

KENTUCKY BAR ASSOCIATION



Bench & Bar

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September 2010



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***LEGISLATIVE
UPDATE***

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September 2010

Dear Colleagues:

As a fellow member of the Kentucky Bar Association, it is an honor to celebrate with you the centennial of our State Capitol Building in Frankfort. For one hundred years, the Capitol has served as the seat of power and persuasion, democracy and deliberation, justice and jurisprudence. It stands as a witness to the many men and women who helped bring forth the historic and progressive achievements of the 20th – and now 21st – century.

Within this majestic building, our Commonwealth continues to practice the essential elements of representative government. The executive, legislative and judicial branches of state government call these hallways home.

As a public servant, I have been fortunate to work in this building in several roles over many years – as state representative, attorney general, lieutenant governor and now governor. I continue to marvel at the Capitol's elegance, its craftsmanship, and the cherished role it plays in the lives of so many Kentuckians who work and visit here. The marbled floors and columns throughout, the colorful lunettes above the House and Senate chambers, and the mahogany paneling of the Supreme Court chambers represent the pride and the promise that Kentuckians still hold for their native state.

While the Capitol represents many things to many people, it is a building dedicated to serving the people of Kentucky, both in symbol and in practice, by ensuring just laws are created, executed and adjudicated. As practitioners of the law, I hope you will join me in celebrating this special building in its centennial year.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Beshear".

Steven L. Beshear



Bruce K. Davis

In any discussion about the current status of the primary and secondary education system in Kentucky, the issue of civics instruction will usually emerge. While much progress has been made in Kentucky's education system, many adults, especially members of our great profession, lament the fact that quality civic instruction — including the study of government process, history and law — has diminished or disappeared altogether. Some programs supporting civics education have become “after school” volunteer efforts where teachers and community volunteers, including many lawyers, have worked together. These programs include the state High School Mock Trial Tournament and the “We The People” competition organized through the Kentucky Administrative Office of the Courts.

At the recent joint meeting of the National Conference of Bar Presidents, National Association of Bar Executives, and National Conference of Bar Foundations, Stephen N. Zack of Florida announced that improving high school civics education is one of his goals this year as the incoming President of the American Bar Association (ABA). The ABA Board of Governors recently authorized the creation of a Commission on Civic Education in the Nation's Schools. One priority of the Commission will be to plan a three-day civic education academy for teenagers in high

CIVICS IN EDUCATION

schools around the country over the President's Day weekend in February 2011. If anyone knows the importance of civic education and being a voice in your government it is Steve Zack. As a teenager in 1961, his family fled the Castro regime in Cuba and settled in Miami.

At the same time that Steve Zack became ABA President in August, Kentucky's own Bill Robinson became ABA President-Elect, and I know that the many KBA members who have already heard this exciting news will agree with me that the volunteer leadership of the ABA could not be in more capable hands for the next two years. Both Bill and Steve bring extensive experience in unified, mandatory, state bar associations to the leadership of the ABA, the largest voluntary professional association in the world. Steve served as a President of the Florida Bar and, as you know, Bill

was one of the great Kentucky Bar Association Presidents.

During the same joint meeting session where Steve Zack delivered his civics in education speech, a video presentation from retired United States Supreme Court Justice Sandra Day O'Connor was shown wherein Justice O'Connor discussed the importance of each generation of Americans learning about the United States government system because, as she noted, “you don't inherit the knowledge through the gene pool.” Justice O'Connor recommended the website, www.iCivics.org, for lawyers wanting to seek materials for volunteer efforts in assisting school teachers.

If you have been involved with a volunteer effort to promote quality civics instruction in your local school district, I would like to hear about the success of your effort and highlight it in a future page. 

Mark your calendar

June 15-17, 2011

KBA Annual Convention 2011

Lexington



Kentucky Bar Association

2011 Outstanding Service Awards Call for Nominations

The Kentucky Bar Association is accepting nominations for 2011 Outstanding Judge and Lawyer, Donated Legal Services, and Bruce K. Davis Bar Service Awards. Nominations must be received by December 31, 2010. If you are aware of a Kentucky judge or lawyer who has provided exceptional service in these areas, please call (502) 564-3795 to request a nominating form or download it from our website at www.kybar.org by choosing "Inside KBA" and clicking on "Public Relations – Outstanding Service Awards."

Outstanding Judge Award Outstanding Lawyer Award

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

Donated Legal Services Award

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

Bruce K. Davis Bar Service Award

Many lawyers take time from their practices to provide personal, professional, and financial support to the KBA. This award expresses the appreciation and respect for such dedicated professional service. All members of the KBA are eligible in any given year except for current officers and members of the Board of Governors.

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YOUNG LAWYERS SECTION

KENTUCKY BAR ASSOCIATION

By Nathan Billings,
Chair, KBA Young Lawyers Section

LAWYERS NEED A PLAN FOR LIFE

“A clear vision, aligned with your personal values, uncovers productive and wasteful tasks that should be minimized to make time for those goals that are truly important to you.” – Lou Allegra, Allegra Management Consulting

No attorney engages a new lawsuit, a transaction, or other legal matter, without having some form of a plan in mind to accomplish the client’s goal. We all recognize that planning is an inherent and critical part of our representation of all clients.

As leaders in our families, law firms, communities, non-profits, government and churches, we also need a plan for our practice and, more importantly, for our lives. If we, as lawyers and leaders, intend to succeed in life, we must have, *and follow*, a plan. Unfortunately, many of us fail to do for ourselves what we daily do for our clients. And, while law school and daily practice may prepare us to succeed in legal representation by developing and implementing a plan, they do not teach us how to do the same as leaders or in life.

Thus, this YLS Lawyers as Leaders article focuses on how young lawyers can develop and implement a life plan.

As Steven Covey’s Habit Two states, “begin with the end in mind.” You must have a clear picture of your personal vision for your life. Lou Allegra, a management consultant to corporate executives, defines personal vision as “a clear description of yourself and your life at some future point.”

Sit down with pen and paper, close your eyes, and think about that personal vision, asking what you hope your life looks like in three to five years, 10 to 15 years, and then twenty-plus years. Components for each period might include career position, finances, relationships with family and friends, work-life balance, involvement in the community, leisure time and activities, lifestyle, and geographic location. Write down your reflections for each period.

Then, for each component in each period, identify *at least* one step that you can take in the next year to move toward that goal, and set a deadline for it to be completed. For example, someone might record “a week of vacation in Europe” in the three to five year time frame. A step could be “save \$250.00 a month towards trip.” Another lawyer might record “serve on the Humane Society board.” A potential step could be “call Humane Society for volunteer opportunities.”

After jotting down these notes, take another 15 minutes and type your notes into a useable format. Part of a sample life plan might look like this:

3-5 year period

Goal 1: Travel to French Riviera for Vacation (leisure)

Step 1: Save \$250.00 a month. Deadline – 5th of each month

Step 2: Find travel partner. Deadline – December 1st

Step 3: Research various French Riviera resorts – Deadline April 1st

Step 4: Decide upon specific location – June 1st

10-15 year period

Goal 1: Be debt free except for primary mortgage (finances)

Step 1: Identify all debts, from smallest to largest

Step 2: Pay off smallest debt first. Roll that payment into next largest debt.

Once a plan has been developed, place a *monthly* follow up appointment with yourself on your calendar, and when that appointment arrives, spend a few minutes reviewing your plan and steps. The goal of this latter part is to ensure the plan does not collect dust – you ensure implementation.

Clearly, developing a plan is not difficult. As noted above, we frequently utilize a similar process in serving our clients. In fact, most of us have an internal sense of our goals, and sometimes even the steps. Yet, there are tangible benefits in intentionally spending time thinking about your plan, recording it, and regularly following up with yourself.

Overall, it is not the “know how” that “uncovers productive and wasteful tasks.” Rather, it is the *intentional* act of taking time to recognize your goals for various stages in life, to identify specific steps that will accomplish those goals, and to follow up with yourself regularly.

If you would like to become more involved in YLS, or with the Lawyers as Leaders initiative, please contact YLS Chair Nathan Billings at nbillings@lckgy.com or 859-225-5240.

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Kentucky Business Entity Laws: The 2010 Amendments

By Thomas E. Rutledge and Dean Dennis R. Honabach

The 2010 General Assembly adopted a number of amendments to Kentucky's business entity laws. Set forth in Senate Bill 150, the amendments have an effective date of July 15, 2010.¹

The Response to *Barone v. Perkins*

The 2010 Amendments expressly overrule that portion of the *Barone v. Perkins*² decision which suggested that the liability shield provided by the LLC Act is more robust than that in the Business Corporation Act because the former does not contain the phrase "exempt that he may become personally by reason of his own acts or conduct"

language that appears in the latter.³

As amended, these statutory provisions recognize the rule that one is subject to liability for his or her own torts. The *inter se* duties of the participants in various business organizations are not modified. Just as the "except that he may become personally liable by reason of his own acts or misconduct" language of KRS §271B.6-220(2) does not either limit or modify the director's standard of culpability for breach of the standard of care,⁴ the addition of equivalent language in the other acts does not modify the responsibilities *inter se* participants in the venture. The addition of Restatement section 7.01 language to, for example, the LLC Act⁵ does not modify the standard of culpability for a breach of the

duty of care,⁶ impact the ability to modify that duty or culpability for its violation, or otherwise create a basis for liability.⁷

Bringing Suit on Behalf of an LLC

The 2010 Amendments also repealed KRS §275.340, which has caused mischief in its application. Former KRS §275.340 provided that a party could not assert a determination that there was not proper authority to initiate an action on behalf of an LLC "... as a defense to an action brought by the LLC or as the basis for the LLC to bring a subsequent suit in the same cause of action." The rules determining who has the authority to initiate a legal action on behalf of and in the name of an LLC are set out in KRS §275.335.⁸

In *Lourdes Medical Pavilion, LLC v. Catholic Health Care Partners, Inc.*,⁹ the court applied KRS §275.340 to deny dismissal of an action. In *Lourdes*, the operating agreement required the consent of both members to initiate legal action on behalf of the LLC. One member, in its own name as well as in the name of the LLC, brought an action against the other member. The court found that in bringing the action the plaintiff member was acting outside the bounds of the operating agreement. Based upon its reading of §275.340, however, the court determined that the action should not be dismissed notwithstanding the lack of actual authority of the one member to bring the suit on behalf of the LLC. In so applying §275.340, the *Lourdes* court eviscerated KRS §275.335 and ignored the "maximum enforcement of operating agreements" directive of KRS §275.003(1).¹⁰

To avoid this result, the 2010 Amendments repealed KRS §275.340.¹¹ Actual authority to bring an action on behalf of an LLC will continue to be determined under the operating agreement and KRS §275.335(1). Questions as to whether an action has been properly authorized and whether the LLC is bound by any determination rendered will be answered under generally applicable principles of law.

An additional "Legislative Update" article has been placed on the KBA website under **Hot Topics**.



Look for this logo at www.kybar.org to find "The Kentucky Business Entity Filing Act: An Introduction" written by Thomas Rutledge & Laura D'Angelo.

Limits on Distributions by Limited Liability Partnerships

The 2010 Amendments also revised the Kentucky Uniform Partnership Act (“KyUPA”) and the Kentucky Revised Uniform Partnership Act (2006) (“KyRUPA”) rules governing distributions made by limited liability partnerships. The other acts that provide limited liability to the owners set limits on the distributions that the entity may make to its members, thus preserving the concept of the “trust fund” to ensure that some assets remain available to satisfy the claims of more senior creditors. Under these various limitations, the entity may not make a distribution to its owners which would render the entity insolvent under either the equity or the balance sheet tests.¹² A notable exception to this rule has been the limited liability partnership provisions of the KyUPA¹³ and the KyRUPA.¹⁴ Neither of these acts imposed any limit on distributions.¹⁵ To bring these acts in line with their other limited liability counterparts, the 2010 Amendments revised both to include limitations on distributions that mirror the limits on distributions applicable to other limited liability entities.¹⁶ Each of the new sets of rules provides a two-year look-back period for the recovery from the persons authorizing an improper distribution.¹⁷

Effect of the Dissolution of an LLC

The 2010 Amendments also clarify and correct §275.300, which addresses the effect of the dissolution of an LLC.¹⁸ The amendments to §275.300(3)(d) make clear that dissolution does not, unless the operating agreement provides to the contrary, amend the operating agreement¹⁹ or terminate capital contribution obligations previously undertaken.²⁰

Prior to the Amendments, all of KRS §275.300 was prefaced with “unless otherwise provided in a written operating agreement,” thereby implying that all of the rules in the section were merely default rules that were subject to private ordering. Certain of the substantive provisions, however, such as the provision restricting the activities of a dissolved LLC to those activities “appropriate to wind up and liquidate its business and

affairs”²¹ and the rule that pending actions were not abated by dissolution²² were clearly not subject to contrary private ordering. Therefore, the 2010 Amendments make clear that subsections (1) and (3) are subject to modification in a written operating agreement, while subsections (2) and (4) are not.

Foreign Limited Partnerships Transacting Business in Kentucky

Addressing a lacuna in the Kentucky Revised Uniform Limited Partnership Act (2006) (“KyULPA”), the 2010 Amendments added a new section addressing the consequences to a foreign limited partnership that transacts business in Kentucky without having qualified to do so. Under the rule as amended, a foreign limited partnership may not maintain an action or proceeding prior to such time as it procures a certificate of authority.²³

The Professional Service Corporation Act

The 2010 Amendments made several revisions to the Professional Service Corporation Act. The revisions to KRS §274.017(1) are grammatical in nature, although the revision to KRS §274.017(1)(d) also makes it clear that the requirement that the professional service be permitted by the articles of

incorporation applies both to the professional corporation itself as well as to a corporation seeking to be a shareholder of a professional corporation.

The revisions to KRS §274.017(2) confirm the ruling in *National Loan Investors, L.P. v. Retina Assoc., P.S.C.*²⁴ There the court, in an unpublished opinion, concluded that notwithstanding an otherwise valid pledge agreement of the stock in a PSC, a non-professional pledgee could not execute on that pledge and take ownership of the shares because it was not a “qualified person” as required by the PSC Act.²⁵

The revisions to what previously was KRS §274.245(1), which deals with foreign professional service corporations seeking to qualify to transact business in Kentucky, make clear that the “qualified shareholder” requirement is to be applied as if the foreign corporation were itself incorporated in Kentucky. The deletion of KRS §274.245(2) makes it clear that the rules applicable to determining whether or not a foreign professional service corporation must qualify to do business will be the same as those applied to foreign business corporations in general.²⁶ The exception from qualification applicable to a foreign professional service corporation which did not maintain an office in the Commonwealth is no longer available.

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Although always implicit in the Professional Service Corporation Act,²⁷ the Amendments now specify that the rules applicable to business corporations in general, including shareholder limited liability, apply to professional service corporations as well. The applicability of these rules is subject, of course, to the PSC's retention of certain supervisory liability and to other applicable rules of personal liability under professional regulatory rules.²⁸

The Amendments added a new provision expressly authorizing a PSC that is no longer rendering professional services to delete the PSC provisions from its Articles of Incorporation and thereafter be governed solely by KRS ch. 271B.²⁹

Notwithstanding the internal affairs doctrine, with respect to services rendered in Kentucky, Kentucky law as it relates to shareholder liability applies to those acting on behalf of a foreign PSC.³⁰

The Consequences of Defaulting on Obligations Undertaken in an Operating or Partnership Agreement

The LLC Act, KyRUPA and KyULPA each contemplate that there may be obligations to make additional capital contributions in the future or to make or perform other obligations. The

2010 Amendments added provisions to each of these acts providing that the operating/partnership agreement may specify the penalties or consequences of a failure to satisfy an otherwise enforceable obligation, and setting forth a non-exclusive list of the penalties/consequences to which the parties may agree.³¹ In each instance, the language adopted is based upon similar provisions in the Delaware LLC Act.³² These additions should lay to rest the question as to whether³³ *Man-O-War Restaurants, Inc. v. Martin*,³⁴ which was overridden in 2002 as to corporations,³⁵ still remains applicable to other business forms notwithstanding the freedom of contract principles embodied in those acts.³⁶

Charging Orders

The 2010 Amendments revised the various changing order provisions. As amended, the rights of the holder of a changing order are the same irrespective of the statute governing the LLC or partnership in question.³⁷

The Doctrine of Independent Legal Significance

The 2010 Amendments expressly incorporate the doctrine of independent legal significance into the KyBCA, the KyLLCA, KyRUPA and KyULPA.³⁸ That doctrine provides that simply

because one cannot achieve a desired result under one rule or set of rules in the act does not prevent one from using another rule or set of rules to achieve that result.

Member Resignation

Members in a member-managed LLC owe fiduciary obligations to the other members, to the LLC or to both.³⁹ Although members qua members in a manager-managed LLC do not *ab initio* have fiduciary obligations to either the LLC or the other members,⁴⁰ such obligations can arise by private ordering. As adopted in 1994, the Kentucky LLC Act gave members the right, on 30 days' prior written notice, to withdraw from the LLC and to receive the "fair value" of their limited liability company interest.⁴¹ At that time, LLCs had, as a default rule, minimal "capital lock-in." This rule was merely a default, and could be modified in the written operating agreement. In 1998, the provision allowing a member to unilaterally withdraw from an LLC was deleted from the Kentucky LLC Act, and replaced by KRS §275.280(3), which provides that a member does not have the right to withdraw from a Kentucky LLC unless such a right is set forth in a written operating agreement or, at the time resignation is desired, all of the other members consent.

Addressing the anomaly of a default rule under which a party subject to fiduciary duties may not unilaterally resign, the 2010 Amendments revised the LLC Act to provide that, unless a contrary rule is set forth in a written operating agreement, a member in a member-managed LLC⁴² may resign on 30 days' notice.⁴³ In a manager-managed LLC, however, the old rule remains – there is no right of resignation except and unless it is set forth in a written operating agreement or unless a resignation is approved by all other members.⁴⁴ Absent contrary private ordering,⁴⁵ a member who has resigned is treated as his or her own assignee.⁴⁶

The addition (readoption) of a right of withdrawal of a member in a member-managed LLC should not limit the utility of that structure for estate planning purposes. The actual impact upon

SECRETS OF THE KENTUCKY SUPREME COURT

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By Justice Donald C. Wintersheimer (Ret)

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valuation discounts should be minimal in that (a) upon resignation the former member becomes an assignee of his or her own membership interest having, consequently, the same (and no greater) economic rights than the member had before the resignation;⁴⁷ and (b) the withdrawing member will have no right to liquidate the interest (*i.e.*, capital lock-in is retained.) Moreover, the participants can avoid the impact of the new provisions by using a manager-managed, rather than a member-managed, LLC.

The amendments corrected the references to “former members” in KRS subsections 275.310(2) and (3) to refer to the “assignees.”⁴⁸ They also added a reference to assignees in KRS §275.300.⁴⁹

Mergers and Conversions

The 2010 Amendments revised the LLC Act, the KyRUPA and the KyULPA to change the effect of a merger. If the surviving entity is a LLC, a partnership, or a limited partnership governed by, respectively, the KyLLC Act, KyRUPA or KyULPA, one effect of the merger is that a written operating or partnership agreement provided for in the plan of merger becomes binding upon the members or partners of the surviving business entity.⁵⁰ This addition conforms to the effect of conversion provisions.⁵¹ Further, and purely as a point of clarification, the Amendments revised the LLC Act and KyULPA to specify that an effect of a merger is that amendments to the articles of organization/operating agreement/certificate of limited partnership of the entity surviving the merger will be effective and binding upon the members/partners.⁵² The ability to by amendment, merger or conversion impose a contribution obligation on a member is limited by the requirement that such obligations be “set forth in a writing signed by the member” to be enforceable.⁵³ While it may be argued that a signed operating agreement which, by its terms, could be changed to add a contribution obligation by amendment or a merger approved by less than all members⁵⁴ constitutes a signed writing that satisfies KRS §275.200(1), such a reading of the revised rules is at best strained

and conflicts with the clear intent of the provision. Nevertheless, limited partners in a limited partnership, all partners in a limited liability limited partnership, and partners in a limited liability partnership may want to protect themselves from having contribution obligations imposed by including a statute of frauds requirement in the controlling partnership agreement.

Clarification of KRS §275.170

Entirely as a point of clarification and without any modification to the substantive rules already in place, the Amendments supplemented KRS §275.170(1) to specify that it constitutes the statutory standard of culpability for breach of the undefined standard of care. At the same time, the Amendments revised KRS §275.170(2) to make clear that the section constitutes the standard of loyalty imposed on members and managers in an LLC.⁵⁵

Addition of a Dartmouth College Provision to KyULPA

The Amendments added a *Dartmouth College*⁵⁶ provision to the KyULPA.⁵⁷ That addition, which expressly permits the legislature to make amendments to the KyULPA applicable to existing Kentucky limited partnerships, underscores the importance of including crucial default provisions in a limited partnership’s organic documents.

