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Contents

2 President’s Page
   By: Mike Sullivan

Features: Guns and the 2nd Amendment

4 Papaw’s Gun, Flea Markets and Your Neighbor: The Legal Transfer of Firearms Between Individuals
   By: Mark Lowney and Frances Catron Cadle

10 Dueling and Kentucky Firearms Jurisprudence
   By: Scott Kappas

14 The Still Evolving Jurisprudence of the Right to Bear Arms and the Applicable Standards of Constitutional Review
   By: Jeff Spears and Paul Alley

18 Disposition of Firearms in Decedents’ Estates
   By: Timothy M. Noyes

Columns

50 Young Lawyers Division
   By: Rebecca R. Schafer

52 University of Louisville Louis D. Brandeis School of Law

53 Northern Kentucky University Salmon P. Chase College of Law

54 University of Kentucky College of Law

56 Effective Legal Writing
   By: Jennifer Jolly-Ryan

58 Shop Talk
   By: Michael Losavio

60 Law Practice
   By: Bob Young

Bar News

62 Chief Justice John D. Minton Jr. Confirmed to SJI Board of Directors

63 Justice Lisabeth Hughes Named Deputy Chief Justice

63 Justice VanMeter Sworn In as Supreme Court Justice

66 Ethics Opinion E-440

73 Judicial Conduct Commission

Departments

74 Kentucky Lawyer Assistance Program

76 Kentucky Bar Foundation

78 Continuing Legal Education

86 In Memoriam

88 Who, What, When and Where
I would like to share with you information on two matters on our agenda for the remainder of my term as president: this year’s annual convention in Owensboro and our newly established Task Force on Judicial Evaluations.

**KBA ANNUAL CONVENTION**

First, I am excited that the KBA will host the 2017 Annual Convention in my hometown of Owensboro Wednesday-Friday, June 21-23, 2017, at the new Owensboro Convention Center. Those of you who have not visited Owensboro in several years will certainly be impressed by the over $250 million in public and private improvements made to our downtown and riverfront. The Executive Inn, which many of you recall hosted our annual convention in 1985, has been replaced by two new hotels and a state of the art convention center comparable to or better than the other sites where we have our convention. The KBA has secured rooms at these hotels and others in town at a lower rate than we usually obtain for our conventions.

As noted in the annual convention brochure that appears on pages 24-49 of this edition of the *Bench & Bar*, this year’s theme is “Our Evolving Profession and the Kentucky Lawyer,” and we will highlight the evolution of our profession and the ever changing legal landscape. We have secured numerous exceptional speakers for our event. I refer you to the brochure for a more complete description, but I will highlight a few of them. On Wednesday, June 21, **Jerry Buting**, one of the defense attorneys for Steven Avery, who is the subject of the Netflix documentary series “Making a Murderer,” will hold “A Conversation on Justice.” **Rabia Chaudry** will join us thereafter. She is the public advocate for Adnan Syed, the man at the center of one of the most popular podcasts in history, “Serial,” whose murder conviction was vacated after he served 17 years in prison. She hosts her own podcast, “Undisclosed.” On Thursday, June 22, **Mark Whitacre**, who was the subject of the book and major motion picture (starring Matt Damon) “The Informant,” will speak. The Friday programming will be packed with fun and interesting sessions, including **Matt Jones**, Kentucky attorney and host of “Hey Kentucky!” and “Kentucky Sports Radio,” who will join us to discuss compliance and legal issues in collegiate sports. Topping off Friday’s schedule will be the featured presentation, **Amanda Knox**, who will share the story of her conviction, and subsequent acquittal, of the murder of her roommate while in Italy as an exchange student.

These sessions, along with many other exceptional CLE programs on subjects of interest to Kentucky lawyers, are listed in the brochure, as well as many social events. I thank J.D. Meyer, chair of the Annual Convention Planning Committee, and Matt Cook, chair of the Convention CLE Planning Committee, as well as all members of those committees, for the outstanding job they performed in planning this convention. As an added bonus, the River of Music Party (ROMP), a festival showcasing Bluegrass Music, will be in town that weekend. For more information on the 2017 ROMP Festival and the lineup, visit www.rompfest.com.

I look forward to welcoming each of you as we spend three days together growing in our profession, networking with colleagues, and enjoying Owensboro.

**TASK FORCE ON JUDICIAL EVALUATIONS**

In many of our more populated areas, such as Louisville, Lexington and Northern Kentucky, local bar associations have a process for bar members to comment on and evaluate the judiciary in those areas. These judicial evaluations, if conducted properly, can provide feedback that can improve the administration of justice in our courts. They can also provide information to the public regarding the qualifications of judicial candidates.

As part of its strategic plan adopted last year, the KBA is exploring statewide implementation of this evaluation process. We have formed a Task Force on Judicial Evaluations, chaired by Amy Cabbage, which includes judges from both our district and circuit courts and representatives of these larger local bar associations that have conducted these types of evaluations. Our goal is to develop a fair and thorough evaluation process that will assist in improving the administration of justice in courts in the Commonwealth of Kentucky. We look forward to the successful development of this process.
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By Kentucky Lawyers. For Kentucky Lawyers.
Your client’s grandfather dies and leaves him his shotguns, rifles and handguns. A handgun your client has always wanted is for sale in a booth in the local flea market. Your client is selling his extensive collection of hunting rifles. Your client wants to loan a rifle or a handgun to his twelve year old nephew. Your client wants to buy a gun in South Carolina and bring it home to Kentucky. Your client sees a rare gun for sale on the internet and wants to purchase it and ship it to Kentucky. These are everyday situations faced by Kentuckians who want to assure themselves they are complying with the law in our current pro-gun versus anti-gun political climate. And so the phone call to you. The place to begin is the Gun Control Act (GCA) of 1968.¹

The GCA and its implementing regulations² are the principal Federal laws relating to firearms. The GCA requires a license for individuals and businesses engaged in the commercial buying and selling of firearms (called Federal Firearms Licensees or FFLs), but there is no requirement for individuals not engaged in the business to be licensed. However, there are a number of provisions in the GCA which address the sale or other transfer of firearms by and between individuals. This article will address the transfer of firearms by those unlicensed individuals not considered FFLs.

BUYING AND SELLING BETWEEN INDIVIDUALS

There are significant prohibitions on gun possession. Gun owners or possessors cannot in any circumstances sell or transfer a firearm to anyone whom they have reason to believe is prohibited by law from possessing a firearm.³ People prohibited by law from possessing firearms (“prohibited persons”) include:

1. anyone convicted of a felony;⁴
2. fugitives from justice;
3. any unlawful user or addict of drugs;
4. anyone who has been adjudicated as mentally defective or has been involuntarily committed to a mental institution;
5. certain classes of aliens;⁵
6. anyone who has been dishonorably discharged from the Armed Forces;
7. anyone who has renounced their U.S citizenship;
8. anyone who is the subject of a domestic violence restraining order or has been convicted of a misdemeanor crime of domestic violence; and
9. anyone under indictment for a crime punishable by a term of imprisonment exceeding one year may not ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.⁶

These restrictions apply to anyone who wants to possess a firearm. The law imposes a duty on an FFL to seek information in order to determine whether the purchaser is a person who is prohibited from possessing a firearm. There is no equivalent duty placed on unlicensed individual sellers. However, it is still unlawful for anyone to knowingly transfer a firearm to someone who is prohibited by law by possessing one. The law uses the language “knowing or having reasonable cause to believe.”⁷ With these restrictions in mind, gun owners may directly sell or otherwise transfer a firearm to another person as long as the seller has no reason to believe the buyer is prohibited from possessing the firearm.

There is a general requirement that both parties to the sale be residents of the state where the purchase is occurring.⁸ For purposes of the GCA, a person is a resident of a state in which he or she is present with the intention of making a home in that state.⁹ There are legal ways to effectuate the sale of firearms from a resident of one state to the resident of another but extra steps are required.¹⁰ Unlicensed individuals may complete a transfer of a firearm to an unlicensed individual in another state by shipping the firearm to an FFL in the state of the person receiving the firearm. The FFL...
would then transfer the firearm to the unlicensed out-of-state individual after having that person come in to the store and complete all the necessary paperwork and get the required background check to make sure the transfer is lawful.

When the situation is reversed, the process is reversed. If a gun owner purchases a firearm in another state and wants to bring it back to Kentucky, the federal law requires that the firearm be shipped by an FFL to an FFL in the state of residence, and the new owner pick it up from the FFL.13 There is an exception for transfers of long guns, that is, rifles and shotguns, by FFLs to out-of-state residents. The exception allows FFLs to sell shotguns or rifles to nonresidents so long as the sale is done over the counter at the FFL’s licensed premises and complies with the laws of both states.14 So, the purchase of a firearm from an individual in another state, just like the sale of a firearm, requires the physical transfer of the firearm be made through FFLs.

Because Firearms dealers are required to complete paperwork and trigger background checks on purchasers of firearms to try and discover whether a potential possessor of a firearm falls into any of the categories of people who may not possess firearms, the use of an FFL to facilitate a private sale can act as a safety net for a private seller even when the sale is between residents of the same state. If there is a question, or if a private seller simply wishes to be assured that a private purchaser is lawfully permitted to possess a firearm, the transfer may be made using the services of a local FFL. The private seller would contact a local FFL and if the FFL agrees, the FFL would make the transfer after the required paperwork and background check are completed. The FFL may charge a fee for facilitating the transfer. But there is no requirement that a private seller use an FFL for an intrastate transaction. If the transfer is made using an FFL, then the FFL becomes responsible for triggering a background check on the purchaser and completing the required paperwork as if the firearm had been purchased through the FFL. Thus, the individual seller is protected.

There is no recordkeeping requirement pertaining to the transfer of a firearm between two individuals under federal law, and Kentucky does not regulate intrastate transfers between Kentucky residents. In order to protect the firearm owner, a “personal firearms record” can be created and maintained.15 This is a record of the make, model and serial number of each firearm in one’s collection, and the date the firearm was acquired. A personal firearms record is helpful in the event a firearm is lost or stolen, and in assisting the police in returning a recovered firearm to its owner. Upon the resale or transfer of a personal firearm, the name of the person who purchased it and the date it was transferred to the new owner easily could be added to a personal firearms record to help establish the due diligence of the seller in case there would ever be a question about the lawfulness of the transfer.

BUYING AND SELLING FROM A FLEA MARKET
From the point of view of the person who wishes to buy a firearm from a seller at a flea market, the rules governing the transfer of firearms between individuals apply.14 The purchaser may buy the firearm as long as the sale doesn't run afoul of some other provision of the law like receiving stolen property, and the purchaser is not a prohibited person. Individuals purchasing firearms at flea markets and fairs should note that FFLs may only sell firearms from their licensed business premises. The only exception is for a gun show in the state where the licensed premises is located.15 Irrespective of the professional appearance of the booth or the number of guns offered for sale, flea market sellers are not licensed firearms dealers (FFLS).

Clients should also know that engaging in the business of dealing in firearms without a license is a felony.16 The government does not have to prove that a defendant’s primary business was dealing in firearms to charge this felony. As stated by the Fourth Circuit Court of Appeals in United States v. Beecham, only the following are required to sustain a conviction: “[t]he government need not prove that a defendant’s primary business was dealing in firearms or that he necessarily made a profit from it. The government must show “a willingness to deal, a profit motive, and a greater degree of activity than occasional sales by a hobbyist.”17 Consequently, an important consideration for private sellers of firearms is to make sure the level of their activities does not rise to the point of requiring them to obtain an FFL. Individuals who frequently sell firearms at flea markets or fairs run the risk of violating this prohibition. Persons with questions about this can contact their local office of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for information and assistance.18

BUYING AND SELLING TO A MINOR
The laws make a distinction between long guns, such as rifles and shotguns, and handguns when it comes to their lawful possession by those under 18 years of age. There is no age restriction on the possession of long guns under Kentucky or Federal law.19 Juveniles may possess long guns. While an FFL may not sell a long gun to a person under the age of 18, there are no restrictions on private individuals selling long guns to juveniles as long as both parties to the transfer are residents of the same state. However, there are restrictions under both Kentucky law and Federal law on the possession of handguns and handgun ammunition by people under 18 years old.20 Consequently, a handgun may not be sold directly to a person under 18 years of age. Although Kentucky law does not restrict the transfer or sale of handguns to people between the ages of 18 and 21, Federal law prohibits FFLs from selling handguns or handgun ammunition to anyone under age 21.21 So, a private individual may sell a handgun to someone between the ages of 18 and 21 while a gun dealer cannot.

There are many common sense exceptions to the restriction on the possession of handguns by juveniles. For example, a juvenile may possess a handgun while in attendance at a firearms safety course, target shooting at an established firing range, with the permission of his parent and on real property under the control of an adult who has also given permission, hunting pursuant to a valid license, in the course of employment such as ranching or farming, in the course of employment with the Armed Forces or National Guard, etc.22 A common thread of these exceptions are the writ-
ten consent of the parent or guardian, the consent of the owner of the premises where the handgun is to be possessed, and the assumption of ultimate responsibility for the juvenile’s acts by an adult or employer.

Another common sense exception is for the self-defense in a home. A juvenile may lawfully possess a handgun in self-defense or the defense of others against an intruder while in the residence of the juvenile or in a residence in which the juvenile is an invited guest.

**LOANING OR BORROWING A FIREARM**

A person not prohibited from possessing a firearm can borrow or rent a firearm in any state irrespective of residency as long as the anticipated use is temporary and for a lawful sporting purpose. The person loaning the firearm must not have reason to believe the recipient is a prohibited person. Thus, for example, a visiting relative or friend from another state may borrow a firearm to go hunting or target shooting. In order to temporarily loan a handgun (but not a long gun) to a juvenile, one of the exceptions listed above must apply.

**INHERITING A FIREARM**

As stated above, individual gun owners may not directly transfer a firearm to another individual residing in another state. This is true regardless of the purpose—sale, trade, gift, loan, or other. The law does have an exception for bequests and the intestate transfer of property after death. An individual is permitted to transfer a firearm to a person who is not a resident of Kentucky in order to carry out a bequest or the intestate descent of a firearm to another person who is not otherwise prohibited from possessing a firearm. So, Papaw’s guns can be transferred by the executor or administrator of his estate to a beneficiary even if the beneficiary lives in a state other than Kentucky as long as some other provision of the GCA does not prohibit the beneficiary from possessing a firearm. The ownership and physical possession of long guns may be transferred through inheritance to a juvenile without running afoul of the GCA or Kentucky law. Handguns are a different story. The ownership of handguns may be transferred by bequest or inheritance to a juvenile but the actual transfer of possession of the handgun directly to the juvenile may not occur until the juvenile reaches age 18.

**MAILING AND SHIPPING OF A FIREARM**

A gun owner may ship a firearm by a common carrier to another resident of the same state or to an FFL in any state. The carrier must be notified that the package contains a firearm or ammunition. The carrier is prohibited from labeling the package in any way to indicate that it contains a firearm or ammunition and the carrier must obtain a written acknowledgment of the delivery and receipt.

Although a gun owner directly cannot ship a gun to a resident of another state, a gun owner may ship a firearm to him or herself in care of another person in the other state if the purpose of shipping the firearm is for the gun owner to hunt or engage in any other lawful activity with the firearm. That shipment is allowed because the owner is deemed to be sending the firearm to him or herself rather than to another person. The package should be addressed to the owner “in the care of” the out-of-state resident and should only be opened by the owner. Likewise, a homeowner relocating from one state to another may move his or her firearms with other household goods as long as the owner notifies the mover that firearms are being transported. The state law of the new residence should be checked to make sure that the gun owner may lawfully possess the firearms under that state’s laws.

Handguns cannot be placed in the U.S. Mails. A common or contract carrier must be used to ship a handgun. At the time of this writing, it is the business policy of U.P.S. and Fed Ex to not accept for shipment any firearms moving from one unlicensed person to another. They will only ship from an unlicensed person to an FFL. A long gun may not be sent through the U.S. Mails to a non-licensed resident of another state. A long gun may be sent through the U.S. Mails to a resident of the same state as the sender or to a licensee in any state. Long guns should be sent by registered mail in packaging which does not indicate the contents of the package.

**TRAVELING WITH A FIREARM**

Federal law protects an individual’s ability to travel with a firearm. The Firearm Owners Protection Act of 1986 (FOPA), provides that notwithstanding any state or local law, a person is entitled to transport a firearm from any place where he or she may lawfully possess and carry such firearm to any other place where he or she may lawfully possess and carry it. The firearm must be unloaded and locked out of reach. In vehicles without a trunk, the unloaded firearm must be in a locked container other than the glove compartment or console. This includes ammunition that must be locked out of reach in the trunk or in a locked container other than the glove compartment or console.

Those traveling across state lines should be aware that each state has different laws concerning the transportation of firearms and should be familiar with those laws. State concealed carry provisions may alter the requirements the firearm be unloaded and locked out of reach in a container other than a glove compartment or console. Those varying state concealed carry laws are outside the scope of this article. State and local police officers may not be aware of the Federal law allowing for the interstate transport of firearms if secured properly. Travelers should be advised to have any licenses or permits to carry firearms with them, and to become familiar with any applicable local laws before traveling.

Transporting firearms across state lines on behalf of another person can cause problems. In the case of United States v. Mitchell, a Texas resident purchased handguns in Texas and travelled to New York and gave them to a New York resident. This happened several times and the New York resident began giving the Texan money to purchase handguns in Texas and bring them to him in New York. The Texas resident was charged and convicted of criminal activity. The Texan argued he could not be convicted because he was technically complying with the law. The U.S. Court of Appeals for the Third Circuit, in affirming the conviction, relied on the
“otherwise obtained” language in the federal statute, noting that this term “communicated [Congress’s] intent to have the statute’s proscription reach beyond straightforward, one-on-one purchases to cover those illegal firearms transactions effected through the use of agents or straw men.” The court concluded that although the New York resident had not purchased the firearms directly, he had “otherwise obtained” them, and thus, the Texas resident could be convicted as a coconspirator to violate federal law by serving as his agent.

Traveling by air has special concerns. The rules concerning the shipment of a firearm through a common or contract carrier apply. That is, the firearm must be declared to the carrier, it must be checked, the firearm must be secured in a case which is not labeled to show its contents, although no written acknowledgment of delivery and receipt must be obtained by the airline upon delivery back to the passenger. Each airline establishes their own procedures for passengers transporting firearms and the airline should be contacted ahead of time to assure compliance with those procedures. The Transportation Safety Administration (TSA) guidelines state that firearms must be declared to the airline in checked baggage, must be unloaded and locked in a hard sided container, and that only the passenger should retain the key or combination to the lock. Additionally, firearms parts, including magazines, clips, bolts and firing pins must be placed in checked baggage. Firearms are never permitted to be taken on an airplane inside the carry-on luggage or on the person of the traveler.

INTERNET PURCHASES OF FIREARMS

The purchase and sale of firearms on the internet has become increasingly popular. If a firearm is purchased online from an FFL, all of the requirements for a sale by an FFL remain. The firearm must be shipped by the seller to an FFL so that the required paperwork and background check are conducted before it is transferred to the purchaser. There are also websites like www.gunbroker.com which host auctions for both FFLs and private sellers to sell firearms. When an FFL uses such sites, the rule above still applies, the firearms must be shipped to an FFL for transfer to the purchaser after the paperwork and background check are completed.

When a private seller makes the sale on an auction site or any other type of internet site, and the purchaser resides in a different state, the firearm must be shipped to an FFL in that state in order to be transferred. If the purchaser resides in the same state as the seller, there is no requirement to ship it through an FFL, although the seller may still elect to do so if he or she wants to make sure the purchaser can legally possess the firearm. If the firearm is shipped directly to the in-state purchaser, compliance with the Federal laws concerning the mailing and shipping of firearms is required. Just like selling at a flea market, internet sellers of firearms should be careful that their activities do not rise to the level of being engaged in the business of dealing in firearms without a federal firearms license. The same rules apply whether the sales are from a flea market booth or through a website.

CONCLUSION

Both Kentucky and federal laws provide lawful ways for law abiding citizens to purchase, sell, lend, borrow, inherit, transport, travel with, and ship firearms. The restrictions that do exist require a few extra steps and precautions to insure safety and to prevent firearms from falling into the hands of those individuals who should not possess them.

ABOUT THE AUTHORS

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Cadle graduated from the University of Kentucky College of Law in 1983 and was a member of the Kentucky Law Journal. Immediately upon graduation, she served as law clerk to then U.S. District Judge Eugene E. Siler, Jr. She is an active member of the Kentucky Bar Association where she serves on the editorial board of the Kentucky Bench & Bar magazine, and is a frequent contributing author.

ENDNOTES

2. 27 C.F.R., Part 478.
4. 18 U.S.C. § 922(d)(1) reads a person “under indictment for, or has been convicted in any court of, a crime punishable by a term of imprisonment exceeding one year.”
5. 18 U.S.C. § 922(d)(5) and (6). The exact language of the statute states any person “who being an alien is illegally or unlawfully in the United States or except as provided in subsection (y)(2), has been admitted to the United States under a non-immigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).”
6. 18 U.S.C. § 922(g) and (n); Kentucky law also prohibits the possession of a firearm by a convicted felon, KRS.527.040.
8. 18 U.S.C. § 922(a)(3) and (5); 27 C.F.R. § 478.29.
9. 27 C.F.R. § 478.11, definition of “state of residence.”
10. 18 U.S.C. § 922(a)(3) and 922(b)(3); 27 C.F.R. § 478.29.
11. 18 U.S.C. § 922(a)(3) provides that it is unlawful “for any person [other than an FFL] to transport into or receive in the State where he resides … any firearm purchased or otherwise obtained by such person outside that State.”
15. 27 C.F.R. § 478.100.
17. Beecham, 993 F.2d 1539 (4th Cir. 1993).
18. 18 U.S.C. §§ 922(t), 923(a) and (d). An applicant for an FFL is required to identify a premises from where they will conduct business and must maintain the required records of their inventory, to initiate background checks on each purchaser prior to the transfer of a firearm, and are subject to annual compliance inspections by regulatory officials from ATF. ATF has regulatory offices in Louisville at 502-753-3500 and Lexington at 859-219-4508 where information about obtaining a Federal firearms license can be obtained, as well as at www.atf.gov.
19. See, 18 U.S.C. § 922(c)(1) and (2).
20. KRS 527.100(1); 18 U.S.C. § 922(c)(1) and (2).
22. KRS 527.100(1)(a)-(g).
26. 18 U.S.C. § 922(a)(5) provides it is unlawful “for any person [other than an FFL] to transfer, sell, trade, give, transport, or deliver any firearm to any person [other than an FFL] who the transferor knows or has reasonable cause to believe does not reside in … the State in which the transferor resides.”
27. Id.; 27 C.F.R. § 478.30(a) and (b).
28. 27 C.F.R. § 478.30(a).
29. See, 18 U.S.C. §§ 922(a)(1) and (2); 922(c)(3)(C).
31. 18 U.S.C. § 922(b)(5); ATF Publication 5300.4, Q&A B8.
32. 18 U.S.C. § 922(e); 27 C.F.R. §§ 478.28 and 478.31. But note, there are special categories of firearms such as fully automatic weapons which must be registered in the National Firearms Registry and Transfer Record with ATF in order to legally possess, and which require approval from ATF prior to being moved interstate. See, 26 U.S.C. §§ 5841-5872. Any discussion of the possession and transfer of those firearms is outside the scope of this article.
35. 18 U.S.C. §§ 922(a)(2)(A) and (e); 27 C.F.R. § 478.31.
37. 18 U.S.C. § 926A.
39. Id. at 81.
40. Id.
41. Infra at p. 6 and n. 30.
43. There is a TSA exception which allows certain law enforcement officers to fly armed if they meet certain criteria and have completed the TSA Law Enforcement Officer Flying Armed Training Course.
44. 18 U.S.C. §§ 922(t), 923(g)(1)(A), 27 C.F.R. §§ 478.102, 478.124(a), (c).
45. 18 U.S.C. §§ 922(t), 923(g)(1)(A), 27 C.F.R. §§ 478.102, 478.124(a), (c).
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DUELING AND KENTUCKY
FIREARMS JURISPRUDENCE

BY: SCOTT KAPPAS
Most Kentucky lawyers fondly remember the day they took the oath as members of the Kentucky Bar. Family and friends gathered for a formal ceremony in Frankfort. Leading representatives of Kentucky’s Bar administered the traditional oath and a reception was held at the Bar’s headquarters. What made this affair noticeably different from proceedings in other states was the requirement that the new lawyers affirm that they have not participated in duels.1 Duels? Is this 2016 or 1816? Most visitors from out-of-state wonder why such an antiquated affirmation continues to exist well into the 21st century. The fact is this “oddity” actually provides an insight into Kentucky’s jurisprudence regarding firearms. Unlike many states, the Commonwealth’s statutory bent has a tradition of narrowly tailoring the regulation of guns and gun usage. A perusal of statutes in states such as Wisconsin and Minnesota will find many laws regulating the use of firearms for hunting and sport shooting.2 But Kentuckians have always had a “carry a gun like I wear a pair of shoes” attitude. And this culture, whether originating from the dueling tradition of the South or the frontier spirit of Daniel Boone, has made citizen gun carry a trademark of Kentucky from its beginning.

One of the earliest instances of the Kentucky courts addressing the right to carry a firearm was the 1822 case of Bliss v. Commonwealth.3 Kentucky’s highest court invalidated a Kentucky statute that criminalized carrying a concealed weapon. The Court ruled the statute violated the Kentucky constitutional right to bear arms.4 At that time, the Kentucky constitutional guarantee of the right to bear arms was much more absolute than it is today. The Commonwealth’s first Constitution stated, “the right of the citizens to bear arms in defense of themselves and the state, shall not be questioned.”5 The Court in Bliss said that this language did not make exception for the legislature to regulate the mode of carry. The Court reasoned that prohibiting either concealed or open carry essentially questioned the right and was therefore at odds with the Kentucky Constitution.6 Because of this ruling, lawmakers were forced to add a qualification to later versions of the Constitution (our current version is from 1891) that qualified the right. The current Kentucky Constitution states that, “[a]ll men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned: the right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.”7 This opened the door to statutory prohibitions on the concealed carry of weapons. But the open carry of firearms remained unregulated and, for the most part, untouched by those crafting the law.

So, from the late 19th century to just recently, the preferred method of carry in Kentucky was “plain view.” Secured in a belt holster and visible for all to see, the right to carry a gun in public was well-accepted. In the 1956 case, Holland v. Commonwealth,8 the Kentucky high court opined that many states gave their legislatures the power to regulate the carry of firearms, and some states even provided their assemblies with the power to regulate mere gun possession. But Kentucky only empowered its legislature to regulate the citizens’ ability to carry concealed weapons. Therefore, the Court wrote “…if the gun is worn outside the jacket or shirt in full view, no one may question the wearer’s right to do so.” This perhaps summed up the general view in Kentucky and helped distinguish the state from so many others.

But, despite this unrestricted attitude at the state level, Kentucky law did not prohibit local communities from enacting ordinances that would restrict or, in some cases prohibit, the public carry of loaded weapons, either openly or concealed.10 These ordinances, while lacking the same harsh penalties mandated by the corresponding Kentucky statutes, caused enough problems to make open carry impractical.11 Most law-abiding citizens did not want to knowingly violate a traffic ordinance much less one regulating weapons carry. And the potential for inconsistency when crossing from one small town to the next had a chilling effect similar to that of a “speed trap” for those exercising their right to carry.12

Thus, establishing statewide uniformity became a principle goal of those promoting the right to carry. In 1984, the General Assembly enacted a comprehensive preemption law that became a model for many other states.13 The new Kentucky statute was titled “Local Firearms Control Ordinances Prohibited.” The new statute prohibited the future enactment of local ordinances regulating the “…possession, carrying, storage, or transportation of firearms, ammunition etc. . . .” Further, the new law nullified any existing ordinances.14 In one fell swoop, the General Assembly eliminated the ability of local governments to regulate gun carry absent a specific grant of power from Frankfort. Subsequent amendments to the law also provided those harmed by enforcement of an otherwise preempted local ordinance with a civil cause of action against the offending entity.15 Much to the chagrin of urban areas that continued to enforce the newly unenforceable local ordinances, citizens were eligible for damages and reasonable attorney’s fees for any local overreach.16

Even with preemption, those exercising their right to carry openly continued to be harassed for engaging in otherwise lawful behavior.17 In 1990, a Cincinnati man was told by a Covington Police dispatcher that open carry was lawful in Kentucky. He proceeded to carry a handgun in a visible belt holster while walking around Covington’s Main Strasse area. Police were summoned on a report of a “man with a gun.” The visitor was arrested on a disorderly conduct charge and forced to appear in court. The presiding judge quickly dismissed the charge as having no legal basis, finding that a handgun secured in a visible belt holster does not meet the standard necessary to effect an arrest for disorderly conduct.18 The case exemplified how otherwise lawful behavior, if perceived by some as odd, could bring unwanted police attention to a citizen attempting the exercise of a fundamental right.

This incident, along with similar ones in Lexington and Louisville, prompted calls for the enactment of a licensing law that would allow the carry of concealed loaded guns in public. In 1996, the General Assembly enacted Kentucky’s License to Carry Concealed Deadly Weapon Law.19 This law provided a legal means whereby residents could apply to the State Police for licenses authorizing...
them to carry concealed firearms in public. It created standards for application that were based on qualifying factors that were objectively derived. Citizens who had clean criminal records would not be forced to demonstrate a “viable need” for carry, as was the case in more restrictive states. Instead, if one met the objective criteria set forth by the statute, paid the required fees and attended an eight-hour gun safety course, one would be issued a license to carry a concealed firearm.20

The new law essentially created an exception to Kentucky’s general prohibition on concealed carry and codified this exception in Section 4 of the preexisting law.21 It allowed licensees to carry concealed in most public areas except those specifically prohibited such as law enforcement offices, daycare centers, bars, K-12 schools, courthouses, and meetings of legislative bodies. It also permitted private businesses, hospitals and post-secondary institutions to post signs prohibiting concealed carry on their premises. But an exception clause in the new law exempted violators of these posted prohibitions from incurring any criminal penalties and also shielded law licensees and other lawful gun owners, from adverse action for concealed in most public areas except those specifically prohibited.24 Local governments were limited to regulating carry within their own buildings. Open spaces, such as parks and parking lots, were not specifically listed as areas subject to regulation.25 Attempted regulation in these areas could result in lawsuits against the offending entities per Kentucky’s preemption law.26 Additionally, KRS §527.020 provided civil penalties against public and private employers who prohibited licensees and other lawful persons from keeping loaded or unloaded firearms in vehicles parked on their properties.27

In 2012, the University of Kentucky lost a high profile case in which they fired an anesthesia tech for possessing a firearm in his vehicle parked at the UK Medical Center. The Kentucky Supreme Court ruled that UK’s actions violated public policy (the right to bear arms) and were patently unlawful.28 The statute that allows universities to control firearms on their premises is explicitly qualified by another part of the Kentucky statute which exempts licensees, and other lawful gun owners, from adverse action for storing guns in their vehicles while parked on university property.29 The unanimous Court, stated, “[w]e conclude that Mitchell’s discharge was contrary to a fundamental and well-defined public policy, i.e. ‘the right to bear arms’ as evidenced by the Kentucky Revised Statutes. We further conclude that an explicit legislative statement prohibited Mitchell’s discharge.”30

The Court essentially confirmed the plain language of the statutes. But this ruling also highlighted an important public policy exception to the state’s broad employment-at-will doctrine which holds that at-will employees may be discharged, “for good cause, for no cause, or for a cause that some might view as morally indefensible.”31 The Court pointed to the “narrow public policy exception” developed in previous case law, most notably Grzyb v. Evans,32 which held that if a discharge is contrary to well-defined public policy, as evidenced by existing constitutional or statutory authority, it is a question of law for the court to decide as to whether or not the discharge is legitimate. KRS §527.020 not only provided a blanket protection clause for vehicle gun possession, but also mandated civil and criminal penalties for the property owner violating the protection. Similar fact patterns occurring in states without this statutory preciseness would likely be decided in favor of the property owner/employer based on an application of the general “at will” doctrine. But Kentucky’s tradition of citizen gun carry, coupled with a legislature in step with this tradition, made for an outcome relatively unique to the Commonwealth.33

The enactment of concealed carry licensing witnessed a steady and dramatic rise each year in the number of people applying for licenses.34 This fact, and the reports from the Federal Bureau of Investigation (FBI) detailing the record number of gun purchases in the Commonwealth, suggested that gun carry among average citizens became even more common than it was before the law.35 But the practicality of concealed carry was still the subject of much discussion. If a licensee used a gun in self-defense, what would be the legal consequences for him? The traditional Castle Doctrine, accepted by many states, holds that a person has no duty to retreat when confronted by a threat to his life within his own home or place of abode.36 But confrontations outside of one’s residence are an entirely different matter. Many states still require those in public areas to “retreat to the wall” before employing deadly force against an attacker.37 And other states may not impose a “duty to retreat” in special areas outside one’s home, such as vehicles, but still require retreat in most public places.38

Kentucky’s judiciary has spoken on this subject consistently and in rather emphatic terms as early as 1931.39 The case of Gibson v. Commonwealth said it best: “[i]t is the tradition that a Kentuckian never runs. He does not have to….he is not obliged to retreat, nor to consider whether he can safely retreat, but is entitled to stand his ground, and meet any attack upon him with a deadly weapon. . . .”40 The operative language, “stand his ground” has become quite common in the news as of late. Much of the media characterizes this phrase as being a recent invention. But it has been a part of Kentucky’s case law for 86 years. And Kentucky’s courts have upheld it consistently throughout the Commonwealth’s history. One would think that such strong history would render further statutory input unnecessary. Yet disturbing trends in the judicial decisions of other states prompted the General Assembly to address the issue in 2006 with a strong codification of existing Kentucky case law.

