

KENTUCKY BAR ASSOCIATION



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KENTUCKY BAR ASSOCIATION “RULE OF LAW” SYMPOSIUM



THE KENTUCKY BAR ASSOCIATION explored the rule of law’s impact on different professional disciplines – including business, health care, education, government, the media, legal and judicial services, social services, law enforcement and theology – during a symposium held Friday, February 6, on the Kentucky State University campus in Frankfort.

KBA President Barbara D. Bonar said the Kentucky Rule of Law Symposium drew about 120 participants to discuss how the rule of law serves as the foundation of American government and its court system, while also providing an inspirational framework for developing countries to strengthen their own legal systems.

“In the interest of strengthening the rule of law, we examined its history, its limitations, and the hope it provides for future progress,” Bonar said. “By day’s end, we came to understand better the rule of law’s dependence on human action and the force of our own will in seeking justice.”



Patrick Flannery, far left, Travis School Equipment, (and son of the late Patrick Flannery, well-known Covington attorney), Kentucky Bar Association President Barbara D. Bonar, and Michael T. Sutton, far right, managing partner of Sutton Rankin Law PLC of Edgewood, welcome Abraham Lincoln, as portrayed by Jim Sayre of Lawrenceburg, to the Symposium. The event served as a celebration of the 200th birthday of the Commonwealth’s most famous son, Abraham Lincoln, whose belief in the rule of law guided his legal career and the advice he gave as counsel. The rule of law stands for the idea that government authority can only be exercised in accordance with publicly disclosed and widely accepted laws.

Chief Justice John D. Minton, Jr., of the Kentucky Supreme Court, said the rule of law stands for the idea that government authority can only be exercised in accordance with publicly disclosed and widely accepted laws.

“But history teaches us that the concept of the rule of law is not static and, in fact, is relative to the time, places, and circumstances under which it is cited,” Minton said. “Continued recognition of, and adherence to, the rule of law will give us the strength and opportunity to address the challenges that face us today.”

Norman L. Greene, partner in the New York law firm Schoeman, Updike & Kaufman LLP and a much published author on the rule of law, said the time-honored concept “inspires people to try to bring better lives to citizens of many nations and to our own citizens as well.”

“The goals are to uphold human rights, spread democracy, help ensure stability and public safety, and improve economic development, including ending or alleviating poverty,” Greene said. “The concept is especially vital today, even though one can trace the rule of law to the ancient Greeks and to others, including Abraham Lincoln.” Noting concerns whether they are reconcilable with the rule of law and its requirements for the judiciary, he added, judicial elections in the United States should be made “part of the rule of law discussion.”

Elizabeth “Betsy” Andersen, executive director and executive vice-president of the American Society of International Law, said the rule of law is “something that we too often take for granted” in the United States. “Globalization,” she said, “highlights the wide gulf in human understanding and the lack of a common global framework for ordering our world.”

“We need a legal system in Africa that can ensure that AIDS drugs reach their intended beneficiaries and don’t end up on the black market,” Andersen noted. “Would-be recruits to al-Qaeda need to see and experience justice and opportunity, so they don’t feel the lure of radical ideology and desperate acts of violence.”

“I believe firmly that the answer lies in a conception of the rule of law based in international law – founded on internationally agreed principles, enshrined in treaties, and enforced by effective international institutions,” Andersen said.

The symposium also featured Kentucky Supreme Court Justices in small group discussions on topics including judicial independence; civil rights and social justice; the courts and dispute resolution; business, labor and the workplace; crimes, punishment, and deterrence; and families, children and family courts. Participants in these discussions included several justices from the Kentucky Supreme Court.

Additionally, the event served as a celebration of the 200th birthday of the Commonwealth’s most famous son, Abraham Lincoln, whose belief in the rule of law guided his legal career and advice as counsel. Jim Sayre of Lawrenceburg provided a living history presentation of Abraham Lincoln during the symposium luncheon in the Hill Student Center.

Portions of the Kentucky Rule of Law Symposium were videotaped and will be made available to school teachers and law professionals, Bonar said.

Sponsors for the event included the Kentucky Bar Foundation, the American Bar Association, Boehl Stopher & Graves LLP; Dinsmore & Shohl LLP; Frost Brown Todd LLC; Greenebaum Doll & McDonald PLLC; Landrum & Shouse LLP; Reed Weitkamp Schell & Vice PLLC; Seiller Waterman LLC; Stites & Harbison PLLC; Stoll Keenon Ogden PLLC; and Wyatt Tarrant & Combs LLP.



Norman L. Greene, partner in the New York law firm Schoeman, Updike & Kaufman LLP, participates in a small group discussion on “Judicial Independence: It’s Not What You Think.” A much-published author on the rule of law, Greene said the time-honored concept “inspires people to try to bring better lives to citizens of many nations and to our own citizens as well.” To his right is Cecile Schubert of the League of Women Voters of Berea & Madison County.



Jeffrey A. Apperson, far left, Clerk of Courts, U.S. District Court, Western District of Kentucky, Kentucky Court of Appeals Judge Michelle M. Keller of Covington, and Kentucky Supreme Court Justice Daniel J. Venters of Somerset listen to presentations during the Symposium.



Elizabeth “Betsy” Andersen, Executive Director and Executive Vice-President of the American Society of International Law, addresses Symposium participants. Andersen said the rule of law is “something that we too often take for granted” in the United States. “Globalization,” she said, “highlights the wide gulf in human understanding and the lack of a common global framework for ordering our world.”



Kentucky Supreme Court Justice Wilfrid A. Schroder of Covington, left, and Rev. Ronald M. Ketteler of Crestview Hills converse during the Symposium’s continental breakfast.

Photos by John Perkins, Creative Services.

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By Scott D. Laufenberg
Chair, KBA Young Lawyers Section

Outstanding Young Lawyer Call for Nominations

Each year the Young Lawyers Section of the Kentucky Bar Association recognizes an Outstanding Young Lawyer for his/her civic activities, legal accomplishments and community involvement. If you know of a young lawyer who would be a worthy recipient of the Outstanding Young Lawyer Award, please submit a brief letter (no more than one page, single-spaced) discussing why the nominee is deserving of the Outstanding Young Lawyer Award. The nominating letters should include factors such as, but not limited to, civic activities, legal accomplishments and community involvement.

Once the nomination letters are received, the Award Committee will forward a more detailed application to the nominee for him/her to complete. The nominating letters and nominees' applications will then be forwarded to a panel of judges for their consideration.

Who is considered a Young Lawyer? Any Kentucky lawyer who is 40 years of age or under or any Kentucky lawyer who has practiced law 10 years or less regardless of age.

Nominating letters should be sent to Nathan Billings at Legal Consulting Group, 219 North Upper Street, Second Floor, Lexington, Kentucky 40507 or as an attachment by e-mail to nbillings@lcgky.com. Nominating letters must be **received by Friday, April 10, 2009**, or the nominee will not be eligible for the award. Upon receipt of the nomination letter, nominees will be sent an application to complete and the deadline for applications is Friday, May 1, 2009.

The Outstanding Young Lawyer Award recipient will be announced at the KBA Annual Convention, June 10-12, 2009 in Covington, Kentucky, and the Award will be presented at the Young Lawyers Section luncheon on Thursday, June 11, during the Convention. If you have any questions, please contact Nathan Billings at (859) 619-0068. ☎

Policing the Internet

Closing the Loopholes in Technology-based crime

By Frances E. Catron & Erin May

Congress spent the waning days of the 2008 Fall campaign season passing legislation that establishes new and expanded federal criminal laws in two areas of crime greatly affected by the use of technology: child pornography and identity theft. The rash of new legislation is an attempt to respond to the ever-evolving ways in which technology is exploited to facilitate criminal activity and to address loopholes existing in older statutes. The new legislation significantly modifies the previous federal child pornography and identity theft statutes, granting increased jurisdiction to federal prosecutors and extending the types of crimes to which federal statutes apply. The specific changes in each of these areas of law are discussed below.

CHILD PORNOGRAPHY OFFENSES

Expanding Federal Jurisdiction

The Effective Child Pornography Prosecutions Act (ECPA) expands the reach of the federal criminal child pornography laws.¹ The stated congressional intent is to legislate child pornographers to the limits of its constitutional authority under the Interstate Commerce Clause.² Previously, federal jurisdiction for prosecuting individuals engaged in the receipt, distribution, or transportation of child pornography extended to circumstances where the images had been shipped or transported “using the mails or . . . in interstate or foreign commerce.” The new legislation changes the basis for a federal prosecution to “using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce.” Prosecutors may now establish federal

jurisdiction without proof the child pornography images actually traveled across state lines. Instead, proof of the use of a facility or means of interstate commerce, such as the internet or telephone system, is now sufficient to establish federal jurisdiction. For example, when an image of child pornography is captured via a cell phone camera and transmitted over purely intrastate cell towers or phone lines, the conduct is now a federal crime.

Similarly, the basis for federal criminal jurisdiction over those who produce or possess images of child pornography has also been extended to the limits of the Commerce Clause, the broadest basis of federal jurisdiction, “in or affecting interstate or foreign commerce.” Previously, federal jurisdiction for the crime of producing or possessing images of child pornography was established when materials used to commit the crime, such as a computer, had been manufactured outside the state where

The Effective Child Pornography Prosecutions Act (ECPA) expands the reach of the federal criminal child pornography laws.

the criminal activity occurred. The new legislation no longer requires such a showing; instead, the statutes now permit federal jurisdiction in all cases where the materials used to commit the crime “affect interstate commerce.” Such a showing could be made, for example, by introducing evidence of revenue generated through the sale of the given brand of computer used to possess the images. With these new changes, federal jurisdiction extends to almost every imaginable conduct involving child pornography.

Web Surfing for Child Pornography

The ECPA also makes it a federal crime to knowingly access sexually explicit images of minors with the intent to view them.³ It expressly criminalizes the use of the internet to access and view any matter containing an image of

child pornography, even when the images are not downloaded, printed or saved.⁴ The Act expands the definition of “possession” of child pornography by relieving the prosecution of the burden of establishing that a defendant exercised dominion and control over the images, as had been required by some developing case law.⁵ See *United States v. Romm*, 455 F.3d 990, 998 (6th Cir. 2006).

Live Broadcasts of Child Sex Abuse Via Web Cam Now Covered by Federal Statutes

The Protect Our Children Act of 2008⁶ added language to the federal child pornography laws to cover the real time transmission of images of child sexual abuse. Previous to the amendment, defendants argued that real time transmissions via web cam, cell phone cameras, or other emerging technology capable of transmitting live images, did not fall into the statutory definition of a “visual depiction.” Thus, the statutory definition of “visual depiction” has been amended to make it absolutely clear that live images, as opposed to captured images such as pictures and videos, are covered by the statute.

Making Morphed Images of Minors Now Covered by Federal Statutes

The Protect Our Children Act also criminalizes the production or distribution of a pornographic image made from the morphed images of identifiable minors.⁷ A morphed image is a picture produced by combining parts of several pictures to create a new image. Prior to this law, federal law prohibited the trade, collection and possession of such images, but did not specifically prohibit the production of such images. The statute provides for a sentence of up to 15 years in prison.⁸ Unlike the provisions of federal law criminalizing the trade, collection and possession of morphed child pornography, this new statute does not provide for an enhanced sentence for repeat offenders. Thus, a second or subsequent offense still has a 15 year statutory maximum sentence while a conviction for a sec-

ond or subsequent offense for trading, collecting or possessing child pornography carries an enhanced minimum mandatory sentence of 15 years up to a statutory maximum of 40 years imprisonment. Consequently, a second or subsequent conviction for possession of child pornography carries a higher penalty than the second or subsequent conviction for production of child pornography, inadvertently creating an anomaly within the federal statutes.

Sex Offender Registration

Congress passed the Keeping the Internet Devoid of Sexual Predators (KIDS) Act of 2008.⁹ The KIDS Act mandates that sex offenders provide their "internet identifiers" to the National Sex Offender Registry.¹⁰ Registered sex offenders will have to report their email addresses and screen names to the National Sex Offender Registry. The new law contemplates that social networking web sites such as MySpace.com and

Facebook.com will be able to cross-check the list of their users with a database of internet identifiers self-reported by registered sex offenders.

The KIDS Act mandates that sex offenders provide their "internet identifiers" to the National Sex Offender Registry. Registered sex offenders will have to report their email addresses and screen names to the National Sex Offender Registry.

The law does not establish a requirement that social network web sites actually perform the cross-check. The new law also prohibits the results of any cross-check from being published or the accounts of any sex offender being identified as such. There is no criminal or civil penalty imposed on the web

sites for failing to perform the cross-check and there is no new or enhanced criminal penalty in this statute for sex offenders who fail to provide their internet identifiers.

IDENTITY THEFT OFFENSES

Criminal Restitution

The Identity Theft Enforcement and Restitution Act of 2008 made important changes to the way restitution is calculated and awarded to victims of identity theft. Previously, federal law¹¹ provided for restitution to victims of identity theft for the direct financial costs of the theft. However, no provision allowed for compensation to be awarded for the time a victim spent establishing that he or she was not responsible for fraudulent purchases, loans or withdrawals made by the identity thief. The new legislation cures this inequity by allowing the court to order a defendant to pay "an amount equal to the value of the time reasonably spent by the victim in an



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attempt to remediate the intended or actual harm incurred by the victim from the offense.” The language does not set a standard rate for courts to use to calculate the loss amount, but instead allows the court to have broad discretion to calculate the “reasonably spent” standard based on the victim’s personal circumstances.

Expanded Jurisdiction Over the Theft of Sensitive Identity Information

The Identity Theft Enforcement and



Frances E. Catron is an Assistant United States Attorney for the Eastern District of Kentucky and has prosecuted cases on behalf of the United States for 21 years, handling complex white col-

lar fraud, drug prosecutions, medical malpractice defense and employment discrimination cases. She served as First Assistant United States Attorney from 2001-2006, and was appointed by the Attorney General as the Interim United States Attorney for the Eastern District of Kentucky from June 2001 through September of 2001. Ms. Catron graduated from the University of Kentucky College of Law in 1983 and was a member of the *Kentucky Law Journal*. She is an active member of the Kentucky Bar Association where she serves as Editor of the *Kentucky Bench & Bar* magazine and is a frequent contributing author.



Erin May has been serving as an Assistant United States Attorney in the Eastern District of Kentucky since 2005. As the Project Safe Childhood Coordinator, she is responsible for coordinating

child exploitation prosecutions in the Eastern District of Kentucky. Ms. May also handles a variety of other types of criminal prosecutions, including narcotics, firearms and fraud violations. Prior to joining the United States Attorney’s Office, Ms. May clerked on the Sixth Circuit Court of Appeals for the Honorable John Rogers. Ms. May graduated from the University of Kentucky College of Law in 2004. She is from Hazard, Kentucky.