Miscellaneous Revisions

The 2010 Amendments made a number of miscellaneous changes to the various acts. They corrected a grammatical error in the provision addressing the conversion

of a corporation into an LLC,⁵⁸ and a typographical error in KRS §275.365(4).⁵⁹ The amendments also corrected an erroneous cross-reference to KRS §362.2-110(2)(d). They revised KRS §275.225 to make it clear that an improper distribution includes one that violates the operating agreement⁶⁰ and clarified that it is not the LLC that determines that a distribution is proper, but rather the member or manager acting on its behalf.⁶¹ The amendments make it clear that an assignor member does not vote with respect to whether its assignee should be admitted as a member in the LLC unless provided otherwise by the Articles of Organization or a written operating agreement. The LLC Act was revised to expressly authorize provisions in an operating agreement affording rights to third-parties⁶² and to explicitly provide that a contractual obligation of good faith and fair dealing exists in each operating agreement.⁶³ The amendments deleted the provision requiring a corporation converting into an LLC to cancel its assumed names.⁶⁴ To achieve conformity with KyRUPA and KyULPA, the Amendments revised the LLC Act to exempt LLCs from the reach of KRS §381.135.⁶⁵

The 2010 Amendments also made several miscellaneous changes to the business and nonprofit corporation acts. As amended, those acts now provide that a special meeting of the board of directors may be called by judicial order upon an application filed by at least one-third of the incumbent number of directors.⁶⁶ The Amendments revised the provisions addressing annual reports filed by corporations to make it explicit that the report must list

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the secretary of the corporation; a tendered report that does not list a secretary is “incorrect” and will be returned for correction and resubmission.⁶⁷ Foreign corporations not utilizing the MBCA formula (*i.e.*, not requiring the designation of a “secretary”) should identify the person having the custody of and capacity to authenticate the records of the corporation.⁶⁸ The Amendments also eliminated the requirement that documents filed on behalf of a “private corporation” with a county clerk bear a scrivener block.⁶⁹

L3Cs

A proposal to authorize the so called “low-profit limited liability company” or “L3C”⁷⁰ was in light of the significant controversy that exists with respect to that structure⁷¹ converted into a study committee. ⓘ

ENDNOTES

1. See AG OP. 10-002 (2010).
2. No. 2007-CA-000838-MR (June 20, 2008), available at 2008 WL 2468792, discretionary review denied January 14, 2009 (2008-SC-

0515D).

3. See KRS §275.150(3); *id.* §362.2-303(e); *id.* §362.2-404(4); *id.* §272.203; *id.* §272.490(2); *id.* §279.090; *id.* §279.390; and *id.* §273.187.
4. See KRS §271B.8-300(5).
5. KRS §275.150 as amended by 2010 Acts, ch. 133 § 31.
6. KRS §275.170(1).
7. See KRS §275.180(1).
8. The authority to bring an action on behalf of an LLC may be expanded or restricted in the operating agreement. See KRS §275.335.
9. 2006 U.S. Dist. LEXIS 12550 (W.D. Ky. Mar. 22, 2006).
10. At the time of the *Lourdes* decision, the “maximum enforcement of operating agreements” language was codified at KRS §275.015(14).
11. See 2010 Acts, ch. 133, §77.
12. See KRS §271B.6-400(3); *id.* §275.225; *id.* §362.473 and *id.* §362.2-508.
13. See KRS §362.555; *id.* §362.220(2).
14. See KRS §§362.1-1001 through -1003; *id.* §362.1-306.
15. Absent an election to be an LLP there is no need for a provision limiting distributions; a creditor claim is enforceable against the partners. See KRS §362.220(1); *id.* §362.1-306(1).
16. See KRS §362.1-1003; *id.* §362.601.
17. See KRS §§362.601(2); *id.* §362.1-1003(2). Accord KRS §271B.8-330(3); *id.* §275.230(3); *id.* §362.2-509(4). See also *Wilson v. Payne*, 288 S.W.3d 284 (Ky. 2009).
18. KRS §275.300.
19. KRS §275.300(3)(d).
20. KRS §275.300(3)(d).
21. KRS §275.300(2).
22. KRS §275.300(4)(b).
23. See KRS §362.2-911.
24. 2004 WL 2366559 (Ky. App. 2004).
25. See KRS §274.005(4).
26. See also KRS §271B.15-010.
27. See KRS §274.015(2).
28. See KRS §274.015(2); *id.* § 274.055(1).
29. See KRS §274.015(3).

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30. See KRS §274.055(4).
31. See KRS §275.003(2); *id.* §362.1-103(4); and *id.* §362.2-110(4).
32. See DEL. CODE ANN. tit. 6, §18-502(c). Other jurisdictions with similar provisions include Ohio. See OHIO CODE §1776.24.
33. See, e.g., Kenneth R. Sagan, *Top Ten Kentucky Business Law Oddities*, 2007 Kentucky Bar Association Annual Convention (June 22, 2007).
34. 932 S.W.2d 366 (Ky. 1996).
35. See Thomas E. Rutledge, *The 2002 Amendments to the Kentucky Business Corporation Act*, 67 BENCH & BAR 13, 20-22 (May, 2003).
36. See KY. REV. STAT. ANN. §275.003(1); *id.* §362.1-104(3); *id.* §362.2-107(3).
37. See KRS §275.260; *id.* §362.285; *id.* §362.481; *id.* §362.1-504; and *id.* §362.2-703.
38. See KRS §271B.1-430; *id.* §275.003(5); *id.* §362.1-104(5); and *id.* §362.2-107(4).
39. KRS §275.170(1); KRS §275.170(2).
40. KRS §275.170(4).
41. See 1994 Acts, ch. 389, §56.
42. Whether the LLC in question is member- or manager-managed is a question of positive law determined by reference to the election made in the articles of organization. See KRS §275.025(1)(d); see also PROTOTYPE LLC ACT, §401, comment.
43. KRS §275.280(3)(a).
44. KRS §275.280(3)(b).
45. See also Thomas E. Rutledge, *You Just Resigned – Now What? Different Paradigms for Withdrawing From a Venture*, 12 J. PASSTHROUGH ENTITIES 43 (Nov./Dec. 2009).
46. See KRS §275.255(1)(b); *id.* §275.255(1)(c); see also KRS §275.280(1)(c)3.
47. See KRS §275.255(1)(b).
48. See KRS §275.310.
49. See KRS §275.300(2)(d). Prior to this addition, a strict (but unintended) reading would indicate that notwithstanding an assignee's rights to receive the distributions that would otherwise be made to the assignor (KRS §275.255(1)(b)), a dissolving LLC may not make distributions to assignees.
50. See KRS §275.365(11); *id.* §362.1-906(7); *id.* §362.2-1109(8).
51. See KRS §275.375(2)(d); *id.* §362.1-904(2)(d); and *id.* §362.2-1105(2)(d).
52. See KRS §275.365(10); *id.* §362.2-1109(7).
53. KRS §275.200(1).
54. See, e.g., KRS §275.175(2)(a) (majority-in-interest of members may amend operating agreement); *id.* §275.350(1) (majority-in-interest of members may approve merger).
55. See KY. REV. STAT. ANN. §275.170(1), (2), as amended by 2010 Acts, ch.133, §32. For a review of *Patmon v. Hobbs* and the duty of loyalty under the LLC Act, see Thomas E. Rutledge and Professor Thomas Earl Gue, *The Analytic Protocol for the Duty of Loyalty Under the Prototype LLC Act*, ___ ARKANSAS L. REV. ___ (2011) (*forthcoming*, currently available on SSRN.com).
56. 17 U.S. (4 Wheat) 518 (1819).
57. See KRS §362.2-106(2). This provision supplements section 3 of the Kentucky Constitution.
58. See KRS §275.376(11)(d).
59. The amendment substituted “chooses” for “choices.” That error had existed since the adoption of the LLC Act in 1994
60. See KRS §275.225(1)(c).
61. See KRS §275.225(2).
62. KRS §275.003(3).
63. See KRS §275.003(7).
64. KRS §275.376.
65. See KRS §275.220(3).
66. See KRS §271B.8-205; *id.* §273.223(2).
67. KRS §271B.16-220; *id.* §273.3671. See also KRS §271B.8-400(3) (requirement to have the officer); *id.* §273.227(3) (same); *id.* §271B.1-400(23) (defining the “secretary” and referencing KY. REV. STAT. ANN. §271B.8-400(3); *id.* §273.161(1) (defining the “secretary”).
68. See MBCA §1.40(20) (defining the person discharging the MBCA § 8.40(c) obligations as the “secretary”). For example, while a Tennessee corporation is not required to designate a “secretary,” that not being a defined term (see TENN. CODE §48-11-201), it is required to have an officer to whom is delegated “responsibility for preparing minutes of the directors’ and shareholders’ meetings and for authenticating records of the corporation.” See TENN. CODE § 48-18-401(c).
69. See KRS §382.335(1).
70. H.B. 371, introduced February 3, 2010.
71. Examples of that criticism include: David Edward Spenard, *Panacea or Problem: A State Regulator’s Perspective on the L3C Model*, 65 EXEMPT ORGANIZATION TAX REVIEW 131 (February, 2010).
72. 2010 Acts, ch. 133, §78 (not codified in KRS).



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By Jamie Hargrove

Without a single “Nay” vote, the 2010 General Assembly passed H.B. 188,¹ thereby improving numerous of Kentucky’s estate and trust statutes. These changes have an effective date of July 15, 2010.²

The proposal came out of the Legislative Committee of the Trust & Estate Section of the Kentucky Bar Association, and its chair, Walter Morris, spoke on behalf of the legislation before both the House and Senate Judiciary Committees. The leadership of Representative Tom Kerr was crucial to the passage of this legislation, parts of which had been unsuccessfully lobbied multiple times over at least dozen or so years.

Repeal of The Rule Against Perpetuities

Ding Dong! The Witch is dead. Which old Witch? The Wicked Witch!
*Ding Dong! The Wicked Witch is dead.*³

For as long as the age of anyone reading this article, Kentucky has had in place a statute commonly referred to as “the rule against perpetuities” (the “Rule”).⁴ For some, the Rule is the Wicked Witch of the West. The whole “life in being” is a concept clients (and some attorneys) never seem to get their arms around. For others, it meant flight to other jurisdictions to avoid it. Either way, the death of this Wicked Witch is likely to be well received.

The purpose of the Rule, dating back to the 17th century English common law, was to preclude future limits on the pas-

sage of assets from family for an indefinite period of time.⁵

With some states having abolished the Rule long ago,⁶ it has become easier and easier for practitioners to avoid the Rule by simply establishing their client’s trust in one of those states. Once it became evident the policy of the Rule is going to be easily avoided (and such avoidance drives business out of their own state), then it makes sense to eliminate the Rule. That is exactly what happened in Kentucky this spring, making Kentucky the 20th state to repeal the Rule.

Included in the Act are some additional provisions to KRS ch. 381 that, when first read, look to be in direct conflict with the “The Wicked Witch is Dead” provision eliminating the Rule Against Perpetuities. In fact, while on the one hand the Rule is generally repealed, it is reintroduced in certain narrow circumstances. When the trustee is restricted from selling trust property for a period of time equal to the old Rule, the old Rule will remain in force.⁷ Most practitioners are not going to run into these expanded sections of KRS ch. 381 as it is fairly rare that a client would put such transfer restrictions on a trustee. Still, every now and then a client might say “I want my family farm in a trust and I never want it sold.” Okay, now there is a problem. Such a trust will fall under these additional provisions of the new act and be subject to the Rule even though in all other cases (*i.e.* where the Trustee is not restricted from conveying trust

assets), the Rule is repealed.

A fair question is “why”? Why didn’t this new legislation simply make a broad repeal of the Rule in all situations rather than retaining this exception when a trustee is restricted from conveying trust assets? The answer is IRC § 2041(a)(3). In *Murphy v. CIR*,⁸ the court held that a trust created by an exercise of a special power of appointment that then created a second power of appointment did not trigger inclusion in the estate of the holder of such power of appointment. *Murphy* was a Wisconsin case that interpreted Wisconsin’s Rule Against Perpetuities to include the “exceptions” that were added to Kentucky’s new legislation. The concern by the drafters of this new legislation was that without this exception, certain trusts with powers of appointment could lead to estate inclusion problems under IRC § 2041. While it adds complexity to the new legislation, the exception to the Rule’s repeal helps protect against a significant estate tax problem.

The intent of the legislation is that these new provisions under KRS ch. 381 will be prospective in their application. Consequently, most of the new provisions are not going to have much impact on existing irrevocable trusts. It should be noted, however, that if an existing trust has power of appointment provisions that would allow the assets of the existing trust to be appointed to the new trust, the new laws will apply to such new trust and the appointed assets. Care should be taken, however, to address the various tax issues that arise when assets are appointed from one trust to another.

Small Trusts Limit Increased to \$50,000

*You know I’m saying
Never sweat the small stuff it happens
everyday
Never sweat the small stuff and you will
be ok*⁹

Every so often our legislature has to update a few statutory dollar figures to inflation-adjust them. One such figure is

the Small Trust provision, now increased to \$50,000.¹⁰ With this change, the court can be petitioned for an order to terminate any trust of \$50,000 or less. The motivation for this statute is recognition that such small trusts are not practical in comparison to their ongoing administrative costs.

Principal & Income Act

*Take it easy, take it easy
Don't let the sound of your own wheels
drive you crazy*

*Lighten up while you still can*¹¹

Sometimes there needs to be legislation to make things easier. That is exactly what the amendments to KRS §§ 386.450 and 386.454 do.¹² First, they make it easier for a trustee to make certain allocations between principal to income and/or income to principal when it makes sense to do so in order to be fair to both the income and remainder beneficiaries.

The changes also make it much easier to convert a standard income trust to a unitrust with a fixed percentage payout (e.g. 4.0%) each year. The unitrust has become very popular¹³ and for many practitioners has all but replaced the standard annual income distribution.

The popularity of the unitrust is that it allows for a trustee to invest in "total return" for the trust, avoiding the conflict of investing in income (providing greater current benefits to the income beneficiary) or for growth (providing for greater long-term benefits to the remainder beneficiary). With a unitrust, all beneficiaries simply want the trust to grow and neither group cares whether the growth comes from the investment of income or principal.

Before this change, every beneficiary of any existing trust had to approve the conversion to a unitrust. This gave every beneficiary an effective veto power, and a proposed conversion could not proceed if a beneficiary did not respond to the solicitation of consent. The amendment will now allow for this change with only notice going out to all beneficiaries. It still requires court approval, and any beneficiary not

agreeing with the conversion can go into court and plead his or her case.

Qualified Plans/IRAs and the Marital Deduction

*We're caught in a trap
I can't walk out*

*Because I love you too much baby*¹⁴

It is always nice when a trap is eliminated. While the amendment to KRS § 386.480 may not get anyone out of the trap he or she might already be in, it will certainly eliminate the trap on a going forward basis. The current trap is created when a qualified plan (e.g., 401(k) plan), deferred compensation plan, IRA or similar account has as its beneficiary the owner of the account's living trust or trust under will that is designed to otherwise qualify for the marital deduction. Kentucky law currently provides that any installment payments made to a trust will be treated as 10% income.¹⁵ That approach, while arguably reasonable

from a principal/income allocation standpoint, is a method that may not allow the qualified asset to meet the criteria necessary to qualify for the marital deduction. The problem is that the income in the account could exceed 10% in a given year and then the surviving spouse who is beneficiary of an "all income" trust would not be getting "all" of the income as required for qualification for a marital deduction. The regulations provide for several statutory or trust language fixes for this problem. Prior to this new amendment, Kentucky trusts had to rely on having the provisions in the trust to make sure the qualified asset would meet the marital deduction criteria. This new amendment meets the statutory approach authorized by the regulations and eliminates the potential trap in which practitioners might otherwise find themselves.¹⁶

The new law fixes this problem by expanding the definition of income to

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provide that if the income actually generated by the qualified plan account, IRA account, etc. is greater than 10%, then the greater amount will be treated as “income”, not simply the 10% of the payout amount.¹⁷ As mentioned above, this statutory approach is specifically authorized in the regulations.

Notice To Beneficiaries of Revocable Trusts

*Everyone makes one mistake
One more time for old time's sake
One more time before the feeling fades*¹⁸

True, everyone makes mistakes, and the court did so in its decision in *JP Morgan Chase Bank, N.A. v. Longmeyer*.¹⁹ In this matter, the Supreme Court of Kentucky said that any amendments by the grantor of a revocable trust had to be communicated to the beneficiaries.

With Living Trusts replacing Wills in many cases for making date-of-death dispositive bequests of an individual's estate, the *Longmeyer*

decision is tantamount to requiring a person to notify their next of kin everything he or she modifies in his or her Will. While in the *Longmeyer* case it might have made sense due to some unique facts, certainly in most situations it would be a mistake to require a person to notify a family member or other beneficiary of the trust every time it was updated.

The amendment makes it clear that as long as the trust can be amended, then there is no notice that has to be given.²⁰ Of course, if it cannot be amended, it doesn't seem there would be any type of notice to give (*i.e.*, if you can't amend it, there can never be any notice of an amendment!). The exception might be if the trust document allowed for some type of amendment after the grantor/settler becomes incompetent. In this case, the new statute specifically provides that the grantor/settlor's incompetence will throw the Living Trust back into the notice requirement, thus requiring notice to all beneficiaries.

\$7,500 Exemption for Spouse/Children

*Make up your mind this is clarity
Clarity that you did not have before
The treatment is strong but last only so long*

*It's maybe your minds, needing more*²¹
As is often the case, the statute often says what it should; it's just that no one knows what it says. That was the case with KRS 391.030. The confusion in the past was clarified by this amendment as follows:

Does the statute apply in testate matters? Now, we know with clarity, “yes”.²²

Does a surviving spouse need to renounce the will to claim the exemption? Now, we know with clarity, “no”.²³

If a spouse does renounce, can the spouse claim the exemption? Now, we know with clarity, “yes”.²⁴

Can children of a testate decedent always claim the exemption? Now, we know with clarity, “no”, not “always”.²⁵ A child can only claim the exemption from the property he or she was bequeathed.

The new amended statute has some additional provisions that help clarify the priority by which assets are to be used to fund the payout of the exemption and related guidelines.²⁶

Renunciation by Spouse of Deceased Spouse's Will

*When ancient ghosts are waking
So many steps need taking
So many plans need making*²⁷

Sometimes when everything else has so many steps, it is nice to eliminate a step. That is exactly what happened with the amendment to KRS § 392.080.²⁸ Formerly, for a surviving spouse to renounce the will of his or her deceased spouse, it required an in-person acknowledgement in front of the county clerk or his or her deputy. The amendment removes this more formal step and simply requires an acknowledgement before a notary public; a form of acknowledgement is set forth in the statute. ⓘ

ENDNOTES

1. 2010 Acts, ch. 21.
2. Op. Atty. Gen. 10-002.

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- Sex Offender • Litigation Support Services
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3. Fitzgerald, Ella, *Ding-Dong! The Witch Is Dead*, on Ella Fitzgerald Sings the Harold Arlen Songbook (Verve Records 1961).
4. See KRS § 381.215; see also *id.* § 381.216 (both repealed 2010 Acts, ch. 21, § 14).
5. The rule against perpetuities may be traced to the *Duke of Norfolk's Case* of 1682, 3 Ch. Cas. 1, 22 Eng. Rep. 931 (Ch. 1682), wherein the House of Lords rejected efforts by the Duke of Norfolk to significantly entail the passage of certain of his titles and honors beyond his immediate heirs.
6. For example, South Dakota abolished the Rule in 1983 and Delaware in 1986.
7. 2010 Acts, ch. 21, § 2.
8. 71 TC 671 (1979).
9. Jene, *Get Into Something*, on *Get Into Something (Remix)* (Motown 2002).
10. KRS § 386.185(1) as amended by 2010 Acts, ch. 21, § 4. It was last raised from \$15,000 to \$25,000 in 1990. See 1990 Acts, ch. 450, § 2.
11. The Eagles, *Take it Easy*, on *The Eagles* (Asylum Records 1972).
12. These amendments are to Kentucky's Uniform Principal and Income Act ("UPIA"). UPIA relates solely to trust and estate accounting and gives guidelines for the determination of what is to be treated as "income" and what is to be treated as "principal" for purposes of trust and estate receipts and disbursements. Since most trusts will have a current beneficiary and also future (*e.g.*, remainder or contingent remainder) beneficiary, the treatment of receipts and disbursements as either income or principal can impact different classes of beneficiaries differently. UPIA is designed to provide consistency and fairness for such allocations.
13. See, *e.g.*, Robert E. Madden, *Tax Planning for Highly Compensated Individuals* § 15.04[5] (2006)
14. Presley, Elvis, *Suspicious Minds* (American Sound Studio 1969).
15. KRS § 386.480(3)
16. Rev. Rul. 2006-26, 2006-1 CB 939.
17. See KRS § 386.480(6) as amended by 2010 Acts, ch. 21, § 7.
18. Foo Fighter, *The One* (RCA Records 2001).
19. 275 S.W.3d 609 (Ky. 2009).
20. KRS § 386.715(4) as amended by 2010 Acts, ch. 21, § 8.
21. Ripley, Alice, Louis Hobson, Aaron Tveit, *Make Up Your Mind/Catch Me I'm Falling (Reprise)*, on *Next To Normal* (Original Cast Recording 2009).
22. KRS § 391.030(4) as amended by 2010 Acts, ch. 21, § 9.
23. KRS § 391.030(4)(c) as amended by 2010 Acts, ch. 21, § 9.
24. KRS § 391.030(4)(c) as amended by 2010 Acts, ch. 21, § 9.
25. KRS § 391.030(4)(b) as amended by 2010 Acts, ch. 21, § 9.
26. KRS § 391.030(4)(d) as amended by 2010 Acts, ch. 21, § 9.
27. Rubinstein, John, *Morning Glow*, in 2010 Acts, ch. 21, § 10.
28. See 2010 Acts, ch. 21, § 10.