Kentucky’s “stand your ground” law was formally enacted in July of 2006.41 The law restated much of what was already evident in the case law. It set forth a presumption that a person who uses deadly force against an intruder who unlawfully and forcibly enters that person’s dwelling, residence or occupied vehicle is acting legitimately, regardless of what force the defender employs against

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It is interesting to note that the General Assembly did extend some measure of local control to cities and counties who wished to prohibit concealed carry of firearms in buildings publicly owned, leased or controlled. Local governments were allowed to post signs prohibiting concealed carry in these areas but were not given authority to regulate open carry.23 The local rules could not carry criminal penalties for violations, only denial of admittance to the facilities.24 Local governments were limited to regulating carry within their own buildings. Open spaces, such as parks and parking lots, were not specifically listed as areas subject to regulation.25 Attempted regulation in these areas could result in lawsuits against the offending entities per Kentucky’s preemption law.26 Additionally, KRS §527.020 provided civil penalties against public and private employers who prohibited licensees and other lawful persons from keeping loaded or unloaded firearms in vehicles parked on their properties.27

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Kentucky’s “stand your ground” law was formally enacted in July of 2006.41 The law restated much of what was already evident in the case law. It set forth a presumption that a person who uses deadly force against an intruder who unlawfully and forcibly enters that person’s dwelling, residence or occupied vehicle is acting legitimately, regardless of what force the defender employs against
the intruder. So, if an intruder breaks into a vehicle armed with a drinking straw, and the occupant uses a gun to defend him or herself, such force arguably would be considered legitimate under the circumstances because the vehicle’s occupant is presumed to have a “reasonable fear of imminent peril of death.”42 Of course, exceptions to the presumption exist. If the defender is engaged in illegal activity, for instance illegal drug sales, or if the intruder is a policeman in performance of his duties or an immediate family member, the presumption would not apply.43

Most importantly, the law created the much talked about “stand your ground” standard in public places. A person not engaged in unlawful activity in a place he has a right to be (most public places), has no duty to retreat when attacked. He may meet force with force, including deadly force.44 This differs slightly from the standard applied when a dwelling, residence or occupied vehicle is involved. In those places, deadly force is almost always justified if the invasion was forcible and unlawful. But, in public places, one must only meet force with force to be lawful. If an attacker wields a baseball bat, and the victim of the attack shoots him, the use of deadly force is justified. But the totality of the circumstance always will be examined. If the attacker is wildly swinging a baseball bat five feet away from the victim, a head shot from a .45 would be justified. The victim was clearly in danger of death or serious bodily harm. But if the attacker was menacing the victim with a baseball bat from 100 feet away, deadly force may not be justified. But in either situation, a victim in Kentucky has no duty to retreat.

Finally, the law provided both criminal and civil immunity for those using force as permitted under the new law.45 Citizen gun carriers were most concerned about the possibility of being charged with a crime or being named in a lawsuit from the lawful use of their firearms.46 Most gun owners have heard horror stories of the burglar who sues the homeowner for damages after the homeowner shoots and wounds him. Under the Kentucky statute, criminal and civil immunization is provided for a person who, “uses force as permitted… and is justified in using such force.”47 The statute also awards reasonable attorney’s fees, court costs and other damages for expenses incurred by a person defending against any adverse action taken in violation of this statute. This makes Kentucky’s “stand your ground” law one of the strongest in the nation.48

Kentucky’s historical connection with firearms is reflected in its jurisprudence. And this jurisprudence reflects what Kentuckians value most—lawful gun ownership and lawful gun use. It was recently reported in an online news magazine that, based on National Crime Information Center (NCIC) background check information from the FBI, the Commonwealth has the highest per capita number of gun transactions in the country, making for probably the highest per capita rate of actual gun ownership.49 When coupled with a favorable legal climate for guns, practicing attorneys are bound to run into cases that require knowledge of gun laws and their place in both Kentucky legal history and present-day society. As Kentucky’s elected representatives can attest, the one subject guaranteed to be addressed in the General Assembly each session is that of guns. And the oath we take to enter into our profession as Kentucky lawyers enshrines this tradition of responsible and lawful gun ownership.

ABOUT THE AUTHOR
SCOTT KAPPAS is an attorney in Covington, Ky. Since 1996, he has written and published the, “Traveler’s Guide to the Firearm Laws of the Fifty States.” The book is updated yearly and is currently in its 21st edition with over 1,000,000 copies sold nationwide. Purchasers of the book include the NFL, NBA and the National Rifle Association. Along with his publishing business, Kappas is active in the fight to preserve and expand the right to bear arms. He has authored several academic studies on the subject and has spoken on behalf of gun rights before both media outlets and legislative committees. He holds a Bachelor of Arts in history from NKU (1990) and a Juris Doctorate from Chase College of Law (1993).

ENDNOTES
1. Kentucky Constitution Section 228 requires each member of the Bar to swear “I have not fought a duel with deadly weapons within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, nor aided or assisted any person thus, offending, so help me God.”

2. This point is exemplified by statutes in both states prohibiting the possession of loaded long guns in vehicles. These prohibitions ostensibly prevent hunting from vehicles. Long guns are not considered “self defense” weapons in these states. Kentucky has no such prohibition, illustrating that Kentucky considers any firearm legitimate for self defense. See, Miss. Stat. §97B.045 & Wis. Stat. §167.31.


4. Id.

5. Id.

6. Id.

7. KY Const. Bill of Rights §1.


9. Id.

10. Prior to 1984, the Kentucky Revised Statutes did not preempt the local regulation of firearms.


13. KRS §65.870.

14. KRS §65.870(3).

15. KRS §65.870(4).

16. Id.


18. Id.

19. KRS §237.110.

20. KRS §237.110(4).

21. KRS §527.020 — general prohibition against concealed carry of firearms — subsection (4) except for licensees.

22. KRS §237.110 (17).

23. KRS §237.119(2).

24. Id.

25. Id.

26. KRS §65.870(4) provides for the recovery of declaratory injunctive relief, attorney’s fees, costs, and expert witness fees and expenses.

27. KRS §527.020(4).


29. KRS §527.020.

30. Mitchell, 366 SW 3d at 897.

31. Id. at 898.

32. Grzyb v. Evans, 700 S.W.2d 399, 401(Ky. 1985).


37. See, e.g. State v. Quarles, 504 A. 2d 473 (RI 1986).


40. KRS §503.055.

41. KRS §503.055(1)(a) and (b).

42. KRS §503.055(2)(c) and (d).

43. KRS §503.055(3).

44. KRS §503.85.

45. Vilos, supra note 35 at 5.

46. KRS §503.085.

47. Vilos, supra note 35 at 169.

48. The Most Armed States, supra note 34.
The right to bear arms has been a recurring issue for the last few decades despite the fact private firearms possession has been common since the founding of the nation. Few legal issues so intimately entwine our history, our political ideologies, and our civil liberties, or so test our judiciary, as the issue of the right to bear arms. The words of the Second Amendment of the U.S. Constitution have a familiar ring to most citizens: “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” But the federal constitutional right of an individual to bear firearms in self-defense was only recently clarified by the Supreme Court. Unlike the Commonwealth of Kentucky’s Constitution which has long provided that Kentuckians have an “inherent inalienable …right to bear arms in defense of themselves and of the State...,” the U.S. Constitution had been subject to a decades long debate as to whether the Second Amendment affords rights to the individual or to the states for purposes of forming state militias, or to both. Kentuckians have a rich tradition of the use of firearms for self-defense, hunting and sporting purposes, and Kentucky courts have noted that “an overwhelming amount of law abiding citizens in Kentucky have guns in their homes for lawful purposes.”

Following the decision in District of Columbia v. Heller, a steady flow of new federal cases have tried to define the boundaries and breadth of the federal right to bear arms. Prior to Heller, Kentucky’s own highest court began to define the scope of the right to bear arms under the Kentucky Constitution. Perhaps because the state and federal constitutions are different in rights, language and structure, each court applies different methods when reviewing challenges to legislative enactments that restrict the right to keep and bear arms. Even within the federal system, the standards of judicial review are not settled. This article will examine the evolving standards of review followed by the United States and the Commonwealth of Kentucky when addressing constitutional challenges to the right of an individual to bear firearms.

FEDERAL REVIEW OF SECOND AMENDMENT CLAIMS

Starting in 2008, the United States Supreme Court issued two opinions of extraordinary importance as relates to the rights of individual citizens to keep and bear arms in their personal capacities, the Heller case and McDonald v. City of Chicago. Although these decisions established that the Second Amendment right is an individual right and addressed the underlying purposes of the amendment, the Supreme Court let linger for another day questions of how to apply the decisions and the full scope of the right. The Heller decision addressed several issues raised by a resident of Washington, D.C., who challenged the city’s virtual ban on gun possession and its imposition of gun storage requirements, such as requiring the disassembly of firearms, and requiring the use of trigger locks. Heller alleged that these restrictions prevented him...
from being able to defend himself and wrongfully interfered with his constitutional right to bear arm. The Supreme Court agreed. In an historic decision, the Court recognized that the Second Amendment protected the individual “right of law-abiding, responsible citizens to use arms in defense of hearth and home.”

The Supreme Court held that “the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock makes it impossible for citizens to use arms for the core lawful purpose of self-defense and is hence unconstitutional.” Notably, the Court also held as it relates to the ban on handgun ownership that “[u]nder any of the standards of scrutiny the Court has applied to enumerated constitutional rights, this Syllabus prohibition—in the place where the importance of the lawful defense of self, family, and property is most acute—would fail constitutional muster.” The Court did acknowledge in dicta that the right is subject to certain traditional and historical restrictions which are “presumptively lawful.” These restrictions include the restrictions on possession of a firearm by a felon, the mentally ill, and prohibitions covering sensitive locations. The Court did not, however, specify the standard of review to be used by the lower courts to judge any restrictions placed on the right to bear arms. The levels of judicial review recognized by the Court for constitutional issues are rational basis, intermediate scrutiny, and strict scrutiny. The District of Columbia had argued that the gun ban need only be rationally related to a legitimate purpose of the city, the most favorable level of review for a government entity. While the Court specifically rejected the rational basis test for future Second Amendment claims as too low, it did not address which of the two remaining higher standards should be applied.

The Supreme Court revisited the Second Amendment in McDonald v. City of Chicago. The salient question in the City of Chicago was whether the Second Amendment applied to the individual States and by extension to the City of Chicago through the Due Process Clause of the Fourteenth Amendment, or did it simply restrict actions of the Federal government. Recall that the District of Columbia is a federal enclave; thus, the Heller decision did not answer that question. The lower courts sought to distinguish City of Chicago from Heller by noting that early post-Fourteenth Amendment jurisdiction under the Privileges and Immunities Clause had failed to explicitly protect the rights enshrined in the Second Amendment from encroachment by the states. The Supreme Court, however, rejected that conclusion, and found that the Second Amendment applies to the states as “the Fourteenth Amendment’s Due Process Clause incorporates the Second Amendment right recognized in Heller.”

Heller and City of Chicago established that the Second Amendment provides protection from certain actions by both the Federal and State governments, and that the right to possess a handgun for personal protection is protected by the Second Amendment. With those core issues settled, the lower federal courts now continue to address numerous issues related to the exercise of Second Amendment rights and there are, unsurprisingly, divergences in application.

**INTERMEDIATE SCRUTINITY VERSUS STRICT SCRUTINITY**

The Tenth Circuit Court of Appeals weighed in on the standard of judicial review in the case of Bonidy v. U.S. Postal Service. Bonidy lived in a rural area that required citizens to pick up mail at a post office box. Further, evidence presented in the case indicated that armed thugs often sought to rob patrons at post offices in hopes of stealing valuable mail. Because of his concerns, Bonidy sought an opinion from the United States Postal Service (“USPS”) General Counsel as to whether or not he would be prosecuted if he brought an otherwise lawfully concealed weapon into a post office, or in the alternative, left it secured in his vehicle. He was advised that he would be subject to prosecution if he did either. As a result, he filed suit claiming that the USPS regulations violated his Second Amendment right. The district court upheld the constitutionality of the prohibition on carrying a firearm inside the post office, but found that the prohibition on possession in the parking lot, legal under state law, did violate the Second Amendment.

The United States appealed the decision as it relates to the storage of the firearm in the public postal parking lot.

The Tenth Circuit upheld the regulation forbidding the carry of a weapon inside a post office. However, the Tenth Circuit reversed the district court’s finding that the prohibition against possession in the parking lot was unconstitutional. In upholding the entirety of the Post Office’s regulation, the Tenth Circuit cited the dicta in Heller, also repeated in City of Chicago, that the Supreme Court’s holdings in those cases “did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons and the mentally ill,” and “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” In reaching its decision, the Tenth Circuit applied the “intermediate scrutiny” review.

The Seventh Circuit Court of Appeals in Friedman v. City of Highland Park noted that other courts had applied intermediate scrutiny, but chose instead to ask “whether a regulation bans weapons that were common at the time of ratification [of the U.S. Constitution].” a new standard of review. In Friedman, the Seventh Circuit considered a challenge to a city ordinance banning assault weapons and high capacity magazines. The Seventh Circuit upheld the ordinance as constitutional, and the Supreme Court denied the request for a writ of certiorari.

Justice Clarence Thomas wrote a dissent from the denial of certiorari in which Justice Antonin Scalia joined. The justices took exception to several rationales employed by the Seventh Circuit as being at odds with the holdings in Heller and City of Chicago. Specifically, the dissenters noted that the argument for applying a “new test” that looks to whether the firearms “were common at the time of ratification” in 1791 was inconsistent with Heller which states that “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” In the dissenter’s view, the substitute test was improper because “[Heller] excluded from protection only ‘those weapons not typically possessed by
law-abiding citizens for lawful purposes.” The dissenting justices expressed concern that too low a standard could lead to “relegating the Second Amendment to a second-class right.”

**SIXTH CIRCUIT APPLIES INTERMEDIATE SCRUTINY (SO FAR!)**

The Sixth Circuit’s approach to *Heller* has been to recognize that regulations and statutes that regulate activities protected by the Second Amendment require at least the application of an intermediate level of scrutiny while leaving the door open to a circumstance where strict scrutiny would apply. In *Tyler v. Hillsdale County Sheriff’s Depart., et al.*, the Sixth Circuit en banc considered a challenge to Title 18 U.S.C. §922(g)(4) which prohibits individuals from possessing a firearm after being involuntarily committed to a mental institution. The plaintiff had been committed for a very short period of time for depression some 30 years prior. After the Bureau of Alcohol, Tobacco, Firearms and Explosives declined to review Tyler’s petition for restoration of his firearm rights, he sought judicial relief asserting that Section 922(g)(4) was unconstitutional as applied to him. His basic argument was that the Second Amendment forbids prohibiting a healthy individual from firearms ownership just because he was previously involuntarily committed to a mental institution in the distant past. The Sixth Circuit agreed that Tyler had a viable claim.

The lead opinion in *Tyler* opted for a two-step analysis that required the government to show (1) either that the regulated activity does not fall within the historical scope of the Second Amendment, or (2) if that burden cannot be satisfied, then to advance a permissible justification for restricting or regulating Second Amendment rights. In deciding *Tyler*, the Sixth Circuit acknowledged the dicta in *Heller* that prohibitions against firearms possession by the mentally ill enjoyed a presumption of lawfulness, but cautioned that such presumptive lawfulness is “precautionary, not conclusive.” In *Tyler’s* case it was undisputed that he was not currently mentally ill. The Sixth Circuit observed that mental illness prohibitions were a twentieth century development and that persons who were involuntarily committed in the past were not categorically unprotected by the Second Amendment. Having decided that Tyler’s right to bear arms fell within the scope of the Second Amendment, the court next examined the government’s offered justifications for the restriction of Tyler’s rights. In this inquiry, the government had the burden to justify the constitutionality of the statute and its resulting burden on Second Amendment conduct.

For this second part of the test, the lead opinion applied an intermediate level of constitutional scrutiny. Intermediate scrutiny requires that (1) the government’s stated objective be significant, substantial, or important; and (2) a reasonable fit exist between the challenged regulation and the asserted objective. The burden of justification is “demanding and it rests entirely on the State.” Notably, in *Tyler*, the government failed to offer any evidence as to why there was a continuing need to disarm persons who were once committed to a mental health facility, but have returned to health and lived peacefully. Under the facts, the court concluded that Tyler had a viable Second Amendment claim and remanded the case to the district court for further proceedings.

While the opinion applied intermediate scrutiny, the dicta of the lead opinion indicated that the court was not foreclosing the potential for a case where strict scrutiny and therefore a presumption of constitutionality might be applicable in the right circumstances. It should be noted that some of the concurring judges were ready to apply the higher level review of strict scrutiny, even in *Tyler’s* case.

By necessity the Supreme Court may need to revisit the Second Amendment again if non-uniform standards and methodologies continue to develop in the circuit courts, resulting in, as feared by Justices Thomas and Scalia, the excessive erosion of the protections afforded under the Constitution. The full scope of the Second Amendment Right to Bear Arms may not be fully known until the Supreme Court has opportunity to provide more guidance on just when exactly the right is lost, and to more fully articulate when and which of the two higher constitutional standards of review should be used and under what circumstances. Until the U.S. Supreme Court clarifies these questions, the task is left to the lower courts to navigate the issue with what guidance they currently possess.

**KENTUCKY APPLIES THE RATIONAL BASIS TEST**

In considering claims based upon the state constitutional right to bear arms, the Commonwealth appears to have adopted the lesser level of review for state constitutional challenges and applies the rational basis test. In *Posey v. Commonwealth*, the Kentucky Supreme Court dealt with a challenge to the Kentucky statute prohibiting the possession of a firearm by a felon. Section 1(7) of the Commonwealth’s Constitution protects the Kentuckian’s “right to bear arms in defense of themselves and of the State, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.” Posey, who had a prior drug felony, sought to avoid conviction by arguing that the statute was an invalid infringement of the rights guaranteed under Section 1(7). Posey asserted that the Kentucky Constitution prevented the General Assembly from making laws regulating guns in any way except to regulate concealed carry.

The Kentucky Supreme Court applied a rational basis standard to conclude that former felons could be denied the right of possessing firearms. The decision relied heavily on the case of *Early v. Commonwealth*, which had held that one’s status as a serious felon presents a threat of future criminal activity, and that prohibiting such persons from possessing a firearm was a reasonable exercise of the legislative police powers. The *Posey* Court specifically found “nothing to support Appellant’s suggestion that the limiting language [in Section 1(7)] concerning ‘concealed weapons’ … somehow divests the legislature of power to reasonably regulate the area of firearms possession.” The Supreme Court deferred “to the reasonable interpretation of our legislature, finding that the [Kentucky] constitution permits some reasonable regulation of the people’s right to bear arms.” The statute was upheld as “not arbitrary or irrational and [it] did not unduly infringe upon the right to bear arms.”
One justice dissented on the statutory challenge and set forth an animated examination of the history of the right of self-defense and of bearing arms with some arguments that oddly foreshadowed the Heller rational, though firmly rooted in Kentucky’s own jurisprudence and history. Justice Will Scott asserted that the precedents prior to Early had treated Section 1(7) of the Kentucky Constitution as establishing a more robust right than found by the majority. He distinguished Early as only applying to “infamous” felony crimes and contended that the Early Court was never given the lengthy history necessary to evaluate the true nature of the right. The dissent provides a resource for those seeking to more deeply examine the historical context of the Kentucky right to bear arms, and gain more insight into why this issue can be so complex. The dissent’s methodology also foreshadowed that adopted by the Sixth Circuit in Tyler because it engages in both an examination of the historical scope of the constitutional protections and then argues for application of a level of scrutiny higher than rational basis.44 Justice Scott’s argument in dissent was similar to the holding in Tyler; he argued that excluding all non-violent felons including those “who posed no threat to the general welfare” was a case of deprivation of the right rather than a mere burdening of the right.45 Nevertheless, rational basis is the standard in the Commonwealth.

CONCLUSION

Heller opened the door to a new understanding of a long quiet part of the U.S. Bill of Rights, the Second Amendment. It also introduced a potential conflict between the standard of review used by the courts to protect the federal right to bear arms as opposed to the Kentucky constitutional right to bear arms. This could result in a set of facts where the government entity’s attempt to regulate firearms passes state constitutional muster under a rational relationship standard of review but fails the intermediate scrutiny test under the Second Amendment right to bear arms. The continuing push and pull between individuals seeking to exercise their rights to bear arms and various subdivisions of government seeking to regulate gun use in the name of public safety promises to remain fertile ground for courts to continue elucidating the full scope and limits of the Second Amendment’s constitutional protections, as well as the protections afforded by Section1(7) of the Kentucky Constitution. Given the importance of the liberties and issues involved, it is perhaps not surprising that the journey has assumed an evolutionary nature as each case provides new insight and new guidance where none had existed previously. Individual freedoms are by their nature items of great passion that merit asking the tough questions. Therefore, these issues will continue to return to the highest courts until the full dimensions of the rights are well known, established and protected.

ABOUT THE AUTHORS

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ENDNOTES

2. See Brumley v. Commonwealth, 413 S.W.3d 280, 287 (Ky. 2013) (“commonense suggests that an overwhelming amount of law abiding citizens in Kentucky have guns in their homes for lawful purposes”); see also, Mitchell v. University of Kentucky, et, al., 366 S.W.3d, 895 (Ky. 2012) (“a fundamental and well-defined public policy, i.e., the right to bear arms, as evidenced by existing statutory provisions…”).
8. Id. at 628.
9. Id. at 628–29.
10. Id. at 628 n. 26.
11. Id. at 628 n.27.
13. Id. at 791.
14. See Heller, 554 US at 635–36 (“In sum, we hold that the District’s ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Assuming that Heller is not disqualifed from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home.”) This is not an unlimited right. For example, the Court in Heller notes that the opinion should not be read so as to protect the right to bear arms for convicted felons or those with mental illness, for example. Heller at 628–27 n.26.
17. McDonald, 561 U.S. at 786 (2010).
18. Bonidy, 790 F.3d at 1126.
19. Friedman v. City of Highland Park, 784 F.3d 406 (7th Cir 2015). This opinion is worth a read if for no other reason than that it is a cursory and superficial analysis of the relative benefits of various categories of weapons that have been encountered in a court decision.
20. Id. at 410.
22. Id. at 448.
23. Id. at 448; see also, Heller, 554 U.S., at 582.
24. Friedman, 136 S. Ct. at 448.
25. Id. at 450.
27. Id. at 685.
28. Id. at 686.
29. Id. at 687–688, 690.
30. Id. at 693-697.
31. Id. at 693.
32. Id. at 693.
33. Id. at 690, 696.
34. Id. at 696.
35. Id. at 699.
36. Id. at n. 12.
37. Id. at 702 and 703.
38. For example, how should the term “mental illness” be defined for the purposes of removing one’s Second Amendment rights? For example, should it require an appealable court order, or simply an action inconsistent with mental stability such as a loss of personal control because of the outcome of a sporting event or political election?
39. Posey, 185 S.W.3d 170 (Ky. 2006).
41. Posey, 185 S.W.3d at 179.
42. Id. at 181.
43. Id.
44. Id. at 204-05.
45. Id. at 205.
If probate of decedents' estate is a significant part of your practice, you may run into an estate in which the decedent owned firearms. In that event, you need to be able to advise the personal representative (“PR”) regarding the legalities of transferring firearms out of the estate, whether to a beneficiary/heir or to an unrelated person.

SHOTGUNs, RIFLES AND HANDGUNs

Federal law prohibits a person who meets any of certain criteria from possessing firearms or ammunition.1 More importantly to legal counsel, it is unlawful for the PR to transfer firearms or ammunition to a person who meets any of those criteria.2 The penalty for a violation of these statutes is a fine, imprisonment for not more than 10 years, or both.3

An ATF Form 4473 is required when purchasing a firearm from a retailer. The questions from the Form 4473 are as follows:

1. Are you under indictment or information in any court for a felony, or any other crime, for which the judge could imprison you for more than one year?
2. Have you ever been convicted in any court of a felony, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation?
3. Are you a fugitive from justice?
4. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?
5. Have you ever been adjudicated mentally defective (which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs) OR have you ever been committed to a mental institution?
6. Have you been discharged from the Armed Forces under dishonorable conditions?
7. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner?
8. Have you ever been convicted in any court of a misdemeanor crime of domestic violence?
9. Have you ever renounced your United States citizenship?
10. Are you an alien illegally in the United States?

Since the law makes it illegal for a person (the PR) to transfer a firearm to a prohibited person, the prudent PR should require each and every recipient of a firearm or ammunition from the estate to provide written responses to the Form 4473 questions. This is especially true in cases where the PR is not well-acquainted with the beneficiary/heir or sells firearms/ammunition to any person with whom the PR is not well-acquainted. If the PR sells the firearms to a person or entity licensed to deal in firearms (an “FFL”), the PR can dispense with the questionnaire and need only obtain a signed copy of the dealer's firearms license prior to transferring the firearms.

If the recipient is not a prohibited person and resides in the same state as the decedent, the PR can deliver the firearms to the recipient in person or can ship them by common carrier. However, U.S. Postal Service regulations prohibit shipment of handguns (but not long guns) by a person who is not an FFL.
What if the recipient lives in a state other than the decedent’s state of residence? Federal law generally prohibits a transfer of firearms across state lines unless the recipient is an FFL. If the recipient is not an FFL, the PR must ship the firearms to an FFL in the state of residence of the recipient. In addition, the out-of-state recipient cannot legally take possession of the firearms in the decedent’s state and then carry them across the state line himself to his state of residence. An exception to this rule exists in the event the out-of-state recipient is a beneficiary/heir of the estate. The same code section that prohibits interstate transfer to a person who is not an FFL specifically allows shipment out-of-state to a person “to carry out a bequest” or by “intestate succession.” Or, the beneficiary/heir may himself transport the firearms across the state line when acquired “by bequest or intestate succession.”

If the PR avails herself of the exceptions described above for shipping firearms across a state line directly to a beneficiary/heir, it is important to be certain that the recipient is, in fact, a beneficiary/heir. Consider the following example. Father dies, leaving everything, including firearms, to surviving spouse (“Mother”). Mother is not interested in the firearms and wants Son, who lives in a different state, to have them. In this case, Son is not a beneficiary of Father’s estate; Mother is the beneficiary, and she is making a gift of her bequeathed firearms to Son. There is no exception in the statute for gifts, so the firearms must be transferred by Mother to an FFL in Son’s state of residence.

Another consideration is the age of the recipient. It is unlawful (with various exceptions) for a juvenile to possess a handgun or ammunition that is suitable only for use in a handgun. Similarly, it is unlawful for a person to transfer a handgun or handgun–only ammunition to a juvenile. A juvenile is defined as a person less than 18 years of age. These prohibitions, however, do not apply to “a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile.” This appears to mean the juvenile may hold equitable title, but not legal title, to handguns and ammunition acquired by inheritance. (As an aside, please note the law governing the sale of firearms and ammunition by FFLs is more restrictive than that discussed in the previous paragraph. An FFL may sell long guns (shotguns and rifles) and ammunition for same to persons 18 years of age and older. Handguns and ammunition for same may be sold only to persons 21 years of age and older. Even though it is legal for persons aged 18-20 to possess handguns, they cannot legally purchase them from an FFL.)

The foregoing discussion concerns only federal law, and presumes that any transfers contemplated are legal under state law. In the case of transfers across a state line, the transfers must be legal in both the state of origin and the state of destination. Kentucky has no laws that would negatively impact such transfers. In the event the PR has qualms about the legalities of interstate transfers of firearms, she can relieve herself of anxiety and legal obligations by transferring the firearms to an FFL in the state of destination. Most FFLs handle such transfers for a small fee.

**MACHINE GUNS, SILENCERS, ET AL.**

On rare occasions, attorneys may encounter an estate with a special category of firearms commonly referred to as “Class 3” firearms. These firearms include machine guns, silencers, short barrel rifles and shotguns, and a few other less common items. You are more likely to encounter silencers (also called “suppressors”) than any of the other types of Class 3 firearms, as they have grown very popular in recent years. All of these items are strictly regulated under the National Firearms Act of 1934, as amended by the Gun Control Act of 1968 and the Firearm Owners’ Protection Act of 1986. Briefly, the National Firearms Act Branch (the “NFA”) of the Bureau of Alcohol Tobacco Firearms and Explosives (“BATFE”) maintains a registry of every Class 3 (“C3”) item not owned by the federal government. The NFA must approve all transfers of C3 items prior to transfer from one owner to another (more on this later).

How do you know if a decedent’s firearms include any C3 items? Hopefully, a family member or friend will be aware of that fact and will so inform the PR, but in the case of machine guns, it is often very difficult to tell the difference between a machine gun and a semi-automatic firearm of the same model. This is especially true in the case of firearms such as a full-auto M-16 compared to a semi-auto AR-15, or a full-auto AK-47 compared to a semi-auto model, where there is often no external difference at all. Silencers, on the other hand, are relatively easy to recognize. They are typically a metal tube an inch or larger in diameter and three inches or greater in length, with a hole at one end for the bullet to exit, and a thread opening or twist-on attachment device at the other end. They typically screw on the threaded end of a gun barrel or twist on to an attachment mount. Sometimes they are permanently affixed to the firearm.