Restitution Act of 2008 also expands federal jurisdiction over forms of identity theft using computers. The Act criminalizes the theft of information from “protected computers.”¹² Prior to this new law, federal jurisdiction over an act of identity theft could be established only if the conduct involved interstate or foreign communication, i.e. the theft involved the actual use of the internet or interstate phone lines. For example, under the previous law, there would be no federal jurisdiction over thefts that occurred through wi-fi connections or “insider” theft. This limitation was an impediment to federal prosecution when thieves accessed computers and stole valuable sensitive or proprietary information but did not use a form of interstate communication. The new legislation removes this limitation by striking the “interstate or foreign communication” requirement. Instead,

The type of threat that can provide jurisdiction in cyber-extortion cases was also expanded by new legislation in an attempt to keep pace with the creativity and evolving schemes of computer criminals.

federal jurisdiction is now established simply by showing that a defendant stole information from a “protected computer.” The definition of “protected computer” supplies the interstate nexus requirement by requiring that the victim computer itself is used in interstate or foreign commerce or communication, not that the theft conduct involved interstate or foreign commerce.

Expanded Jurisdiction Over Malicious Spyware, Hacking and Keyloggers

The new legislation targets crimes involving malicious spyware or keyloggers.¹³ The Act makes it a crime to cause “damage” to computers or to impair the “integrity or availability” of data or computer systems. Under previous law, the amount of damage caused by the criminal conduct had to exceed \$5,000 to trigger federal jurisdiction

unless special circumstances were present. This monetary threshold was a significant impediment to the federal prosecution of botnet and other cases where an individual installed malicious spyware on numerous computers, because it was difficult or impossible to measure the loss this damage caused to each computer owner or to prove that the aggregate of these many small losses exceeded \$5,000. Section 204 of the new legislation makes extensive changes to 18 U.S.C. §1035(a)(5), and to the corresponding provision of 18 U.S.C. §1030(c), which prescribes punishment for the violations. Under these changes, the government is no longer required to prove a loss greater than \$5,000 when an offense causes damage to ten or more computers. Thus, where a defendant installs spyware on hundreds of victim computers or creates a botnet, the government can more easily charge a felony violation of subsection 1030(a)(5). The new legislation also now provides a catch-all misdemeanor for offenses that do not otherwise meet the threshold requirements of subsection 1030(c)(4). For example, if a defendant installs spyware on less than 10 computers, and the provable loss is less than \$5,000, the government now has the option of charging a misdemeanor offense.

Cyber-Extortion

The type of threat that can provide jurisdiction in cyber-extortion cases was also expanded by new legislation in an attempt to keep pace with the creativity and evolving schemes of computer criminals. Previously, 18 U.S.C. §1030(a)(7) prohibited the transmission of a threat “to cause damage to a protected computer.” The definition of “causing damage” would include threats to delete data, crash servers, or prohibit computers from accessing the internet using a denial of service attack. This limited definition excludes many types of extortion commonly used by criminals, i.e. by threatening to steal confidential data or to make confidential data public if demands are not met. Section 205 of the new legislation fixes this problem by amending section 1030(a)(7) to criminalize not only explicit threats to cause damage to a computer,

but also threats to steal data on a victim's computer, to publicly disclose previously stolen data, or to not repair damage the offender already caused to the computer. This new amendment allows prosecutors to charge a violation of 1030(a)(7) when, with the intent to extort, a defendant transmits in interstate commerce any: (1) threat to cause damage to a protected computer; (2) threat to obtain information from a protected computer without authorization or in excess of authorization; (3) threat to impair the confidentiality of information obtained from a protected computer without authorization or in excess of authorized access; or (4) demand or request for money or other thing of value in relation to damage to a protected computer, where such damage was caused to facilitate the extortion.

Conspiracy to Commit Cyber-Crimes

The Identity Theft Enforcement and Restitution Act of 2008 also amended the law to specifically allow for the prosecution of conspiracies under 18 U.S.C. § 1030. The prior version of the law did not allow for conspiracy prosecution, forcing prosecutors to instead rely on the general criminal conspiracy provision of 18 U.S.C. § 371. The new conspiracy offense is punishable in the same way as a completed violation of 18 U.S.C. § 1030 instead of the five-year maximum term of imprisonment allowed for violations of 18 U.S.C. § 371. Like the drug and money laundering conspiracy statutes, 18 U.S.C. § 1030(b) makes no reference to an overt act in the statute.

Forfeiture

Section 208 of the new legislation added criminal forfeiture to the list of punishments facing cyber-criminals. Previously, 18 U.S.C. § 1030 did not provide for civil or criminal forfeiture of property used in or derived from computer crime. Pursuant to the new legislation, forfeiture is now available for "any personal property that was used or intended to be used to commit or to facilitate the commission of such violation; and . . . any property, real or personal, constituting or derived from, any proceeds that such person obtained,

directly or indirectly, as a result of such violation." Thus, the statute allows for forfeiture of real property that constitutes or is derived from proceeds of a violation, but not forfeiture of real property that is used merely to commit or facilitate the violation. Personal property is now subject to forfeiture for either reason. ④

ENDNOTES

1. H.R. 4120, P.L. 110-358, 122 Stat. 4001, effective October 8, 2008.
2. 154 Cong. Rec. H9887-01, Sept. 25, 2008.
3. H.R. 4120, P.L. 110-358 at §203, 122 Stat. 4003-04, eff. October 8, 2008.
4. 18 U.S.C. §§ 2252(a)(4)(B) and 2252A(a)(5)(B).
5. See, *United States v. Romm*, 455 F.3d 990, 998 (6th Cir. 2006)
6. S.1738, P.L. 110-401 at § 301 and 303, 122 Stat. 4242, effective October 13, 2008.
7. *Id.* P.L. 110-401 at § 304, 122 Stat.
8. The sentence authorized resulted in the oddity that the person making and distributing the morphed image can receive less prison time than the person receiving the morphed image, who under previously existing law faces up to 20 years in prison and a minimum mandatory sentence of 10 years if there is a previous conviction for sexual abuse or child pornography. No enhanced sentence for a previous sexual abuse or pornography conviction exists for the new crime. See, 18 U.S.C. § 2252A(b)(2) and (3).
9. S. 431 Keeping the Internet Devoid of Sexual Predators Act of 2008, P.L. 110-400, 122 Stat. 4224, effective October 13, 2008.
10. 42 U.S.C. §§ 16901-16962.
11. 18 U.S.C. § 3663
12. 18 U.S.C. § 1030(a)(2).
13. 18 U.S.C. §1035(a)(5).

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Coming to the Table:

Kentucky Finding Success with Mediating Felony Cases

By Chief Circuit Judge Anthony W. Frohlich, Retired Campbell Circuit Judge William J. Wehr, and Carol Paisley, Manager of the Division of Mediation for the Administrative Office of the Courts

In 2004, struggling with the largest caseload in the state, newly appointed Circuit Judge Anthony W. Frohlich needed a way to address the growing criminal docket for his two-county circuit of Boone and Gallatin. He volunteered his circuit to participate in a new Kentucky Administrative Office of the Courts ("AOC") mediation program for civil cases, but asked that felony mediation also be included in the week-long civil schedule. The AOC, being the support arm of the Judicial Branch, agreed, devoting one day of the settlement week in Judge Frohlich's circuit to felony mediation, with AOC personnel observing but not participating on that day. Retired judges with mediation training and expertise mediated 14 cases. All of them were resolved with plea agreements, saving the time involved with a trial.

Today, as a result of Judge Frohlich's idea and his collaboration with the AOC Division of Mediation, the AOC offers a groundbreaking felony mediation program for all Kentucky circuit courts, clearing cases from burgeoning criminal dockets and reducing jail overcrowding. Tim Cocanougher, Commonwealth's attorney for Marion County, said he would like to participate in more felony mediations for cases in his circuit. The

AOC has overseen three felony mediation days in the 11th Judicial Circuit (comprised of Green, Marion, Taylor and Washington counties), and another just occurred in February. "This process gave some of our officers and victims their day in court and helped me settle a few cases that would not have settled without mediation," Tim said.

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In the past, mediation was only used to settle civil cases, misdemeanors and family law cases in Kentucky. The felony initiative is proving successful in counties across Kentucky. Of the 255 felony cases mediated since the AOC began offering the program in March 2008, some 218 of the cases – 85 percent – have been resolved through the process. Kentucky's innovative program has

gained the attention of media at every level, with coverage by The Associated Press, USA Today, The Courier-Journal in Louisville and local newspapers.

Among the legal publications that have written about the program are The Daily Journal in Los Angeles and the American Bar Association's national Dispute Resolution magazine. The ABA will address the felony mediation concept at its annual dispute resolution meeting in New York in April 2009, highlighting Kentucky's program.

Using retired judges as the mediators, the AOC Division of Mediation has overseen felony mediations on behalf of 17 circuit judges representing 29 counties, with the first being in the 32nd Judicial Circuit that consists of Boyd County. There are 56 judicial circuits in the Commonwealth. The AOC started its state-wide program after Judge Frohlich's office reported such positive results from the four felony mediations in his circuit. After that first felony mediation day in 2004, Judge Frohlich held three more successful mediations in the Boone/Gallatin circuit independent of the AOC. He scheduled one per year in 2005, 2006 and 2007 to explore the boundaries of the felony mediation concept, focusing on a particular case type for each of the mediation events. The last of the three mediations, for example, focused on defendants who spoke only Spanish and a mediator who spoke fluent Spanish and English. In all, the four annual mediation days resulted in 67 plea agreements out of the 74 cases mediated, a 90 percent success rate.

The most recent criminal mediation day conducted in Boone County, where Judge Frohlich is now chief circuit judge, was in September 2008 and it focused on victim participation. Fourteen of the nineteen cases were successfully mediated. Judge Frohlich now sees his future mediations involving other disciplines, including a study by sociologists and criminologists working with the victims who participate in mediation.

The AOC works with circuit judges and prosecutors to determine mediation-appropriate cases. In some instances, prosecutors have already discussed with

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defense attorneys the cases they think should be considered for mediation. Defendants are then contacted to see if they are interested in having their cases addressed by way of mediation. The program is voluntary, so all parties – from the prosecutor to the defendant – must agree to have the case mediated. The defendant can withdraw from the process at any stage.

Most of the cases resolved to date through the AOC felony mediation program related directly to illegal drugs, such as trafficking or possession of a controlled substance, or related indirectly to such illegal activities, like cases involving defendants who stole from family members to buy drugs. But the program does not limit the types of cases that may be mediated. Murder and rape cases have also been settled through mediation, as have cases involving assault, possession of materials portraying a sexual performance by a minor, and possession of a forged instrument.

As for program personnel, the AOC enlists Kentucky senior judges who have completed mediation training to conduct the felony mediations. Senior judges are retired judges who continue working for a set amount of time in return for an enhanced retirement benefit but no other pay. They assist judges with congested dockets and fill in when a sitting judge dies or retires, among other duties. In addition, each new county to mediate has an orientation that includes the Commonwealth's attorney, private and public defense counsel, judges and staff, circuit court clerk, law enforcement and others.

On a typical felony mediation day, several senior judges are assigned cases to mediate for the circuit. Each case takes about 90 minutes to mediate, or longer in cases with multiple defendants or victims. After the mediators explain the process to participants and answer questions, the parties move to separate conference rooms. The judges each

Kentucky Felony Mediation Guidelines

The mediator is protected by an attorney-client confidentiality standard. All parties must agree that the mediator will never be required to disclose information divulged in mediation.

Mediators are not to disclose information given by a party in the case to the other party in the case unless explicitly permitted to do so. Mediators are encouraged to use notes extensively to minimize the potential for mistakes.

Parties must be advised that the outcome of the case rests with the judge, who could reject a plea agreement.

Mediators must familiarize themselves with the presiding judge's philosophies.

The guilty plea process includes a colloquy between the defendant and the presiding judge to assure that the defendant's participation in mediation is voluntary, the plea was intelligent and knowingly made and not corrupted by the mediation process, and that the defendant had a fair opportunity to consider the consequences of the agreement.

A defendant who maintains his or her innocence of any wrongdoing should not participate in the criminal mediation process. A mediator should terminate the mediation immediately in such a case.

The ideal circuit court mediator is a retired trial judge who is an experienced

civil mediator trained through the AOC's mediation training or its equivalent and who has prosecutorial and criminal defense experience.

Attorneys are not permitted to mediate cases back to back, as it slows down the docket process.

Once parties volunteer for mediation, the presiding judge should memorialize the mediation with an order mandating the appearances of parties and counsel. A defendant should be allowed to withdraw from mediation anytime during the process.

Maintain a mediation docket schedule that identifies the mediator, case number, case name, participating attorneys, criminal charges and room assignments. The criminal mediation process requires many people to be involved: bailiffs, the jailer, attorneys, the presiding judge, mediators and the circuit clerk. A docket coordinator, such as a judge's staff attorney, should be assigned to keep the process moving.

A presiding judge should be on hand to accept guilty pleas on criminal mediation day.

If a case does not mediate successfully, parties should come back to the courtroom to get a trial date. Once through mediation, the parties are generally ready to try the case quickly.

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mediate one case at a time and work individually with the parties in an effort to help them reach an agreement. The mediators facilitate communications and work to bridge any gaps in expectations and outcomes by going back and forth between the room where the prosecutor is stationed and the room with the defendant and his or her attorney. If an agreement is reached, the parties go before the sitting judge to ask him or her to accept the terms. The outcome for the individuals involved in mediated cases is often far different from that of a trial. "A lot of times victims and defendants will leave the system without feeling that they have had their say," Circuit Judge Oscar Gayle House said after the felony mediation in his circuit of Clay, Jackson and Leslie counties. "We seldom leave court with people who are happy, but we did today." Of

the 19 cases mediated in Judge House's circuit in March 2008, 18 were settled. "Completing that many cases in a traditional court setting would have taken about six to eight weeks and likely ended with both victims and defendants dissatisfied," Judge House said. But as with a trial, the final decision in mediated cases remains with the judge, who can choose to reject a plea agreement.

Mediations also involve law enforcement officers and, in some cases, the crime victims. "In one of my cases my client apologized directly to the victims – something that rarely occurs when a case is called in a courtroom full of people," said attorney Kristin Bailey, who works for the Department of Public Advocacy office in London. Although that may have been due to the circumstances of that case, the mediation forum would at least open the door to

that more often." Bailey said she would like felony mediation to be used more often. "The sessions were a benefit to both my clients and the victims," she said. "It is the one time that my clients were able to discuss their side of the case without their statements being used against them in later proceedings."

Kentucky State Police Detective Jim Smith said he appreciated the impact of felony mediation in a case he had investigated. "I greatly appreciate the mediation process," he said. "It worked very well for my case. It put the pressure on the defendant to reach an agreement that was suitable for both the Commonwealth and the defendant. My chief also was very pleased with the outcome. It seems to speed up the entire court process."