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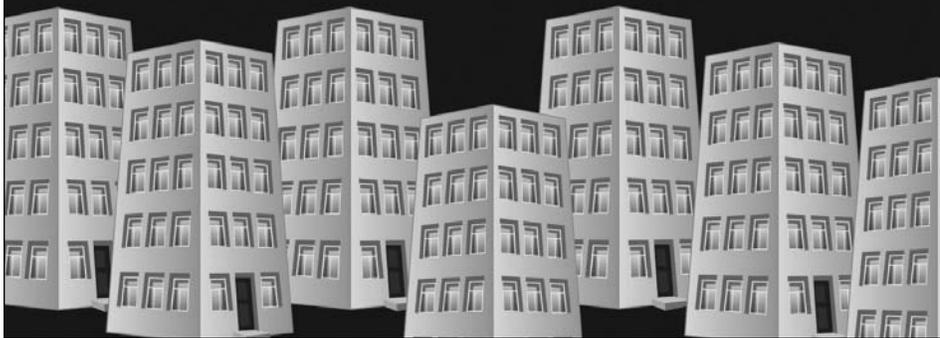
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The Kentucky Condominium Act



By Scott W. Brinkman

When the Kentucky Horizontal Property Law was enacted by the Kentucky General Assembly,¹ John F. Kennedy was President, the Cuban missile crisis had not yet occurred, the Beatles were an obscure musical group playing in nightclubs in Liverpool, England, and the form of condominium ownership was rare in Kentucky. This rather basic law established the parameters of the condominium form of real property ownership.

The Kentucky Condominium Act (KCA),² signed into law by Governor Beshear on April 8, 2010, broadly rewrites Kentucky condominium law to create more certainty and clarity with respect to the rights, duties and obligations of developers, unit owners, associations owning common elements and members and officers of the executive board charged with enforcing the rights and discharging the duties of the association. Although modeled after the Uniform Condominium Act, the Kentucky Condominium Act is less sweeping than the Uniform Condominium Act.³

The KCA applies to all condominiums created within Kentucky on or after January 1, 2011.⁴ In addition, several provisions of the Act apply to all condominiums created before this effective date, but only to the extent of events or circumstances occurring after the effective date, and these sections of the KCA do not invalidate existing provisions of the declaration, bylaws, plats or plans of those condominiums.⁵

Any amendment to the declaration, bylaws, plats or plans of any condominium created before January 1, 2011, must conform to the Act.⁶ The Rule Against Perpetuities shall not be applied to defeat any provision of a condominium's declaration, bylaws, rules or regulations.⁷ Further, to the extent of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with the provisions of the KCA.⁸

With a unanimous vote of the owners, the KCA will apply to a condominium created before January 1, 2011, and in that event the condominium's declaration, bylaws, plats and plans will need to be amended to be consistent with the KCA.⁹ It has limited application even absent that election.¹⁰

Unless specifically permitted by its terms, the requirements of and rights granted by the Act may not be waived.¹¹ The Act does not supersede the zoning, subdivision, building code or other real estate use laws¹² of jurisdiction, but these laws may not prohibit the condominium form or impose any requirement upon a condominium that the laws would not impose upon a physically identical development with a different form of ownership.

The KCA is intended to be flexible in allowing many different types of projects to qualify as a condominium; the key definitions are "condominium" and "real estate."¹³ A condominium is a "single unit in a single-unit or a multiple-unit structure or structures, portions of which are designated for

separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions."¹⁴ Importantly, there is a "condominium" only if the undivided interests in the common elements are vested in the unit owners. "Real estate" is defined as "any fee simple interest, leasehold estate, or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests by which custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance."¹⁵ A condominium can be created only by recording a declaration executed in the same manner as a deed in every county in which a portion of the condominium is located. A "declaration" is defined as any instrument, including a master deed, that creates a condominium.¹⁶ While there is flexibility as to how a condominium is created, the preference appears to be the use of master deeds.

The KCA clarifies the relationship between condominiums, including condominiums in various stages of development, and ad valorem taxation. It also clarifies the effect of eminent domain on a condominium including the manner in which condemnation awards are to be allocated between the units and the common elements.

The Act should prove helpful in clarifying the portions of a condominium unit that constitute part of the unit versus a common element or limited common element.¹⁷ Many questions have arisen over the years as to the appropriate distinction between property owned by the unit owner and property that constitutes either a common element or a limited common element, distinctions important to insurance, ad valorem real property taxation, and eminent domain questions.

The KCA makes distinctions between common elements, limited common elements, and units with respect to the property commonly associated with a condominium unit.¹⁸ The Act allows the owners of units to which a limited common element is appurtenant to re-allocate the limited common element

among such units by amendment to the declaration unless the declaration otherwise provides. Unit owners should insist upon having the flexibility to allocate limited common elements among the units in such proportion as is acceptable to such unit owners.

The KCA also specifies the information that must be contained in a declaration in order for the declaration to effectively create a condominium, including a legally sufficient description of the real estate on which the condominium is located, the maximum number of units which the developer may create and the description of the boundaries of each such unit, and the limited common elements including any real estate that may be allocated subsequently as limited common elements.¹⁹ It must also include a description of any development rights and other special declarant rights reserved by the declarant, including a statement clarifying the order in which development rights may be exercised as to different parcels of real estate, if any. These clarifying statements should help prospective purchasers and lenders in analyzing the manner in which a partially developed condominium is to be developed.

When a condominium is developed under a ground or other long-term lease, a memorandum of lease must be recorded with respect to any lease the expiration or termination of which may terminate the condominium or reduce its size.²⁰ Although leasehold condominiums are fairly rare in Kentucky, the legislation creates more certainty with respect to the rights of unit owners subject to leasehold condominiums and the manner in which leasehold condominiums must be described.

The declaration must allocate a fraction of undivided interests in the common elements and common expenses of the association, and a portion of the votes in the association, to each unit and to state the formulas used to establish those allocations.²¹ The declaration must also state the formulas to be used to reallocate the allocated interests among units in a condominium after any units are added or withdrawn. A declaration may provide for different allocations of votes to the units on par-

ticular matters specified in the declaration and for class voting on specified issues affecting the class if necessary to protect the valid interests of the class. However, the declaration may not permit cumulative voting, including cumulative voting for the purpose of electing members of the executive board.²² The sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all of the units must equal 100%. Importantly, the common elements of a condominium are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

Plats and plans are part of the declaration.²³ Upon exercising any development right, the declarant must record either new plats and plans necessary to conform to the requirements of the legislation or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of the legislation. In the latter instance, the certification of a plat or plan must be made by a professional land surveyor, licensed architect or professional engineer.²⁴

The KCA creates a variety of new

sections governing the exercise of declarant development rights.²⁵ In order to exercise any development right as to specific real estate, the declarant must record an amendment to the declaration, which must assign an identifying number to each new unit created through the exercise of the development rights, must reallocate the allocated interests among all units, and must describe any common elements and any limited common elements created through the exercise of the development rights. A declaration must be amended in the event a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements or both.

The Act provides guidance as to the right of unit owners to make improvements to their units, to change the exterior appearance of the condominium, to remove or alter intervening partitions or create apertures between adjoining units, to relocate boundaries between adjoining units, and to subdivide units.²⁶ The declarant is permitted to establish specific provisions governing these matters in the declaration, but if the declaration is silent on the matter, the KCA provides default rules.

The Act provides guidance regarding the extent to which easements are cre-

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ated within units or the common elements. To the extent any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists, although the easement does not relieve a unit owner of liability in case of willful misconduct or relieve any person of liability for failure to adhere to plats and plans.²⁷ Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights.²⁸

With certain specific exceptions stated elsewhere in the Act, a declaration may be amended only by vote or agreement of unit owners of units to which at least 67% of the votes in the association are allocated or any larger majority specified in the declaration.²⁹ However, the declaration may specify a smaller number if all of the units are restricted exclusively to nonresidential use. This is one of the several examples in the KCA in which a distinction is drawn between residential and nonresidential use of a condominium. Any action to challenge the validity of an amendment adopted pursuant to this section must be brought within a year after the amendment is recorded.³⁰ Finally, except to the extent expressly permitted or required by other provisions, no amendment to a declaration that creates or increases special declarant rights, increases the number of units, changes the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted shall be effective unless unanimously approved by the unit owners.³¹

A condominium may be terminated by agreement of unit owners to which at least 80% of the votes in the association are allocated.³² A declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.³³ Although terminations of condominiums occur infrequently, the legislation includes specific provisions regarding the rights, duties and obligations of unit owners, the association and mortgagees in the event of a proposal to terminate a condominium as well as

upon the termination of a condominium.

The KCA recognizes the existence of professional organizations that manage multiple condominiums, and provides that the provisions applicable to any unit owners' association apply equally to any such professional management organizations except as otherwise provided in the legislation.³⁴

The KCA also creates a statutory framework for the merger of two or more condominiums into a single condominium.³⁵

The KCA includes numerous provisions regulating condominium associations. As an initial matter, unless otherwise stated in the declaration, a unit owners' association shall be organized no later than the date the first unit is conveyed.³⁶ The membership of the association must at all times consist exclusively of all of the unit owners.³⁷ The association may be organized as a for-profit or nonprofit corporation or as an unincorporated association.³⁸ Section 34 includes the specific powers of the association. The declaration may alter the statutory powers of an association, but it may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons. The legislation empowers an association to impose an emergency assessment against a unit for the specific reasons set forth in the legislation, subject to approval by a simple majority of unit owners present at a special meeting of unit owners called for the purpose of approving the emergency assessment.

The legislation provides that, except as provided in the declaration, the bylaws or subsection (2) of Section 35, the executive board of the association may act in all instances on behalf of the association.³⁹ The officers and members of the executive board are held to a standard of ordinary and reasonable care in the performance of their duties.⁴⁰ One of the most important duties of an executive board is to adopt an annual budget for the condominium. Section 46 requires that once a common expense assessment has been made by the association, assessments must be made at

least annually based upon the budget. The executive board must provide a summary of the proposed budget to all unit owners within 30 days of adoption and must schedule a meeting of unit owners to consider its ratification upon not less than 14 days and not more than 30 days after the summary is circulated.⁴¹ In the interest of ensuring that budgets are formulated for condominiums, a budget formulated by an executive board shall be deemed ratified at a meeting of unit owners, whether or not a quorum is present, unless at the meeting at least a majority of the unit owners reject the budget. If rejected, the last budget ratified by the unit owners shall be continued until such time as the unit owners ratify a new budget.

The declaration may provide for a period of declarant control of the association, which must terminate no later than the earlier of any of four defined events.⁴² Unit owners have the right to elect members of the executive board during the period of declarant control.⁴³ The executive board shall elect association officers. Any member of the executive board elected by the unit owners may be removed by the unit owners, with or without cause, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present.⁴⁴ Given that a quorum can exist at a meeting of the association if persons entitled to cast 20% of the votes which may be cast for election of the executive board are present at the meeting either in person or by proxy,⁴⁵ the legislation creates a very low threshold for the removal of any member of the executive board elected by the members.

Section 36 of the KCA sets forth provisions governing the creation, exercise, transfer and termination of special declarant rights, which are defined in this section.⁴⁶ These provisions are very detailed and should provide a great deal of guidance to all parties having an interest in a condominium in which the declarant has created special declarant rights.

The Act details certain matters that must be addressed in the bylaws.⁴⁷

With certain exceptions, the associa-

tion is responsible for the maintenance, repair and replacement of the common elements, and each unit owner is responsible for the maintenance, repair and replacement of his or her unit.⁴⁸

A meeting of the members of the association must be held at least once a year, and the Act specifies the manner in which the annual or any special meeting of the members shall be called.⁴⁹ The KCA defines quorum of the association and the executive board⁵⁰ and specifies the manner in which the vote appurtenant to each unit is to be cast including through the use of a proxy.⁵¹

Neither the association nor any unit



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owner except the declarant shall be liable for the declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain.⁵² Further, the legislation provides that an action alleging a wrong done by the association must be brought against the association and not against the unit owner.⁵³ In addition, any statute of limitation affecting the association's right of action is tolled until the period of declarant control terminates.⁵⁴

The legislation sets forth the circumstances in which the common elements of a condominium may be conveyed or subjected to a lien or security interest by the association.⁵⁵ Again, a distinction is drawn between residential and nonresidential condominiums in terms of the percentage of unit owner approval required in order for an association to validly convey or encumber common elements.

An association is required to maintain property insurance on the common elements and liability insurance.⁵⁶ If any such insurance is not reasonably available, the association is obligated to immediately inform the unit owners of such fact. The Act lists the requirements for insurance obtained by the association. With certain exceptions, the association is obligated to use any insurance proceeds received due to casualty loss to repair or replace the portion of the condominium that has been damaged or destroyed.⁵⁷ Section 44 includes other important provisions governing insurers which issue insurance policies subject to the provisions of the KCA and the disposition of insurance proceeds including a provision that prohibits an insurer from canceling or refusing to renew an issued insurance policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner, and each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

The KCA continues existing law by permitting the association to make common expense assessments against the unit owners.⁵⁸ The association shall have a lien on a unit for any assessment levied against that unit or fines imposed

against its unit owner from the time the assessment or fine becomes due.⁵⁹ The lien may be foreclosed in the same manner as mortgages on real estate. The lien for assessments does not have priority over existing liens or governmental liens. However, the recordation of the declaration constitutes record notice and perfection of the lien, and no further recordation of any claim of lien for an assessment shall be required.⁶⁰ The lien will be extinguished unless proceedings to enforce the lien are instituted within five years after the full amount of the assessments becomes due, and a judgment or decree in any action to enforce the lien shall include costs and reasonable attorneys' fees for the prevailing party. The association is not precluded from taking a deed to the unit in lieu of foreclosure to recover the amounts secured by the lien. An association is obligated to provide a unit owner within 10 days after request a recordable statement setting forth the amount of unpaid assessments against his or her unit, which statement shall be binding upon the association, the executive board and every unit owner.⁶¹

The KCA includes provisions dealing with money judgments against a condominium. Specifically, except as provided in subsection (2) of Section 48, a judgment for money against the association, if recorded, shall not be a lien on the common elements but shall be a lien in favor of the judgment lienholder against all of the units at the time the judgment is entered.⁶² The exception is that, if the association has granted a lien or security interest in the common elements to a judgment creditor of the association, the holder of the lien or security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced. Section 48 also clarifies that a unit owner of a unit subject to a judgment lien that encumbers other units may obtain a release of his or her unit from the judgment lien by paying the proportionate amount secured by the judgment lien.

The KCA provides that the association must keep financial records sufficiently detailed to enable the association and its unit holders to comply

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with the provisions of Section 52 of the Act.⁶³ All financial and other records of the association must be made reasonably available for examination by any unit owner or his or her authorized agents.⁶⁴

Within 10 days after request by a unit owner, an association must furnish a certificate to the unit owner containing the information needed by the unit owner to comply with subsection (1) of Section 52.⁶⁵ The seller of a unit is obligated to furnish to the purchaser of the unit upon request and before the execution of any contract for sale of the unit a copy of the declaration, other than the plats and plans, and a copy of the bylaws, the rules or regulations of the association, and a certificate containing certain information including condominium expenses and financial information.⁶⁶

A unit owner providing the certificate to a purchaser shall not be liable to the purchaser for any erroneous information provided by the association. Also, a unit owner shall not be liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the sales contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until the conveyance, whichever first occurs. The certificate must also be prepared or delivered in other circumstances set forth in the Act. A declarant is obligated to have any real estate being conveyed to an association released from all liens that, upon foreclosure, would deprive unit owners of any right of access to or easement of support for their units.⁶⁷

KRS 381.865 was amended to provide that the association's books and records shall be audited or reviewed at least once a year by an independent accountant.

The KCA represents a significant enlargement of the statutory framework governing condominiums, especially condominiums created after the effective date of the Act. To comply with the Act, it will be incumbent upon declarants and unit owners to create or resuscitate associations that will be proactive in the management of the condominium through its executive board. The legislation was drafted with the

intent and purpose of ensuring that condominiums in Kentucky are well-managed by informed unit owners, acting through the association and the executive board, but without imposing unreasonable and unnecessary requirements and restrictions that will deter this type of ownership. Time will tell whether the appropriate balance was achieved. ①

ENDNOTES

1. The Kentucky Horizontal Property Law (1962 Acts, ch. 205) is codified in KRS §§ 381.805-381.910. *See generally* John K. Skaggs, Jr. and Charles H. Erwin, *The Horizontal Property Law of Kentucky*, 51 Ky. L.J. 46 (Fall 1962).
2. 2010 Acts, ch. 97, sometimes the "Act" or "KCA".
3. In addition to wording changes that are typical in the adoption of a uniform act, a significant number of provisions in the uniform act were not included in the Act, including: 1-112; 1-114; 2-115; 3-105; 4-102 through -107; 4-110; 4-112 through -118; 4-120 and all of article 5.
4. KRS§381.9103(1), From January 1, 2011, the Kentucky Horizontal Property Law will not apply to newly created condominiums.
5. KRS§381.9103(2).
6. KRS§381.9103(3).
7. KRS§381.9129(2). The 2010 General Assembly generally repealed the Rule Against Perpetuities. *See* 2010 Acts, ch. 21, § 14;
8. KRS§381.9129(3).
9. KRS§381.9103(4).
10. KRS§381.9103(6).
11. KRS§381.9107.
12. KRS§381.9111.
13. KRS§§381.9105(7), (19).
14. KRS§381.9105(7).
15. KRS§381.9105(19).
16. KRS§381.9105(9).
17. KRS§381.9127.
18. KRS§381.9127(6).
19. KRS§381.9133.
20. KRS§381.9135.
21. KRS§381.9137.
22. KRS§381.9137(3)(b). While an association may be organized as a business corporation (§381.9165) and a business corporation may

elect to use cumulative voting for its directors (*see* KRS§271B.7-280), this prohibition on cumulative voting in the context of an association is intended to control.

23. KRS§§381.9141(1), (3).
24. KRS§381.9141(4).
25. KRS§381.9143.
26. KRS§§381.9145-381.9149.
27. KRS§381.9151.
28. KRS§381.9153.
29. KRS§381.9155.
30. KRS§381.9155(2).
31. KRS§381.9155(4).
32. KRS§381.9157. While the declaration of a residential condominium association may provide a voting threshold higher than 80%, it may not set one lower.
33. KRS§381.9157(1).
34. KRS§381.9161.
35. KRS§381.9163.
36. KRS§381.9165.
37. *Id.* Following a condominium's termination the association is made up of the former owners or their respective heirs and assigns. *Id.*
38. *Id.*
39. KRS§381.9169.
40. KRS§381.9169(1).
41. KRS§381.9169(3).
42. KRS§381.9169(4).
43. KRS§381.9169(6).
44. KRS§381.9169(7).
45. KRS§381.9179(1).
46. KRS§381.9171.
47. KRS§381.9173.
48. KRS§381.9175.
49. KRS§381.9177.
50. KRS§381.9179.
51. KRS§381.9181.
52. KRS§381.9183(1).
53. KRS§381.9183(2).
54. KRS§381.9183(5).
55. KRS§381.9185.
56. *Id.*
57. KRS§381.9187.
58. KRS§381.9191.
59. KRS§381.9193.
60. KRS§381.9193(4).
61. KRS§381.9193(8).
62. KRS§381.9195.
63. *Id.*
64. KRS§381.9197.
65. KRS§381.9203(2).
66. KRS§381.9203(1).
67. KRS§381.9205.

The Kentucky Securities Act: A Synopsis of Recent Revisions



By Colleen Keefe and
Manning Warren III

This article briefly summarizes recently enacted amendments to the Securities Act of Kentucky (the Act).¹ On April 7, 2010, Governor Beshear signed Senate Bill 130 (SB 130) into law amending KRS Chapter 292, the Act.² SB 130 is the evolution of legislation originally crafted by the Division of Securities of the Department of Financial Institutions (the Department) and introduced in the Legislature in 2006, although it did not pass at that time. In 2010, the Department turned to Senator Thomas Buford to introduce a slightly updated version of the legislation, which was passed unanimously by both houses of the General Assembly.³ The new law is primarily a technical reorganization of the registration provisions applicable to securities professionals. The legislation also provides the Commissioner of the Department with a few new tools to combat securities fraud. In order to provide additional protection to the elderly, who are often targeted by dishonest promoters, a provision is added to double fines imposed for violations directed at those 60 and over. Perhaps the most significant of these provisions is the establishment of a Securities Fraud Prosecution and Prevention Fund. This article will discuss the specific changes that SB 130 made to the Act and the anticipated benefits of these changes.

Many of the changes to the Act are

consistent with similar provisions in the Uniform Securities Act of 2002, which was approved by the American Bar Association.⁴

This is true of the changes to KRS Section 292.330, governing the activities of broker-dealers, investment advisers, agents and investment adviser representatives. SB 130 repealed and reenacted KRS Section 292.330 in a revised form and created seven new sections to break up this once lengthy and tedious section.⁵ Previously, KRS 292.330 addressed the registration requirement for securities professionals, the registration process and exemptions from registration, as well as post-registration record keeping and reporting requirements. It also delineated the rulemaking and enforcement authority of the Commissioner of the Department related to those persons. As reenacted by SB 130, KRS 292.330 will simply set forth the requirement that a person defined by KRS 292.310 of the Act as a broker-dealer, investment adviser, agent, or investment adviser representative must be registered, and sets forth exemptions from that requirement. Many of these exemptions were previously provided as exceptions to the definitions of broker-dealer, investment adviser, agent, and investment adviser representative. SB 130 simply removes those exceptions from KRS 292.310 and places them in the revised KRS 292.330.

