

KENTUCKY BAR ASSOCIATION



Bench & Bar

Volume 72 Number 1

January 2008

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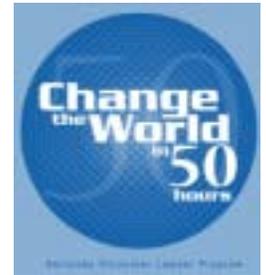
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Supreme Court of Kentucky

Standing, *left to right*: Deputy Chief Justice Will T. Scott, Justice Bill Cunningham, Justice Mary C. Noble and Justice Wil Schroder; and seated, *left to right*: Justice Lisabeth Hughes Abramson, Chief Justice Joseph E. Lambert and Justice John D. Minton, Jr.

“Pursuant to SCR 3.130(6.1), the Supreme Court of Kentucky encourages all lawyers to donate service this year to those who can not afford it. Many Kentuckians are in great need of legal representation, but are unable to pay. You are the only persons qualified to provide the legal representation they need. Please give your time and services, and encourage your fellow bar members to do the same. Let’s make access to justice a reality for Kentuckians in need.”

– Justices of the Supreme Court of Kentucky



The Court of Appeals

Standing, *left to right*: Judge Christopher Shea Nickell, Judge Jeff S. Taylor, Judge James I. Howard (Judge Michael Caperton), Chief Judge Sara Walter Combs, Judge Thomas B. Wine, Judge Laurance B. VanMeter and Judge Michelle M. Keller; and seated, *left to right*: Judge Donna L. Dixon, Judge Kelly Thompson, Judge James H. Lambert, Judge Janet L. Stumbo, Judge Lisabeth Hughes Abramson (Judge Denise M. Clayton), Judge Glenn E. Acree, and Judge Joy A. Moore.

“I know of no professionals as generous as lawyers in donating time and talent to the needy of our society. By granting access to justice to the poor, *pro bono* attorneys not only serve their immediate clients. Indeed, they safeguard the freedoms of all citizens by making the legal system relevant and responsive to those who would otherwise have no voice. We at the Court of Appeals salute their noble and generous efforts as the true heroes of law and justice.”

– Chief Judge Sara W. Combs, Kentucky Court of Appeals



Jane Winkler Dyche

Pro Bono Publico

Pro bono publico –
a Latin phrase meaning for the public good.

What do you do for the public good? In the legal profession, this is the work each lawyer is encouraged to do, providing free legal services to those who would otherwise be unable to afford such services.

“I made a promise to myself that when I graduated and became an attorney, I would give some of my time back for people who were not as fortunate as I was.” – Laurie Dowell, President of the Northern Kentucky Volunteer Lawyers

Last fall I had the chance to visit with lawyers from Ashland, Paducah, London, Covington, Owensboro, Bowling Green, Lexington and Louisville in conjunction with the KBA Kentucky Law Update programs. In each of the gatherings, the public perception of lawyers was mentioned as a concern. KBA members are frustrated that many people think lawyers are more interested in the fee than in the client and the cause. What better way to have a positive impact on the life of another, and show the public on a case-by-case basis, that lawyers can and do serve those in need than to provide free or reduced cost legal services?

There are many opportunities and programs such as the Kentucky Volunteer Lawyer Program and the four Kentucky civil legal aid services organizations that encourage collaboration and coordinate the efforts of attorneys who serve those in need. However, the need is great and not nearly met by these providers. Each of these programs has a volunteer lawyer component. Every Kentucky lawyer has

the opportunity to donate legal services to those of limited means. Urban practitioners and rural practitioners both are needed. Large firm, small firm, or solo practitioner, each has something to offer.

Recognition for a minimum of 50 hours of legal services donated by Kentucky lawyers at free or reduced cost is provided by SCR 3.130(6.1). On the annual dues statements received in 2007 by the Kentucky Bar Association, 738 KBA members reported they had provided at least 50 hours of donated legal services. At the present time, there are 11,894 in-state Kentucky lawyers and 3,689 members who live outside of Kentucky. Many of us provide *pro bono* services, but we do not keep track of our hours as we track those hours provided to clients who pay for legal services.

“In the early years of my practice I didn’t believe I had time to devote to pro bono work. Now referrals from Kentucky Legal Aid are an expected, welcome, and rewarding part of my work.” – Doug Gott, an IOLTA Trustee

This year, take the time to note the hours you spend in providing free, or reduced price, legal services to those who would otherwise be without the services. Regardless of where you are in your career, new lawyer, mid-career or long-experienced, you have the opportunity to serve. The American Bar Association’s Commission on Second Season of Service also provides assistance for ABA members who want to transform their practice as they transition into the final stages of their career. Visit <http://www.abanet.org/secondseason/> for more information.

Volunteer your time, energy and interest to provide public interest legal services. I hope that on your next KBA Annual Dues Statement you will be able to report at least the minimum number of hours of donated legal services. Imagine what our communities would be like if each of us complied with SCR 3.130(6.1). I challenge each Kentucky lawyer to provide at least 50 hours of free or reduced cost legal services this year.

“I have been volunteering at Legal Aid since I was in law school...helping people through a complicated legal system that, without volunteers and Legal Aid, would not be accessible to many people.” – Sandra McLaughlin

Bits and Pieces

- On the annual dues statement in 2007, 9,080 out of 15,583 KBA members responded to an inquiry about their form of practice.

2,230	solo practice
2,973	practice in a firm
715	in-house corporate
1,434	government
214	non-profit
355	judiciary
1,159	retired/not practicing
- Plan now to join us June 18-20 in Lexington for *Framing Our Future - The KBA Convention Re-Imagined for 2008*. The Annual Convention Planning Committee and the CLE Committee are focusing on comments and feedback from members of the KBA in designing cutting-edge programs and events to meet the needs of KBA members. Visit www.kybar.org for the latest convention information as it becomes available.

FEBRUARY 2008 KENTUCKY BAR APPLICANTS

Following is a list of applicants who have applied to take the February 26 & 27, 2008 Kentucky Bar Examination. If anyone has knowledge pertinent to determining the character and fitness of any of the applicants to become a member of the Kentucky Bar, please provide that information to:

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

NOTE: This list is current as of December 3, 2007. Any applications filed after this date will not be included in this list.

MICHAEL PAUL ACKERMAN	STAFFORD EASTERLING	TIMOTHY JOHN KELLY	BRIANDA ALUBA ROJAS
ANNA MEGAN ADKINS	LIZ DARLING EDMONDSON	COLLEEN JO ANN KENNEDY	KENNETH RUSSELL ROOT
ANNA M. ALEKSANDER	MARA EUGENIA ELLIOTT	NICOLE MARIE KERNS	RICHARD KYLE ROSE
J JOSEPH ALLEMAN	DAWN RENAE ELLIOTT	ERICA MICHELLE KIPLE	TRAVIS ALAN ROSSMAN
MARIA BRIDGET ALTMANN	JEFF RYAN ENGLISH	PRIYA SAZAWAL KOUL	MIA FAYE ROWE
JENNIFER CAVE ARTISS	BENJAMIN WALKER ENTWISTLE	CHRISTOPHER MICHAEL KOZOLL	PAUL C RUDOLPH
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ASHLEIGH NOEL BAILEY	PASHENS LA'RAY FITZPATRICK	JAMES BART LEONARDI	MICHELE LEE SCHULER
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JASON A BAUMAN	SARAH NICOLE FOX	JENNIFER JEAN LOOMIS	NATALIE RAE SMALLWOOD
BRANDON DOUGLAS BELLEW	TRACEY ARMBRUSTER FRAZIER	CRYSTAL DAWN LOVE	MONICA LYNN SMITH
MICHAEL J. BENDER	JARED AVERY FRISK	AMEER ELIAS MABJISH	JAMIE LYNN SPINKS
JONATHAN COLLINS BENNIE	WILLIAM HAROLD FRY	LISA DAMSTROM MARSHALL	STEVEN PAUL STADLER
CONNIE ELIZABETH BERRY	CATHERINE SUE NOE FULLER	NATHAN BRADLEY MASINGO	ROOSEVELT JOSEPH STENNIS JR
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STACEY MARIE BOWENS	JARRETT DANIEL GERLACH	CORINNE MARIE MCCHESENEY	STEPHANIE ALICIA SURRATT
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SHANNON LEIGH BROOKS	ANTHONY BRADLEY GRAY	BRANDI LYNN MCELDOWNEY	ADRIENNE AUGUST-GODFREY THAKUR
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VIRGINIA LORRAINE CROFT DUNN	NATASHA ANGELIQUEH JONES	D BRIAN RICHMOND	TALBOT DEWITT ZIEGLER
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514 West Main Street
Frankfort, KY 40601-1812

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Deadline:

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In October 2007, Justice Bill Cunningham of the Supreme Court of Kentucky spoke at a luncheon hosted by the Lawyers Care Volunteer Attorney Program honoring volunteer lawyers in Western Kentucky. In his remarks, Justice Cunningham emphasized the obligation of all lawyers and our justice system to ensure the words of our Pledge of Allegiance, “with liberty, and justice for all,” are applied to every segment of our society, without regard to economic status, race, religion or gender.

In this issue of our *Bench & Bar*, the Kentucky Bar Association spotlights *pro bono*, lawyers donating their legal services free of charge. The literal translation for the Latin term *pro bono* is “for the public good.”¹ The Kentucky Supreme Court and Court of Appeals have joined together to encourage all lawyers to donate legal services to those who are unable to pay. (Emphasis added). As noted in their endorsement, “You are the only persons qualified to provide the legal representation they need.”

The legal profession has always proclaimed itself as having an inherent obligation “to do the right thing.” SCR 3.130(6.1) sets out the ethical obligation of the Kentucky lawyer:

A lawyer is encouraged to voluntarily render public interest legal service. A lawyer is encouraged to accept and fulfill this responsibility to the public by rendering a minimum of fifty (50) hours of service per calendar year by providing professional services at no fee or a reduced fee to persons of limited means and/or by financial support for organizations that provide legal service to persons of limited means.

The very existence of the rule speaks to its importance. The rule is not mandatory and a violation of the rule will not result in any disciplinary sanction. This fact speaks to the trust the Court has placed in Kentucky lawyers to “do the right thing” and comply with the goal set forth in SCR 3.130(6.1).

The importance of donating legal services has never been higher. Federal fund-

ing for civil legal aid services has decreased while the need for civil legal aid services has increased. For every client that is served, another eligible client is turned away due to lack of resources.² Kentucky lawyers can no longer neglect the profession’s call to act for the public good and to provide legal representation to our fellow Kentuckians who cannot afford it.

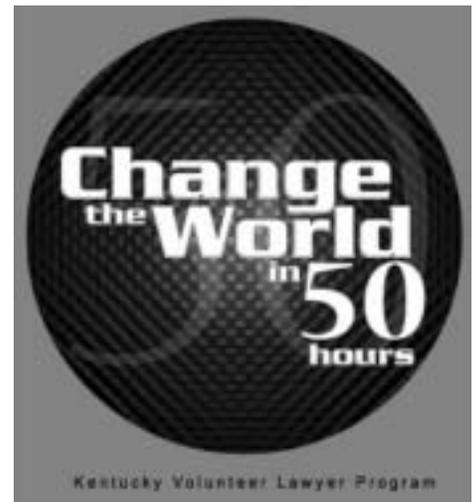
Currently, only 18% of Kentucky lawyers report taking *pro bono* cases. For July 1, 2006, through June 30, 2007, the KBA reported the following:

Number of Kentucky lawyers	11,631
Lawyers who reported <i>pro bono</i> service	2,153
Total hours of <i>pro bono</i> work reported	81,708

Lawyers who do take *pro bono* cases average approximately 37.95 hours per year. On the other hand, 9,478 lawyers, 82%, reported no *pro bono* work. Including those lawyers, the average number of *pro bono* hours logged by all Kentucky lawyers is only 7 hours per year. We can and should do better.

The Kentucky Supreme Court recently approved the KBA Board of Governors’ initiative to create Kentucky’s first statewide *pro bono* development project, now known as the Kentucky Volunteer Lawyer Program (KyVLP). The KyVLP seeks to increase and strengthen *pro bono* participation by private lawyers in civil legal aid cases.

The KyVLP brings together local *pro bono* programs across the state under one umbrella organization. Until now, local *pro bono* programs have operated with a local focus and with scarce resources. Each program created its own recruitment campaign and developed its own training materials while having to manage and place cases with their limited, and often over-used, volunteers. The KyVLP and the collective efforts, resources and opportunities which can be marshaled through it, will allow volunteers to be more efficiently managed. While each program remains an independent organization with its own board of directors and within its civil legal aid program, the KyVLP seeks



Kentucky Volunteer Lawyer Program

By Jacqueline S. Duncan

to integrate components of their systems, eliminate duplication of their efforts, and provide ongoing support services. The KyVLP will provide CLE programs and training; provide a clearinghouse of written materials, including more forms for volunteers; implement new strategies to reach low-income clients; and create recognition programs for volunteers. Ultimately, these efforts will improve access to the civil side of the judicial system for low-income Kentuckians.

The KyVLP, in partnership with the local *pro bono* programs, launches its first statewide campaign to recruit volunteer lawyers for *pro bono* work with this issue of the *Bench & Bar*. Our theme, "Change the World in 50 Hours," asks all Kentucky lawyers to volunteer their legal services to fulfill their professional obligation as directed under SCR 3.130(6.1). We need each of you to volunteer with your local *pro bono* program to donate legal services for those who are in need and unable to pay.



Jacqueline S. Duncan became the director of the Kentucky Volunteer Lawyer Program in May 2007. She received her J.D. from the University of Kentucky College

of Law in 1987 and joined the law firm of Jackson Kelly, PLLC, in its Lexington office, where she practiced general litigation for over 15 years. In 2005, she began working part-time at the Access to Justice Foundation with the Legal HelpLine for Older Kentuckians providing advice and counsel to low-income persons 60 and older.

This recruitment campaign first invites you to the KyVLP website, www.kyvlp.org.³ General information on *pro bono* work, including FAQs, general opportunities, news and related links, will be posted on the website. The website serves as a network for the programs, the coordinators, and the volunteer lawyers.

Most importantly, the website allows visitors to sign up online with their local *pro bono* program. When you sign up, the information will automatically be sent to the local *pro bono* coordinator in your area. This will allow you to receive emails about local opportunities, such as free CLE. Significantly, you will receive email notices about low-income persons needing help with legal problems in the practice area you designate when you sign up. Choosing several practice areas when you sign up will allow you to become more aware of the legal services needed in your communities. As you see these opportunities to serve – whether it be to take a case, to volunteer for a clinic, or to be a mentor – you can "click" on the opportunity and volunteer.

The recruitment campaign also seeks to educate you about your local *pro bono* program. Volunteering through your local *pro bono* program is the best way to assure you are donating free legal services to clients who are indeed persons of limited means. Local *pro bono* coordinators screen clients to determine their inability to afford an attorney and identify the legal issues at stake. Information on client income levels and the types of legal needs being met, as well as the *pro bono* hours reported by volunteers, support funding requests for civil legal aid programs. *Pro bono* programs work closely with civil legal aid programs where public interest lawyers are available to pro-

vide substantive support for you, if needed. If you take cases through a *pro bono* program, its malpractice insurance covers your volunteer service oftentimes as the primary, but at least secondary, coverage. Working through the local *pro bono* office will ensure a more streamlined process, and thus one which is more efficient and effective for all involved. These *pro bono* programs help make the volunteer experience more valuable for the lawyers and the clients.

Many reasons are offered as to why lawyers do not volunteer with their local *pro bono* program. First, lawyers equate community volunteerism and *pro bono*. Over the years lawyers have undoubtedly contributed countless hours in their communities by actively participating through civic organizations, political offices and campaigns, or religious institutions. Lawyers often believe this suffices to meet their *pro bono* obligation. Others claim they do *pro bono* when they draft a will or do the legal work on a divorce for a "friend of a friend" who could not afford it; cut hours or reduced the hourly fee for less well-to-do client; or simply write off legal fees for a struggling client. While all these efforts are truly commendable, appreciated, and good deeds, these lawyers are not necessarily providing *pro bono* legal services to those of limited means as anticipated by SCR 3.130(6.1).

Another reason lawyers may not take a *pro bono* case through their local program is their fear of the time it will consume. Lawyers recognize the importance of, and consequently spend considerable time on, networking, marketing, and other administrative matters that are not billable hours but nonetheless affect their return on investment.

Pro bono, too, yields a positive return on your investment. *Pro bono* puts you, your firm and the legal profession in a positive light; enhances skills and educates us on the legal as well as social needs of our communities; and teaches us to deal with people of diverse backgrounds. For less experienced lawyers, *pro bono* work provides the opportunity to let them be lead counsel and develop their abilities to listen to clients, evaluate solutions and strategies, give advice and advocate in court.

Finally, many lawyers dismiss *pro bono* because they do not practice in the public



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interest law areas and feel uncomfortable taking cases outside of their practice areas. As our society is "increasingly defined in legal terms,"⁴ many lawyers have their niche and even general practitioners avoid certain types of cases. While Kentucky lawyers are ethically bound not to take cases in areas in which they are not competent, ethics rule SCR 3.130(6.1) still admonishes the Kentucky lawyer to search out *pro bono* opportunities: "Every lawyer, regardless of professional prominence or professional workload, should find time to participate in or otherwise support the provision of legal services to the disadvantaged."⁵ (Emphasis added). Local *pro bono* programs provide substantive support for those who take cases outside their primary area of practice, including opportunities for CLE and access to written materials to learn more about a particular *pro bono* practice area. Lawyers can also request assistance for their first few cases such as having an attorney from the local civil legal aid program serve as co-counsel with them, or have another volunteer lawyer serve as a mentor.

Time and space limitations preclude listing all the programs and the opportunities *pro bono* coordinators are currently offering. The programs and contact information are provided following this article. Now is the time for all Kentucky lawyers to incorporate *pro bono* into their practice. Here are some general suggestions and considerations.

Judges

As leaders of our communities and our profession, judges should encourage lawyers to become involved with *pro bono* programs by reminding the local bar regularly of the need for their donated legal services. Judges may also adopt procedural accommodations which could give incentives to lawyers to take *pro bono* cases, such as hearing *pro bono* cases first on their regular docket and offering to hear any other matters the lawyer may have on the docket at that time. Being heard first on the docket helps conserve the volunteers' time, minimizes any inconvenience to them, shows the court's gratitude for their work and recognizes their efforts before their local bar.

Law Firms

Law firm management, executive committees or managing partners, should develop a *pro bono* policy for the firm. Firm policies vary greatly depending on a myriad of factors. Your firm will want to consider how it will be involved — handling individual cases, volunteering at legal clinics or undertaking a single firm-wide *pro bono* project; what time expectations are for lawyers; how *pro bono* time will be counted toward the lawyers' annual budgeted hours; what in-house training or mentoring may be needed; and how your local civil legal aid program and *pro bono* coordinator can assist you. The KyVLP has sample firm policies and would be happy to assist any Kentucky law firm interested in developing a *pro bono* policy.⁶

Law firms can also contribute financially to civil legal aid programs. In 2006, Wyatt, Tarrant & Combs' Louisville office generously sponsored a fellowship with the Legal Aid Society and fully supported the salary and benefits for a staff attorney position. In northern Kentucky, law firms may want to donate to the current building campaign for the central office for Legal Aid of the Bluegrass (LAB). There are many opportunities for firms to make a difference with their dollars.

Private Attorney Involvement

Sign-up online and find out the types of legal needs and various volunteer opportunities available to you when your schedule permits you to volunteer. Find your niche for *pro bono*, attend a CLE or ask for training. Let KyVLP or your local *pro bono* program know how they can help you help others.

Volunteers are desperately needed for

direct representation in all programs. The greatest need is for direct representation in family law matters. Paying or not, clients with family law cases present unique challenges. Several programs, particularly in northern and eastern Kentucky, are offering assisted *pro se* divorce clinics where the divorce is uncontested and involves no children and no property. More and more family law cases are being referred to mediation. Volunteer lawyers are needed as mediators and to represent the parties, even if for the limited purpose of the mediation.

Many of the *pro bono* programs offer a time scheduled, task specific opportunity to volunteer in a legal clinic. Examples of such legal clinics are those that help clients with wills and advance directives, bankruptcy and foreclosure, and small claims cases. Clients are prescreened and scheduled for clinics where the scope of their needs is known and narrowed. If these opportunities are not currently being offered in your area, consider volunteering to organize or host a clinic.

In-house Counsel; Government Attorneys

Lawyers serving in-house and government agencies, like law firms, would also benefit from an organizational *pro bono* policy. Clinics offer a great way for those lawyers to get involved, particularly where you can attend a CLE or brief training in the morning and meet with clients in the afternoon to address legal concerns on a narrow topic. Partnering with established entities such as bar associations or affiliated sections, law firms or law schools, also offers networking opportunities for those involved.

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Robert F. Duncan

Since 1995 Mr. Duncan has successfully mediated civil matters involving issues pertaining to personal injury, professional liability, construction, health care, insurance coverage/bad faith, as well as hospital and nursing home liability. Mr. Duncan is the Chair of the Mediation Section of the Fayette County Bar Association. Mr. Duncan received his undergraduate degree in Civil Engineering from the University of Kentucky and is a graduate of the University of Kentucky School of Law.

Daniel G. Grove

Daniel G. Grove joined Jackson Kelly PLLC in 2003. Prior to joining the Firm, Mr. Grove was in private practice for over 30 years, concentrating in the areas of civil and criminal litigation, domestic relations, fraud, business disputes and negligence. He is a Fellow of the American College of Trial Lawyers and a permanent member of the Fourth Circuit Judicial Conference. Mr. Grove has experience mediating civil disputes in Maryland, Virginia, and Washington, DC; and is now qualified to mediate disputes in Kentucky.