The family member or friend may know the firearm is a C3 item, and know where the decedent kept the NFA Form 4 that shows the item was legally registered to the decedent. The Form 4 will list the owner’s name and address, the make, model, serial number and other features of the firearm, and the date transfer of ownership to the decedent was approved by the NFA. There will also be a stamp, similar to a postage stamp, on the Form 4. The stamp is proof that the $200 federal transfer tax was paid by the decedent. In the event a copy of the Form 4 cannot be located, the PR can contact the NFA in writing and request a duplicate copy, which will be provided. But if the NFA says the firearm is not registered in the National Firearms Registration and Transfer Record (“NFRTR”), NFA will advise the PR that the firearm is contraband, and unlawful to possess. The NFA will advise the PR on the steps that must be taken to dispose of the contraband firearm. This is unfortunate, because there are many errors in the NFRTR (which fact the NFA does not dispute). This issue will occur more frequently in the future as WWII, Korea and Vietnam era military veterans, their spouses, and adult children pass away. Some veterans of foreign wars, especially WWII, were able to bring captured firearms with them when they returned to the U.S. Most of these “war trophy” machine guns were never registered with the NFA. There was an amnesty registration in 1968, during which veterans...
transfers of C3 firearms. Also, the C3 firearm can be delivered directly to an out-of-state beneficiary/heir. Transfers to anyone other than a beneficiary/heir require payment of the $200 federal transfer tax. Transfers to persons who resides in a state other than the decedent’s state must be transferred to an FFL who is also authorized to deal in C3 firearms (a “C3 dealer”). The C3 dealer will then transfer the C3 firearm to the purchaser. Since this process requires two transfers, it will require $400 in transfer taxes ($200 to transfer from the estate to the out-of-state C3 dealer, and $200 to transfer from the C3 dealer to the purchaser).

If the transfer is to a beneficiary/heir, the PR and the transferee must complete two original Forms 5 (ATF 5320.5). A passport-size photograph of the transferee must be attached to each Form 5. The chief law enforcement officer (“CLEO”) of the transferee’s residence must be listed on the Form, and a copy of the completed Form must be provided to the CLEO. The transferee must provide two sets of fingerprints on FBI Form FD-258. The transferee must also provide a completed Certification of Compliance with 18 USC 922(g)(5)(B) (ATF Form 5330.20). All of these forms are mailed to the NFA at the address on the Form 5. If the transferee is not a beneficiary/heir, the process is substantially the same, except that Form 4 (ATF Form 5320.4) will be substituted for Form 5. In addition, payment of the $200 transfer tax is required. The Form 4 and ancillary documents plus payment are mailed to a different address than the Form 5.

When NFA receives the transfer documents, the FBI will conduct a background check using the supplied personal information and fingerprints of the transferee. When the transfer is approved, one original of the Form will be returned to the PR, who should make a copy for her probate records. The PR can then deliver the original Form and the C3 firearm to the transferee. This is an important point—the C3 firearm MUS T remain in the PR’s possession until it is delivered to the transferee along with the approved Form. The transferee cannot take possession until the transfer has been approved by the NFA. Currently, the time necessary for approval of a transfer is more than six months, but this time has varied significantly over the past several years, from as short as three months to as long as 12 months.

The Forms and the Certification are available on the BATFE website and other places on the internet. The fingerprint cards cannot be printed, since they are actual cardboard cards, but they can be ordered from the BATFE website. Even though most law enforcement agencies use the same card, NFA will only accept fingerprint cards with the NFA-ATF stamp on them.

This process can be daunting to the uninitiated. PRs (or attorneys) who have no prior experience with NFA transfers may want to engage the services of a C3 dealer to guide them through the process.

Although this article is focused on decedent’s estates, the same rules apply in bankruptcy cases in which the bankruptcy estate contains firearms the Trustee wants to liquidate. If the bankruptcy estate includes C3 firearms, the Trustee will sign the NFA Forms as “transferor.”

NEW REGULATION AFFECTING GUN TRUSTS

The BATFE recently promulgated a new regulation that affects trusts and other legal entities in regard to C3 firearms. ATF Rule 41F went into effect on July 13, 2016, and requires certain persons within a trust, limited liability company, corporation, or other legal entity that submits an application for ownership of C3 firearms to provide fingerprints, photographs, and other personal information as part of the application process. Prior to the effective date of the new Rule, members, shareholders, officers, owners, grantors, trustees, etc. were not required to provide such personal information. A little background will explain the reason for adoption of the Rule.

Prior to Rule 41F, individuals who submitted an application for ownership of a C3 firearm were required to provide not only the personal information described in the preceding paragraph and in the C3 section of this article, but also to obtain the signature of the CLEO of the jurisdiction of the applicants’ residence, certifying that the CLEO had no information that the transferee would use the firearm for other than lawful purposes or that possession of the firearm would place the transferee in violation of state or local law. Perhaps not surprisingly, some CLEOs refused to sign the certification, thereby making ownership of C3 firearms impossible for residents of the CLEO’s jurisdiction, even though such ownership was otherwise lawful under state and local law.

The law enforcement certification was not a requirement for legal entities. Consequently, some individuals submitted applications in the name of a corporation or LLC in which they were an owner, thereby avoiding the requirements of the CLEO certification, and also of providing personal information such as fingerprints and photographs. Eventually, people realized that trusts were also eligible legal entities, and that they were not encumbered with the legal baggage of business entities, such as requirements to register with the secretary of state and state tax department, and to file annual tax returns. Trusts were soon touted as a preferred entity for avoidance of the CLEO certification. As trusts became popular as a vehicle in which to own C3 firearms, grantors began naming multiple co-trustees in their trust and specifically authorizing each co-trustee with the authority to possess the C3 firearms held by the trust. A grantor would name his family or friends as co-trustees and they could all enjoy use of the grantor’s C3 firearms without the grantor being present, which is generally prohibited under federal law.
Enterprising attorneys began advertising these so-called “gun trusts” on the internet as a means of allowing multiple people to share access to C3 firearms, and some attorneys even franchised their gun trust business. Gun trusts quickly became so popular that even companies other than attorneys began offering gun trusts at prices far below the prices typically charged by attorneys. Internet advertisements for gun trusts promoting multiple-party access to C3 firearms without any type of background check apparently caught the eye of government officials. Several years ago the Obama administration instructed the Justice Department to take steps to eliminate this loophole that allowed acquisition of C3 firearms without a background check. The preferred reason was that criminals and other prohibited persons could use a trust or other entity to acquire machine guns in violation of federal law. ATF Rule 41F is the result.

Rule 41F makes several notable changes to C3 laws, plus it codifies an existing NFA interpretation of law. Most importantly, as previously mentioned, it requires anyone who is a Responsible Person of a trust, partnership, LLC, corporation, etc. to provide the personal information and documentation previously required only of individual applicants (name, address, photograph, fingerprints, etc.). “Responsible Person” is defined as “any individual who possesses, directly or indirectly, the power or authority to direct the management and policies of the trust or entity to receive, possess, ship, transport, deliver, transfer, or otherwise dispose of a firearm for, or on behalf of, the trust or legal entity.” In a trust, this includes grantors/settlors and trustees. Beneficiaries will not be considered Responsible Persons unless they have the authority to exercise the powers enumerated above. The transferee entity must provide the exact name of the entity and its business address, or, in the case of a trust, the primary location at which the C3 firearm will be stored. A full, unredacted copy of the trust document (or articles of incorporation or organization) must accompany the application (Form). This last requirement is not new.

Another provision of the Rule is that an entity that submits a subsequent application (Form) within 24 months of a previously approved application does not have to resubmit the previously provided documentation if the entity certifies that there has been no change to the previous documentation. The trust must identify the previously approved application by Form number, serial number of the firearm, and the date the Form was approved by the NFA.

Another notable change, previously alluded to, is the elimination of the requirement for certification by the CLEO. Instead, the applicant (transferee) and all Responsible Persons must forward a completed copy of the Form to the CLEO prior to submission of the Form to the NFA. This change applies to all transfers, not just those to a trust or business entity. The change came about through the efforts of the National Firearms Act Trade and Collectors Associ-
at a trade group for C3 dealers, manufacturers and aficionados, who lobbied NFA for years on this issue. The fact that this change was made is more than a little surprising, given the firearms policy position of the Obama administration.

The final change adds a new section to BATFE regulations, 27 CFR 479.90a, previously discussed in the section on C3 firearms. Nothing in 479.90a is new; it merely sets forth NFA’s prior interpretation or position on C3 firearms in decedent’s estates. This includes clarification that the PR of an estate may possess the C3 firearms of an estate without that possession being treated as a “transfer” requiring Form 4 approval. It also makes clear that a transfer of a C3 firearm to a beneficiary/heir is exempt from the $200 transfer tax. And, as before, a transfer to a person other than a beneficiary/heir is subject to payment of the transfer tax.

Finally, it states that the PR must submit a copy of her order of appointment, death certificate of the decedent, and a copy of the decedent’s will (if any) along with her Form 4 or Form 5.

Rule 41F will likely result in a decrease in the use of a “gun trust” as an entity to own C3 firearms. The elimination of the CLEO certification negates the reason for which trusts originally became popular, and the requirement for all Responsible Persons to provide personal information for background checks may cause some people to decide against a trust. A question the new Rule raises but does not address is what obligation, if any, the trust (or the grantor or a Responsible Person) has to notify the NFA in the event a Responsible Person subsequently becomes a prohibited person, e.g., he is convicted of a felony or a misdemeanor crime of domestic violence. Is it the grantor’s responsibility to remove that person as a trustee? Must the trust notify the NFA if a trustee has been removed, for whatever reason? Must a Responsible Person application be submitted in the event the grantor subsequently names an additional trustee? The NFA may establish policies to resolve these issues as they are forced to address them, but if and when they do it may be years before they codify those policies.

ABOUT THE AUTHOR
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ENDNOTES
1. 18 U.S.C. § 922(g)
2. 18 U.S.C. § 922(d)
3. 18 U.S.C. § 924(a)(2)
4. 18 U.S.C. § 922(a)(5)
5. 18 U.S.C. § 922(a)(3)
6. 18 U.S.C. § 922(a)(5)
7. 18 U.S.C. § 922(a)(3)
8. 18 U.S.C. § 922(a)(2)
9. 18 U.S.C. § 922(a)(1)
10. 18 U.S.C. § 922(a)(5)
11. 18 U.S.C. § 922(c)(3)
12. 18 U.S.C. § 922(b)(1)
13. Firearms regulated by the NFA are sometimes referred to as “Title Two” firearms; firearms discussed in the first section of this article are sometimes referred to as “Title One” firearms. These Titles are contained within the Gun Control Act of 1968, Public Law 90-618.
15. 27 CFR 479.90a.
16. I have a letter from BATFE dated Sept. 5, 1999, as revised Feb. 23, 2006, that specifically states this. I will provide a copy to anyone who requests it.
18. To my knowledge, there is only one documented instance of a legally registered C3 firearm being used in the commission of a crime since enactment of the National Firearms Act of 1934. This incident occurred in Dayton, OH in 1988 when an off-duty police officer used his legally registered MAC-11 submachine gun to fatally shoot a suspected drug dealer. The officer killed the suspect in a reported drug house while off-duty in violation of department policy. The officer pleaded guilty to murder and felonious assault. You can read the details in Searcy v. City of Dayton, 38 F. 3d (6th Cir. 1994).
19. 27 C.F.R. § 479.85(a).
20. 27 C.F.R. § 479.11.
21. Ibid.
22. 27 C.F.R. § 479.85(b).
23. 27 C.F.R. § 479.85(c).
24. 27 C.F.R. § 479.84(c).
25. 27 C.F.R. § 479.90a(a).
26. 27 C.F.R. § 479.90a(b).
27. 27 C.F.R. § 479.90a(c).
Do you know someone who could win the...

2017 KBA Annual Student Writing Competition?

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.

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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. For inquiries concerning the KBA Annual Student Writing Competition or to receive a copy of the Bench & Bar Editorial Guidelines, contact Shannon H. Roberts at sroberts@kybar.org or call (502) 564-3795 ext. 224.

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DEAR FELLOW KENTUCKY ATTORNEYS:

I am honored to have the 2017 Kentucky Bar Association Annual Convention in my hometown of Owensboro. I would like to extend a personal invitation for you and your family to attend the convention scheduled for Wednesday-Friday, June 21-23, 2017, at the Owensboro Convention Center.

This year’s theme, “OUR EVOLVING PROFESSION AND THE KENTUCKY LAWYER,” will highlight the evolution of our profession and the ever changing legal landscape. This convention will explore the ways the profession has changed and is continuing to change, while also focusing on national and local areas of interest.

We have secured numerous exceptional speakers for our event. On WEDNESDAY, JUNE 21, JERRY BUTING, one of the defense attorneys for Steven Avery, who is the subject of the Netflix documentary series “MAKING A MURDERER,” will hold “A Conversation on Justice.” RABIA CHAUDRY, the host of the podcast “UNDISCLOSED,” will join us thereafter. She is the public advocate for Adnan Syed, the man at the center of one of the most popular podcasts in history, “SERIAL,” whose murder conviction was vacated after he served 17 years in prison. On THURSDAY, JUNE 22, MARK WHITACRE, who was the subject of the book and major motion picture (starring Matt Damon) “THE INFORMANT,” will speak. The FRIDAY, JUNE 23, programming will be packed with fun and interesting sessions, such as “Better NOT Call Saul: Professional Ethics Lessons from ‘Breaking Bad’ and Its Prequel,” “Hamilton, Not the Musical,” and “Fantasy Sports: The Challenging Legal Landscape.” Also in the Friday lineup is MATT JONES, Kentucky attorney and host of “HEY KENTUCKY!” and “KENTUCKY SPORTS RADIO,” who will join us to discuss compliance and legal issues in collegiate sports. Topping off Friday’s schedule will be the featured presenter, AMANDA KNOX, who will share the story of her conviction, and subsequent acquittal, of the murder of her roommate while in Italy as an exchange student.

These sessions are on the schedule, along with many other exceptional CLE programs and social events. Catch up with classmates and colleagues at the kick-off event or the annual banquet. Don’t miss this opportunity to reconnect with acquaintances or meet new attorneys from across the state!

I would also like to mention our public service project, OWENSBORO’S COURT APPOINTED SPECIAL ADVOCATES OF OHIO VALLEY (CASA) and RESILIENCE INITIATIVE FOR STABILITY AND EMPOWERMENT (RISE). The mission of CASA and RISE is to advocate for, and help reduce the trauma experienced by, children who are the victims of abuse and neglect. Through our public service project, these children will receive a piece of luggage filled with comfort items and necessities. Please support CASA and RISE and their work by donating on your registration form. You may also donate items such as toiletries, books, stuffed animals, clothes, or any other age specific items, directly to their booth, which will be located in the exhibit area during the convention.

MARK YOUR CALENDARS NOW to attend this outstanding event in June! As an added bonus, the River of Music Party (ROMP), a festival showcasing Bluegrass music, will be in town that weekend. For more information on the 2017 ROMP Festival and the lineup, visit www.rompfest.com.

I look forward to welcoming each of you as we spend three days together growing in our profession, networking with colleagues, and enjoying this beautiful Western Kentucky town.

Best regards,

R. MICHAEL SULLIVAN, PRESIDENT
KENTUCKY BAR ASSOCIATION
OUR EVOLVING PROFESSION AND THE KENTUCKY LAWYER

TABLE OF CONTENTS

MAIN EVENTS  5-7  PUBLIC SERVICE  8  CLE SESSIONS  9-20  HOTEL & SHUTTLE  23  REGISTRATION  26

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Kentucky Lawyer Assistance Program
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MEMORIAL SERVICE

The Kentucky Bar Association will celebrate the lives and legacies of those KBA members who have passed since May 1, 2016, during its 26th Annual Memorial Service at St. Stephen Cathedral, 610 Locust Street, Owensboro.

Members of the planning committee encourage members who are arriving in town just prior to the convention, and those who are situated locally, to participate in this beautiful, ecumenical service held in honor of our fellow Kentucky attorneys who have passed. The dignity of the event will be underscored by the Supreme Court of Kentucky dressed in their robes. Additional members of the judiciary have also been invited to participate. The service will feature various musical selections and will be led by representatives from different faiths. Family members of the deceased will receive personal invitations, but all KBA members are encouraged to attend.

The following members will be fondly remembered:

Robert M. Alexander
Andrew K. Banks
Albert W. "Al" Barber, Jr.
Camila J. Belcher
John M. Berry
Fred F. Bradley
Walter L. Bubener
Jack C. Burkett
Morris E. Burton
Larry A. Carver
Robert C. Cetrulo
John J. Chewning
Judi B. Ciliberti
E. Leslie Combs, Jr.
Stewart E. Conner
Marlow W. Cook
D. Kendall Cooper
George P. Deeb, Sr.
Priscilla S. "Penny" Diamond
William M. Dishman
Robert S. Easley
Carl H. "Hoot" Ebert
Mark T. Farrow
Robert L. Fears
Stephen S. Frockt
Wesley G. Gatlin II
E. Spivey Gault
Scott J. Goldberg
Arlene C. Gray
Murray J. Greenwald
John S. Hancock, Jr.
William S. Haynes
Edward D. Hays
George T. Hays
Paul V. Hibberd
John K. Hickey
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Carol W. Johnson
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Jacqueline R. Kanovitz
Dennis E. Kelley
Bruce L. Kells
Frederick B. Kieckhefer, Jr.
James Levin
Martin Levy
Crystal D. Love
Dwain H. Lowry
Boyce F. Martin, Jr.
Thomas P. McCarthy
Frank H. McCarty
Gwen McClure
Frederick W. Mebs
Carl D. Melton
John T. Miller
Carolyn Miller-Cooper
Anita E. Muckelroy
William P. "Bill" Mulloy
W. Douglas Myers
Randall V. Oakes
Earl O’Bannon
Armand L. Ostroff
Robert B. Overstreet
Robert Palmer
Todd A. Peck
Harrison F. Pettit
Patricia H. Rabits
Herbert T. Ransdell III
George E. Riggs
John S. Roberts
Judge E. P. Barlow Ropp

Danny Rose
David E. Roseberry
Calvert T. Roszell
Joseph H. Rouse
Brian T. Ruff
Stanley M. Saunier, Jr.
William A. Schroeder
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Ian G. Sonego
Marvin M. Sotsky
Imon G. Spencer
Barkley J. Sturgill
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Julia K. Tackett
James "Jim" G. Tomaw
Edwin W. Tranter
Myer S. Tulkoff
J. Wirt Turner, Jr.
J. Douglas Turner
Gardner L. Turner
Edwin J. Walsbourn III
Irwin G. Waterman
David S. Weinstein
David O. Welch
Robert L. Whittaker
David L. Williams
Lillian D. Williams
Joseph H. Wimsatt
Harold G. Wren

(Shown are memoriams at the time of printing.)
4:45-6:45PM  
**The Pier**  
Owensboro Convention Center  
Sponsor:  
STOLL KESSON & DODEN

**KICK-OFF EVENT**  
Complimentary with Registration  
Pre-Registration Required  
Join us at The Pier - accessible via the Owensboro Convention Center - for an evening of fun as you enjoy a variety of appetizers and network with colleagues from across the state. This venue hosts a beautiful view of the newly renovated downtown riverfront area, including Smothers Park. With the incredible view, lively entertainment, plus complimentary food and beverage throughout the evening, everyone is guaranteed a memorable time!

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THURSDAY, JUNE 22

12:00-1:30PM  
**Riverview Room**  
Owensboro Convention Center  
**YOUNG LAWYERS DIVISION LUNCHEON**  
$20 per person  
The Young Lawyers Division (YLD) wishes to extend an invitation to all KBA members and guests to attend their annual luncheon with distinguished keynote speaker, Secretary of State Alison Lundergan Grimes. The division will honor recipients of the 2017 Outstanding Young Lawyer Award, Service to Young Lawyers Award, and Young Lawyer Service to Community Award. In addition to these annual awards, the winners of the 2017 Legal Food Frenzy competition will also be recognized. The law firm or legal organization that raised the most food and funds to aid hunger relief in Kentucky will be presented the prestigious Grand Champion Attorney General’s Cup. Immediately following the luncheon program, all YLD members are invited to remain for the annual meeting of the Young Lawyers Division.

5:00-6:15PM  
**Lobby**  
Owensboro Convention Center  
**BENCH & BAR AND YOUNG LAWYERS DIVISION JOINT RECEPTION**  
Complimentary with Registration  
Pre-Registration Required  
The annual bench & bar reception will again be joined with the Young Lawyers Division reception allowing attendees the excellent opportunity to catch up with justices, judges and attorneys from throughout Kentucky gathering for conversation and refreshments. During this time-honored social event, attendees will gather for food and camaraderie. This event will take place just prior to the annual banquet, which we hope you will make plans now to attend.

6:30PM  
**Exhibit Hall 3**  
Owensboro Convention Center  
**KBA ANNUAL BANQUET**  
$65 per person  
Join us for the annual banquet where you can dine on a delicious meal and enjoy the program as we celebrate the investiture of the KBA’s new Officers and Bar Governors and present the President’s Special Service Award, 2017 Distinguished Judge and Lawyer awards, as well as the Chief Justice’s Special Service Award.

Miss Kentucky 2014, Ramsey Carpenter, will be performing during this year’s event. Carpenter is known for her Bluegrass fiddle playing and is sure to put on a fantastic show. Join us for the annual banquet so you won’t miss out on this sensational musical program!
OUR EVOLVING PROFESSION AND THE KENTUCKY LAWYER

FRIDAY, JUNE 23

12:00-1:00PM

KBA MEMBERSHIP AWARDS LUNCHEON

Exhibit Hall 3
Owensboro Convention Center

$30 per person

Let the tributes begin! We’ll honor the recipients of the KBA’s Annual Bruce K. Davis Bar Service Award, Donated Legal Services Award, and the Nathaniel R. Harper Award during this traditional luncheon hosted on the convention’s closing day. We’ll also recognize past KBA presidents, present our annual Law Day Awards, and honor the many Senior Counselors, listed below, who achieved this distinguished status in 2017.
Each year, the Kentucky Bar Association’s Annual Convention Planning Committee identifies a public service project aimed at improving the lives of Kentuckians, with an emphasis often placed on those living within the host city. The committee has selected Owensboro’s COURT APPOINTED SPECIAL ADVOCATES OF OHIO VALLEY (CASA) and the RESILIENCE INITIATIVE FOR STABILITY AND EMPOWERMENT (RISE) groups that assist children who have experienced trauma. Most often children who are removed from their homes are the ones experiencing this trauma when they are relocated to a foster home.

CASA and RISE have partnered with several other local organizations in the hopes of raising awareness for this issue and the many other problems children face in the area. One of the ways CASA and RISE are trying to lighten the impact of the relocations is to give a piece of luggage to the children with whom they work. The luggage contains toiletries, books, stuffed animals, a journal (with community resources listed), clothes and many other age-specific items.

Please consider donating on your registration form to help these organizations and the good work that they are doing on behalf of the children of Owensboro. CASA and RISE will also have an exhibitor table during the convention and will be accepting monetary donations, as well as donations of the items listed above. Take time to stop by during the event to hear more about what these organizations are doing.
Our Evolving Profession and the Kentucky Lawyer

Wednesday, June 21

8:30-10:30 AM
Supreme Court Rules Hearing
CLE Credit: 2.0
Sponsor: Supreme Court of Kentucky


The Supreme Court will meet in open session with Chief Justice John D. Minton Jr. presiding. Comments on proposed changes to Supreme Court Rule 3 will be presented. These proposed changes are presented to the membership to solicit open debate regarding the methods by which the courts can best administer justice. Make sure your ideas are heard!

10:40-11:40 AM
Dissolving and Winding Down the Kentucky Business Entity
CLE Credit: 1.0
Sponsor: Business Law Section

Featuring Joshua M. O’Bryan, Louisville; Thomas E. Rutledge, Louisville; Vincent F. Heuser, Jr., Louisville; R. Douglas Martin, Lexington.

This program will provide practitioners insight into practical considerations associated with the dissolution and wind down of the Kentucky business entity. Topics will include mechanics of dissolution and wind down (corporation vs. LLC); role of the liquidator/board following dissolution; ongoing liabilities/responsibilities of entity, liquidator, board, members, shareholders, etc.; reviving the dissolved entity where administratively dissolved, in connection with litigation; practical considerations in escheatment issues, final tax returns, etc.; representing the creditor of a dissolved entity; employee considerations, including WARN Act requirements and winding up benefit plans; and, advantages and disadvantages of bankruptcy.

10:40-11:40 AM
Expanded Expungement: Experts, Explanations and Experiences
CLE Credit: 1.0
Sponsor: YLD

Featuring Damon L. Preston, Frankfort; Julie M. Kaelin, Louisville; Judge John David Seay, Bardstown.

Felony expungement and expanded misdemeanor expungement became available in Kentucky in July 2015. Immediately, tens of thousands of Kentuckians became eligible to have felony convictions erased from their records and hundreds of thousands could benefit from having misdemeanors removed. The panelists will discuss how expungement opportunities were expanded and the successes and challenges that have come in implementing the new law. The session will end with suggestions for changes to the expungement laws in Kentucky.

10:40-11:40 AM
Having, Raising and Keeping a Child: Basic Ideas, Increasing Complexity – It’s Not as Easy as It Used to Be
CLE Credit: 1.0
Sponsor: Family Law Section

Featuring William Singer, Belle Meade, New Jersey.

This program will cover assisted reproductive therapy, adoption, surrogacy agreements, ownership and disposition of genetic material, including embryos, maintenance and parental rights, including implications for bi-national couples.
When Harper Lee’s second book, Go Set A Watchman came out in the summer of 2015, it set off shock waves around the world because it appeared to present Atticus Finch as something less than the saint he was in To Kill A Mockingbird. Dallas historian and lawyer Talmage Boston explains all the pertinent facts about Miss Lee and Watchman in a way that not only restores Mr. Finch back to his well-earned spot on the pedestal as a great role model for our profession, but pinpoints the author’s assessment of a successful strategy for civil discourse that aligns nicely with the Kentucky Code of Professional Courtesy.

Is your mind constantly going at 150 mph? Do you find yourself wasting precious time on thinking about the past or worrying about the future? Do you struggle to keep your attention on a task? Are you always multitasking, unable to focus? Is stress or anxiety keeping you from doing your best work? Mindfulness practice is the key to increasing focus and productivity. In this workshop, you’ll learn: the latest research on lawyer burnout, anxiety, depression, suicide, and other issues lawyers face; tools for stress and anxiety management; understanding the stress response; what is productivity and how can mindfulness help increase it; practical mindfulness practices you can incorporate into your day; increasing awareness and noticing when you’re distracted; and tips for increasing focus and productivity.

The KBA Animal Law Section for a lively discussion about service animals and the law. The presenters, two attorneys from the Animal Law Section, and special guest Lon Hodge, a U.S. veteran, with his service dog Gander, winner of the American Humane Association 2016 Service Dog Hero Award, will provide attendees a basic understanding of service animals and federal law, Kentucky law, and the distinction between service animals and emotional support animals.

On December 18, 2015, Netflix grabbed the attention of the nation with its documentary “Making a Murderer” and never let go. The story of Steven Avery, a man from Manitowoc County, Wisconsin, who served 18 years in prison after being wrongfully convicted of the sexual assault and attempted murder of Penny Beernsten, before being fully exonerated in 2003 by DNA evidence, was the topic of conversation of everyone and that conversation continues today. Join Jerry Buting as he discusses the Steven Avery case and its broader implications, as well as a discussion on the larger topic of the American criminal justice system.
SPOTLIGHT CLE: THE MURDER CASE OF STATE V. ADNAN SYED
Featuring Rabia Chaudry, Washington, D.C.
This case was made popular through the global phenomenon podcast “Serial,” which examined the 1999 murder of Hae Min Lee and conviction of Adnan Syed, the wrongfully convicted man still in prison for the murder. Rabia Chaudry has been Adnan’s public advocate and friend for the past 17 years and has now written Adnan’s Story in collaboration with Adnan, documenting his ordeal. Come explore this fascinating case with one of the central players and gain the insight that only Rabia Chaudry has.

ESTATE PLANNING/PROBATE – FIDUCIARY RESPONSIBILITY AND OBLIGATIONS AND RISKS ASSOCIATED THEREWITH
Featuring Stephanie McGehee-Shacklette, Bowling Green
This program will address fiduciary obligations and responsibilities, primarily those of trustees and executors, and the risks and liabilities associated therewith. The focus will be specifically on individual fiduciaries, and will also discuss the dangers and ethical considerations of attorneys acting as trustees and fiduciaries.

CRIMINAL JUSTICE REFORM IN KENTUCKY
Featuring Edward C. Monahan, Frankfort; Secretary John C. Tilley, Frankfort; Senator Whitney Westerfield, Hopkinsville; County Judge Executive Tommy Turner, Hodgenville; Representative Joseph M. Fischer, Ft. Thomas
In 2011, the General Assembly passed HB 463, which was intended to significantly reform the criminal justice system in Kentucky and to save millions of dollars in expenditures devoted to running state prisons and county jails. However, the projected reductions have not been fully achieved. A panel of key Kentucky leaders will examine the state of Kentucky’s criminal justice reform efforts and discuss the changes that must occur in order to achieve a rational and sustainable approach to the budgetary and correctional issues our justice system faces.

THE UNIQUE CHALLENGES PRESENTED BY HOMELESS YOUTH IN JUVENILE AND FAMILY COURTS
Featuring Judge Joan L. Byer (ret.), Louisville; and, Naomi Smoot, Washington, D.C.
This program will look at the unique needs and demands presented in the prosecution and defense of children who are homeless in family and juvenile courts. Areas covered will include the relationship between children who are homeless and those subject to sex trafficking, mandatory components of the law for children in schools who are homeless, the role of trauma informed courts in more effectively serving homeless youth and protections state and federal law extend to children who are trafficked.

LAWYERS AND PRESIDENTS: THE TIES THAT BIND
Featuring Talmage Boston, Dallas, Texas
How do the 10 most important leadership traits for America’s Presidents throughout history align with perfect synchronicity alongside the Kentucky Rules of Professional Conduct and the Code of Professional Courtesy? Lawyer and presidential historian Talmage Boston of Winstead PC connects the dots that explain why so many of our top presidents were highly esteemed lawyers before they got to the White House, making even more timely and relevant his recently released book, Cross-Examining History: A Lawyer Gets Answers from the Experts about Our Presidents (Bright Sky Press 2016).
3:35-4:35PM

**VETERANS DISCHARGE UPGRADE PROCEDURE**  
Featuring Dennis Shepherd, Lexington; and Sean Dennis, Louisville  

There are times when a veteran finds himself separated from the armed forces with less than an honorable discharge due to events that may be beyond his control. This program will cover basics such as what is a veteran; what are the types of discharges; definition of the DD 214; how the upgrade process works and how to operate in it; improper or inequitable discharges; beneficial evidence needed for upgrade; and reasons that discharges are often upgraded.

3:35-4:35PM

**FIXING A BROKEN SYSTEM: WHERE DO WE STAND ON THE RECOMMENDATION OF THE ABA’S KENTUCKY ASSESSMENT REPORT ON THE DEATH PENALTY?**  
Featuring Representative Jason M. Nemes, Louisville; Professor Linda S. Ewald, Louisville; Judge James A. Wethington II, Owensboro; Representative Joseph M. Fischer, Ft. Thomas; Misty C. Thomas, Washington, D.C.; Senator Whitney Westerfield, Hopkinsville; Professor Allison I. Connelly, Lexington

In 2009, the American Bar Association gathered together a group of distinguished lawyers, judges and law school faculty to undertake an extensive study of the administration of Kentucky’s death penalty. The goal was to assess the fairness and accuracy of the capital system, as it existed in the Commonwealth at the time. Our distinguished panel will discuss some of the major concerns raised by the report, the initiatives to address those concerns and what still needs to be done to ensure fairness and just, reliable outcomes in our criminal justice system, particularly in the administration of the death penalty.

3:35-4:35PM

**THE PAPERLESS PRACTITIONER**  
Featuring Tad Thomas, Louisville

Come learn how to cut costs and increase efficiency, two goals of every busy lawyer, by using digital technology to make your practice paperless.