In addition to reenacting Section 292.330, SB 130 created seven new sections of Chapter 292 applicable to

the activities of securities professionals. The new sections describe: 1) the filing requirements to apply for registration as a securities professional;⁶ 2) the notice filing requirements for federal “covered advisers;”⁷ 3) the filing requirements for succession to the registration of a broker-dealer or investment adviser;⁸ 4) the filing requirements related to termination, temporary registration, or withdrawal from registration as a securities professional;⁹ 5) the filing fees for registration as a securities professional;¹⁰ 6) the requirements for recordkeeping and reporting by a securities professional and the authority of the Commissioner to examine securities professionals and prescribe rules governing their conduct;¹¹ and 7) the enforcement authority of the Commissioner with respect to applicants for registration as a securities professional and all other registrants.¹² These amendments are expected to bring clarity to the requirements related to the



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tions. In that capacity, she oversees investigations conducted by the Division of alleged violations of the Securities Act of Kentucky and coordinates joint investigations with other state and federal agencies including those conducted in conjunction with criminal authorities. She previously served with the Department as Director of the Securities Division and as legal counsel to the Department. Ms. Keefe is a native of Lexington, Kentucky. She holds a Bachelor of Science degree in economics from the University of Kentucky and law degree also from the University of Kentucky.

registration and conduct of securities professionals, while making it easier for those persons to comply with the Act. They are also expected to facilitate the day-to-day administration of these provisions by the Department's staff.

The Uniform Securities Act contains an exemption from broker-dealer registration for a broker-dealer without a place of business in Kentucky and who only deals with non-residents, often referred to as the "snowbird exemption."¹³ SB 130 does not contain this



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bright Scholar and Visiting Professor of Law at the University of London, Visiting Professor of Law at the George Washington University, Emory University, and the University of Arizona, and was Professor of Law at the University of Alabama. Prior to his academic career, Professor Warren was a partner at Ritchie, Rediker & Warren and an associate at Bradley Arant Rose and White, both in Birmingham, Alabama. He is a widely published scholar in the field of corporate and securities regulation, has testified on market regulation before the United States Senate Banking Committee, and has served as a consultant to the London Stock Exchange and the North American Securities Administrators Association. He also has served as a member of the U.S. Securities and Exchange Commission's Federal Advisory Committee on Market Transactions and as a director of the American Judicature Society, and is an active member of the American Law Institute. Professor Warren was formerly Chair of the Business Law Section of the Kentucky Bar Association.

specific language, but Kentucky provides this exemption in a regulation based on the Commissioner's general authority to exempt persons from broker-dealer registration by rule or order.¹⁴ Similarly, the Uniform Securities Act provides that the securities administrator may by rule or order exempt foreign registered broker-dealers.¹⁵ In Kentucky, this exemption is provided by an order.¹⁶ Finally, the Uniform Securities Act exempts out-of-state registered broker-dealers who have three or fewer customers in a particular state during a twelve-month period.¹⁷ The exemption in SB 130 is not as broad and exempts such broker-dealers only if they make 15 or fewer offers or sales in Kentucky during a twelve-month period.¹⁸

Other amendments of note include a change to KRS 292.380(6) related to the registration of securities by notification, coordination or qualification.¹⁹ This amendment limits the initial effective period of a registration statement to one year and requires the annual renewal of a registration statement for securities offered beyond the initial year. In addition, a new paragraph is added to KRS 292.480 providing for a private action for fraudulent investment advice, regardless of whether the person giving the advice also offered or sold a security.²⁰ The person so defrauded may bring an action to recover both the consideration paid for the advice and the amount of actual damages caused by the fraudulent conduct.

Finally, the Commissioner's authority at KRS 292.500(14) to impose civil fines is amended to allow the Commissioner to impose a fine of up to \$20,000 for each violation of the Act.²¹ If a violation is directed at a person age 60 or over, the Commissioner may impose an additional fine of up to \$20,000 per violation.²² Related to this amendment is a new section which will allow the Commissioner to direct a portion of these fines into a newly established Securities Fraud Prosecution and Prevention fund.²³ Expenditures from the fund may be used to assist in criminal prosecution

of fraudulent activities, for training and equipment related to prevention, detection, and investigation of securities fraud, and for investor education. It is hoped that these changes will provide the Commissioner with additional tools to protect the most vulnerable members of the investing public and make violations of the Act less profitable for dishonest promoters, issuers and securities professionals. 

ENDNOTES

1. These amendments have an effective date of July 15, 2010. *See* Atty. Gen. Op. 10-002.
2. 2010 Acts, ch. 82.
3. S.B. 130, Introduced February 2, 2010. Reported formally by Senate Banking and Insurance Committee on March 9, the Committee Substitute was approved by the Senate on March 16. The bill was approved by the House Banking and Insurance Committee on March 24 and was approved by the entire House on March 26.
4. 7C U.L.A. 22. The complete text, with comments, of the Uniform Securities Act of 2002 ("USA") is available as well at NCCUSL.org.
5. 2010 Act, ch. 82, § 2.
6. 2010 Act, ch. 82, § 3.
7. 2010 Act, ch. 82, § 4.
8. 2010 Act, ch. 82, § 5.
9. 2010 Act, ch. 82, § 6.
10. 2010 Act, ch. 82, § 7.
11. 2010 Act, ch. 82, § 8.
12. 2010 Act, ch. 82, § 9.
13. USA § 401(b), 7C U.L.A. 102.
14. 808 KAR 10:310 (2009).
15. USA § 401(d)(1), 7C U.L.A. 103.
16. Registration Exemption for Certain Canadian Broker-Dealers and Agents, Or. of Ky. Dept. Of Fin. Instns. (Oct. 12, 2006).
17. USA § 401(b)(1)(G), 7C U.L.A. 103.
18. KRS § 292.330(2)(c) as amended by 2010 Acts, ch. 82 § 2.
19. 2010 Act, ch. 82, § 10.
20. KRS § 292.480(7), created by 2010 Acts, ch. 82 § 12.
21. KRS § 292.500(14) as amended by 2010 Acts, ch. 82 § 13.

Kentucky Adopts the Uniform Prudent Management of Institutional Funds Act



By John T. McGarvey

The title is a mouthful: Uniform Prudent Management of Institutional Funds Act—known by the acronym UPMIFA—but the legislation is brief and its goal simple. By enacting Senate Bill 76, the General Assembly adopted UPMIFA’s guidelines for the management, investment, and expenditure of endowment funds held by charitable institutions.

UPMIFA replaces the former Uniform Management of Institutional Funds Act, codified in Kentucky since 1976 at KRS 273.510, *et. seq.* The authors of the new act used the experience acquired in the 34 years of the former statute by providing bright-line standards for prudent investing and management of institutional funds. The old statute was repealed upon the effective date for new legislation, July 15,

2010. The new statute will be codified as new sections of KRS Chapter 273.

The coverage of UPMIFA is expanded to include endowments held by a charitable institution for its own account and include funds held in any form, including nonprofit corporate form, except for charitable trusts with a commercial or individual trustee.

The three primary areas of difference between UPMIFA and its predecessor relate to investment conduct, the expenditure of funds and the delegation of management and investment of the funds. While some former restrictions are lifted, new express standards of conduct and evaluation have been enacted.

The former law included the general obligation of institutions to invest prudently using ordinary business care. UPMIFA is more detailed in its direction. Specific requirements on the investment of funds include:

- Costs must be managed prudently in relation to the value and type of assets, the purposes of the institution, and the investment skills available to the institution;
- Portfolio managers are not limited in the types of assets included for the portfolio;
- A “whole portfolio” standard of performance is adopted for investment management;
- There is an explicit requirement for diversification of investments and portfolio balancing.

On the expenditure side, the former law used a net appreciation standard and allowed net appreciation to be spent for the purposes of the endowment. This restricted expenditures to amounts in excess of the donated principal. It also used a historic dollar value limitation (an “underwater” endowment could distribute only current income), now rejected in favor of UPMIFA’s new prudent total return standard. Seven factors for evaluation of the prudence standard are set out in the statute:

- Duration of the fund;
- Purposes of the institution and of the managed fund;
- General economic conditions;
- Possible effects of inflation or deflation;
- Anticipated total return from income and appreciation of investments;
- Other resources of the institution;
- Institutional investment policy.

The old law permitted the delegation of management to an outside agent, but set no specific standards for either the act of delegation or the conduct of the agent. UPMIFA sets standards for both. In making the decisions about delegating management and investment of an institutional fund to outside agents, the delegating institution must act in good faith and exercise the care of an ordinarily prudent person in a similar position.

The institution must then clearly establish the scope and terms of delegation of the powers of the outside agent, and periodically review and supervise the agent. The agent owes a duty of rea-

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sonable care to the institution and must act within the scope and terms of the delegation

UPMIFA voids the mandatory arbitration clauses typically found in fund-management and investment contracts. The statute specifically provides that any agent that accepts delegation of a management or investment function from an institution subject to the laws of Kentucky, subjects itself to the jurisdiction of Kentucky courts in all disputes concerning the agent's performance.

By enacting UPMIFA, the Kentucky Legislature expanded the coverage of institutional funds but did not void or repeal other statutes that permit similar delegation of management and investment authority. Institutions that already delegate management and investing to committees, officers, or employees through the authority of other laws of the Commonwealth may continue to do so.

As did its predecessor, UPMIFA allows the release or modification of restrictions on a fund through a court proceeding if the fund meets the specific conditions enumerated in the statute. The institution must show that

the conditions from which it seeks relief are impracticable, wasteful, or impair the management or investment of funds or that this institution must demonstrate that exigent circumstances dictate relaxing the restrictions to further the purposes of the fund.

An institution seeking the relax of restrictions on a fund must do so through a court proceeding. The Attorney General must be included as a named party, given notice of the proceeding to release the restriction, and provided an opportunity to object.

UPMIFA allows the modification or release of restrictions of those funds in business for more than 20 years and with less than \$50,000 under management. The institution must use the residual fund in a manner consistent with the charitable purpose expressed in the establishing document. Although the release of the restrictions on small funds does not require a court proceeding, the release must be preceded by a notice to

the Attorney General about the proposed release at least 60 days prior to release of the fund.

UPMIFA also adopts more modern defined terms than its predecessor. For example, "record" is defined as "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and retrievable in a perceivable form." UPMIFA also recognizes and coordinates with newer federal statutes such as the E-Sign law, and directs the courts to consider the need for uniformity in the construction of the law among states that have enacted a form of this UPMIFA.

Kentucky was the 44th state and 46th jurisdiction (the others being the District of Columbia and the U.S. Virgin Islands) to enact the law. Alaska and Louisiana are near enactment of UPMIFA bills. By the end of 2010, it is anticipated that only New York, Pennsylvania, Florida, and Mississippi will not have enacted UPMIFA. ☺



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By Neva-Marie Polley

On April 26, 2010, Governor Steve Beshear signed the Amanda Ross Domestic Violence Prevention Act into law.¹ The Act, often referred to as “Amanda’s Law,” brings several changes to the Kentucky statutes which govern how courts address domestic vio-

lence. The Act is named in honor of Amanda Ross who was killed on September 11, 2009, as the result of a domestic assault allegedly committed by former state Rep. Steve Nunn. At the time of her death, a Domestic Violence Order (“DVO”) was in effect against Mr. Nunn. This article highlights some of the changes that will affect how courts

handle domestic violence cases in both the family and criminal law contexts in light of Amanda’s Law.

Eligibility Changes

An Emergency Protective Order (“EPO,” the ex parte order which may be issued prior to the initial DVO hearing) and DVO may be granted to a “family member” or a member of an “unmarried couple.”² The definition of “unmarried couple” remains the same (persons who have a child in common, any child of that couple, or persons who live, or have lived, together as a couple). The definition of “family member” has been modified to restrict the qualifying family relationship to spouses, former spouses, grandparents, parents, children, stepchildren, or other members of the same household in cases in which the alleged victim is a child.³

Contact Restriction Changes

Courts already have the authority to order an adverse party in a DVO action to have no contact with the petitioner as well as to stay away from the petitioner’s residence.⁴ Amanda’s Law provides that courts may also enter orders restraining the adverse party from traveling to other locations frequented by the petitioner, such as a school or workplace.⁵ Additionally, adverse parties may be restricted from having contact with certain members of the petitioner’s family.⁶ The distance at which a restrained party may be ordered to remain from a protected person or a protected location is set at 500 feet.⁷ Previous versions of the law did not limit the contact provisions of the order to 500 feet; courts were at liberty to craft orders setting the distance at the number of feet appropriate in a given case.

Reissuance of a Protective Order When Adverse Party not Served

If an adverse party has not been served with notice at the time of the initial DVO hearing, the court is required to reissue the summons and

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continue the terms of the EPO pending a second hearing date, which must be held within 14 days of the initial hearing date.⁸ Courts are to continue this process until the adverse party is provided with at least 72 hours of notice of the final hearing date.⁹ The EPO may remain in effect for no more than six months from the initial filing of the petition.¹⁰ A petitioner may file a new petition for protection prior to the expiration of the six-month time period. If a new petition is not filed within the six-month period, the EPO will be dismissed without prejudice. Absent service on the adverse party, the series of EPOs may not be extended for more than two years.¹¹

Global Positioning Monitoring System

Amanda's Law grants courts the authority to require, in lieu of imprisonment, the adverse party to wear a Global Positioning Monitoring System ("GPMS") following a "substantial violation" of a DVO.¹² "Substantial violation" is defined as assault, menacing, terroristic threatening, stalking, wanton endangerment, kidnapping, sexual offense, burglary, destruction of property, theft, harassment or any felony offense against the petitioner or his/her family.¹³ Once GPMS is ordered, it is a

Class D Felony to fail to wear the device as ordered; to remove the device; or to tamper or destroy the device.¹⁴ GPMS may also be utilized in criminal cases as a condition of pretrial release, probation, pretrial diversion or conditional discharge of a sentence of incarceration.¹⁵

Retrieval of Adverse Party's Criminal Record

Upon request of a party, or on its own motion, a court may obtain an adverse party's criminal history from the Kentucky State Police or from the Administrative Office of the Courts. Courts may also obtain records of prior EPOs and DVOs, along with the adverse party's history of compliance with such orders.¹⁶

Domestic Violence Shelter Trespass

Amanda's Law creates a new criminal offense titled "Domestic Violence Shelter Trespass." This offense is committed when a person, who is currently the subject of a protection order, enters the building or premises of a domestic violence shelter. Violations of this statute will be prosecuted as a Class A Misdemeanor. Consent by the adminis-

trator of the shelter is a defense to this charge.¹⁷

A complete version of Amanda's Law — in its final version at the time of passage and signing — can be found at <http://www.lrc.ky.gov/Statrev/ACTS2010RS/0170.pdf>. The provisions of Amanda's Law went into effect on July 15, 2010. ©

ENDNOTES

1. 2010 Acts, ch. 170.
2. KRS § 403.740.
3. KRS § 403.720(2), as amended by 2010 Acts, ch. 170, § 1.
4. KRS § 403.740(1).
5. KRS § 403.740(1), as amended by 2010 Acts, ch. 170, § 2.
6. *Id.*
7. *Id.*
8. KRS 403.740(4), as amended by 2010 Acts, ch. 170, § 2.
9. *Id.*
10. *Id.*
11. KRS 403.740, as amended by 2010 Acts, ch. 170, § 2.
12. 2010 Acts, ch. 170, § 7.
13. *Id.*
14. *Id.*
15. *Id.*
16. 2010 Acts, ch. 170, § 3.



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The Delicate Ethical Requirements of Representing a Person With Diminished Capacity

Del O'Roark, Loss Prevention Consultant, Lawyers Mutual Insurance Company of Kentucky

Introduction

The rapidly aging US population raises many social issues for our society. None is more significant for lawyers than the fact that they will encounter in increasing numbers persons with what Kentucky's 2009 Rules of Professional Conduct (hereinafter Rules or Rule) describe as "diminished capacity." These are people who in various degrees cannot work with lawyers in a traditional lawyer-client relationship – the primary concept that underpins virtually all the Rules that govern ethical behavior for Kentucky lawyers.

Kentucky's 1990 Rules included Rule 1.14, Client under a disability, that provided lawyers limited guidance for situations when a person was unable to function as a fully competent client. This Rule, however, left too many unanswered questions concerning:

- How is the lawyer-client relationship altered when a client is disabled?
- How are lawyers to determine that a person was disabled?
- When may a lawyer take protective action on behalf of such person?
- What protective actions may lawyers ethically take?
- When may a lawyer disclose a disabled client's condition?

The 2009 revised Rule 1.14¹ is a major advancement in answering these questions. The purpose of this article is to provide an overview of these revisions and then offer a structure for applying the Rule by highlighting its standards and covering the key considerations in its application. The article concludes with suggestions for risk management of representation of clients with diminished capacity.

An Overview of the 2009 Revised Rule – It is Important What You Call Things

The first significant revision is in the caption of Rule 1.14. "Client under a disability" is now "Client with diminished capacity," which phrase is then used throughout the Rule and its Comments. The purpose of this change in terminology is to stress the new focus of the Rule on a continuum or degrees of a client's diminished capacity as opposed to the more restrictive term "disability."² Now when a lawyer becomes

concerned whether a client is fully competent, the term diminished capacity brings into consideration a range of incapacity from mild to extreme. Where the client is on that spectrum will be the benchmark from which ethical representation is measured.

Other important additions to the Rule and its Comments that are covered below are:

- Guidance on determining the extent of a client's diminished capacity.
- Guidance on the participation of family members or other persons in the lawyer's representation of a client with diminished capacity.
- A standard for authorization to take protective action on behalf of a client with diminished capacity.
- Protective measures that a lawyer may take short of requesting the appointment of a guardian.
- Guidance on whether a lawyer may seek appointment of a guardian.
- Guidance on Rule 1.6 confidentiality limitations on disclosure of a client's diminished capacity.
- Guidance on rendering emergency legal assistance to a person with seriously diminished capacity.

The Lawyer-Client with Diminished Capacity Relationship

A good way to analyze a lawyer's relationship with a client with diminished capacity is to start with a review of how the Rules require lawyers to work with competent clients. A succinct description of the normal interaction between lawyer and client is:

A normal client-lawyer relationship presumes that there can be effective communications between client and lawyer, and that the client after consultation with the lawyer, can make considered decisions about the objectives of the representation and the means of achieving them.³

However:

When the client's ability to communicate, to comprehend and assess information, and to

make reasoned decisions is partially or completely diminished, maintaining the ordinary relationship in all respects may be difficult or impossible.⁴

This breakdown in the normal relationship invokes Rule 1.14 that establishes the overarching requirement that a lawyer's primary duty is to, as far as reasonably possible, maintain a normal lawyer-client relationship with a client with diminished capacity.⁵ The Comments to the Rule embellish this requirement as follows:

Comment (1): The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

Comment (2): The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

Examples of lawyers found not to have maintained a normal relationship as far as reasonably possible are:

- Lawyer failed to abide by client's estate planning objectives after being informed of client's medical and mental disability.
- Lawyer conducted only one telephone discussion with incapacitated client before filing voluntary conservatorship proceedings, provided inadequate representation during the call, and thereafter had no direct communication with the client.
- Order appointing guardian reversed because lawyer failed to develop a strategy in collaboration with the incapacitated client for solving the legal problems of the client.

- Lawyer failed to adequately represent client in guardianship proceedings when, in name of client's best interests, and contrary to client's wishes, lawyer waived client's statutory right to be present at trial, made recommendations to the court that contravened client's wishes, sought to prevent hearing on the issue of disability, and objected to all testimony on the issue.⁶

What reasonably normal relations should be with a client with diminished capacity will always turn on the unique facts of the client's condition. There is no substitute for good judgment in deciding what that is. What is clear is that to comply with Rule 1.14 an effort must be made to communicate with the client and ascertain the client's views of the matter. To this end ABA Formal Opinion 96-404 (8/2/1996) advises 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 decisions and directions." The opinion stresses that the fact that a lawyer believes a client's judgment is in error or is ill considered does not per se mean the client is unable to adequately act in his own interest. The lawyer should not substitute his judgment for "what is in the client's best interest [because this] robs the client of autonomy and is inconsistent with the principles of the 'normal' relationship."

What Constitutes a Reasonable Belief that a Client has Diminished Capacity?

As accomplished as we lawyers see ourselves, there are few of us with the qualifications to unilaterally determine when a person has diminished capacity except when representing minors, when a client has a legal representative or guardian at the inception of a representation, and the more extreme cases of obvious mental or physical problems. Eccentricity, odd behavior, contrariness, decisions against interest, and other traits that a lawyer may find questionable in a client are not the same thing as diminished capacity. Reasonable belief is the lawyers standard for determining when a client's condition moves from difficult to the level of diminished capacity. As an aid in applying this standard the following is offered:

Rule 1.0, Terminology, provides these definitions for belief and reasonable belief:

"Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

The Restatement of the Law — The Law Governing Lawyers (hereinafter *Restatement*) helpfully elaborates on a reasonable belief of diminished capacity as follows:

A lawyer should act only on a reasonable belief, based on appropriate investigation, that the client is unable to make an adequately considered decision rather than simply being confused or misguided. Because a disability may vary from time to time, the lawyer must reasonably believe that the client is unable to make an adequately considered decision without prejudicial delay.

A lawyer's reasonable belief depends on the circumstances known to the lawyer and discoverable by reasonable investigation. Where practicable and reasonably available professional evaluation of the client's capacity may be sought.

....

Careful consideration is required of the client's circumstances, problems, needs, character, and values, including interests of the client beyond the matter in which the lawyer represents the client.⁷

Comment (6) to Rule 1.14 advises that in assessing a client for diminished capacity, a lawyer in appropriate circumstances may seek guidance from an appropriate diagnostician and should consider:

- The client's ability to articulate reasoning leading to a decision.
- The variability of the client's state of mind and ability to appreciate consequences of a decision.
- The substantive fairness of a decision.
- The consistency of a decision with the known long-term commitments and values of the client.