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to donate their legal services, low-income Kentuckians will have no access to legal representation. Occasionally, *pro se* litigants may attempt the process but judges and lawyers are often frustrated in such proceedings. Individuals have legitimate claims and defenses, but common law, statutory and contractual rights go unasserted without a lawyer. Without a lawyer, these individuals risk losing property, public benefits, and jobs to which they may be rightfully entitled.

Access to legal counsel and representation should never be denied because a person cannot afford to pay for a lawyer. We are members of a select and distinct profession. With that distinction comes the responsibilities identified in SCR 3.130(6.1). Help change a low-income person's world by volunteering 50 hours of legal services this year. As a profession, we can help make "justice for all" a reality for all Kentuckians. ■

ENDNOTES

1. [The American Heritage Dictionary of the English Language: Fourth Edition, 2000.](#)
2. *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, The Legal Services Corporation, 2005.
3. KyVLP and the civil legal aid programs express their sincere and deep appreciation to Ron Shaw as owner of ProTempus for donating the software and technical expertise for the website. ProTempus provides law office software. Its estimated product, services and support on the KyVLP website exceeds \$50,000.00. Thank you.
4. SCR 3.130(6.1), comment 2, recognizing the rights and responsibilities as such.
5. SCR 3.130(6.1), comment 3.
6. The American Bar Association's Standing Committee on *Pro Bono* and Public Service and Center for *Pro Bono* offers several resources for helping firms develop their *pro bono* policy or starting a *pro bono* program. See <http://www.abanet.org/legalservices/probono/>

**Kentucky Volunteer Lawyer Program
Access to Justice Foundation**

Director: Jacqueline S. Duncan
535 West Second Street, Suite 101
Lexington, KY 40508-1284
email: jduncan@ajfky.org
phone: 859-255-9913 x18
fax: 859-231-5356

Kentucky Pro Bono Programs are under the direction of four civil legal aid programs that cover the state.

1. Kentucky Legal Aid (KLAD) serves western Kentucky. Its pro bono programs are listed below.

Lawyers Care Volunteer Attorney Program

Director: Gayle Faulkerson
1700 Destiny Lane
Bowling Green, KY 42104
General Phone: 866-452-9242
Intake Phone: 270-780-0528
Fax: 270-467-0528

Counties Served: Allen, Ballard, Barren, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Graves, Green, Hancock, Hart, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Metcalfe, Muhlenberg, Ohio, Simpson, Taylor, Todd, Trigg, Union, Warren, Webster

Lawyers Care also has offices in Owensboro and Paducah.

Coordinators: Natalie Gayle Bash	Owensboro Lawyers Care
Managing Attorney	Cheryl Cureton
Kentucky Legal Aid	Managing Attorney
1122 Jefferson Street	117 West Second St.
Paducah, KY 42001	Owensboro, KY 42301
800-467-2218	866-452-9242

2. Legal Aid Society (LAS) serves Jefferson and surrounding counties. It has two pro bono programs.

Legal Aid Society Volunteer Lawyer Program

Director: Leslie Clemons
425 W Muhammad Ali Blvd, Ste F1 Blvd4
Louisville, KY 40202-2353
General Phone: 502-584-1254
Intake Phone: 800-292-1862
Fax: 502-584-8014

The Louisville Bar Association partners with the LAS Volunteer Lawyer Program to form the Louisville Pro Bono Consortium.

Counties Served: Breckenridge, Bullitt Nelson, Grayson, Hardin, Jefferson, Larue, Marion, Meade, Oldham, Shelby, Spencer, Trimble, Washington

3. Legal Aid of the Bluegrass (LAB) has four pro bono programs throughout northern, eastern and central Kentucky.

Northern Kentucky Volunteer Lawyers, Inc.

Director: Lynette Guzzino
302 Greenup St
Covington, KY 41011-1740
General Phone: 859-431-8200
Fax: 859-431-3009

Counties Served: Boone, Campbell, Carroll, Gallatin, Grant, Kenton, Owen, Pendleton

Legal Aid of the Bluegrass Pro Bono Project-Morehead

Director: Theresa Mason
P.O. Box 1040
Morehead, KY 40351-1040
General Phone: 606-784-8921
Intake Phone: 800-274-5863
Fax: 606-783-1342

Counties Served: Bath, Bracken, Carter, Elliott, Fleming, Mason, Menifee, Montgomery, Morgan, Nicholas, Robertson and Rowan

Legal Aid of the Bluegrass Pro Bono Project-Ashland Attorney Access Project

Director: Elizabeth Thomas
P.O. Box 1147
Ashland, KY 41105-1147
General Phone: 606-329-1321
Intake Phone: 877-295-4137
Fax: 606-325-0615

Counties Served: Boyd, Greenup & Lewis County referrals

Fayette County Bar Association Pro Bono Program, Inc. (LAWCARE)

Director: Tammie Haddix
122 N Broadway
Lexington, KY 40507-1227
General Phone: 859-255-7244
Fax: 859-254-4573

Counties Served: Fayette ONLY

4. Appalachian Research and Defense Fund (APPALRED) covers southern and eastern Kentucky.

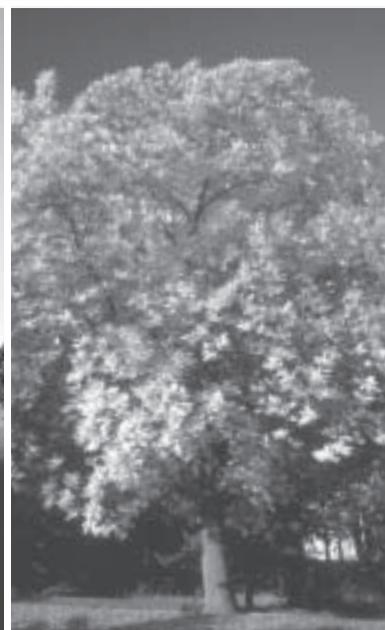
Volunteer Lawyers for Appalachian Kentucky

Director: Will Synder
207 West Court Street, Suite 201
Prestonsburg, KY 41653
General Phone: 606-886-8136
Fax: 606-886-8137

Counties Served: 37 Counties: Adair, Bell, Breathitt, Casey, Clark, Clay, Clinton, Cumberland, Estill, Floyd, Garrard, Harlan Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, Madison, Magoffin, Martin, McCreary, Monroe, Owlsey, Pike, Powell, Pulaski, Rockcastle, Russell, Wayne, Whitley, Wolfe

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January of 1978 is a significant anniversary for those interested in Kentucky's attempt to provide civil legal services to its low income citizens. For January of 1978 marked the beginning of the first full year that there were civil legal aid programs operating in all regions of Kentucky. While there had been some federal funding for "legal aid for the poor" beginning in 1965 under the auspices of the Office of Economic Opportunity as part of President Johnson's "war on poverty," it was actually not until 1980 that every county in the country was assigned its own "Legal Aid" office. The Legal Services Corporation (LSC), a quasi-governmental entity, is a Washington, D.C., not-for-profit corporation established by Congress in 1974 with a mission to provide low-income persons throughout the United States with access to high quality legal assistance in civil matters.¹ To carry out its mission, it currently funds some 138 independent not-for-profit law firms. (Hereinafter "legal aid programs.")

In Kentucky there are now four such legal aid programs: Legal Aid of the Bluegrass, which covers roughly the area from Carrollton to Danville to Ashland; the Appalachian Research and Defense Fund, which stretches roughly from Prestonsburg to Columbia; Kentucky Legal Aid, headquartered in Bowling Green, which covers western Kentucky and south central Kentucky; and the Legal Aid Society of Louisville, which covers Jefferson County and fourteen counties neighboring Louisville.

These legal aid programs employ staff attorneys who, in civil non-fee-generating cases, represent low-income people who have limited assets and usually have a family income below 125% of the federal poverty level.² Additionally, each of these legal aid programs operates *pro bono* projects which are usually in partnership with local bar associations. Though in 1981, LSC required that its legal aid programs involve the private bar in the delivery of civil legal services to the poor,³ in Kentucky partnerships between the private bar and the legal aid organizations pre-dated the mandate.

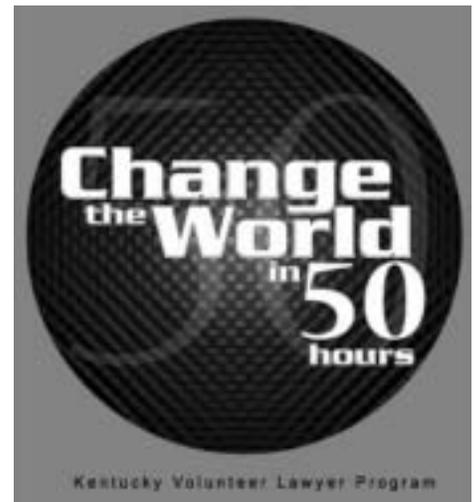
Last year, the legal aid programs in Kentucky closed some 23,000 staff attorney cases and approximately 2,300 *pro*

bono cases. While in recent years productivity has increased somewhat because of improved technology, these numbers have been fairly consistent for the last 25 years. This is despite the fact that federal funding for LSC, in terms of inflation adjusted dollars, has declined by 52.5% since 1980.⁴ Much of the decline in funding has been replaced by state and local funding: IOLTA, United Way, and a host of other grants. Indeed, one of Kentucky's legal aid programs is now funded by some 60 grants from some 40 funding sources.

Impressive as these case statistics are, they represent only about 20% of the need low-income families have for civil legal representation, according to the American Bar Association.⁵ Furthermore, during the past five years nine states have conducted their own legal needs studies using the same telephone survey method employed by the ABA. These studies confirmed that at most, low income people's legal needs were being met twenty percent of the time.⁶

Because it is simply not possible for the legal aid programs to provide a lawyer for every low-income person who experiences a bona-fide civil legal problem, LSC has mandated that each of its programs periodically conduct a legal needs survey of its service area and set priorities to assure that program resources are targeted to the most pressing problems that low-income people encounter.⁷ For example, one Kentucky LSC program found during its most recent priority setting process that the emerging needs were for representation of victims of predatory home lending, immigrant victims of domestic violence, and for some legal assistance in removing barriers to employment.

While accounting for some regional variation, Kentucky's four legal aid programs, through a state planning process, have attempted to harmonize their "priorities" as much as possible. Generally speaking, the priorities that the programs have adopted focus upon securing and maintaining basic human needs for the low-income family. This translates into case acceptance guidelines weighted toward, *inter alia*, family law, especially where the case involves domestic violence or the welfare of children, maintain-



Eliminating the Justice Gap

By Richard A. (Dick) Cullison



Richard A. (Dick) Cullison is the Executive Director of Legal Aid of the Bluegrass, a LSC funded program covering 33 Kentucky counties with offices in Covington, Lexington, Morehead, and Ashland. Mr. Cullison began his legal aid career as a staff attorney with the Northern Kentucky Legal Aid Society in 1977, and he became its director in 1984. Northern Kentucky Legal Aid merged with Northeast Kentucky Legal Service in 1998 and Central Kentucky Legal Services in 2002, at which time its dba name became Legal Aid of the Bluegrass. The opinions stated in the article are the author's alone and are not necessarily those of the KBA or anyone else in the legal aid or *pro bono* community.

ing the family home whether by stopping evictions or home foreclosures, securing a public benefit where the client has been wrongfully denied it, and consumer cases which protect family income.

The following case vignettes are examples of cases which have been handled by legal aid attorneys which are "within priorities:"

A single mother with two children defaulted on her mortgage because

she was the victim of a predatory loan. A legal aid lawyer represented her in the foreclosure proceeding and raised several federal and common law defenses. The settlement reduced her mortgage payment by more than 50%, and the family stayed in the home.

A public housing agency attempted to evict a disabled person alleging that he constantly violated the Complex's rules. A legal aid attorney presented evidence to the agency concerning the nature of the tenant's disability and requested a "reasonable accommodation" on behalf of the client. The matter was informally resolved through the public housing grievance procedure, and the disabled client remains in his affordable home.

A woman who could not speak English arrived in the United States to be a mail order bride of a medical doctor. He never married her. Rather he had her travel with him as he provided service in various rural hospitals. He kept her chained in motels as a sex slave. A legal aid lawyer obtained an order of protection for the woman and secured a T-Visa and work papers from INS because the woman was found to be a victim of severe trafficking within the meaning of federal immigration law.

A married mother of three fled with her children to a domestic violence shelter to escape her husband's severe physical abuse. He then filed a juvenile court action alleging the children were dependent because they resided in a shelter. With representation of a legal aid attorney, the woman had the juvenile case dismissed, secured a protective order which gave her possession of the marital residence with her children and later secured a dissolution of her marriage which gave her custody and child support and restricted the husband's visitation.

A nursing home patient was denied Medicaid because Kentucky maintained that the patient's family had sold his home for less than the tax valuation. With representation by a legal aid lawyer, the patient proved at an administrative hearing that the condition of the home was so poor that its fair market value was considerably less than the assessed value and that the family had done everything it could to receive full value from the sale of the home. The hearing officer ordered Medicaid to be reinstated, and the patient was permitted to stay in the nursing facility.

A legal aid lawyer filed bankruptcy for a couple in their late 60s (whose only income derived from SSDI) to keep their utilities from being disconnected. The husband was on a breathing machine, so loss of utility service would have been particularly harmful. Since the couple filed a Chapter 7 four years ago, they filed a Chapter 13 and kept their utilities on.

Because Legal Aid programs concentrate on these types of priority cases, their value to the community goes beyond their noble attempt "to establish justice for all," or to provide "access to the courts" for the least fortunate. As the vignettes demonstrate, over the past generation, the legal aid programs have become a vital web in society's social safety net for the less fortunate. It is sad,



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however, that the legal aid societies and their *pro bono* partners lack sufficient resources to accept all of the cases which are within the program's "priorities."

For a two month period in 2005, LSC had each of its programs keep track of every potential client who presented a bona-fide legal problem in a priority area. Unlike the ABA study and similar studies which relied on an attempt to establish legal need among the poverty population generally, this survey actually tracked people who "voted with their feet" (or more typically with their telephone call) by applying for service at a legal aid office they thought would help them.

The LSC survey established that for every client served, one applicant was turned away due to lack of resources. It concluded: "It is clear from this research that at least 80 percent of the civil legal needs of low-income Americans are not being met. Moreover, 50 percent [54% in Kentucky] of the eligible people seeking assistance from LSC-funded programs in which the programs provide service are being turned away for lack of program resources."⁸ Thus, in theory at least, to serve the additional 50% of "clients" who

present "priority cases" and erase "The Justice Gap,"⁹ the amount of work performed by the legal aid programs with their *pro bono* partners would need to double.

One solution to this "Justice Gap" dilemma would be for the legal aid programs to have their budgets doubled so they could accept twice as many priority cases. For a variety of political reasons, it seems unlikely that this will happen in the short run at least. As previously noted, the federal commitment to LSC has significantly declined in the last 27 years. It is worth noting, however, that the United States funds legal aid to the poor at a much lower percentage of its gross national product than do most other Western developed nations. For example, Germany and Finland at the low end invest 3 times as much as does the United States, and England at the high end invests 12 times as much.¹⁰

But even if the budgets of the legal aid programs were doubled, their Boards of Directors would likely first address some other concerns, such as low salaries and infrastructure needs before adding new staff.¹¹ Legal Aid lawyers are the lowest

paid lawyers in the profession. They typically start well below \$40,000.00 per year and must work in excess of ten years in the profession to reach \$50,000.00. With the current crop of law graduates emerging from law school with as much as \$100,000.00 in student loan debt, the legal aid programs are having increasing difficulty attracting and maintaining staff attorneys. Therefore, it might require something more than doubling the legal aid budget for the programs to be able to double the service they provide.

LSC has suggested that the quickest way to narrow the "Justice Gap" is to increase the number of cases handled *pro bono*. It has encouraged all LSC programs and other interested entities to pass resolutions declaring their commitment to working with all interested partners to improve and enhance the delivery of *pro bono* legal services to help narrow the "Justice Gap." All four of Kentucky's legal aid programs have passed such a resolution.

If the legal aid programs increased their productivity by 20%, the "Justice Gap" in Kentucky could be eliminated if *pro bono* increased by 1,000% from



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2,300 cases to 23,000 cases per year. Staggering as this figure is, it could be attained if every practicing attorney in Kentucky met the aspirational goal of providing 50 hours of *pro bono* service annually.¹² Statistics maintained by the Kentucky Bar Associations establish that there are nearly 9,500 Kentucky lawyers who report no *pro bono* work in a given year. Some 2,150 Kentucky lawyers last year reported doing *pro bono* work, and they averaged 39 hours for the year on *pro bono* cases.¹³ If every one of these took one more 11 hour case (perhaps a bankruptcy or an administrative public benefits hearing), and every heretofore non participating attorney fulfilled the ideal of SCR 3.130(6.1) by taking two to three cases per year and devoted up to 50 hours to these, the “Justice Gap” would be eliminated in Kentucky.

Of course if this new *pro bono* effort were really going to eliminate the “Justice Gap” as defined in this article, these new *pro bono* cases would need to be “priority cases.” For some *pro bono* programs, this would require a

change in culture. These programs have focused upon the simplest of legal tasks, such as the preparation of basic legal documents and uncontested divorces. These efforts are valuable, and they do decrease the “Need Gap” for legal service as defined in the ABA studies. However, if *pro bono* effort is going to reduce the “Justice Gap” in addition to the “Need Gap,” the new *pro bono* work may have to be more sophisticated. Many of Kentucky’s *pro bono* lawyers are already handling “priority” cases. The following cases were handled by *pro bono* lawyers in Kentucky in recent years:

An unscrupulous broker induced a 90 year old widow to invest her life saving of \$100,000 in a fraudulent investment scheme and lost her money. Two *pro bono* lawyers worked on her case and negotiated a settlement with the securities firm to restore all the money.

A teacher lost his license in an employment dispute with the Board

of Education. A *pro bono* lawyer on two weeks notice filed an appeal and represented the client successfully in an administrative hearing.

A low income family was being evicted from an apartment they could afford. They were having difficulty finding an alternative residence because of the size of their family, and they were afraid they might have to split up the family in order to secure alternative housing. A *pro bono* attorney, on one day’s notice, represented the family in the eviction, and he negotiated a settlement with the landlord whereby the family could remain in their apartment.

A mother and victim of domestic violence who had been the primary caretaker of her two year old was facing a hostile custody battle which began when she filed for child support. A volunteer lawyer accepted the case, rearranged her schedule and successfully represented the client at a hearing.

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An elderly man found out that his residence had been foreclosed upon for the first time when he learned that the Master Commissioner was about to conduct a judicial sale of his home. A *pro bono* attorney discovered that the man had never been served with any notice concerning the foreclosure litigation. He obtained a stay of the sale, and then negotiated a settlement with the creditor so the client could remain in his home.

A few years ago, Kentucky required its Medicaid nursing home patients to place their income in excess of \$1,656.00 per month in an irrevocable Qualified Income Trust. It did not matter that all who needed the trust were already spending their entire income for the nursing home care. No one in Kentucky had ever done one of these. Within a month, a group of legal aid lawyers working with *pro bono* lawyers developed a satisfactory form, and had hundreds of patients execute the trust instrument. In one community, several *pro bono* lawyers spent all day at nursing facilities assisting a family execute one of these documents about every 45 minutes.

If *pro bono* work is really going to be a significant factor in reducing the “Justice Gap,” it should not be sold upon the premise that it is virtually effortless. Everybody knows that nothing worthwhile is effortless. Rather it should be sold on the basis that there is a brutal need for the service, and that the work can be exciting and fulfilling.

The purpose of this article is not to demonstrate that eliminating the “Justice Gap” is too daunting a task to be undertaken. Rather it is to show that it is within our reach. It will take some increased resources for the legal aid programs, more *pro bono* commitment, use of new technology and new methods of delivery, and some sort of statewide coordination of these systems.

Consider that if productivity of the legal aid programs as well as their *pro bono* partners increases by 10% per year, in five years the “Justice Gap” will be cut in half. This new year, we are entering a

second generation of delivering high quality civil legal service to the least fortunate in our society. In one generation, in a creative manner, we found a way to meet about half of these clients’ “priority needs.” It is both a worthy and an achievable goal for the next generation to eliminate the “Justice Gap” and to strive to develop ways to eliminate the “Need Gap,” and ultimately satisfy everyone’s civil legal needs so we may truly have “justice for all” in our society. ■

ENDNOTES

1. 42 USC 2996-29961.
2. Approximately \$12,000 per year for a family of one; \$17,000 for a family of two; \$21,000 for a family of three; etc.
3. 45 CFR Part 1614.
4. Houseman, *Civil Legal Aid in the United States An Update for 2007*, Center for Law and Social Policy, p.12; www.clasp.org.
5. ABA Consortium on Legal Services and the Public, *Legal Needs and Civil Justice, A Survey of Americans, Major Findings from the Comprehensive Legal Needs Study*, 1994, <http://www.abanet.org/legalservices/downloads/sclaid/legalneedsstudy.pdf>.
6. Houseman, *supra* at p. 9.
7. 45 CFR Part 1620.
8. Legal Services Corporation, Documenting the Justice Gap in America: The Current Unmet Civil Legal Need of Low-Income Americans, Sept. 2005, p.14; [http://www/lsc.gov/press/documents/LSC%20Justice%20%20Gap Final 1001.pdf](http://www/lsc.gov/press/documents/LSC%20Justice%20%20Gap%20Final%201001.pdf).
9. Since according to the ABA studies only 20% of low income people’s legal needs are being addressed, the ABA labels the 80% shortfall the “Justice Gap;” for purposes of this article however, that gap will be called the “Need Gap;” and the fact that 50% of applicants at legal aid programs who present priority cases are being turned away will be called the “Justice Gap.”
10. Houseman, *supra* at pp. 12,13 referencing Earl Johnson, “Equal Access to Justice: Comparing Access to Justice in the United States and other Industrial Democracies,” 24 *Fordham Int’l L.J.* S83 (2001)
11. Each legal aid program has a governing board comprised of at least 60% attorneys appointed by a bar association and 33% eligible clients. 45 C.F.R. Part 1607
12. SCR 3.130(6.1)
13. See Jacqueline Duncan’s companion article in this *Bench & Bar*.