For more information about the felony mediation program, contact Carol Paisley, Manager of the AOC Division of Mediation, at (502) 573-2350 or carol.paisley@kycourts.net.



Judge Anthony W. Frohlich has served as the Boone and Gallatin Circuit Judge since April of 2004. He graduated first in his class at Northern Kentucky University's Chase College of Law in 1980. Prior to

2004, Judge Frohlich was in private practice and served as Boone County Master Commissioner (1989-2004), Domestic Relations Commissioner (1989-1990), Assistant Commonwealth's Attorney (1980-1989), City Attorney for the City of Walton (1980-1989) and Boone and Gallatin Child Support Program Attorney (1980-1997).



Judge William J. Wehr retired in 2008 after serving 20 years on the bench. He began as a Circuit Judge in Campbell County in 1988, and he became Chief Regional Circuit Judge for the North-

ern Region of Kentucky in 1994. He then became the Chief Senior Judge for the statewide Senior Status Program in 2004. Judge Wehr was in private practice and also served as a prosecutor prior to becoming a judge. He was elected Northern Kentucky Bar Association President in 1987 and Kentucky Circuit Judges Association President in 1996. He also served as

an elected Kentucky Bar Association Delegate from 1984-1988 and on the American Judges Association Board of Directors from 1994-1999. Judge Wehr received his B.A. from the University of Kentucky and earned his J.D. from Northern Kentucky University's Chase College of Law in 1976.



Carol Paisley is the Mediation Division Manager for Kentucky's Administrative Office of the Courts. Among the Mediation Division highlights is an annual Mediation Colloquium. The Mediation Division

also promotes and maintains Kentucky's Court of Justice Mediation Guidelines and a Roster of Court Approved Mediators; administers the Court Annexed Mediation Program; and is integrating Felony Mediation into the fabric of Kentucky's court system. Ms. Paisley regularly conducts mediation training programs, mostly in Kentucky, and has received over one hundred hours of mediation training which includes training from the Harvard Law School Program of Instruction for Lawyers. Prior to her current position, Ms. Paisley directed the Mediation Center of Kentucky, practiced domestic law, and served as law clerk to the late Justice William M. Gant of the Supreme Court of Kentucky. She received her B.A., M.S., and J.D. degrees from the University of Kentucky. Ms. Paisley is a founding member and past Chair of the KBA's ADR Section.

Meeting in the Middle

Counties in which felony mediation is being used to resolve felony cases:

2008

Adair	Gallatin
Ballard	Green
Boone	Hickman
Boyd	Hopkins
Bracken	Marion
Breathitt	Mason
Bullitt	Perry
Carlisle	Powell
Casey	Taylor
Clay	Union
Crittenden	Washington
Fleming	Webster
Franklin	Wolfe
Fulton	

Total: 27 Counties

Counties in which felony mediations have been planned for 2009:

Calloway	Larue
Casey	Lewis
Greenup	Marion
Hart	Marshall
Hopkins	Nelson

DPA Budget Cuts

By John Delaney

I am a public defender with the Department of Public Advocacy. Although the public perception of my role as a lawyer may be different, there is much more to being a public defender than merely showing up for my court docket, working out plea agreements with the prosecution and trying jury trials. I have clients and witnesses to interview, facts to investigate, legal research to perform, motions to file, and phone calls to return, just as every other practicing attorney. However, there aren't enough hours in the day. I cannot get through every case file I have, return every phone call, or file every motion. I have constitutional and ethical obligations to my client which I am finding it difficult to fulfill due to my heavy caseloads.

I am also the Directing Attorney for the Covington Trial Office, and the public defenders in my office tell me they do not have the time for all their clients. We are the only representative for indigent defendants accused of crimes as guaranteed under the U.S. Constitution. Most often, their families have abandoned them and they are left sitting alone in jail with no one to turn to for help. As a public defender and as a supervisor of a number of public defenders, I have an ethical obligation to ensure each and every one of our clients receives competent and diligent representation. I must ensure the caseloads of my attorneys are not so excessive as to prevent them from meeting their constitutional and ethical obligations. I am concerned.

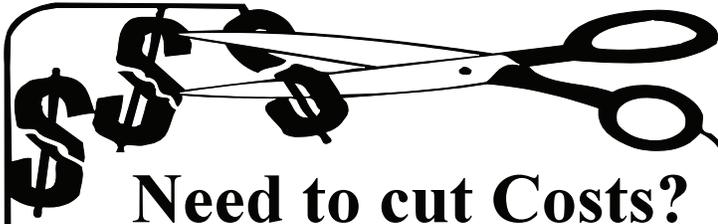
The Department of Public Advocacy is the Commonwealth's statewide public defender agency. The Department represents all those persons accused of crimes who cannot otherwise afford a lawyer. This fiscal year, the Department's budget was severely cut, resulting in staff and resource limitations in our offices. Clients, as well as the system and our staff, suffer because

of a lack of funding to cover all courts across the state adequately. The National Advisory Commission on Criminal Justice Standards and Goals has stated that the maximum caseload for trial level public defenders should be no more than 150 felony cases per year, no more

than 200 juvenile cases per year, or no more than 400 misdemeanor cases per year. Mixed caseloads exceeding 363 cases per year have been found to be excessive. Assuming that the current level of court appointments remains the same, caseloads under the FY 2009



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DPA budget for individual DPA attorneys will rise to at least 40% over the national standards. In order to monitor attorney workloads, DPA keeps track of its own caseloads and does its own case counting in accordance with national standards. DPA only counts new cases during a fiscal year. If work on any case already opened carries over into the next fiscal year, the case is not recounted, despite the fact that work on the case continues to be performed. (Any cases carried over from the prior

year which are still being worked are not counted in the next fiscal year's count.) DPA's policy 9.04 defines a case as follows: "a case consists of a single accused, having either under the same or different case number(s), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events." This definition (which is further explained in our policies) is considered nationally to be a conservative case counting approach. Capital

cases (which require inordinately more time than any other case) are counted as an average case for case counting purposes which counter-balances some of the cases taking less time, such as parole or probation revocations.

The Covington Trial Office covers the 16th and 17th Judicial Districts in Campbell and Kenton Counties. When fully staffed, this office has 15 attorneys, five support staff and two investigators. Right now, we have 12 attorneys, 3 support staff and 2 investigators. In FY 2008 the Covington Office represented clients in 7329 cases. Had the office been fully staffed, it would have had a caseload of 489 cases per attorney for the year; however, due to the budget cuts, the office was never fully staffed and the caseload per attorney was actually 524 or 564 depending on the number of actual attorney vacancies. The FY 2009 budget cut will result in much harsher effects for the Covington Trial Office, by further increasing already high per attorney caseloads; by placing conflict clients at a severe disadvantage; and by making the administration of the office a daunting task.

I am supposed to be the one person my clients can count on; I am supposed to fight for them. But, it's hard to help my clients effectively when I am being pulled in twenty different directions on any given day. In response to the budget cuts DPA instituted a hiring freeze. As a result, the frequency of judges calling the office looking for attorney coverage has increased. Unfortunately, the Covington Office must respond to these judges that there are simply no attorneys available. In September, in response to shortages in other offices, an attorney was transferred to a different office, in a different Judicial District. Covington has not been allowed to replace him. On October 1, an attorney retired. He has not been replaced. In December, another attorney retired, and it is unknown if he will be replaced. In addition, our office also has absences for various reasons such as illness, maternity leave, and numerous other valid reasons. It is not uncommon on any given day to only have ten or eleven attorneys in the office trying to provide court coverage

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SEMINAR SCHEDULE

Thursday, April 23

- 8:00 a.m. Registration & Continental Breakfast
- 8:30 a.m. "Extreme Home Makeover" Relocation Update
Martha A. Rosenberg
- 9:00 a.m. "Who Used to be a Millionaire" Bankruptcy
C.R. Bowles Jr. & Laurel S. Doheny
- 10:30 a.m. Break
- 10:45 a.m. "The Real Estate Pros" Commercial Real Estate Valuation
Melanie Straw-Boone, William L. Hoge & Lin E. Bell
- 12:15 p.m. Lunch with judges and speaker;
Presentation of the 3rd Annual Family Court Judge of the Year Award & Raising the Bar Award. Lunch will be provided. Sponsored by Republic Bank and Trust.
- 1:00 p.m. "Dirty Sexy Money" Impact of Sour Economy on Family Law Matters. Panel of Judges:
Judges Lisa Osborne Bushelman, Timothy E. Feeley, Stephen M. George, Margaret Ryan Huddleston & Jo Ann Wise
- 2:00 p.m. "Splitting in Today's Economy." *Marlene Eskind Moses*
- 2:30 p.m. "Survivor" Receivers in Divorce
Suzanne M. Baumgardner & Valerie S. Kershaw
- 2:45 p.m. "Private Practice" Business Valuation Update
Diana L. Skaggs
- 3:00 p.m. Break
- 3:15 p.m. "Desperate Housewives" Moving Money Out of the Marital Estate and Asset Protection Plans
Mitchell A. Charney & Wayne F. Wilson
- 4:00 p.m. "Deal or No Deal" Banks: Friends or Foe
Chip Hancock & Steve DeWeese
- 5:00 p.m. Adjournment & Cocktail Reception

Friday, April 24

- 8:30 a.m. "Smarter than a Fifth Grader?" Legal and Ethical Writing for Family Court. *Elizabeth Scott Moise*
- 10:00 a.m. Break
- 10:15 a.m. "Law & Order" Electronic Evidence for Family Law Practitioner and Ethical Issues
Sharon D. Nelson & John W. Simek
- 12:00 p.m. Adjournment



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- Early-bird non-member - \$275
(On or before March 27)
- Member after March 27 - \$275
- Non-member after March 27 - \$325

The program is open to all interested individuals but members of the legal community who practice family law are especially encouraged to attend.

that—prior to the budget cuts—required 15 attorneys.

The very reason that I became a public defender is to say to the world that when it comes to someone's freedom, you must protect it. Now I feel that I must make choices. How do I give more to this client without taking away from another? When it comes to protecting one's life and liberty, those choices should not be made. I want to ensure that I, and my attorneys, are not making choices between clients; instead, we are doing everything we need to do to protect their interests. If we don't, we are not protecting the system of justice this country was built upon. I don't think any member of the public wants a person's liberty at stake without a fair trial and competent representation.

As a consequence of staff reductions, prior levels of service to clients has been difficult to maintain. For example, clients may wait longer to see an attorney and that attorney may have less time for adequate consultation compared to previous years. In addition, attorney caseloads are steadily rising to levels even higher than before the budget cut, which is now having an impact on the psychological well being of attorneys and office staff. The level of anxiety in the office has risen alongside caseloads. In the past, the remedy for being "stressed out" would have

been to take time off; however, now, due to staff reductions, no staff hours can be spared without negatively impacting client representation. Sacrificing the quality of our services is simply something the Covington Office is not willing to do.

The lack of attorneys and support staff is not the only problem. Our office is also facing a serious shortfall in other resources. For instance, our voicemail has been completely out of commission for many months and we do not have the money to either fix or replace it. This has seriously strained an already taxed, overworked support staff. Obviously, this takes them away from other functions, such as preparing motions, pleadings, and letters to clients. Our clients become very frustrated by the lack of communication from us and the difficulty in reaching us. We also have frequent computer and telephone issues. We do not have laptops or blackberries, making us far less efficient during the long periods of time we spend waiting in court for our cases to be called.

Our desire is to serve our clients and the system; yet, without the resources, it becomes a very frustrating and daunting task to accomplish. The frustration turns into high turnover rates and leaves me with young, untrained staff who need even more time and attention in order to provide the competent, diligent counsel

our clients are entitled to have. The answer is to find a funding formula that ensures every client has the resources available to him or her to guarantee the constitutional right of adequate representation.

DPA has stretched its budget as far as possible and has sought the assistance of the private bar. In Northern Kentucky, attorneys did step forward to take cases *pro bono* to assist with our budget crisis; but it is a short term solution for a long term problem. Private attorneys are willing to take a case or two as long as they don't last too long or take up too much time. The Department of Public Advocacy filed a lawsuit seeking a declaration that it could impose a service reduction plan when funds were insufficient to ethically represent in all cases; but the court has not yet decided the case. While discovery is on-going, the Franklin Circuit Court ordered DPA to continue to represent in all cases to which it was appointed. In order to meet this order, DPA has to maintain certain staffing levels—forcing the Department to run out of money before the end of the fiscal year. The Constitution mandates the provision of counsel for all indigent defendants and the Department of Public Advocacy provides that counsel. Adequate funding to ensure ethical representation needs to be addressed by this Commonwealth. ☹



John Delaney graduated from the University of Massachusetts in 1985 with a degree in economics. In 1992, he graduated from Western New England College of Law. Prior to joining the Department

of Public Advocacy (DPA), Mr. Delaney worked for New England Legal Services in Springfield, Massachusetts and for the committee for Public Counsel Services in Northampton, Massachusetts. Mr. Delaney began working for DPA in 1993. In the fall of 2003, Mr. Delaney became the Directing Attorney for the Boone County Trial Office. In April of 2006, he left the Boone County office to become the Directing Attorney of the Covington Trial Office. The Covington office provides public defender service to Campbell and Kenton Counties.

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Funding for the Criminal Justice System: Differing Views from Prosecutors and the Defense

By Rob Sanders

Protecting the citizens of this great Commonwealth from criminals is proving more and more difficult with each budget cycle. Much like our counterparts at the Department of Public Advocacy, the ever-growing obstacle for prosecutors is funding, or, more specifically, lack thereof. While prosecutors and defense attorneys have different duties and unique tasks, the issues causing exponentially increasing frustration for both are essentially the same. They are:

- A huge increase in caseloads;
- No corresponding increase in resources to handle these caseloads;
- Difficulty attracting qualified new attorneys because of low starting salaries; and
- The inability to retain experienced attorneys because of low pay.

Felony crimes in Kentucky are each prosecuted in Circuit Court by one of the fifty-seven Commonwealth's Attorneys. The prosecution of misdemeanors, juveniles, traffic infractions, and violations of city ordinances (along with a host of other non-criminal prosecution related duties), is handled by a County Attorney in District Court. Each of Kentucky's one hundred twenty counties has a County Attorney. Commonwealth's Attorneys are required by statute to be full-time prosecutors (though a few part-time Commonwealth's Attorneys have been "grandfathered in"). County Attorneys are permitted to maintain a private practice.

In 1978 the Unified Prosecutorial System (UPS) was created to maintain uniform and efficient enforcement of laws and administration of criminal justice. The UPS represents each Commonwealth's Attorney and County

Attorney. The Prosecutors Advisory Council (PAC) oversees UPS. Although it has many functions, UPS receives one lump sum of money for all fifty-seven Commonwealth's Attorneys and one lump sum for all one hundred twenty County Attorneys. PAC is then charged with the task of divvying up each pile of money among the respective recipients. PAC is chaired by the Attorney General and consists of three Commonwealth's Attorneys, three County Attorneys, and two citizen members, all of whom are appointed by the Governor. As the Commonwealth's Attorney for the 16th Judicial Circuit of Kentucky, I write from the perspective of a felony prosecutor but readers should recognize, as I do, that County Attorneys face similar, if not identical, funding issues. I am also one of the three Commonwealth's Attorney representatives to PAC; an appointment which sounded a lot more fun when I thought I'd be deciding how to allot money, not stuck with the unpleasant task of cutting everyone's budgets.