In investigating whether a client has diminished capacity, a lawyer may obtain relevant information from sources such as family and friends, concerned parties, health care providers, social services, and court-appointed professionals.⁸ The one thing to be sure not to do is to jump to conclusions or fail to thoroughly investigate. A Washington lawyer received an 18-month suspension from practice for filing a petition for appointment of a guardian for a client he asserted was incompetent based on his personal judgment without conducting any formal investigation into the client's medical or psychological state. There was no evidence the lawyer consulted the client's healthcare providers or talked with people in her community. The last date that the lawyer personally talked to the client was nearly two months before filing the petition. A dissenting justice wanted to disbar the lawyer.⁹

What Should a Lawyer Do When the Reasonably Normal Lawyer-Client Relationship Breaks Down?

The best situation for a lawyer representing a client with diminished capacity is that by sensitive and careful communication a reasonably normal lawyer-client relationship is maintained throughout the representation. When this relationship breaks down, the issue becomes may the lawyer now make necessary decisions for the incapacitated client or must decisions be reached by following the Rule 1.14 guidance for taking protective action.

The *Restatement* would allow a lawyer representing an incapacitated client without a guardian or legal representation to "pursue the lawyer's reasonable view of the client's objectives or interest as the client would define them if able to make adequately considered decisions on the matter, even if the client expresses no wishes or gives contrary instructions."¹⁰

The 1990 Rule 1.14 Comments included language that also suggested that if the client had no guardian or legal representative, a lawyer had some undefined authority to make decisions for the client. This language, however, was deleted from the 2009 Rule 1.14 Comments with the explanation that it is unclear when it is appropriate for a lawyer to act for an incapacitated client and what the limits on any such action would be.¹¹ Therefore, notwithstanding the *Restatement* position, Kentucky lawyers are best advised not to be aggressive in encroaching on decisions reserved for clients by Rule 1.2, Scope of representation and allocation of authority between client and lawyer, and follow the guidance in Rule 1.14 for taking protective action on behalf of a client with diminished capacity.

Taking Protective Action

Major improvements in the 2009 Rule 1.14 are the added provisions on when and how lawyers should proceed in taking action to protect the interests of a client with diminished capacity. The Rule now contains a standard or trigger for when protective action may be taken and three new Comments with guidance on assessing a client's capacity and selecting the most appropriate protective action. It divides protective action into two categories – those protective actions short of seeking appointment of a guardian and the more drastic step of seeking the appointment of guardian ad litem, conservator, or general guardian.

When may protective action be taken?

Rule 1.14 answers this question specifically:

- (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.

Protective actions short of seeking the appointment of guardian ad litem, conservator, or general guardian.

The first step in determining what protective action to take is to assess the degree of the client's diminished capacity. See the analysis above on reasonable belief for determining whether a client has diminished capacity and in what degree. Once the conclusion is reached that protective action is necessary, a lawyer should follow the basic rule that the least restrictive action under the circumstances that will serve the client's needs should be selected.¹² Rule 1.14, Comment (5) incorporates this principle as follows:

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.

Comment (5) includes this list of protective actions short of seeking the appointment of a guardian:

- Consulting with family members.
- Using a reconsideration period to permit clarification or improvement of the client's circumstances.
- Using voluntary surrogate decision-making tools such as durable powers of attorney.
- Consulting with support groups, professional services, and adult-protective agencies.
- Other individuals or entities that have the ability to protect the client.

Seeking the appointment of guardian ad litem, conservator, or general guardian.

Comment (7) provides this guidance when considering whether to seek a guardian for the diminished capacity client:

If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for

the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

When seeking the appointment of a guardian, it is still required that the least drastic protective action be selected. For example, if the representation concerns litigation, a guardian ad litem is the appropriate protective action – not a general guardian to take overall control of the client's affairs.¹³

There are a number of ethical considerations involved in seeking the appointment of a guardian that are beyond the scope of this article. The ABA/BNA Lawyers' Manual on Professional Conduct provides a good analysis of these issues in its Lawyer-Client Relationship chapter, Client With Diminished Capacity, at 31:601, 609. This is the place to begin research.

Disclosing Diminished Capacity

Disclosing a client's diminished capacity is one of the most difficult decisions that lawyers can face. Ill-considered disclosure can be unnecessarily embarrassing for the client, worsen his condition, create complications for maintaining a reasonably normal relationship with the client, and even lead to undesired efforts by others to appoint a guardian for or institutionalize the client when the client's condition does not require such drastic action. Rule 1.14 now includes helpful new guidance for applying Rule 1.6's confidentiality requirements in diminished capacity client representations. Paragraph (c) of Rule 1.14 provides:

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.

Comment (8) to the Rule amplifies this guidance as follows:

Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by

Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.¹⁴

Emergency Legal Assistance for a Nonclient with Seriously Diminished Capacity

Lawyers from time to time are consulted by a person with obvious seriously diminished capacity who desperately needs legal assistance. Recognizing the incapacity, a lawyer may reasonably decide not to consult further with that person. The moral, if not ethical, problem for the lawyer is the person is then left exposed to potentially irreparable harm. Is there some limited scope of representation the lawyer can assume to help the person get the legal assistance needed? Rule 1.14 now answers this question in its Comments:

(9) In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

(10) A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Apparently the Comments presume that the diminished capacity of the person is so severe that it is patently obvious and no investigation is necessary – reasonable belief is a given. I found no authority on this point or on applying the emergency legal assistance Rule 1.14 Comments to a case. Whether this means that there have been few problems with them, or that lawyers are not using them is a matter of conjecture. Note that if emergency action is taken, the lawyer has the fiduciary duties of a lawyer-client relationship for the limited scope of representing the person in acquiring emergency legal assistance. If the person with diminished capacity consulting the lawyer is a prospective client and no emergency action is taken, Rule 1.18, Duties to prospective client, applies to the consultation.

Special Considerations

Involvement of family members: Family members may become involved in the representation of a client with diminished capacity in three ways. First, the client may ask for family members to participate in the matter. Second, a lawyer may consult family members in taking protective action. Rule 1.14 Comment (3) provides this guidance:

The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not family members, to make decisions on the client's behalf.

The third way in which family members can become involved in a representation is by paying the lawyer's fees. This is permissible per Rule 5.4(c) that provides:

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.¹⁵

Withdrawal: A lawyer's fiduciary duty of loyalty when representing a client with diminished capacity requires that the lawyer not consider withdrawing except under the most extreme cases of a breakdown in the relationship. ABA Formal Opinion 96-404 offers this helpful analysis of the issue:

[W]hile withdrawal in these circumstances solves the lawyer's dilemma, it may leave the impaired client without help at a time when the client needs it most. The particular circumstances may also be such that the lawyer cannot withdraw without prejudice to the client. For instance, the client's incompetence may develop in the middle of a pending matter and substitute counsel

may not be able to represent the client effectively due to the inability to discuss the matter with the client. Thus, without concluding that a lawyer with an incompetent client may never withdraw, the Committee believes the better course of action, and the one most likely to be consistent with Rule 1.16(b) [Declining or terminating representation], will often be for the lawyer to stay with the representation and seek appropriate protective action on behalf of the client. (*footnotes omitted*)

Discharge: Clients with diminished capacity may discharge their lawyer. The main ethics consideration for a discharged lawyer is covered in Comment (6) to Rule 1.16, Declining or terminating representation:

If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.¹⁶

Discharge by a client with diminished capacity has been considered in one KBA ethics opinion. KBA E-314 (1986) gave a qualified yes to the inquiry of a discharged lawyer on whether he could initiate conservatorship proceedings for his now former client because he believed the former client was under undue influence by successor counsel.

Substantive law: It is important to consider that substantive law requirements may apply to a representation of a client with diminished capacity. This can be the case in representing minors or other incapacitated or vulnerable persons. Substantive law overrides ethics rules. Thus, in situations when Rule 1.14 would not permit disclosure of a client's diminished capacity or other confidential information, substantive law may require a lawyer to report this information to the proper authorities.¹⁷

Criminal defense counsel: In addition to the considerations in representing clients with diminished capacity covered in this article, criminal defense counsel must consider the impaired client's constitutional rights in determining appropriate protective action. The ABA/BNA Lawyers' Manual on Professional Conduct covers constitutional considerations for defense counsel in its chapter on Lawyer-Client Relations, Client With Diminished Capacity, 31:601 at 31:620.

Managing the Risk

The risk of misunderstandings in diminished capacity client representations is large and requires heightened risk management practices. What follows are some ideas on how to manage this increased risk.

- **Letter of engagement (LOE):** Always use a letter of engagement in diminished capacity client representa-

tions that clearly identifies who the client is, the scope of the engagement, the fee agreement, and any special instructions. In the scope paragraphs cover specifically what will be done and what will not be done for the client. An example of a special instruction is client consent to reveal confidential information. It will usually be necessary to modify the language of a standard LOE to an easy to read/easy to understand format tailored to the ability of the client to comprehend.

- **Fee Agreement:** Do all that can be done in the LOE to avoid fee issues. Ask for a substantial "evergreen" retainer at the inception of the representation. Charge a fixed fee collected in advance, if that is feasible. Keep in mind that withdrawing from representing a diminished capacity client is problematic. Withdrawing and suing the client for fees carries a great risk of both a malpractice claim and a bar complaint – a losing proposition for a lawyer when the adversary is a client with diminished capacity that the lawyer has dropped.
- **Document the file:** Meticulously document the file. It is always prudent to follow up with a letter every tough issue consultation with a client that includes what was discussed, advice given, and the client's decision or instructions. With diminished capacity clients consider going one step further and sending a letter after every consultation tailored to the client's ability to understand. At a minimum document the file after every consultation with the client.
- **Conflicts of interest:** Be alert for conflicts of interest. These can be intergenerational conflicts of interest centering on preservation of assets of the client that arise when family members participate in discussions with the lawyer; spousal conflicts in estate planning and divorce matters; and fiduciary conflicts when a lawyer represents a fiduciary or is a fiduciary.
- **Make a comprehensive review of the matter just before filing suit:** It is always difficult to withdraw from representation of a diminished capacity client, but even more so once a suit is filed. Just prior to filing suit carefully review the situation to resolve any issues such as whether the client's condition has progressed to the point that a guardian ad litem should be appointed, whether the relationship has deteriorated to the point that the lawyer cannot adequately represent the client, and any shortfall in the payment of agreed fees.
- **Do not forget to check for substantive law requirements and changes in the law applicable to representations of diminished capacity clients.** A recent example of the importance of keeping up with the law on representing clients with diminished capacity is the Kentucky Supreme Court decision in *Branham v. Stewart* (No. 2007-SC-000250-DG,

3/18/10). In *Branham* the Court held that a minor may make a claim for legal malpractice or breach of fiduciary duty against a lawyer retained by a person acting as the minor's next friend or statutory guardian. While clarifying the professional relationship of lawyers with minors, the decision also raises ethical questions regarding representing minors. Read *Branham* and "The Child Client in Domestic Violence Proceedings: The Ethical Dilemma of Child Advocacy in Guardian Ad Litem Appointments" by Crabtree and DiLoreto in the January 2010 issue of the *KBA Bench & Bar* (Vol. 74 No. 1). Be sure to avoid conflicts of interest when representing more than one party in matters involving minors. You are likely to be sued either for malpractice or fiduciary duty breach if you fail to do so.

- **Use the KBA Ethics Hotline:** Many of the decisions necessary to adequately represent a diminished capacity client involve close ethical questions. The KBA Ethics Hotline is a readily available source of sound advice for Kentucky lawyers and especially suitable for ethics questions concerning clients with diminished capacity.

Conclusion

Thanks to the 2009 revised Rule 1.14, Kentucky lawyers now have substantially improved guidance for representing those highly vulnerable clients with diminished capacity whose best hope is a lawyer that will protect their interests. ☺

ENDNOTES

1. 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.

2. ABA Ethics 2000 Commission Reporter's Explanation of Changes – Model Rule 1.14.
3. ABA Formal Opinion 96-404 (8/2/1996). Citing Rules 1.2 and 1.4.
4. *Ibid.*
5. Paragraph (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.
6. *See*, ABA Annotated Model Rules of Professional Conduct (6th Ed., 2007), page 216, and ABA/BNA Lawyers' Manual on Professional Conduct, Client With Diminished Capacity 31:601 at 31:603 for citations and additional analysis.
7. *See*, §24, A Client with Diminished Capacity, Comment *d*, of the Restatement of the Law, The Law Governing Lawyers (2000).
8. *See*, ABA Annotated Model Rules of Professional Conduct (6th Ed., 2007), page 218, and ABA/BNA Lawyers' Manual on Professional Conduct, Client With Diminished Capacity 31:601 at 31:606, 607.
9. *In Re Eugster*, Wash. No.200, 568-3, 6/11/2009.
10. §24, A Client with Diminished Capacity, (2) and Comment *d*, of the Restatement of the Law, The Law Governing Lawyers (2000).
11. ABA Ethics 2000 Commission Reporter's Explanation of Changes – Model Rule 1.14.
12. ABA Formal Opinion 96-404 (8/2/1996).
 13. *Ibid.*
 14. For a summary of ethics opinions on disclosure *see*, ABA Annotated Model Rules of Professional Conduct (6th Ed., 2007), page 221, and ABA/BNA Lawyers' Manual on Professional Conduct, Client With Diminished Capacity 31:601 at 31:617.
 15. *See also*, Rule 1.8(f).
 16. *See generally*, ABA/BNA Lawyers' Manual on Professional Conduct, Client With Diminished Capacity 31:601 at 31:617.
 17. Rule 1.6 (b)(4).

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**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

IN RE THE MATTER OF:

**JOHN DAVID SEAY, CIRCUIT JUDGE
TENTH JUDICIAL CIRCUIT**

ORDER OF PUBLIC REPRIMAND

John David Seay is Circuit Judge for Kentucky's Tenth Judicial Circuit composed of Hart, Larue and Nelson Counties. Judge Seay has waived formal proof and has agreed to accept the disposition made in this order.

After receiving complaints and conducting an investigation, the Commission determined that Judge Seay failed to render timely decisions in a significant number of cases. The delays were inordinate.

The Kentucky Code of Judicial Conduct, SCR 4.300, Canon 3B(8), provides: "A judge shall dispose of all judicial matters promptly, efficiently and fairly." The Commentary points out that Canon 3B(8) requires judges to be "expeditious in determining matters under submission."

There was a pattern of delay in cases under submission in all three counties of Judge Seay's circuit. The inaction persisted even after a number of cases were brought to his attention by the Commission. In these matters, Judge Seay violated Canon 3B(8) of the Code of Judicial Conduct by failing to dispose of judicial matters promptly and efficiently.

In making the determinations in this order, the Commission duly considered that Judge Seay had no prior infraction, that he met and cooperated with the Commission and discussed his docket in an attempt to address the delays, and that he has made significant and substantial progress in making rulings and expediting cases. The Commission will continue to monitor Judge Seay's court as to the status of his case docket.

IT IS THEREFORE ORDERED that for the foregoing violations Judge John David Seay is hereby publicly reprimanded.

DATE: July 30, 2010

STEPHEN D. WOLNITZEK, CHAIR

AGREED TO :

JOHN DAVID SEAY



Writing a Persuasive Letter

by Professor Jennifer Jolly-Ryan
Northern Kentucky University's Chase College of Law

During his or her career, a lawyer will write many persuasive letters. The lawyer may write letters asserting a client's rights or offering to settle a legal dispute. The lawyer risks jeopardizing his or her own credibility, and more importantly the client's case, by writing an ineffective letter that discourages, rather than encourages, negotiation. Negotiation is not a time to lose credibility or create an adversarial relationship.

A lawyer has much to lose if there are mistakes in his or her writing. Opposing counsel will judge the strength of the lawyer's case by the way it is written. For example, if a demand letter is full of typos, mistakes in grammar, or weak or wrong explanations of the facts or law, opposing counsel will have no incentive to settle the client's case or meet the requests. Opposing counsel will assume that if the case goes to trial, the lawyer will also do a sloppy job with the trial, so why settle?

In most instances, the lawyer's audience for persuasive letter writing is opposing counsel. If a party is represented by counsel, *all* communication must be with opposing counsel.¹ Aside from the rules of Professional Responsibility, keep in mind that writing to a sued, non-lawyer is a sensitive matter. The sting can be taken out of any letter through eliminating an over formalistic tone or poor word choice. For example, a lawyer can avoid the appearance of an attack by minimizing the times the word "you" is used in a letter. Even when letters are written to

opposing counsel, which is most often the case, there is no need to declare war in the process of negotiations.

A lawyer should also be reasonable when setting a time for opposing counsel to respond to a demand or request in a letter. As a matter of good practice and courtesy, give opposing counsel enough time to consult with his or her client, perhaps consult with an insurance carrier, and evaluate the settlement offer, without leaving the case and clients in limbo. Remember that settlement negotiations are not all out war and the demand letter *begins* the process of negotiation.

Here are more tips that will help improve persuasive writing, whether in a letter, in a memorandum in support of a motion, or in a brief.

Avoid Value Laden Words and Personalization:

Avoid too strong, value-laden words like "clearly" and "obviously." Instead, make the substance of the writing so convincing that the reader will draw his or her own conclusion that the point made is clear or obvious. On the other hand, do not weaken writing by including personalized words like "I think," "I believe," or even "we believe." In persuasive writing, be much more direct with the point.

Make the Document Appear Professional:

To make a good impression, the document must be professional in

appearance. Be consistent with margins and in a business letter, align the information to the left. A business letter uses one-inch margins, single space and block paragraphs with one line space in between each one. It includes a salutation and a signature line. Follow the rules of formality, whether the letter is written in hard copy or email.

Use Active Voice, to Make Forceful Points:

The active voice is usually shorter, clearer, much punchier, and the subject of the sentence is acting rather than being acted upon.

Passive: The deadline was missed **by** the defense counsel.

Active: Defense counsel missed the deadline.

The clue to the passive voice in the first sentence is the word "by."

Avoid Nominalizations (Often identified through words ending in "tion"):

Provide responses = respond

Offer testimony = testify

Make inquiry = inquire

Places a **limitation** upon = limits

Make an **examination** of = examines

Reach a **resolution** = resolve

Bears a resemblance to = resembles

Cut Extra Words:

Adequate number of = enough

At the present time = now

On a daily basis = today

Due to the fact that = because

Excessive number of = too many
 For the reason that = since
 In the event that = if
 In the near future = soon
 Prior to = before
 At this point in time = now

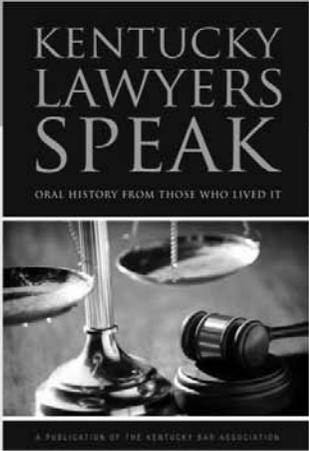
resented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Model Rules of Prof'l. Conduct R. 4.2 (2003), available at http://www.abanet.org/cpr/mrpc/rule_4_2.html. According to the ABA Comments to Model Rule 4.2, the purpose of Model Rule 4.2 is to protect "a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who

are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation." Model Rules of Prof'l. Conduct R. 4.2 cmt. 1 (2003), available at http://www.abanet.org/cpr/mrpc/rule_4_2_comm.html. This rule has been revised since 2002 to permit a prosecutor to communicate with a represented party without the other lawyer's consent if the prosecutor first obtains a court order.

ENDNOTE

1. *The ABA's "No-Contact" Rule*, ABA Model Rule of Professional Conduct 4.2 provides:
 In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be rep-



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NKU Salmon P. Chase College of Law

By Amber Potter
NKU Chase College of Law
Communications Coordinator

NKU Chase Welcomes New Faculty

Beth Locker has joined the Chase faculty as Director of Externships. She received her J.D. from the



Elizabeth Locker

University of Michigan Law School and her A.B. from Dartmouth College with a major in psychology and minor in education. She has focused her legal career on child welfare and juvenile justice issues and is committed to developing practice-ready attorneys who are well prepared to leave law school and engage in fulfilling legal careers.

At the University of Michigan Law School, Locker worked with both the university's own child welfare law clinic and a similar clinic at the University of Cape Town South Africa. Upon graduation from law school, she was awarded the Post-Graduate Fellowship in Law at the Barton Child

Law & Policy Clinic at Emory University School of Law. While there she supervised students in the clinic and summer externship programs as well as co-taught a seminar course on child welfare law.

Upon completion of her fellowship,



Donna M. Spears

Locker joined the Supreme Court of Georgia Committee on Justice for Children where she eventually served as Deputy Project Director. While working for the J4C, she was named a Marshal Memorial Fellow by the German Marshall Fund of the United States and given the opportunity to study international and children's policy issues in Europe.

In her most recent position, Locker served as Policy Director at Voices for Georgia's Children, a statewide children's policy and advocacy organization where she was responsible for oversight and expansion of the organization's comprehensive policy agenda for children.

Donna M. Spears has joined the Chase College of Law Library faculty as Assistant Professor of Law Library Services and Assistant Director for Research & Instructional Technology. She earned her bachelor's degree from the University of Louisiana at Lafayette and her master's degree in Library and Information Science from Louisiana State University. Her first professional librarian position was as the Electronic Resources Librarian at the Lafayette Parish Public Library in Lafayette, La.

Spears earned her J.D. from Loyola University College of Law in New Orleans, La. While in law school, she clerked for Justice Knoll of the Louisiana Supreme Court and Judge Lemelle of the Federal District Court for the Eastern District of Louisiana. Her professional career as a law librarian began at the Florida International University College of Law Library where she served as a Research and Reference Librarian. She will be teaching Basic Legal Skills - Research and Advanced Legal Research. ©

UK University of Kentucky College of Law

By Richard C. Ausness
Gallion & Baker Professor of Law
University of Kentucky College of Law

Trust Protectors

I recently completed an article, to be published this fall in the ABA's Real Property, Trust and Estate Law Journal, that identifies a number of uses for trust protectors and also points out that many issues in this area have not been addressed by either courts or legislatures.