3:35-4:35PM

**ARE YOU PRACTICING ELDER LAW? YOUR AREA OF LAW MIGHT FALL WITHIN THE SCOPE OF ELDER LAW**  
Featuring Shari Polur, Louisville

Elder law is a unique field of practice because it applies several different areas of law into one issue – seniors. In any one day, an elder law practitioner might practice estate planning, special needs planning, guardianship, disability law (SSI and SSDI), Medicare planning, Medicaid planning, VA planning, healthcare law, family law, criminal law, torts, contracts, and many things in between. The objective of this presentation is to encourage attorneys to consider how they could blend an elder law component into their existing law practice. The aging population is growing and more resources are needed to help them and their loved ones navigate the unique situations seniors face.
TRADE SECRETS AND NON-COMPETES
Featuring E. Kenly Ames, Bowling Green

An overview of the Defend Trade Secrets Act of 2016, which for the first time creates a federal cause of action for misappropriation of trade secrets. We will cover the key provision of the legislation, including the remedies available and disclosures that employers must make in order to take advantage of all those remedies. We will also discuss tactical considerations for whether to pursue a claim in federal court or in state court under the Kentucky Trade Secrets Act. We will also discuss recent developments in the law relating to non-competition agreements in Kentucky. We will conclude with a short overview of efforts in other jurisdictions to limit or eliminate the use of non-competes. Generally, there is a perception that trade secret claims are on the rise and non-competes are on the wane as a means to protect businesses’ interests.

HOW TO DEAL WITH A DIFFICULT CLIENT
Featuring Louis I. Waterman, Louisville

This program will teach attendees both coping techniques and management skills for dealing with the most difficult clients, including client outbursts and an array of legal and psychological methods to address the concerns that are raised when a client becomes very difficult during the course of representation. The program will touch on client management, managing expectations from the initiation of representation, recruitment of the client and withdrawal from representation in an appropriate manner. In addition, the ethical guidelines for withdrawing from representation in an appropriate manner and how an attorney can protect him/herself from ethical complaints and lawsuits from difficult clients will also be presented.

NUTS AND BOLTS OF APPELLATE PRACTICE
Featuring Chief Judge Joy A. Kramer, Burlington; Judge Glenn E. Acree, Lexington

Everything you need to know about practice in the Kentucky Court of Appeals, including pointers that might surprise even the seasoned advocate. Sure, you’ll get the basics, but be prepared to jot down some tips that will make your time before the intermediate appellate court a lot less stressful. These presenters have experiences and perspectives on appellate advocacy from both sides of the bench.

A BRIEF INTRODUCTION TO ARBITRATION PRACTICE
Featuring John Hays, Lexington; Kathleen M.W. Schoen, Louisville; David B. Blandford, Louisville; William G. Geisen, Covington

This program is designed to provide attorneys with an understanding of how the arbitration process works from the demand to the award. The program will be taught by a panel of experienced arbitrators who will encourage audience participation. It is designed for attorneys who have never been involved with arbitration or who have limited experience with it.
GET READY FOR HERE THEY COME: YOUR OPPORTUNITIES TO SHAPE THE FUTURE OF LEGAL SERVICES

Featuring Judy Perry Martinez, New Orleans, Louisiana

The legal sector, like all other industries and sectors, is rapidly changing. The influences of not only technology but innovative thinking are bringing forth new delivery models, new regulations, and new players. Individual lawyers, law firms, in-house law departments, and bar associations must lead in ensuring that the best of what the legal profession has to offer in terms of quality, efficiency, and ethics is at the foundation of innovations. Join us as Judy Perry Martinez, former chair of the ABA Commission on the Future of Legal Services and current special advisor to the newly created ABA Center for Innovation, shares her views on what the future holds and how you can play a role in shaping legal services for the public we took an oath to serve.

HOT TOPICS IN U.S. IMMIGRATION

Featuring Kirby J. Fullerton, Lexington

With the Trump administration now in office for six months, how has a Trump Presidency changed the existing immigration framework? This 60-minute, fast-paced, informal session will update you on recent immigration hot topics, as well as additional updates relevant to U.S. business and/or family immigration. Our speaker will discuss proposed regulations in depth and provide tips for complying with new regulations. He also will present updates on recent trends, decisions and/or FAQs.

CONFLICTS OF INTEREST – A DISCUSSION

Featuring Professor William H. Fortune, Lexington; John F. Vincent, Ashland; R. Stephen McGinnis, Greenup; Dale W. Henley, Lexington

More than half the questions for Kentucky hotline lawyers involve conflict of interest. In this interactive presentation four experienced lawyers will take you through a series of exercises to illustrate the proper way to analyze conflicts under the Kentucky Rules of Professional Conduct.

TAX LAW UPDATE

Featuring Clyde L. Kirtley, Lexington; Jeffrey J. Yost, Lexington

This is a tax update for everyone. The program will cover tax matters of particular interest to Kentucky lawyers, including both Kentucky and U.S. cases, regulations, rulings and proposed and/or recent enacted legislation.

DEFENDING YOUR FIRST FEDERAL CRIMINAL CASE

Featuring Edward L. Metzger III, Covington; Megan Mersch Fields, Crestview Hills; and, Lucas M. Joyner, London

This program will provide an overview of how to defend a client against criminal charges in federal court. Attendees will gain a basic knowledge of the Federal Rules of Criminal Procedure, the United States Sentencing Guidelines, and the difference between state and federal criminal prosecutions, so that criminal defense practitioners who regularly appear in state court will not be “lost” when their client’s case is picked up by the federal prosecutors.
OUR EVOLVING PROFESSION AND THE KENTUCKY LAWYER

THURSDAY, JUNE 22

10:50-11:50AM

YOU BE THE JUROR: VOIR DIRE IN SEX DISCRIMINATION CASES
Featuring Barbara D. Bonar, Covington; Bernard R. Mazaheri, Lexington; Michael W. Hawkins, Cincinnati
This program will take participants through a mock voir dire. The mock voir dire will be presented in support of a sexual harassment and retaliation trial, “Jane Smith v. Auto Repair of Greater Kentucky.” Voir dire will first be conducted by the attorney for Plaintiff Jane Doe, a customer service representative at Auto Repair, and then by the attorney who represents the Defendants Auto Repair and the alleged harasser, Store Manager Jason Jones. Participants will respond to questions using interactive responders.

10:50-11:50AM

SPOTLIGHT CLE: THE OPIOID EPIDEMIC IN KENTUCKY
Featuring Chief Justice John D. Minton Jr., Bowling Green; Judge Paula F. Sherlock, Prospect; Judge David A. Tapp, Somerset; Van Ingram, Frankfort; Dr. Allen Brenzel, Frankfort
Opioid use disorder has reached epidemic levels in Kentucky. It is flooding our courts, our prisons, our child welfare system, our emergency rooms, and our treatment providers. It is taking an emotional toll on our families and our communities. And it is creating a health crisis that threatens to impact thousands of people in our region. This panel discussion will focus on the role of the court system, law enforcement and the medical community in addressing the opioid epidemic.

12:00-1:00PM

THE PEOPLE’S REPRESENTATIVE, WENDELL FORD: HIS LASTING IMPRINT ON STATE AND FEDERAL LEGISLATION
Featuring Mindy G. Barfield, Lexington; John T. McGarvey, Louisville; Robert Mangas, Washington, D.C.
Born in Daviess County, Wendell H. Ford was a state senator, Lt. Governor, Governor and U.S. Senator. Well known as the longtime leader of the Kentucky Democratic Party and a defender of tobacco and coal, this one-hour seminar featuring former Ford staff will instead focus on Ford’s role introducing, sponsoring or ensuring the passage of key tax, education, criminal justice and environmental reform measures by the Kentucky General Assembly that continue to this day. It will highlight his important role in the passage of monumental legislation such as the Motor Voter Bill, the Clean Air Act, and the Family Medical Leave Act. It will also discuss Ford’s philosophy of collaboration and compromise in the legislative process.

12:00-1:00PM

TECHNOLOGY FOR LAWYERS: WHAT’S NEW? WHAT’S HOT?
WHAT IS MY ETHICAL DUTY AND WHAT DO I NEED TO KNOW?
Featuring Stephen E. Embry, Louisville
Check out the latest and greatest in technology for lawyers! Are these things that are of value to you and your practice? Are there issues of which you need to be aware? What impact does Comment 8 to the Model Rules have on your practice? Join Stephen Embry as he brings you up to speed on the ever-evolving world of technology and how it impacts your duty as a lawyer.
1:25-2:25PM

**FEATURE CLE: WHEN GOOD LEADERS LOSE THEIR WAY**

Featuring Mark Whitacre, Florence

You’ve seen the movie, now meet the real-life “Informant.” Mark Whitacre wore a wire for the FBI every day for three years in one of the largest white-collar criminal cases in U.S. history. But, his story is also about hope, family commitment, redemption and second chances, and a wonderful example of a family overcoming extreme adversity, against all odds. His presentation is an important lesson about doing the right thing and the need to focus on the long term.

2:35-3:35PM

**SOCIAL MEDIA & DIGITAL MARKETING STRATEGIES FOR SOLO AND SMALL FIRMS**

Featuring Amy Cubbage, Louisville

This program will focus on available online marketing platforms for solo practitioners and small firms and discuss the advantages and disadvantages of each. In addition, attendees will learn the ethics of online marketing, including an update on the applicable Kentucky rules on lawyer advertising.

2:35-3:35PM

**CAN JUDGES SPEAK? THE FIRST AMENDMENT AND THE COURTS**

Featuring Judge Jeffrey S. Taylor, Owensboro; R. Kent Westberry, Louisville; Stephen D. Wolnitzek, Covington; Jeffrey C. Mando, Covington; Jimmy Shaffer, Frankfort

This outstanding panel discussion will review the Kentucky Judicial Canons in light of recent United States Supreme Court and Sixth Circuit Court of Appeals decisions that directly affect the Code of Judicial Conduct (SCR 4.300), especially as pertains to Canon 5, election campaigns, and judicial speech.

2:35-3:35PM

**TEACHER DISCIPLINE IN KENTUCKY**

Featuring Todd G. Allen, Frankfort; Mary Ruble, Frankfort; Shelly D. Chatfield, Lexington; Jeffrey S. Walther, Lexington; Lisa K. Lang, Frankfort

This program will highlight the various forms of discipline to which Kentucky teachers are subject, including discipline by their public school district employers as well as discipline through their credentialing organization, the Kentucky Education Professional Standards Board. The presentation will cover statutory and regulatory provisions governing teacher discipline from a simple reprimand up to revocation of teaching certification. The presenters will highlight the due process hearing rights which attach with various forms of discipline as well as cases of interest on this topic.

2:35-3:35PM

**SPOTLIGHT CLE: U.S. SUPREME COURT REVIEW**

Featuring Benjamin J. Beaton, Washington, D.C.; Justin Walker, Louisville; Michael P. Abate, Louisville

Our exceptional panel will address the issues in cases from the United States Supreme Court’s current term (October Term 2016), which concludes in late June. In addition, they will discuss the nomination and confirmation hearings of Judge Neil Gorsuch, what it means for the cases decided this term, any cases still under consideration, and the upcoming term’s docket. This is a program you don’t want to miss!
COLLABORATIVE FAMILY LAW: REACHING RESOLUTIONS RESPECTFULLY
Featuring Rebecca Simpson, Bowling Green; Bonnie M. Brown, Louisville; Mark A. Ogle, Ft. Mitchell; Missy DeArk, Louisville; Julie McAninch, Nashville
Join our stellar panel as they discuss the benefits and challenges of using a collaborative approach to resolving family disputes. This emerging area of family law practice uses a team approach to help families develop solutions to problems respectfully without the hostility of courtroom litigation. This approach to family law requires a substantial paradigm shift and can prove very successful for couples facing divorce or other conflict—especially those who have children in common since, through their children, the couple will remain connected long after their court case is over. Resolving matters collaboratively can prevent irreparable damage that often results from courtroom litigation in family law cases.

INTELLECTUAL PROPERTY FOR THE GENERAL PRACTITIONER
Featuring Jack A. Wheat, Louisville
This program will look at the basics of intellectual property for the non-IP attorney, providing the basics and practical pointers on copyright, trademark and patent, from registration to litigation.

REINFORCING AMERICAN INSTITUTIONS: WHY AMERICANS SHOULD TRUST MEDIA AND THE JUDICIARY
Featuring Secretary of State Alison Lundergan Grimes, Frankfort
Secretary of State Alison Lundergan Grimes will present an overview of legal issues presented during the 2016 presidential election cycle and will discuss groundbreaking findings on Kentucky’s civic health. She will lead a discussion on Kentuckians’ trust in media and public institutions, including the judiciary. This session will include important information which will arm attorneys with knowledge about the people they serve in the practice of law in their respective communities.

PRACTICAL THOUGHTS ON EVERYDAY ETHICAL DILEMMAS
Featuring James J. Bell, Indianapolis
Fulfilling that ethics CLE requirement just became a little more fun. Attorney discipline and criminal defense attorney James J. Bell brings his humorous, yet practical and relevant approach to ethics and civility in the practice of law. Through the use of video clips and vignettes from the everyday practice of law, James will illustrate and discuss some of the more common ethical dilemmas and quandaries of today’s practice; providing insights and awareness to avoiding some of the potential ethical pitfalls you may encounter. It will be an “edutaining” (educating + entertaining) hour you won’t want to miss.
Fantasy sports has grown from the odd pastime of hobbyists to a multi-billion dollar industry. Some 42 million Americans now play in some form of fantasy sports contest, and they wage an estimated four to five billion dollars per year. Large, global companies and major sports leagues are investing heavily in the continued growth of the market. Yet the legality of fantasy sports, as a subset of sports wagering generally, remains unclear. Federal law sets some overall limitations on sports-based wagering and establishes a carve-out for certain aspects of the fantasy industry. State law, including the law of Kentucky, speaks to the legality of wagering on sports in more general terms. This presentation will review federal and Kentucky law as applied to fantasy sports, internet gaming transactions, and sports wagering more generally.

An entertaining examination of professional ethics missteps and transgressions by fictional television attorney Saul Goodman (f/k/a Jimmy McGill) from “Breaking Bad” and “Better Call Saul.” Using parody video vignettes shot on a shoestring budget and starring themselves as characters inspired by the series, the presenters will discuss how Saul’s law practice measures up against the Kentucky Rules of Professional Conduct. Attendees need not have any previous familiarity with the series to pick up an hour of ethics credit and enjoy a few laughs in the process.

The Kentucky Supreme Court renders nearly 300 opinions per year—covering subjects spanning the entirety of Kentucky jurisprudence. But few (if any) of us have the spare time to read every opinion. This program is designed for the busy practitioner who is interested in the development of the law and understanding how individual justices approach various cases. To that end, the panel will cover a few dozen of the most important decisions since last convention; and the panel will provide a global view of the caseload, timelines and voting patterns. Each panelist is a specialist in a particular aspect of the Court’s docket, and has culled and distilled the essential opinions of this past year.

Bourbon is booming! Kentucky bourbon production has increased 170 percent since 1999, with sales of almost three billion dollars in 2015. With numbers like these and the fact that approximately 95 percent of all bourbon is made and bottled in Kentucky, there are bound to be growing pains of a legal nature. This program will look at the history of bourbon production, the legal problems past and present and the future of America’s whiskey. Whether you’re a bourbon aficionado or just looking for a hot toddy, I mean topic, this program is for you.
HOT TOPICS IN ACCESS TO JUSTICE

Featuring Justice Michelle M. Keller, Covington

Join Kentucky Supreme Court Justice Michelle M. Keller to discuss the most pressing issues currently affecting access to justice, both in Kentucky and nationwide. This session will highlight a number of issues of importance to the legal community, including funding of legal aid programs, recent developments in the Kentucky Access to Justice Commission, and much more.

HOT TOPICS IN HOSPITALITY LAW

Featuring Stephen G. Amato, Lexington

Hospitality law encompasses a wide range of topics, from alcoholic beverage regulations to intellectual property, to land use. This session will touch on new developments in hospitality law, such as the recent passage of Kentucky’s Senate Bill 11 and other regulatory items of importance.

HORSES AND DRUGS

Featuring Sonja S. Keating, Lexington; Mindy Coleman, Lexington

Join the Equine Law Section to discuss whether horses are on drugs or are they victims of environmental contamination? Do regulations properly differentiate between deliberate doping and innocent contamination? What are the effects of environmental contamination, limit of detection, and increased sensitivity of testing? What are the repercussions on the absolute insurer rule in horse racing and horse showing, including the intended and unintended consequences from administrative regulations on due process, constitutionality, and property rights on owners, trainers, and riders?

SPOTLIGHT CLE: COLLEGIATE SPORTS LEGAL ISSUES

Featuring Matt H. Jones, Louisville; Rachel Newman Baker, Lexington

Kentucky Sports Radio host Matt Jones is known for his love of the University of Kentucky and all things sports, but did you know he is an attorney, too? Join Jones and the University of Kentucky’s Senior Associate Athletics Director for Compliance Rachel Newman Baker to hear an in-depth and thought provoking discussion on the intricate details of the NCAA restrictions pertaining to student athletes. This session will provide you with the essential information to help navigate the minefield of regulations placed on collegiate and high school athletics.

YOU WANT TO DO WHAT? A PRIMER ON HELPING YOUR CLIENT SET UP A KENTUCKY BREWERY

Featuring Stephanie L. Stumbo, Lexington; N. Adam Watson, Louisville

This is the best time in U.S. history to be a beer lover. As a nation, the U.S. now has more than 150 beer styles and over 20,000 brands to choose from—more than any other market in the world. Currently, over 4,600 breweries are responsible for the beer brands available in the U.S. The Brewers Association estimates more than 2,000 craft breweries are in the planning stages. Come learn from two insiders about the legal challenges that have accompanied the beer boom.
HAMILTON: NOT THE MUSICAL

Featuring William G. Chrystal, Charlotte Court House, Virginia

“Hamilton: An American Musical” has been a critical and box office success. It was nominated for 16 Tony Awards and received 11. This is not that performance. There will be no rapping; however, there will be costumes. Come learn about the man who was George Washington’s aide de camp during the Revolutionary War, a Founding Father, first Secretary of the Treasury, and organizer and primary writer of The Federalist. In addition, he helped establish the Coast Guard and West Point; and, as a lawyer, helped establish the truth as a defense in libel cases. Join acclaimed Alexander Hamilton portrayer William Chrystal as he brings history to life.

FEATURE CLE: WAITING TO BE HEARD

Featuring Amanda Knox, Seattle, Washington; Professor Gregory Gordon, Hong Kong

Amanda Knox was tried and convicted for the murder of British student Meredith Kercher, who died from knife wounds in the apartment she shared with Knox in 2007. Knox and her then-boyfriend, Raffaele Sollecito, were both found guilty of killing Kercher, receiving 26- and 25-year prison sentences, respectively. In October 2011, Knox and Sollecito were acquitted and set free. In March 2013, Knox was ordered to stand trial again for Kercher’s murder; Italy’s final court of appeal, the Court of Cassation, overturned both Knox’s and Sollecito’s acquittals. Knox and Sollecito were again found guilty of murder in February 2014, with Sollecito receiving a 25-year prison sentence and Knox receiving a 28.5-year sentence. The Supreme Court of Italy overturned the convictions in 2015. The salacious case spurred a media frenzy that was unlike any other, resulting in the case being tried in the media as well as the courtroom. Many stories have been told; however, Amanda Knox is still waiting to be heard.

Guidebook will be back for the 2017 Annual Convention

Thanks to the generosity of Casemaker, our app will again be available for the 2017 Annual Convention. The app allows attendees to view the convention agenda, access materials for programs, view maps for events and receive up to the minute notices on any event or programming changes. More information on the app will be available in future convention materials. Make sure to download it on day one and stay up to date throughout the three day event!
OUR EvOLVING PROFESSION AND THE KENTUCKY LAWYER

FEATURED / SPOTLIGHT CLE PROGRAMS

TUESDAY, JUNE 20

12:00PM-5:00PM
Convention Registration Open

3:30PM-4:30PM
Memorial Service
St. Stephen Cathedral
610 Locust Street

5:00PM-6:00PM
Senior Lawyers Section Meeting

WEDNESDAY, JUNE 21

7:00AM-4:30PM
Convention Registration Open

7:00AM-8:00AM
Open 12-Step Recovery Program

8:00AM-4:30PM
Exhibit Areas/Coffee Break Areas Open

8:00AM-9:00AM
Lawyers Mutual Insurance Company of Kentucky Policyholders Meeting
Contact: Nancy Meyers, (502) 568-6100

8:00AM-4:35PM
New Lawyer Program

8:30AM-10:30AM
Supreme Court Rules Hearing

10:40AM-11:40AM
Spotlight CLE: Dissolving and Winding Down the Kentucky Business Entity
Expanded Expungement: Experts Explanations & Experiences
Having, Raising & Keeping a Child: Basic Ideas, Increasing Complexity-It’s Not as Easy as it Used to Be

11:50AM-12:50PM
The Anxious Lawyer
Service with a Smile: A Discussion about Service Animals and the Law

1:00PM-1:15PM
Welcome & Opening Session

1:15PM-2:15PM
Feature CLE: A Conversation on Justice with Jerry Buting

2:25PM-3:25PM
Spotlight CLE: Murder Case of State v. Adnan Syed with Rabia Chaudry

2:25PM-3:25PM
Criminal Justice Reform in Kentucky
Estate Planning/Probate – Fiduciary Responsibility & Obligations & Risks Associated Therewith
Lawyers and Presidents: The Ties that Bind
The Unique Challenges Presented by Homeless Youth in Juvenile & Family Courts

3:35PM-4:35PM
Are You Practicing Elder Law? Your Area of Law Might Fall within the Scope of Elder Law
Fixing a Broken System: Where Do We Stand on the Recommendation of the ABA’s Kentucky Assessment Report on the Death Penalty?
The Paperless Practitioner
Veterans Discharge Upgrade Procedure

4:45PM-6:45PM
Kick-Off Event
The Pier, Owensboro Convention Center
Free with registration

6:00PM
Brandeis School of Law Alumni Reception

6:30PM
NKU Chase College of Law Alumni Reception

6:30PM-8:30PM
American College of Trial Lawyers Annual Dinner
Contact: Rick Straub, (270) 443-4516

9:00PM-10:00PM
KYLAP Meditation Session
THURSDAY, JUNE 22

7:00AM-4:30PM
Convention Registration Open

7:00AM-8:00AM
Open 12-Step Recovery Program

8:00AM-4:30PM
Exhibit Areas/Coffee Break Areas Open

8:30AM-9:30AM
How to Deal with a Difficult Client
Nuts & Bolts of Appellate Practice
Trade Secrets and Non-Competes

9:40AM-10:40AM
A Brief Introduction to Arbitration Practice
Conflicts of Interest – A Discussion
Hot Topics in U.S. Immigration
Your Opportunities to Shape the Future of Legal Services

10:50AM-11:50AM
Spotlight CLE: The Opioid Epidemic in Kentucky

10:50AM-11:50AM
Defending Your First Federal Criminal Case
You Be the Juror: Voir Dire in Sex Discrimination Cases
Tax Law Update

12:00PM-1:00PM
Technology for Lawyers: What’s New? What’s Hot?
What Is My Ethical Duty and What Do I Need to Know?
The People’s Representative, Wendell Ford: His Lasting Imprint on State & Federal Legislation

12:00PM-1:30PM
Young Lawyers Division Luncheon

12:00PM-1:30PM
KBF Fellows & Partners for Justice Society Luncheon

1:25PM-2:25PM
Feature CLE: When Good Leaders Lose Their Way with Mark Whitacre

2:35PM-3:35PM
Spotlight Program: U.S. Supreme Court Review

2:35PM-3:35PM
Can Judges Speak? The First Amendment and the Courts
Social Media & Digital Marketing Strategies for Solo & Small Firms
Teacher Discipline in Kentucky

3:45PM-4:45PM
Why Americans Should Trust Media and the Judiciary
Collaborative Family Law: Reaching Resolutions Respectfully
Practical Thoughts on Everyday Ethical Dilemmas
Intellectual Property for the General Practitioner

5:00PM-6:15PM
Bench & Bar and YLD Joint Reception

6:30PM-9:30PM
Annual Banquet
Installation of Officers and Board of Governors
Entertainment: Miss Kentucky 2014 Ramsey Carpenter $65.00 per person

9:00PM-10:00PM
KYLAP Yoga Session

FRIDAY, JUNE 23

8:00AM-2:00PM
Convention Registration Open

8:00AM-2:00PM
Exhibit Areas/Coffee Break Areas Open

9:00AM-10:00AM
Spotlight CLE: Fantasy Sports: The Challenging Landscape

9:00AM-10:00AM
Better NOT Call Saul: Professional Ethics Lessons from “Breaking Bad” and Its Prequel

9:00AM-11:00AM
Kentucky Supreme Court Review

10:10AM-11:10AM
Hot Topics in Access to Justice
The Bourbon Industry: Kentucky’s Amber Road

11:20AM-12:20PM
Spotlight CLE: Collegiate Sports Legal Issues

11:20AM-12:20PM
Horses and Drugs
Hot Topics in Hospitality Law

12:00PM-1:00PM
KBA Membership Awards Luncheon
$30.00 per person

12:30PM-1:30PM
Helping Your Client Set Up a KY Brewery
Hamilton: Not the Musical

1:40PM-3:10PM
Feature CLE: Waiting to Be Heard with Amanda Knox

3:10PM
Convention Adjourns
OUR EVOLVING PROFESSION AND THE KENTUCKY LAWYER

HOTEL RESERVATION INFORMATION

The Kentucky Bar Association has reserved a block of rooms with special rates for convention attendees and guests at the hotels listed below. To receive the special group rate, rooms must be booked directly with the hotel using the information below by Thursday, May 18, 2017. After this date, room reservations will be taken on a rate and space availability basis. There are a limited number of hotel rooms downtown, so we encourage you to reserve your room early. Shuttle service will be available from the outlying hotels (see below for the schedule). Cancellations must be made directly with the hotel at least 24 hours before the reserved date. All reservations must be guaranteed by an individual credit card.

HOTELS NEXT TO CONVENTION CENTER

HAMPTON INN & SUITES

401 W. 2ND STREET, OWENSBORO
Single/Double $119 per night
Call (270) 685-2005 for a reservation or visit online at WWW.KYBAR.ORG/2017ACDTH

HOLIDAY INN Owsenboro Riverfront

701 West First Street, Owensboro
Single/Double $119 per night
Call (270) 683-1111 or Holiday Inn Line (Central Reservations Office): 800-HOLIDAY
GROUP CODE: BAR or visit online at WWW.KYBAR.ORG/2017ACHI

OUTLYING HOTELS (APPROX. 3 MILES FROM DOWNTOWN)

COMFORT SUITES

230 Salem Drive, Owensboro
Single/Double $99 per night
Call (270) 926-7675 for a reservation

FAIRFIELD INN

800 Salem Drive, Owensboro
Single/Double $99 per night
Call (270) 688-8887 for a reservation

HAMPTON INN OWENSBORO-SOUTH

615 Salem Drive, Owensboro
Single/Double $104 per night
Call (270) 683-1111 or visit online at: GROUP.HAMPTONINN.COM/KYBARASSOCIATION

PARKING INFORMATION

There is free onsite parking in the Owensboro Convention Center (OCC) lot. There are also numerous parking areas close to the OCC for additional parking. Please see the map on the next page for more information.

LOUISVILLE SHUTTLE INFORMATION

FREE SHUTTLE DEPARTING FROM LOUISVILLE-ONE DAY ONLY!

The Kentucky Bar Association, thanks to the sponsorship by Kentuckiana Court Reporters, will provide a shuttle for ONE DAY ONLY from the Louisville area. The shuttle will depart from Mall St. Matthews in Louisville on Wednesday, June 21 at 7:15 a.m., EDT. The shuttle will depart from the Owensboro Convention Center on Wednesday evening at 5:30 p.m., EDT, and return to Louisville. The shuttle will only run from Louisville on Wednesday, June 21. This shuttle is equipped with Wi-Fi and restrooms. CONVENTION ATTENDEES INTERESTED IN RIDING THIS SHUTTLE ON JUNE 21, SHOULD INDICATE THEIR PARTICIPATION ON THE REGISTRATION FORM. For more information or if you have any questions, please contact Melissa Blackwell at (502) 564-3795 or by email at mblackwell@kybar.org.
OUR EVOLVING PROFESSION AND THE KENTUCKY LAWYER

HOW TO REGISTER

MAIL  Mail the attached registration form(s) with payment to: KENTUCKY BAR ASSOCIATION, ATTN: ACCOUNTING DEPARTMENT 514 WEST MAIN STREET, FRANKFORT, KY 40601-1812

ONLINE  Visit our website at WWW.KYBAR.ORG and click on the 2017 KBA Annual Convention banner on the homepage for full registration details.

CONFIRMATION  Members will receive a confirmation via email once their registration has been processed. If an email address is not provided, then a confirmation will be mailed to their official KBA roster address.

SPECIAL REQUESTS  If you need special accommodations to fully participate in the event or are purchasing meal tickets and have dietary restrictions, please contact the Membership Department at (502) 564-3795.

EARLY REGISTRATION DISCOUNT  Register by MAY 15, 2017, and receive $100 off the on-site registration fee! This discount does not apply to the Law Student/Paralegal and One Day/Half Day attendance fees and is not valid with any other discount.

OPTIONAL EVENT TICKETS  Advance reservations for all optional events are recommended.

CANCELLATION OF REGISTRATION  Cancellation of your 2017 Kentucky Bar Association Annual Convention registration must be in writing and received by the Kentucky Bar Association by June 9, 2017, to receive a full refund. Cancellations received between June 10, 2017, and June 16, 2017, will be charged a $50 administrative fee. There will be no refunds on cancellations received after June 16, 2017. Event tickets will not be refunded after June 16, 2017.

REGISTRATION CENTER  Upon arrival, all registrants should check in at the KBA Registration Desk located in the lobby of the Owensboro Convention Center. The registration center will be open on Wednesday and Thursday, June 21–June 22, 7:00 a.m.-4:30 p.m. and Friday, June 23, 8:00 a.m.-2:00 p.m.

WANT MORE INFORMATION ON EVENTS AND LOCAL ATTRACTIONS IN THE OWENSBORO AREA?

VISIT THE OWENSBORO-DAVIESS COUNTY CONVENTION & VISITORS BUREAU WEBSITE AT VISITOWENSBORO.COM.
2017 ANNUAL CONVENTION OWENSBORO, KY

REGISTRATION

KBA Membership Number:__________________________________________________________

Registrant First and Last Name:_____________________________________________________

First Name or Nickname for Badge:__________________________________________________

Spouse/Guest First and Last Name:__________________________________________________

Guest First Name or Nickname for Badge:____________________________________________

Email Address:__________________________ Business Phone:___________________________

Check if you are: ☐ Judge ☐ Speaker ☐ Printed Book ☐ PDF Download ☐ Louisville Shuttle

Select One

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Event Tickets:

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Subtotal: $______________

☐ Please consider making a tax deductible donation to CASA/RISE ($10 recommended donation) $______________

Total Fees to Accompany Form: $______________

Make check payable to the Kentucky Bar Association and mail to:
Kentucky Bar Association
Attn: Accounting Dept.
514 West Main Street
Frankfort, KY  40601-1812

or log in to the KBA Website at kybar.org/2017ac to pay by credit card.
All major credit cards accepted.
 ☐ Please withhold my name from convention vendors.

By registering for the Kentucky Bar Association’s Annual Convention, all attendees, instructors and exhibitors acknowledge they may be photographed during the convention. Please be aware these photos are for the KBA’s use only, and may appear in the Bar’s programs, publications, e-newsletter, website, and other materials. Your attendance constitutes permission and consent for this photography and subsequent usage.
For continuing legal education and networking with colleagues from around the Commonwealth, the Kentucky Bar Association (KBA) Annual Convention is one of the best values you will find. This year, make plans to join the KBA Young Lawyers Division (YLD) in the beautiful riverfront city of Owensboro from June 21–23. Renowned for their delicious bar-b-q and rich history of bluegrass music, there will be no shortage of good food and world-class entertainment at this year’s convention. As an added bonus, this year’s lineup of speakers is sure to entertain, inspire, and educate.