At the last legislative session, PAC, recognizing the financial constraints of reduced tax revenue in the Commonwealth, requested \$41,650,400 to fund all fifty-seven Commonwealth's Attorneys Offices for Fiscal Year '08 (FY08). This amount equaled only the funds needed to maintain the "*status quo*," and included no funding for new positions or new programs, improved technology, or even the annual increased costs of doing business. The only increase requested was for money needed to cover the rising health care and pension costs of existing positions. Rather than funding the already over-worked and underpaid "*status quo*" system, the legislature allotted only \$33,147,800 to Commonwealth's Attorneys Offices for FY08.

Facing an obvious and sizable budget deficit, PAC was forced to choose

between a 6% cut in staff salaries, or, sizable cuts in operating expenses to minimize salary reductions. PAC chose to do everything possible to avoid salary cuts knowing that every office was already operating at or below "minimum staffing." Politicians refer to budget reductions as "trimming fat" but the cuts sustained by Commonwealth's Attorney Offices were hardly that. As a result of these budget cuts, PAC implemented the following cost saving measures:

- Mandatory 30 day waiting periods before filling vacancies;
- Elimination of travel reimbursement (which was only \$1000 per year to begin with) for single county circuits;
- Elimination of court reporter budgets;
- 20% cut to expert witness funds;
- 50% cut to every Commonwealth's Attorney office's supply budget;
- Elimination of dues to the National District Attorneys Association;
- Elimination of training for all staff other than licensed attorneys;
- Elimination of the travel budget for prosecutor training (meaning that educational opportunities are now limited to the annual Kentucky Prosecutor's Conference);
- Elimination of the printing budget for everything except file folders (meaning there are no funds for letterhead, envelopes, and business cards).
- Even with these measures, Commonwealth's Attorney Office staff salary budgets still suffered a 1% reduction. It is difficult for Commonwealth's Attorneys to accept these cuts, particularly when the Legislative Research Commission staff received a 5% raise and all other state employees received a 1% raise.

Low morale results when lawyers cannot even have their most basic professional needs met. Commonwealth's Attorney Offices are, arguably, the most important law office in each judicial circuit, but felony prosecutors do not have business cards like other professionals. Even the new lawyer fresh out of law school has a business card. When one Commonwealth's Attorney asked what he should do when his letterhead ran out, the only suggestion offered was "Xerox it before you run out!" Would you wonder if the letter you received from the prosecutor was legitimate if it was on copy paper and the return address on the envelope was handwritten?

Commonwealth's Attorney Offices across Kentucky are making every effort to pinch pennies day in and day out. Fax machines and email saves postage and accommodates malfunctioning government voicemail systems. Discovery is increasingly scanned on DVD to save copy paper. Prosecutors in

multi-county Circuits carpool to courthouses. Offices even instituted "Ink Pen Amnesty Day" to remind staff to return writing instruments that wandered off in suits, purses, or behind ears. Even with this "coupon clipping mentality," the fiscal forecast is still bleak. While researching budget numbers for this article, staff of the Attorney General's Office warned unplanned budget cuts may be coming from the capitol as early as the New Year.

PAC made the same "*status quo*" request for Fiscal Year '09 (FY09) in the amount of \$44,298,100. FY09 funds received from the legislature were also \$33,147,800 meaning Commonwealth's Attorneys Offices across Kentucky are facing even larger cuts next year. Unlike last year, however, there is simply nothing left to cut from the operating side of Commonwealth's Attorneys Office budgets. The majority of remaining operating costs go to items such as rent and utilities that simply cannot be cut. Basically, the entire

burden of the FY09 cuts will be borne in staff salary reductions. Asking attorneys, most making less than \$50,000, and support staff making less than \$30,000, to take a 6% pay cut is guaranteed to cause an exodus.

In 2004-2005, then-Attorney General Greg Stumbo convened a "Blue Ribbon Commission Report on Criminal Prosecution" to provide an in-depth analysis of issues and obstacles facing prosecutors. Every Commonwealth's Attorney was surveyed and 70% reported difficulties retaining employees. The Commission also found that one in five Assistant Commonwealth's Attorneys leave prosecution annually for increased financial gain. I have been a Commonwealth's Attorney for almost two years and have already lost two assistants; one to the U.S. Attorney's Office and one to the private bar and thus the turnover rate appears accurate. As is true in the private industry, when it comes to employees, "you get what you pay for." With what little salary is left after FY09

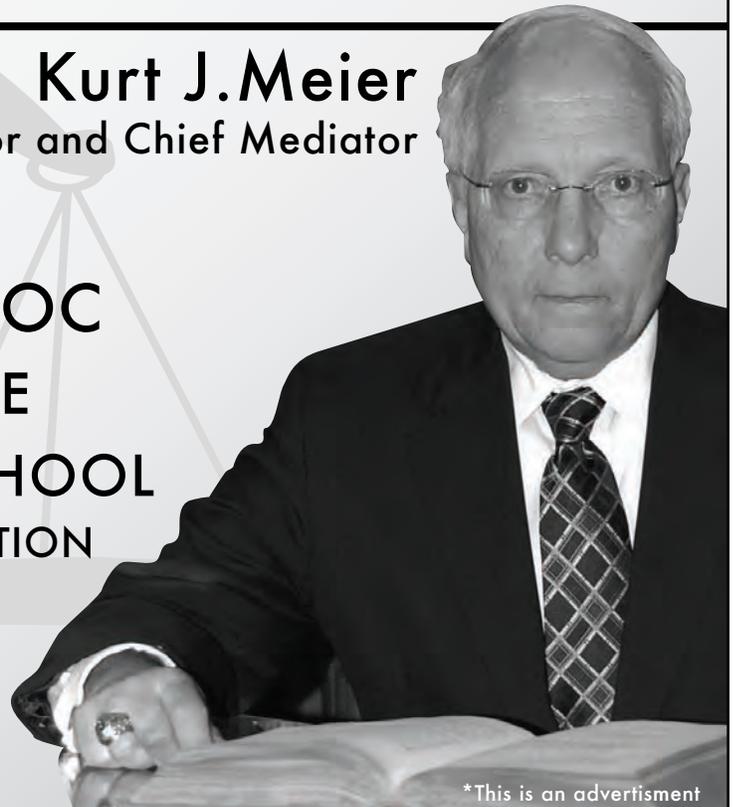
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cuts, one thing the Commonwealth will no longer be paying for is experience. Today, of the nine assistant prosecutors on the Kenton County Commonwealth's Attorney Office payroll, only two have more than five years experience. After a 6% pay cut, Kenton County will be lucky to have any.

While fast paced action and love of the "cause" will always attract some new attorneys to prosecution, do the citizens of the Commonwealth really want to entrust Class A and B felonies to green prosecutors fresh out of law school? My point is not to insult young prosecutors. I have some great ones in my office and have met many more throughout Kentucky. Taking on the role of teacher, however, while probably one of my favorite job functions, is also incredibly time consuming. One new prosecutor is a time consuming project. An office full of them makes it simply impossible to give each the instruction and supervision they need. This is not just a problem for elected officials but

for all experienced prosecutors tasked with assisting young prosecutors. The real frustration, however, is in the continuous nature of the cycle. About the time a young prosecutor has gained experience and really starts to excel in the courtroom, they also start getting married, buying houses, and/or having kids. As anyone who has taken one of those "life steps" knows, they are expensive. All of a sudden \$35,000 or \$40,000 doesn't go nearly as far so they start looking for more lucrative work.

The natural rivalry between prosecutors and public defenders has also transferred itself out of the courtroom and into the state capitol. Accusations and criticisms fly in an effort to convince legislators one side is more in need than the other of public funds.

One thing the Department of Public Advocacy (DPA) has done extremely well is lobby. Unlike Commonwealth's Attorneys, who are each independent, constitutionally elected officials, the DPA is a bureaucracy run by a guber-

natorially appointed Public Advocate. In contrast, Commonwealth's Attorneys are locally accountable to their respective circuits which means there are fifty-seven bosses running around the Commonwealth. The DPA has one boss. PAC has to ask for volunteers to lobby for funding, while DPA has personnel whose job includes lobbying. For these and other reasons, DPA has done far better in recent budgets than prosecutors.

In this Commonwealth's Attorney's humble opinion, prosecutors need not fight against the folks on the other side of the courtroom. In fact, prosecutors, public defenders and judges (who are also tremendously underfunded) need to join forces and demand adequate funding of our judicial system, which is government's most basic function. Some possible changes seems obvious. For instance, court costs should be allocated back to the costs of operating courts. Currently court costs go to the general fund and all sorts of legislative mandates. Also, the legislature should consider the cost of new crimes on the entire criminal justice system, not just the Department of Corrections. Every new crime increases workloads not just for corrections but for prosecutors, public defenders, judges, and the staff of each respective office.

Ultimately, one thing will keep the system functioning adequately to ensure public safety and protect the rights of the accused – money. Funding is dangerously low and about to run out altogether. For the sake of our honorable profession, I urge all members of the bar to lobby for increased funding of the criminal justice system?! ☹

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1 Tax Law Update
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3 Criminal Law Brown Bag
Louisville Bar Association

3 Women Lawyers Seminar
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10 Corporate Law Brown Bag
Louisville Bar Association

14 Video Replay: Professionalism,
Ethics & Substance Abuse
Cincinnati Bar Association

15 Landlord – Tenant Law Update
Cincinnati Bar Association

16 Bankruptcy Law Brown Bag
Louisville Bar Association

17 Trial Skills
Kentucky Justice Association

17 Elder Law Seminar
Cincinnati Bar Association

21 Sue Unto Others as You Would
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23 Basic Tax
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23-24 12th Annual Louisville Bar
Association and the American
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24 Trial Skills
Kentucky Justice Association

24 Advocacy Series: Trial Practice
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29 Civil Rights
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29-30 24th Annual National Conference
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MAY

1 Social Security Update
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5 Cybersleuth: Research Strategies
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8 Subrogation
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14-15 Louisville Bar Association
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16-20 Trial College
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19 Video Replay: Professionalism,
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22 Local Government Seminar
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27 Dissolutions/Divorce:
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29 Legal Writing 201
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Betwixt and Between: Dash or Hyphen?

Helene Davis, Professor and Law Library Director, University of Kentucky College of Law

When most writers think of punctuation, the marks that immediately come to mind include commas, periods, semi-colons, and question marks. Punctuation signals how a reader should interpret the words or phrases you've written—when to pause, when to stop, or how phrases or clauses relate to each other. But aside from the punctuation marks mentioned above, there are other marks that shape sentences, arrange thoughts, and prioritize phrases. Among these marks are hyphens and dashes.

Hyphens

Hyphens (-) are used to divide compound words or hybrid terms that represent a single thought or expression. For legal writers, popular examples of hyphenated terms include “physician-patient,” “quasi-adjudicative,” or

“Sarbanes-Oxley.” Hyphenated terms may operate as adjectives, depending upon the construction of the sentence. Consider the following: “physician” and “patient” are both nouns, but in the phrase “physician-patient relationship” the compound noun operates as an adjective.

Another appropriate use of hyphens is to resolve ambiguity. For example, a hyphen is hardly the only difference between “pre-judicial” and “prejudicial” or “re-creation” and “recreation.” In each instance, the paired terms have completely different meanings. Incidentally, these examples also illustrate the exception to another rule when hyphenating: terms with prefixes and suffixes are generally **not** hyphenated.

Traditionally, hyphens also served a role in typesetting or typing—they were

used to truncate words at the end of a line. Today's writers are more likely to use a word processing program, however. Depending upon how the auto-formatting options are set within these programs, word-dividing hyphens may be inserted automatically at the end of a syllable to ensure your text falls within established margins.

Other common examples of hyphenated words include any compound number (e.g., twenty-fifth), phone number (e.g., 555-5678), or social security number (e.g., 999-00-9999). In addition to the examples already provided, legal writers will also encounter hyphens in more traditional uses: for example, “fact-laden,” “up-to-date,” “tri-state,” “left-handed,” “long-term,” or “self-interest.”

If you're unsure whether a particular word should be hyphenated, check a good dictionary.

Dashes

Dashes, on the other hand, come in a variety of lengths, but all are longer than a hyphen. For most writers, the differences between an en dash (–) and an em dash (—) are simply technical. That said, it's still a good idea to understand the differences.

The em dash—so called originally because it was the width of the letter “m”—is the more frequently used of the two. Em dashes usually set off parenthetical information mid-sentence or at the end of a sentence. A good rule of thumb for using em dashes with a parenthetical phrase is that your sentence should still read logically without the interposed text. If it does, or if you could use commas to set off the phrase

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instead, then you're using the dashes correctly. (If you can correctly choose between commas or em dashes, decide how much emphasis you want to give the inserted text. For more emphasis, choose dashes over commas.) When used this way, em dashes are not usually set off with spaces. No matter how they're used, em dashes should be used judiciously—more than two per sentence can introduce confusion.

The en dash is most often used to indicate a range of dates, such as "1995–1999." In this example, the dash serves the same function that the word "to" serves in the phrase "from 1995 to 1999." But note: where your actual construction includes "from," you should use the word "to" in lieu of a dash so that you achieve parallel construction in your writing. In some circumstances, an en dash is used in lieu of a hyphen. For example, the more words you have in either part of your compounded term, the more likely you'll need an en dash instead of a hyphen. Consider the following: "post-

New Deal policy" versus "post–New Deal policy."

Typing or Inserting

Hyphens are often used where a dash should be—perhaps because writers are more accustomed to using hyphens. On a standard (i.e., QWERTY) keyboard, the hyphen key always appears as part of the number row and doesn't require the typist to shift first. Originally, the only way to create a dash was to type multiple hyphens: two or three, depending upon whether you were trying to achieve an en dash or an em dash. Additional options arrived with the advent of word processing programs. Depending upon your automatic formatting settings, typing two hyphens may automatically create an em dash. If that's not the case—or you dislike automatic formatting—you can insert a dash from a menu of available symbols.

To insert a dash symbol in Word, follow this menu path: Insert ⇨ Symbol ⇨ Special Characters. Because dashes are so ubiquitous, they are conveniently

listed here as well as among other groups of symbols. Note, that you can also assign shortcut keys of your choice to these characters so they can be inserted as you type with fewer keystrokes instead of via menus.

To insert a dash symbol in WordPerfect, follow this menu path: Insert ⇨ Symbol ⇨ Current Font Symbols (from the drop down menu). Take care to not insert a minus sign or hyphen by mistake. As you scroll, look for dashes after all the symbols that traditionally appear on the number row of a standard keyboard, as well as after any numbers.