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Partners for Justice

By William H. Hollander

Wyatt, Tarrant & Combs has a long history of *pro bono* involvement. Wilson Wyatt was proud of the fact that, from the beginning, the firm's attorneys recorded hours dedicated to *pro bono* work. Like many other firms, Wyatt requires first through third year attorneys to donate at least 50 hours to *pro bono* work every year. Many more experienced lawyers also donate substantial *pro bono* work.

It was in that spirit that, in 2003, Wyatt decided to experiment with a new program, committing to send a lawyer to the Legal Aid Society's Louisville offices on a full-time basis, while continuing to pay the associate's full salary and benefits. The original plan was to rotate attorneys every three months, although some attorneys served six month stints. We called it the "Partners for Justice Fellowship." Then Wyatt Managing Partner Kevin Hable was instrumental in the effort. "It's an additional way for our young lawyers to know more about the law and the practice of law," Hable said. "Also, as a law firm we discharge our civic duty by participating in this project.... We want to continue the tradition and pass it along to the next generation of lawyers."

Allison Peck Lankford was the first Wyatt attorney to be detailed to Legal Aid. Like all of the others who followed her, Allison worked primarily in Legal Aid's family law division, representing low-income victims of domestic violence, most of whom either had children in the home or were disabled, in divorce cases. At the end of the program, she wrote about the vast difference between her Legal Aid work and her work at Wyatt as a commercial litigator. "There were many times during the last six months when I literally had to fight back tears as I listened to the stories of the brave women who found the courage to leave destructive and dangerous relationships."

Seven other Wyatt associates followed Allison to Legal Aid. One of them, Wyatt litigator Rania Basha, remembers learning a lot about empathy during her experience. "My initial fear was that I would have no idea how to talk or relate to clients who were victims of domestic

violence. After her supervisor advised her to just "be sensitive," Rania says she overcame her fears and "I listened to the clients and talked to them and sometimes even hugged them." Steve Mercer, a real estate lawyer at Wyatt, says one experience will stick with him forever: "When the hearing was over and the judge stated that he was going to sign the decree dissolving the marriage, my client looked at me in near tears and said 'Thank you, I am finally free.'"

Legal Aid leaders welcomed Wyatt's involvement but candidly told us that clients would better be served if our attorneys served for six month terms, instead of the three month stints we had initially proposed. The reasons were simple: most of the divorce cases Wyatt lawyers were handling took more than three months to conclude and longer terms reduced the amount of time spent in training and transitioning cases. Wyatt, on the other hand, was reluctant to go beyond the three month terms, for fear of taking relatively new lawyers out of the flow of work in the firm for a period which would adversely affect their growth in their chosen area of law.

In 2006, Wyatt and Legal Aid jointly decided that Legal Aid's needs could best be served if Wyatt funded a full-time Legal Aid employee, who we call a "Wyatt Fellow." Since March 2006, Shawna Scheidel, a DePaul University College of Law graduate whose career goal is to serve low income clients, has worked full time on the same type of cases our associates were working on under the former program. Wyatt reimburses Legal Aid for Shawna's salary and the cost of her benefits. The difference between providing a detailed Wyatt associate and funding Shawna's position is that Shawna is available to take a case from inception to conclusion, the need for less training time means that more clients can be served, and Shawna is gaining expertise which will help poor clients for years to come.

Client service is, of course, key. Wyatt and Legal Aid both believe the new program allows more clients to be better served than the previous Wyatt program. At Wyatt, we have long recog-



William H. Hollander is the managing partner of Wyatt, Tarrant & Combs. Mr. Hollander is also member of the

firm's Executive Committee and a member of the firm's Intellectual Property & Technology Licensing Practice Group. He serves on the Kosair Children's Hospital Leadership Cabinet and just completed service as a trustee of the Children's Hospital Foundation, where he chaired the Planned Giving committee. Mr. Hollander received his A.B. degree *cum laude* in 1975 from Harvard College and earned his J.D. degree *summa cum laude* in 1984 from Indiana University-Bloomington.

nized that lawyers have an obligation to contribute financial support to organizations that provide legal services free of charge to persons of limited means, and the Wyatt Fellow program is simply an expansion of that effort. The firm made the commitment hoping that it would inspire other law firms to emulate it. Louisville firms have found various ways to assist Legal Aid, which would not exist without that generous support.

But simply paying for someone else to do work for those unable to pay for legal services doesn't fully satisfy our professional and moral responsibilities, teach lawyers what life is like for the underprivileged needing legal help, or inculcate long term support for Legal Aid, all of which were goals of the original program. To reach those goals, many law firms and lawyers are committed to more traditional *pro bono* efforts, encouraging firm attorneys to take *pro bono* engagements, including at Legal Aid. Wyatt reminds its newer attorneys of the obligation as part of the evaluation process, because we realize that actually committing the time to engage in *pro*

bono activities, while also carrying on a large caseload at the firm, is a challenge.

Wyatt's experience in providing a dedicated Wyatt employee to Legal Aid taught us that providing the best client service to those in need requires flexibility. The program afforded needed assistance to Legal Aid, while serving as a real eye-opener and memorable experience for these individual Wyatt lawyers in the effort. Ultimately, we decided that client service could be improved by funding a Legal Aid employee, while continuing traditional *pro bono* efforts. Many attorneys across the Commonwealth make personal commitments of this nature as a regular practice, and find their professional and personal lives enriched. We applaud those efforts, and encourage others to make similar commitments. ■

Editor's Note: Wyatt, Tarrant & Combs received the "Firm of the Year" award from the Fayette County Pro Bono organization at the annual recognition luncheon on December 4, 2007.



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Pro Bono Spotlight

By Eileen M. O'Brien

Pro bono coordinators from around the Commonwealth were asked to identify those individuals and law firms entitled to special recognition for their efforts in contributing *pro bono* services pursuant to SCR 3.130(6.1). The suggestions from the civil legal aid and local bar association *pro bono* programs serve to illustrate the diversity of meaningful efforts to address the legal needs of low-income clients. Those to be commended range from small to large law firms, young associates to retired attorneys and in-house counsel, as well as solo practitioners in various practice areas.

Northern Kentucky - Amy L. Tieman has been an active member of the *pro bono* panel since 1998. She is an associate with the firm of Dallas, Neace and Koenig and works as an assistant county attorney for Gallatin County, serving also in the Boone, Gallatin, Harrison and Owen County Child Support Divisions. Ms. Tieman often serves as guardian *ad litem* for children in difficult custody cases and in her duties with the child support program, assists in the establishment of paternity and in setting, reviewing and collecting child support and prosecuting non-support cases in district and circuit court. She is described as “maintaining a high work ethic regardless of the per hour charge.” Ms. Tieman serves on the Board of Directors of the Northern Kentucky Bar Association, is a lifetime northern Kentucky resident and a 1996 graduate of the Salmon P. Chase College of Law.

Ashland/Morehead - Delores Woods Baker, a solo practitioner in Maysville, has worked through Legal Aid of the Bluegrass and has accepted more *pro bono* cases than any other attorney on the Morehead volunteer lawyer panel. Ms. Baker has accepted and completed over 30 cases from the *pro bono* program alone, and is also known to take cases for low income citizens without reporting and receiving credit through the program. She has received the following recognition and awards from the Eastern Kentucky Region, Legal Aid of the Bluegrass Office: 2000 - Special Service Award; 2003 - *Pro Bono* Attorney of the Year; 2004 - Access to Justice Award; 2005 -

Outstanding Service Award. Ms. Woods is a 1984 University of Louisville Law School graduate, who opened an office in Grayson in 1985 and moved to Maysville in 1993.

Fayette County/Central Kentucky - David A. Holladay, a graduate of the University of Kentucky College of Law '71, has been a volunteer for the Fayette County Bar Association *pro bono* program for at least a decade. In the past fiscal year he donated 40 hours of volunteer time to represent indigent individuals in Fayette County. The director of the area program noted that his membership in the program has been exceptionally valuable in that he does not hesitate to take on the more time consuming, contested matters. By way of example, the local *pro bono* program awarded him the 2006 “Nick of Time” award for his willingness to take an ongoing divorce action with a custody dispute and property issues at a crucial point in the case and for his representation of a low-functioning individual regarding a child support arrearage/miscalculation issue within the child support recordkeeping from another state. Clients of the FCBA *pro bono* program consistently report that Mr. Holladay treats them with respect and dignity and handles their matters in a timely, professional manner.

Louisville - The firm of Wyatt, Tarrant & Combs has demonstrated a strong commitment to the Legal Aid Society and its clients. The firm funds a fellowship designed to provide a legal aid staff attorney with a greater understanding of the legal needs of the low-income community as that attorney develops in litigation skills. In addition to that fellowship, the firm still supports *pro bono* work of its associates by encouraging first, second and third year associates to devote, as part of their 50-hour annual *pro bono* commitment, at least 20 hours annually to assisting a legal aid client.

Western Kentucky - As a result of significant changes in bankruptcy law in 2005, many *pro bono* volunteer attorneys in the area declined to assist with legal aid bankruptcy cases. However, Samantha J. Evans, (Evans Law Firm)



Eileen M. O'Brien, a graduate of Transylvania University and the University of Kentucky College of Law, is a member in the Lexington

office of Stoll Keenon Ogden PLLC. Ms. O'Brien practices in the areas of civil litigation, family law and employment law. She is certified by the state as a mediator after completing training by the Administrative Office of the Courts and the 2004 Harvard Law School mediation workshop. She is a member of the board of directors of Chrysalis House, Inc. and was appointed by Lexington's mayor to serve on the board of the Carnegie Center for Literacy.

in Hopkinsville, agreed to have all of the Lawyers Care referrals in her general area sent to her and offered to travel to other districts if there was a need for assistance. In addition to this effort, Ms. Evans offered to assist with the overflow from Kentucky Legal Aid resulting from the decrease in volunteers in that practice area. Ms. Evans has logged over 60 hours each year in bankruptcy cases alone, and also accepts family law cases and social security and home ownership clients.

Hazard - Heidi Hopfensperger was admitted to the Wisconsin Bar in 2003, and the Kentucky Bar Association in 2005. She initially worked for the Appalachian Research and Defense Fund (AppalRed) in Hazard, representing low income individuals needing legal assistance in a number of different areas. She moved from AppalRed to a local law firm in 2006, and in November of that year opened her own firm. From July of 2006 to July of 2007, Ms. Hopfensperger has taken 22 cases on a *pro bono* basis, logging 25 to 30 hours donated to those matters. In addition, she continues to donate her time to the cases still open and underway.

Southern/Southeastern Kentucky - J. Warren Keller, of Taylor, Keller, Dunnaway and Tooms, PLLC was a member of the Kentucky Lawyers for Legal Services for the Poor organization from 1992 to 1996, and is the founding President and Board Chair of the successor organization, the Access to Justice Foundation based in Lexington. Mr. Keller has also served as the Chair of the Kentucky Bar

Association Donated Legal Services Committee, and received the 2001 Distinguished Award for Donated Legal Services from the state bar association. He is the outgoing President of the Kentucky Bar Foundation Board, and since June of 2006 has handled seven *pro bono* cases from his local program in the areas of dissolution, child support and custody/visitation. ■



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NKU Chase Institutes *Pro Bono* Requirement

Dennis Honabach, Dean,
NKU Chase College of Law and
Nancy Lee Firak, Associate Dean for
Academics, NKU Chase College of Law

One goal of every law school is to instill in its graduates a deep appreciation for the fundamental values of the profession. For lawyers, those values should include a general obligation to serve the community at large and the specific obligation to provide legal services for those in need. It should surprise no one that law schools recognize the need to encourage its students to provide *pro bono* legal services.

Since its inception, NKU Chase College of Law has encouraged its students to participate actively in the provision of *pro bono* services. Four years ago the faculty of the College of Law made this more formal by creating a *Pro Bono* Transcript Notation Policy which recognized any student who voluntarily provided twenty-five hours of *pro bono* work, including assistance to government agencies, public interest organizations, or other free public or community legal services. That recognition took the form of a notation on the student's transcript recognizing his or her *pro bono* activities. Student participation in the voluntary program was admirable but not universal.

Last year, the faculty at NKU Chase College of Law took its charge of insuring that Chase students understood their professional obligation one step further. With the wholehearted support of student leaders, the faculty adopted a *pro bono* service graduation requirement that will be effective for first-year students entering Chase in August 2008. In adopting the graduation requirement, Chase joined ranks with Columbia University Law School, Harvard Law School, the University of Louisville, the University of Pennsylvania, and a handful of other law

schools which have adopted public service requirements. Under the new mandatory program, each student must complete fifty hours of *pro bono* legal service by graduation. Once fully implemented, the new program will ensure that Chase law students collectively provide more than 10,000 hours of *pro bono* legal service to the community each year.

In adopting the new mandatory program, the faculty acted on its belief that students who engage in public service in the course of their education are more likely to develop an appreciation of their obligation to provide *pro bono* legal services. Such appreciation will enhance their commitment to *pro bono* service in their professional lives. The faculty also believed that students who participate in *pro bono* activities will experience the rewards of helping those who otherwise could not afford legal services. This will translate into a stronger post-graduate commitment.

The new graduation requirement continues a tradition of substantial participation by NKU Chase law students in volunteer service programs. For example, the Chase Law Advocates Program (CLAP) already places law students with lawyers who volunteer to provide legal services, both in clinical settings and in private practice, to those who do not have the financial ability to pay for legal services. Students participating in the Volunteer Income Tax Assistance (VITA) program assist low-income citizens with preparation of their tax returns. VITA students have provided important service to Northern Kentucky residents for more than a decade. During that period, they have succeeded in securing the return of hundreds of thousands of dollars in tax refunds to the Northern Kentucky community. Other Chase students are involved in additional *pro bono* service in a variety of ways, including volunteering their service to not-for-profit organizations that reach out to those in need. The new program ensures that all Chase graduates will have gained first-hand experience in providing *pro bono* services to those in need as part of their legal education.

Law 959
A DECADE OF SERVICE

By Laura Sutton & Allison Connelly,
Associate Clinical Professor

In a small house on Maxwellton Court, within sight of the University of Kentucky College of Law, a dozen third year law students have the opportunity to practice real world law at the U.K. Legal Clinic. Students in the semester-long graded course, known as Law 959, are required to spend eight to ten hours a week in the Clinic during the semester. Enrollment in the Clinic is capped at twelve students in the Fall semester and fifteen students in the Spring. Student enrollment generally includes one student each semester who is fluent in Spanish. This allows the Clinic to provide free civil legal services to Lexington's growing Hispanic population.

While all Clinic clients have low incomes, clients generally represent all levels of education, life experience and perspective. The Clinic, which does not advertise its services, provides a hands-on opportunity for interested students to apply their substantive legal knowledge in a practical way by representing indigent individuals. Students experience the satisfaction of using their skill and knowledge to make a difference in their client's life, not for pay, but because it is the "just" thing to do. Students also see and learn about poverty and injustice in the community surrounding them. Many students say they are surprised by their experiences and are determined to continue their *pro bono* work after law school.

The College's *pro bono* effort is tailored to serve low income individuals who present a wide range of legal problems that include wills and advance directives, uncontested divorces, landlord-tenant issues and consumer protection matters. Prospective clients and their civil cases are screened for financial eligibility and for the educationally rewarding potential for the students. Once the case

is assigned to a participating student, the legal representation involves both periodic conferences between the student, the client and the supervising attorney for the Clinic, as well as the opportunity for weekly group status assessments during which the students analyze and brainstorm potential solutions. During the 2006-2007 academic year, nearly every student had some kind of formal court appearance or mediation.

In the decade since its inception, the Legal Clinic has handled 1,036 cases through the efforts of over 250 students. The students have been exposed to a variety of experiences and legal issues. The Clinic functions on a small budget provided by the College of Law and through student fundraising utilized to pay any incidental costs, such as filing and service fees. Clients are not charged for the services they receive.

Although the College of Law does not mandate participation in a *pro bono* program, by providing an opportunity to some twenty-seven students a year to practice law under the Supreme Court's limited practice rule (SCR 3.130(5.3), the Clinic is a unique opportunity for the students to experience their chosen profession in a non-abstract way prior to graduation. For many who will join large or small law firms, agencies or companies, such "real world" advocacy might otherwise have been years away.

Student alumni of the Clinic do practice in every imaginable setting, from major urban law firms to small private practices. By incorporating *pro bono* service and concepts into the curriculum, the program serves to instill the conviction in its students that all persons are entitled to quality legal repre-

sentation regardless of their economic circumstances.

Laura Sutton is currently an acquisitions editor at the University Press of Kentucky.

Allison Connelly currently serves as the director of the U.K. Legal Clinic and oversees the law school's Legal Writing Program. She also teaches Criminal Trial Process and Litigation Skills.



University of
Louisville
School of Law

Samuel L. Greenebaum
Public Service Program

By Mary Jo Gleason

In the fall of 1990, the University of Louisville's Louis D. Brandeis School of Law adopted a public service program whereby all students must perform 30 hours of law-related *pro bono* public service as a graduation requirement. The law school is a pioneer and model in the mandatory public service movement as it was the fifth law school in the country to adopt such a program.

During the last fifteen-plus years, the Samuel L. Greenebaum Public Service Program has contributed well over 50,000 hours of legal-related services. These services have been provided to the legally underserved through law students' work for more than 80 different agencies in Louisville, Kentucky, the United States,

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and around the world. Those benefiting from these services include Legal Aid offices, public defender and prosecutors' offices, nonprofit public service organizations, various government agencies, judges and court system projects, advocacy groups, and other approved law-related programs. The students are also encouraged to continue such work after graduation. Significantly, while this public service has been beneficial to the recipients, the power and impact it has had on the law students and the law school has been substantial.

The rationale behind the public service program is based on the legal profession's inherent obligation to perform public service. The obligation has been elucidated in the Kentucky Rules of the Supreme Court in SCR 3.130(6.1) and in the American Bar Association Model Rules of Professional Responsibility in Model Rule 6.1, which both recommend that every attorney contribute fifty (50) hours per year in *pro bono* services.

Louisville Law students' public service has had far-reaching impact. Over the years, students have worked with many agencies and groups outside the local area, including the Elder Abuse Division of the Los Angeles District Attorneys' Office, the Cleveland Legal Aid Society, and the Victim Assistance Center in San Luis Obispo, California. One law student went to Germany to assist low-income soldiers in Germany returning from the Iraqi War; another spent her summer with Amnesty International in Hong Kong; one worked over the summer in Venezuela to help the indigenous people of the Amazon; and last summer, a law

student went to Rwanda and helped with the reconciliation courts of Gacaca.

Louisville Law's public service program also has the flexibility to provide immediate relief in sudden crises. For instance, ten dedicated law students spent part of their 2006 winter holiday break in New Orleans, Louisiana, giving legal aid to survivors of Hurricane Katrina. Not only did the law students provide legal related assistance to Hurricane Katrina victims, they also generated sufficient funds to cover travel and housing costs for their week of service.

Local public service activities in which our law students are involved include a program created by law students called the PASS Program (Partnering Attorneys with Students in Service). This initiative pairs a student with a private practitioner working on a case from the Volunteer Lawyer Program at the Legal Aid Society. Ed Perry Mediation Fellows participate in a pilot mediation project for the Small Claims docket in Jefferson District Court in addition to volunteering at Just Solutions for *pro bono* cases referred by Jefferson Family Court.

Louisville Law students also provide research about important issues for local nonprofit agencies. For example, some students researched national disability regulations for a website sponsored by the American Printing House for the Blind. Others worked with law professor Tony Arnold on land use issues for Habitat for Humanity. Law students participate in clinics sponsored by the Legal Aid Society, Americana Community Center, Kentucky Refugee Ministries, and the Louisville Bar Association in cooperation

with Jefferson Family Court. Moreover, this year the school introduced a Street Law program which has fourteen law students teaching sophomores who are enrolled in the legal magnet at Central High School.

The impact on *pro bono* services is obvious. Every student hour contributed to an organization relieves the burden on that organization's regular staff so that additional services may be offered. Students thus play a substantial role in making legal services more available to the underserved.

Additional advantages of the program for the law students include fostering the *pro bono* spirit, allowing them to network with the legal community, providing opportunities to learn pragmatic duties of the practice of law, and giving them real life experience in issues of professional responsibility. From this experience, some students will decide to become public servants, and others will choose to be leaders in the *pro bono* efforts of the private bar. Indeed, more than eighty percent of our students state that participation in their public service project has had a positive impact on their interest in doing *pro bono* work upon graduation from law school.

My hope is that every law student, after achieving the skills of our profession, recognizes the concomitant responsibility flowing from these skills, and that through the public service graduation requirement, these law students understand, regardless of their future employment, they have a professional obligation to help others. The Louisville Law students will have experienced one of the noblest callings in the law, namely, the privilege of representing the poor and underprivileged members of society. At Louisville Law, every student has this good fortune. ■

Mary Jo Gleason formerly served as the Samuel L. Greenebaum Public Service Program Director at the University of Louisville School of Law. Currently Ms. Gleason is the staff attorney for Judge Denise Clayton of the Kentucky Court of Appeals.

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Protecting Those Who Protect Us

By Ryan C. Reed
Chair, KBA Young Lawyers Section

Many of the video images of September 11, 2007 have gained a place in our collective national memory. But different images affect in different ways those of us who observed the unfolding events of that day.

For me, two images will always stand out. One was captured when a Nightline camera crew followed a woman frantically searching the city, block by block, hour by hour, for the husband she feared she lost when the Twin Towers collapsed. The raw emotion that exploded from her when her cell phone finally rang, with his call, reminded me that this tragedy must always be viewed principally as a series of tragedies endured on an individual, family-by-family basis.

The other image was more subtle but just as powerful: as throngs of people rushed out of the buildings before their collapse, and north through Manhattan, their faces revealed primal fear. But intermixed were hundreds and hundreds of first responders, heading in the other direction, toward the danger of what would prove to be one of the most overwhelming disasters of our time. As civilians fled the scene, courageous men and women in the uniforms of protectors rushed toward certain danger and possible death.