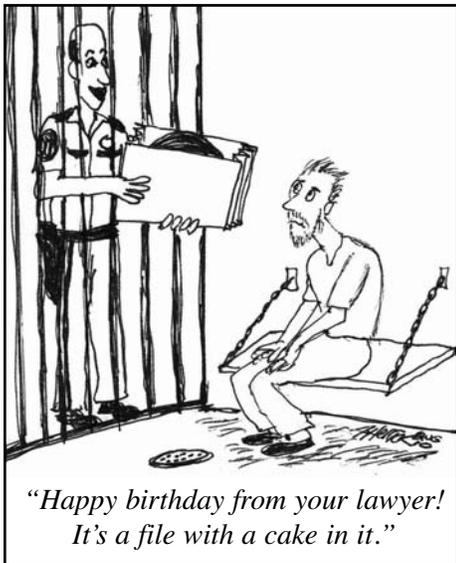
Richard C. Ausness

A trust protector is a person who is

appointed by the settlor to ensure that the trustee carries out the settlor's wishes. A number of states have now enacted statutes that expressly or impliedly authorize settlors to appoint trust protectors. In addition, § 808 (b) of the Uniform Trust Code provides that the settlor may authorize a third party to oversee the trustees or make certain decisions about the management or distribution of trust assets. Although the Code does not mention trust protectors by name, a comment to that section declares that "[s]ubsections (b)-(d) ratify the use of trust protectors and trust advisors."¹

Depending on the jurisdiction, trust protectors can be given a wide variety of powers and responsibilities. For example, settlors may appoint trust protectors to advise the trustee about investment decisions or about discretionary distributions to beneficiaries. The settlor can also give a trust protector the power to remove a trustee, co-trustee or successor trustee and to appoint a replacement. In addition, the settlor may authorize the trust protector to direct, consent or veto a trustee's action or inaction in making discretionary distributions to beneficiaries. In addition, a trust protector may be

Legally Insane by Jim Herrick



authorized to consent to or veto the exercise of a power of appointment. Finally, the settlor may empower the trust protector to modify the substantive provisions of the trust, including provisions that affect the rights of trust beneficiaries.

Unfortunately, many questions about the status of trust protectors have not been answered. First, should a trust protector be treated as a fiduciary? Second, if a trust protector owes some sort of fiduciary duty, what standard of conduct applies? Third, if a trust protector is a fiduciary, to whom is this fiduciary duty owed? Finally, what remedies are available in such cases to an injured party? So far, the only appellate decision to address any of these issues is *Robert T. McLean Irrevocable Trust v. Davis*,² decided by the Missouri Court of Appeals in 2009.

McLean involved a special needs trust established by the beneficiary's grandmother. In 2005, a successor trustee brought suit against the trust protector, alleging that he failed to monitor and report trust expenditures and failed to prevent the former trustees from acting against the interests of the beneficiary. A Missouri intermediate appellate court considered whether the defendant had breached any fiduciary duty to the beneficiary. The court found that the trust instrument conferred powers on the trust protector in a "fiduciary" capacity. Thus, the court concluded that the trust protector owed a duty of trust, confidence, candor and *good faith*.

Despite the increasing popularity of trust protectors, their powers and duties are poorly defined and their legal status is ambiguous in many states. My article suggests that that the Uniform Trust Code be revised to identify a trust protector's powers and responsibilities. ①

ENDNOTES

1. Unif. Trust Code § 808, cmt (amended 2004 & 2005).
2. 283 S.W.2d 786 (Mo. Ct. App. 2009).



University of Louisville School of Law

By Jim Chen
Dean and Professor of Law

Notes from the vast wasteland: All I really need to know about law, I learned from ABC's prime-time schedule

Television is a "vast wasteland," said FCC chairman Newton Minow in a celebrated 1961 address. For the most part, I agree. But I did indulge in two series during the 2009-10 season, which happily (for me) aired back-to-back on the same night on one broadcast network's prime-time schedule. Though I have the flimsiest of excuses for this admittedly frivolous exercise, I'll stick to it. All I really need to know about law, I learned from *Lost* and *V*.

It's hard to imagine a more incongruous pair of shows. *Lost* was a six-season, 121-episode cultural phenomenon, lavishly produced and filmed on location in Hawaii. *Lost*'s dominant attitude toward technology is skeptical; its heroes are reduced to making do with the relics of a utopian community that died out in the 1970s. Its sprawling plot drove its producers on a wild chase across time and space in search of thematic coincidences and cosmic themes. But none of *Lost*'s leitmotifs ever proved more compelling than the title of the second season's finale, "Live Together, Die Alone."

For its part, *V* is an update of a 1983 miniseries about — no, I could not make this up — technologically superior reptilian aliens infiltrating human society. "The Visitors" seduce humans with miraculous cures and an inexhaustible source of energy. Although some critics have imagined *V* as a thinly veiled allegory about contemporary politics, its own producers call it "a show about spaceships." This visually flashy series has only one overarching theme, but it's a good one. What separates lizards from outer

space from humans on earth is empathy. In other words, to empathize is human.

Despite its superficial complexity, law arises from the interaction of very simple and quite arguably universal rules. Possession really is nine-tenths of the law of property. The notoriously chaotic field of family law turns on disagreements, personal and systemic, over the best interests of a child. No interest is good unless it vests, if at all, within 21 years of a life in being at the time of its creation. But even these rules have an even simpler basis, one summarized nicely by *Lost* and *V*. Learn to cooperate, or you will fail on your own. Walk a mile in your neighbor's shoes. *Live together, die alone. Empathize.* You can even render the sentiment in Sanskrit, as T.S. Eliot did at the conclusion of an altogether different "Waste Land": *Datta. Dayadhvam. Damyata. / shantih shantih shantih*

This is what the thunder teaches us as lawyers and legal educators: What does it profit a lawyer to master legal analysis and to write persuasively, only to lose empathy for one's clients, for the legal profession, and for the greater social good? Clients and

■ In Memoriam	
John L. Ackman, Jr.	Louisville
Virginia C. Burbank	Glenview
Charles S. Cassis	Louisville
William D. Compton	Pikeville
Woodrow Francis Downs	Bardstown
John Reed Fendley	La Grange
Christie Irene Floyd	Louisville
Gordon H. Hood	Covington
Richard Melvin Hunt	Pikeville
William Gordon Iler II	Owensboro
Henry K. Jarrett III	Louisville
John Alton Robenalt	Lima, OH
Adolph J. Sehlinger III	Louisville
Lucy Bryans VanMeter	Lexington
Thomas R. Willenborg	Covington

KENTUCKY BAR NEWS

lawyers alike face enemies, though perhaps not as cataclysmic as the Black Smoke Monster of *Lost* or the Visitors of *V*. Litigators as much as dealmakers know that clients are often best served by avoidance of conflict and amicable resolutions. Deal together, sue alone.

Frankly, conventional legal education struggles to teach these lessons. The competitive nature of legal education, to say the least, implicitly deprecates cooperation and empathy. Appellate court opinions, the core ingredient of most conventional law school classes, put a premium on all-out legal warfare and exhaustion of formal remedies. Judicial rhetoric routinely fosters the seductive illusion that judges are final because they are infallible. *Contra Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring). At its worst, the most rarified of legal subcultures suggests that courts of last appeal deliver conclu-

sive, intellectually unassailable answers to disputes whose emotional volatility and practical intractability guarantee that each generation, each new variation on the theme of civilized society, will pit its own approach against the test of time. Precisely because “all life is an experiment,” we routinely “wager our salvation upon some prophecy based upon imperfect knowledge.” *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

A better approach does exist. As is so often true of superior answers, we will need to work harder and wait longer. Core values such as professional civility and respect for diversity can never be directly taught; forcing students to take courses styled “Civility” or “Diversity,” likely as not, will cultivate contempt for the very values we seek to inculcate. Experience is the better teacher. Law schools must continue to provide more opportunities

for students to learn cooperation and empathy through personal contact with the real concerns of real people. From in-class simulations to public service placements and live-client clinics, we strive to put our students on the spot, in the best and most intense sense of that phrase. The classic model of classroom-based law school instruction, based on appellate decisions and the Socratic method, also has a part to play. Conquering discrete intellectual puzzles is neither law nor even training in law, but merely the first step toward true mastery. Whether we learn this lesson while *Lost* in the wasteland of broadcast television or reciting the formal poetry of figurative waste lands, we reach the same inexorable conclusion:

*We shall not cease from exploration
And the end of all our exploring
Will be to arrive where we started
And know the place for the first time.* ④

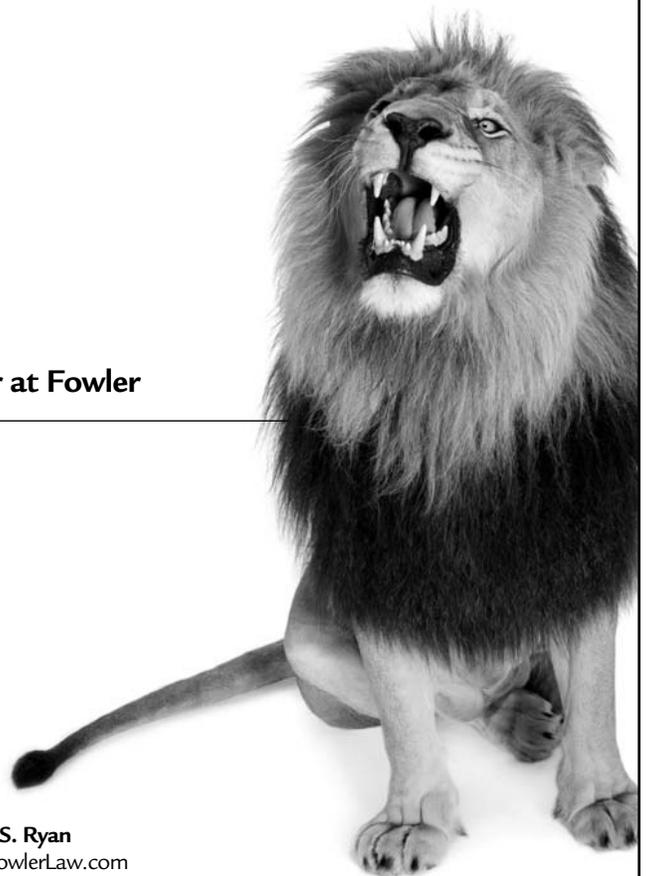
“Let us never negotiate out of fear.
But let us never fear to negotiate.”

John F. Kennedy

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Mediators: John E. Hinkel, Jr. • Tiffany Lauderdale Phillips • Robert S. Ryan
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300 West Vine Street, Suite 600 Lexington, KY 40507-1660 THIS IS AN ADVERTISEMENT



THE KENTUCKY BAR FOUNDATION AWARDS \$227,750 FOR LAW-RELATED GRANTS AND PROJECTS IN 2010

The Kentucky Bar Foundation in June 2010 awarded a total of \$227,750 in annual grants, which represents the largest annual grant awards in the Foundation's history. Among the recipients are 11 agencies and programs statewide that will receive funding to meet law-related needs of our Commonwealth's citizens. Included in the total awards are scholarships in the amount of \$5,000 each to Kentucky's three law schools, and funding in the amount of \$18,000 for Credit Abuse Resistance Education (CARE) Programs presented to high school seniors in 18 counties throughout the Commonwealth.

GRANTS

Legal Services Programs, \$100,000. A \$25,000 grant was awarded to each of the four regional legal services programs – Appalachian Research and Defense Fund of KY, Inc., Kentucky Legal Aid, Legal Aid of the Bluegrass, and Legal Aid Society, Inc.

Access to Justice Foundation (*Child Advocacy Today – CAT*), \$15,000. As part of its efforts to expand free civil legal assistance to the indigent, the Access to Justice Foundation has partnered with the Kentucky Children's Hospital at the University of Kentucky in a unique multi-disciplinary approach to improving child health. The program, called Child Advocacy Today (CAT), is based on a model developed by Boston Medical Center in 1994 and replicated in over 80 sites, serving 136 clinics and hospitals in 32 states. CAT combines medical care for low-income children with legal services in a health clinic setting, offering families an opportunity to address legal problems contributing to health problems for their children through preventative law efforts. CAT's mission is to break through the traditional barriers in providing health care and the separate provision of legal services by making a lawyer available within the Pediatrics Department at

Kentucky Children's Hospital. The attorney trains doctors and other health care workers to identify legal problems causing negative health outcomes for children. Once a problem is identified, the lawyer can then provide free services, or a referral for pro bono legal services, for the young patient. Currently, CAT serves low-income families and children primarily in Fayette and the contiguous counties, but has also served families in Pike, Harlan, Knott, Perry, and Breathitt counties. The Bar Foundation grant allows CAT to continue to provide these services.

The Center for Women and Families (*Legal Justice for Victims of Domestic Violence & Sexual Assault*), \$5,000.

The program is designed to provide attorneys to help victims of intimate partner abuse and sexual violence residing in the counties of Bullitt, Henry, Oldham, Shelby, Spencer, and Trimble. There are two primary objectives of the program: 1) To train attorneys to understand the complexities of domestic violence and sexual assault. Attorneys located across the outreach counties will be trained in the dynamics of representing victims of domestic violence and sexual assault. The trainings will include information on understanding domestic violence, representing victims of domestic violence in cases of divorce, custody, EPO's, child support, and property disputes; 2) To identify attorneys who will agree to take referrals from The Center for Women and Families at a reduced rate or pro bono. By the end of the grant cycle, the project coordinator will have established a network of attorneys across the six outreach counties. This network of attorneys will help the Center's clients with issues such as emergency protective orders and violations, child custody and visitation, child support, divorce, and property disputes. The Center will provide referrals for abuse victims in the outreach counties who have the potential to

achieve positive outcomes through the legal system with the assistance of legal counsel.

Kentucky CASA, Inc. (*CASA Trainer Enhancement*), \$20,000. This project seeks to fund enhancements to the Kentucky Court Appointed Special Advocates (CASA) web-based training system. The Kentucky CASA Trainer Enhancement Project is Phase II of the development of a web-based training curriculum for CASA volunteers and staff. Phase I was completed in 2009 and included building a web-based training system that delivers 20 of the 30 legally required training hours to individuals training to be CASA advocates. This training provides a standardized and uniform approach to ensure that CASA training is consistent throughout the Commonwealth. Phase II of this project is a new module which makes it possible for Kentucky CASA to offer web-based in-service training to volunteers, and to track per volunteer the number of training hours obtained in a calendar year. In-service continuing education presentations chosen by Kentucky CASA will be delivered by qualified professionals. Like the pre-service training already delivered in this manner, in-service training will ensure that volunteers and staff are completing the required number of hours per year and that the quality of training is of a nature that will benefit the courts assigning CASA volunteers to cases. The enhancements will provide a minimum of seven of the 12 legally required hours of web-based in-service training to each of the 718 CASA advocates, 52 CASA staff, and other community partners each year at no cost.

Lighthouse Recovery Services, Inc. (*Indigent Sponsorship Project*), \$10,000. Lighthouse Recovery Services, Inc., was formed to act as an arm of the Daviess County District Court to assist with the increasing



Sandy Rich, Director of Lighthouse Recovery Services, Inc., accepting Kentucky Bar Foundation grant from Eileen M. O'Brien, 2010-2011 Kentucky Bar Foundation Vice President.

volume of substance abuse offenders appearing in court. It is a unique relationship rarely found in the judicial system. Almost all elements of drug court are included within the Lighthouse program, but Lighthouse provides an even broader array of service. The mission of Lighthouse is to restore productive lives through effective mentoring, monitoring, drug testing, and educational classes in an attempt to break the cycle of addiction and drug-related crimes. All participants are assigned a mentor. The mentor makes weekly and sometimes daily contact with the participant. Participants attend weekly educational classes on recovery dynamics, relapse prevention and social life skills. All participants are subject to frequent, random drug screens. After Phase I they are assisted in finding employment. Lighthouse operates three "safe houses" for participants who are homeless or not in an environment conducive to recovery. The participants in Lighthouse would be serving jail time if they were not active participants in the program. The grant provides funds for operating expenses for Lighthouse, which will help ensure that the program can continue serving individuals in the Owensboro community and surrounding area, and help reduce the criminal activity involved with drug and alcohol addiction.

Prevent Child Abuse Kentucky, Inc. (Multi-Disciplinary Collaboration in the Courtroom), \$12,000. The array of persons and professions coming in contact with a child victim of abuse is vast – but none more prevalent than social workers, law enforcement officers, and members of the legal community. Quality training on subjects ranging from multi-disciplinary collaboration, interviewing techniques, and courtroom testimony, to understanding the abuse/neglect/dependency law, and corresponding reporting requirements will

ultimately result in enhancing the safety and well-being of Kentucky's children. The objective of the program is to provide regional training, serving as a pilot project, to a multi-disciplinary audience, resulting in better collaborative approaches to child abuse and neglect cases. The training will be targeted toward social workers, law enforcement and the legal community, primarily Guardians Ad Litem, but also judges and prosecutors. Topics at the trainings will include multi-disciplinary cooperation and discussion, courtroom decorum, "nuts and bolts" of abuse/neglect/dependency law, as well as investigatory and interviewing techniques. Trainings will be delivered in a "train-the-trainer" format to help create sustainability after the conclusion of the grant period. Training will be conducted by noted and credentialed individuals who are considered experts in their respective fields.

UNITE Pike, Inc. (Pike County Women's Jail Re-Entry Program), \$25,000. Funding to continue the Women's Jail Re-Entry Program at the Pike County Hall of Justice. The program is designed to assist women in obtaining the skills necessary to lead healthy, productive lives and reduce the probability of re-entering the criminal justice system. The program, which is

optional for female inmates, prepares inmates for re-entry as productive, healthy members of society. This includes participation in the work force and caring for their families. The paramount goal of the program to be administered in the Pike County Detention Center is to reduce substance abuse relapse and re-incarceration rates of participants. This is achieved by providing professional group and individual counseling, individualized progress/recovery plans, case management preparation for re-entry into the community, and life and job skills training – including domestic violence education and parenting skills. UNITE Pike contracts with WestCare Kentucky to implement the program. WestCare Kentucky is a member of WestCare, Inc., which is a widely respected substance abuse treatment organization that operates in seven states.

KBA Young Lawyers Section (U@18 Program), \$3,750. The Young Lawyers Section of the KBA has focused on providing the Commonwealth's youth with pertinent and practical information on their rights and responsibilities under the law as they approach the age of majority by means of its U@18 program. The U@18 program, funded under a grant from the Kentucky Bar Foundation, includes two components, which are intended to complement one another: 1) a 28-page booklet which provides information about the change in legal status that occurs when a young person attains the age of 18; and 2) a classroom presentation made by a young attorney to students around the Commonwealth. Most young adults are aware that their potential criminal responsibility becomes more serious when they reach adulthood. However, many are unaware of their basic rights and responsibilities as renters, consumers, property owners, voters, spouses, and employees. In the booklet, *U@18: Becoming an Adult in Kentucky*, a basic overview of these topics is provided with an emphasis on practical and straightforward information.

AWARDS AND SCHOLARSHIPS

The **2010 KBA Outstanding Judge, Sara Walter Combs, Stanton**, donated her **\$2,000 award** from the Kentucky Bar Foundation to the **Louis D. Brandeis School of Law/KLEO Scholarships Program**.

The **2010 KBA Outstanding Lawyer, Robert G. Lawson, Lexington**, donated his **\$2,000 award** from the

Kentucky Bar Foundation to the **University of Kentucky College of Law/KLEO Scholarships Program**.

The Louis D. Brandeis School of Law at the University of Louisville, Salmon P. Chase College of Law, and the University of Kentucky College of Law received a **Kentucky Bar Foundation Scholarship in the amount of \$5,000 each**. They will be awarded to qualified students based on criteria established by the law schools.

The Kentucky Bar Foundation remains the Commonwealth's only statewide law foundation. Since 1958, through grants which total over **\$1,500,000**, the Foundation has funded law-related, community based programs benefiting citizens in urban and rural counties in every region of Kentucky. A special thanks to the members of the Kentucky Bar whose financial support and volunteer leadership have made these efforts possible. 

Terms Expire on the KBA Board of Governors

On June 30 of each year, terms expire for seven of the fourteen Bar Governors on the KBA Board of Governors. SCR 3.080 provides that notice of the expiration of the terms of the Bar Governors shall be carried in the *Bench & Bar*. SCR 3.080 also provides that a Board member may serve three consecutive two-year terms. Requirements for being nominated to run for the Board of Governors are contained in Section 4 of the KBA By-Laws and the requirements include filing a written petition signed by not less than twenty (20) KBA

members in good standing who are residents of the candidate's Supreme Court District. Board policy provides that "No member of the Board of Governors or Inquiry Commission, nor their respective firms, shall represent an attorney in a disciplinary matter." Any such petition must be received by the KBA Executive Director at the Kentucky Bar Center in Frankfort prior to close of business on the last business day in October. The current terms of the following Board members will expire on June 30, 2011:

1st District
Serieta G. Jagers
Princeton

2nd District
R. Michael Sullivan
Owensboro

3rd District
Richard W. Hay
Somerset

4th District
Douglass Farnsley
Louisville

5th District
Fred E. Fugazzi, Jr.
Lexington

6th District
Thomas L. Rouse
Erlanger

7th District
William H. Wilhoit
Grayson

Before You Move...

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

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

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

FAX the Address Change/Update Form obtained from our website or other written notification to:

Executive Director/Membership Department (502) 564-3225

MAIL the Address Change/Update Form obtained from our website or other

written notification to:

**Kentucky Bar Association
Executive Director
514 W. Main St.
Frankfort, KY 40601-1812**

* Announcements sent to the *Bench & Bar's Who, What, When & Where* column or communication with other departments other than the Executive Director do not comply with the rule and do not constitute a formal roster change with the KBA.