For More Information

When in doubt about the basics of the symbols that fall betwixt and between—dashes and hyphens—these general rules can help convey your message. For more information and examples both *The Chicago Manual of Style* and Bryan Garner's *A Dictionary of Modern Legal Usage* are excellent resources. ⓘ



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Michael Losavio

Control and Access in the Cell-Phoned World

The information security issues faced by correctional institutions surprise me, but in hindsight they make sense. Controlling contraband cell phones and personal data assistants is just as tough as controlling any of the myriad illegal items that slip into prisons. Digital security for prisons may offer a mirror, albeit extreme, for information risks to ourselves and our clients.

Computing and telecommunications offer different, heightened risks to institutional and public safety. This reflects

the risks of the information economy, where vital intellectual property, from client lists to secret, proprietary software, is just a click away from exposure. This risk grows with the increasing power of small, personal computing and telecommunications devices. More and more government agencies and private businesses struggle with protecting confidential intellectual property and private customer/client/patient data from internal threats like careless or malicious employees.

Is there a more problematic internal threat than prison inmates? And the victims, witnesses and law enforcement personnel with whom they come in contact?

Recent Discussions

It's an issue that keeps growing.¹ North Carolina Corrections recovered over 140 cell phones in its institutions in 2008, where the going price for a cell phone was up to \$500.00; Texas recovered more than 700, of which 20 were seized from death row inmates.² A Tennessee inmate used one to plot his escape; other inmates have used them to arrange attacks on inmates and harass victims.³ National Public Radio asserts gangs coordinate activities from prisons with smuggled cell phones.⁴

The irony is that service providers of all stripes are increasing their location services for cell phone users, from embedded handset GPS reporting to *Google Maps for Mobile: My Location*. While some miscreants will be caught through these, the more dedicated felons will quickly learn to avoid them.

Solutions?

The solutions, from offices to prisons, fall into three domains: legal, administrative and technical.

Legal restrictions may be effective if the subjects (1) are aware of those restrictions and (2) are deterred by them. A central issue with "cyberlaw" is that many people simply are not aware of pertinent laws prohibiting certain kinds of conduct with electronic devices. There is neither tradition nor pedagogy on good computing practice.

Even if generally aware, people may still not comply, as seen in the contin-

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ued practice of downloading music and video in violation of copyright law. For prison inmates, the deterrent effect of law may be even more attenuated. Some states have moved forward with special felony penalties for those both supplying and possessing contraband cell phones in prison, an effort to dissuade inmates and their suppliers outside prison walls. But, still, problematic; one inmate's mother called his warden to complain about the bad cell phone reception when she'd called him.⁵

Administrative restrictions, when enforced, may be more effective as they may more clearly explain what is prohibited and may more immediately enforce those prohibitions. Training and enforcement are key elements to make any such administrative measures effective. But this works best for negligent or unintended breaches of security; for those intent on forbidden activity, administrative restrictions may be of only limited benefit.

A technical solution?

Technical solutions face special hurdles with these radio-frequency devices independent of control by any institution other than the service provider. Their use and monitoring is subject to extensive federal regulation. FCC regulations prevent cell phone signal jamming (though the FBI or Secret Service may seek special permission for jamming to protect, say, a Presidential motorcade.) The Wiretap Act requires judicial approval to intercept and monitor cell phone transmissions. Broadcast signal jamming and signal interception, as a practical matter, might cause other problems within and without the institution.

Interestingly, the olfactory prowess of our canine associates has seen success with cell phones. Institutions in the United Kingdom, Florida, South Carolina and other states use dogs trained to scent a particular component of cell phones, with some success.^{6 7} The training comes at about \$6500.00⁸ per hound.

Yet countermeasures are already being used by inmates. Cell phones, when not in use, are being disassembled and distributed around the facility, making these component parts more difficult to find

and easier to replace when found. And separating the SIM card from the handset, for example, makes valuable digital forensic data even more inaccessible.

We won't dwell on the places cell phones have been found in prisons.⁹ The Naval Surface Warfare Center, at the request of the federal Bureau of Prisons and the National Institute of Justice, has looked at this problem; they noted that:

Four main approaches have been identified to deal with the cell phone problem: (1) locate and confiscate cell phones through the use of detection technology; (2) overpower the cell phone signal with a stronger signal, commonly referred to as "jamming;" (3) trick the cell phone into reacting as if there is no service; and (4) intercept the signal, which requires a judge's order. The simplest option is signal detection which carries no regulatory or legal restrictions. Since all cell phones use radio frequency (RF) antenna power, the Bureau of Prisons (BOP), the National Institute of Justice (NIJ), and the Naval Surface Warfare Center-Dahlgren are launching a multi-year project to develop technology to detect RF and to evaluate and test existing technologies.¹⁰

Signal Detection

O.K. Signal detection and transmitter location seems to offer the sleekest solution. Naturally, cost may be a controlling factor. Some possible applied research

problems in this area include use of wireless E911 tracking technology and use of cell phone sensor networks.

Use of E911 and other mobile phone tracking technologies

Mobile cell phones offer options for tracking and general location during use as they constantly signal for the closest cell tower. Each signal to the tower, regardless of the use of the phone for a call, associates the phone with the area around the tower. The signal strength and signals to other cell towers give further information as to a cell phone's location. This creates a starting location point for the cell phone.

Enhanced 911 service was implemented to associate a physical address with an emergency 911 telephone call over a traditional wired telephone line. The system and enabling legislation allowed access and matching of caller line information to databases of caller location data. An emergency operator could then receive the location of the caller as the call was in progress.

For wireless cell phones, this type of location service doesn't work as there is no fixed use location associated with the portable device. This has led to efforts to create a wireless enhanced 911 service to locate a particular cell phone during a 911 call.

Such a system may use cell tower triangulation from the angle of arrival of cell signals between two towers.

Another option uses cell tower multilateration to measure the time difference in the time of receipt of a cell signal at three or more cell receivers. Given the fixed speed of the signal, just that time

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difference can be used to get a location on a plane; add a fourth receiver and you can get a 3-D location.

Both methods face accuracy questions, but pinpoint location may not be needed.

A review of technical and regulatory restrictions on wireless E911 could offer the relatively inexpensive solution of using it to locate cell phones in use in controlled facilities. Utility may vary with cell tower deployment in a particular area, but use of existing analysis systems for emergencies could help in the public safety context of corrections. Enabling legislation and negotiation with service providers may be necessary, but regulatory review should reveal how best to address any needs in that area.

Use of a local sensor network

These same location technologies could be applied locally through a sensor network for cell phone signals within a facility.

This would avoid some of the regulatory or contract issues found in working with service providers themselves. But it requires greater resources. EVI Technology estimates a grid for a 40,000 sq. ft. area (about an acre) would require a 10-sensor network.¹¹ The sensors are networked to a computer which does site location and alerts in time for an effective search.

But the size of Kentucky institutions may drive costs beyond their reach in these times of stretched budgets. Kentucky State Reformatory has nearly 2000 beds in its twelve dormitories and covers 43 acres: <http://www.corrections.ky.gov/ksr/photos/>. A sensor network of the entire facility might require as many as 400 sensors to be effective.

What to Do?

Jon Ozmint of South Carolina Corrections argues that, given the costs of signal sensor networks, signal jamming is the optimal solution as to effectiveness and cost and the best way to stop continued criminal activity by inmates.¹² Yet the cell phone industry is concerned about the spill-over effects on the general public, which might create public safety issues for folks near institutions who cannot reliably use their cell phones.

Resolving this impasse in a cost-effective manner is important for criminal justice and public safety. The incapacitation function of corrections is undermined when inmates can continue their criminal activities; rehabilitation becomes more difficult, if not impossible. But where is the funding?

Research on sensor networks combined with research on restricted low-power jamming is a low-cost compromise that may work. Though more costly, a distributed system of low-power jammers minimizes service disruption outside the institution and may meet FCC and service provider concerns. A comparison of the two options may give guidance for correctional policy.

The Kentucky Department of Corrections and the University of Louisville are discussing collaborative options to solve this problem. That may require a combination of technical, legal, and administrative solutions from across government, industry, and the academy. A challenge, like all others in public safety, but an important one for public safety and one that may hold further benefit for other agencies and businesses seeking to protect their valuable information from disclosure. ☺

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ATTENTION: AMENDED REGULATIONS OF THE ATTORNEYS' ADVERTISING COMMISSION

Supreme Court Rule 3.130 contains the Kentucky Rules of Professional Conduct (KRPC). KRPC 3.130-7.03 establishes an Attorneys' Advertising Commission with general responsibilities for implementing the lawyer advertising rules. In discharging its responsibilities, the AAC is given authority to issue and promulgate regulations subject to prior approval by the Kentucky Bar Association Board of Governors. When regulations are proposed and issued, members of the Kentucky Bar Association are entitled to at least sixty (60) days advance notice and an opportunity to comment. The AAC, with approval of the Board, has promulgated the following amendments to Regulation 2, and new Regulations 14, 15 and 16. The Kentucky Bar Association Board of Governors approved the proposed regulations for publication on July 19, 2008. The Regulations were published for comment in the September 2008 issue of the *Bench & Bar*. On January 9, 2009 the Commission reviewed the comments and revised Regulation 14. On January 16, 2009 the Board of Governors approved a change to Regulation 14 and gave final approval to Regulations 2, 15, and 16 as originally published.

The following Regulations will be effective May 1, 2009.

The full Regulations of the Attorneys' Advertising Commission may be viewed at www.kybar.org, along with Frequently Asked Questions.

AAC REGULATION NO. 2: PERMISSIBLE CONTENT OF ADVERTISEMENTS SUBMITTED WITHOUT A FEE

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

1. Participation by the lawyer in community groups or clubs and nonprofit charitable organizations or groups, either as a member or officer;
2. Previous employment positions, including governmental and non-governmental employment;
3. Enlargements of business cards that are not themselves advertisements under SCR 3.130-7.02(1)(a), but if the advertisement includes reference to a website, the website is considered a separate advertisement;
4. Listings of immediate family, such as spouses, children and parents;
5. Information identifying the offices of the firm in several jurisdictions or cities within or without the Commonwealth of Kentucky;
6. The length of time any particular law firm or lawyer has been in practice;
7. The types of information listed in SCR 3.130-7.05(1)(a)(6-13) may include both past and present participation or status, if the advertisement discloses, when necessary, that the lawyer is no longer a participant or no longer holds that status;
8. A photograph of the lawyer with no accompanying scene in the background of the photograph;
9. Words such as "congratulations" or "good luck," when used in program advertisements for charitable or education functions;
10. The designation of a law firm as "A debt relief agency" as required by the Bankruptcy Abuse Prevention and Consumer Protection Act [11 USC§528(b)(1)(a)(b)];
11. The website address of a lawyer or law firm's website advertisement, if the website has been submitted and approved as required by SCR 3.130(7.05);

12. Such variations on the items contained herein and in SCR 3.130-7.05(1) (a)(1-25) that are minor or technical in nature and may be reviewed and approved by the designee of the Commission named herein;

13. Additions or revisions to a previously submitted and approved advertisement, as required by SCR 3.130 (7.05)(2), need not be re-submitted to the Commission if the new addition or revision is limited to the items listed in SCR 3.130(7.05)(1)(1 – 26) and AAC Regulation 2.

AAC REGULATION NO. 14: ADVERTISING OF FEES

The Supreme Court Rules and the Attorney Advertising Regulations require specific information regarding fees, as well as information about services to be provided, in certain attorney advertisements. Supreme Court Rules 3.130-7.04 and SCR 3.130-7.15 establish what minimum information is required in advertisements which reference attorney fees.

If the advertisement uses any language to imply or state that there will be no fee owed unless there is a recovery, as is typical in contingent fee advertisements, then the advertiser must include language identifying whether the attorney or the client is responsible for court costs and/or case expenses. It may be deceptive, and therefore may be in violation of SCR 3.130-7.15, to employ advertising that refers to contingent fee arrangements without addressing the client's liability for court costs and case expenses. Language similar to that provided in SCR 3.130-7.04 is adequate to explain whether or not the court costs and/or case expenses will be the responsibility of the client. AAC Regulation 1 also addresses other information that must be included in advertisements to avoid a misleading omission under SCR 3.130-7.15.

Further, if the advertisement states a contingent fee percentage or rate then the advertisement must also disclose whether percentages are computed before or after deduction of court costs and case expenses. It may be deceptive, and therefore may be in violation of SCR 3.130-7.15, to employ advertising that refers to a contingent fee percentage without addressing the manner in which the fee is computed.

Contingent fee percentages are allowed to be stated in advertisements not requiring a submission fee pursuant to SCR 3.130-7.05(1)(a)(22) and SCR 3.130-7.05(b)(1).

AAC REGULATION NO. 15: ELECTRONIC SUBMISSION OF ADVERTISEMENTS

SCR 3.130-7.05(1)(b) states, "If the advertisement contains only those items listed in SCR 3.130-7.05(1)(a), the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement.

SCR 3.130-7.05(2) states, "If the advertisement does not qualify under SCR 3.130-7.05(1) for submission without a fee, the lawyer shall mail or deliver to the Commission, c/o the Director of the Kentucky Bar Association, three (3) copies of the advertisement.

1. Advertisements containing only those items listed in SCR 3.130-7.05(1)(a) and AAC Regulation 2 for submission without a fee, may also be electronically submitted via facsimile or emailed in PDF (Portable Document Format) to the Attorneys' Advertising Commission address attorneyadvertising@kybar.org.

2. Website advertisements that do not qualify for submission without a fee may be submitted in electronic format only if on a data disc in PDF (Portable Document Format). Three (3) copies of the data disc should be mailed or delivered to the Commission, c/o the Director of the Kentucky Bar Association.

AAC REGULATION NO. 16: RECORD RETENTION

SCR 3.130-7.08 states, "The records of the Commission shall be available for inspection and copying at the offices of the Kentucky Bar Association at reasonable times and upon reasonable notice."

The availability of the records of the Commission shall be limited to two years from the date of submission of the advertisement. The Commission may destroy any records two years after submission.

Supreme Court of Kentucky

**IN RE:
ORDER AMENDING
RULES OF CIVIL PROCEDURE (CR)
RULES OF CRIMINAL PROCEDURE (RCr)**

2009-01

The following rules' amendments shall become effective April 1, 2009.

A. AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

I. CR 7.03 Privacy Protection for Filings Made with the Court

The new rule CR 7.03 shall read:

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

- (a) the digits of the social-security number or taxpayer-identification number;
- (b) except in criminal cases, the month and day of the individual's birth; and
- (c) the digits of the financial-account number.

Redaction may be made by any method, including but not limited to replacing the identifiers with neutral placeholders or covering the identifiers with an indelible mark, that so obscures the identifiers that they cannot be read.