I have since learned that those two images are actually tied together more closely than I could have originally believed.

There is, of course, the obvious family-by-family tragedies experienced when so many first responders sacrificed their lives in New York on September 11. Most of the country grieved with those families through the media coverage that unfolded in the following weeks.

But a less obvious tragedy, though a tragedy still, was revealed in the time since: of the hundreds of first responders killed that day in the line of duty, it is

reported that only a handful had wills or other estate planning documents. And so, in many instances, a second wave of grief and hardship followed, again on a family-by-family basis, as survivors were left to confront the probate process.

Some young lawyers in South Carolina decided shortly after September 11 that the hidden tragedy of that day, first responders dying without the protection of even a basic will, could and should be prevented from happening again. They developed a simple but powerful concept that has since been adopted and refined by young lawyer organizations across the country. Under the program, young lawyers volunteer their time to advise first responders on, and to prepare, basic wills and related documents such as durable powers of attorney and living wills. The advice and documents are provided free of charge, typically through meetings at the fire house, police barracks, etc.

The program is called "Wills for Heroes" and I am pleased to report that the KBA Young Lawyers Section has adopted the program this year as one of its signature public service projects. In doing so, we are following the lead of the American Bar Association's Young Lawyers Division, which has made "Wills for Heroes" its nation-wide public service project for 2007-08.

On March 8, we plan to conduct "Wills for Heroes" clinics in cities around the Commonwealth, including Paducah, Bowling Green, Louisville, Lexington, Covington, and Pikeville. Other locations are being considered based upon the local availability of volunteer young lawyers. The clinics will provide a single location in each city for interested first responders to meet with available attorneys for advice, preparation, and execution of documents on-site. Fire, police, and sheriff's departments in those cities have been

approached with information about the clinic and the program's guidelines and services. Individual first responders will be provided with pre-clinic materials, including questionnaires, by mid-February. There is no doubt in my mind that the demand for this program will be tremendous.

As young lawyers who live under the continuous protection of these first responders, we have the opportunity and the obligation to meet that demand.

There are several ways to help. The first and most important is to volunteer your time to meet with the first responders at the clinic and prepare the documents that will protect the surviving family in the event of a tragedy. Attorneys with experience in wills and estate planning are needed for each clinic site to field special questions or handle unique requests. Another way to help is to solicit your firm for donations like loaned laptops, printers, paper, or the contribution of staff time from paralegals or administrative assistants who can play a supporting role at the clinic. If you want to help but cannot for some reason provide legal advice or prepare documents, you can and should contribute to the pre-clinic and on-site logistical efforts required to stage a clinic of this magnitude.

Our plan is ambitious, and we will have an abundance of first responders relying on us to help them protect their families. We need volunteer lawyers to help reach our goal of simultaneously staffing these clinics, and to ensure that every first responder who seeks our help that day gets it.

These men and women answer the call to serve us every day. You are invited and encouraged to answer the call to serve them this one day, March 8, 2008.

To volunteer, or for more information, please contact me at yls@kybar.org. ■

Kentucky Clients' Security Fund

The Kentucky Clients' Security Fund was established by the Supreme Court of Kentucky (Rule 3.820) to be administered by Trustees with the assistance of the staff of the Kentucky Bar Association. It is funded by the Bar dues of the lawyers of Kentucky, to reimburse clients for losses caused by their attorney's dishonest conduct, defined as the wrongful taking of clients' money or other property. The amount of \$7.00 per lawyer, \$6.00 per member of the judiciary, is allocated from member dues by the Kentucky Supreme Court for this Fund. The Fund does not consider losses resulting from negligence. There are caps on recovery.

In the last fiscal year 2005-2006, and in the fiscal year 2006-2007 the Fund has paid \$226,190 to victims.

The Fund provides a last-resort avenue for client victims who are unable to get reimbursement for their losses from the responsible lawyer, or from insurance or other sources. There is no charge to the client for this process. The Rule prohibits lawyers from being compensated for assistance in a claim.

Claims are reviewed by a Board of Trustees appointed by the Board of Governors of the Kentucky Bar Association. These five (5) Trustees consist of three lawyers and two lay members who perform their duties as a public service and receive no compensation.

Fund Payments to Date in Fiscal Year 2007-2008

Attorneys Whose Clients Suffered Losses		Total Paid	Number of Clients Reimbursed
David A. Griffiths	Bellevue, KY	\$500.00	1
Maxwell Lee Hammond	Grayson, KY	\$24,606.60	22
R. Allen McCartney	Louisville, KY	\$874.41	2
Kari Marie Morton	Madisonville, KY	\$361.00	1
Arthur Woodson Pulliam	Louisville, KY	\$10,798.00	8

Further information regarding the Fund can be found on the Kentucky Bar Association website, www.kybar.org under the Law & Ethics page.

The Kentucky IOLTA Fund through its Board of Trustees Salutes the *Pro Bono* Programs and the Participating Attorneys

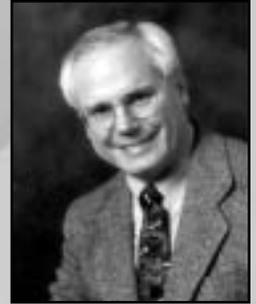
The Kentucky IOLTA Fund has for 2007-2008 awarded total grants in the sum of \$1,500,560 to provide assistance primarily to the Legal Services and *Pro Bono* programs throughout the Commonwealth in addition to helping underwrite the costs of the Public Service Fellowship programs at each of our state's three law schools. Thank you Kentucky lawyers for your active participation in the various *Pro Bono* programs throughout the Commonwealth and helping IOLTA work towards fulfilling its charitable mission to make our justice system more accessible to all citizens.



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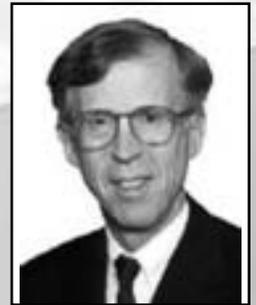
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CLEvents

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.

JANUARY

- 23 Computer Forensics
Cincinnati Bar Association
- 24-25 New Lawyers Training
Cincinnati Bar Association
- 25 ADR/Mediation & Litigation
Brown Bag CLE
Louisville Bar Association
- 31 Bankruptcy Law Brown Bag
CLE
Louisville Bar Association

FEBRUARY

- 6 Property Tax Appeals
Cincinnati Bar Association
- 12 Tax Law Brown Bag CLE
Louisville Bar Association
- 13 Solo/Small Firm Brown Bag
CLE
Louisville Bar Association
- 20 Labor & Employment Brown
Bag CLE
Louisville Bar Association
- 20 Eminent Domain
Cincinnati Bar Association
- 21 Litigation Brown Bag CLE
Louisville Bar Association
- 21 Tax Law Core Topics
Cincinnati Bar Association
- 21-22 14th Biennial Midwest/Midsouth
Securities Law Conference
UK CLE

- 22 Health Law Brown Bag CLE
Louisville Bar Association
- 27 Environmental Law Brown Bag
CLE
Louisville Bar Association
- 28 Appellate Law Brown Bag CLE
Louisville Bar Association
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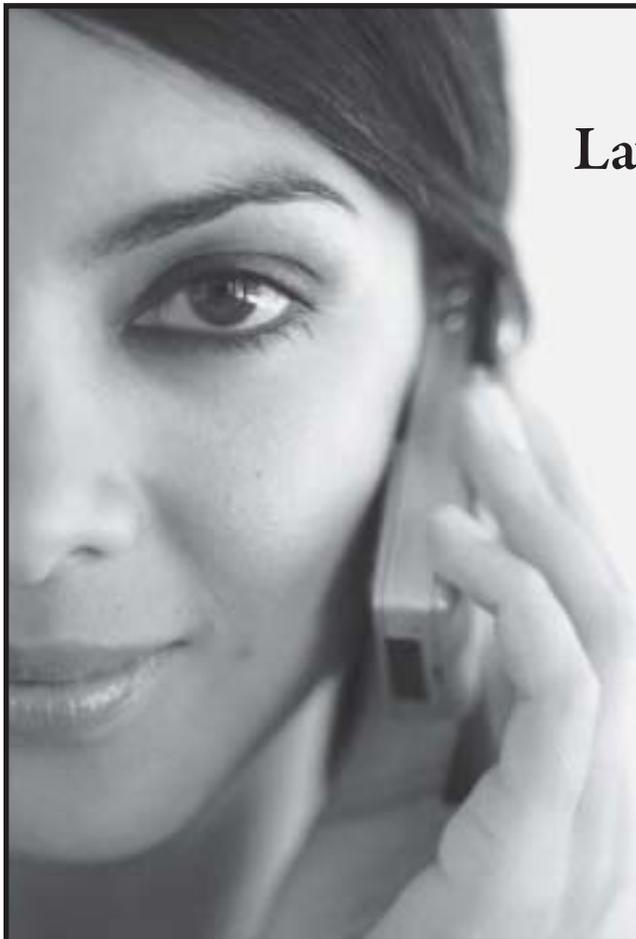
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Michael Losavio

Mastering the Masters of Digital Forensics

Part I of a Series

Many in the bar are concerned about availability of quality, ethical and affordable expertise in the area of information technology and digital forensics. They know how easily electronic documents can be changed, damaged or lost. As the evidentiary use of electronically stored information (ESI) increases, who can they can trust to accurately develop case facts in a manner their clients can afford?

Many also have those same concerns about the specialists they rely on for their own office IT systems. For lawyers the security, confidentiality and integrity of their ESI is a paramount concern. And whether in representing a client or managing our practices, the rules of professional conduct require we verify the competence of our experts and their compliance with our ethical responsibilities.

The KBA's Small Office Section is planning support and training on office computer systems for small and solo law firms, including programs for the 2008 KBA Annual Convention. If you have any thoughts on what you would like to hear about, contact the Section Chair, Larry Meyer and let him know.

Digital forensics, with its relative newness, lack of professional licensing and no clear set of standards of practice, puts a greater burden on attorneys to vet the qualifications of its experts. To meet that, we may need to develop our own knowledge of the subject and more closely work with the experts we hire. To quote

from the web home for Systematic Approaches to Digital Forensics Engineering (SADFE):

Digital forensic evidence has a human side: legal and technical teams must work together, and the result of their efforts normally will be presented to non-specialists who render a decision within the societal framework of a court of law.
<http://conf.ncku.edu.tw/sadfe/>

Developing that knowledge may be easier said than done.

Where it starts

This can start with the computer systems we use ourselves as we apply that knowledge to better understand the evidence in our cases.

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A basic review of how your computer works can tell you much about the key feature of these systems: how it stores the data (and accompanying metadata) of every file and ESI you use including where that file remains when you “delete” it.

Basic review of how your most popular application programs for e-mail, web browsing and word processing may show how they create, store and distribute information, particularly special metadata used by the application. Learning how to use a “track changes” feature may help you with document drafting during intense negotiations; it may also help you avoid disclosing unintended metadata about your changes and help you discover probative information in someone else’s ESI.

This fundamental knowledge can help you work with your IT/DF experts, if only as a guide to the questions you need to ask.

Going Further

You may need to know more than this and you may need an expert to help you. There may be many reasons you will need expert assistance, ranging from the need to assure evidentiary integrity to recovering damaged or “deleted” files to managing the sheer massive volume of ESI stored in today’s computers. These services can be of use both in case investigation and in computer management to recover damaged or otherwise “lost” business data.

An overview of some of the tools used in digital forensics can help us understand some of what an expert might need to do.

AccessData’s digital forensics bundle of utility programs provides for analysis of a computer’s hard drive for information that might otherwise be difficult or impossible to retrieve. It is designed for both law enforcement and corporate security, with the latter growing in scope as more businesses seek to protect their intellectual property and computer assets from misuse.

AccessData’s Academic Bundle is a suite of programs needed for a thorough analysis of ESI and electronic evidence:

- the Forensic Toolkit
- the FTK Imager for capturing the ESI

- the Password Recovery Toolkit and
- the Registry Viewer.

Registry Viewer

The Registry Viewer allows examination of the system registry without the risk of changing the registry data. In Windows, the registry is a database of most system settings used for all aspects of the computer’s operation; damage to a setting may render part or all of a computer system unusable with complete loss of all data. The registry keeps track of user settings and activities, such as the last time a particular feature (key) or program was used or changed. This can be potential evidence of system manipulation or user activity not otherwise shown on the computer.

Password Recovery Toolkit

Passwords such as those used to sign on to a computer are stored in encrypted files for safekeeping, so when a password is forgotten or lost it may be difficult to recover. The Password Recovery Toolkit finds encrypted password files on a computer and then cracks them to

reveal the passwords therein. This feature is configured for many common office software applications.

FTK Imager

The FTK Imager is a program for creating an identical physical copy (image) of a hard drive without changing any data on the hard drive. This preserves the integrity of files and their metadata, including for use as potential evidence in a legal proceeding. Imager can capture ESI without any danger of spoliation of the original ESI through modification or destruction. It can also do a “hash” analysis on both the new copy and the original to verify that they are electronically identical. This can be a crucial feature to avoid challenges that the ESI was changed in the evaluation process.

The ability of the FTK Imager to create an identical physical copy of the hard drive rather than just copy files is crucial to a complete investigation. Using a “copy” feature usually only produces a logical copy of all files visible to the user such that only the contents of active, undeleted files are available as useful



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information. It may not capture metadata, deleted files, hidden files or other file artifacts needed to resolve disputes as to the who, when, what or how of ESI.

The Forensic ToolKit

The Forensic ToolKit is the heart of digital forensic analysis for evidence. It finds and organizes information about ESI for indexing, analyzing and reviewing all file and file artifacts on a hard drive.

Its benefit goes beyond finding deleted or damaged material. Rather, FTK analyzes and sorts data on a computer's files to make human examination of the files as efficient as possible. This is critical as computer hard drives are so large now that they can store hundreds of thousands of files; reviewing each one would be as difficult as reviewing a hundred thousand paper documents one at a time.

FTK begins case analysis akin to the case management software used by law offices, recording basic data about the case, investigator and agency involved. It can be set to track how the review is conducted and select the particular tools that

will be used for a particular analysis. Once the data source is analyzed by the program, the examiner can begin the review, using various tools to focus the search for relevant material, bookmark results, and comment.

These are powerful tools for the investigation of ESI.

But we should not yet rely solely on our IT/digital forensics expert to use these tools or their special knowledge to guide how we use the results. The saga of teacher Julie Amero is a case study on how faulty expert testimony may lead to injustice: <http://www.foxnews.com/story/0,2933,278897,00.html>.

Next Time

Part II of this series will begin a more detailed examination of the features and use of these tools both by the digital forensics examiner and the lawyer overseeing their work.

More information on this is available at www.accessdata.com; AccessData is the holder on the trademarks for the Forensic ToolKit, FTK Imager, Registry

Viewer and Password Recovery ToolKit.

If you have any thoughts on this, please send them to me at Michael.losavio@louisville.edu. ■

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Five Tips on Writing to a Judge

Professor Barbara McFarland

Numerous books and articles have been written on this topic. As a teacher of legal writing, I've read many of those books and articles. As a clerk who has written for six different federal judges, however, I have my own pretty good idea of what a judge expects of a brief or memorandum. So, here are my top five tips, in descending order of importance.

Tell the Truth

Credibility is the most important asset an advocate can possess. Once lost, it is not easily regained. Deliberate deception is rare, but it decimates the reputation of the deceiver. More common are inadvertent misstatements or omissions, but their impact is only slightly less devastating.

Misstatements of law frequently result from failure to read an entire opinion or to put a statutory provision in the appropriate context. Counsel will write, "The court held . . ." and insert a quotation from an early page of an opinion – or, even worse, from a headnote or editorial summary – without reading on to learn that the court actually held something quite different. Or, reading from a computer screen, the writer will paraphrase or quote language, attributing it to the court without realizing that what appeared on the screen was a dissenting opinion, not the opinion of the court. Carefully and thoroughly read, analyze, and update every authority you cite.

Material facts that are adverse to the client's position must be included in documents filed with a court. The court is

Professor Barbara McFarland is Acting Director of Student Success Initiatives at the Northern Kentucky University Salmon P. Chase College of Law.

going to learn those facts eventually, so you need to acknowledge them, address their impact on the legal issues, and protect your credibility. Although you must include adverse facts, you need not emphasize them.¹

Finally, be honest with the court about the strengths and weaknesses of your client's case. Make concessions that do not harm your client's interests, admit to the court when you are asking it to change or advance the law, and acknowledge valid points made by the other side to the extent possible. Often, counsel can agree that a particular statement of the

law is accurate, which is helpful to the court, without agreeing on its application to the facts of the case before the court.

Cite the Right Law

Whenever mandatory precedents are available, start with them. A court is primarily interested in opinions of the courts with appellate jurisdiction over it. As one former judge often said, "I don't care what the Ninth Circuit says, counsel; it's the Sixth Circuit that delights in reversing my judgments." Tell just enough about each precedent you cite that the court understands its facts, result, and relevance

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to the case at hand. When describing a statute or rule, quote only the pertinent parts, but paraphrase the remainder so the court understands the overall context.

Avoid string citations that waste your space and the court's time. If more than one authority makes a particular point, indicate that fact in text; then begin your citation with an appropriate signal: "Kentucky law on this topic is well established. *See, e.g., X v. Y, . . .*"

Perhaps most importantly, always update every authority you cite. My favorite memorandum in response to a motion had one line: "The statute upon which defendant relies was repealed by the Kentucky legislature years ago."

Organize Issues for Maximum Impact

As a general rule, when you have multiple issues to address, order them from strongest to weakest and eliminate any that are unlikely to achieve the desired result. This general rule has three exceptions, however: 1. when the argument depends upon a logical progression of issues, mirror that progression in your document — discussion of why your client's conduct should not be considered a breach of contract should follow, not precede, any issues regarding the formation of that contract; 2. when both threshold and substantive issues must be addressed, put the threshold ones first, regardless of their relative weight — a response to a motion to dismiss for both lack of personal jurisdiction over the defendant and failure to state a claim should convince the court of the propriety of the exercise of jurisdiction before moving on to the sufficiency of the com-

plaint; and 3. when your strongest argument is likely to result in a remedy your client does not want, argue for the preferred remedy first — after a criminal trial, you may have some fairly strong arguments for a new trial, but because your client really wants a judgment of acquittal, argue for that result before you argue for the new trial.

When applying the rule and its exceptions to subissues within a larger issue, a fourth exception applies: when you must satisfy a conjunctive multi-part test, discuss the parts in order. In attempting to have a case certified as a class action, you would, therefore, first discuss the four prerequisites for certification in the order in which they appear in the rule. Upon turning to the type of class, however, you could either revert to the general rule and put your strongest argument first, or apply the third exception and argue first for the type of class you would prefer.

Make it Perfect

Advocates might be surprised at the negative impact spelling, typographical, punctuation, and word choice errors have on a court's impression of their competence. A federal circuit court judge once wrote that while reading a brief peppered with mechanical errors, the judge may experience "a gnawing feeling on occasion that the obviousness of the uncorrected errors indicates that the brief, having not been read for these errors, may be equally unreliable in its substantive reasoning or its analysis of authorities."² So, proofread, edit, and correct until your documents are as perfect as you can make them.

Follow the Court Rules

Rules are the advocate's friend; they mandate certain content and form, so you need not agonize over those aspects of the written document. Read them and follow them to the letter. You may not get past the clerk's office if your document does not follow the rules. One attorney tried to file a motion without a supporting memorandum, which was required by local rule. When the clerk informed the attorney of the rule, the attorney handwrote the word "motion" over what had been the title of the document and the word "memorandum" over what had been the one-sentence request for court action. The clerk then accepted the document, but the court was not impressed. An attorney can even be sanctioned, if the rule violation is egregious.³

Remember that, despite the time and attention devoted to the federal rules back in law school, they are not the only rules by which you must abide. Local courts frequently have rules, specialized courts have their own sets of rules, and individual judges may also have rules and procedures for you to find, learn, and follow. A phone call to the clerk's office of the court to which you are writing will usually yield you copies of, or at least references to, all the applicable rules.

As a busy practitioner, you may not have time to read whole books on the topic of improving your writing. However, by following these five tips, you may improve your ability to persuade a court to rule in your client's favor. ■

ENDNOTES

1. Many valid techniques may be used to minimize the impact of adverse facts, but that is a topic for some future column.
2. Wilbur F. Pell, *Read Before Signing*, 60 A.B.A.J. 977 (1980).
3. *See, e.g., Ernst Haas Studio, Inc. v. Palm Press, Inc.*, 164 F.3d 110, 113 (2d. Cir. 1999)(sanctioning counsel for failing to comply with Fed. R. App. P. 28).

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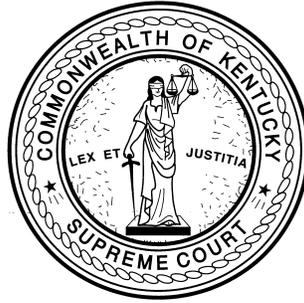
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Supreme Court of Kentucky



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

2007-007

The following rules' amendments shall become effective February 1, 2008.

2007 AMENDMENTS TO THE RULES OF THE SUPREME COURT

1. SCR 2.011 Moral character and fitness

Section (3) and new section (4) of SCR 2.011 shall read:

- (3) If the Committee's initial review and investigation into the character and fitness of an applicant reveals any of the following conduct, further detailed investigation shall be undertaken, as determined to be warranted, prior to the Committee's determination regarding whether the applicant possesses the requisite character and fitness to practice law in Kentucky:
- A. Unlawful conduct
 - B. Academic misconduct
 - C. Making a false statement, including omissions of material information
 - D. Misconduct in employment
 - E. Acts involving dishonesty, fraud, deceit or misrepresentation
 - F. Abuse of legal process
 - G. Neglect of financial responsibilities
 - H. Neglect or disregard of ethical or professional obligations
 - I. Violation of an order of court
 - J. Conduct indicating mental or emotional instability impairing the ability of an applicant to perform the functions of an attorney
 - K. Conduct indicating substance abuse impairing the ability of an applicant to perform the functions of an attorney
 - L. Denial of admission to the bar in another jurisdiction on character and fitness grounds
 - M. Disciplinary complaints or disciplinary action by an attorney disciplinary agency or a professional disciplinary agency of any jurisdiction.
- (4) Each applicant for admission to the Kentucky Bar shall pay all investigative fees, reporting fees or other expenses required and assessed by the Character and Fitness Committee as deemed necessary in determining the character and fitness of the applicant.