Remember Amanda Knox? The American exchange student who spent four years in an Italian prison following her conviction (later acquitted) for the 2007 murder of her roommate? She’ll be there. And the “Making a Murderer” Netflix documentary series? Well the attorney for criminal defendant Steven Avery will also be joining us in Owensboro. As well as Rabia Chaudry, the attorney and family friend of the wrongfully convicted man at the center of the most popular podcast in history, “Serial.” For 15 years, Chaudry worked tirelessly for the release of her friend, and was the impetus behind the production of the “Serial” podcast. The list of a-list speakers doesn’t stop there. Mark Whitacre will join us. He was the subject of the 2009 movie, “The Informant!” and was played by Matt Damon. Matt Jones, of Kentucky Sports Radio, will be there too.

The YLD will be sponsoring 10 CLE programs throughout convention—covering topics including Kentucky Supreme Court opinions, hospitality law, expungements, and intellectual property. At noon on Thursday, June 22, the YLD will be hosting its annual luncheon. We invite all KBA members and guests to attend. This year we have the pleasure and honor of being joined by keynote speaker, Secretary of State Alison Lundergan Grimes. The division will honor recipients of the 2017 Outstanding Young Lawyer Award, Service to Young Lawyers Award and Young Lawyer Service to Community Award. In addition to these annual awards, the winners of the 2017 Legal Food Frenzy competition will also be recognized. The law firm or legal organization that raises the most overall total pounds in the Legal Food Frenzy competition will be presented the prestigious Attorney General’s Cup. Then on Thursday evening, preceding the annual banquet, the YLD and Bench & Bar Joint Reception will take place in the lobby of the new Owensboro Convention Center. Surrounded by three-story floor to ceiling windows, join us for complimentary appetizers and drinks while enjoying live bluegrass music and reconnecting with lawyers from across the Commonwealth.

Members of the YLD will save $150 in registration for Annual Convention. If you would like to join the YLD, you can sign up online by visiting www.kbayld.org.

For those of you who don’t want the fun to stop with convention, ROMP bluegrass music festival will be held from June 22–25 in Owensboro. This music and art festival will feature over 30 top bluegrass, folk, and Americana acts.

SEE EVERYONE IN OWENSBORO ON JUNE 21!

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- O.Z. Tyler Distillery (10 Distillery Road) - Newly-opened bourbon distillery with behind-the-scenes tour and tasting available 2pm Monday through Friday.
- The Miller House (301 East 5th Street) - Upscale restaurant and lounge serving lunch and dinner in a historic mansion; reservations recommended. Head to the bourbon bar in the basement for a selection of more than 400 bourbons.
- Old Hickory Pit Bar-B-Q (338 Washington Avenue) - World famous bar-b-q.
- Moonlite Bar-B-Q (2840 West Parrish Avenue) - World famous bar-b-q.
- The Famous Bistro (102 West 2nd Street) - Lovely lunch and dinner spot with a quaint dining room and outdoor patio; reservations recommended.
- The Creme Coffee House (109 East 2nd Street) - Cozy atmosphere offering more than just great coffee, including smoothies, desserts, and live music throughout the week.
- Colby’s Deli & Cafe (401 Frederica Street) - A great spot for a quick and healthy breakfast or lunch; known as “Owensboro’s Best Kept Secret!”
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WHAT’S NEXT FOR GUN LAWS?
A CON LAW EXPERT WEIGHS IN.

As with so many controversial topics in our society, the discussion about guns often has two levels.

“There’s a political and a legal side,” says Brandeis Law Professor Sam Marcosson, an expert in constitutional law.

The legal side is in flux, he says. And until the U.S. Supreme Court clarifies the level of scrutiny governing gun laws, that flux could remain.


In Heller, the Supreme Court ruled that the Second Amendment is an individual right, not one connected to service in a militia.

In McDonald, the Court ruled that an individual’s right to bear arms applies to the states. That decision cleared up some of the uncertainty surrounding the scope of the Heller decision.

Now, the dispute focuses on the level of scrutiny that courts will use to rule on regulations on gun ownership. Some courts use strict scrutiny, meaning that laws must be narrowly tailored to achieve a compelling government interest—in this case, “how effectively they serve the purpose of preventing gun violence,” Marcosson says. Some courts have shut down regulations based on this level of scrutiny. But other courts use intermediate scrutiny, which means that the government need only show a substantial relationship between regulations and their intended purpose. These courts generally uphold regulations.

The Supreme Court hasn’t taken the cases that could clarify which level of scrutiny lowers courts must use.

“Some speculate that’s because the Court is split 4-4 and doesn’t want to take a case it can’t resolve,” Marcosson says. “We may have to wait until the Supreme Court gives us more guidance,” which might not happen until a ninth justice is confirmed.

1L STUDENT IS AN ADVOCATE FOR GUN OWNERS’ RIGHTS

Ilya Chernyavskiy, a 1L at Brandeis Law, believes students, faculty and staff at the University of Louisville who have permits to carry concealed weapons should be allowed to do so.

Chernyavskiy is state director for the Kentucky chapter of Students for Concealed Carry. “I don’t think students and faculty and staff should have to decide between their livelihoods and their lives,” he says.

UofL has a policy against deadly weapons on campus, but carrying concealed weapons with proper permits on campus is not a crime. “I think this policy should be changed because the law allows it,” Chernyavskiy says. “Students should be allowed to take responsibility for their own lives.”

This fall, Chernyavskiy participated in a panel discussion about campus safety hosted by the Kentucky Council on Postsecondary Education. He estimates there were a couple hundred people at the event, including deans and campus police chiefs from around the state.

Chernyavskiy became interested in guns a few years ago when dating a woman who took him shooting. “It was love at first shot,” he says.

Through this new hobby, he began learning more about gun laws and the ways they vary state by state. A PhD candidate in physiology at the time, he was spending his spare time talking with legislators about gun laws.

Eventually, he decided to enroll in law school. “It influenced my law degree a lot,” he says. “That’s what drew me to law school.”

Eventually, he would like to pursue a career as in-house counsel for a gun company.

Although guns can be a divisive topic, Chernyavskiy says he’s never felt discriminated against by law faculty for expressing his opinions. “She just likes that I’m an advocate for something,” he says of a Brandeis Law professor.
CHASE COMPETITION TEAMS BLEND A FORMULA FOR SUCCESS

Chase trial team member Linda Long thinks she understands why the team knows it has a winning case each time it steps into a mock courtroom. It is a combination of talented students and experienced coaches, she says. Or, as a sports writer might put it, it is chemistry.

By that assessment, competition teams at Northern Kentucky University Salmon P. Chase College of Law have a lot of chemistry going on this year:

• The mock trial team was preparing for regional competitions in the National Trial and the American Association of Justice contests after competing into the semifinal round of the Kentucky Mock Trial Competition.

• The moot court team argued to the brink of the final-four of the Craven Moot Court Competition, sponsored by the University of North Carolina School of Law.

• Student Jason Rainey completed four rounds of The Closer negotiation competition at Baylor Law School, with the eventual winner citing him as the most difficult round.

Getting students ready for competitions involves practice sessions with full-time and adjunct faculty members. In the case of the trial team, Professor Jack Harrison and nine adjunct professors coach students through trial phases from opening statements to closing arguments.

In a mock case involving a fictional death at a mythical college fraternity party, coaches helped students develop techniques for:

• An opening statement that connects with jurors. “I began by picking a theme I felt could be interwoven throughout,” says 2L Sophia Stevenson. “The coaches and I worked on my emotional appeal and a vivid description as to how the victim was fatally injured.”

• Direct examination that tells a story. “I wanted my witness to simply tell the truth,” 3L Long says. “To get my witness to say exactly what I hoped he would, I just had a conversation with him.”

• Cross examination that impeaches. “The best tool was the witness’s own words in the deposition,” 2L Michael Bromell says. “The precise nature of questions grants opportunities for impeachment if there is any deviation.”

• A closing argument that gives jurors a reason. “The closing argument is as much about the jury as it is the case; it is our time to convince jurors sympathetic to our case to fight for a decision in our favor,” 3L Nicholas Hunt says.

In the end, 90 to 100 hours of preparation with Professor Harrison, who was a trial attorney before he joined the Chase faculty, and practicing or retired litigators pays off. “We have dedicated coaches who are willing to spend tons of time sharing their experiences and advice to mold a stellar team,” 3L Long says.

The practice time for professors and students in other competitions also pays off.

Professor John Bickers prepared the moot court team for oral arguments that students presented in the Craven competition. There, the three-student team finished fifth, after out-arguing Boston University, Chicago, Notre Dame, and eventual champion Virginia in preliminary rounds.

Professor Barbara Wagner prepped 2L Rainey for the negotiation competition in which he outscored or tied his competitors with 11 of 12 judges, losing only once, by one point.

As with a sports team with the chemistry to put points on a scoreboard, Chase professors and students are putting up winning arguments in multiple competitions.

Student Sophia Stevenson developed an opening statement to connect emotionally with jurors with help from trial team coaches. Adjunct professors who help coach the team are William Gustavson, Peter Tripp, David Bolch, Melissa Pile, Melissa Bodner, Jesse McClain, Ian Mitchell, Carrie Masters Starts, and Adair Smith.
Chief Justice of the United States Visits UK

University of Kentucky College of Law students as well as judges, lawyers and clerks from across Kentucky were provided an extraordinary opportunity on February 1, as the Hon. John G. Roberts Jr., Chief Justice of the United States, visited the UK campus.

Chief Justice Roberts was here as the first speaker for the newly established John G. Heyburn II Initiative for Excellence in the Federal Judiciary.

“It is both an honor and a privilege to welcome the Hon. Chief Justice Roberts as the first speaker in the John G. Heyburn II Lecture Series,” said David A. Brennen, dean of the College of Law. “The inaugural Heyburn Initiative event marks the beginning of countless opportunities for our students to hear firsthand from some of our nation’s leaders in law, including other distinguished members of the judiciary and lawmakers, and helps UK Law continue its tradition of excellence.”

The chief justice spoke to a large audience in the Kincaid Auditorium located in the Gatton College of Business and Economics. He began with a tribute to the 11 Supreme Court justices who came from Kentucky and then shared an inside look at the nation’s highest court through a Q&A with James C. Duff, director of the Administrative Office of the U.S. Courts and former UK basketball player.

Director Duff asked the chief justice a myriad of questions including, “How do you encourage collegiality and how important is it to the work of the court?”

“It is critically important,” answered Chief Justice Roberts. “When you think about it, if you pick nine people at random, if you throw them all together and say that for the next 20 years, you’re going to decide some of the most important issues ever to face the country, you immediately realize that you have got to find a way to get along, or else it’s going to be a long 20 years.”


President George W. Bush nominated him as chief justice of the United States, and he took his seat Sept. 29, 2005.

The conversation followed a conference panel, featuring University of Michigan Professor Pamela Brandwein, Federal Judicial Center Director Jeremy Fogel and Chief Judge of the United States Court of Appeals for the Fifth Circuit Carl E. Stewart. The panel also brought inspiration to the audience through a discussion about the history and judicial courage of numerous judges. Similar to the chief justice, they highlighted the importance of collegiality as it relates to the work of the court.

“One of the hallmarks of being a federal judge is collegiality,” said Chief Judge Stewart. “So much of what we do is girted by the fact that very smart people, men and women, may disagree about legal principals, but it’s the collegiality that really allows the rule of law to work.”
Preceding the event, the chief justice met with a small group of UK law students.

The Heyburn Initiative, a national, nonpartisan federal judicial initiative, was announced in October 2016 by President Eli Capilouto, U.S. Senate Majority Leader Mitch McConnell and Dr. Martha K. Heyburn. In partnership with the UK College of Law and UK Libraries, the initiative established a national lecture series on relevant judicial topics and is launching an archives and oral history program for Kentucky’s federal judges.


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

MAKE LEGAL WRITING READER FRIENDLY WITH ROADMAPS AND TRANSITIONS

BY: JENNIFER JOLLY RYAN

Similar to road signs and highway markers, roadmaps and transitions are important sign posts in any legal document. Roadmaps and transitions help readers navigate through legal writing. They are most helpful to readers who are presented with complex legal analysis and logic in persuasive briefs and memoranda. Imagine traveling on a road trip to an unknown destination on roads without any highway signs or highway markers. It is easy to get lost. Similarly, it is easy to get lost in legal writing without roadmaps and transitions. Without them, sentences and paragraphs are disconnected, making it difficult to grasp arguments and ideas or understand how they relate to each other. Without them, writing is choppy, like a series of jumbled up bullet points. This Effective Legal Writing column provides a few pointers about making legal writing reader friendly and directive by using roadmaps and transitions.2

1. ROADMAP

In grade school, we were taught that a good piece of writing has three parts: introduction, body, and conclusion. In other words, we were taught to “tell them what you’re going to tell them, then tell them, then tell them what you told them.” Legal writing is no different. Roadmaps are the “tell them what you’re going to tell them part” of a legal document. Roadmaps identify the overall issue or conclusion reached and the elements to be discussed. In the first sentence, state the overall conclusion so that the reader will read everything else in context.3 For example, the first sentence of the argument section in a brief to the court might read “Plaintiff’s Motion to Amend should be granted because . . . .” The writer should follow this strong topic sentence with the overall roadmap paragraph, introducing the rule and elements that will be discussed. Although my flashing warning sign here is abrupt, the biggest mistake writers make in writing roadmaps is giving too much information up front. Do not go beyond listing elements or factors and giving a very brief introduction of the law. Anything more overwhelms the reader and destroys a clear roadmap. Later, as the writer transitions to sub-elements or supporting arguments throughout the brief or memorandum, the writer should provide more specific mini-roadmaps with more specific information, when the reader is ready for it.

2. LINK PARAGRAPHS AND SENTENCES

The effective legal writer links sentences to previous sentences, and paragraphs to previous paragraphs. The writer connects what was already discussed to what will be discussed. Without these links, readers have no signals about how sections of writing relate. Three effective tools to link one sentence, paragraph, or idea to another are repetition, avoiding vague or ambiguous pronouns, and transitions.

A. REPEAT DIFFICULT KEY POINTS

Throughout the brief or legal memoranda, repeat key points or words. More complex concepts need greater repetition for readers to grasp them. Repetition tells readers “this is really important.” It helps readers follow logic and reasoning. To drive home a point or concept, be consistent with words when discussing the same point or concept. For example, the word recklessness should not be substituted for the word negligence. A switch to “family dog” drastically changes the meaning of “canine.” If the writer does intend to change to another concept, he or she should use different words to make the departure crystal clear. Repeating sentence structures is another signpost technique, making legal writing reader friendly. “If you use the word negligence, you mean . . . . If you use the word reckless, you mean . . . .”

B. AVOID VAGUE OR AMBIGUOUS PRONOUNS

Avoid vague pronouns like “this” or “that” to help readers stay oriented. Vague pronouns require the reader to backtrack through complex writing to figure out who or what the writer is referencing. There are two ways to avoid vague or ambiguous pronouns. First, the writer can simply substitute the vague pronoun for a noun; the person or thing’s name or title. Second, the writer can sum up a concept in a previous sentence and make the linkage clear by using a summative modifier. A summative modifier adds a clear subject to a sentence by converting a pronoun to an adjective. The new subject roadmaps the rest of the sentence, signaling to the reader that the rest of the sentence will add something new.4 Below are two pairs of sentences. The first pair of sentences contains no linking summative modifier. The second pair contains the linking summative modifier, sign posts and signals.5

Effective legal writers use headings, roadmap paragraphs, and transitions. These help readers navigate through legal documents.

Effective legal writers use headings, roadmap paragraphs, and transitions. These sign posts help readers navigate through legal documents.

C. USE LOTS OF TRANSITIONS

A transition is a word or phrase that explains how a sentence or paragraph relates to the previous sentence or paragraph. Transitional words and phrases that link sentences and paragraphs are important in legal writing. They orient and guide the reader. Most importantly, they help the reader follow the writer’s logic and reasoning. The words first, second, and third are the simplest examples of transitions that help readers connect one idea to the next. There are many more. To choose an appropriate transition, first
CONCLUSION

Make legal writing reader friendly by helping readers navigate legal writing and stay oriented. Use signposts, including roadmaps, and transitions. The point is that “if [your readers] don’t know where you are going, [they] will probably end up someplace else.” Do not miss the opportunity to persuade or inform your reader. Signposts are what keeps readers of legal writing on the right road and prevents them from getting lost.

ENDNOTES

1. Professor Jennifer Jolly-Ryan teaches writing at Salmon P. Chase College of Law, Northern Kentucky University. She is a member of the Kentucky Bar Association and a graduate of Salmon P. Chase College of Law. She is a former law clerk for Judge S. Arthur Spiegel of the United States District Court, Southern District of Ohio and practiced law with the law firms of Dinsmore & Shohl and Jolly & Blau before joining the Chase College of Law faculty.

2. In this first paragraph, the phrase “roadmaps and transitions” is repeated many times. The repetition is intentional. Only through editing this article many times, the phrase consistently became “roadmaps and transitions.” This roadmap helped to keep me on track while writing this article. I hope that my roadmap helps you as a reader.


5. Id. (citing Williams and Colomb, Style: Lessons in Clarity and Grace, 127-29. These examples are modifications of Professor Leneis’ examples of summative modifiers in his article.

6. Useful examples and lists of transitions are easily found. A good transition list available on the internet can be found at https://owl.english.purdue.edu/owl/resource/574/02/ and most of the sources cited in this article also have good transition lists. Some of my examples were modeled after examples in Rick Bales, Transitions, Ky. Bench & Bar (Sept. 2011).

7. This quotation is a slight modification of the famous quote: “if you don’t know where you are going, you will probably end up someplace else.” Laurence J. Peter, Peter’s Quotations: Ideas for Our Time, 125 (1977).
Change in legal practice has been a topic of this column since its inception. The changes in commerce, technology and the practice have become steady and frequent. The Kentucky Bar Association has task forces examining two key concerns. The first is on the state of legal practice in Kentucky now, on which I sit. The second is the future of legal practice here. What might that mean for lawyers and the administration of justice here in the Commonwealth?

I divide what we do into three areas, the scholarship of the law, the practice of law and the business of law. These areas are all intertwined and may have a significant impact on each other. What concerns me in my non-evidence based sense of our discipline is that competitive pressures within the business of the law may begin to have an impact on both the scholarship and its practice. My sense is the competitive pressures today may be greater than ever, having an impact on the time that can be dedicated to a case, case selection and other factors which may affect the quality of the outcome. That may affect the reality and perception of justice, as well as drive people to try and handle matters themselves to whatever end and at whatever ultimate cost.

WHERE ARE WE NOW?

One theme is a trend towards more specialists and fewer generalists. Harrison Barnes’ analysis of attorney placement firm BCG’s internal data report The BCG Attorney Search 2017 State of the American Lateral Law Firm Legal Market Report finds that legal practice in 2016 began with activity relating to patents, real estate and corporate law that slowed over the year, with litigation beginning slowly but picking up over time. In particular, “niche” practices saw growth in demand with litigation again becoming a hot practice area towards the end of the year. This reflects, at least within 2016, the growth in demand for specialist practitioners. Barnes observes that this impacts lateral moves into other law firms far more than the quality of law school or of one’s current firm. Niche practice areas range from bankruptcy and immigration to tax and employment law. Although this analysis focuses on large law firms, it can indicate generally what we all may face. Barnes opines that part of the reason for this is that there are too many lawyers for not enough legal work.

One ABA short interview with “millennial” attorneys on their perspectives on the current state of legal practice found that technology is playing an immense role. This includes erasure of boundaries between work and private life, what one called “a blessing and a curse.”

Thompson Reuters 2016 State Of The US Small Law Firms Survey found that the top three challenges for small law firms were 1) acquiring new business; 2) spending too much time on administrative tasks; and 3) the increasing complexity of technology. These were closely followed by challenges of cost control and expenses, rate pressure from clients and keeping up with changes in the legal market. Yet the strong majority of small firms still viewed themselves as successful in their endeavors. It appeared that successful firms were able to focus on practice profits and client satisfaction, optimizing both; less successful firms were stressed by expense management and failure to expand their “brand.” The report concluded that there were opportunities and challenges, with threats not just from increased competition between lawyers but with the growth of do-it-yourself services.

SO, WHERE ARE WE GOING?

Jenna Nand writes that with the continuing bad news on employment opportunities for lawyers’, views on the future of legal practice may be dismal. But it still will be an essential service, albeit offered in different forms, as detailed by four practitioners she interviewed. Such changes included more specialization, adoption of commercial business models, new alternative fee arrangements, and new practice structures for law firms that integrate global Information and Communication Technologies.

Heidi Alexander of attorney@work.com interviewed Prof. Andrew Perlman of the Suffolk University Law school as to his new project to create an Institute on Law Practice Technology & and Innovation. Prof. Perlman’s observations were techno-focused, with new and more powerful technologies being implemented constantly, creating a need to train lawyers and law students for emerging technologies and constantly adopt relevant new technologies. In part this was connected to the increased commoditization of legal services and the general velocity of change that lawyers, as well as everyone else, handle.

Ilina Rejeva of the ABA For Law Students asks how law schools
are preparing law students to negotiate the technological currents of modern legal practice. She cites several analyses that indicate less of a need for generalist practitioners, administrative staff and associates/contract attorneys, indicating a premium for specialists in particular areas. These analyses, and that of the World Economic Forum, indicate greater focus on legal technology and case processing will be essential to be competitive and employable. One example was Bucerius Law School of Hamburg, Germany, that operates an Open Innovation Laboratory for new systems of legal practice. Vanderbilt Law School uses its Law and Innovation program to look at issues of innovation, entrepreneurship technologies, legal business and access to legal services. This latter is, I believe, a significant concern as factors which increase the cost of legal services reduce the ability of more and more people to use them via a competent practitioner. That leads to greater and greater problems throughout the system and, possibly, instability in how our system of justice functions and sustains its legitimacy.

These are significant challenges for today, and for the future. How we address them will have an impact on rule of law in our daily, mundane lives and of the people in our communities. If you would like to share your thoughts on this, please email me at future@losavio.win.net.

ABOUT THE AUTHOR

MICHAEL LOSAVIO teaches in the Department of Justice Administration and the Department of Computer Engineering and Computer Science at the University of Louisville on issues of law, society and information assurance in the computer engineering and justice administration disciplines. His focus is on law and social sciences as they relate to computer engineering, evidence and digital forensics. Courses include Digital and Computer Crime, Transnational Cybercrime and Legal Issues with Data Mining and Information Assurance. He holds a J.D. and a B.S. in Mathematics from Louisiana State University.

ENDNOTES


LAW PRACTICE TASK FORCE IS HERE TO SERVE YOU

BY: BOB YOUNG

Kentucky lawyers operating law practices need all the help they can get — and the new Law Practice Task Force, recently created by the KBA, is designed with that need in mind.

I’m serving as managing partner of my firm, English, Lucas, Priest and Owsley in Bowling Green. I also served as chair of the Law Practice Division of the American Bar Association. These experiences have taught me first hand that it is a fierce juggling act to handle both the business needs of a law firm and manage an active case load. That’s why I am excited to be part of this new task force. I also hope that all attorneys will share with each other the ways that they handle the business side of their practice so that we improve the practice of law in Kentucky.

The mission of our Task Force is to create a member service to help all Kentucky lawyers and their employees with law office management issues, including but not limited to information on starting their firms, practice management trends, marketing, client development, legal technology and finance. A primary focus will be to assist new, solo and small firm attorneys. This column will be dedicated to these topics. We welcome your suggestions.

ABA REQUIRES TECHNICAL KNOWLEDGE OF LAWYERS

We’ll start with the topic of technology, as keeping up with it has huge benefits for attorneys and our clients.

In fact, the American Bar Association encourages lawyers to understand and embrace new technology. Knowing that technology impacts every lawyer, the ABA amended its model rules at its annual meeting in 2012. Rule 1.1 now provides that lawyers must be competent not only in the law and its practice but also in technology. The comment to Rule 1.1 says that to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements. In other words, “relevant” requires today’s lawyers to be current not only in their areas of practice, but also in technology. Twenty-six states have now adopted some version of Model Rule 1.1.

As I write this column, I am preparing to attend the ABA Law Practice Division TECHSHOW. I remember attending my first TECHSHOW about 10 years ago as part of my responsibilities in a leadership role I had with my firm. Some of the toughest decisions then were selecting computers and choosing dictation. Things have changed drastically! Law firm technology today is so much more than equipment that sits on our desks. It touches all areas of our practices including, management, finance, technology and marketing.

What lawyer doesn’t need practice management software to start their practice or to help them work faster, smarter and more profitably? Shouldn’t every litigator be familiar with the advances in e-discovery, collecting social media evidence and knowing how to try a case or take a deposition using an iPad? Finally, if you own your firm or have a leadership role in your firm, it is imperative to keep updated on cloud computing, generating business through your website and social media and encouraging every lawyer and employee in your office to become technologically efficient. Our goal is to provide education, information, technology resources and publications to make certain that every member of the KBA meets the competency standards contemplated by the Model Rules.

MENTORING IS KEY

When I began practicing law more than 25 years ago, I would frequent the doors of the partners and older associates in the firm. My questions ranged from evolving legal topics, to some as simple as how to get involved in the community or how to generate business. In today’s challenging legal environment, many new lawyers do not have this luxury and now in addition to these questions, they are faced with the challenges of running a business. They start their own firms not because they want to, but because they have to. It is hard enough starting out as a new lawyer, but looking back I cannot imagine also starting out as a new small business owner. I am not sure I could have handled both of these challenges. Our task force aims to create the resources and assistance required by Kentucky lawyers.

I hope this will be the first of many columns dedicated to assisting Kentucky lawyers regarding the business of law and issues associated with running and managing their law practices. I want to thank KBA President Mike Sullivan, KBA Executive Director John Meyers and the KBA Board of Governors for assembling a Law Practice Task Force to address these very important issues that impact every Kentucky Lawyer.

As we begin our journey, I would like to thank Hailey Scoville Bonham, Amy Cabbage, Steve Embry, Pashens Fitzpatrick, Michael Losavio, Jeff Sallee, KBA President-Elect Bill Garmer, and John Meyers, for agreeing to serve on the KBA Law Practice Task Force. We look forward to this tremendous opportunity to assist and aid Kentucky lawyers to improve the way they run their practices and firms. If you have any thoughts or suggestions, please feel to reach out to any of us.

ABOUT THE AUTHOR

BOB YOUNG is former chair of the Law Practice Division of the American Bar Association. He is the managing partner at English, Lucas, Priest & Owsley, LLP, in Bowling Green, Ky.
The Board of Governors met on Friday, Nov. 18, 2016. Officers and Bar Governors in attendance were, President M. Sullivan; President-Elect W. Garmer; Vice President D. Ballantine and Young Lawyers Division Chair-Elect E. Weihe. Bar Governors 1st District – M. Pitman, F. Schrock; 2nd District – J. Meyer, T. Kerrick, 3rd District – M. Dalton, H. Mann; 4th District – A. Cubbage; 5th District – M. Barfield, E. O’Brien; 6th District – G. Sergent, S. Smith; and 7th District – M. McGuire, J. Vincent. Officers and Bar Governors absent were: Immediate Past President D. Farnsley, Fort, Dottye Moore of Elizabethtown and Dr. Leon Mooneyhan of Shelbyville non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

In Executive Session, the Board considered seven (7) default disciplinary cases, involving five attorneys. Judy Campbell of Frankfort, Young Lawyers Division Chair R. Schafer, and Bar Governors W. Garmer, Vice President D. Ballantine and Young Lawyers Division Chair E. Weihe. Bar Governors 1st District – M. Pitman, F. Schrock; 2nd District – J. Meyer, T. Kerrick, 3rd District – M. Dalton, H. Mann; 4th District – A. Cubbage; 5th District – M. Barfield, E. O’Brien; 6th District – G. Sergent, S. Smith; and 7th District – M. McGuire, J. Vincent. Officers and Bar Governors absent were: Immediate Past President D. Farnsley, Young Lawyers Division Chair R. Schafer, and Bar Governors B. Simpson.

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

- Approved Ethics Opinion E-440 as a formal opinion regarding client with diminished capacity.
- 2017 Annual Convention Chair and Bar Governor J.D. Meyer reviewed with the Board the featured speakers: Jerry Buting, one of the defense attorneys for Steven Avery of the Netflix documentary series “Making a Murderer” is scheduled for Wednesday; Mark Whitacre, best known for his whistleblower role in the mid-1990’s at Archer Daniels Midland, where he exposed an international price fixing conspiracy for the FBI is on board for Thursday and Amanda Knox, the American exchange student who spent almost four years in an Italian prison following her conviction for the 2007 murder of fellow exchange student and roommate, Meredith Kercher, is set to present on Friday. Meyer reported that on Friday there will also feature seminars on the bourbon industry, craft beer issues and distribution law.
- Approved the reappointment of the James A. Dressman III, Bar Governors Amy Cubbage, and Howard Mann for a three year term ending on Dec. 31, 2019 to the KBA Audit Committee; in addition, Dressman was reappointed to serve as chair for a one year term.
- Approved the reappointment of George E. Long II of Benton to a three year term ending in December 2019 to the Bar Center Board of Trustees.
- Approved the appointment of Douglas Farnsley of Louisville to fill the reminder of W. Douglas Myers’ term as Kentucky Delegate on the ABA House of Delegates.
- Approved the hiring of Guion Johnstone as the Kentucky Bar Foundation/IOLTA executive director.
- John Meyers, executive director, reported that Robert Young of Bowling Green has been appointed to serve as chair of the Task Force on Law Practice, in addition, other members have been appointed with many diverse members ranging from young solo practitioners to more experienced large firm members as well. The goal of the task force is to develop a comprehensive plan for providing law practice services for KBA members.
- Approved issuing a Show Cause Notice to those members of the bar who had not paid their dues or were CLE non-compliant.
- Approved the creation of a Task Force on Judicial Evaluations.
- Meyers reviewed the results of the Certification of the 2017-2018 Board of Governors elections. Meyers advised that uncontested races were won by Meyer, Mann, Cubbage, and Barfield. Newly elected Bar Governors will be Todd McMurtry from Fort Mitchell and Rhonda Jennings Blackburn from Pikeville. Meyers reported there will be one contested race in the 1st Supreme Court District between Jack Lackey of Hopkinsville and Van Sims of Paducah.
- Meyers reported that the Diversity & Inclusion Summit is scheduled for Friday, April 7, at the Hilton Lexington Downtown. The task force is currently seeking sponsors of the Summit.
- Approved the proposed amendments to the IOLTA Bylaws.
- Approved the 2017 Holiday Schedule consistent with the Administrative Office of the Courts.
- Meyers gave an update on the IT project.
- Meyers reported that the Bar Center Board of Trustees is scheduled to meet with the G. Scott & Associates, Architects firm, to discuss the scope of the restrooms renovations as well as reviewed drawings, proposed cost, bidding and construction specs.

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

May 19-20, 2017 and June 20, 2017

To schedule a time on the Board’s agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795.
U.S. SENATE CONFIRMS PRESIDENT’S NOMINATION OF CHIEF JUSTICE MINTON TO SJI BOARD OF DIRECTORS

The U.S. Senate has confirmed President Obama’s nomination of Chief Justice of Kentucky John D. Minton Jr. to the State Justice Institute’s board of directors. The president nominated Chief Justice Minton in July and the Senate confirmed the nomination Dec. 10. His term on the board is through Sept. 17, 2019.

“I congratulate Kentucky Supreme Court Chief Justice John Minton on his confirmation to serve on the State Justice Institute Board of Directors,” said U.S. Senate Majority Leader Mitch McConnell of Kentucky. “Chief Justice Minton has served with distinction in Kentucky’s judiciary for over two decades, and I can think of no better candidate to help improve the quality of state courts nationwide. As president of the Conference of Chief Justices, he has earned the respect of his colleagues to spearhead innovation and best practices across the country. I believe that Chief Justice Minton will be an asset to SJI and continue to make Kentucky proud.”

Chief Justice Minton said he appreciates the Senate’s confirmation. “I’m eager to begin working with my fellow board members to award grants that benefit state courts,” he said. “SJI grants make it possible for many state court systems to engage in programs they might not otherwise be able to afford. With the SJI’s assistance, state courts have been able to educate judges about domestic abuse, address human trafficking, implement juvenile justice reforms and much more.”