(2) An attorney or party making a filing under part (1) above shall keep an unredacted, original copy of the filing. The attorney and party shall be custodians of the original or unredacted copy of the filing and shall present it upon order of the court.

(3) The court may order that a filing be made under seal without redaction. If the court orders an unredacted copy of the filing under seal, a copy redacted in compliance with part (1) of this rule may also be filed.

(4) For good cause, the court may by order in a case:

- (a) require redaction of additional information; or
- (b) limit or prohibit a nonparty's access to a document filed with the court.

(5) The clerk is not required to review filings with the court for compliance with this rule. The responsibility to redact filings rests with counsel and the party making the filing.

(6) A person waives the protection of this rule as to the person's own information by including it in a filing without redaction.

(7) An attorney or party failing to comply with this rule will be subject to the sanction powers of the court, including having the relevant filing stricken from the record. A conforming copy of a filing previously stricken from the record for failure to comply with this rule may be refiled unless otherwise ordered by the court.

II. CR 45.01 Form; issuance

CR 45.01 shall read:

(1) Every subpoena shall state the court from which it is issued, the title of the action, the court in which the action is pending, and its civil action number; and the name, address, telephone number and e-mail address of the attorney or pro-se party causing the subpoena to be issued. Every subpoena shall command each person to whom it is directed to attend and give testimony and/or to produce designated documents or tangible things in that person's possession, custody, or control, or to permit inspection of premises, at the time and place therein specified. A copy of every subpoena served shall be certified to the opposing party and to any person whose information is being requested.

(2) The clerk or other authorized deputy shall issue a subpoena signed but otherwise in blank, to a party requesting it, who shall fill it in before service. An attorney licensed to practice law in this state may also issue and sign a subpoena on behalf of the court. Subpoenas shall not be used for any purpose except to command the attendance of the witness and/or production of documentary or other tangible evidence at a deposition, hearing or trial; unless the parties agree that production may be made without a deposition. Upon order of the Court, with the agreement of the parties, documents may be produced without a deposition.

III. CR 45.02 For production of documentary evidence

CR 45.02 shall read:

The court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (a) quash or modify

the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

IV. CR 45.03 Service; Notice

CR 45.03 shall read:

(1) A subpoena may be served in any manner that a summons might be served. It may also be served by any person over eighteen years of age, and the affidavit endorsed thereon by such person shall be proof of service or the witnesses may acknowledge service in writing on the subpoena. Service of the subpoena shall be made by delivering or offering to deliver a copy thereof to the person to whom it is directed. A subpoena may be served at any place within this state. Proof of service shall be made by filing with the issuing court a statement showing the date and manner of service and the names of the persons served. The statement must be certified by the server.

(2) Copies of all documents received in response to the subpoena shall be forthwith furnished to all other parties to the action, except on motion and for good cause shown. Any other tangible evidence received in response to the subpoena shall be forthwith made available for inspection by all other parties to the action.

(3) Every subpoena, except those issued for trial, shall be served, in the manner prescribed by Rule 5.02, on each party and any person whose information is being requested.

V. CR 45.04 Protection of a person subject to a subpoena

CR 45.04 shall read:

(1) A subpoena that commands the person to whom it is directed to produce designated documents or tangible things or to permit inspection of premises may relate only to matters within the scope of discovery permitted by Rule 26.02. Every subpoena will be subject to the provisions of Rule 26.03.

(2) The person to whom a subpoena is directed may, within ten (10) days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than ten (10) days after service, serve upon the attorney or pro se party designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena

was issued. The party serving discovery may, upon notice, move for an appropriate order.

(3) A resident of the state may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. A person commanded to produce documents or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

VI. CR 45.05 Subpoena for a hearing or trial; personal attendance

CR 45.05 shall read:

(1) Subject to the provisions of paragraph (2) of this rule a witness whose deposition might be used under Rule 32.01(c) shall not be compelled to appear in court for oral examination, unless he/she failed, when duly subpoenaed, to give his/her deposition.

(2) Upon the affidavit of a party or his/her attorney that the testimony of a witness is important, and that the just and proper effect of that testimony can not in a reasonable degree be obtain without oral examination in court, the court may, in its discretion, order the personal attendance of the witness, although such witness may otherwise be exempt from personal attendance.

VII. CR 73.02 When and how taken

Sub-section (e) of section (1) of CR 73.02 shall read:

(1) (e) The running of the time for appeal is terminated by a timely motion pursuant to any of the Rules hereinafter enumerated, and the full time for appeal fixed in this Rule commences to run upon entry and service under Rule 77.04(2) of an order granting or denying a motion under Rules 50.02, 52.02 or 59, except when a new trial is granted under Rule 59.

(i) If a party files a notice of appeal after the date of the docket notation of service of the judgment required by CR 77.04(2), but before disposition of any of the motions listed in this rule, the notice of appeal becomes effective when an order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge a post-judgment order listed in this rule, or a judgment altered or amended upon such motion, must file a notice of appeal, or an amended notice of appeal, within the time prescribed by this rule measured by the date of the CR 77.04(2) docket

notation regarding service of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

VIII. CR 76.28 Opinions

Section (2) of CR 76.28 shall read:

(2) Time of Announcement.

Unless otherwise determined by the Supreme Court, opinions of the Supreme Court will be released for publication on Thursdays. Opinions of the Court of Appeals shall be released on Fridays. However, if a Friday is a state holiday, the Court of Appeals, at the discretion of the Chief Judge may render opinions on the last working day before the holiday. The time of publication shall be 10:00 A.M. prevailing Frankfort time.

IX. CR 76.36(7) Original proceedings in appellate court

Sub-section (c) of section (7) of CR 76.36 shall read:

(7) Appeals to the Supreme Court.

(c) To perfect the appeal the appellant shall, within thirty (30) days after filing a notice of appeal, file with the Clerk of the Supreme Court a brief setting forth argument for reversal or modification of the judgment or order from which the appeal is taken. In workers' compensation cases, briefing shall proceed according to CR 76.12.

X. CR 76.38(4) Effective date and reconsideration of orders

A new section (4) of CR 76.38 shall read:

(4) Orders granting or denying reconsideration under this Rule will not be reconsidered.

XI. SUBPOENA DUCES TECUM FORM

The new Subpoena Duces Tecum Form shall read:

AOC-025 Doc. Code: RS
Page 1 of 1
Commonwealth of Kentucky
Court of Justice www.courts.ky.gov
CR 45; RCr 7.02



[] SUBPOENA

[] SUBPOENA DUCES TECUM

Case No. _____
Court _____
County _____
Date _____

PLAINTIFF

VS

DEFENDANT

The Commonwealth of Kentucky to:

Name _____
Address _____

You are commanded to appear before: *(select one of three choices)*

[] _____ Court [] The Grand Jury of _____ County
[] Other _____

You are to appear at: _____

on the _____ day of _____, 20____ at _____ [] a.m. OR [] p.m. [] Eastern [] Central Time

[] To testify in behalf of _____

[] To produce _____

[] To give depositions

You are commanded to produce and permit inspection and copying of the following documents or objects (or to permit inspection of premises): _____

on the _____ day of _____, 20____ at _____ [] a.m. OR [] p.m. [] Eastern [] Central Time
at the following address: _____

Issuing Officer/Attorney Licensed in Kentucky
By: _____

Name of Requesting Attorney
Phone # _____

PROOF OF SERVICE

This subpoena was served by delivery of a true copy to: _____

This _____ day of _____, 20____ By: _____
_____ **Title**

B. 2008 AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

I. RCr 4.48 Forfeiture of bail

RCr 4.48 shall read:

(1) If the court has ordered forfeiture of bail following a show-cause hearing as described in Rule 4.42(5), or following the willful failure of the defendant to appear in court when required, the court shall serve a copy of the forfeiture order on the defendant and the defendant's surety or sureties at their last-known addresses. If the defendant or the defendant's surety or sureties do not appear within 20 days after service of the order or return of not found and satisfy the court that appearance or compliance by the defendant was impossible and without his or her fault, the court may order judgment against the defendant and the defendant's surety for the amount of the bail or any part thereof and the costs of the proceedings.

(2) If the declaration of forfeiture is made by a trial court other than the circuit court and the amount of bail is beyond its jurisdiction, or a lien on real estate is involved, the bond shall be filed with the clerk of the circuit court of the county where the amount of forfeiture may be determined and collection proceedings may be so instituted.

(3) A forfeiture may be set aside upon such conditions as the forfeiting court may impose if it appears that justice does not require its enforcement.

(4) When bail is forfeited, the clerk of the court shall enter a record of the forfeiture and date of forfeiture. When real estate is affected, the clerk shall forthwith send notice of the forfeiture and date thereof to the county clerk of each county where the real estate is situated. The county clerk of the latter county shall make an appropriate entry at the end or on the margin of the record of the Commonwealth's lien on the real estate.

II. RCr 4.54 Continuation of bail

RCr 4.54 shall read:

(1) Except as provided in Rule 5.22 and Rule 12.78, bail taken at any stage of the proceedings shall continue in effect to insure the appearance of the defendant for any and all purposes at all stages of the proceedings, including appeal. In the event a defendant waives the charges to the Grand Jury, or following a preliminary hearing is ordered bound over to the circuit court, control over bail, including any conditions thereof, shall remain with the district court until indictment is returned, at which time control shall pass to the circuit court. Upon the conviction of a defendant, bail may be increased, decreased, revoked, or modified by the trial court without being subject to the hearing requirements of

Rule 4.42, and control over bail shall remain with the trial court throughout any appeal.

(2) Subject to RCr 5.22, bail shall terminate (a) when the principal is acquitted or the prosecution is dismissed; (b) when the principal, following conviction, fails to file a notice of appeal within the time limit under Rule 12.04; (c) when the appeal taken by the defendant is dismissed; or (d) on the effective date of an appellate decision affirming the conviction.

(3) In the event of a reversal of a conviction by an appellate court granting the defendant a new trial, the defendant shall be entitled to the rights of pre-trial release under Rule 4.04 as if upon an initial appearance.

(4) The efficacy of a bail bond shall not be affected by the fact that the defendant is prosecuted for an alleged offense or offenses different from but arising out of the same occurrence as the charge named in the bail bond.

III. RCr 8.28 Presence of defendant

RCr 8.28 shall read:

(1) The defendant shall be present at the arraignment, at every critical stage of the trial including the empaneling of the jury and the return of the verdict, and at the imposition of the sentence. The defendant's voluntary absence after the trial has been commenced in his or her presence shall not prevent proceeding with the trial up to and including the verdict. The defendant may be permitted to remain on bail during the trial. Upon a hearing and finding by the trial court, that a defendant in custody on any charge, including a felony, intentionally refuses to appear for any proceeding, including trial, short of physical force, such refusal shall be deemed a waiver of the defendant's right to appear at that proceeding.

(2) A defendant who persists in engaging in disruptive conduct after being warned by the court that such conduct will cause him or her to be removed may be excluded from the courtroom.

(3) A corporation may appear by counsel for all purposes.

(4) In prosecutions for misdemeanors or violations the court may permit arraignment, plea, trial and imposition of sentence in the defendant's absence. However, no plea of guilty to a violation of KRS 189A or KRS 218A may be entered in the defendant's absence, unless the defendant first executes a written waiver of his or her right to be present.

(5) During his or her appearance in court before a jury the defendant shall not be required to wear the distinctive clothing of a prisoner. Except for good cause shown the judge shall not permit the defendant to be seen by the jury in shackles or other

devices for physical restraint.

IV. RCr 11.02 Sentence.

RCr 11.02 shall read:

(1) Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall, if the defendant is guilty of a felony, cause a presentence investigation to be conducted, examine and consider the report, and furnish a copy of the report to the attorney for the Commonwealth and the attorney for the defendant no later than two (2) business days prior to final sentencing. The defendant may waive the presentence investigation report pursuant to KRS 532.050. The court shall consider the possibility of probation or conditional discharge and shall afford the defendant and the defendant's counsel an opportunity to make a statement or statements in the defendant's behalf and to present any information in mitigation of punishment.

(2) After imposing sentence in a case tried on a plea of not guilty, the court shall advise the defendant of his or her right to appeal and of the right of a person who is unable to pay the cost of an appeal, or unable to employ counsel, to apply for leave to appeal in forma pauperis and to have the continued assistance of counsel to perfect and prosecute the appeal. If the defendant is proceeding without counsel and so requests, the clerk of the court shall prepare a notice of appeal for the defendant's signature and shall file the notice forthwith.

V. RCr 12.04. When and how taken

RCr 12.04 shall read:

(1) An appeal is taken by filing a notice of appeal in the trial court.

(2) The notice of appeal shall name all of the appellants and appellees and designate the judgment from which the appeal is being taken. The clerk shall serve notice of the filing of the notice of appeal by mailing a copy thereof to the clerk of the appellate court and to the attorney for each appellee, shall note on each copy thus served the date on which the notice of appeal was filed, and shall note in the docket the names of the parties served and date or dates on which the copies were mailed.

(3) The time within which an appeal may be taken shall be thirty (30) days after the date of entry of the judgment or order from which it is taken, subject to Rule 12.06, but if a timely motion has been made for a new trial an appeal from a judgment of conviction may be taken within thirty (30) days after the date of entry of the order denying the motion; provided, however, that in the case of a motion for new trial made later than five (5) days after return of the verdict, the appeal must be from the

order overruling or denying the motion, and the review on appeal shall be limited to the grounds timely raised by the motion as provided by Rule 10.06.

(4) The timely filing of a notice of appeal from a judgment of the district court shall stay proceedings on the judgment as long as the case remains on appeal, except for the requirement of bail. Stays in juvenile dispositions shall be discretionary with the court.

VI. RCr 12.76 Stay of execution

RCr 12.76 shall read:

(1) (Death.)

A sentence of death shall be stayed pending review by an appellate court, but the defendant may be transferred to the penitentiary.

(2) (Imprisonment.)

The execution of a sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail.

(3) (Fine.)

A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the trial court upon such terms as the court deems proper.

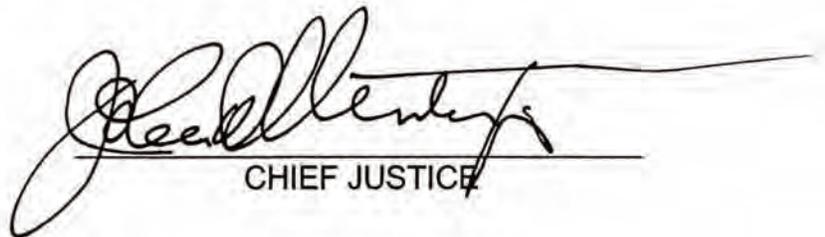
(4) (Probation.)

A sentence of probation may be stayed if an appeal from the conviction or sentence is taken. If the sentence is stayed, the court shall fix the terms of the stay.

All sitting. All concur except:

Schroder and Venters, JJ. dissent and would not adopt the proposed amendments to CR 45.01.