2. SCR 3.150 Access to Disciplinary Information

SCR 3.150 shall read:

(1) Confidentiality. In a discipline matter, prior to a rendition of a finding of a violation of these Rules by the Trial Commissioner or the Board and the recommendation of the imposition of a public sanction, the proceeding is confidential.

(2)(a) Notwithstanding subsection (1), the pendency, subject matter and status may be disclosed by Bar Counsel if:

- i. The Respondent has waived confidentiality;
- ii. The proceeding involves public reciprocal discipline;
- iii. The disclosure of any information is made for the purpose of conducting an investigation by the Inquiry Commission or the Office of Bar Counsel, or;
- iv. A Motion for Temporary Suspension is pending.

(b) After considering the protection of the public, the interests of the Bar, and the interest of the Respondent in maintaining the confidentiality of the proceeding prior to a finding of a violation of the Rules, the pendency, subject matter and status may also be disclosed by Bar Counsel at the discretion of the Chair of the Inquiry Commission, or of the Chair's lawyer member designee, if:

- i. The proceeding is based upon an allegation that the Respondent has been charged with a crime arising from the same nexus of facts; or
- ii. The proceeding is based upon a finding by a court in a civil matter that an attorney has committed conduct that may constitute a violation of the Rules of Professional Conduct.

(3) Duty of Participants. All Participants in a proceeding under these Rules shall conduct themselves so as to maintain the confidentiality requirement of this Rule. Nothing in the rule shall prohibit the Respondent from discussing the disciplinary matter with any potential witness or entity in order to respond in a disciplinary proceeding, or to disclose to any tribunal, or to disclose any information for the purpose of conducting a defense. This provision shall not apply to the Complainant or the Respondent after the Inquiry Commission or its Chair has taken action on a Complaint including the issuance of a charge, the issuance of a private admonition, or a dismissal, including those pursuant to SCR 3.160(3).

(4)(a) Request for Non-Public Information. A request for non-public information to the Office of Bar Counsel may be considered by the Inquiry Commission and may be granted if the request relates to an investigation by the requestor and is made by:

- i. The Character and Fitness Committee;
- ii. A Lawyer Disciplinary Enforcement Agency;
- iii. A Judicial Disciplinary Enforcement Agency;

(b) A request for non-public information to the Office of Bar Counsel may be considered by the Court if the request is made by a Law Enforcement Agency, or other official authorized by federal or any state's law to investigate or prosecute misdemeanors or felonies, or the equivalent thereof, in any jurisdiction, provided that the agency or official certifies under oath with specificity that the information is necessary to a pending investigation. In this event the Respondent shall receive notice unless the Court determines that disclosure of the request would seriously prejudice the investigation.

(c) In the absence of a third party request, the Court may permit the disclosure of any non-public information to any of the entities listed in (4)(a) or (b) upon application to it by the Office of Bar Counsel.

(d) In the event of a request under (4)(a) or (c) no notice to the Respondent is required, although either the Inquiry Commission or Court may require notice upon review of the application.

(5) Public Proceedings. Upon a finding by the Trial Commissioner or the Board that an attorney has committed a violation of these rules meriting public discipline, or upon the filing of a petition for reinstatement, the record of the Disciplinary Clerk, and any further proceedings before the Board or Court, shall be public except for:

- (a) deliberations of the Inquiry Commission, Board of Governors, or the Court; or
- (b) information with respect to which a protective order has been issued.

(6) Protective Orders. The Inquiry Commission, the Trial Commissioner, the Board, or the Court, which at the time the order is sought has the case pending before it, may, upon application of any person or entity, and for good cause shown, issue a protective order. Such an order may protect the interests of a Complainant, witness, third party, Respondent, or Bar Counsel. The order may prohibit the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(7) Notice to National Discipline Data Bank. The Disciplinary Clerk shall transmit notice of all public discipline imposed against a lawyer and reinstatements to the National Discipline Data Bank maintained by the American Bar Association.

3. SCR 3.157 Appointment and duties of Disciplinary Clerk

SCR 3.157 shall read:

The Board shall appoint a Disciplinary Clerk and such Deputy Clerks as may from time to time become appropriate. The Disciplinary Clerk shall have such qualifications as the Board deems appropriate, and shall be responsible for accepting the filing of charges issued by the Inquiry Commission, pleadings or other paper, issuing process, and the preparation and maintenance of the records of each disciplinary proceeding, other than the files of the Office of Bar Counsel, and other duties as are assigned by the Board.

4. SCR 3.160 Initiation of disciplinary cases

Sections (1) and (3) of SCR 3.160 shall read:

(1) After review by Bar Counsel pursuant to subparagraph (3) of this Rule, any sworn written statement of complaint against an attorney for unprofessional conduct shall be filed with the Disciplinary Clerk who shall promptly notify the attorney by certified mail, sent to the address maintained by the Director pursuant to SCR 3.175, or other means consistent with the Supreme Court Rules and Civil Rules, of the complaint, and that he/she has twenty (20) days to respond to the complaint. Upon completion of the investigation by the Office of Bar Counsel the matter shall be assigned to an Inquiry Commission panel by rotation.

(3) (A) Upon receipt of a verbal, or written allegation of a violation of the Rules of Professional Conduct, or sworn complaint, the Office of Bar Counsel will initially determine, under the direction of the Chair and Inquiry Commission, whether the matter is appropriate for alternative disposition. Alternative disposition may include, but is not limited to:

- i. Informal resolution
- ii. Referral to Fee Arbitration under SCR 3.810
- iii. Legal negligence arbitration under SCR 3.800
- iv. Legal or management education programs
- v. Remedial ethics education programs
- vi. Referral to KYLAP under SCR 3.970(1)(c)
- vii. Issuance of a warning letter.

(B) A complaint is not suitable for alternative disposition if it alleges serious misconduct in which the sanction would more than likely result in a suspension. Additionally, some ethical violations warranting a private or public reprimand may not, under all circumstances, be eligible for alternative disposition.

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

(D) If Bar Counsel deems a written and sworn complaint to state an ethical violation, such that alternative disposition is not appropriate or the Respondent will not consent to or complete the alternative disposition program, the matter shall proceed under subsection (1) above.

(E) If Bar Counsel deems any written and sworn complaint against a member not to state an ethical violation and it is not suitable for alternative disposition, it may decline, without investigation, to entertain it.

5. SCR 3.165 Temporary suspension by the Supreme Court

Sections (1), (2), (3) and (6) of SCR 3.165 shall read:

(1) On petition of the Inquiry Commission, authorized by its Chair, or the Chair's lawyer member designee, and supported by an affidavit, an attorney may be temporarily suspended from the practice of law by order of the Court provided:

(a) It appears that probable cause exists to believe that an attorney is or has been misappropriating funds the attorney holds for others to his/her own use or has been otherwise improperly dealing with said funds; or

(b) It appears that probable cause exists to believe that an attorney's conduct poses a substantial threat of harm to his clients or to the public; or

(c) An attorney has been convicted of a crime as set out in SCR 3.320 and it appears from the record of such conviction that the attorney has so acted as to put in grave issue whether he/she has the moral fitness to continue to practice law; or,

(d) It appears that probable cause exists to believe that an attorney is mentally disabled or is addicted to intoxicants or drugs and probable cause exists to believe he/she does not have the physical or mental fitness to continue to practice law. If the attorney denies that he/she is mentally disabled or denies that he/she is addicted to intoxicants or drugs, the Court may order the attorney to submit to a physical or mental examination by a physician or other health care professional appointed by the Court. The examining health care professional shall file with the Clerk of the Court a detailed written report setting out the findings of the health care professional, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations by any health care professional of the same condition. The Clerk of the Court shall furnish a copy of the examining health care professional's entire report to the attorney and to Bar Counsel. The Court may order the attorney to produce to the Court and Bar Counsel any relevant medical, psychiatric, psychological or other health care or treatment records, including alcohol or drug abuse patient records, evidencing prior or ongoing treatment for mental disability or addiction to drugs or to execute appropriate releases which would comply with applicable federal and state law in order to permit the treating health care professional to release those records to the Court and Bar Counsel. Any such order and the resulting records regarding the treatment shall be confidential and sealed in the record.

(2) Any such order of temporary suspension may restrict the attorney in dealing with client funds and shall, when served on any bank maintaining any account upon which said attorney may make withdrawals, serve as an injunction to prevent said bank from making further payment from such account or accounts on any obligation except in accordance with restrictions imposed by the Court, and shall direct such bank not to disclose (except to those entitled to withdraw from the account or accounts or to receive payment of such obligation, or upon the express written permission of at least one of such persons as to each such account or obligations) that such order has been received or the contents thereof. Any fees tendered to such attorney thereafter shall be deposited in a trust fund from which withdrawals may be made only in accordance with restrictions imposed by

the Court. The Court may appoint a trustee to receive, transfer, or disburse any funds that are in the possession of or are under the control of the attorney if the funds came into the attorney's possession from the attorney's clients or from third parties during or as a result of the practice of law prior to suspension. The Court may require the trustee to render an accounting of said funds to the Court and to furnish a copy of the accounting to the Director.

(3) The petition of temporary suspension authorized by this rule shall be filed with the Clerk of the Court. The Chair of the Commission, or the Chair's designee, or the Commission's counsel, shall certify that a copy of the petition has been served on the Respondent or Respondent's attorney at his/her bar roster address. The Respondent shall file a response to the petition within twenty (20) days of the date the petition was filed with the Clerk. The Court may schedule an oral argument or a show cause hearing after the filing of the response or after the expiration of the time for a response to be filed.

(6) Upon the issuance of an order of temporary suspension, the attorney affected shall immediately, to the extent reasonably possible, cancel and cease any advertising activities in which the attorney is engaged, and remove the attorney's name from any firm with which the attorney is associated.

6. SCR 3.166 Automatic suspension after conviction of a felony

Sections (1) and (5) of SCR 3.166 shall read:

(1) Any member of the Kentucky Bar Association who pleads guilty to a felony, including a no contest plea or a plea in which the member allows conviction but does not admit the commission of a crime, or is convicted by a judge or jury of a felony, in this State or in any other jurisdiction, shall be automatically suspended from the practice of law in this Commonwealth. "Felony" means an offense for which a sentence to a term of imprisonment of at least one (1) year is authorized by law. The imposition of probation, parole, diversion or any other type of discharge prior to the service of sentence, if one is imposed, shall not affect the automatic suspension. The suspension shall take effect automatically beginning on the day following the plea of guilty or finding of guilt by a judge or jury or upon the entry of judgment whichever occurs first. The suspension under this rule shall remain in effect until dissolved or superseded by order of the Court. Within thirty (30) days of the plea of guilty, or the finding of guilt by a judge or jury, or entry of judgment, whichever occurs first, the suspended attorney may file a motion with the Clerk of the Supreme Court of Kentucky setting forth any grounds which the attorney believes justify dissolution or modification of the suspension.

(5) Any attorney suspended under this rule shall immediately, to the extent possible, cancel and cease any advertising activities in which the attorney is engaged, and remove the attorney's name from any firm with which the attorney is associated.

7. SCR 3.185 Informal admonition procedure

SCR 3.185 shall read:

After a complaint against an attorney for unprofessional conduct is investigated and a response filed, the Inquiry Commission may direct a private admonition to the attorney if the acts or course of conduct complained of are shown not to warrant a greater degree of discipline. The attorney so admonished may, within twenty (20) days from the date of the admonition, answer and request that the private admonition be treated as if a charge had been filed against the attorney as is provided by Rule 3.190; whereupon, the issues shall be processed under the applicable rules. The Inquiry Commission may also issue a warning or a conditional dismissal letter including, but not limited to, conditions such as referral to KYLAP, or attendance at a remedial ethics program or related classes as directed by the Office of Bar Counsel.

8. SCR 3.190 Charges; form; by whom and where filed

SCR 3.190 shall read:

If a panel of or the entire Inquiry Commission determines, by a majority vote, that probable cause exists for a charge to be filed, it shall cause to be prepared such charge stating the name and bar roster address of the

attorney and facts alleged to constitute unprofessional conduct. The charge shall be signed by a member of the panel which considers the case. It shall then be filed with the Disciplinary Clerk within twenty (20) days. Upon notice to the respondent, the Inquiry Commission may amend the charge upon its own motion, or that of the Office of Bar Counsel, or the Respondent, at any time before hearing or submission by default.

9. SCR 3.200 Notice of filing charges; time to answer

SCR 3.200 shall read:

Upon the filing of a charge, the Disciplinary Clerk shall furnish the Respondent with a copy, by certified mail return receipt requested to the Respondent's bar roster address, or by service on the Director as set forth in SCR 3.175, and notify the Respondent that within twenty (20) days after receipt of the notice, he/she must file an answer and three (3) copies with the Disciplinary Clerk for transmittal to the Inquiry Commission. The Inquiry Commission may rule on motions to file late answers for good cause shown as set forth in CR 6.02.

10. SCR 3.230 Procedure when answer raises issues of fact

SCR 3.230 shall read:

After an answer is filed raising issues of fact, the Disciplinary Clerk shall appoint the next available member of the Trial Commission to serve as a commissioner upon approval by the Chief Justice. The Trial Commissioner shall reside in a different Supreme Court district from that of the Respondent. The Disciplinary Clerk shall immediately notify the Trial Commissioner of his/her appointment and provide the Trial Commissioner a copy of the pleadings.

11. SCR 3.260 Joinder and consolidation

Section (2) of SCR 3.260 shall read:

(2) A charge may be filed against two or more attorneys if based on the same or related state of facts, and separate charges against two or more attorneys based upon the same or related state of facts may, by order of the Inquiry Commission, be consolidated and tried as a single disciplinary proceeding. Where two or more attorneys are proceeded against in the same proceeding, the Trial Commissioner shall report to the Board as to each.

12. SCR 3.300 Rights of respondent against whom a charge has been filed

SCR 3.300 shall read:

The Respondent against whom a charge has been filed shall have the right to be represented by counsel. The Respondent shall have all the rights secured to a party by the Rules of Civil Procedure and Kentucky Rules of Evidence with respect to the introduction of evidence. The Respondent shall have the right to compel the attendance of witnesses and the production of books, papers and documents or other writings, except those contained in the investigative file of Bar Counsel, to the hearing or to such depositions as are permitted under SCR 3.340. The Respondent shall have the right to an oral argument or to file a brief before the Trial Commissioner. The Respondent shall be afforded a full opportunity to defend himself/herself by the introduction of evidence, and to cross-examine witnesses. If the facts in the charge would give rise to a criminal proceeding, respondent shall not be compelled to give evidence against himself or herself. If the Respondent is unable to employ counsel, the Chair, or Chair's lawyer member designee, upon written request accompanied by an *in forma pauperis* affidavit, made within twenty (20) days after service of the charge, shall appoint counsel for the Respondent.

13. SCR 3.330 Order of proceedings and burden of proof

SCR 3.330 shall read:

The Trial Commissioner shall determine and regulate the order of proceedings at the hearing. Upon the

application of a party or upon direction of the Trial Commissioner, the Disciplinary Clerk shall issue subpoenas for the attendance of witnesses or the production of evidence at the hearing. Prehearing discovery shall proceed in accordance with this rule as directed by the Trial Commissioner rather than by the Kentucky Rules of Civil Procedure. If reasonably necessary to prepare the case for hearing, the Trial Commissioner may allow the taking of depositions and require the production of documents. The burden of proof shall rest upon the Association in a disciplinary proceeding, and the facts must be proven by a preponderance of the evidence. In reinstatement hearings the burden shall rest upon the Applicant, and he/she must demonstrate by clear and convincing evidence his/her suitability for reinstatement. Before submission the Trial Commissioner may direct such oral argument as he/she deems appropriate and receive briefs from all parties on such terms as he/she may impose.

14. SCR 3.340 Introduction and admissibility of evidence, evidence taken in other proceedings

SCR 3.340 shall read:

The testimony at all hearings shall be in person, except that the parties may use depositions under the same standards as those prescribed by the Kentucky Rules of Civil Procedure. The rules of evidence applicable in civil actions shall apply, and the Trial Commissioner will rule on all evidentiary issues.

Where, in any proceeding, evidence has been taken under oath upon due notice to the Respondent, and at the taking of which Respondent has appeared, either in person or by counsel, or as attorney for any party, a duly certified transcript, videotape or digital recording made by a court reporter or official of a court, of all, or the essential portions, of such proceedings may be used as evidence in any hearing or in any investigation antecedent to or in connection with any disciplinary case involving the same charge, or any charge growing out of the matters connected therewith. Such transcript, tapes, or digital recordings of the record, or parts thereof, may be made a part of the record on any hearing or investigation.

15. SCR 3.652 New Lawyer Skills Program

Sections (8) and (9) of SCR 3.652 shall read:

(8) The time for completion and certification set forth in paragraphs (5) and (6) of the Rule may, upon written application to and approval by the Commission or its designee, be extended. Written applications for an extension under this paragraph must be received by the Commission no later than thirty (30) days after the member's deadline to complete the Program as set forth in paragraph (5) of this Rule. All applications must be signed by the member and notarized. The Commission may approve extensions for completing the Program under the following circumstances:

(a) Where the member demonstrates hardship or other good cause clearly warranting relief. Requests for relief under this subsection must set forth all circumstances upon which the request is based, including supporting documentation. In this circumstance, the member shall complete the requirement set forth in paragraphs (5) and (6) as soon as reasonably practicable as determined by the Commission or its designee; or

(b) Where the member fails to demonstrate hardship or other good cause clearly warranting relief. In this circumstance, the member must pay a fee of \$250.00 and complete the requirement set forth in paragraphs (5) and (6) at the next regularly scheduled New Lawyer Skills Program.

(9) Failure to complete and certify attendance for the New Lawyer Skills Program pursuant to paragraphs (5), (6), or (8) of this Rule shall be grounds for suspension from the practice of law in the Commonwealth or other sanctions as deemed appropriate by the Court. Ninety (90) days prior to the end of the twelve (12) month period all individuals not certifying completion of the New Lawyer Skills Program pursuant to paragraphs (5), (6), or (8) shall be notified in writing that the program must be completed before the end of the twelve (12) month period, indicating the date. Names of all individuals not submitting certification of completion of the New Lawyer Skills Program within the twelve (12) month period or not being granted an extension of time, pursuant to paragraph (8) of this Rule, shall be submitted to the Court by the Director, certifying the member's failure to comply with the New Lawyer Skills Program requirement. The Clerk shall docket the matter and the Court shall issue

each such member a rule returnable within twenty (20) days thereafter to show cause why the member should not be suspended from the practice of law or otherwise sanctioned as deemed appropriate by the Court. The Commission shall be permitted to file a reply within ten (10) days following the filing of a response by a member. Unless good cause be shown by the return date of the rule, or within such additional time as may be allowed by the Court, an Order shall be entered suspending respondent from the practice of law or imposing such other sanctions as may be deemed appropriate by the Court. An attested copy of the Order shall forthwith be delivered by the Clerk to the member, the Director, and in the case of suspension, to the Circuit Clerk of the district wherein the member resides for recording and indexing as required by Rule 3.480.

16. SCR 3.800 Legal Negligence Arbitration

SCR 3.800 shall read:

(1) Purpose.

The purpose of this Rule 3.800 is to establish a procedure whereby claims of legal negligence in the amount of fifty thousand dollars (\$50,000.00) or less arising from attorney and client relationships may be resolved by submission to binding arbitration.

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Association, or an attorney admitted to practice pursuant to SCR 3.030 when the dispute arises from that representation.

(B) "Association" means the Kentucky Bar Association.

(C) "Director" means the Director of the Kentucky Bar Association.

(D) "Dispute" shall mean any claim of legal negligence in the amount of fifty thousand dollars (\$50,000.00) or less. This includes a matter that is the subject of a diversion pursuant to SCR 3.160(3), or a matter referred for negligence arbitration by the Court.

(E) "Amount in Controversy" means the amount of direct loss claimed as a result of the claimed negligence of an attorney.

(F) "Panel" means the arbitrator or arbitrators appointed to arbitrate a claim of legal negligence.

(3) Scope of Authority.

(A) The Rules and Procedures herein shall be available to resolve any dispute as herein defined only when the amount in controversy exceeds the jurisdictional maximum specified in KRS 24A.230 and all parties to the dispute agree in writing to submit the claim of negligence to the arbitration procedures herein and further, agree in writing that they shall be fully bound by the decision and award of the Panel.

(B) These Rules shall not be used unless the parties to the dispute certify in writing that a good faith effort has been made by them to resolve the dispute.

(C) These Rules shall not be used if the dispute is the subject matter of a pending lawsuit, unless the parties follow the procedures of KRS 417.060(4).

(D) Except as otherwise provided herein, the substantive law of the Commonwealth of Kentucky will apply to any dispute arbitrated under this plan.

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by the filing of a petition with the Association. The signed petition shall state the origin and details of the dispute, the acts or omissions deemed to be negligent, and the

amount claimed due as a result of the negligence alleged. The petitioner shall also sign an arbitration agreement. The petition and arbitration agreement shall be on forms provided by the Association.

(B) Upon the filing of the petition, the Director shall determine whether it presents a dispute under these Rules. The decision of the Director on that matter shall be final. The Director shall have full power to require additional information from the petitioner as is deemed necessary.