The Supreme Court of Kentucky hosted the SJI Board of Directors when it met in April 2016 to select grant recipients.

SJI is a federal non-profit corporation that awards grants to improve the quality of justice in state courts and foster innovative, efficient solutions to common issues faced by all courts. Some areas SJI is currently focusing on with grants are language access in state courts, technology, self-represented litigants and juvenile justice. SJI is governed by an 11-member board of directors appointed by the president and confirmed by the U.S. Senate. The SJI board is comprised of six state court judges, one state court administrator and four members of the public (must be two from each major political party).

To see SJI’s confirmation announcement about Chief Justice Minton, visit: http://www.sji.gov/senate-confirms-chief-justice-minton-to-serve-on-sji-board-of-directors/.
Chief Justice of Kentucky John D. Minton Jr. has named Justice Lisabeth T. Hughes as deputy chief justice of the Supreme Court of Kentucky. Justice Hughes has served as a justice since 2007 and as a judge for 20 years. The deputy chief justice fills in when the chief justice recuses in a case or an administrative matter.

“Justice Hughes and I have served on the Supreme Court together for 10 years and I’m pleased she’s taken on the role of deputy chief justice,” Chief Justice Minton said. “In addition to outstanding legal scholarship, she contributes significant legal and practical experience to our court, drawing upon her years as a practicing lawyer and a judge on both the Circuit Court and the Court of Appeals.”

In the role of deputy chief justice, Justice Hughes succeeds Deputy Chief Justice Mary C. Noble, who retired in 2016.

Justice Hughes serves the 4th Supreme Court District, which is Jefferson County. She was appointed as a justice in 2007 to fill the vacancy created by the retirement of the late Justice William E. McAnulty Jr. In November 2008, the voters of Jefferson County elected her to serve as the justice from their district. She was re-elected in November 2014.

Prior to taking the Supreme Court bench, Justice Hughes served as a Kentucky Court of Appeals judge from 1997-1998 and a Jefferson County Circuit Court judge from 1999-2006. She was reappointed to the Court of Appeals in 2006 and later elected to the court, where she was serving when she was appointed to the Supreme Court.

After earning her bachelor’s degree with highest honors from the University of Louisville, Justice Hughes graduated magna cum laude from the University of Louisville Louis D. Brandeis School of Law, where she was named Outstanding Graduate of her law school class. Before serving as a judge, she practiced law for 15 years, concentrating on business and commercial litigation.

Justice Hughes is a past president of the Louis D. Brandeis Inn of Court. She is chairwoman of the Supreme Court’s Civil Rules Committee and is the Supreme Court representative on the board of the Kentucky IOLTA Fund. She is past president of the alumni council for the University of Louisville Louis D. Brandeis School of Law and served as a trustee for the Kentucky Judicial Form Retirement System Board from 2000-2012. She is a past Louisville Bar Association Judge of the Year and was the U of L Law Alumni Fellow in 2009. She is a frequent lecturer for the Kentucky Circuit Judges College and is a 2007 graduate of Leadership Louisville.

Laurence B. VanMeter was ceremonially sworn in Feb. 7 as a justice of the Supreme Court of Kentucky. Justice VanMeter’s significant other, Lucy Ferguson, holds two family Bibles that have a long history in Justice VanMeter’s family. To her right are Nancy T. Bishop and Shannon Arvin Bishop, who performed the official robing of Justice VanMeter at the ceremony. They are the widow and daughter, respectively, of the late William T. "Buddy" Bishop, an attorney who was Justice VanMeter’s mentor and his official rober when he took the bench at the Court of Appeals, Circuit Court and District Court.

Justice Laurance B. VanMeter was ceremonially sworn in as a justice of the Supreme Court of Kentucky on Feb. 7 in the Supreme Court Courtroom at the state Capitol in Frankfort. Chief Justice of Kentucky John D. Minton Jr. administered the oath of office to the court’s newest justice, who was elected in November.

Justice VanMeter took office in January and serves the 5th Appellate District in Central Kentucky. He succeeds Justice Mary C. Noble, who retired in 2016.

Upon taking office, he became the third justice to have served at all four levels of the state’s unified court system. He served 13 years as a Kentucky Court of Appeals judge before being elected to the Supreme Court. Prior to the Court of Appeals, he was a Fayette Circuit Court judge and Fayette District Court judge.

Justice VanMeter serves as the chairman of the Judicial Retirement Fund Investment Committee after serving two terms as chairman of the board of trustees for Kentucky Judicial Form Retirement Systems. He previously was a member of the Supreme Court’s Civil Rules Committee. Justice VanMeter served as acting chief judge of the Court of Appeals in 2010 and as chief judge pro tem from 2007-2010. He has served on the Kentucky Bar Association’s Probate and Trust Legislative Committee, the Supreme Court’s Family Court Rules Committee and on the chief justice’s Fayette Family Court Task Force. He is a fellow of the University of Kentucky, a life fellow of the KBA and a founding fellow of the Fayette County Bar Foundation.

He received his undergraduate degree in history from Vanderbilt University in 1980 and his law degree from the University of Kentucky College of Law in 1983. He was a member of the law school’s Order of the Coif and Kentucky Law Journal.
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KENTUCKY BAR ASSOCIATION  
STATEMENTS OF FINANCIAL POSITION  
June 30, 2016 and June 30, 2015  
Unaudited*  

<table>
<thead>
<tr>
<th>ASSETS:</th>
<th>June 30, 2016</th>
<th>June 30, 2015</th>
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<td>3,130,641</td>
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<td><strong>TOTAL ASSETS</strong></td>
<td><strong>$13,433,136</strong></td>
<td><strong>$13,195,452</strong></td>
</tr>
</tbody>
</table>

| LIABILITIES: | | |
| Accounts payable | $143,726 | $315,764 |
| Accrued expenses | 360,934 | 405,714 |
| Current maturities of bonds payable | 135,000 | 125,000 |
| **Total Current Liabilities** | **639,660** | **846,478** |
| Deferred revenue | 14,669 | 14,366 |
| Bonds payable, less current maturities | 455,000 | 590,000 |
| **Total Liabilities** | **1,109,329** | **1,450,844** |

| NET ASSETS: | | |
| Unrestricted - | | |
| Board designated | 303,436 | 362,682 |
| Undesignated | 12,020,371 | 11,381,926 |
| **TOTAL LIABILITIES AND NET ASSETS** | **$13,433,136** | **$13,195,452** |

The accompanying notes are an integral part of these financial statements.

*Pursuant to SCR 3.120 (8), there shall be an annual audit of the Kentucky Bar Association.  
The Audited Financial Statement and Report can be found on the website at  
https://www.kybar.org/financialstatements
Formal Ethics Opinion
KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-440
Issued: November 18, 2016

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at http://www.kybar.org/237), before relying on this opinion.

Question 1: What is Diminished Capacity for Purposes of Rule 1.14?
Answer: See Discussion on Page 2.

Question 2: When a client suffers from diminished capacity, what steps should the lawyer take to preserve a normal attorney client relationship?
Answer: See Discussion on Page 5.

Question 3: When a client suffers from diminished capacity how may a lawyer seek assistance from the client’s family, other third parties or the courts without violating the duty of confidentiality under SCR 3.130(1.6)?
Answer: See Discussion on Page 7.

Question 4: May a lawyer refuse to represent a client with diminished capacity, withdraw from such a representation after the client suffers from diminished capacity, or accept the termination of the representation of a client with diminished capacity?
Answer: See Discussion on Page 8.

Question 5: When may or must a lawyer representing a client with diminished capacity seek the appointment of a surrogate decision-maker?
Answer: See Discussion on Page 9.

Question 6: When a lawyer represents a client in a criminal action and the client suffers from diminished capacity, what additional concerns will the lawyer have? Further, what responsibility does a prosecutor have if he/she has reason to believe the defendant suffers from diminished capacity?
Answer: See Discussion on Page 10.

References: RULES OF SUPREME COURT OF KENTUCKY
SCR 3.130(1.14); SCR 3.130(1.6); SCR 3.130, Scope, Para. XVIII; SCR 3.130(1.2)(a); SCR 3.130(1.4); SCR 3.130(1.6); SCR 3.130(6.2); SCR 3.130(1.16);

CASES

ETICS OPINIONS

INTRODUCTION
This opinion addresses ethical issues that arise when a lawyer believes that his/her client suffers from diminished capacity within the meaning of SCR 3.130(1.14).

A lawyer may need to consider whether a client’s capacity to make adequately considered decisions is possible when the lawyer has reason to believe a client suffers from diminished capacity impairing his/her ability to make adequately considered decisions. When a client suffers from diminished capacity the lawyer must endeavor to maintain a normal attorney-client relationship so far as reasonably possible. If the lawyer believes the client’s diminished capacity places the client at risk of substantial physical, financial, or other harm, the lawyer should consider whether it is necessary to take protective action to protect the client’s interests. In taking protective action, the lawyer should be guided by the client’s wishes and values, and the client’s best interests. To the extent reasonably necessary to protect the client’s interests, when taking protective action, the lawyer is impliedly authorized to disclose information relating to the representation that SCR 3.130(1.6) would otherwise forbid. The lawyer should take care to ensure that any disclosed information will not be used against the client’s interests.

In order to assist the lawyer through the decision making process this Committee poses the following questions and analysis for the lawyer’s consideration when determining the most appropriate course of action.

1. What is Diminished Capacity for Purposes of Rule 1.14?
SCR 3.130(1.14) imposes various duties upon an attorney who suspects or knows that a client suffers from diminished capacity. The lawyer who has reason to believe that the client suffers from diminished capacity should review Rule 1.14, the full text of which is as follows.
SCR 3.130(1.14) Client with diminished capacity

(a) When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, age, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client’s interests.

While Rule 1.14 and the Comments do not enumerate all of the causes or conditions which may result in a client’s diminished capacity, Rule 1.14(a) indicates that a client’s capacity may be diminished by reason of “minority, age, mental impairment or some other reason.” Thus, any condition which appears to limit or interfere with the client’s ability to make adequately considered decisions should be assessed by the lawyer.

A lawyer should consider the question of diminished capacity at the outset of a representation. As Rule 1.14(a) focuses on a client’s decision-making ability “in connection with a representation,” a lawyer’s determination that a client is suffering from diminished capacity can only be made in the context of a specific representation. The degree of capacity necessary to make adequately considered decisions depends on the nature and scope of a specific representation, including the complexity of the factual and legal issues. Moreover, in some representations, a client may be able to decide routine factual and legal issues, but may have diminished ability to decide major issues.

The formation of a client-lawyer relationship is a matter of contract law, and a client’s capacity to enter into a contract presents a substantive legal issue. See SCR 3.130, Scope, Para. XVIII (“[F]or purposes of determining the lawyer’s authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists.”); Pete v. Anderson, 413 S.W. 3d 291, 296 (Ky. 2013). If a lawyer believes a prospective client may not have the capacity to enter into a valid attorney-client contract the lawyer should consider whether the prospective client’s interests would best be served by the establishment of a conservatorship or guardianship with a family member or other person whose interests are aligned with the prospective client.

So, at the initial stage of the representation the lawyer’s first duty is to determine whether the client suffers from diminished capacity to the extent the client cannot legally consent to an attorney-client contract. Comment (6) suggests it is permissible for the lawyer to seek information and assistance from family members, or other interested persons or an appropriate diagnostician.

ABA Formal Opinion 96-404 (August 2, 1996) notes that limited disclosures of a lawyer’s observations concerning a client’s capacity are implicitly authorized by Rule 1.6. However, ABA Opinion 96-404 caution that a lawyer must limit such disclosures to information that is relevant to the assessment of the client’s capacity because “this narrow exception in Rule 1.6 does not permit the lawyer to disclose general information relating to the representation.” A lawyer must take steps to ensure that information disclosed in connection with assessing the client’s capacity will not be used in a manner adverse to the client’s best interests. Thus, such information should not be disclosed to persons whose interests are adverse or potentially adverse to those of the client.

In a 2001 article by Charles P. Sabatino published by the ABA’s Commission on Legal Problems of the Elderly, the author advises that, because lawyers seldom receive formal capacity assessment training, a lawyer may prefer to refer cases of questionable capacity to mental health professionals. This Committee, however, cautions that the lawyer should be aware of the possibility that a mental health review will show the presence of some level of diminished capacity in almost all older clients; thus, pursuing a capacity assessment may lead to a course of action, perhaps a proceeding in guardianship court that is inappropriate.

Sabatino cites a 1982 Report of the President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research as stating that “Decision making capacity requires, to a greater or lesser degree: (1) possession of a set of values and goals; (2) the ability to communicate and to understand information; and (3) the ability to reason and to deliberate about one’s choices.” The client’s values and goals may establish a benchmark against which the client’s capacity can be assessed rather than by conventional standards held by others. Mr. Sabatino then offers four actions that a lawyer may find helpful to the lawyer’s ultimate decision as to how to proceed.

1. Interview the Client Alone - Family, friends, or caretakers commonly accompany older or disabled individuals to the lawyer's office. These significant others may play an important role in providing essential background information relevant to the work to be done. However, the ethical starting point in the client-lawyer relationship remains the individual’s competent choice to retain the services of the lawyer and to decide the overall objectives of the representation. Be clear from the beginning who the client is and the ethical implications of that relationship in terms of loyalty, confidentiality, and decision making. The initial interview should always include a time when the lawyer and client meet alone. This is important not only to confirm representation and its objectives, but also
to provide an opportunity, if needed, to assess capacity. This one-on-one meeting request may cause apprehension among family members, including the elderly client, but it is necessary to ensure that personal and environmental factors do not unduly influence the decision-making process.

2. Adjust the Interview Environment to Enhance Communication – It is possible that the client has a hearing loss that is mistaken for diminished capacity, hence, the lawyer should try to optimize the interview environment for the client. Specific actions may include speaking slowly, conducting the interview in a quiet and well-lit area, arranging furniture so as to avoid glare, and providing any necessary audio or visual amplification to facilitate communication and functioning. Although their cognitive processing may not be as fleet as that of younger persons, given more time, partially impaired elders may be able to understand the ramifications of each action under consideration. Be willing to spend extra time explaining the nature and consequences of options and resist the temptation to equate the speed of the client’s ability to process information with level of capacity. If possible, meet with a client more than once to acquire a stronger sense of the client’s decision making capacity.

3. Know the Client’s Value Framework - The standard against which capacity is measured is the standard set by the individual’s standards of behavior and values, rather than conventional standards held by others. Without knowledge of the client’s personal frame of reference, capacity judgments have insufficient anchor and are liable to be based on someone else’s judgment. For the long-time client whose functioning appears to be slipping, the lawyer may be familiar with the client’s subjective frame of reference. Newer clients require a more thorough inquiry.

4. Presume Capacity - Merely raising the issue of capacity can be hurtful and damaging to the individual; therefore, as the process could ultimately result in a major intrusion into the client’s autonomy in the form of guardianship, the starting presumption should always be one of capacity.

If the lawyer concludes, after consultation with the client and/or with the assistance of a mental health professional, that the client may have diminished capacity, Comment (6) to SCR 3.130(1.14) provides a non-exhaustive list of factors that a lawyer should “consider and balance” in determining the extent of the diminished capacity: the client’s ability to articulate reasoning leading to a decision; the client’s variability of state of mind; the client’s ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client.

If the lawyer decides to proceed with the representation then the lawyer should consider the following portions of this Opinion, especially a need for the lawyer to document the client’s condition and the lawyer’s observations. See this Committee’s discussion under Question 3 of this opinion.

2. When a client suffers from diminished capacity, what steps should the lawyer take to preserve a normal attorney client relationship?

SCR 3.130(1.14)(b), provides the following guidance.

When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client’s own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

Comment 5 provides additional guidance, as follows.

5) If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client’s best interests and the goals of intruding into the client’s decision making autonomy to the least extent feasible, maximizing client capacities and respecting the client’s family and social connections.

Prior to taking any steps, the lawyer should consider the allocation of authority between lawyer and client and in this regard SCR 3.130(1.2)(a) provides the following guidance.

Subject to paragraphs (c) and (d), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

While Comment 4 to SCR 3.130(1.2) refers to SCR 3.130(1.14), it does not offer any additional substantive guidance.

Lawyers should also be mindful of the requirements of SCR
3.130(1.4), as follows.

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

We find additional guidance in Comments (1), (2), and (6) of SCR 3.130(1.4), as follows:

1) Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

2) If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously communicated to the lawyer that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

6) Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14.

In ABA Formal Opinion 96-404 the ABA's Ethics Committee made the following comments.

Rule 1.14 recognizes that there may be situations in which a normal client-lawyer relationship is impaired, or, perhaps, impossible because of client disability. Rule 1.14(a) requires a lawyer, “as far as reasonably possible,” to “maintain a normal lawyer-client relationship” with a client who’s “ability to make adequately considered decisions in connection with the representation is impaired.” This obligation implies that the lawyer should continue to treat the client with attention and respect, attempt to communicate and discuss relevant matters, and continue as far as reasonably possible to take action consistent with the client’s directions and decisions. (At page 2).

As explained above, the lawyer has an affirmative obligation to try to maintain a normal attorney-client relationship to keep the client informed and to allow the client to make her own decisions insofar as possible. Further, as the representation progresses the lawyer is obligated to maintain communication and to regularly reassess the client’s decision-making capacity, as capacity may change and may be present for some decisions and not for others.

3. When a client suffers from diminished capacity how may a lawyer seek assistance from the client’s family, other third parties or the courts without violating the duty of confidentiality under SCR 3.130(1.6)?

SCR 3.130(1.6) provides two exceptions to the basic requirement that a lawyer maintain a client’s communications and/or actions confidential. The first exception to the confidentiality requirement is to prevent reasonably certain death or substantial bodily harm, and the second is to comply with other law or court order. A client who is threatening suicide or a violent act or following an illegal course of action would be within these exceptions; hence, the lawyer could seek assistance from an emergency responder or other professionals or family members without violating SCR 3.130(1.6).

If the exceptions of SCR 3.130(1.6) do not apply, then SCR 3.130(1.14) provides additional exceptions. SCR 3.130(1.14(b)) allows for a lawyer to “take a reasonably necessary protective action” if the client “is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in his or her own interest.” The action allowed, as specifically stated in the Rule, includes “consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a Guardian Ad Litem, conservator, or guardian.

The Comments to the Rule, particularly Comment 5, provides that those measures would also include consulting with family members, support groups, adult protective services, other professionals (such as therapists), or using powers of attorney. Based upon the Rule and the Comments, it appears that all of these options are available to the lawyer if the lawyer believes that the client is at risk of substantial physical, financial, or other harm and cannot protect his or her own interests.

Further, subsection (c) of SCR 3.130(1.14) allows the lawyer to reveal information that would otherwise be protected under SCR 3.130(1.6) if required, but “only to the extent reasonably necessary to protect the clients’ interests.” The lawyer has to walk a fine line and only reveal the information necessary to get the help needed and to protect the client’s interest - but not any more informa-
tion than needed. Particularly, Comment 8 to the Rule discusses the fact that disclosure of the client's diminished capacity could adversely affect the client's interests. While the lawyer is probably impliedly authorized to reveal that information by SCR 3.130(1.14(b)), given the risks of disclosure a lawyer should proceed with caution and carefully document the facts and circumstances leading to the lawyer's decided course of action. The lawyer's documentation efforts would include the lawyer's notes of conversations with the client, members of the client's family, mental health diagnosticians, and then a recording of the lawyer's own observations of the client would be a good place to start. Further, see “Capacity Worksheet for Lawyers,” in Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers, by the ABA Commission on Law and Aging and the American Psychological Association (2005), the completion of a worksheet along the lines indicated in the referenced material should be helpful to evidence the lawyer's thought process in taking the appropriate course of action.

4. May a lawyer refuse to represent a client with diminished capacity, withdraw from such a representation after the client suffers from diminished capacity, or accept the termination of the representation by a client with diminished capacity?

Other than a lawyer's obligation under SCR 3.130(6.2) to not seek to avoid appointment by a tribunal to represent a person except for good cause a lawyer may accept or refuse representation at will; however, once the representation commences, withdrawal presents ethical issues under SCR 3.130(1.16) as well as SCR 3.130(1.14).

In ABA Formal Opinion 96-404, the ABA Committee noted that, absent Rule 1.14, a lawyer whose client becomes incompetent would be acting without proper authority from the client and would be unable to carry out his or her responsibilities to the client. The ABA Committee stated that Rule 1.14 resolves this dilemma by permitting a lawyer to take protective action, but the Rule does not compel a lawyer to take such action and many lawyers are uncomfortable with doing so. The ABA Committee stated that although Rule 1.16(b) permits a lawyer to withdraw if withdrawal can be accomplished “without material adverse effect on the interests of the client,” the lawyer should consider whether withdrawal in these circumstances may leave the impaired client without help at a time when the client needs it most. The ABA Committee concluded that even if withdrawal would not have a material adverse effect on the client, the better course of action, and the one most likely to be consistent with Rule 1.16(b), will often be for the lawyer to continue to represent the client and seek appropriate protective action.

Several state ethics committees have agreed with the ABA Committee that withdrawal from the representation of a client with diminished capacity is not favored. See Vermont Ethics Op. 2006-1 (2006) (if a client is not competent to protect the client's own interests, "withdrawal should not be pursued, even if permissible"); District of Columbia Ethics Op. 353 (2010) (a lawyer should not withdraw from representation of a client with diminished capacity whose surrogate decision-maker's actions create substantial risk that the client will lose her home; "it is difficult to imagine a circumstance under which permissive withdrawal causing substantial harm would be appropriate when representing a client with diminished capacity"). See also, Cheney v. Wells, 877 N.Y.S. 2d 605 (N.Y. Sur. Ct. 2008) (permission to withdraw conditioned upon lawyer commencing a limited property guardianship proceeding for client). Cf. Michigan Informal Ethics Op. CI-882 (1983) (the probability that the client would have the "same difficulties with any other lawyer retained ... does not bind the attorney to remain in a relationship which the client may have rendered unreasonably difficult for the attorney to continue").

In summary, a lawyer contemplating withdrawal from the representation of a client with diminished capacity should proceed with caution and should carefully consider whether taking protective action would be the better choice.

Likewise, a lawyer should proceed with caution when a client with diminished capacity attempts to discharge the lawyer. As noted in Comment (6) to SCR 3.130(1.16), the client may lack legal capacity to terminate the client-lawyer relationship, and discharging the lawyer may be adverse to the client's interests. The Comment further notes that "[t]he lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14." See also, Massachusetts Ethics Op. 2004-1 (2004) (lawyer who believes...
discharge by elderly client was due to coercion by abusive adult child should ascertain client’s actual wishes and may consult with other family members); South Carolina Ethics Op. 05-11 (2005) (lawyer asked by both impaired client and client’s conservator to turn over client’s files may seek appointment of a guardian or take other protective action if client believes client cannot act in her own interest; conservator generally cannot make personal decisions for client); Michigan Informal Ethics Op. CI-1055 (1984) (lawyer asked to withdraw petition by client assessed as incompetent by examining psychiatrist may not withdraw if withdrawal is not in client’s interests).

5. When may or must a lawyer representing a client with diminished capacity seek the appointment of a surrogate decision-maker?

In ABA Formal Opinion 96-404, the ABA Committee advised that a lawyer may seek to have a guardian appointed for a client with diminished capacity, but such an appointment “is a serious deprivation of the client’s rights and ought not be undertaken if other, less drastic, solutions are available.” Accord, Missouri Informal Ethics Op. 960095 (1999) (lawyer who believes that client shows signs of Alzheimer’s disease may seek appointment of a guardian as a last resort); Missouri Informal Ethics Op. 96-404; ABA Formal Opinion 96-404 (before seeking appointment of a guardian, lawyer must maintain “as regular a lawyer-client relationship as possible and adjust representation to accommodate client’s limited capacity”); Restatement (Third) of the Law Governing Lawyers §24 cmt. b (2000) (appointment of a guardian “may be expensive, not feasible under the circumstances, and embarrassing for the client”). ABA Formal Opinion 96-404 further notes that even where seeking the appointment of a guardian is appropriate, a lawyer must consider whether the circumstances of the representation reasonably require the appointment of only a guardian ad litem for pending litigation, or a guardian for the client’s property and financial affairs but not the client’s personal affairs, or a general guardianship. If a lawyer concludes that the appointment of a guardian would best serve the client’s interests, the lawyer herself may initiate the proceedings. Rule 1.14(b); ABA Formal Opinion 96-404; Nassau County (N.Y.) Ethics Op. 98-2 (1998); Cheney v. Wells, supra. The lawyer may not, however, represent a third party petitioning for a guardianship over the lawyer’s client. As explained by the ABA Committee in ABA Formal Opinion 96-404, “[s]uch a representation would necessarily have to be regarded as ‘adverse’ to the client and prohibited by Rule 1.7(a), even if the lawyer sincerely and reasonably believes that such representation would be in the client’s best interests, unless and until the court makes the necessary determination of incompetence.” Accord, Virginia Ethics Op. 1769 (2003); Missouri Informal Ethics Op. 990048 (1996). Further, except in “the most exigent of circumstances,” a lawyer “should not act as or seek to have himself appointed guardian” of a client with diminished capacity, and even in such circumstances the lawyer should seek only a temporary appointment and “take appropriate steps for the appointment of a formal guardian, other than himself, as soon as possible.” ABA Formal Opinion 96-404. Accord, In re Laprath, 670 N.W.2d 41 (S.D. 2003).

6. When a lawyer represents a client in a criminal proceeding and the client suffers from diminished capacity, what additional concerns will the lawyer face? Further, what responsibility does a prosecutor have if he/she has reason to believe the defendant suffers from diminished capacity?

KRS 504.090 states that “[n]o defendant who is incompetent to stand trial shall be tried, convicted or sentenced so long as the incompetency continues.” “Incompetency to stand trial” means, as a result of a mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one’s own defense.” KRS 504.060. Hence, by its very definition, one who is “incompetent” is not rational.

A defendant is presumed competent, and has the burden to establish incompetence by clear and convincing evidence. Cooper v. Oklahoma, 517 U.S. 348, 116 S.Ct. 2680, 134 L.Ed.2d 498 (1996). Nevertheless, “incompetency to stand trial” is not a defense which may be pursued or abandoned by the defendant or counsel as a matter of strategy:

First, unlike a true defense, the issue of competency is not for the defendant alone to raise; it can be raised by the trial court, on its motion, whenever the trial court has reason to believe that the defendant’s competency is in question. (See KRS 504.100(1), “[i]f upon arraignment, or during any stage of the proceedings, the court has reasonable grounds to believe the defendant is incompetent to stand trial, the court shall appoint at least one (1) psychologist or psychiatrist to examine, treat and report on the defendant’s mental condition;” see also Johnson v. Commonwealth, 887 S.W.2d 547 (Ky. 1994).)

Second, once the issue of competency has been raised, it cannot simply be waived and abandoned:

“[Kentucky’s] statutory right to a hearing is not constitutional, and can be waived when there is not substantial evidence of incompetency in the record, because our long-standing rule is that defendants may generally waive statutory rights…[citations omitted]…

If there is substantial evidence that a defendant is competent, and thus the constitutional right to a hearing attaches, the trial court must conduct a competency hearing (at trial or retrospectively) even if both counsel and the defendant waive it.” Padgett v. Commonwealth, 312 S.W.3d 336 (Ky. 2010).

Finally, a person found incompetent under circumstances in which there is no substantial probability that he will attain competency in the foreseeable future is subject to involuntary hospitalization proceedings under KRS 202A or 202B. KRS 504.110(2). Thus, while an incompetent client may not have to withstand trial for his conduct, neither can he necessarily avoid some consequence for the conduct, based merely upon grounds of incompetency.

Whether and when an attorney should raise the issue of his client’s competency is discussed in “The Decision to Challenge the
Competency of a Marginally Competent Client: Defense Counsel’s Unavoidably Difficult Position,” Ethical Problems Facing the Criminal Defense Lawyer: Practical Answers to Tough Questions, Uphoff, Rodney J. (both author of article and editor of book), 1995. Uphoff concludes that while the attorney must first discuss the issue fully with the defendant, “counsel frequently will be required to raise the competency issue,” but in some cases may conclude that raising competency concerns will be “highly detrimental to the client’s best interests,” and therefore may decline to raise the competency issue in a manner “consistent with counsel’s assessment of the defendant’s best interests.” This analysis would seem to favor raising competency as an issue unless the attorney can document a reason why raising the issue would be “highly” detrimental. As part of that analysis, an attorney making the decision whether to raise the issue of competency should be aware that in so doing he may be subjecting the client to examination by a mental health professional who may or may not ask questions about the client’s charges, or which would elicit facts pertaining to the client’s charges. The client’s answers to such questions may be reported in medical records or reports written by the mental health professional, and eventually may be shared with the court, the prosecutor, or both, and depending upon the damage that such answers could do to the defense of a case, the “highly detrimental to the client’s best interests” standard may be met. Clearly, though, Uphoff intends this to be a high standard, and counsel should be prepared to explain to an ethics tribunal his or her reasons why competency was not raised when the client has given a clear indication that he is laboring under diminished mental capacity. 

The ABA/BNA Lawyer’s Manual on Professional Conduct is less equivocal about a criminal attorney’s duty to raise competency as an issue:

If criminal defense counsel has a good faith doubt about a client’s competency, the lawyer has a duty to raise the issue with the court. Red Dog v. State, 625 A.2d 245 (Del. 1993) [discussing Rule 1.14(b)]... As stated in Drope v. Missouri, 420 U.S. 162 (1975), “evidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but even one of these factors standing alone may, in some circumstances, be sufficient.”

The Manual’s analysis seemingly would dispose of the issue, though it cites no Kentucky case.

As to a prosecutor’s responsibilities, there appears to be no clear cut rule or Kentucky case detailing a prosecutor’s responsibility to determine if a defendant suffers from diminished capacity. SCR 3.130(3.8) outlines the special responsibilities of a prosecutor:

(c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

If a prosecutor has knowledge that a defendant suffers from diminished capacity, and believes defense counsel may not have information of same, he/she should make the information available to defense counsel. Such information may be considered exculpatory. Brady v. Maryland, 373 U.S. 83 (1963).

In conclusion, an attorney who has a serious question as to whether his criminal client has diminished capacity to the point where his client may not be competent to stand trial is ethically authorized, and in fact may have a duty, to raise the issue of competency before the court. In so doing, the attorney should consider whether raising the issue will be highly detrimental to the client’s legal interests. The attorney who decides to raise the issue should be aware that once raised, it cannot be waived, and that otherwise confidential information may be revealed. The attorney who decides NOT to raise the issue should be prepared to document why she did not raise the issue of diminished capacity/competency before the court, in the event a question is raised about the attorney’s actions.