ENTERED: February 11, 2009.



CHIEF JUSTICE

NKU Salmon P. Chase NORTHERN KENTUCKY UNIVERSITY College of Law

By Wendy Lane
Communications Coordinator

Shea Named Outstanding Chase Alumnus

Joseph W. Shea, III, '74 was named 2008 Outstanding Chase Alumnus by the NKU Alumni Association at its annual Alumni Awards Banquet on February 6, 2009. Shea is a highly-regarded legal practitioner and is well-known throughout the Kentucky and Ohio legal communities. He served the Ohio Supreme Court as its chief bar examiner, was elected as the youngest president ever of the Ohio Justice Association, and is widely-used nationally as a bar examiner in the field of Civil Litigation. He has authored several books including an annual publication of his widely-used courtroom evidence manual. He is the principal in the Cincinnati-based law firm Shea & Associates.

Shea's peers have voted him as one of the top 100 lawyers in Ohio or top 50 in Cincinnati annually since 2004. He is a fellow of the American College of Trial Lawyers and Society of International Barristers. He holds various record verdicts and outcomes. He received the 2008 Ohio State Bar Association's (OSBA) Ritter Award, its highest commendation, given annually to the Ohio attorney who has obtained the highest level of professionalism, integrity, and ethics in the practice of law.

Shea also believes in giving back. Years ago, Shea became concerned that smaller firms could not afford access to powerful online legal research sites. Using his own resources, he pioneered the idea of providing online legal research resources directly through state bar associations. In the late 1990s, he partnered with the OSBA to offer its members access to the online libraries as a free membership benefit. It was an immediate success. Today, 28 state bar associations, including the Kentucky Bar Association, offer members free unlim-

ited access to the service. Casemaker libraries have saved attorneys and their clients millions of dollars.

The Casemaker libraries now include rules, codes, case and statutory law for all 50 states and the federal system. Casemaker currently contains over 13 million legal documents. More than 400,000 lawyers have access to Casemaker and in the past year over 300 million documents have been retrieved. ☺

UK University of Kentucky College of Law

Mary J. Davis, Associate Dean for Administration & Faculty Development and Stites & Harbison Professor of Law

Great Teaching at the UK College of Law

The UK College of Law has always prided itself on its fine teaching faculty. We say regularly and with enthusiasm that we are a dedicated group of exceptional teachers who take seriously our obligations in the classroom. This year, the UK Alumni Association agrees; it has recognized the teaching accomplishments of two of our faculty. Professors Bob Schwemm and

Allison Connelly were chosen as two of the six UK Great Teachers for 2009.

The UK Great Teacher Award is given annually to professors who have demonstrated superior knowledge of their subject matter, have original and innovative classroom presentations, and demonstrate concern for students. Started in 1961, the UK Great Teacher Award is the oldest continuous award to recognize teaching at UK. It is all the more special because the nominations are made by current students. Professors Schwemm and Connelly exemplify what it means to be a "Great Teacher."

Professor Bob Schwemm has been a stalwart of the UK College of Law faculty since he joined us in 1975. Teaching Civil Procedure to a generation of attorneys, Prof. Schwemm is known for his ability to make the densest of procedural doctrine accessible. He also teaches Constitutional Law II and Statutory Civil Rights, two courses regularly over-subscribed due to Prof. Schwemm's popularity. Prof. Schwemm is a nationally known scholar in housing discrimination law, publishing widely in the field and speaking regularly at national conferences. He gives his time freely to student activities by, among other things, assisting the National Moot Court teams in preparation for competition. His reputation takes him to other law schools occasionally as a visiting professor (he is teaching at John

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KENTUCKY BAR NEWS

Marshall Law School in Chicago this semester), and we are relieved when he returns to UK.

Professor Allison Connelly helps make the practice of law less mystifying with her enthusiastic and energetic teaching in the UK Legal Clinic. The Legal Clinic is one of the most sought after courses as a result of Prof. Connelly's demanding yet engaging style. Prof. Connelly also teaches a Litigation Skills section, directs the Legal Writing Program and leads the Academic Success Program. She joined the faculty in 1996 as the UK Legal Clinic's Director and has quickly made her mark as a talented teacher. Not only is she gifted in the classroom, she is the faculty advisor to the Trial Advocacy Board and coaches its nationally competitive National Trial Teams. Prof. Connelly has a remarkably strong following of students, a testament to her hard work and dedication.

Over the years, UK College of Law students have benefited by learning from nine other UK Great Teachers: Robert

G. Lawson, 1973 and 2001; James R. Richardson, 1974; W. L. Matthews, 1978; Rutheford B. Campbell, 1980; Carolyn S. Bratt, 1985; Louise E. Graham, 1989; Martin J. McMahon, Jr., 1996; William H. Fortune, 2001 and Eugene R. Gaetke, 2005. Our students are fortunate to have such dedicated professors in the classroom. ☺



University of
Louisville
School of Law

By Jim Chen
Dean and Professor of Law

The University of Louisville proudly welcomes its newest faculty members: Ariana Levinson, Luke Milligan, and Shelley Santry. Professor Milligan joined the faculty in fall 2008; Professors Levinson and Santry will begin their appointments in fall 2009.

Ariana Levinson

Ariana Levinson joined the University of Louisville School of Law as a visiting assistant professor in 2007. At the close of 2008, she was invited to join the faculty as an assistant professor of law.

Before teaching at Louisville, Professor Levinson taught at the University of Southern California School of Law and at the UCLA School of Law. Professor Levinson has worked in labor law, working as a fellow for the AFL-CIO's Legal Department, and has clerked for the Honorable John G. Davies of the United States District Court, Central District of California and for the Honorable Myra C. Selby of the Supreme Court of Indiana.

Professor Levinson graduated *magna cum laude* from the University of Michigan Law School, where she was on the *Law Review*. Her teaching and research interests include labor law, alternate dispute resolution, lawyering skills, employment law, employment

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Additional information on Professor Levinson is available on her Law School homepage: http://www.law.louisville.edu/faculty/ariana_levinson.

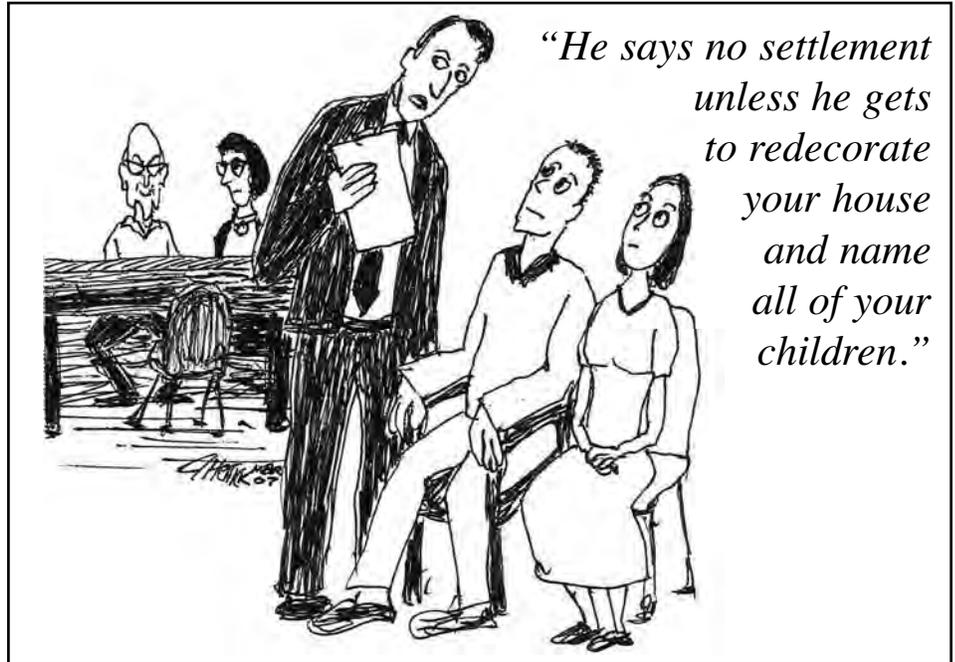
Luke Milligan

Luke Milligan joined the law faculty in 2008. He writes and teaches in the areas of criminal law, constitutional law and jurisprudence. Professor Milligan’s recent articles examine various relationships between executive officials and the press. His work has appeared in the *Boston University Law Review*, the *Cardozo Law Review*, the *Emory Law Journal*, and the *Washington and Lee Law Review*. In 2009 Professor Milligan will be a visiting lecturer at the University of Turku (Finland) and the University of KwaZulu-Natal (South Africa).

Before entering academia, Milligan practiced law at Williams & Connolly in Washington, D.C. He is a former law clerk to Judge Edith Brown Clement of the U.S. Court of Appeals for the Fifth Circuit and Judge Martin L.C. Feldman of the U.S. District Court for the Eastern District of Louisiana. While a law student at Emory University, Milligan was an articles editor of the law journal and worked with the Carter Center on post-conviction matters in Africa and Central Asia.

Additional information on Luke Milligan is available on his Law School homepage: http://www.law.louisville.edu/faculty/luke_milligan.

Legally Insane by Jim Herrick



Shelley Santry

Shelley Santry, an attorney at the Jefferson County Attorney’s Office and former Legal Aid Society attorney, has been named director of the University of Louisville’s new law clinic. Professor Santry will join the law school faculty in July 2009.

Shelley Santry graduated from Franklin Pierce Law Center in May 1992 and was awarded that school’s public service award upon graduation. She brings experience in both civil and criminal law to the directorship. Since 2001, she has prosecuted domestic violence, sexual assault and child abuse

cases for the county attorney’s office. From 1992 until 2001, Professor Santry’s work at the Legal Aid Society focused on representing low income clients in civil cases.

Professor Santry, who learned firsthand the importance of clinical work in her own education, considers such training vital: “I applaud U of L for having the vision to offer this critical ‘hands on’ opportunity to students. As a product of clinical education myself, I can attest the community will benefit by having prepared and confident law school graduates.”

■ In Memoriam

V. J. Alston	Louisville
Hollie Conley	Lexington
Charles Lee Hoefinghoff	Edgewood
Martin Jack Horwitz	Crescent Springs
Russell Cletus Maricle, Jr.	Manchester
Philip Martin Owens	Irvine
Charles S. Sinnette	Ashland
Penny Travelsted	Bowling Green
George V. Triplett	Owensboro
Dennis W. VanHouten	Villa Hills
Frank G. Ware	Florence

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IOLTA AND LEGAL SERVICES FACE FINANCIAL CRISIS

At the time the Kentucky IOLTA Fund and the Supreme Court of Kentucky began working on the initiative to amend Supreme Court Rule 3.830 to provide for a comprehensive IOLTA program with a “comparability” rule pertaining to the participating financial institutions, it was known that Kentucky was one of a few remaining states that did not have a mandatory IOLTA program. In fact, Kentucky is one of only twelve states that does not require mandatory participation in its IOLTA program if the law firm or attorney has a “pooled client escrow account” related to its practice. The thirty-eight states that have provided for mandatory IOLTA have experienced significant increases in their annual IOLTA revenues upon converting from an Opt-Out program.

Little did anyone involved in the initiative realize that before the amended Rule can be considered for approval and implementation, the interest rates paid on attorney IOLTA accounts would have

reached historic lows due to the Fed Fund Rate being reduced to a range of 0% to .25%. This has resulted in the IOLTA program experiencing recent decreases in its revenues of over 75%.

At this same time, the four regional legal services programs in the Commonwealth have received a cut in their legislative appropriation from \$1,500,000 to \$500,000. This past September, the IOLTA program made a \$1,000,000 collective grant to the four programs for fiscal year 2008-2009. For fiscal year 2009-2010, IOLTA’s grant will be in the range of only \$200,000 to \$300,000, with the distinct possibility that the grant will be even less for the following year. In addition, it is certain that the IOLTA program for the first time in its history will not make grants to the local bar pro bono programs throughout the state for fiscal year 2009-2010. The financial abilities of various sources to fund legal services to the poor is in a crisis mode and, given the present and

forecast state of the nation’s economy, it is a certainty that it will become worse before it begins to show any signs of improvement.

As a result of this downward spiral with regard to funding legal services to the indigent in Kentucky, there will be fewer people served with regard to their legal problems than ever before. Even prior to this decline in funds available to provide these services, it is estimated that at least one of every two qualified persons needing legal assistance is not served due to lack of financial resources.

There are currently two viable options to address these distressing circumstances that essentially are preventing the poor from having access to the state’s justice system that all of us in the legal community so strongly uphold. The first is to support the proposed amended Supreme Court Rule 3.830 that, when adopted and placed in effect, will over time greatly enhance the revenues to the IOLTA program, which in turn can be utilized to increase the amount of the IOLTA grants for legal services. Upon all of the attorneys and law firms, who are not exempt under the rule, actively participating in the IOLTA program, it will ultimately provide a significant benefit to the legal services programs. Secondly, there must be a unified fundraising campaign involving all of the attorneys and law firms throughout the state to raise a substantial sum of money to help the legal services programs weather this crisis. It is imperative that the legal community as a whole provide its assistance to help meet these ever-increasing needs.

We all realize that to be a licensed lawyer in Kentucky is an invaluable privilege and one that we cannot take lightly in these unprecedented economic times in which we live. Judge Learned Hand has famously declared, “If we are to keep our democracy, there must be one commandment: thou shalt not ration justice.” As lawyers, we must care enough to come together and assume this financial obligation to provide accessibility to our system of justice. To do otherwise is to turn our backs on those who most need our help during these very challenging times. ☺



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**SUMMARY OF MINUTES
KBA BOARD OF GOVERNORS
MEETING
NOVEMBER 21, 2008**

The Board of Governors met on Friday, November 21, 2008. Officers and Bar Governors in attendance were *President B. Bonar, President-Elect C. English, Jr., Vice President B. Davis, Immediate Past President J. Dyche, Young Lawyers Section Chair S. Laufenberg, Bar Governors 1st District – D. Myers, J. Freed; 2nd District – R. Sullivan; 3rd District – R. Hay, G. Wilson; 4th District – D. Ballantine, D. Farnsley; 5th District – A. Britton, F. Fugazzi, Jr; 6th District – D. Kramer, T. Rouse; and 7th District – B. Rowe, W. Wilhoit. Bar Governors absent were: J. Harris, Jr.*

In Executive Session, the Board considered thirteen (13) default discipline cases involving seven attorneys and two (2) restoration cases. Malcolm Bryant of Owensboro, Steve Langford of Louisville, and Dr. Robert Strode of Frankfort, non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

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

- Heard status reports from Attorneys' Advertising Task Force, Long Range Planning Committee, Kentucky Lawyer Assistance Program (KYLAP), Member Services Committee, Office of Bar Counsel and Rules Committee.
- Accepted the Fiscal Year June 30, 2008 Audit Report prepared and presented by Anneken & Moser.
- Approved the City of Lexington as the

location for the 2011 Southern Conference of Bar Presidents and authorized appointment of a host committee to be named at a later time.