(C) If the Director determines that the Association shall not accept jurisdiction, the petition shall be returned to the petitioner indicating why the Association has not accepted jurisdiction and will not arbitrate the matter.

(D) If the Director determines that the Association shall accept jurisdiction, a copy of the petition and the arbitration agreement signed by the petitioner shall be forwarded to the other party to the dispute to sign and return to the Director with the answer to the petition. Twenty (20) days shall be allowed in which to answer unless additional time is requested. Upon receipt of the answer, the Director shall forward to the petitioner a signed copy of the arbitration agreement and the answer submitted by the other party to the dispute.

(E) If the other party to the dispute refuses to submit to arbitration, or fails to sign and return the arbitration agreement and answer within the time allowed, the Director shall so notify the petitioner, and the file of the Association shall be closed.

(F) If the dispute is referred to arbitration as referenced in 2(D) above, then sections 4(B) and (C) of this rule are not applicable. The attorney involved in the dispute shall be deemed the petitioner and shall file a petition with the Director.

(G) Upon the filing of a petition with the Association, any applicable statute of limitations is tolled until dismissal or final award is entered.

(5) Arbitration Panel.

(A) Composition.

(i) Where the amount in controversy is ten thousand dollars (\$10,000.00) or less, the Panel shall consist of one (1) practicing attorney.

(ii) Where the amount in controversy exceeds ten thousand dollars (\$10,000.00), but is not in excess of fifty thousand dollars (\$50,000.00), the Panel shall consist of three (3) practicing attorneys.

(iii) The practicing attorneys referred to in paragraph (5)(A)(i) and (5)(A)(ii) above shall each:

(a) be a member in good standing of the Association;

(b) be appointed for a particular dispute by the Director;

(c) if engaged in the private practice of law, maintain an office and carry on such practice within a reasonable proximity to the county in which the petitioner resides.

(iv) Any attorney appointed by the Director may refuse to serve. Such refusal shall be by written notice to the Director within ten (10) days of the appointment.

(v) The Director, in cases of a three-member Panel, shall designate one member of the Panel as Chair of the Panel.

(B) Objections.

Either party to the dispute may object for cause to any of the Panel members. Such objection shall be in writing and shall be made within twenty (20) days of written notification of the composition of the Panel. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the Panel.

Objections to Panel members shall be made to the Director and shall be determined in accordance with KRS 26A.015 et seq. The decision of the Director shall be final.

(C) Compensation.

The Panel shall not be compensated for its services. Reasonable transportation costs may be reimbursed.

(D) Vacancies.

If any arbitrator should be unable to act, the Director shall declare the office vacant and, if the matter has already been heard by the Panel, it shall not be reheard if the remaining members concur in the Award. If the sole member of the Panel is unable to act or the remaining members of the Panel do not concur in the Award, a new member shall be selected and the matter will be reheard. If the Panel has not yet heard the matter a new arbitration Panel member shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no ex parte communication between the parties and the Panel upon the subject matter of the arbitration other than at arbitration proceedings, or in documents filed with the Association as part of the proceedings. This limitation does not apply to administrative communications between the Panel and the parties regarding the scheduling of the hearing.

(6) Hearings.

(A) Location.

Hearings shall be held in a county that reasonably limits the travel required by the parties to attend the hearing.

(B) Notice.

The Chair of the Panel shall fix the time and cause written notice of time and place to be served upon all parties to the dispute by Certified Mail not fewer than ten (10) days prior to the time set for the hearing. Such notice of hearing shall also inform the parties of their right to be represented by an attorney and their right to present evidence in support of their respective positions.

(C) Stenographic Record.

(i) Any party may have a hearing before a Panel reported by a Certified Shorthand Reporter at the expense of the requesting party by written notice presented to the Panel Chair at least seven (7) days prior to the date of the hearing. Any other party to the arbitration shall be entitled to acquire, at their own expense, a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter.

(ii) In the event the Panel determines it appropriate or necessary to record the hearing, it may be recorded by digital or video means with costs being assessed as the Panel deems just. A party to the dispute, at its own expense, may request a copy of the record so recorded.

(D) Production of Records and Subpoenas.

(i) The parties to a dispute have the obligation to provide all documents needed for the Panel to resolve the questions presented for resolution. The discovery provisions of the Kentucky Rules of Civil Procedure are not strictly applicable. When a party fails to provide documents determined necessary by the Panel, the Panel may accept the negative factual inferences created by the failure to provide the requested documents.

(ii) When the Panel determines the provisions of KRS 417.110 should be utilized, it may request permission in writing from the Director for the authority to issue a subpoena for the documents specified in its request.

(E) Oath of Panel Members.

The Panel shall take a written oath to be filed with the Director to decide the dispute submitted to them according to the law and evidence and the equity of the case to the best of their judgment without favor, affection or prejudice.

(F) Conduct of Hearings.

(i) The testimony of all witnesses shall be given under oath. The Panel Chair shall administer oaths to witnesses.

(ii) The Panel Chair shall preside at the hearing and shall be the judge of the relevancy and materiality of the evidence offered, shall rule on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. Strict compliance with the rules of evidence shall not be required.

(iii) In cases involving a three (3) member Panel, if at the time set for any hearing all three members of the Panel are not available to participate, the hearing shall be postponed, or, with consent of the parties shall proceed with the hearing with one (1) member of the Panel chosen by the parties as the sole arbitrator.

(iv) If any party to an arbitration who has been duly notified fails to appear at a scheduled hearing, the Panel may proceed with the hearing and determine the dispute upon the evidence produced.

(v) The Panel Chair may adjourn the hearing from time to time as necessary. Upon request of a party to the arbitration for good cause, the Panel Chair may postpone the hearing from time to time.

(vi) No briefs or legal memorandum shall be submitted by the parties unless specifically requested by the Panel or a majority thereof.

(7) The Award.

(A) Rendition and Form.

(i) The Panel shall render its award within thirty (30) days after the close of the hearing. The Award shall be made by a majority of the Panel.

(ii) The original Award shall be in writing and shall be signed by the member(s) of the Panel concurring therein. The Award shall include a determination of all questions submitted to the Panel, the decision of which shall be necessary to resolve the dispute. Copies of the Award shall have the same legal force and effect as the original.

(iii) While it is not required that the Award be in any particular form, it should, in general, consist of a preliminary statement reciting the jurisdictional facts, i.e., that a hearing was held upon notice pursuant to a written agreement to arbitrate, the parties were given an opportunity to testify and cross-examine, etc., a brief statement of the dispute, findings, conclusions, and the amount, if any, to be paid or reimbursed. The Panel shall avoid reciting information in the text of the Award that is privileged unless the parties specifically waive any privilege.

(iv) An Award may also be entered by consent of all parties to the dispute.

(v) The Award signed by the member(s) of the Panel shall be provided to the Director, who shall cause it to be mailed to the parties by Certified Mail.

(B) Correction of Errors.

If, upon receiving the Award, a party determines it contains significant factual or accounting errors or omissions, the party may bring this information to the attention of the Director within fifteen (15) days from the receipt of the Award. The Director will present the information to the other party and to the Panel for consideration along with the comments from the other party to the dispute. If the Panel determines that modification of the Award is appropriate, the Panel will issue a modified Award reflecting any changes made and will provide the modified Award to the Director for service on the parties as indicated above. This procedure is not intended to provide a party the opportunity to submit new evidence or to reargue the merits of the dispute.

(C) Effect and Enforcement.

The provisions of KRS 417.180 and of the arbitration agreement of the parties shall govern and determine the effect and enforcement of the Award. The law of the Commonwealth of Kentucky will govern the award of interest of any judgment.

(8) Records.

With the exception of the Award itself all records, documents, files, proceedings and hearings pertaining to arbitration of any dispute under these Rules shall not be open to the public or to any person not involved in the dispute with the exception of disputes referred to arbitration as stated in section 2(D) above. In that circumstance, a copy of the Award may be provided to the referring activity or agency.

(9) Death or Incompetence of a Party.

In the event of the death or incompetence of a party to the arbitration proceedings before the hearing has been concluded, the proceedings shall be abated without prejudice to either party to seek such relief as may be proper. In the event of death or incompetence of a party after the close of the hearing, but prior to issuance of the Award, the decision rendered shall be binding upon the heirs, administrators, or executors of the deceased and on the estate or guardian of the incompetent.

(10) No Charge for Arbitration Services.

No charge or fee shall be required of any party requesting or making use of the arbitration services provided by these Rules.

(11) Indemnity Provision.

By agreeing to the procedures authorized herein, the parties further agree to indemnify and hold harmless the Association, its employees and the Panel concerning any action arising out of the procedures set forth by this rule and for any and all conduct of the Panel in the exercise of the procedures herein.

17. SCR 3.810 Legal Fee Arbitration

SCR 3.810 shall read:

(1) Purpose.

The purpose of this Rule 3.810 is to establish a procedure whereby fee disputes arising from attorney and client relationships may be resolved by submission to binding arbitration.

(2) Definitions.

(A) "Attorney" means an attorney-at-law who is a member in good standing of the Kentucky Bar Association, or an attorney admitted to practice pursuant to SCR 3.030 when the dispute arises from that representation.

(B) "Association" means the Kentucky Bar Association.

(C) "Director" means the Director of the Kentucky Bar Association.

(D) "Dispute" means a disagreement between an attorney and a client relative to the fee due the attorney for particular legal services rendered, or a disagreement between attorneys concerning the amount of the fees due each attorney for particular legal services rendered. This includes a matter that is the subject of a diversion pursuant to SCR 3.160(3), or a matter referred for fee arbitration by the Court.

(E) "Amount in controversy" means the difference between the sum of money an attorney proposes to charge for legal services and the sum of money the client offers to pay for such services, or the total amount of the fee to be divided between attorneys.

(F) "Panel" means the arbitrator or arbitrators appointed to arbitrate the dispute.

(3) Scope of Authority.

(A) The Rules and Procedures herein set forth shall be available to resolve any dispute when the amount in controversy exceeds the jurisdictional maximum specified in KRS 24A.230 and all parties to the dispute agree in writing to submit the dispute to these Rules and further agree in writing that they shall be fully bound by the decision and Award of the Panel.

(B) These Rules shall not be used unless the parties to the dispute certify in writing that a good faith effort has been made by them to resolve the dispute.

(C) These Rules shall not be used if the dispute is the subject matter of a pending lawsuit, unless the parties follow the procedures of KRS 417.060(4).

(4) Institution of Proceedings.

(A) Proceedings hereunder shall be begun by the filing of a petition with the Association. The signed petition shall state the origin and details of the dispute, the nature and degree of legal services rendered, and the amount claimed due as a result of the dispute alleged. The petitioner shall also sign an arbitration agreement. The petition and arbitration agreement shall be on forms provided by the Association.

(B) Upon the filing of the petition, the Director shall determine whether it presents a dispute under these Rules. The decision of the Director on that matter shall be final. The Director shall have full power to require additional information from the petitioner as is deemed necessary to determine whether the Association shall accept jurisdiction of the dispute under these Rules.

(C) If the Director determines that the Association shall not accept jurisdiction of a fee dispute, the petition shall be returned to the petitioner indicating why the Association has not accepted jurisdiction of the matter.

(D) If the Director determines that the Association shall accept jurisdiction, a copy of the petition and the arbitration agreement signed by the petitioner shall be forwarded to the other party to the dispute to sign and return to the Director with the answer to the petition. Twenty (20) days shall be allowed in which to answer, unless additional time is requested. Upon receipt of the answer, the Director shall forward to the petitioner a signed copy of the arbitration agreement and of the answer submitted by the other party to the dispute.

(E) If the other party to the dispute refuses to submit the fee dispute to arbitration, or fails to sign and return the arbitration agreement and answer within the time allowed, the Director shall so notify the petitioner and the file of the Association shall be closed.

(F) If the dispute is referred to arbitration as referenced in 2(D) above, then sections 4(B) and (C) of this rule are not applicable. The attorney involved in the dispute shall be deemed the petitioner and shall file a petition with the Director.

(G) Upon the filing of a petition with the Association, any applicable statute of limitations is tolled until dismissal or a final award is entered.

(5) Arbitration Panel.

(A) Composition.

(i) Where the amount in controversy is ten thousand dollars (\$10,000.00) or less, the Panel shall consist of one (1) person who shall be a practicing Attorney.

(ii) Where the amount in controversy exceeds ten thousand dollars (\$10,000.00), the Panel shall consist of three (3) persons, two (2) of whom shall be practicing Attorneys and the third (3rd) member shall be a non-lawyer.

(iii) The practicing Attorney(s) referred to in paragraph (5)(A)(i) and (5)(A)(ii) above, shall each:

(a) be a member in good standing of the Association;

(b) be appointed for a particular dispute by the Director; and

(c) if engaged in the private practice of law shall maintain an office and carry on such practice within a reasonable proximity to the county in which the petitioner in the dispute resides.

(iv) Any attorney appointed by the Director may refuse to serve. Such refusal shall be by written notice to the Director within ten (10) days of the appointment.

(v) The non-lawyer referred to in paragraph (5)(A)(ii) shall be selected by the senior presiding judge or Chief Circuit Judge of the county where the attorney involved in the fee dispute maintains a principal office for the practice of law. If the dispute is between two attorneys, the selection of the non-lawyer member of the Panel shall be made by the senior presiding judge or Chief Circuit Judge of the county where the attorney petitioning for arbitration maintains a principal office for the practice of law.

(vi) In cases of a three-member Panel, the Director shall designate one member of the Panel as Chair of the Panel.

(B) Objections.

Either party to a fee dispute may object for cause to any of the Panel members. Such objection shall be in writing and shall be made within twenty (20) days of written notification of the composition of the Panel. Failure to object within twenty (20) days shall constitute a waiver of any objection to the composition of the Panel.

Objections to Panel members shall be made to the Director and shall be determined in accordance with KRS 26A.015 et seq. The decision of the Director shall be final.

(C) Compensation.

The Panel shall not be compensated for its services. Reasonable transportation expenses may be reimbursed.

(D) Vacancies.

If any arbitrator should be unable to act, the Director shall declare the office vacant and, if the matter has already been heard by the Panel, it shall not be reheard if the remaining members concur in the Award. If the sole member of the Panel is unable to act or the remaining members of the Panel do not concur in the Award, a new member shall be selected and the matter will be reheard. If the Panel has not yet heard the matter a new arbitration Panel member shall be selected in accordance with these Rules.

(E) Communication Between the Parties and Panel Members.

There shall be no ex parte communication between the parties and the Panel upon the subject matter of the

arbitration other than at arbitration proceedings, or in documents filed with the Association as part of the proceedings. This limitation does not apply to administrative communications between the Panel and the parties regarding the scheduling of the hearing.

(6) Hearings.

(A) Location.

Hearings shall be held in a county that reasonably limits the travel required by the parties to attend the hearing.

(B) Notice.

The Chair of the Panel shall fix the time and place for the hearing and shall cause written notice of time and place to be served upon all parties to the dispute by Certified Mail not fewer than ten (10) days prior to the time set for the hearing. Such notice of hearing shall also inform the parties of their right to be represented by an attorney and their right to present evidence in support of their respective positions.

(C) Stenographic Record.

(i) Any party may have a hearing before a Panel reported by a Certified Shorthand Reporter at the expense of the requesting party by written notice presented to the Panel Chair at least seven (7) days prior to the date of the hearing. Any other party to the arbitration shall be entitled to acquire at their own expense, a copy of the reporter's transcript of the testimony by arrangements made directly with the reporter.

(ii) In the event the Panel determines it appropriate or necessary to record the hearing, it may be recorded by digital or video means with costs being assessed as the Panel deems just. A party to the dispute, at its own expense, may request a copy of the record so recorded.

(D) Production of Records and Subpoenas.

(i) The parties to a dispute have the obligation to provide all documents needed for the Panel to resolve the questions presented for resolution. The discovery provisions of the Kentucky Rules of Civil Procedure are not strictly applicable. When a party fails to provide documents determined necessary by the Panel, the Panel may accept the negative factual inferences created by the failure to provide the requested documents.

(ii) When the Panel determines the provisions of KRS 417.110 should be utilized, it may request permission in writing from the Director for the authority to issue a subpoena for the documents specified in its request.

(E) Oath of Panel Members.

The Panel shall take a written oath to be filed with the Director to decide the dispute submitted to them according to the law and evidence and the equity of the case to the best of their judgment without favor, affection or prejudice.

(F) Conduct of Hearings.

(i) The testimony of all witnesses shall be given under oath. The Panel Chair shall administer oaths to witnesses.

(ii) The Panel Chair shall preside at the hearing and shall be the judge of the relevancy and materiality of the evidence offered, shall rule on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. Strict compliance with the rules of evidence shall not be required.

(iii) In cases involving a three (3) member Panel, if at the time set for any hearing all three members of the panel are not available to participate, the hearing shall be postponed, or, with consent of the parties shall proceed with the hearing with one (1) member of the panel chosen by the parties as the sole arbitrator.

(iv) If any party to an arbitration who has been duly notified fails to appear at a scheduled hearing, the Panel may proceed with the hearing and determine the dispute upon the evidence produced.

(v) The Panel Chair may adjourn the hearing from time to time as necessary. Upon request of a party to the arbitration for good cause, the Panel Chair may postpone the hearing from time to time.

(vi) No briefs or legal memorandum shall be submitted by the parties unless specifically requested by the Panel or a majority thereof.

(7) The Award.

(A) Rendition and Form.

(i) The Panel shall render its Award within thirty (30) days after the close of the hearing. The Award of the Panel shall be made by a majority of the Panel.

(ii) The original Award shall be in writing and shall be signed by the member(s) of the Panel concurring therein. The Award shall include a determination of all questions submitted to the Panel, the decision of which shall be necessary to resolve the controversy. Copies of the Award shall have the same legal force and effect as the original.

(iii) While it is not required that the Award be in any particular form, it should, in general, consist of a preliminary statement reciting the jurisdictional facts, i.e., that a hearing was held upon notice pursuant to a written agreement to arbitrate, the parties were given an opportunity to testify and cross-examine, etc., a brief statement of the dispute, findings, conclusions, and the amount to be paid or reimbursed. The Panel shall avoid reciting information in the text of the Award that is privileged unless the parties specifically waive any privilege.

(iv) An Award may also be entered by consent of all parties to the dispute.

(v) The award signed by the member(s) of the Panel shall be provided to the Director, who shall cause it to be mailed to the parties by Certified Mail.

(B) Correction of Errors.

If, upon receiving the Award, a party determines it contains significant factual or accounting errors or omissions, the party may bring this information to the attention of the Director within fifteen (15) days from the receipt of the Award. The Director will present the information to the other party and to the Panel for consideration along with any comments by the other party to the dispute. If the Panel determines that modification of the Award is appropriate, the Panel will issue a modified Award reflecting any changes made and will provide the modified Award to the Director for service on the parties as indicated above. This procedure is not intended to provide a party the opportunity to submit new evidence or to reargue the merits of the dispute.

(C) Effect and Enforcement.

The provisions of KRS 417.180 and of the arbitration agreement of the parties shall govern and determine the effect and enforcement of the Award. The law of the Commonwealth of Kentucky will govern the Award of interest on any judgment.

(8) Records.

With the exception of the Award itself all records, documents, files, proceedings and hearings pertaining to arbitration of any fee dispute under these Rules shall not be open to the public or to any person not involved in the dispute with the exception of disputes referred to arbitration as stated in section 2(D) above. In that circumstance, a copy of the Award may be provided to the referring activity or agency.

(9) Death or Incompetence of a Party.

In the event of the death or incompetence of a party to the arbitration proceedings before the hearing has been concluded, the proceedings shall be abated without prejudice to either party to seek such relief as may be proper. In the event of death or incompetence of a party after the close of the hearing but prior to issuance of the Award, the decision rendered shall be binding upon the heirs, administrators, or executors of the deceased and on the estate or guardian of the incompetent.

(10) Arbitration of Fee Disputes Between and Among Attorneys.

(A) The Association may accept jurisdiction of any fee dispute between or among attorneys when such a dispute has been submitted to the Association in accordance with these Rules.

(B) These Rules shall be applied by the Association in the resolution of fee disputes between and among attorneys except that in rendering its Award the Panel shall determine whether the fee in dispute should be divided and if so, in what proportions it should be divided between or among the parties to the arbitration.

(C) Service of a copy of such Award on the attorneys shall conclusively limit all claim and interest of the participating attorneys in the disputed fee in accordance with the division of the fee, if any, set forth in the Award.

(11) No Charge for Arbitration Service.

No charge or fee shall be required of any party requesting or making use of the fee arbitration services provided by these Rules.

(12) Indemnity Provision.

By agreeing to the procedures authorized herein, the parties further agree to indemnify and hold harmless the Association, its employees and the Panel concerning any action arising out of the procedures set forth by this rule and for any and all conduct of the Panel in the exercise of the procedures herein.

18. SCR 3.820 Client's Security Fund

Section (10) of SCR 3.820 shall read:

(10) Eligible Claims

(a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of or in the course of a lawyer-client relationship between the lawyer and the claimant.

(b) The claim shall have been filed no later than two years after the claimant knew or should have known of the dishonest conduct of the lawyer.

(c) As used in these Rules, "dishonest conduct" means: (1) Wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, or

(2) Refusal to refund unearned fees received in advance where the lawyer performed no services or such an insignificant portion of the services that the refusal to refund the unearned fees constitutes a wrongful taking or conversion of money.

(d) Except as provided by section (e) of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred as a result of any negligent act of malpractice,

(2) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;

(3) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(4) Losses incurred by any financial institution which are recoverable under a “banker’s blanket bond” or similar commonly available insurance or surety contract;

(5) Losses incurred by any business entity controlled by the lawyer, any person or entity described in section (d)(1), (2), or (3) hereof;

(6) Losses incurred by any governmental entity or agency.

(e) In cases of extreme hardship or special and unusual circumstances, the panel of Trustees may, in its discretion, recognize a claim which would otherwise be excluded under these Rules.

(f) In cases where it appears that there would be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the panel of Trustees may in its discretion, deny the claim.