KENTUCKY BAR NEWS

SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING JUNE 15, 2010

The Board of Governors met on Friday, June 15, 2010. Officers and Bar Governors in attendance were, *President* C. English, Jr, *President-Elect* B. Davis; *Vice President* M. Keane; *Immediate Past President* B. Bonar and *Young Lawyers Section Chair* J. Moore. *Bar Governors 1st District* - D. Myers, J. Freed; *Bar Governors 2nd District* - R. Sullivan, J. Harris; *3rd District* - R. Hay, G. Wilson; *4th District* - D. Ballantine, D. Farnsley, *5th District* - A. Britton, F. Fugazzi, Jr.; *6th District* - D. Kramer, T. Rouse; and *7th District* - B. Rowe, W. Wilhoit.

New Young Lawyers Section Chair John N. Billings of Lexington and Incoming First District Bar Governor Serieta G. Jagggers, both taking office on July 1, 2010, were also in attendance.

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

- Heard a status report from the Board Policy Subcommittee and the Kentucky Lawyer Assistance Program.
- Young Lawyers Section Chair Jennifer H. Moore reviewed the highlights of the YLS Annual Report. She stated that in an effort to promote additional

outreach, the YLS has decided to provide free CLE programs as a member service benefit for its members. Ms. Moore also reported on the following activities of the section: Annual Convention program, update on the U@18 project, YLS Disaster Legal Services and “Why Choose Law: Diversity Matters” project.

- President English reported that 1,831 members had pre-registered for the Annual Convention and most of the event tickets had reached record numbers as well. President English encouraged the Board to attend the Memorial Service and the Senior Counselors Reception held during the convention week.
- Approved the appointment of Judge Olu A. Stevens of Louisville and Roula Allouch of Covington (Young Lawyer Delegate) as the Kentucky Delegates of the American Bar Association (ABA) House of Delegates for a two-year term ending at the end of the ABA Annual Meeting in 2012.
- Approved the nomination of Robert C. Ewald of Louisville, William E. Johnson of Frankfort and W. Robert Lotz of Covington for submission to the Governor for appointment to the Public Advocacy Commission.
- Chief Bar Counsel Linda Gosnell provided a brief report on the issue of ongoing compliance with Keller v. State Bar of California.
- Heard a report from Justice Bill

Cunningham regarding the Access to Justice Commission. Justice Cunningham reported that the Commission hopes to assist with re-educating the stakeholders in the legal system about the need for pro bono services, and continue to increase the availability of such services.

- Heard a report from Jackie Duncan concerning the continued funding for the Kentucky Volunteer Lawyer Program.
- Sarah Turberville, with the American Bar Association, presented a report regarding the ABA Death Penalty Moratorium Project.
- Approved the list of the 2010 Honorary Members who reached the age of 75 or have been admitted to the practice of law for 50 years during the period of beginning July 1, 2010, and ending June 30, 2011.
- Executive Director John Meyers reported that the Supreme Court made two new appointments of Scott D. Laufenberg of Bowling Green and Rhonda Huddleston of Warsaw, and one reappointment of Ken R. Haggard of Hopkinsville to the IOLTA Board of Trustees.
- Executive Director John Meyers reported the Supreme Court approved the new appointment of Julie Gillum of Somerset and two reappointments of Kerry S. Morgan of Bowling Green and Janet Jakubowicz of Louisville to the CLE Commission. ☺

NOTICE OF OFFICE OF BAR COUNSEL ADMINISTRATIVE FEE FOR RESTORATION AND REINSTATEMENT

The Board of Governors has approved collection of a fee of \$50.00 that must be paid by any former member of the KBA who intends to apply for restoration or reinstatement.* Pursuant to 3.500(1) and 3.510(1), a former member is required to submit with their application a certification from the Office of Bar Counsel that they have no pending discipline. The \$50.00 fee is to cover the administrative cost for researching and preparing the certification and must be tendered prior to the delivery of the certification to the potential applicant. If you have any questions regarding this fee, contact Sonja Blackburn, Office of Bar Counsel paralegal, at 502-564-3795, ext 261.

* This fee became effective Sept. 1, 2010.

To KBA Members

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

November 19-20, 2010
January 14-15, 2011

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.

PROPOSED AMENDMENT, DELETION AND ADDITION TO THE REGULATIONS OF THE ATTORNEYS' ADVERTISING COMMISSION, PURSUANT TO SCR 3.130(7.03)(5)(A)

As approved by the KBA Board of Governors July 30, 2010

Publisher's Note:

Supreme Court Rule 3.130 contains the Kentucky Rules of Professional Conduct which include rules on lawyer advertising. SCR 3.130(7.03) establishes an Attorneys' Advertising Commission (the "Commission") which has general responsibilities for implementing the lawyer advertising rules. In discharging its responsibilities, the Commission is given authority to issue and promulgate regulations subject to prior approval by the Board of Governors. When proposed regulations are issued, members of the Kentucky Bar Association are entitled to at least sixty (60) days advance notice and an opportunity to comment. The Commission has promulgated an amendment to Regulation 2, proposes to delete Regulation 3 as it has been superseded by the requirements of SCR 3.103(7.25), and proposes a new Regulation enumerated number 17. The Board of Governors approved these changes on July 30, 2010, subject to review and consideration of comments from the membership. **Members wishing to comment on these proposed regulations must do so in writing. Written comments must be sent no later than December 15, 2010 to the Attorneys' Advertising Commission, c/o KBA Executive Director, 514 West Main Street, Frankfort, KY 40601-1812.**

**AAC Regulation No. 2: (to be amended)
PERMISSIBLE CONTENT OF
ADVERTISEMENTS SUBMITTED
WITHOUT A FEE**

Pursuant to SCR 3.130-7.05(1)(a)(26) the Commission may specify additional information that may be contained in advertisements that are permitted to be submitted without a fee. The following

additional information may be included in any of these advertisements: ...

- 11. The website address of a lawyer or law firm's website advertisement, if the website has been submitted [and approved] as required by SCR 3.130(7.05); ...

Note: The remaining portions of this Regulation are not sought to be amended. They may be viewed at www.kybar.org.

**AAC Regulation No. 3: (to be deleted)
COMMUNICATIONS THAT
REQUIRE THE DISCLAIMER**

"THIS IS AN ADVERTISEMENT" [SCR 3.130-7.09(3) requires that certain types of advertisements contain the disclaimer "THIS IS AN ADVERTISEMENT." In addition, SCR 3.130-7.25 authorizes the Commission to require the disclaimer "THIS IS AN ADVERTISEMENT." This Regulation No. 3 clarifies the relationship between SCR 3.130-7.09(3) and SCR 3.130-7.25.

- 1. SCR 3.130-7.09(3) does not apply to every written, recorded or electronic communication from a lawyer, including emails. Rather, it applies only to any such communication that solicits "professional employment from a prospective client known or reasonably believed to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship." The term "particular matter" includes any identifiable type or category of legal matters as well as any specific case of that consumer. An advertisement that is within the scope of SCR 3.130-7.09(3) must include the disclaimer "THIS IS AN ADVERTISEMENT."

- 2. Even if an advertisement does not constitute a solicitation of professional employment within the scope of SCR 3.130-7.09, the Commission may require the disclaimer "THIS IS AN ADVERTISEMENT." Pursuant to SCR 3.130-7.25, if the Commission concludes that the advertisement may not be perceived by the consumer as a quest for clients because of its format, manner of presentation or medium.]

**AAC Regulation No. 17: (proposed new regulation)
SOCIAL MEDIA
SCR 3.130-7.02(1)(j) states:**

" 'Advertise' means to furnish any information or communication containing a lawyer's name or other identifying information, and an 'advertisement' is any information containing a lawyer's name or other identifying information, except the following . . . Information and communication by a lawyer to members of the public in the format of web log journals on the internet that permit real time communication and exchanges on topics of general interest in legal issues, provided there is no reference to an offer by the lawyer to render legal services."

Communications made by a lawyer using a social media website, such as MySpace and Facebook, that are of a non-legal nature are not considered advertisements; however, those that are of a legal nature are governed by SCR 3.130-7.02(1)(j).

*All language in brackets is to be deleted. All language underlined is to be added.

Kentucky's Wm. T. (Bill) Robinson III elected president-elect of the ABA

Former American Bar Association treasurer and past president of the Kentucky Bar Association, Wm. T. (Bill) Robinson III, was elected August



Wm. T. (Bill) Robinson III

10th as ABA president-elect at the association's Annual Meeting in San Francisco. He will serve for a one-year term, before becoming ABA president in August 2011.

An ABA member for more than 35 years, Robinson is the member-in-charge of the Florence, Ky., offices of Frost Brown Todd LLC, a regional law firm of nearly 500 lawyers with offices in Kentucky, Ohio, Tennessee, West Virginia and Indiana. Throughout his career, Robinson has been a leader in the legal profession as well as in his community, including serving as chair for the Greater Cincinnati/Northern Kentucky International Airport and the Kentucky and the Northern Kentucky Chambers of Commerce.

Robinson believes that lawyers work-

ing together can make a positive impact, and stressed, "Public service is an essential component of our professional DNA that binds us together as lawyers. Working together we will achieve meaningful, lasting, needed change."

"There are certain things that really matter," explained Robinson, "like providing effective support for our courts and for fair and equal access to justice, while ensuring fair and impartial diversity in our association and in our profession."

Robinson added, "We cannot ignore the fact that our profession has been hit hard by the economic crisis. In the coming year we will look for opportunities to make the ABA stronger and even more relevant to practicing lawyers everywhere. The ABA needs an integrated approach. We need the best ideas from all corners of the organized bar...building on past work and leadership."

At the ABA, Robinson has been a member of the association's policy-making House of Delegates for more than 25 years, chair of the Standing Committee on Governmental Affairs,

member of the planning committee for the annual "ABA Day" advocacy event in April in Washington, D.C., and member of the Board of Governors' Strategic Planning Committee. For seven years, he was a member of the ABA Board of Governors.

For nearly four decades, civil litigation at the trial and appellate levels has been the primary focus of Robinson's law practice. He has substantial experience in commercial litigation, class actions, product liability defense, environmental litigation and medical malpractice defense.

Robinson's work in the law and the community has been recognized by several organizations. He has received the Judge Learned Hand Human Relations Award from the American Jewish Committee, the Lincoln Award from Northern Kentucky University, the Themis Award from the Cincinnati Bar Association, the Jacob E. Davis Award from the Greater Cincinnati Foundation, the Outstanding Lawyer Award from the Kentucky Bar Association and the Oak Award as Outstanding Alumnus of Kentucky from the Kentucky Advocates for Higher Education.

Robinson is a graduate of Thomas More College and the College of Law at the University of Kentucky where, in 2004, he was inducted into the Alumni Hall of Fame.

With nearly 400,000 members, the American Bar Association is the largest voluntary professional membership organization in the world. 



AAC Chair Amy D. Cabbage of Louisville presents a plaque to outgoing member Larry E. Conley of Corbin in recognition of his many years of service to the KBA's Attorneys' Advertising Commission.

CLICK

www.kybar.org

KBA members can access CourtNet database in 3 easy steps

For Kentucky Bar Association members, gaining access to the CourtNet database is as easy as one two three.

With only three steps, attorneys can view all pending civil and criminal cases in Kentucky. If a criminal case is pending, an attorney can also see both opened and closed cases associated with a particular defendant. Cases with disposition dates are not available. The Administrative Office of the Courts maintains the CourtNet database, which stores court records from all 120 Kentucky counties.

Follow these three steps:

1. **Register.** New CourtNet users must register for online access at <http://apps.courts.ky.gov/courtrecords/KBA/>. You will receive an e-mail confirming your registration and another e-mail with a registration number. You will need the registration number the first time you log on to CourtNet.

2. **Download the KBA User Agreement and return it within 30 days of registering.** Download the KBA User Agreement on the web page that confirms you have completed online registration for CourtNet. You must complete and return the agreement within 30 days of registering or you will not be able to log on to CourtNet. The completed user agreement may be scanned and e-mailed to COJUseraccess@kycourts.net or mailed to the address at the bottom of the agreement. If you do not deliver the user agreement within 30 days, you will need to register again and complete and return the user agreement.

3. **Reset your password every 90 days.** All KBA users must reset their CourtNet password every 90 days or they will not be able to log on to CourtNet. The web page that appears after you log on to CourtNet provides the days of access remaining before you must reset your password.

To change your password, click on the Change Password link next to the days of access remaining. Type your current password and then a new password. The system will require you to retype the new password to confirm it. If your password

expires, e-mail COJUseraccess@kycourts.net to request a temporary password. Use the temporary password to log on and reset your password.

The most effective method to search for a case in CourtNet is by the case number and the county. A CourtNet user manual is available at the top of the web page after you successfully log on to CourtNet. For assistance with CourtNet, contact the AOC at COJUseraccess@kycourts.net. The AOC is the administrative arm of the state court system. 

2nd ANNUAL NATIONAL PRO BONO CELEBRATION

Plans are being made by local pro bono programs in Kentucky to participate this October in the 2nd Annual National Pro Bono Celebration.

The ABA Standing Committee on Pro Bono and Public Service sponsored the first such celebration in October, 2009, with hundreds of event sponsors and individuals supporting and coordinating more than 600 exciting and well-attended events in 48 states, Puerto Rico, D.C. and Canada.

The Kentucky Volunteer Lawyer Program, local pro bono programs and civil legal aid programs, joined the 2009 National Pro Bono Celebration by hosting over 15 events such as recognition luncheons, CLE programs, legal clinics and a KET televised interview with Justice Bill Cunningham.

Building on last year's success, Kentucky programs again will be part of the 2010 Celebration with similar programs being planned for this October. If you'd like to participate, sponsor or be a part of programs in your area, contact the Kentucky Volunteer Lawyer Program, www.kyvlp.org, or email Jacqueline Syers Duncan at jduncan@ajfky.org.

Mark your calendar

June 15-17, 2011

**KBA Annual
Convention 2011**

Lexington



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ON THE MOVE



Andrew M. Boyer

Greta Hoffman is pleased to announce that **Andrew M. Boyer** has joined her practice as an associate, focusing on sports law, criminal, probate, and family law matters. Boyer is a 2008 graduate of the Florida Coastal School of Law in Jacksonville, Fla. He received his undergraduate degree from the University of Kentucky. He is licensed to practice in Florida and Kentucky, and has obtained his Sports Law Certificate.



Blake Brickman

Blake Brickman has joined **Dinsmore & Shohl LLP** as an associate in the Litigation Department. He will practice in the firm's Lexington office. Brickman focuses his practice on commercial litigation. Prior to joining the firm, he served as a Law Clerk for U.S. District Judge Amul Thapar in the Eastern District of Kentucky. Earlier in his career, Brickman served as the Chief of Staff for U.S. Senator Jim Bunning. Brickman earned his J.D. from the University of Kentucky College of Law and his B.A. from Vanderbilt University.



Walker Crittenden Cunningham III

Kentucky Elderlaw, PLLC is pleased to announce its newest associate, **Walker Crittenden Cunningham III**. Mr. Cunningham received his B.A. *cum laude*, from Vanderbilt University in 2000 and his J.D. from the University of Kentucky College of Law in 2003. Mr. Cunningham has spent the last seven years as a prosecutor in Jefferson County, first at the Office of the Commonwealth Attorney and then at the Office of the County Attorney. Mr. Cunningham will focus entirely on elder law. He will assist older citizens and family members on a wide range of issues including nursing home, Medicaid, asset preservation, legal documents, guardianship, probate and related matters.



Joseph Brittain Howard

Joseph Brittain Howard, Esq., has joined the law firm of **Treiser Collins, P.L.**, in Naples, Florida. Mr. Howard's practice focuses primarily on the areas of trusts, estate planning, probate, probate litigation, business formation, business litigation, landlord tenant issues, real estate leasing, real estate foreclosure, real estate litigation, construction litigation, bank/creditor

collections, contracts, breach of contracts litigation, personal injury litigation and criminal defense in all Federal and State Courts of Florida.



Kathryn T. Martin

Thompson Miller & Simpson is pleased to announce that **Kathryn T. Martin** has joined the Firm. Ms. Martin is a 2009 *cum laude* graduate of the University of Kentucky College of Law. Kathryn was Notes Editor of the Journal of Natural Resources and Environmental Law, and won the Best Brief Award for the Swinford Writing Club. Ms. Martin will concentrate her practice at Thompson Miller & Simpson in healthcare and product liability law.

Rodger W. Moore joins **The Drew Law Firm** as a partner. Mr. Moore practices in the areas of business litigation, personal injury, landlord-tenant law, and employment discrimination. He received his undergraduate degree from the University of Arkansas, his MBA from Tulane University and his law degree from Emory University.



Jonathan D. Niemeyer

Western & Southern Financial Group has named **Jonathan D. Niemeyer** senior vice president and general counsel. Mr. Niemeyer will be responsible for all aspects of the law department, corporate compliance and government relations for Western & Southern and its subsidiaries and affiliates.



James R. Odell

Fowler Measle & Bell PLLC is pleased to announce that **James R. Odell** has joined the firm as Of Counsel. He received his undergraduate degree from the College of William & Mary and his LL.B. from the University of



Emily H. Cowles



Melinda T. Sunderland



Eric M. Jensen

Morgan & Pottinger is pleased to announce that three attorneys have been named to the firm's partnership. **Emily H. Cowles** and **Melinda T. Sunderland** are now shareholders of the law firm, and **Eric M. Jensen** is a member. Each will take on additional respon-

sibilities in expanding M&P's practice areas including equine law, commercial bankruptcy and banking litigation.

WHO, WHAT, WHEN & WHERE



Michael B. Faulkner

Kentucky College of Law. **Michael Brandon Faulkner** also recently joined the firm as an associate. Mr. Faulkner received his undergraduate degree from Birmingham-Southern College and his J.D. from the Salmon P. Chase College of Law.

Chase College of Law.



Mark M. Sandmann

Gibson & Sharps PSC is pleased to welcome **Mark M. Sandmann** to its head-quarter offices in Louisville. Sandmann came to Gibson & Sharps in April to expand the firm's national health insurance recovery practice

by heading the pharmaceutical fraud and antitrust division. He will also be representing local, regional and national health insurers in mass tort litigation throughout the country. Sandmann earned his B.A. in Political Science and International Relations from the University of Missouri and received his J.D. from the Syracuse University College of Law.



James R. Schaefer

James R. Schaefer, a **Drew Law Firm** partner who specializes in residential real estate approaches closings with the goal of maximizing satisfaction and minimizing frustrations for his clients, is now licensed in



Richard V. Evans



Brian D. Zoeller



Daniel E. Fisher



Raja J. Patil



Brian S. Settles



Everett S. Nelson



Natalee A. Gilmore

Fultz Maddox Hovious & Dickens PLC is proud to announce that **Rick Evans**, **Brian D. Zoeller**, and **Daniel E. Fisher** have been named members of the firm. **Raja J. Patil** has been named Of Counsel and **Brian S. Settles**, **Everett S. Nelson** and **Natalee A. Gilmore** have joined the firm as associates.

Kentucky. Mr. Schaefer also practices in the areas of commercial real estate, corporate and small business representation and civil litigation. He is a graduate of Ohio State University and Capital University.

Frost Brown Todd LLC is pleased to announce **Pei Zhang** has joined the firm as a staff attorney in the Louisville, Ky. office. Ms. Zhang practices in the areas of international business, mergers and acquisitions, and corporate finance. She received her Bachelor of Laws degree from Beijing University School of Law in China. She then went on to earn her J.D. from the University of Louisville Louis D. Brandeis School of Law. Ms. Zhang is

fluent in Mandarin, English and German.

Greenebaum Doll & McDonald PLLC is pleased to announce that **James M. Francis** and **Robin B. Thomerson** have joined the firm as Of Counsel. Mr. Francis has joined the firm as a member of the Intellectual Property Practice Group and will split his time between the firm's Lexington and Louisville offices. Ms. Thomerson has joined the firm as a member of the Environment, Energy and Natural Resources Practice Group in the firm's Lexington office.

Littler Mendelson is pleased to introduce **Susan Sears** as the new Lexington Managing Shareholder.

J. Warren Keller and **Clayton O. Oswald** are pleased to announce the formation of **Taylor, Keller & Oswald, PLLC**, located in London at 1306 West Fifth Street, Suite 100. **Boyd F. Taylor** is Of Counsel to the firm. **Michael J. Bender** will join their firm as an associate.

Reminger is proud to announce the appointment of accomplished attorney



Ron Green



Pam Chestnut



James Inman

Ron Green and **Pam Chestnut** have formed a new law firm in Lexington, Ky., **Green & Chesnut PLLC**, which engages in the defense of civil litigation. **James Inman** has associated with the firm. Its office is located at Chase Tower, 201 East Main Street, Suite 1250.

WHO, WHAT, WHEN & WHERE

Joseph Borchelt as a new practice group co-chair. Borchelt is the co-chair of the firm's Employment Practices group, comprised of more than 20 attorneys.



Lloyd R. Cress, Sr.

Dinsmore & Shohl LLP is pleased to announce that **Lloyd R. Cress, Sr.**, has joined the firm as Of Counsel in the Environmental and Natural Resources Practice Groups. He will practice in the firm's Lexington, Ky., office and continue to serve as General Counsel of the Kentucky Coal Association.



Stacy A. Hoehle

Seiller Waterman LLC is pleased to announce that **Stacy A. Hoehle** has become an associate with the firm. Hoehle received her B.A. from Centre College and her J.D. from the University of

Louisville Louis D. Brandeis School of Law. She is licensed to practice law in Kentucky. She will be a member of the Family Law Practice Group.