END NOTES

2. See Rule 1.14, Comment (1).
3. See Rule 1.14, Comment (7). However, as noted in ABA Formal Ethics Op. 96-404 (1996), the appointment of a guardian is a “serious deprivation of a client’s rights and ought not be undertaken if other, less drastic, solutions are available.” See also In re Brantley, 920 P.2d 433 (Kan. 1996) (lawyer disciplined for filing involuntary conservatorship proceeding without meeting personally with the client to determine her state of mind or understanding of financial affairs).
4. See Rule 1.14, Comment (3). See also Mo. Informal Ethics Op. 990095 (1999) (a lawyer who believes a client shows signs of Alzheimer’s disease may seek assistance from a social service agency); N. Y. City Ethics Op. 1997-2 (1997) (in forming conclusions about a client’s capacity, a lawyer must take into account not only information and impressions derived from the lawyer’s communications with the client, but also other relevant information that may reasonably be obtained from other sources, and the lawyer may also seek guidance from other professionals and concerned parties).
5. See Rule 1.14, Comment (6). See also ABA Formal Ethics Op. 96-404 (1996) (“...If a lawyer is unable to assess his client’s ability to act or if the lawyer has doubts about the client’s ability, ... it is appropriate for the lawyer to seek guidance from an appropriate diagnostician, particularly when a disclosure of the client’s condition to the court or opposing parties could have adverse consequences for the client.”); N.D. Ethics Op. 00-06 (2000) (a lawyer who believes a divorce client will accept an offer contrary to her best interests may consult with a professional to determine the nature and extent of the client’s disability); Pa. Ethics Op. 87-214 (1988) (a lawyer who reasonably believes a client cannot handle her financial affairs and health care needs may seek court appointment of a physician to report to court on the threshold issue of her competence).
6. See Rule 1.14, Comment (8).
7. (4) In a case in which the client appears to be suffering diminished capacity, the lawyer’s duty to abide by the client’s decisions is to be guided by reference to Rule 1.14.
COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:
SHAN F. EMBRY, DISTRICT COURT JUDGE
46TH JUDICIAL DISTRICT

PUBLIC REPRIMAND
Shan F. Embry is a District Court Judge for Kentucky's 46th Judicial District consisting of Breckinridge, Grayson, and Meade Counties. Judge Embry has waived formal proceedings and has agreed to the disposition made in this Order.

The Commission received information during a preliminary investigation that on June 20, 2016, Judge Embry had an ex parte discussion with an attorney representing the father of two young girls regarding Case No. 16-J-00058-001 styled In re: K.R.D. and Case No. 16-J-00059-001 styled In re: M.R.D. During the ex parte conversation, the father's attorney alleged that the daughters were refusing to go on a vacation with him.

Later that day, the mother of the girls and her current husband appeared before Judge Embry in a forcible detainer case unrelated to Case Nos. 16-J-00058-001 and 16-J-00059-001. Without providing a hearing or an opportunity to respond, Judge Embry ordered the mother to convince her daughters to go on vacation with their father or be held in contempt. When the attorney for the mother returned to the courtroom and informed Judge Embry the girls wanted to speak with her, she refused and threatened to place them in foster care if they did not go on vacation with their father. She later called the girls to the bench and demanded they tell her whether it would be vacation or foster care. After the girls agreed to go on vacation, Judge Embry told them that if she got a report they misbehaved on the vacation, they would visit her again and they would like it even less.

The Commission concludes that Judge Embry’s conduct violated SCR 4.020(1)(b)(i) and that she engaged in misconduct in office. The Commission further concludes that Judge Embry violated SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

Canon 1 which requires judges to maintain high standards of conduct and uphold the integrity and independence of the Judiciary.
Canon 2A which requires judges to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
Canon 3B(4) which requires judges to be dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.
Canon 3B(7) which requires judges to give every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law and prohibits judges from engaging in ex parte communications except in certain circumstances.
Canon 3B(8) which requires a judge to dispose of a matter promptly, efficiently, and fairly.

Based on the foregoing conduct, Judge Embry is hereby publicly reprimanded. In making the disposition in this Order, the Commission duly considered that Judge Embry fully cooperated in the matter.

Date: 12/27/16

/s/
STEPHEN D. WOLNITZEK, CHAIR

Agreed to:

/s/
Hon. Shan F. Embry

COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION

IN RE THE MATTER OF:
TIMOTHY N. PHILPOT, FAMILY COURT JUDGE
22ND JUDICIAL CIRCUIT

PUBLIC REPRIMAND
Timothy N. Philpot is a Family Court Judge for Kentucky's 22nd Judicial Circuit consisting of Fayette County. Judge Philpot has waived formal proceedings and has agreed to the disposition made in this Order.

The Commission received information during a preliminary investigation that Judge Philpot requires couples with children to participate in special hearings to determine whether or not their marriage is irretrievably broken, but does not require such hearings with couples that do not have children. The Commission also received information that Judge Philpot was providing third parties with facts about the cases, which were not part of the public record, to assist the third parties with their independent research and teaching duties.

The Commission concludes that Judge Philpot's conduct violated SCR 4.020(1)(b)(i) and that he engaged in misconduct in office. The Commission further concludes that Judge Philpot violated SCR 4.300 and the relevant portions of the following Canons of the Code of Judicial Conduct:

Canon 2D which prohibits a judge from lending the prestige of his office to advance the private interests of others.
Canon 3 which requires judges to perform the duties of judicial office fairly and impartially.
Canon 3B(11) which prohibits judges from disclosing or using, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

Based on the foregoing conduct, Judge Philpot is hereby publicly reprimanded. In making the disposition in this Order, the Commission duly considered that Judge Philpot fully cooperated in the matter.

Date: 1/6/17

/s/
STEPHEN D. WOLNITZEK, CHAIR

Agreed to:

/s/
Hon. Timothy N. Philpot
The Kentucky Lawyer Assistance Program (KYLAP) and the Kentucky Bar Association’s Family Law Section will be co-sponsoring Jeena Cho at the upcoming 2017 KBA Annual Convention in Owensboro. Ms. Cho will be speaking on the subject of mindfulness on Wednesday, June 21st from 11:50 a.m. -12:50 p.m. Ms. Cho is the author of a new book, “THE ANXIOUS LAWYER,” and will be doing a book signing at the convention. Ms. Cho will also be leading a guided mindfulness meditation session on Wednesday evening, June 21, at 9:00 p.m. during the convention.

KYLAP will hold an OPEN 12-STEP RECOVERY MEETING on Wednesday and Thursday mornings at 7:00 a.m. There will also be a Yoga session at 9:00 p.m. on Thursday, June 22.

More information regarding Ms. Cho’s session and the other KYLAP sponsored activities can be found in the preconvention brochure on page 24.

KYLAP HOSTS LAWYERS IN RECOVERY MEETINGS IN NORTHERN KENTUCKY & LEXINGTON

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

All meetings are open to law students, lawyers and judges who are already involved or who are interested in a 12-step program of recovery, including but not limited to Alcoholics Anonymous, Narcotics Anonymous, Overeaters Anonymous and Al-Anon. Come meet other attorneys and network. All meetings and contacts are confidential. SCR 3.990.

For additional information, please visit www.kylap.org, call (502) 564-3795, ext. 266, or email abeitz@kylap.org.

Contact KYLAP DIRECTOR Yvette Hourigan for more information about the KYLAP FOUNDATION, INC., FORGIVABLE LOAN PROGRAM. (502) 564-3795 · yhourigan@kylap.org

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As spring approaches in Kentucky, the vast majority of this great Commonwealth begins to focus its attention on the trappings of the season; warmer weather, NCAA basketball and the Kentucky Derby. However, for the licensed attorneys of this state, springtime also sounds the call to review our continuing legal education transcripts to ensure we have either complied with, or will have an opportunity to fulfill our duties as set forth in the Rules of the Supreme Court.

In Kentucky, “continuing legal education” or “CLE” is defined as a legal education activity which is designed to maintain or improve the professional competency of practicing attorneys and is accredited by the Continuing Legal Education Commission. Pursuant to SCR 3.645, every person licensed to practice law in the Commonwealth of Kentucky, unless otherwise exempted, is required to complete and certify a minimum of twelve (12) credit hours of continuing legal education activities, including a minimum of two (2) credit hours devoted to “ethics, professional responsibility and professionalism.” These continuing legal education activities are required to be completed by June 30 of each educational year, which begins on July 1st of the previous calendar year.

The Continuing Legal Education Commission, which is comprised of seven (7) attorneys, one from each appellate district in the Commonwealth, is responsible for the administration and regulation of all continuing legal education programs and activities for the members of the Kentucky Bar Association, subject to the approval and direction by the Board of Governors and the Supreme Court. As part of this administration, the Commission oversees the accreditation process of every single program application for a CLE activity in Kentucky.

In order to receive accreditation, a proposed CLE activity must conform to the following standards:

1. the activity is an organized program of learning which contributes directly to the legal competence of an attorney;
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ENDNOTES
1. SCR 3.600(4)-(5).
2. SCR 3.645(1).
3. SCR 3.600(7).
4. SCR 3.605.
5. SCR 3.650(2)(a)-(j).
6. SCR 3.650(3)(a)-(b).
7. SCR 3.650(3)(c).
8. SCR 3.650(3)(d).

In summary, there are a multitude of ways to satisfy your continuing legal education
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EXHIBITORS:

Kentucky Bar Association  
2017 New Lawyer Program

in conjunction with:

OUR EVOLVING PROFESSION  
AND THE KENTUCKY LAWYER  
2017 KBA ANNUAL CONVENTION • JUNE 21-22, 2017

June 21-22, 2017  
Owensboro Convention Center  
Owensboro, KY

Visit kybar.org/page/nlpdatesandlocations for more information

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

SCR 3.640 New Lawyer Program
Don't want to travel for “LIVE” CLE credits? The KBA provides you a weekly series of live teleseminars that are as nearby and as convenient as your office or home phone. For the full catalog of offerings in 2016, visit http://ky.webcredenza.com/.

For questions or to register over the phone, please contact Kim at kim@webcredenza.com or (720) 879-4142.

The annual Kentucky Law Update (KLU) is just around the corner. The KLU program series is an exceptional benefit of KBA membership and Kentucky is the only mandatory CLE state that provides its members a way of meeting the annual CLE requirement at no additional cost. Registration will become available on our website this summer. We look forward to seeing you in the fall!

2017 KENTUCKY LAW UPDATE DATES & LOCATIONS

COVINGTON NORTHERN KENTUCKY CONVENTION CENTER
Aug. 31-Sept. 1 (TH/F)

LOUISVILLE KENTUCKY EXPOSITION CENTER
September 14-15 (TH/F)

ASHLAND BELLEFONTE HOSPITAL
September 28-29 (TH/F)

LONDON LONDON COMMUNITY CENTER
October 5-6 (TH/F)

PIKEVILLE EASTERN KENTUCKY EXPO CENTER
October 12-13 (TH/F)

OWENSBORO OWENSBORO CONVENTION CENTER
October 19-20 (TH/F)

BOWLING GREEN HOLIDAY INN & SLOAN CONVENTION CENTER
November 2-3 (TH/F)

PADUCAH JULIAN CARROLL CONVENTION CENTER
November 15-16 (W/TH)

LEXINGTON LEXINGTON CONVENTION CENTER
December 12-13 (T/W)

The KBA Online Catalog offers a great way to take CLE whenever and wherever you have access to the internet! Seminars featuring our highest rated speakers are delivered right to your desktop in streaming audio and video formats.

Visit kybar.inreachce.com/ for the latest program additions and ordering information. The catalog also includes audio programs you can download directly to your iPod/ mp3 player, for playback at your convenience.

Note: Online video and downloaded audio seminars are technological programs, of which you are allowed up to 6.0 CLE credits per educational year.

Looking for upcoming KBA accredited CLE events? Look no further... check out http://web.kybar.org/clesearch/listprograms.aspx

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

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

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

Check out the KBA’s Facebook by searching Kentucky Bar Association. Make sure to like the page while you are there!
2016 CLE AWARD RECIPIENTS

Congratulations to the following members who have received the 2016 CLE Award by obtaining a minimum of 60 CLE credit hours within a three-year period, in accordance with SCR 3.690. The CLE Commission applauds these members for their efforts to improve the legal profession through continuing legal education.

NEW AWARDS LIST

Sharif A. Abdrabbo
John G. Absher
Glenn E. Acree
Stuart L. Adams, Jr.
Wayne M. Adams, Jr.
Perry Adanick
Martha L. Alexander
Kenneth J. Allen
Melissa A. Allen
Todd G. Allen
Randall E. Appleton
Nathaniel J. Arnett
Charles W. Arnold
Emily J. Arnzen
Bruce E. Avery
Ashleigh N. Bailey
Elizabeth C. Bancroft
Thomas E. Banks II
Richard E. Cooper
Elizabeth N. Cooke
Robert M. Connolly
Mia L. Conner
Bayard V. Collier
Julius C. Collado
Kevin J. Coleman
Aaron A.R. Cole
Sarah V. Coker
James D. Chaney
Nathaniel V. Chittick
Karen G. Chrisman
Querida L. Christian
Jacob C. Clark
Susan Stokley Clay
Richard H. Clay
Miranda D. Click
Julius J. Cohen
Ross D. Cohen
Sarah V. Coker
Aaron A.R. Cole
Jo Ann S. Coleman
Kevin J. Coleman
Julius C. Collado
Bayard V. Collier
David C. Condon
Mia L. Conner
Robert M. Connolly
Elizabeth N. Cooke
Richard E. Cooper
Taylor D. Cooper
Lindsay A. Cordes
Erin M. Corken
Christine A. Corndorf
Richard Couch
Emily H. Cowles
Michael J. Cox
Nicholas Craddock
Beach A. Craigmyle
Justin D. Criswell
Justin D. Crocker
Julia B. Crocker
Mary V. Cromer
William Y. Culbertson
Nora C. Currens
Terry M. Cushing
Melinda G. Dalton
Jonathan B. Davis
Alexander P. De Grand
Patric K. Deaton
Laura D. DelCotto
Sean M. Dennis
Wesley B. Deskins
Kevin M. Devlin
Ervin Dimeney
Ryan J. Dischinger
Jamie W. Dittrert
Jared L. Downs
Whitney Dunlap III
Timothy W. Dunn, Jr.
Denise T. Dubrin
Scot A. Duvall
Leigh A. Dycus
Aaron M. Dyke
Thomas I. Eckert
Charles E. Edwards III
Vincent J. Eiden
Charles B. Eidson
Karena A. Eldahan
Douglas Farmsley
Maria A. Fernandez
Kenneth L. Finley
Fred E. Fischer III
Pashens L. Fitzpatrick
Brian D. Flick
Teddy L. Flint
Dana D. Fohl
Ephraim H. Folberg
Melanie M. Foran
Darren W. Ford
Christine J. Foster
Dennis R. Fouss
Kristen H. Fowler
George E. Fowler, Jr.
Christopher S. Fox
Stephen L. Frank
Jennifer L. Fransen
McKinzie A.W. Frazier
Scott L. Frost
Kathryn H. Gabbhart
Erica N. Galyon
Peter M. Gannott
John B. Gardner
Vanessa L. B. Garrett
Andrew T. Garverich
Byron L. Gary
Tyler A. Gattermeyer
Chongyang Ge
William G. Geisen
Stephen M. George
Ashley D. Geraghty
John S. Getinger
Stephen G. Geurin
Margaret C. Gigandet
Justin S. Gilfert
Sue E. Gilkey
Barry D. Gilley
Jill L. Giordano
Joanne W. Glass
Andrew J. Gochenaur
Brandon C. Goehring
Michael A. Goforth
Anne E. Gorham
Linda A. Gosnell
William A. Gray
Joan D. Grefer
Trina L. Gregory
Esther A. Grossman
Margo L. Grubbs
John M. Grundy
Geraldine M. Guerin
Sherif Guindi
Bruce P. Hackett
Timothy J. Hagerty
Patrick H. Haggerty
Michael A. Haile, Jr.
Edith F. Halbleib
Leila L. Hale
Everard B. Hall
Kathryn H. Hall
Stephen C. Hall
John T. Hamilton
Stephen T. Hamilton, Jr.
John E. Hamlet
Ashley R. Hampton
Douglas M. Hardin
Benjamin R. Hardy
William H. Harkins, Jr.
Alisha M. Harper
Mariellen Harrington
Drew C. Harris
Nicholas R. Hart
Jason A. Hart
Jonathan G. Hart
Carly A. Harvey
Bradley D. Harville
Matthew S. Hatfield
Jeremy A. Hayden
Amy Y. Hayden
Mary G. Hayes
Christina Heavrin
Sheryl E. Heeter
Dennis C. Helmer
Steven M. Henderson
Joe W. Hendricks, Jr.
Penny U. Hendy
Stephanie Hickerson-Harris
Ramona C. Hieneman
John P. Hill
Jason E. Hiltz
Joseph B. Hines
Samuel D. Hinkle IV
Cerie M. Hinkle
Tracy L. Hirsch
Malicia T. Hise
Joshua D. Hitch
John S. Hitt
William A. Hoback
Heather J. Hodgson
Zachary A. Horn
Brian C. House
Craig W. Housman
James I. Howard
Dana R. Howard
John P. Howard
James A. Hubbard
Lucrcia D. Hudson
Robert D. Hudson
Arden W. R. Huff
Lance C. Huffman
Angela M. Y. Hughes
Badge S. Humphries
Kimberly S. H. Price
Benjamin B. Hyden
David B. Irvin
Angela J. Irvine
Robin C. Irwin
Kerry O. Irwin
Darryl L. Isaacs
Christopher R. Johnson
2016 CLE RENEWAL AWARD RECIPIENTS

Congratulations to the following members who have received the CLE award by obtaining a minimum of 60 CLE credit hours within a three-year period, in accordance with SCR 3.690, and renewing the award by obtaining at least 20 hours in subsequent years. The CLE Commission applauds these members for their efforts to improve the legal profession through continuing legal education.

RENEWAL AWARD LIST

| Michael A. Abate | Frank A. Brancato | Timothy R. Coleman | Jane W. Dyche |
| Gary W. Adkins | Mark R. Brengelman | Tia J. Combs | Martha M. C. Eastman |
| Daniel T. Albers | Douglas F. Brent | Kimberly H. Compton | Patricia L. Echniser |
| Jeffery P. Alford | Anita M. Britton | Gregory S. Condra | Francis H. Edelen, Jr. |
| Sharon K. Allen | Michael E. Brooks | Eric N. Conley | Glenda M. Edwards |
| Michael W. Alvey | Shannon Brooks-English | Suzanne D. Cordery | Stephen E. Embry |
| Lori J. Alvey | James B. Bryant III | Jenna M. Corum | Sarah N. Emery |
| Lacy M. Andrews | Angela M. Buckler | Jerry J. Cox | Kenny B. Ernstberger |
| Joseph V. Aprile II | Jonathan D. Buckley | David B. Cox | Philip M. Eskew |
| Susan M. Argo | Josephine L. Buckner | Joshua B. Crabtree | Amy L. Eversole |
| W. Dale Arnott | Wayne T. Bunch II | Ronald K. Craycraft | Ross T. Ewing |
| Michael C. Arnold | Pervis C. E. Burcham III | Philip G. Crnkovich | Michael J. Farrell |
| Timothy G. Arnold | Kyle M. Burns | Leslie M. Cronen | Curte Ferguson, Jr. |
| Hannah B. Autry | Frederick M. Busroe, Jr. | Melissa J. Crump | Lucy A. Ferguson |
| Grant M. Axon | James F. Butler III | Niles B. Cumpe | Megan M. Fields |
| David R. Azbill | Bradley S. Butler | Jack R. Cunningham | Roderick H. Fillinger |
| Scott A. Bachert | Cynthia S. Buttorff | Mary E. Cutter | Joseph L. Fink III |
| Kimberly J. Baird | William R. Buzo | James P. Dady | Jason S. Fleming |
| Junis L. Baldon | Timothy J. Byland | Brian K. Darling | Tonya H. Fleming |
| Kenton L. Ball | Derek E. Cain | Benjamin K. Davis | George L. Fletcher |
| Catherine H. Ball | Kelley L. Calk | Russell H. Davis, Jr. | Anna G. Fletcher |
| Thomas J. Banaszynski | Natasha C. Camenisch | Lee Davis, Jr. | Mark A. Flores |
| Travis K. Barber | Richard H. Campbell, Jr. | Richard F. Dawahare | Paul K. Ford |
| Amy V. Barker | Lynda Campbell | Edmonde P. DeGregorio | Larry Forman |
| George T. Barker | Traci C. Caneer | Kimberly G. DeSimone | William H. Fortune |
| David M. Barron | Alton L. Canon | Jeffrey B. Dean | James M. Foster |
| John A. Bartlett | Michael L. Cannon | William S. Dean | William G. Francis |
| Courteney T. Baxter | Michael O. Caperton | Jeffery B. Dean | James M. Francis |
| Simone R. Beach | John K. Cartwright | William B. Deatherage | Cathy W. Franck |
| Amanda M. Bear | Keith M. Carwell | Paul D. Deaton | Robert B. Frazer |
| Bryan H. Beauman | Paul A. Casi II | John M. Debbele | Carl N. Frazier |
| Kimberly L. Beck | Mary S. Cassidy | Larry C. Deener | Danita J. Frederick |
| Lindsey G. Bell | Michelle T. Castle | Elizabeth A. Deener | Richard J. Gangwish II |
| Brian M. Bennett | Christopher D. Cathey | Richard J. Deye | Jodie D. Ganote |
| Amye L. Bensenhaver | Ottis L. Cave III | Rebecca G. DiLoretto | Peter J. Ganz |
| John R. Benz | Jennifer J. Cave | Peter G. Diakov | Alexander Garcia |
| Joel T. Beres | James I. Chamberlain | Monica L. Dias | Grace I. Gardiner |
| Turney P. Berry | Blake R. Chambers | Robert W. Dibert | Larry D. Garmon |
| Simon-Brooks H. Berry | Shelley D. Catfield | Denise A. Dickerson | Richard A. Getty |
| Clay M. Bishop | Ashley L. Chilton | Autumn G. Dmytrywycz | Roger A. Gibbs |
| Susan U. Blake | Kyle A. Citrynelli | Thomas A. Dockter | Grace M. Giesel |
| Randy J. Blankenship | Janis E. Clark | Krista A. Dolan | Sheldon G. Gilman |
| Edmund B. Blythe III | Bradley D. Clark | Anna L. Dominick | Karen H. Ginn |
| Nute A. Bonner | Carolyn Clark-Cox | Sheila M. Donovan | Thomas C. Glover |
| David C. Booth | James K. Clarke | John L. Dotson | Thomas H. Glover |
| Tiffany J. Bowman | Tara J. Clayton | Howard N. Downing | Angela M. Goad |
| Jason A. Bowman | Charles E. Clem | Elizabeth A. Duncan | Steven R. Gold |
| Kendall B. Boyd | Mitchell S. Cohen | Clay W. Duncan | Sharon L. Gold |
| | | | Joyce M. Gordon |
| | | | Virginia B. Gorley |
| | | | William T. Gorton III |
| | | | Daniel T. Goyette |
| | | | Lana B. Grandon |
| | | | Amanda V. Green |
| | | | Adam N. Greenway |
| | | | Jane B. Grise |
| | | | Donald E. Groot |
| | | | H. Philip Grossman |
| | | | Asa P. Gullett III |
| | | | Vaseem S.Y. Hadi |
| | | | Ryan M. Halloran |
| | | | Bradley D. Hamblin, Jr. |
| | | | Sharon R. Handy |
| | | | Amy I. Hannah |
| | | | Randall L. Hardesty |
| | | | Harold E. Harmon |
| | | | Norman E. Harned |
| | | | Joshua R. Hartman |
| | | | Megan J. Hastings |
| | | | Martin L. Hatfield |
| | | | Cirris E. C. B. Hatfield |
| | | | Richard W. Hay |
| | | | Jennie Y. Haymond |
| | | | Randall V. Head |
| | | | Stephen K. Heard |
| | | | Frederick R. Heath |
| | | | Mark E. Heath |
| | | | Gregg G. Heckley |
| | | | Charles R. Hedges |
| | | | William E. Henderson, Jr. |
| | | | Shawn M. Herron |
| | | | Sheila P. Hiestand |
| | | | Mary E. Hils |
| | | | Lawrence D. Hilton |
| | | | Penny L. Hines |
| | | | Buckner Hinkle |
| | | | Matthew E. Hite |
| | | | Byron L. Hobgood |
| | | | Charles F. Hoffman |
| | | | James D. Holliday |
| | | | Vicky C. Horn |
| | | | Erica L. Horn |
| | | | Michael K. Horn |
| | | | Katherine J. Hornback |
| | | | Michael D. Hornback |
| | | | Bonnie J. Hoskins |
| | | | P. Yvette Hourigan |
| | | | Bixler W. Howland |
| | | | Lisa P. Hubbard |
As a final tribute, the Bench & Bar publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. Memorials should be sent to sroberts@kybar.org.

**IN MEMORIAM**

<table>
<thead>
<tr>
<th>NAME</th>
<th>CITY</th>
<th>STATE</th>
<th>DATE DECEASED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albert W. Barber</td>
<td>Owensboro</td>
<td>KY</td>
<td>July 30, 2016</td>
</tr>
<tr>
<td>Eli Leslie Combs Jr.</td>
<td>Las Vegas</td>
<td>NV</td>
<td>October 21, 2015</td>
</tr>
<tr>
<td>Stewart E. Conner</td>
<td>Louisville</td>
<td>KY</td>
<td>November 28, 2016</td>
</tr>
<tr>
<td>Marlow W. Cook</td>
<td>Sarasota</td>
<td>FL</td>
<td>February 4, 2016</td>
</tr>
<tr>
<td>George P. Deeb Sr.</td>
<td>Louisville</td>
<td>KY</td>
<td>December 1, 2016</td>
</tr>
<tr>
<td>Robert S. Easley</td>
<td>Murray</td>
<td>KY</td>
<td>January 5, 2016</td>
</tr>
<tr>
<td>Stephen S. Frockt</td>
<td>Prospect</td>
<td>KY</td>
<td>January 13, 2017</td>
</tr>
<tr>
<td>Wesley G. Gatlin</td>
<td>Destin</td>
<td>FL</td>
<td>July 4, 2016</td>
</tr>
<tr>
<td>Scott Jonathan Goldberg</td>
<td>Louisville</td>
<td>KY</td>
<td>October 27, 2016</td>
</tr>
<tr>
<td>Ollen B. Hinnant Jr.</td>
<td>Lexington</td>
<td>KY</td>
<td>August 4, 2016</td>
</tr>
<tr>
<td>Kenneth A. Kallbreier</td>
<td>Jeffersonville</td>
<td>KY</td>
<td>December 23, 2016</td>
</tr>
<tr>
<td>Jacqueline Kanowitz</td>
<td>Louisville</td>
<td>KY</td>
<td>January 18, 2017</td>
</tr>
<tr>
<td>Dwain H. Lowry</td>
<td>Danville</td>
<td>KY</td>
<td>November 16, 2016</td>
</tr>
<tr>
<td>Thomas P. McCarthy</td>
<td>Louisville</td>
<td>KY</td>
<td>December 27, 2016</td>
</tr>
<tr>
<td>Frank Howard McCartney</td>
<td>Flemingsburg</td>
<td>KY</td>
<td>January 7, 2017</td>
</tr>
<tr>
<td>Gwen McClure</td>
<td>Louisville</td>
<td>KY</td>
<td>July 23, 2016</td>
</tr>
<tr>
<td>Frederick William Mebs</td>
<td>Crestview Hills</td>
<td>KY</td>
<td>September 18, 2016</td>
</tr>
<tr>
<td>Carolyn Miller-Cooper</td>
<td>Louisville</td>
<td>KY</td>
<td>December 30, 2016</td>
</tr>
<tr>
<td>Armand Lippman Ostroff</td>
<td>Louisville</td>
<td>KY</td>
<td>April 25, 2016</td>
</tr>
<tr>
<td>Robert Palmer</td>
<td>Dallas</td>
<td>TX</td>
<td>January 5, 2017</td>
</tr>
<tr>
<td>Danny Rose</td>
<td>Hazard</td>
<td>KY</td>
<td>July 26, 2016</td>
</tr>
<tr>
<td>Calvert T. Roszell</td>
<td>Lexington</td>
<td>KY</td>
<td>January 4, 2017</td>
</tr>
<tr>
<td>Stanley M. Saunier Jr.</td>
<td>Lexington</td>
<td>KY</td>
<td>December 5, 2016</td>
</tr>
<tr>
<td>Adolph Duane Schwartz</td>
<td>Louisville</td>
<td>KY</td>
<td>January 7, 2017</td>
</tr>
<tr>
<td>Thomas R. Seel</td>
<td>Liberty Township</td>
<td>OH</td>
<td>December 14, 2016</td>
</tr>
<tr>
<td>George Gregory Seelig</td>
<td>Lebanon</td>
<td>KY</td>
<td>August 13, 2016</td>
</tr>
<tr>
<td>Michael J. Shershin Jr.</td>
<td>Laurel</td>
<td>MS</td>
<td>April 7, 2015</td>
</tr>
<tr>
<td>George Simpson</td>
<td>Sturgis</td>
<td>KY</td>
<td>May 6, 2016</td>
</tr>
<tr>
<td>Anthony Duane Skidmore</td>
<td>Louisville</td>
<td>KY</td>
<td>October 4, 2015</td>
</tr>
<tr>
<td>Marvin M. Sotsky</td>
<td>Louisville</td>
<td>KY</td>
<td>May 22, 2016</td>
</tr>
<tr>
<td>Barkley J. Sturgill</td>
<td>Prestonsburg</td>
<td>KY</td>
<td>January 9, 2017</td>
</tr>
<tr>
<td>Julia Kurtz Tackett</td>
<td>Versailles</td>
<td>KY</td>
<td>November 30, 2016</td>
</tr>
<tr>
<td>Edwin J. Walbourn III</td>
<td>Florence</td>
<td>KY</td>
<td>January 4, 2017</td>
</tr>
<tr>
<td>Joseph Hays Wimsatt</td>
<td>Louisville</td>
<td>KY</td>
<td>January 21, 2017</td>
</tr>
</tbody>
</table>

**ADOLPH DUANE SCHWARTZ,** 74, passed away on Jan. 7, 2017. Schwartz is survived by his wife of 50 years, Ann, his three children, Andy (Val) Schwartz, Jennifer (Alex) Scutchfield and Deborah (Michael) Buchkoski, and three grandchildren, Ciaran Schwartz and Cassandra and Ethan Scutchfield. He graduated from Atherton High School in 1960, having earned 12 varsity letters in football, baseball, track and basketball. He then graduated from the University of Kentucky in 1964 where he played one year of football, three years of baseball and was selected for political science honorary—distinguished graduate. He graduated from UK Law School in 1967 where he was on the Moot Court Board, treasure and third year representative of the Student Bar Association. He was an assistant U.S. Attorney for the Western District of Kentucky from 1971-1974 and again from 1984 until his retirement in 2004. Among his positions at the U.S Attorney’s Office were chief of the Criminal Division and senior litigation counsel. In between, he was assistant regional counsel for the U.S. Postal Service. Awards were many, but his proudest achievements were being included in the first class of Atherton High School Hall of Fame in 2002 and the Director’s Award presented by Attorney General Janet Reno in 1996 for his performance in the Boprot Prosecution of Public Corruption. The above information for Adolph Schwartz was pulled from a version that appeared on the Clark Legacy Center website. To access the full obituary, visit: http://www.clarklegacycenter.com/obits/obituaries.php?obitID=967356.
CALVERT T. ROSZELL JR., of Lexington and Louisville, Ky., died on the 4th day of January 2017. Roszell was born in Lexington on March 30, 1924. A veteran of World War II (1943–45), he was selected to serve in the Army Specialized Training Program (ASTP) and assigned for three months to Randolph Macon College in Ashland, Va. In the spring of 1944, he was assigned to the 95th Infantry Division and landed at Omaha Beach in September 1944. He was at the Battle of the Bulge, fighting with the 95th for its entire 141 days of combat in France, Belgium, Luxembourg, Netherlands and Germany as part of Patton’s Third Army and later the Ninth Army. He served as rifleman, battalion runner and radio operator, and was awarded the Bronze Star Medal, the Combat Infantryman Badge and the European Theater of Operations Medal with four battle stars. He graduated from the University of Kentucky College of Law in 1948, where he was a member of Phi Delta Theta fraternity. He practiced law in Lexington for more than 60 years, beginning as a partner in McDonald Alford and Roszell (1950–80) and as a partner in Harbison Kessinger Lisle and Bush (1980–83). That firm merged in 1983 with the Louisville firm Stites, McElwain and Fowler to become Stites and Harbison. He retired from Stites and Harbison, having served on the Management Committee for seven years, as its Lexington Administrative Partner (1987–90), and as the firm’s counsel in certain matters. He taught mineral and real estate law as an adjunct professor at UK College of Law (1956–79). The above information for Calvert Roszell was pulled from a version that appeared in the Lexington Herald Leader from Jan. 8 to Jan. 11, 2017. To access the full obituary, visit: http://www.legacy.com/obituaries/kentucky/obituary.aspx?pid=183491482.