All sitting. All concur.

ENTERED: DECEMBER 12, 2007.


CHIEF JUSTICE

Supreme Court of Kentucky

2007- 008

ORDER

The Court previously entered an Order creating a pilot project for discipline cases as set forth in amendments it approved to SCR 3.160 and SCR 3.185. The original Order was entered on March 22, 2007. A correcting Order was entered on March 28, 2007. By the terms of that Order the pilot project was to extend through December 31, 2007.

The Court has now adopted, by Order of December 12, 2007, Rule Amendments to SCR 3.160 and SCR 3.185, which set forth the rules governing alternative disposition, to take effect on February 1, 2008. In order to maintain the current project until that new effective date, the Court extends the pilot project, as set forth in the current SCR 3.160 and 3.185, to February 1, 2008.

ENTERED: December 18, 2007


CHIEF JUSTICE

Chase Teams Win Competitions

Northern Kentucky University Salmon P. Chase College of Law competed in the American Bar Association/National Arbitration Forum Arbitration Competition for the first time this year. The Southeast Regional Competition was held November 16-18th in Birmingham, Alabama. Chase fielded two teams – Team Magenta and Team Fuchsia (team names were supplied by the ABA). Team Magenta, consisting of second-year law students Ioanna Paraskevopoulos, Nick Maggard, Sue Irion, and Zac Corbin, defeated Villanova and Cumberland in the preliminary rounds, advancing to the semifinal rounds as the tournament's top seed. Team Fuchsia included second-year students Adam Towe, Katie Morgan, Danielle Lorenz, and Stefanie Brunemann who defeated Florida A & M and

Georgetown in the preliminary rounds advanced to the semifinal rounds as the tournament's second seed. In the semifinal round, Team Magenta lost narrowly to the Cumberland team that Team Magenta previously had defeated. Team Fuchsia defeated Mississippi College in the semifinal round, and went on to defeat Cumberland in the final round to win the tournament and become the Southeast Regional Champion.

Team Fuchsia received an automatic bid to the national tournament to be held January 25-26, 2008 in St. Petersburg, Florida. Team Magenta is likely to receive a bid as well based on the team's tournament point scores.

Chase's National Trial Team won the Ohio CrossTown Mock Trial Competition held November 10-11th in Cleveland. This competition includes teams from the Ohio law schools plus a team from Chase. The students on the Chase team were Anne Bennett Cooke, David Curlin, Chris Hartley, Leslie Heagan, Lindsay Lawrence, Megan Mersch, Ian Stegmaier, and Del Weldon.



By Jim Chen

Dean and Professor of Law

Moot courts and mock trial competitions are to legal education as intercollegiate athletics are to undergraduate education.

The University of Louisville School of Law has enjoyed an extraordinary season of success in moot court, mock trial, and negotiation competitions. Success in those realms, and in other activities where our students interact with students from other law schools (particularly in connection with student-edited law journals and at regional or national conventions), is the law school equivalent of varsity athletics. Indeed, insofar as our university's undergraduate athletes overwhelmingly go pro in something besides sports, whereas law students almost invariably go pro in law, intercollegiate competitions in law bear even more directly on the future success of those students who are fortunate enough to take part.

Alongside clinical experiences, public service externships, and law review editorships, participation in moot court, mock trial, and negotiation competitions provides law students fantastic hands-on opportunities to learn the most important skills that will serve them throughout their careers in the law. Classroom instruction is indispensable, of course, but there is simply no substitute for learning by doing.

In short, we simply can't get enough good news about the success of our moot court, mock trial, and negotiation teams. I have taken great pride in reporting these stories through my new weblog, *The Cardinal Lawyer* (<http://www.law.louisville.edu/CardinalLawyer>). I am equally pleased to share news of Louisville's moot court triumphs with the membership of the Kentucky Bar Association.

The University of Louisville wins the Kentucky Mock Trial competition

The University of Louisville enjoyed great success in the Kentucky Mock Trial competition. Both U of L teams advanced to the semifinal rounds. The team of Dustin Thaker, Christopher Roby, Tonya Appleby, and Colleen Clemons won the competition. Louisville's other semifinalist



Chase National Trial Team



Chase Arbitration Teams

team consisted of Ben Weigel, Courtney Clark, Mac Adams, and Diana Kolze. The team was coached by Shelley Lemons.

Law students help the McConnell Center advance in an undergraduate moot court competition

Louisville Law students have not only competed in their own right; they have also helped their undergraduate counterparts at the U of L's McConnell Center to advance in their southeast regional competition.

I received this letter from Mary Hora, a member of the Law School's class of 2002:

Dear Dean Chen,

I'm a 2002 graduate of the U of L law school, and I coach an undergraduate moot court team of McConnell Scholars at U of L. A couple of months ago, Becky Wimberg kindly allowed me to post an announcement on the Docket asking for law students to volunteer as practice judges. Several students responded, and came out to help the team. I was so impressed by their willingness to help, and by the effort they put into preparing for the practices, that I wanted to draw your attention to them, and let you know how well they represent the law school.

- * Adam Broadus
- * Marshall Casey
- * Algeria Ford
- * Stacy Hoehle (volunteered but was unable to participate because she works on practice evenings)
- * Elisabeth Luff
- * Patrick Watson

Due in large part to the efforts of the practice judges, the U of L undergrads made a great showing at the Southeastern regional tournament this past weekend. All three teams (of two students each) made it into the quarterfinals, and one of these teams advanced to the finals. Two of the three teams have guaranteed places at the national tournament in January, and the third team has a very good chance of being chosen as a wild card. ...

Let me also express my special thanks to Dean [Donald] Olson, who very kindly supplied us with videotapes of past Pirtle-Washer competitions. These were invaluable in helping us to prepare for the tournament.

Mary F. Hora
Staff Attorney
Kentucky Court of Appeals

Louisville teams advance at Richmond regionals

University of Louisville teams also enjoyed fantastic success at the National Moot Court regional competition, held in Richmond, Virginia, on November 16-17. Herewith a report from Professor Sam Marcossou, who has coached this team for a dozen years:

Two University of Louisville teams enjoyed terrific success at the regional competition of the National Moot Court Competition November 16-17 in Richmond, Virginia. A team made up of third-year students Robyn Lurding and Claire Parsons, and a team comprised of third-year Jeff Nicoson and second-year Steve Mattingly, both compiled undefeated records in the Friday preliminary rounds to advance to the Saturday quarter-finals. Along the way, they knocked off teams from UNC, George Mason, William & Mary, and Kentucky. Only six teams of the 20 in the field made it through to the quarters, and U of L had two of them. Congratulations to the two teams for their tremendous performances, both in the prelims and in two close quarter-finals against outstanding teams from Duke. I could not have been any prouder of them; they were truly brilliant and they represented the school wonderfully.

Louisville teams at the ABA's Regional Negotiation Team Competition

On November 10 and 11, two teams representing the University of Louisville competed in the ABA Regional Negotiation Team Competition in Valparaiso, Indiana. The team of Adam Fuller and Elizabeth Powell finished sixth in the 20-team competition. The team of Scott Powell and David Scott finished second and advanced, alongside three other teams, to the final round. The Powell-Scott team finished second overall and are alternates to ABA National Negotiation Team Competition, which will take place February in Los Angeles, California.

The coaches for the Negotiation Teams are Michelle Rudovich, who works in the Office of the Commonwealth's Attorney, and Mary Jo Gleason, who has served as director of the Law School's Samuel L. Greenebaum Public Service Program.

The 2007 Pirtle-Washer Moot Court Competition

Finally, I would remiss if I neglected



Pirtle-Washer champion Joe Stennis, Jr. with Justice Lisabeth Abramson

to mention the University of Louisville's own Pirtle-Washer Moot Court Competition, the Law School's oldest and most prestigious intramural moot court tournament. Joe Stennis, Jr., won the 2007 Pirtle-Washer Moot Court Competition, held at the Law School on October 5. The other finalist was Jeff Nicoson. The semifinalists were Caroline Pieroni and John Purlee.

Two distinguished panels of judges presided over the semifinal and final rounds of the Pirtle-Washer Competition. The semifinal panel consisted of U.S. Magistrate Judge James Moyer, U.S. Bankruptcy Judge David Stosberg, and Kentucky Court of Appeals Judge Tom Wine ('80). The judges for the final round were Justices Mary Noble and Lisabeth Abramson ('80) of the Kentucky Supreme Court and Jefferson Circuit Court Judge Martin McDonald ('88).



Kentucky Bar Association Task Force on Comair Flight 5191 Presents Final Report to Board of Governors

The Kentucky Bar Association Task Force on Comair Flight 5191 has presented its final report to the KBA Board of Governors. The Task Force determined that 13 advertisements violated the Kentucky Supreme Court Rules of Professional Conduct, the Attorney Advertising Commission Regulations, state law, or federal law under provisions of the "Aviation Disaster Family Assistance Act of 1996."

The issue at the forefront of the Task Force's inquiry was improper solicitation of clients by a few lawyers in the immediate aftermath of the August, 2006 crash. The Task Force reviewed lawyer advertisements, and their possi-

ble failure to comply with the appropriate federal and state laws providing thirty and forty-five day moratorium periods on direct written contact by lawyers to Comair 5191 victims' families. The Task Force was created under Supreme Court Rule 3.130(7.60), the Kentucky Disaster Response Plan.

The Task Force consisted of retired Fayette Circuit Judge John Adams, Chair, Scott County Circuit Judge Paul Isaacs, and John M. Rosenberg, Prestonsburg attorney and former Director of the Appalachian Research and Defense Fund of Kentucky, Inc. The Task Force worked in conjunction with the Kentucky Bar Association

Attorneys' Advertising Commission, which assisted in the investigation.

Three Kentucky attorneys were referred to the Inquiry Commission of the Kentucky Supreme Court, a disciplinary entity, for investigation. Seven out-of-state attorneys were referred to the disciplinary authority in their respective states for investigation. One out-of-state lawyer was referred to the local Fayette County Attorney's office. Two attorneys were referred to the National Transportation Safety Board's Office of General Counsel in Washington, D.C.

KBA to Test Mentoring Program

The Supreme Court of Kentucky, at the request of the KBA's Board of Governors, has authorized a pilot program studying the effectiveness of a mentoring program for new lawyers. Fifty volunteers from the February 2008 class of successful bar exam applicants will participate in the one-year study.

Early in 2006, the KBA's Board of Governors established a Mentoring Committee, chaired by Kent Westberry of Louisville, to examine the feasibility of conducting an organized mentoring program in Kentucky. The committee studied the efforts of many other state and local bar associations to determine if their format could be adapted to Kentucky's needs. The most established program was the State Bar of Georgia's "Transition into Law Practice Program" which has

been under development for over a decade. Also studied closely were the pilot programs currently in place in Ohio and South Carolina.

"The Board of Governors and the Supreme Court are to be commended for their leadership in this important work," said Mentoring Committee Chair Kent Westberry. "Through these efforts, we hope to have a very meaningful and long term impact on not only the individuals involved, but on the larger practice of law in our commonwealth."

New lawyer participants will be allowed to recommend a Mentor to work with them over the term of the study. They will jointly complete a variety of suggested projects that are part of the Pilot Program. Examples of these activities include introductions to the local

clerks' offices, discussion of career opportunities and options for *pro bono* activities, as well as other specialized tasks aimed at improving the participants' transition from law school to practicing lawyer.

The Supreme Court's Order establishing the Mentoring Pilot Program, and more details about the program, are available at the KBA website – www.kybar.org. The Mentor Training Program, as well as the supporting materials for the individual participants, is being developed by the KBA CLE Department under the supervision of the Mentoring Committee.

Funding for the Pilot Program was provided by a grant from the Kentucky Bar Foundation with matching funds provided from the KBA CLE Reserve Fund.

CLICK
www.kybar.org

SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING SEPTEMBER 21, 2007

The Board of Governors met on Friday, September 21, 2007. Officers and Bar Governors in attendance were *President J. Dyche, President-Elect B. Bonar, Vice President C. English, Jr., Immediate Past President R. Ewald, Young Lawyers Section Chair R. Reed, Bar Governors 1st District - D. Myers, M. Whitlow; 2nd District - R. Sullivan, J. Harris, Jr.; 3rd District - R. Madden, R. Hay, 4th District - M. O'Connell, 5th District - F. Fugazzi, 6th District - M. Grubbs, T. Rouse; and 7th District - J. Rosenberg, W. Wilhoit. Bar Governors absent were D. Farnsley and D. McSwain.*

In Executive Session, the Board considered one (1) discipline case; twelve (12) discipline default cases, involving three (3) lawyers; one (1) reinstatement case; and two (2) restoration cases.

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

- Heard status reports from the Kentucky Lawyer Assistance Program (KYLAP), Kentucky Volunteer Lawyer Program and Office of Bar Counsel.
- Young Lawyers Section Chair Ryan C. Reed reported the Section is devel-

To KBA Members
Do you have a matter to discuss with the KBA's Board of Governors? Board meetings are scheduled on
March 14-15, 2008
May 16-17, 2008
To schedule a time on the Board's agenda at one of these meetings, please contact Jim Deckard or Melissa Blackwell at (502) 564-3795.

oping a program "On Your Own" in an attempt to reach high school students about the consequences on their lives regarding civil and criminal legal matters. A handbook will be compiled and the Section hopes to visit approximately five high schools in each Supreme Court District. Mr. Reed also reported that the Section is more involved in Kentucky Law Update regional programs and plans to continue to be very involved with the Annual Convention.

- Approved the additional appointments of John R. Martin, Jr. of Louisville and Bruce E. Smith of Nicholasville to the Kentucky Bar Foundation for

three (3) year terms ending on June 30, 2010.

- Approved the appointment of Larry Powell of Louisville as Vice-Chair of the Real Property Law Section.
- Lori Dearfield with Kelley, Galloway & Company, P.S.C. presented the Fiscal Year June 30, 2007 Audit Report.
- Recommended Bar Governor William H. Wilhoit to serve as the Board of Governors representative on the Evidence Rules Review Commission.
- President Dyche reported that the 2008 Annual Convention Planning Committees are in place and have been meeting regularly. The 2008 Annual Convention will be held on June 18-20 in Lexington.
- President-Elect Bonar advised that plans are being finalized and a contract being signed to have a 2008 Fall Getaway at West Baden Springs Hotel, near the French Lick Resort, in Indiana for October 23-25, 2008.
- A copy of the CLE Commission Annual Report that is filed with the Supreme Court was distributed to the Board of Governors.

■ In Memoriam

Nicholas Noel Brown	Bowling Green
William Bekurs Danner	Slidell, LA
Russell E. Dougherty	Potomac Falls, VA
Ralph Forbis Kessinger	Lexington
Jack Darrel Kiser	Lexington
Latham B. Lawton, Jr.	Henderson
Kirk Lewis Neidhardt	Prospect
Paul D. Ross	Lexington
Edward A. Rothschild	Louisville
Charles D. Scott	Louisville
Leonard E. Wilson	Jamestown

Before You Move...

Over 15,000 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 40601-1883

* 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.

WHO, WHAT, WHEN & WHERE

ON THE MOVE

Fowler Measle & Bell PLLC is pleased to announce that **Ashley A. Ryan** has joined the firm as an associate. Ryan received her B.S. from the University of Kentucky and earned her J.D. in May 2007 from the University of Kentucky College of Law. Her primary area of practice will be in corporate and commercial litigation, bankruptcy, and business planning.



Jennifer M. Stinnett

Fultz Maddox Hovious & Dickens PLC

is pleased to announce that **Jennifer Metzger Stinnett** has joined the firm as an associate. Metzger Stinnett completed her undergraduate studies in 2000 at the University of Notre Dame and is a 2003 graduate of the University of Kentucky College of Law. She will focus her practice in business litigation. Before joining the firm, she practiced at Jones Day in Washington, D.C.

The law firm of **Middleton Reutlinger** is pleased to announce that **William K. Oldham, Tara J. Clayton, and Laura B. Grubbs** have joined the firm and that **James E. Cole, Robert J. Theuerkauf** and **Michael F. Tigie** have been named directors with Middleton Reutlinger. Oldham, Clayton, Grubbs, Cole and Theuerkauf earned their law degrees from the University of Louisville School of Law. Tigie earned his law degree from the University of Notre Dame. Oldham focuses his practice on health care litigation, includ-



William K. Oldham



Tara J. Clayton



Laura B. Grubbs



James E. Cole



Robert J. Theuerkauf



Michael F. Tigie

ing nursing home malpractice defense. Clayton concentrates her practice in health care litigation, nursing home negligence and general civil litigation. Grubbs concentrates in commercial litigation and business law. Cole is a registered patent attorney in the firm's Intellectual Property Practice Group. Theuerkauf is also a registered patent attorney and practices in the firm's intellectual property and litigation sections, concentrating on patent and trademark law. Tigie concentrates his practice on land use planning and development as well general commercial litigation.

O'Hara, Ruberg, Taylor, Sloan & Sergent is pleased to announce it has hired **Steven D. Jaeger** as a new associate. Jaeger received his B.A. from



Steven D. Jaeger

Thomas More College in 2003 and earned his J.D. from Salmon P. Chase College of Law in 2007. He is currently admitted to practice in Kentucky. Jaeger plans to focus his practice in the areas of family and elder law.



Nicholas C. Birkenhauer

The law firm of **Deters, Benzinger & LaVelle, PSC** is pleased to announce that **Nicholas C. Birkenhauer** has joined the firm as an associate. Birkenhauer focuses his practice in employment and labor law. He received a B.A. from Washington

and Lee University and obtained his law degree from Salmon P. Chase College of Law.

The Louisville law firm of **Sitlinger, McGlincy, Theiler & Karem** is pleased to announce that **Kelly Marie Rowan** has joined the firm as an associate and will focus her practice in civil trial liti-

Legally Insane by Jim Herrick



*"That's not just a dismissal
with prejudice...
that's with malice aforethought."*

WHO, WHAT, WHEN & WHERE

gation. She graduated, *magna cum laude*, from the University of Louisville School of Law in May 2007.



Jennifer L. Brinkley

Jennifer L. Brinkley is pleased to announce she is now in solo practice. **The Law Office of Jennifer L. Brinkley** is located in Bowling Green at 923 College Street in Suite 1-A. Brinkley, a 2005 graduate of the

University of Kentucky College of Law, concentrates her practice in the areas of family and criminal law. She may be reached at (270) 782-5744.



Ashley A. Flynn

The Crestwood law firm of **Stewart, Roelandt, Stoess, Craigmyle & Emery** is pleased to announce the addition of two new attorneys, **Ashley Ahrens Flynn** and **Mary M. McGuire**.

Flynn represents clients in the areas of adoption, divorce, family law, education law, employment law, tort claims, and civil litigation. She obtained her B.A.

Mary M. McGuire

from the University of Kentucky, earned her J.D. from the University of Louisville School of Law, and was formerly the staff attorney for Judge Timothy Feely in the 12th Judicial Circuit. McGuire represents clients in the areas of real estate law, ERISA, employment law, education law, mergers and acquisitions, and civil litigation. She obtained her B.A. from the University of Evansville and earned her J.D. from the University of Notre Dame. McGuire is admitted to practice law in Kentucky and Illinois.

Amy S. York, a native of Ashland, has joined the law firm of **Nichols Kaster & Anderson, PLLP** in its Minneapolis, Minnesota office as an associate. She is focusing her practice on plaintiffs' employment law. York, a



Amy S. York

graduate of Morehead State University, the University of Kentucky, and the University of Minnesota School of Law, is currently admitted to practice law in Kentucky and Minnesota.

Rene Heinrich is pleased to announce the opening of her new firm, **The Heinrich Firm, PLLC**, located in Newport at 526 York Street. Heinrich was recently elected to the Highland Heights City Council and severs on several non-profit boards. She is accepting new clients in family law cases located in Campbell, Kenton, and Boone Counties, including civil actions on behalf of injured or abused children. Heinrich may be reached at (859) 491-3888.



Jasper D. Ward

The Louisville law firm of **Tachau Meek PLC** is pleased to announce that **Jasper D. Ward** has joined the firm as an associate. Ward graduated from the University of Louisville School of Law in May 2007. He will focus his practice in the areas of commercial and banking litigation, business torts, employment disputes, and medical malpractice.

Derek D. Humfleet is pleased to announce the opening of his new law firm called **Humfleet Law, PLC**, located in Lexington at 110 East Third Street. The firm will represent individuals, farmers, and small businesses when they have been injured or otherwise wronged. Humfleet may be reached at (859) 402-0724.



Mark J. Sandlin

The Louisville law firm of **Goldberg Simpson** is pleased to announce that **Mark J. Sandlin** has joined the firm. Sandlin will concentrate his practice in the areas of commer-

cial litigation, complex foreclosures, bankruptcy, and real estate matters, including title defense litigation. Prior to joining the firm, he was a shareholder in Morgan & Pottinger, PSC.



Paul Dzenitis

Reminger & Reminger Co., LPA is pleased to announce the addition of **Paul Dzenitis** as a partner in the Lexington office located at 269 West Main Street, Suite 700. Dzenitis, a Louisville native, graduated from the University of Kentucky College of Law in 1994. His practice will be concentrated in the defense of medical malpractice, professional liability, nursing home liability, and general liability. He may be reached at (859) 233-1311.

The Louisville law firm of **Travis & Herbert, PLLC** is pleased to announce that **Randy Perkins** has become associated with the firm Of Counsel. He concentrates his practice in the areas of real estate and general civil litigation. Perkins, a 1994 graduate of the University of Louisville School of Law, is a frequent speaker and author on local real estate matters.