Fisher & Phillips LLP, a national labor and employment law firm, announces that **Claire M. Vujanovic** has joined the firm's Louisville office as an Of Counsel.

IN THE NEWS



R. Sean Deskins

The Oldfather Law Firm is pleased to announce that **R. Sean Deskins**, an attorney in the firm, recently received the Outstanding Young Professional Award from the Young Professionals

Association of Louisville (YPAL). Deskins has been an active member of YPAL's Community Outreach Committee and organized a career net-

working program for inner-city high school students in conjunction with the University of Louisville's Think College Now program. In addition to representing victims in catastrophic personal injury, sexual abuse, employment, and civil rights cases throughout Kentucky, Deskins represents high net worth individuals in business and inheritance disputes.



Matt Gillies

The Governing Committee of the American Bar Association's Forum on the Construction Industry recently appointed Stites & Harbison attorney **Matt Gillies** as chair of its Contract

Documents Division (Division 2). Matt Gillies is a member of Stites & Harbison based in the Louisville, Ky., office, where he works in the Construction Service Group. His practice includes drafting and negotiation of construction, design-build, construction management and design contracts, as well as mediating, arbitrating and litigating disputes arising therefrom.

Dressman Benzinger LaVelle PSC Partner **Dennis Kennedy** was recently



Dennis Kennedy

appointed by the Governor's office to the Kentucky Health Information Exchange Coordinating Council (KY-HIECC). This 23-member advisory council assists the Governor's Office of Electronic Health

Information Exchange (GOEHI) to advance Kentucky's health information exchange. The Council is charged with developing a State Health Information Exchange strategic and operational plan.



Dan Mistler

Dressman Benzinger LaVelle PSC Partner **Dan Mistler** recently received the Nick of Time Award from the Northern Kentucky Volunteer Lawyers. Dan was given the award for his work with three clients with

disabilities who were unfortunate victims of an elaborate real estate finance scheme. In his practice, Dan represents plaintiffs in litigation regarding auto accident personal injuries, residential real estate closing issues, consumer protection issues, small business litigation, and other general civil litigation. Dan



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2010 TRAINING DATES:

*Cooperative Parenting and Divorce Leader Training — December 4, 2010

**General Civil Mediation Training (40 hr) — October 21-24, 2010

***Family Mediation Training (40 hr) — December 10-13, 2010

*This program has not been submitted for accreditation.

**This program has been approved for 29.25 CLE Credits of which 3.75 are Ethics Credits.

***This program has been approved for 24.75 CLE Credits of which 1.5 are Ethics Credits.

WHO, WHAT, WHEN & WHERE

also represented a local housing authority for 15 years and has provided assistance to indigent tenants on a pro bono basis.



Emily Kirtley Hanna

Dressman Benzinger LaVelle PSC Law attorney **Emily Kirtley Hanna** was recently elected Chair of the Board of Directors for Welcome House of Northern Kentucky. Hanna has served on the Board for over five years,

and during this time also served as the Secretary for their Executive Committee. Welcome House provides a continuum of quality services for individuals and families who are either homeless or at risk of becoming homeless. Hanna is an associate in DBL Law's litigation practice group with an emphasis in commercial, banking, collections and creditor rights litigation. She obtained her law degree from the Salmon P. Chase College of Law in 2003, and has a bachelor's degree in Political Science from Northern Kentucky University. Hanna is based in DBL Law's Crestview Hills office.



William F. McMurry

William F. McMurry was elected President of the American Board of Professional Liability Attorneys (ABPLA.org) at the Annual Meeting of the ABPLA in Atlanta, Ga. The ABPLA is comprised of esteemed lawyers from around

the country on both sides of the Bar. Mr. McMurry is Board Certified in both Medical and Legal malpractice. Mr. McMurry will continue the ABPLA's

commitment to increase public awareness of the importance of Board Certification for consumers of legal services.



Todd V. McMurtry

Dressman Benzinger LaVelle PSC Law partner **Todd V. McMurtry** was recently appointed to the Covington Latin School (CLS) Board of Education. Mr.

McMurtry is an alumnus of CLS, graduating in 1979, and has also served as a member of their Alumni Board.



Sybil B. Mullin

Sybil B. Mullin with The Drew Law Firm has been appointed a member of the Hyde Park Neighborhood Council in Cincinnati, Ohio.



David W. Nagle, Jr.

Stites & Harbison PLLC attorney, **David W. Nagle, Jr.**, earned the Certified Licensing Professional™ (CLP) credential. Mr. Nagle joins a group of intellectual property professionals who have demonstrated they are dedicated to higher standards of practices in the licensing industry.



Michael Risley

Stites & Harbison PLLC announced that **Michael Risley** is a new honoree in *The Best Lawyers in America*® 2011.



Betty Moore Sandler

Betty Moore Sandler has been elected to serve as the President-Elect of the McLean Bar Association in Virginia. Ms. Sandler is a shareholder in the Woodbridge, Va., law firm of Nichols Zauzig Sandler P.C.

and limits her practice to family law and domestic relations.



E. Frederick "Rick" Straub

E. Frederick "Rick" Straub of Whitlow, Roberts, Houston & Straub, PLLC, in Paducah, Ky., has been certified by the Commonwealth of Kentucky Administrative Office of the Courts as a General Civil

Mediator. Rick is an active litigator and plans to assist with mediation of civil matters throughout Western Kentucky.



Laurence J. Zielke

Gov. Steven L. Beshear on June 9, 2010, reappointed **Laurence J. Zielke** to the Western Kentucky University Board of Regents. Zielke has served on the board since June 30, 2004, when he was appointed

by former Gov. Ernie Fletcher. Mr. Zielke is an attorney and founding member with Zielke Law Firm.



George Miller

Wyatt, Tarrant & Combs, LLP announces that the LexTran Board of Directors recently elected **George Miller**, partner at the law firm of Wyatt Tarrant & Combs, to serve as LexTran

Board Chairman. He has served on the LexTran Board since 2007. Mr. Miller is a member of Wyatt's Labor & Employment Service Team and concentrates his practice in the areas of labor

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WHO, WHAT, WHEN & WHERE

and employment law and eminent domain law.

Greenebaum Doll & McDonald PLLC is pleased to announce that **Michael de León Hawthorne**, a Member in the firm's Louisville office, has been elected to the Board of Directors for the Attorneys for Family Held Enterprises (AFHE).



Margaret
(Maggie) E. Keane

Lawyers Mutual Insurance Company of Kentucky (LMICK) welcomes two new members to its Board of Directors.

Margaret (Maggie) E. Keane joins the Board as the president-elect of the Kentucky Bar

Association. An attorney at Greenebaum, Doll & McDonald, PLLC in Louisville, Ky., Keane served as Vice President of the KBA in 2009-2010, and is listed in the Kentucky Super Lawyers® List as one of the Top 50 Attorneys in Kentucky (2009). Her practice focuses on defense of products liability actions, general commercial litigation, defending employers in various employment actions and representing parties in family law actions. She is a member of the Litigation and Dispute Resolution practice team at Greenebaum, Doll & McDonald. Keane attended the University of Kentucky (1973), and the University of Louisville (1979). She received her J.D. from University of Louisville Louis D.



Dustin Meek

Brandeis School of Law in 1982. **Dustin Meek**, a founding attorney with Tachau Meek, PLC in Louisville, Ky., litigates commercial, business, and financial institution disputes, as well as employment and fiduciary matters.

Meek was born in Ashland, Ky. She attended Transylvania University (B.A., 1988), and received her J.D. from the University of Louisville Louis D. Brandeis School of Law in 1991. She is

listed in the Kentucky Super Lawyers® List (2009) and in *Chambers USA* as a leading Lawyer for Business.

James E. Parsons, an attorney in the Business & Finance practice group in Taft Stettinius & Hollister LLP's Northern Kentucky office, has been appointed to the board of directors of the Gateway Community and Technical College Foundation.



Park L. Priest

Attorney **Park L. Priest** was recently accepted to the TIPS Leadership Academy for 2010 to 2011, a program of the Tort Trial & Insurance Practice Section of the American Bar Association. Park

Priest is a partner and chair of the litigation practice group at English Lucas Priest & Owsley, LLP, in Bowling Green, Kentucky.



Mark Maier

Mark Maier was recently appointed as the Chairperson for the Access to Legal Services Committee of the American Bar

Association, Young Lawyers Division. Mark is an associate at English Lucas Priest & Owsley, LLP in Bowling Green, Ky. He practices primarily in the area of personal injury, insurance law and litigation.



Bob Young

Bob Young, managing partner of English Lucas Priest & Owsley LLP, was recently admitted to the Tennessee Bar Association, allowing him to practice law in Tennessee. Besides the Kentucky and

Tennessee Bar, his bar admissions include the U.S. Court of Appeals for the Sixth Circuit and the U.S. District Courts for Eastern and Western Districts of Kentucky.

RELOCATION

Reminger attorney **B. Scott Jones** announced that he will be relocating his legal practice from Reminger's offices in Cincinnati, Ohio, to Louisville, Ky., on June 1, 2010. Scott focuses his practice in construction law, architect and engineer professional liability, premises liability and occupational safety and health law.

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

The Bench & Bar welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to: Managing Editor, Kentucky Bench & Bar, 514 West Main Street, Frankfort, KY 40601 or by email to sroberts@kybar.org. Digital photos must be a minimum of 300 dpi and two (2) inches tall from top of head to shoulders. There is a \$10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association. The deadline for announcements appearing in the next edition of Who, What, When & Where is October 1st.

CLEvents

Following is a list of **TENTATIVE** upcoming CLE programs. REMEMBER circumstances may arise which result in program changes or cancellations. **You must contact the listed program sponsor** if you have questions regarding specific CLE programs and/or registration. ETHICS credits are included in many of these programs. Some programs may not yet be accredited for CLE credits - please check with the program sponsor or the KBA CLE office for details.

SEPTEMBER

- | | | |
|--|---|---|
| <p>15 Professional Development: Self-Advocating in a Developing Market
<i>Cincinnati Bar Association</i></p> <p>15 Health Law Brown Bag
<i>Louisville Bar Association</i></p> <p>15-17 Kentucky Justice Association Annual Convention
<i>Kentucky Justice Association</i></p> <p>16 Webinar - Tweet, Tweet: Don't Let Your Client Ruin the Case with</p> | <p>17 Alternative Billing Arrangements & Electronic Billing
<i>Louisville Bar Association</i></p> <p>20 Webinar - Is Your Case Right for a Focus Group?
<i>Kentucky Justice Association</i></p> <p>21 Webinar – A “Grand Slam” Settlement Webinar
<i>Kentucky Justice Association</i></p> <p>21 All Ohio Annual Institute on Intellectual Property (Cincinnati)
<i>Cincinnati Bar Association</i></p> <p>21 2010 Appellate Law Update
<i>Louisville Bar Association</i></p> <p>22 All Ohio Institute on Intellectual Property (Cleveland)
<i>Cincinnati Bar Association</i></p> <p>22 The Basics of Commercial Real</p> | <p>Estate Contracts and Due Diligence
<i>Louisville Bar Association</i></p> <p>23 Medicare Secondary Payer Compliance
<i>Cincinnati Bar Association</i></p> <p>23 Practical and Ethical Considerations with New Information Technologies
<i>Louisville Bar Association</i></p> <p>23-24 Kentucky Law Update – Bowling Green
<i>Kentucky Bar Association</i></p> <p>24 Labor & Employment Law Symposium
<i>Cincinnati Bar Association</i></p> <p>28 <u>Kentucky Press Association vs. Commonwealth of Kentucky: Opening Juvenile Records and Proceedings to the Public</u>
<i>State Government Bar Association</i></p> <p>29 Video Replay: Professionalism, Ethics & Substance Abuse</p> |
|--|---|---|

2011 New Lawyers Program

“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 Skills Program.”

SCR 3.652 New Lawyer Skills Program

January 25-26, 2011

Northern Kentucky
Convention Center
Covington, KY

For more information or to register online
visit www.kybar.org/195



- Instruction
Cincinnati Bar Association
- 30 Independent Contractors and
Employee Classifications
Louisville Bar Association
- 30-1 Kentucky Law Update –
Owensboro
Kentucky Bar Association

OCTOBER

- 1 Stress, Anxiety & Depression in the
Legal Profession: What's the
Problem & What Can We Do about It?
Cincinnati Bar Association
- 1 Helping Victims of Domestic
Violence in Family Court
Louisville Bar Association
- 5-6 Kentucky Law Update – London
Kentucky Bar Association
- 6 Campaign Contribution Law
Cincinnati Bar Association
- 7 Federal Court Practices
Louisville Bar Association
- 8 Healthcare Reform
Cincinnati Bar Association
- 8 Litigation Brown Bag
Louisville Bar Association
- 12 Video Replay: Professionalism,
Ethics & Substance Abuse
Instruction
Cincinnati Bar Association
- 13 Environmental Law: Bridges,
Breweries & Vibrant Living
Cincinnati Bar Association
- 14-15 18th Biennial Workers'
Compensation Law Institute
UK CLE
- 15 Crawling through the Chaos: What
Babies Need from Legal & Mental
Health Professionals
Cincinnati Bar Association
- 19-20 Kentucky Law Update –
Prestonsburg
Kentucky Bar Association

- 20 Casino Law
Cincinnati Bar Association
- 21 Professionalism, Ethics &
Substance Abuse Instruction
Cincinnati Bar Association
- 26 Conley vs. Commonwealth: The
Constitutionally Protected Privacy
Right to Possession of Marijuana
for Personal Use in the Home
State Government Bar Association

- 26-27 Kentucky Law Update –
Gilbertsville (Paducah)
Cincinnati Bar Association
- 29 Social Networking: How to Stay on
the Right Side of the Ethical Divide
Cincinnati Bar Association

NOVEMBER

- 3 A Fresh Start . . . Really? Limits
on the Discharge in Bankruptcy
Cincinnati Bar Association

The poster features a dark blue background with white text. At the top, 'KENTUCKY LAW UPDATE' is written in large, stylized white letters. Below this, the program is organized into a grid of location and date blocks. Each block contains the location name, dates, and the venue name. At the bottom, a dark blue banner contains the text 'Program Details & Registration Information available online at www.kybar/186' in white.

Louisville September 2-3 Kentucky International Convention Center	Prestonsburg October 19-20 Jenny Wiley State Resort Park
Bowling Green September 23-24 Holiday Inn & Sloan Convention Center	Gilbertsville October 26-27 Kentucky Dam Village State Resort Park
Owensboro September 30-October 1 RiverPark Center	Covington November 4-5 Northern Kentucky Convention Center
London October 5-6 London Community Center	Ashland November 16-17 Ashland Plaza Hotel
Lexington November 30-December 1 Lexington Convention Center	
Program Details & Registration Information available online at www.kybar/186	

- | | | | | | |
|-----|--|-------|--|------|--|
| 4 | Making Your Case with a Better Memory
<i>Cincinnati Bar Association</i> | 11 | New Lawyer Training: Professionalism, Client Fund & Law Practice Management
<i>Cincinnati Bar Association</i> | 19 | Professionalism, Ethics & Substance Abuse Instruction
<i>Cincinnati Bar Association</i> |
| 4-5 | Kentucky Law Update - Covington
<i>Kentucky Bar Association</i> | 11-12 | 11 th Biennial Real Estate Law and Practice Institute
<i>UK CLE</i> | 23 | Video Replay: Professionalism, Ethics & Substance Abuse Instruction
<i>Cincinnati Bar Association</i> |
| 5 | Law & Film
<i>Cincinnati Bar Association</i> | 12 | Legal Technology Workshop
<i>Cincinnati Bar Association</i> | 30 | Foreign Sovereign Immunities Act: Victims of Terrorism Practice
<i>State Government Bar Association</i> |
| 9 | Video Replay: Professionalism, Ethics & Substance Abuse Instruction
<i>Cincinnati Bar Association</i> | 16 | Presentation Skills
<i>Cincinnati Bar Association</i> | 30-1 | Kentucky Law Update – Lexington
<i>Kentucky Bar Association</i> |
| 9 | Basic Estate Planning & Probate Institute
<i>Cincinnati Bar Association</i> | 16-17 | Kentucky Law Update – Ashland
<i>Kentucky Bar Association</i> | | |
| 10 | eDiscovery
<i>Cincinnati Bar Association</i> | 17 | DUI 101
<i>Cincinnati Bar Association</i> | | |
| 10 | Introduction to Immigration Law
<i>Cincinnati Bar Association</i> | 17 | Corporate Counsel Seminar
<i>Cincinnati Bar Association</i> | | |
| 11 | Legal Writing 201
<i>Cincinnati Bar Association</i> | 18 | Business Development for Lawyers
<i>Cincinnati Bar Association</i> | | |



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Join many other KBA members, and sign up today to have your CLE records sent to your e-mail address of record. In addition to saving countless trees, this action will help eliminate excess paper, create a convenient electronic record for your files, and save the association thousands of dollars allocated to mailing this paper file each year.

Just e-mail us a brief note at cle_reg@kybar.org indicating "I grant the KBA permission to e-mail my CLE records to me."

To check your e-mail address on record with the KBA, look yourself up on the website using Lawyer Locator under the Membership Menu. The e-mail address listed is the one used for your CLE records.

If you want to change your e-mail address on record, fill out the online address form by clicking the box marked "Request for Address Change."

Thank you in advance for your support in this effort!

- Kentucky Bar Association**
CLE Office
(502) 564-3795
- AOC Juvenile Services**
(502) 573-2350
- KYLAP**
Ashley Beitz • (502) 564-3795
- Louisville Bar Association**
Lisa Maddox • (502) 583-5314
- Chase College of Law**
Bonnie Osborne
osborne1@nku.edu
- Kentucky Justice Association (formerly KATA)**
Ellen Sykes • (502) 339-8890
- AOC Mediation & Family**
Melissa Carman-Goode
(502) 573-2350 ext. 2165
- Kentucky Department of Public Advocacy Court Services**
Jeff Sherr or Lisa Blevins
(502) 564-8006 ext. 236
- UK Office of CLE**
Melinda Rawlings • (859) 257-2921
- Mediation Center of the Institute for Violence Prevention**
Louis Siegel • (800) 676-8615
- Northern Kentucky Bar Association**
Julie L. Jones • (859) 781-4116
- Children's Law Center**
Joshua Crabtree • (859) 431-3313
- Fayette County Bar Association**
Mary Carr • (859) 225-9897
- CompEd, Inc.**
Allison Jennings • (502) 238-3378
- Cincinnati Bar Association**
Dimity Orlet • (513) 381-8213
- Pike County Bar Association**
Lee Jones • (606) 433-1167
- Access to Justice Foundation**
Nan Frazer Hanley • (859) 255-9913
- Administrative Office of the Courts**
Melissa Carman-Goode
(502) 573-2350, Ext. 2165
- State Government Bar Association**
Kevin M. Devlin
(502) 564-8100, ext. 344

Pro Bono Events

September 23 - Bowling Green

Pro Bono Appreciation Luncheon with Guest Speaker Judge Steve Wilson

Sponsor: Kentucky Legal Aid Lawyers Care Volunteer Attorney Program

October 1 - Louisville

Domestic Violence Advocacy Program

Sponsors: Louisville Bar Association in partnership with the Legal Aid Society

October 8 - Georgetown

Domestic Violence Advocacy Program, Scott County Justice Center

Sponsors: Legal Aid of the Bluegrass, 14th Judicial Circuit (Family) Court, and Access to Justice Foundation

October 12 - Lexington

Pro Bono Appreciation Luncheon with Guest Speaker Wm. T. (Bill) Robinson

Sponsors: Fayette County Pro Bono Program and Fayette County Bar Association

October 13 - Lexington

Basic Divorce CLE by Fayette Circuit (Family) Court Judge Joanne Wise

Sponsor: Fayette County Pro Bono Program

October 14 - Frankfort

Kentucky Supreme Court Special Announcement by Chief Justice John D. Minton, Jr.

October 19 - Louisville

Call-A-Lawyer

Sponsor: Louisville Bar Association

October 22 - Louisville

Pro Se Divorce Clinic

Sponsor: Louisville Bar Association

October 26 - Gilbertsville

Pro Bono Appreciation Luncheon with Guest Speaker Judge Clarence A. Woodall III, Kentucky Dam Village

Sponsor: Kentucky Legal Aid Lawyers Care Volunteer Attorney Program

October 29 - Louisville

Pro Bono Celebration Breakfast and free ethics CLE for pro bono attorneys presented by Don Major

Sponsor: Louisville Bar Association

October 29 - Covington

Evidentiary Issues in Domestic Relations Interactive CLE and Judge Judy West Scholarship Luncheon

Sponsor: Northern Kentucky Bar Association Women's Law Section



Kentucky Volunteer Lawyer Program
www.kyvlp.org

If you would like to participate, sponsor or be a part of programs in your area, contact:

Jacqueline Syers Duncan

Director, Kentucky Volunteer Lawyer Program
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Kentucky Bar Association Convention

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Crash Analysis & Reconstruction

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Justice Donald C. Wintersheimer

KBA Young Lawyers Section

Kentucky Bar Foundation/IOLTA

Kentucky Commission on the

Deaf and Hard of Hearing

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Company of Kentucky

LexisNexis

McNay Settlement Group, Inc.

National Insurance Agency, Inc.

NKU Alternative Dispute Resolution Center

NKU Chase College of Law

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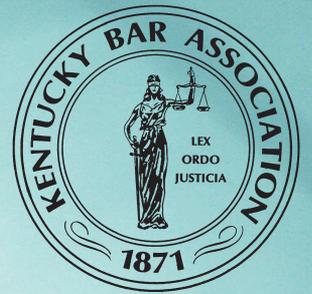
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