CAROLYN MILLER-COOPER, 51, passed away Friday, Dec. 30, 2016. She was the executive director of the Louisville Metro Human Relations Commission, senior member of the Louisville Mayor Greg Fischer’s administration, overseeing the agency that enforces anti-discrimination laws. Miller-Cooper was inducted into the Kentucky Civil Rights Hall of Fame in 2014. She received her Bachelor’s Degree at Hunter College, New York; her J.D. from the University of Kentucky College of Law and her Master’s Degree at McGeorge School of Law, Sacramento, Calif. She was a member of Evangel World Prayer Center, EMERGE-Kentucky, and Alpha Kappa Alpha Sorority, Inc. She served as a mentor with Black Achievers Program-Legal Cluster and as an adjunct professor at JCTC and Brown Mackie College. The above information for Carolyn Miller-Cooper was pulled from a version that appeared in the Courier-Journal from Jan. 4 to Jan. 6, 2017. To access the full obituary, visit: http://www.legacy.com/obituaries/kentucky/obituary.aspx?page=lifestory&pid=183296863.

JACQUELINE ROTHSCHILD KANOVITZ was born Dec. 11, 1942, and passed away on Jan. 18, 2017. She was preceded in death by her parents, Isaac and Jenny Rothschild. She is survived by her husband, Bob Kanovitz; her children, Michael Kanovitz and Elana Levitz (Darren); her sister, Barbette Loevy (Arthur); and grandchildren, Anya and Simon Kanovitz. Professor Jacqueline Kanovitz was the first female professor at the University of Louisville School of Law from which she received a J.D., summa cum laude. She was the author of the leading book on Constitutional Law for Criminal Justice, currently in its fourteenth edition. She was a loving and humble person who adored her husband, children, and all of her nieces, nephews and cousins. The above information for Jacqueline Rothschild Kanovitz was pulled from a version that appeared in the Courier-Journal from Jan. 20 to Jan. 22, 2017. To access the full obituary, visit: http://www.legacy.com/obituaries/name/jacqueline-kanovitz-obituary?pid=100000183654316.

JUDGE JULIA JOHNS KURTZ TACKETT, 70, passed away Nov. 30, 2016. She was born Jan. 19, 1946 in Morganfield, Ky. Judge Tackett graduated Sturgis High School and proceeded on to the University of Kentucky where she received a degree in economics in 1968. She decided to pursue the study of law. She was a member of the Law Journal staff and graduated from UK’s College of Law in 1971, as only one of six women in her graduating class. She was the first female prosecutor—state or federal—in Kentucky. She was the first woman to serve as judge in the Eastern District of Kentucky. She was the first woman to serve as president of the Kentucky Bar Association Young Lawyers Section. She served as a Fayette County Assistant Commonwealth Attorney serving Pat Molloy. She was a federal public defender for the Eastern District of Kentucky and law clerk for Chief Justice John S. Palmore of the Court of Appeals (now Supreme Court). She was elected to the District Court bench in 1977. In 1978 Judge Tackett was one of the first three women elected judge in the Commonwealth of Kentucky and the only one in Eastern Kentucky. Judge Tackett served six consecutive terms as a Fayette County District Court Judge uncontested. In 1999, Judge Tackett was elected to the Kentucky Court of Appeals as Appellate Judge for the Fifth Regional District. She served as an Appellate Court Judge from 2000 until her retirement on June 1, 2006. Judge Tackett ended her 28 year judicial career as the longest serving female judge in Kentucky. She is survived by her son, John L. Tackett (Sarah Merlin), Lexington, Ky.; her daughter, Sarah E. Tackett (John S. Palmore of the Court of Appeals—now Supreme Court). She was the first woman to serve as judge in the Commonwealth of Kentucky and the only one in Eastern Kentucky. Judge Tackett served six consecutive terms as a Fayette County District Court Judge uncontested. In 1999, Judge Tackett was elected to the Kentucky Court of Appeals as Appellate Judge for the Fifth Regional District. She served as an Appellate Court Judge from 2000 until her retirement on June 1, 2006. Judge Tackett ended her 28 year judicial career as the longest serving female judge in Kentucky. She is survived by her son, John L. Tackett (Sarah Merlin), Lexington, Ky.; her daughter, Sarah E. Tackett (John S. Simpson), Louisville, Ky.; two grandchildren, Ora Gray Simpson and Charles Elliott Simpson; three siblings, Kelly (Jim) Goetz, Owensboro, Ky.; Martha (Robert) Williams, Sturgis, Ky., and Bill (Sharon) Kurtz, Owensboro, Ky.; and her former husband and dear friend, John W. Tackett.
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, 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.

ON THE MOVE

Fowler Bell PLLC announces that Benjamin D. Willis joins the firm as an associate in the firm’s workers’ compensation, litigation and commercial & business law groups. He is a graduate of Georgetown College and received his J.D. from the Regent University School of Law in Virginia Beach, Va. He specializes in evaluating, litigating, and settling workers’ compensation claims, medical disputes and subrogation matters for employers and their insurers. Willis also has experience assisting clients with real estate, family and domestic and criminal legal issues.

Lawrence & Lawrence, PLLC, announces that Andrew C. Weeks has joined the firm as an associate attorney. Weeks graduated magna cum laude from the University of Louisville Brandeis School of Law in 2016. He will focus his practice on civil litigation and administrative law.

The Lexington office of Littler, announces the addition of Leila G. O’Carra as special counsel. O’Carra focuses on a broad range of employment matters and has experience in commercial litigation, discrimination and harassment, non-competes and higher education. O’Carra is active in various professional and community organizations, including service as legislative affairs director of the Bluegrass Society for Human Resource Management and a founding fellow of the Fayette County Bar Foundation. She is also a member of the Kentucky and American Bar associations. O’Carra earned her J.D. from the University of Kentucky and her B.S. from Vanderbilt University.

T. Scott Abell and Joshua T. Rose announce the formation and opening of the law firm of Abell Rose LLC, 108 South Madison Avenue, Louisville, Ky. The full service law firm will continue to serve clients in Kentucky and Indiana with a variety of matters, including personal injury, class action litigation, business law, criminal defense, consumer claims, general civil litigation, and probate and wills and estates. Please visit the firm’s website at www.abellroselaw.com for more information.

Cohen, Chase, Hoffman & Schimmel, P.A., announces that Daniel M. Ebert has joined the firm’s Miami, Fla., office as an associate. Ebert received his B.A. in classics from the University of Kentucky, his J.D. from the Northern Kentucky University Salmon P. Chase College of Law, and his LL.M. from the University of Florida Fredric G. Levin College of Law. Ebert’s practice focuses on domestic and international taxation, trusts and estates, and tax litigation. He is licensed in Kentucky, Florida, and the United States Tax Court.

The Cooley & Offill Law Firm announces that Greg A. Jennings has joined the firm as an attorney working throughout Western and Central Kentucky. Jennings received his J.D. from the Louis D. Brandeis School of Law at the University of Louisville in 1988 and his B.A. from Western Kentucky University. He served as the director of the Kentucky Department of Revenue’s Division of Mineral Taxation and GIS Services prior to joining the firm.

Millsap & Singer, LLC, announces the addition of their Louisville office. Millsap & Singer, a creditor’s rights firm with other offices in St. Louis, Mo., and Overland Park, Kan., provides clients with representation in foreclosure, bankruptcy, evictions and related litigation cases. Joining the firm are Mark D. Rucker, Victoria M. Kadreva Holmes, and Lucas J. Markushewski. Rucker joined in November of 2016 and his 25 years of past experience includes representing creditors in foreclosures, in-house counsel for a national lender, and owner/operator of a title company. Rucker graduated from the University of Kentucky with a B.A. in political science in 1990 and MBA/J.D. in 1994. Holmes has been practicing law since 2007. She is a graduate of the United States Coast Guard Academy, and received an M.A. and a J.D. from the University of Kentucky. As a litigator, she represents clients in all stages of real-estate residential and commercial foreclosure, financial-services litigation, and advises clients on regulatory and
Denton Law Firm, PLLC, of Paducah, Ky., is pleased to announce that Holly M. Jones has become an associate attorney with the firm. Jones concentrates her practice in the areas of contracts and transactional matters. Jones received her J.D. from the University of Kentucky, University School of Law, in 2016 and a B.S. in agriculture from the University of Missouri in 2013.

Sturgill, Turner, Barker & Moloney, PLLC, is pleased to begin 2017 with several personnel announcements—three new attorneys and two status changes. James W. Gardner, former Kentucky Public Service Commission (PSC) chairman, joined the firm in an expansion of the utility & energy law practice group. Gardner served eight years on the PSC, in the roles of vice-chairman (2008-2015) and chairman (2015-2016). Prior to his term on the PSC, he was a partner in a Lexington law firm with an emphasis in bankruptcy work. His practice at Sturgill Turner will focus on utilities, clean energy, and bankruptcy law. L. Scott Miller, who retired from the Kentucky State Police after reaching the rank of lieutenant colonel, joined the firm in an expansion of the public entity practice group. His practice at Sturgill Turner will focus on police officer defense, employment law, and civil rights litigation. Langdon Ryan Worley joined the firm’s torts & insurance practice group, with extensive experience defending a litany of cases, ranging from motor vehicle accidents and premises liability matters to commercial trucking, products liability, employment, and blasting cases. She is a 2010 graduate of the University of Kentucky College of Law, and a 2007 graduate of Transylvania University. Jamie Wilhite Dittert has been promoted to member of the firm. Dittert’s litigation practice focuses on medical malpractice and insurance defense. Dittert chairs the firm’s torts & insurance practice group and has been recognized as a Kentucky Super Lawyers Rising Star. Derrick T. Wright has been promoted to member of the firm. Wright’s practice focuses on defending local governments and officials from Section 1983 claims involving constitutional law, as well as litigating and counseling employers on employment law and personnel issues.

Lawrence and Associates announces the opening of their new office in West Chester, Ohio. Associate Pete Tripp and staff started working out of the West Chester, Ohio, location on Jan. 1, 2017. The office will be accepting new cases in the areas of personal injury, workers’ compensation, and social security disability.

Sturgill Turner, Barker & Moloney, PLLC, announces the opening of their new office in West Chester, Ohio, on Jan. 1, 2017. The law firm of O’Bryan, Brown & Tonner, PLLC, announces that Priscilla Page has joined KeyCorp’s Louisville office as an associate attorney. Page was born and raised in Russellville, Ky. She graduated summa cum laude, with a B.A. from Western Kentucky University. She went on to obtain her law degree from the University of Louisville, Brandeis School of Law, where she graduated magna cum laude. Her primary area of practice includes insurance defense litigation.

Weber Rose welcomes new counsel attorney, B. Keith Saksefski. Saksefski is a U.S. Marine Corps veteran and a graduate of the University of Louisville School of Law. In his last 19 years as a solo practitioner, he practiced in the areas of civil litigation, worker’s compensation, administrative law, labor, employment, OSHA, probate, estate and trust litigation, disability, domestic relations, business formation and a myriad of other legal issues. In total, he brings over 26 years of valuable experience to Weber Rose. Weber Rose is also pleased to announce that shareholders Darryl D. Durham, James T. Lobb, and Michael R. Gosnell have been re-elected to the firm’s executive committee.

Attorney Joseph Brown recently joined English Lucas Priest & Owsley LLP as an associate. He is practicing in employment and education law. From 2012 to 2014, he was a park ranger at Mammoth Cave National Park. Brown now lives in Bowling Green and is involved in a variety of community activities. He teaches Sunday school at his church and is passionate about education, public speaking, and community service. Brown is a 2016 graduate of the University of Kentucky College of Law. He earned his B.A. in history in 2013 from the University of Kentucky.

Thompson Miller & Simpson announces that Mitchel Denham has joined the firm as a partner. Denham received his B.S. from Centre College and his J.D. from the University of Kentucky College of Law. Denham joins Thompson Miller & Simpson after serving as executive director, Office of Medicaid Fraud and Abuse Control (2008 – 2011), and as assistant deputy Attorney General in the Kentucky Office of the Attorney General (2011 – 2016), supervising the Criminal and Civil Divisions. Denham will practice in the areas of health care law, health care litigation, government regulations, environmental law, non-profit law, and white collar crime.

Elizabeth Ann Duncan joined Pregliasco Straw-Boone Doheny Banks & Bowman PLLC as an associate attorney in January 2017. She graduated from the University of Kentucky with a B.A. in political science with a minor in
WHO, WHAT, WHEN & WHERE

Middleton Reutlinger announces that Vanna Milligan has joined the firm’s health care practice group. She focuses on long term care and nursing home malpractice defense, including claims of negligence, abuse and neglect, violation of residents’ rights, breach of contract and wrongful death. Milligan received her B.A. in International Studies, Spanish with a minor in history from Centre College. She then received a Master of Arts in International Affairs, Latin America from American University, School of international Service and a J.D. from the Catholic University of America, Columbus School of Law.

Michael P. Foley has been named managing partner of Rendigs, Fry, Kiely & Dennis, LLP. Foley’s practice is unique as he can seamlessly transition from handling cases involving catastrophic personal injury claims, to complex commercial and product liability, to professional and municipal liability claims. He has tried to verdict in excess of 20 jury trials in Kentucky and Ohio state courts, Federal Courts in Ohio and Kentucky and the Federal Court of Claims. He has successfully argued matters before the Ohio Supreme Court, Kentucky and Ohio Courts of Appeal and the 6th Circuit Court of Appeals. His practice areas include commercial litigation, municipal/government law, personal injury, product and professional liability. Foley has been in practice with Rendigs for 25 years and can be reached at mfoley@rendigs.com.

Mark A. Noel has joined Graydon Head & Ritchey LLP as an associate attorney. Noel works with the firm’s personal client services group, focusing his practice on designing and implementing estate plans to fulfill clients’ wishes, preserve and protect their assets, and minimize or eliminate the impact of tax laws on the transfer of wealth. Noel received his undergraduate degree from the University of Kentucky, J.D. from the University Kentucky College of Law, and LLM in Estate Planning from the University of Miami School of Law. Noel is also a contributing author of “Kentucky Estate Administration,” 5th ed. (UK/CLE) (2014).

Dentons & Shohl LLP announces two Lexington attorneys have been named partner. Drew B. Millar and John M. Spires were elected to partnership effective Jan. 1, 2017. Millar is a member of the labor and employment department, Millar’s practice focuses on the representation of both public and private employers in issues related to the workplace. He has significant experience in handling wage and hour matters. He has represented a wide variety of clients in cases brought by the U.S. Department of Labor, as well as a number of state labor boards. He earned his J.D. from the University of Kentucky College of Law. Spires a member of the bankruptcy and restructuring group, Spires has experience representing both creditors and debtors in complex bankruptcy cases and workouts outside of the bankruptcy system, and he has litigated a number of contested matters arising in bankruptcy cases. Spires earned his J.D. from the University of Kentucky College of Law.

Bob Young, a partner at English Lucas Priest & Owsley LLP (ELPO) and attorney with 25 years of experience, became managing partner of ELPO on Jan. 1, 2017. Young practices extensively in the area of personal injury law, handling lawsuits against negligent nursing homes, wrongful death cases, auto accident cases and defective and harmful drug cases. He also has taken a leading role in the American Bar Association, serving as chair of the Law Practice Division from 2014 to 2015. In 2016, he was appointed to the ABA Legal Career Central Board and ABA Law Practice Division Council. The managing partner of the firm is largely responsible for overseeing the firm’s budget, marketing, staff and other tasks.

Wyatt, Tarrant & Combs, LLP, announces that Stephen C. Hall, partner and registered patent attorney, will serve as leader of the firm’s intellectual property protection & litigation service team. Hall focuses his practice on both patent filing and prosecution before the United States Patent and Trademark Office (USPTO) as well as patent litigation in the federal courts. He currently serves as vice chair of the Patent Litigation Subcommittee of the Defense Research Institute’s Intellectual Property Litigation Section. Hall earned his undergraduate degree from the University of Louisville, magna cum laude, and his law degree from the University of Cincinnati College of Law.

The Louisville law firm of Diana L. Skaggs + Partners, PLLC, announces that Michelle Eisenmenger Mapes has been admitted as a fellow to the American Academy of Matrimonial Lawyers. The firm will continue to limit its practice to divorce and family law.

Denton Law Firm, PLLC, of Paducah, Ky., is pleased to announce that Ann R. Myre has joined the firm. Myre concentrates her practice in the areas of residential and commercial real estate transactions, title examinations, and assists in various other litigation matters. Myre received her J.D. from Chase College of Law, Northern Kentucky University in 1985 and a B.A. in history from Agnes Scott College in 1982.
Fowler Bell PLLC announces that attorney Christopher G. Colson has become a member of the firm joining members Guy R. Colson, John E. Hinkel, Jr., Matthew D. Ellison and managing member, Taft A. McKinstry. Colson joined Fowler Bell's litigation, bankruptcy and creditors' rights groups in 2009. Colson has worked on a variety of challenging commercial matters including contract disputes and general litigation.

Wyatt, Tarrant & Combs, LLP, announces that Michael N. Fine has been selected to the Leadership Louisville Center’s Bingham Fellows Class of 2017. The Bingham Fellows program is the leadership-in-action arm of the Leadership Louisville Center. Fine is a member of the firm’s healthcare service team. His practice spans the full range of nonprofit and tax-exempt organization legal issues, advising public charities, private foundations, boards, and donors. He is a 2016 Healthcare Fellow of the Health Enterprises Network, a member of the Kentucky Secretary of State’s Non-Profit Task Force, and a graduate of Focus Louisville. Fine earned his undergraduate degree, universal cum laude, from Washington University in St. Louis, and his law degree from the University of Pennsylvania Law School.

Bingham Greenebaum Doll LLP has named Louisville partner John S. Lueken to lead the firm’s estate planning practice group as chair. Lueken, who is licensed and actively practices in both Kentucky and Indiana, focuses on estate and trust planning and administration, as well as charitable and family-owned business planning. He is a member of the prestigious American College of Trust and Estate Counsel (ACTEC) and is a former certified public accountant with Big Eight tax experience. John R. Cummins, who led the practice group since 1999, will continue practicing full-time in the estate planning practice group.

Eric Lycan, a partner with Dinsmore & Shohl LLP’s Lexington office, has been elected to a prominent leadership role with the Republican National Lawyers Association (RNLA). Lycan was elected vice president for judicial affairs and chair of the judicial affairs committee for the RNLA. In this role, Lycan will lead the RNLA’s efforts to support President Donald J. Trump’s judicial nominees, as well as other legal nominees including President Trump’s choice for Attorney General, Senator Jeff Sessions. Lycan will liaise with Senate Majority Leader Mitch McConnell’s office, the Committee on the Judiciary chaired by Senator Chuck Grassley, and the Trump administration. Lycan serves as outside general counsel to the Republican Party of Kentucky and has advised advocacy groups across the country on campaign finance compliance and other issues. Lycan practices in Dinsmore’s corporate department. Lycan earned his J.D. from the University of Kentucky College of Law and received his B.A. from Centre College.

Wyatt, Tarrant & Combs, LLP, announces that Leadership Kentucky has approved the nomination of David W. Seewer to its Board of Directors for a three year term. Founded in 1984, Leadership Kentucky is an educational organization dedicated to developing the talents and energies of Kentucky’s present and emerging leaders. Seewer is an alumni of the Leadership Kentucky, Leadership Louisville and Bingham Fellows programs. He is a partner in Wyatt’s Louisville office and concentrates his law practice in the areas of real estate, commercial lending and leasing and municipal zoning law. Seewer earned his undergraduate degree from Eastern Kentucky University and his J.D. from the University of Kentucky College of Law.

Bethany Atkins Rice joins McBrayer, McGinnis, Leslie & Kirkland, PLLC, in the estate planning group. Rice previously worked as assistant general counsel for the Finance and Administration Cabinet, handling complex tax issues for the Cabinet’s Department of Revenue both at the administrative level and in litigation before the Kentucky Board of Tax Appeals (now the Kentucky Claims Commission), the circuit courts, the Kentucky Court of Appeals, and the Kentucky Supreme Court. Rice, who has an LL.M. in Taxation, joins a number of experienced team members at McBrayer, including Cecil Dunn, former chair of the Kentucky Board of Tax Appeals and Nick Eusanio, who practiced tax controversy and litigation at a boutique law firm in Columbus, Ohio, and provided tax consulting services with PricewaterhouseCoopers before joining McBrayer, and also has an LL.M. in Taxation.

Sullivan, Mountjoy, Stainback & Miller, P.S.C., has named K. Timothy Kline as a shareholder and director of the firm. Kline is a 2007 graduate of the University of Kentucky College of Law where he served on the Kentucky Law Journal, graduated magna cum laude and was elected to Order of the Coif. Prior to attending law school, he served as an intelligence officer in the United States Air Force and spent time in Saudi Arabia.

Adams, Stepner, Woltermann & Dusing, PLLC, announces that Claire E. Parsons has been named a member of the firm effective Jan. 1, 2017. Parsons practices in the firm’s government practice and commercial litigation practice groups. She focuses her practice on civil rights litigation, employment law, school law, special education and domestic relations. She was recently selected as the secretary/treasurer for the Kentucky Defense Council and has held leadership positions with the Northern Kentucky Chamber Women’s Initiative, Northern Kentucky Bar Association, and Kentucky School Board Association Council of School Attorneys. She is a 2005 graduate of the University of Louisville and a 2008 graduate of the University of Louisville Law School.

Jason Morgan has moved into the role of member, a partnership role in McBrayer, McGinnis, Leslie & Kirkland, PLLC. Morgan
joined McBrayer in 2012 after working as a trial attorney with Freund, Freeze & Arnold in Cincinnati. Morgan’s practice focuses on general liability, construction, guardianship, estate, trust, and commercial litigation. Additionally, McBrayer welcomes three attorneys to the Lexington team: Jason Hollon, who joins the McBrayer litigation team, brings two years of experience as a law clerk to the Honorable Hanly A. Ingram, United States Magistrate Judge for the Eastern District of Kentucky. Lindsey Anderson joins McBrayer’s corporate law team, specializing in banking, lending and finance and commercial lending. Both Hollon and Anderson are graduates of the University of Kentucky College of Law.

Greater Louisville Inc. (GLI) recently re-elected Stites & Harbison, PLLC, attorney Brian Cromer to serve on its board of directors for a three-year term. Cromer previously served on the organization’s executive committee and as their secretary and legal counsel. GLI is Metro Louisville’s Chamber of Commerce, and focuses on accelerating economic growth, job creation and business competitiveness in the Greater Louisville Region. Cromer is a member (partner) of Stites & Harbison based in the Louisville office. His practice focuses on providing a variety of legal services for companies at all stages, from large public companies to middle market businesses to new ventures. He is a member and former president of The Lawyers Club. He serves on the Board of Trustees of Kentucky Wesleyan College.

Stoll Keenon Ogden PLLC attorney Carl N. Frazier was one of three young lawyers who were honored in February by the American Bar Association Young Lawyers Division. Frazier was a finalist for the 2016 William Reece Jr. National Outstanding Young Lawyer Award, an annual recognition of an ABA young lawyer who exhibits professional excellence, service to the profession and the bar, service to the community, and a reputation for or the advancement of legal ethics and professional responsibility. Since joining SKO in 2007, Frazier has been honored with numerous awards demonstrating his high level of professionalism and service. Those include the Fayette County Outstanding Young Lawyer Award, Transylvania University Young Professional Award and his election as barrister of the Central Kentucky American Inn of Court. In 2016 Frazier was named the Kentucky Bar Association’s 2016 Outstanding Young Lawyer. Katy Boatman of Houston was selected as the 2016 National Outstanding Young Lawyer; Timothy Ting of Carbondale, Ill., joined Frazier as a finalist.

Dinsmore & Shohl LLP’s Jeremy S. Rogers has been elected to his fifth term as chairman for the Little Ears Hearing Center Board of Directors. Rogers has been a member of the board of directors since the organization was formed in 2010. The Little Ears Hearing Center works to improve the quality of life for children with hearing loss through family-centered care, education, advocacy and choices in intervention. At Dinsmore, Rogers is a partner in the litigation department with a wide array of trial and litigation experience including business disputes, constitutional law, personal injury, employment, insurance, and criminal defense. Rogers earned his J.D. from Boston College Law School.

Wyatt, Tarrant & Combs, LLP, announces that the Green River Area Community Foundation has approved the nomination of Crystal M. Patterson to its Board of Directors. The Green River Area Community Foundation is dedicated to enriching the quality of life for all citizens in the Kentucky counties of Daviess, Hancock, McLean, Ohio, Union and Webster. Patterson is a member of the firm’s trusts, estates & personal planning service team and the litigation & dispute resolution service team. She serves as counsel to Wyatt, advising individuals and entities involved in fiduciary and complex business litigation disputes. Also, the Kentucky Chapter of the Association of Corporate Counsel (ACC) has approved the nomination of Patterson to its Board of Directors. The ACC Kentucky Chapter serves approximately 100 corporate counsel members in the cities of Louisville, Lexington and the surrounding areas. Patterson serves as general counsel to Gulfstream Commercial Services, LLC, and its affiliates. She earned her law degree from the University of North Dakota School of Law, where she was a member of the Order of the Coif, and her B.S. in nursing from North Dakota State University.

Aaron Smith is now chair of English Lucas Priest & Owsley LLP’s (ELPO) practice management committee. The practice management committee works with the managing partner to oversee the firm’s general operations. Smith works in business and corporate law, also handling personal injury and other similar cases. He also serves as chair of the litigation practice group. Smith came to work at ELPO as an attorney in 2006. His practice focuses on civil litigation and corporate defense work. He holds a J.D. from the University of Kentucky College of Law and a B.A. from Centre College. He is a 2007 graduate of Leadership Bowling Green. He recently served as president of the Bowling Green-Warren County Bar Association.

The Construction Lawyers Society of America (CLSA) has appointed Stites & Harbison, PLLC, attorney Bill Geisen as their inaugural president beginning his term in 2017. The CLSA is an invitation-only international honorary society composed of preeminent lawyers practicing in all areas of construction law. Membership is limited to 1,200 fellows, with lawyers being invited into fellowship upon a proven record of excellence and accomplishment in construction law at both the trial and appellate levels. The CLSA is dedicated to promoting superior advocacy and ethical standards in construction law and fostering a scholarly exchange of ideas in construction law and related fields. Geisen is a member (partner) of Stites & Harbison, PLLC, based in the Covington, Ky., office. As chair of the firm’s construction service group, he focuses
his construction law practice on dispute resolution, litigation, and contract negotiation. He is also a fellow of the American College of Construction Lawyers and Litigation Counsel of America.

Adams, Stepner, Woltermann & Dusing, PLLC, announces that Edward L. (Lee) Metzger III has been named a partner of the firm effective Jan. 1, 2017. Metzger is a trial lawyer who practices primarily in the firm’s litigation practice group. He focuses his practice on criminal defense, insurance defense, personal injury, business litigation, and representation of local government entities. He is a past president and current school board member for Covington Catholic High School, and is a third degree Knight with the Knights of Columbus. In addition, he serves on the editorial board of the NKBA’s bi-monthly magazine, Lex Loci, and is a member of the KBA’s Young Lawyers Division Executive Committee. Metzger is a 2007 graduate of the University of Kentucky and a 2010 graduate of the University of Notre Dame Law School.

W. Craig Robertson, III, has been named partner in charge of Wyatt’s Lexington office. Robertson follows Mark Burton, who served 12 years in the position and remains chairman of the firm’s executive committee. Robertson will maintain his full time litigation practice. He is a member of the firm’s litigation & dispute resolution service team. He concentrates his practice in the areas of commercial litigation, construction, equine, banking, intellectual property, professional malpractice, insurance and appellate law. Robertson earned his J.D. from the University of Kentucky, where he was named Order of the Coif, and his undergraduate degree, with high distinction, also from the University of Kentucky.

Steptoe & Johnson PLLC announces that Mauritia G. Kramer, who works in the Lexington office, has been promoted to member. Kramer practices in the area of labor and employment law.

Dinsmore & Shohl LLP announces two Louisville attorneys have been named partner, J. Tanner Watkins and Anthony M. Zelli were elected to partnership. Watkins a member of the litigation department in the Louisville office and focuses his practice on business and fiduciary litigation, banking litigation, personal injury litigation, and product liability litigation. He was appointed by the Kentucky Supreme Court to serve as Louisville’s representative on the Kentucky Continuing Legal Education Commission. He also serves on the Board of Directors for the Lawyers’ Mutual Insurance Company of Kentucky and is a barrister in the Brandeis Inn of Court. In 2015-2016, he served as chair of the Kentucky Bar Association’s Young Lawyers Division. Zelli, a member of the litigation department in the Louisville office, represents clients in Kentucky and Indiana state and federal courts in a wide array of matters, including cases involving complex business and commercial matters, products liability, personal injury, copyright and trademark, insurance coverage, administrative, and criminal matters. He provides counsel on general corporate matters to clients in a variety of industries, including hospitality and alcoholic beverages, telecommunications, banking, and public utilities. Tony earned his J.D. from Brandeis School of Law at the University of Louisville.

Jackson Kelly PLLC announces that Chacey R. Ford joined the ranks of firm member. Based in the firm’s Lexington, Ky., office, Ford is a member of both the health care and finance, and commercial law practice groups. Previously an associate, she concentrates on health care litigation, commercial litigation on behalf of plaintiffs and defendants, business formation and litigation and creditors’ rights. She also has represented multiple creditor-clients in bankruptcy proceedings, both in core and adversarial matters. Ford earned her law degree from the University of Kentucky College of Law and holds a B.A. from Colorado State University.

Quintairos, Prieto, Wood & Boyer, P.A.
Attorneys at Law

A multi-office law firm is seeking ATTORNEYS for its Louisville and Lexington office. Must have experience in civil trial and/or insurance defense litigation. Portable book of business is a plus.

E-mail resume to resume@qpwblaw.com
Stites & Harbison, PLLC, announced that three attorneys were promoted within the law firm to member (partner) effective January 2017. Katrina Miller will serve out of the Louisville office. She is a member of the business litigation service group. Miller’s litigation practice primarily focuses on defending her financial services clients against claims brought under common law and state and federal consumer protection statutes. Miller is also co-chair of the firm’s financial institutions litigation sub-group. Sarah Cronan Spurlock will serve out of the Louisville office and is a member of the health care service group and privacy & data security group. Spurlock advises clients on a wide range of health care issues, including health information privacy and security laws and data breach prevention and response. Her practice also includes regulatory and transactional health care law and health care litigation. She is co-chair of the firm’s privacy & data security group. Rebecca Weis will work out of the Louisville office and is a member of the employment law service group. Weis’ practice is primarily devoted to labor and employment litigation and counseling. Her practice also includes general civil and business litigation.

Wyatt announces that Wyatt health care attorney Margaret Levi updated the third edition of her book. The “Impact of Health Care Reform on Kentucky Employers,” just recently released, focuses on how health care reform affects Kentucky organizations. The book features chapters on: the history of the Affordable Care Act; expanding access to health insurance; expanding health insurance coverage; limiting health care costs; funding for the Affordable Care Act; and program integrity provisions. Levi is a member of Wyatt’s Health Care Service Team. She advises health care providers in the areas of data privacy and security, fraud and abuse (the Anti-Kickback Act and the Stark Law), compliance programs, clinical trial matters, medical records, The Joint Commission standards, end of life and other patient care matters.

Circuit Judge Danny J. Boggs took senior status effective Feb. 28, 2017. He will continue to perform substantial judicial service as a senior judge. Judge Boggs has served on the Sixth Circuit Court of Appeals since 1986, and was Chief Judge of the Circuit from 2003 to 2009. He will continue to have his chambers in Louisville.

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Who, What, When & Where

2017 KBA Annual Convention Information on Page 24
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