Lisa C. DeJaco

Wyatt, Tarrant & Combs, LLP has elected **Lisa C. DeJaco, Michael McClain, and Aaron D. Zibart** as partners to its Louisville office. DeJaco is a member of the firm's Intellectual Property & Technology Licensing, Commercial Litigation and Communications Groups. She received her B.A., *summa cum laude*, from Furman University and earned her J.D. from the



Michael McClain

University of Virginia School of Law. McClain is a member of the firm's Bankruptcy & Creditors' Rights Practice Group. He obtained his B.A. and M.P.A. degrees from Eastern

WHO, WHAT, WHEN & WHERE



Aaron D. Zibart

Kentucky University and earned his J.D. from the University of Louisville. Zibart is a member of the firm's General Business Practice Group. He received his B.A., *magna cum laude*, and earned his J.D., both from the University of Kentucky. Zibart is also a member of the Georgia Bar Association.



Stephanie Vincent
Larkin

The law firm of **Bowles Rice McDavid Graff & Love LLP** is pleased to announce that **Stephanie Vincent Larkin** has joined the firm in the Lexington office as a member of the Tax Practice Group. Larkin, a native of Bowling Green, received her B.A. from Western Kentucky University in 2004 and earned her J.D. from the University of Kentucky College of Law in 2007.



Brad S. Keeton

Stoll Keenon Ogden PLLC is pleased to announce **Kent A. Boswell, Carl N. Frazier, Dana Howard, Brad S. Keeton, Tiffany F. Konwiczka, Matthew R. Lindblom, Nick Nicholson, Christopher L. Thacker, and James T. Traugher** are now associated with the firm. Boswell focuses primarily in the areas of mineral and environmental law. Keeton, Howard, Thacker, and Nicholson are practicing in the firm's business litigation area while Lindblom focuses his practice primarily in the area of bankruptcy. Frazier practices primarily in



Carl N. Frazier



Dana Howard

the areas of tort, trial and insurance, while Konwiczka practices in the area of family law. Traugher joined the firm as an associate in its Estate Planning & Tax Practice Groups.

Dinsmore & Shohl is pleased to announce that **Sadhna G. True** has been named a partner for the firm's Lexington office; **Stephen B. Pence** will serve as a partner in the Litigation Department working from the Louisville office; and **Ebony L. Glenn** and **John M. Spires** have been hired as associates. True, who previously served as the Director of Civil Rights for the U.S. Department of Agriculture and as a trial attorney with the Civil Division of the U.S. Department of Justice, earned her J.D. from the University of Michigan Law School in 1991. Pence, the outgoing Lieutenant Governor of Kentucky, earned his J.D. from the University of Kentucky College of Law in 1981. He also continues to serve as a military judge in the U.S. Army Reserve JAG Corps. Glenn earned her J.D. from Georgetown University Law Center in 2007 and practices in the firm's Litigation Department. Spires earned his J.D., *summa cum laude*, from the University of Kentucky College of Law in 2006 and also practices in the firm's Litigation Department.



David M. Stout



Haley M.
Dickerson

Stites & Harbison announces the addition of its new associates firm-wide. Frankfort attorney **David M. Stout**, a 2007 graduate of the University of Kentucky College of Law, is a member of the Business Litigation Service Group. Lexington attorney **Haley Martin Dickerson**, a 2007 graduate of the University of Kentucky College of Law, is a member of the Intellectual Property & Technology Service Group. Prior to joining the firm, she served as a judicial intern to Judge Gary D. Payne;



Valorie D. Smith



Erin L. Guy



Steven M.
Henderson



Michael K. Kim



W. Robert Meyer



Rachel Owsley

an intern at The White House, Office of Vice President Cheney, Legislative Affairs in Washington, D.C.; and an intern with the Office of the Hon. Sonny Callahan, U.S. House of Representatives. Lexington attorney **Valorie D. Smith**, a 2007 graduate of the University of Kentucky College of Law, is a member of the Creditors' Rights & Bankruptcy Service Group and the Torts & Insurance Practice Service Group. She also served a judicial internship with Judge Gary D. Payne. Louisville attorney **Erin L. Guy** graduated from the University of Louisville School of Law, *magna cum laude*, in 2007. She is a member of the Torts & Insurance Practice Service Group. Louisville attorney **Steven M. Henderson** graduated from the University of Kentucky College of Law, *magna cum laude*, in 2007. He is a member of the Construction Service Group and is also a Kentucky licensed professional engineer. Louisville attorney **Michael K. Kim** graduated from the University of Miami School of Law, *cum laude*, in 2007. He is a member of the Business Litigation Service Group. Kim held various positions from 2003 to 2005, including certified legal intern with the

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Karen M. Paulin

Law Offices of the Public Defender for the Eleventh Judicial Circuit of Florida and public interest law fellow for the University of Miami School of Law, Children & Youth Law Clinic.

Louisville attorney **W.**



Sean Renfroe

Robert Meyer graduated from Indiana University School of Law-Bloomington in 2002. He is a member of the Creditors' Rights & Bankruptcy Service Group. Meyer was a law clerk for Hon. Basil H. Lorch, III, Chief Judge, U.S. Bankruptcy Court for the Southern District of Indiana. Louisville attorney **Rachel**



Cooper Robertson

Owsley graduated from the University of Louisville School of Law, *magna cum laude*, in 2007. She is a member of the Business & Finance Service Group. Louisville attorney **Karen M. Paulin**



Lauran M. Sturm

graduated from the University of Louisville School of Law, *magna cum laude*, in 2007 and holds a M.B.A. from the University of Louisville. Paulin, who previously served as the director/vice president of human resources at Metro United Way, is a member of the Labor & Employment Service Group. Louisville attorney **Sean**



K. Kelly White

Renfroe graduated from the University of Louisville School of Law, *magna cum*



Steven R. Wilson

laude, in 2007. He is a member of the Capital Markets Service Group. Renfroe was a legal clerk at Weber & Rose. Louisville attorney **Cooper Robertson** graduated from the University of Louisville School of Law, *magna cum*

laude, in 2007. He is a member of the



Terry L. Wright

Capital Markets Service Group. Renfroe was a legal clerk at Weber & Rose. Louisville attorney **Cooper Robertson** graduated from the University of Louisville School of Law, *magna cum*

laude, in 2007. He is a member of the Capital Markets Service Group. Robertson was a judicial clerk for Hon. William L. Stocks, Chief Judge and Hon. Thomas W. Waldrep, U.S. Bankruptcy Court for the Middle District of North Carolina. Louisville attorney **Lauran M. Sturm** graduated from the Indiana University School of Law-Bloomington, *magna cum laude*, in 2007. She is a member of the Capital Markets Service Group. During law school, Sturm worked with Bloomington, Indiana's District 10 Pro Bono Project. Louisville attorney **K. Kelly White**

graduated from the University of Kentucky College of Law in 2007. She is a member of the Business Litigation Service Group and the Health Care Practice Group. White completed a judicial internship with Fayette District Court. Louisville attorney **Steven R. Wilson** graduated from the University of Louisville School of Law, *cum laude*, in 2007. He is a member of the Capital Markets Service Group. Wilson was a law clerk with Vaughn & Associates, PLLC. Louisville attorney **Terry L. Wright** graduated from the University of Louisville School of Law, *cum laude*, in 2007. He is a member of the Intellectual Property & Technology Service Group. Wright was a law clerk at the Office of the Jefferson County Attorney.

The Lexington law firm of **Baldani, Rowland & Richardson** is pleased to announce that **Brandi Lewis** has joined the firm as an associate. Lewis received her B.A. from the University of Kentucky in 1999 and earned her J.D. from Salmon P. Chase College of Law in 2003. She concentrates her practice in the areas of criminal defense and family law. Prior to joining the firm, Lewis served as a law clerk for Judge Roderick Messer of the 27th Judicial Circuit.

David L. Nicholson, Jefferson County Circuit Court Clerk, is pleased to announce two administrative staff appointments. **Wanda Baker** has been appointed as Chief Administrative Officer and Director of Courts, and **Tara Hagerty** has been appointed as Chief Deputy of Family Court. Baker received her bachelor's degree from Kentucky State University and earned her J.D. from the University of Virginia Law School. Hagerty received her bachelor's degree from the University of Louisville and earned her J.D. from the University of Louisville School of Law.

Frost Brown Todd LLC is pleased to announce the arrival of seven associate attorneys, **Holly Brown, Dawn Franklin, Matt Jones, Becky Mayton, J. Morgan McGarvey, Nicole Staffieri** and **Joy Stranski**, to its Lexington and Louisville offices. Brown has joined the firm's Business Corporate Department. She attended the University of Kentucky

Nicola Ai Ling Prall is pleased to announce the opening of her law practice in Raleigh, North Carolina at 5540 McNeely Drive in Suite 301. She focuses her practice exclusively in the area of immigration and nationality law. Prall is fluent in Spanish and has advanced language skill in Portuguese. She graduated, *magna cum laude*, from Case Western Reserve University with a B.A. and earned her J.D. from the University of Kentucky College of Law. Prall is a member of both the Kentucky and the North Carolina Bar Associations. She may be reached at (919) 571-8980.



Jesse R. Hodgson

The law firm of **White Peck Carrington, LLP** in Mt. Sterling announces that **Jesse R. Hodgson** has joined the firm as an associate. Hodgson received his undergraduate degree from Georgetown College in May 2004 and earned his J.D. from the University of Louisville School of Law in May 2007. He will concentrate his practice in the area of transactions.

Frost Brown Todd LLC is pleased to announce the arrival of seven associate attorneys, **Holly Brown, Dawn Franklin, Matt Jones, Becky Mayton, J. Morgan McGarvey, Nicole Staffieri** and **Joy Stranski**, to its Lexington and Louisville offices. Brown has joined the firm's Business Corporate Department. She attended the University of Kentucky

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where she received her B.S. in Accounting in 2003, her M.B.A. in 2007, and her J.D. in 2007. Franklin has also joined the firm's Business Corporate Department. She received her B.A. in 2001 from Yale University and earned her J.D. from the University of Kentucky College of Law in 2007. Jones has joined the firm's Litigation Department. He received his bachelor's degree from Transylvania University and earned his J.D. from Duke University School of Law. Jones began his legal career clerking for Judge A. Raymond Randolph on the D.C. Circuit and spent one year clerking for Judge Karen Caldwell in the Eastern District of Kentucky. Mayton has joined the firm's Commercial Transactions/Real Estate Department. She received her B.A. from Centre College in 2004 and earned her J.D. from the University of Kentucky in 2007. Mayton represents clients in the areas of bankruptcy, real estate, and commercial lending. McGarvey has joined the firm's Litigation Department. He received his Bachelor of Journalism from the University of Missouri in 2002 and earned his J.D. from the University of Kentucky in 2007. Prior to joining the firm, McGarvey worked as a legislative assistant for Congressman Chandler. Staffieri has also joined the firm's Litigation Department. She received her B.A. from Yale University with honors in 2003 and earned her J.D. from Notre Dame Law School in 2006. Prior to joining the firm, she worked for a litigation firm in Chicago. Stranski has joined the firm's Labor Department. She received her B.A. from the University of Toledo in 2003 and earned her J.D. from the University of California, Los Angeles in 2007. Prior to joining the firm, Stranski worked as an extern at the U.S. Attorney's Office for the Central District of California.



Tonya J. Austin

Greenebaum Doll & McDonald welcomes thirteen new associates, **Tonya J. Austin, J. Aaron Byrd, Amy Miller-Mitchell, Jason T. Ams, Christina E. Hayne, R. Clay**



J. Aaron Byrd



Amy Miller-Mitchell



Jason T. Ams



Christina E. Hayne



R. Clay Larkin



J. Cory Greenwell

Larkin, J. Cory Greenwell, Hidekazu Hayakawa, Bengamin W. Johnson, Richard C. Porter, R. Adam Stearman, Nathan D. Williams, and Mark Gomsak. Greenebaum is also pleased to announce that **Miles S. Apple** has joined the firm's Louisville office and will be Of Counsel in the firm's Tax and Finance Practice Group. Apple earned his J.D. from the University of Louisville School of Law. Austin, Byrd and Miller-Mitchell practice in the Greater Cincinnati area. Ams, Hayne and Larkin practice in the Lexington office. Greenwell, Hayakawa, Johnson, Porter, Stearman, Williams, and Gomsak practice in the firm's Louisville office. Austin earned her J.D. from the University of Dayton School of Law. She practices in the Corporate and Commercial Practice Group in Covington. Byrd earned his J.D., *cum laude*, from Salmon P. Chase College of Law. He has joined the Estate Planning, Health and Insurance Practice Group in Cincinnati. Miller-Mitchell earned her J.D., *magna cum laude*, from Salmon P. Chase College of Law. She has joined the Labor and Employment Practice Group in Covington. Ams earned his J.D., *magna cum laude*, from the University of Kentucky



Hidekazu Hayakawa



Bengamin W. Johnson



Richard C. Porter



R. Adam Stearman



Nathan D. Williams



Mark Gomsak

College of Law. He has joined the Litigation and Dispute Resolution Practice Group. Hayne earned her J.D., *magna cum laude*, from the University of Kentucky College of Law. She has also joined the Litigation and Dispute Resolution Practice Group. Larkin earned his J.D., *cum laude*, from the University of Kentucky College of Law. He has joined the Regulatory and Administrative Practice Group. Greenwell earned his J.D. from the University of Kentucky College of Law. He has also joined the Regulatory and Administrative Practice Group. Hayakawa earned his J.D. from the University of Illinois at Urbana. He has joined the Corporate and Commercial Practice Group. Johnson earned his J.D., *cum laude*, from the University of Louisville School of Law. He has also joined the firm's Corporate and Commercial Practice Group. Porter earned his J.D. from the University of Louisville School of Law. He has joined the Tax and Finance Practice Group. Stearman earned his J.D., *magna cum laude*, from the University of Louisville School of Law. He has joined the

WHO, WHAT, WHEN & WHERE



Miles S. Apple

Estate Planning, Health and Insurance Practice Group. Williams earned his J.D. from the University of Kentucky College of Law. He has joined the Litigation and Dispute Resolution Practice

Group. Gomsak earned his J.D. from the University of Louisville School of Law. He has joined the Labor and Employment Practice Group.

IN THE NEWS



Judge James M. Shake

Judge James M. Shake has been elected by his peers to serve his third term as Chief Circuit Court Judge for the Jefferson County Trial Courts. Judge Shake has served with distinction in Circuit Court since 1993, and has also

served as Chief Regional Judge as well as president of the Circuit Judges Association.



Judge Audra J. Eckerle

The Circuit Term is pleased to announce the addition of **Judge Audra J. Eckerle** to the Jefferson Circuit Court Bench, after her win in the November election. Judge Eckerle has served as a District Court Judge since January 2004,

and as the Chief Judge of District Court, and as Chief Regional District Judge. She will sit in Circuit Division Seven.



Judge John B. Brown

John B. Brown was appointed Warren County District Judge for the 8th Judicial District in February 2007. He was subsequently elected in November 2007 to continue to serve as District Court Judge. Judge Brown worked

as an Assistant Commonwealth's Attorney, as a Special Assistant U.S. Attorney, and for Hughes and Coleman prior to taking the bench. He received his B.B.A. from the University of Kentucky in 1988 and earned his J.D. from the University of Kentucky College of Law in 1992.

Bruce Boyer, a Circuit Court Judge in Clearwater, Florida, will begin a three year assignment in the Family Law Division which becomes effective January 1, 2008. Judge Boyer has been a Circuit Court Judge for eighteen years.

Stephen D. Wolnitzek, president of Wolnitzek & Rowekamp, PSC, Attorneys at Law, was re-appointed by the KBA Board of Governors to serve a four-year term on the Kentucky Judicial Conduct Commission, beginning January 1, 2008. Wolnitzek is serving his fourth term. The Commission oversees complaints of ethical violations and judicial misconduct. In addition, the Commission has oversight over all judicial candidates during their campaign for judicial office to insure that the requirements of the Code of Judicial Conduct promulgated by the Supreme Court of Kentucky relating to judicial races are followed.

The American Bar Association's Commission on Lawyer Assistance Programs (CoLAP) presented the first John R. "Jack" Keegan Award to **William L. Hoge, III** of Louisville at its 20th annual meeting in Halifax, Nova Scotia. The award recognized Hoge's role as the Commission's co-founder with attorney Al Welsh. Hoge speaks locally, nationally, and internationally on alcoholism, addiction, and recovery.



Kelly Sue Henry

Kelly Sue Henry, a partner of Wyatt, Tarrant & Combs, LLP, has been elected a Fellow of the American College of Trust and Estate Planning. Henry practices in the Louisville office and concentrates her practice in

the areas of estate and charitable planning, and estate and trust administration.



Wm. T. Robinson III

The Freestore Foodbank, an emergency food and services provider, has appointed **Wm. T. (Bill) Robinson III** as a member of its board of trustees. Each year Freestore Foodbank distributes food and products to approximately 160,000 individuals annually through 450 nonprofit member agencies spread across 20 counties that operate food pantries, soup kitchens, shelters, childcare/eldercare centers, community centers, and residential programs to help needy families in their neighborhoods.



W. R. "Pat" Patterson, Jr.

W.R. "Pat" Patterson, Jr. announces his retirement from the law firm of Greenebaum Doll & McDonald in Louisville, effective January 1, 2008. He will serve as a full time mediator in association with the

Retired Judges and Associates Mediation and Arbitration Service of Louisville.

Carl Breeding, a member in the Frankfort office of Greenebaum Doll & McDonald, has been elected to the board of directors of State Law Resources, an international network of independent law firms that have experience in administrative, regulatory, and government relations at the state and federal level.



Vickie Y. Brown

Vickie Yates Brown, a member in the Louisville office of Greenebaum Doll & McDonald, has been named to the advisory board of Greater Louisville Inc.'s Enterprise Corp., the division of Greater

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Job D. Turner

Job D. (Darby) Turner, a member in the Lexington office of Greenebaum Doll & McDonald, has been elected chairman-elect of the Kentucky Chamber of Commerce's 2008 Board of Directors.

The Kentucky Chamber represents nearly 7,000 businesses that share a vested interest in the state's economic future.



Mark F. Sommer

Mark F. Sommer, a member in the Louisville office of Greenebaum Doll & McDonald, has been elected president of the executive committee of the National Association of State

Bar Tax Sections, an affiliate of the American Bar Association's Section of Taxation. The Section is comprised of more than 19,000 members.



Nicholas W. Ferrigno, Jr.

Nicholas W. Ferrigno, Jr., a member in the Covington office of Greenebaum Doll & McDonald, has co-authored the *Insider's Guide to DOL Audits*, a loose-leaf resource from Aspen Publishers.

Frost Brown Todd LLC is proud to announce that **Thomas P. O'Brien III** was recently appointed to the Board of Overseers at Bellarmine University in Louisville and was re-elected to a third term as president of the Friends of the Louisville Zoo, Inc. The Board of Overseers is the resource development arm of the University. The Friends of the Louisville Zoo, Inc. is in charge of fundraising and civic support for the zoo. This is O'Brien's ninth year on the board. He is also a member of the Louisville Zoo Foundation Board of Trustees.

Frost Brown Todd LLC is also proud to announce that **Nancy Loucks** was recently re-elected to a fourth term as secretary of the Friends of the Louisville Zoo, Inc. The board coordinates nonprofit events such as the black-tie gala Zoofari and Brew at the Zoo.



Jeremy A. Hayden

Frost Brown Todd LLC is pleased to announce that **Jeremy A. Hayden**, a member of the firm's tax area of practice, has been named treasurer-elect of the Northern Kentucky Bar Association (NKBA).

Hayden was sworn into office at the NKBA's annual holiday dinner dance held on December 7, 2007.

The Kentucky Democratic Party State Central Executive Committee voted unanimously on December 1,



Jennifer Moore

2007 to name **Jennifer Moore** chair of the Party. Moore, a Louisville attorney with the firm of Grossman & Moore, was named vice chair in June and has been acting chair since Jonathan Miller stepped down. She is the youngest state Democratic Party Chair in the nation.



Brian F. Haara

The Louisville law firm of Tachau Meek PLC is proud to announce that **Brian F. Haara**, a member of the firm, was named one of Louisville's Forty Under 40 by *Business First*, an award recognizing him as a business leader in the Louisville area.

Buck Hinkle and **Anne Gorham**, who both practice the Lexington office of Stites & Harbison, were honored by the Associated General Contractors (AGC) at its annual meeting. Hinkle received the Legislative Advocate of the Year Award for being a constant and dedicated resource for AGC staff in the political and legislative arenas. Gorham received the Distinguished Service Award for the legal experience and negotiating skills she brought to bear on the Kentucky House Bill 490 (The Fairness in Kentucky Construction Act of 2007).



Alan C. Stout

Alan C. Stout, a partner with the law firm of Stout, Farmer and King of Marion and Paducah, has been elected chairman of the Board of Regents of Murray State University. Stout is a 1978 graduate of Murray State University and a 1981 graduate of Chase College of Law.

Michael Eagen, a partner with Dinsmore & Shohl LLP, has been elected the president of the local chapter for

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the Federal Bar Association (FBA). Eagen will take responsibility over the business of the John W. Peck Cincinnati/Northern Kentucky Chapter of the FBA in Cincinnati and Northern Kentucky.

ALFA International, an organization of independent law firms, and the law firm of Dinsmore & Shohl LLP are pleased to announce that partner **Michael W. Hawkins** assumed his new post as chairman of ALFA International at the network's Annual Business Meeting in Chicago.

Sarah M. Jackson, executive director of the Kentucky Registry of Election Finance, is now serving as president-elect of the Council on Governmental Ethics Laws (COGEL). She will serve as president of COGEL at the end of the 2008 calendar year. Jackson oversees the day-to-day activities of the bipartisan agency charged with enforcing Kentucky's campaign finance laws.

RELOCATIONS

Shelly Lemons-Alvey is pleased to announce the relocation of her law practice to Bullitt County. Her office is located at 147 Combs Court in Shepherdsville. She may be reached at (502) 543-1934. Lemons-Alvey will continue to focus her practice in the areas of criminal defense, family law, and bankruptcy.

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The Bench & Bar welcomes brief announcements about member placements, promotions, relocations and honors.

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Richard M. Sullivan

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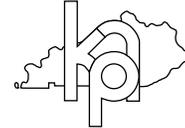
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