- Young Lawyers Section Chair Scott D. Laufenberg reviewed the progress of the U@18 project. The project received a grant in the amount of \$3,500 from the Kentucky Bar Foundation for reprinting 5,000 U@18 brochures. He reported that the Board of the Kentucky Education Association (KEA) has endorsed the project. KEA will assist the section in accessing the schools with the project, and May has been the target month to get the brochures distributed. Mr. Laufenberg also reported on the status of the Brief Insights joint project between the KBA and the section. The 10-minute clips of law practice related material will be available on the web for review at any time at no cost. An ad hoc committee has been working on the logo and website design for this project.
- Rule of Law Symposium Committee Co-Chair Charles E. Ricketts, Jr. addressed with the Board the focus and schedule for the Symposium scheduled for February 6, 2009 at the Kentucky State University Campus.
- Approved the job descriptions for the Director of Communications and Publications & Advertising Manager.
- Ratified the employment of Amy Carman as Director of Communications.
- Approved the appointment of Margo Grubbs of Covington for a three (3) year term to the Bar Center Board of Trustees.
- Approved the reappointment of Michael T. Lee and Charles Wisdom each for a four (4) year term expiring December 31, 2012 to the Joint Local Federal Rules Commission.
- Approved the 2009 Holiday Schedule for the KBA Staff.
- Mr. Deckard reported that Bruce K. Davis of Lexington was unopposed for the Office of President-Elect. Mr. Davis will take office on July 1, 2009. Mr. Deckard further reported that two petitions had been filed for the Office of Vice President, one from R. Scott Madden of Manchester and one from Margaret E. Keane of Louisville. Ballots for the statewide election for the Office of Vice President will be mailed to the entire membership on December 15, 2008.
- Mr. Deckard reported that under the Board's policy the KBA travel reimbursement will be increased to \$.43 per mile.
- Approved the election of officers for the Bankruptcy Law Section.
- Approved a \$2,000 contribution scholarship for the U.S. Bankruptcy Seminar from the Bankruptcy Law Section funds.

To KBA Members

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

**May 15-16, 2009
June 9, 2009**

To schedule a time on the Board's agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795.

Earn CLE credit by attending these University of Louisville seminars!

- **Sexual Harassment in the Workplace: Education and Prevention**

Friday, March 27, 8:30 a.m. 1:30 p.m.

- **Wage and Hour Law: Public and Private Sectors**

Friday, April 10, 8:30 a.m. 1:30 p.m.

- **Basic Workplace Mediation**

Thursday-Friday, June 4-5, 8:30 a.m. 4:30 p.m.

- **Costing the Labor Agreement**

Friday, June 19, 8:30 a.m. 1:30 p.m.

For fees, descriptions, locations and instructor bios, please visit louisville.edu/labormanagement or call UofLs Delphi Center for Teaching and Learning at (502) 852-6456.

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(Credit hours are pending review by the KBA CLE Commission.)



WHO, WHAT, WHEN & WHERE

ON THE MOVE



M. Scott McIntyre

Baker & Hostetler LLP has announced that **M. Scott McIntyre**, a lawyer associated with the firm's Cincinnati office, has been elected to partnership. McIntyre concentrates his practice in employment and labor law litigation and counseling, civil rights litigation, and appeals. He received his bachelor's degree, *summa cum laude*, from Thomas More College in 1997 and earned his law degree, *cum laude*, from the University of Kentucky College of Law in 2001.



Paige L. Ellerman

Taft Stettinius & Hollister LLP proudly announces the election of **Paige Leigh Ellerman** as a new partner in the Cincinnati office. Ellerman practices in Taft's business restructuring, bankruptcy and creditors' rights practice group and is board certified in business bankruptcy law by the American Board of Certification. She focuses her practice on complex business restructuring and Chapter 11 bankruptcy cases.



Jason L. Hodges

The law firm of **Vorys, Sater, Seymour, and Pease LLP** is pleased to announce that it has named **Jason L. Hodges** as a new partner in the firm's Cincinnati office. Hodges counsels clients on corporate governance, business formation and entity selection, mergers and acquisitions, and general business matters and has experience in bank regulatory representation and securities law issues.

Michael S. Vitale has joined **English Lucas Priest & Owsley LLP** in



Michael S. Vitale

Bowling Green as a partner. He previously served as the partner in charge of Wyatt Tarrant & Combs LLP's Bowling Green office. Vitale concentrates his practice in areas of product liability, labor and employment litigation defense, commercial litigation, business planning, and commercial transactions. He received a bachelor's degree and a J.D. from St. Louis University and is licensed to practice law in Kentucky and Tennessee.



Ross T. Ewing

The **Julie Butcher Law Office**, in Lexington, is proud to announce that **Ross T. Ewing** has joined the firm as an associate and will primarily serve the firm's family law clients. Prior to joining the firm, he was a staff attorney to Fayette Family Court Judge Jo Ann Wise. Ewing graduated *Phi Beta Kappa* from the University of Kentucky in 2005 and earned his J.D. from the University of Kentucky College of Law in 2008.

J. Robert Norris is pleased to announce the opening of his law office in Glasgow at 108 West Front Street. Correspondence should be mailed to

P.O. Box 2427, Glasgow, Kentucky 42142-2427. The telephone number as his law office is (270) 629-3838.



Jessica Case



Clark Case

Jessica and Clark Case are pleased to announce the opening of their law firm, **Case & Case, LLP**. The firm's offices are located at 421 West Second Street in Lexington. Jessica and Clark will concentrate their practice in the area of general com-

mercial counseling and litigation, with a focus on small business services related to their experience in employment, equine, and construction law. They may be reached at (859) 619-5163.



Jackie M. Matheny, Jr.

The Paducah firm of **Denton & Keuler LLP** is pleased to announce that **Jackie M. Matheny, Jr.** has become associated with the firm. He is a graduate of Ohio Northern University's Pettit College of Law and has been admitted to practice in Kentucky.



Jamie L. Wilhite

The Lexington law firm of **Sturgill, Turner, Barker & Moloney, PLLC** is pleased to announce that **Jamie L. Wilhite** and **Derrick T. Wright** have joined the firm as associates. Wilhite will be practicing in the insurance defense and workers' compensation areas. Wright will be practicing in the areas of public entity and governmental defense.



Derrick T. Wright

The Louisville law firm of **Weber & Rose PSC** is pleased to announce that



W. Brian Burnette

W. Brian Burnette has joined the firm. Burnette received a B.A. from the University of Kentucky earned his J.D. from the University of Louisville School of Law. He will continue to concentrate his practice in real estate foreclosures and other creditor matters.

The Owensboro law firm of **Sullivan, Mountjoy, Stainback & Miller, PSC** has named **Tyson A. Kamuf** and **Mark W. Starnes** as shareholders and directors of the firm. Kamuf, an Owensboro



Tyson A. Kamuf

native, is a *magna cum laude* graduate of the University of Kentucky and a 2003 *cum laude* graduate of the University of Kentucky College of Law, Order of the Coif. He has a general civil practice with a concentration in utility law. Starnes graduated with honors from the University of Kentucky in 1999 with a B.B.A. and received his J.D. in 2003 from the University of Kentucky College of



Mark W. Starnes

Law. His practice is focused on the areas of federal and state taxation, estate planning, estate/trust administrations, business planning, commercial and structured transactions, and nonprofit organizations.

Louisville attorney **John R. Crockett, III** has been elected chairman of **Frost Brown Todd**. On January 1, 2009, he assumed his role, and on January 5, 2009, Frost Brown Todd merged with Indianapolis-based Locke Reynolds. **C. Edward Glasscock** handed over management responsibilities and assisted in the transition of leadership. Glasscock has been named chairman emeritus in recognition of his lengthy service to the firm and leadership as managing member for over 30 years. He will provide guidance and advice to firm leadership and will also continue his leadership of the firm's mergers and acquisitions practice. John Crockett will assume his new role after 18 years at Frost Brown Todd, where he has focused primarily on product liability, mass disaster litigation, and commercial and construction litigation. He is a graduate of the University of North Carolina and University of Kentucky College of Law. As chairman, Crockett will be externally focused, driving the firm's growth and strategic planning, merger opportunities, ancillary business ventures, and new business opportunities and will be a member of the firm's executive committee. Frost Brown Todd attorneys **Debbie Reiss Hardesty** and **Sheryl G. Snyder**

have also been elected to the firm's executive committee. Other members on the committee include **Charles M. Pritchett** of the Louisville office and **Paul E. Sullivan** of the Lexington office. Hardesty, a firm member since 1987, practices out of the Louisville office. She focuses in employee benefits, executive compensation and corporate matters, with particular attention to business management and ownership succession projects. Snyder also practices out of Frost Brown Todd's Louisville office and represents businesses in litigation. He is chair of the firm's appellate practice group and is co-author, with two other members of the firm, of the treatise *Kentucky Appellate Practice* (West).

Frost Brown Todd is also pleased to announce the appointment of six new members to its Kentucky offices: **J. Christopher Coffman**, **Roger R. Cowden**, **Jan de Beer**, **Tom Flanigan**, **Chris Karo** and **David A. Smart**. Coffman practices in Louisville and focuses on civil and criminal tax controversy matters and white-collar criminal defense. He is a graduate of Vanderbilt University Law School. Coffman has represented clients before the United States Tax Court. Cowden practices in the areas of litigation, regulatory, real

estate, employment, and legislative law in Lexington. Prior to joining the firm, Cowden served as a senior corporate attorney for East Kentucky Power Cooperative, Inc. (EKPC) in Winchester. He received both his B.A., with distinction, and his J.D. from the University of Kentucky. In the firm's Lexington office, de Beer concentrates his practice in the area of international regulation and trade. He has experience in counseling clients as to their export licensing obligations under the Department of Commerce's Export Administration Regulations and the Department of State's International Traffic in Arms Regulations. Flanigan practices in Lexington and concentrates in corporate and commercial law, mergers and acquisitions, debt and equity financing, and commercial litigation. Karo, a former attorney with the Florida Department of Insurance, also practices in Lexington. He focuses on insurance regulatory and corporate matters for insurers, insurance agents and agencies, third party administrators, and service contract providers before regulatory agencies in all 50 states. Smart practices in the area of business/corporate and energy law. Prior to joining the firm, he served as general counsel for EKPC in Winchester and will continue serving in that role while at Frost Brown Todd.

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WHO, WHAT, WHEN & WHERE



Grahmn N. Morgan

Dinsmore & Shohl LLP is pleased to announce five new partners: **Tip Depp**, **Melissa L. Korfhage**, **Grahmn N. Morgan**, **Ashley C. Pack**, and **Catherine S. Wright**.

Depp's practice in Louisville focuses on commercial litigation and administrative law, with an emphasis on telecommunications and public utility law. He received his B.A. from Tulane University in 1996 and earned his J.D. from the University of



Catherine S. Wright

Minnesota Law School in 2000.

Korfhage's practice in Cincinnati is concentrated in mass tort and toxic tort litigation. She received her B.A. from Bellarmine College in 1997 and earned her J.D. from the University of Louisville School of Law in 2000. Morgan has represented clients in complex matters since joining the Lexington office of Dinsmore & Shohl LLP in 2002, including the defense of companies and their officers in class action, product liability, fiduciary, and contract litigation. He received his B.S. from the University of Louisville in 1998 and earned his J.D. from

California Western School of Law in 2001. In Pack's practice in both West Virginia and Kentucky, she works with human resource managers and in-house counsel to provide both labor and employment advice and litigation support. She also practices media law. Pack received her B.A. from the University of Kentucky in 1998 and earned her J.D. from the University of Kentucky College of Law in 2001. Wright, of Lexington, provides employment advice to human resource managers and in-house counsel. She also works with nonprofit entities that receive federal funding and has experience in the area of education law. Wright received her B.A. from the University of Kentucky in 1991 and earned her J.D. from the University of San Diego School of Law in 1996.



Jonathan T. Salomon

The Louisville law firm of **Tachau Meek PLC** is pleased to announce that **Jonathan T. Salomon** has joined the firm as an associate. Salomon is a 1997 graduate of Washington University in St. Louis and a 2001 graduate of New York University School of Law. He previously practiced with the New York office of Cleary Gottlieb Steen & Hamilton LLP, where

he represented financial institutions and public corporations in a wide variety of matters including securities and business litigation, International Chamber of Commerce arbitrations, and investigations conducted by the Securities and Exchange Commission and various United States Attorneys Offices.



Joshua R. Denton

Bass, Berry & Sims PLC is pleased to announce that **Joshua R. Denton** has been elected to membership in the firm's Nashville office. Denton concentrates on antitrust and trade practices litigation and counseling, class action litigation, real estate litigation, complex commercial litigation, and debtor-creditor relations. He graduated from the University of Kentucky with a B.A. and earned his J.D. from the University of Kentucky College of Law. He is admitted to practice law in Tennessee, Kentucky, and Indiana.



Jason Matuskiewicz

The **Frank Jenkins Law Office** is pleased to announce that **Jason Matuskiewicz** has joined the firm as an associate and will concentrate his practice in personal injury, workers' compensation, and mass torts. Matuskiewicz received his B.A. from the University of Kentucky and earned his J.D. from the University of Kentucky College of Law.



Michael P. Bartlett

The law firm of **Taliaferro, Shirooni, Carran & Keys, PLLC** is pleased to announce that **Michael P. Bartlett** has joined the firm as an associate. Bartlett received his B.S. from the University of Louisville and earned his J.D. at the Salmon P. Chase College of Law. He will practice primarily in the area of personal injury litigation.

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Christopher S. Turner



Megan R. Smyth

the areas of civil litigation, insurance defense, and employment law.



Donald C. Wells

corporate-wide for National City. National City has Private Client offices in 10 states. Wells will also continue his local management position and remain in Louisville.



Lindsay P. Graves

Graves received her B.A. from Indiana University Bloomington and earned her J.D. from the University of Louisville School of Law.

Barbara Kriz, Christopher R. Jenkins, H. Caywood Prewitt, Jr., and David C. Jones are pleased to announce the opening of **Baker, Kriz, Jenkins, Prewitt & Jones, PSC**, located in Lexington at 200 West Vine Street, Suite 710. Baker will continue to work with the new firm in an Of Counsel position. **Chris Turner** and **Megan Smyth** are associated with the new firm which concentrates in the areas of civil litigation, insurance defense, and employment law.

Donald C. Wells, senior vice president and manager of the fiduciary group for National City's Private Client Group in Kentucky, is assuming the additional responsibility of overseeing the estate settlement function

The Louisville law firm of **Vaughn & Associates, PLLC** is pleased to announce that **Lindsay Prater Graves** has joined the firm as an associate. She will be practicing in the area of real estate litigation.



Scott M. Brown



Tonya M. Clemons

Kentucky College of Law in 2005.

The Louisville law firm of **Seiller Waterman** is pleased to announce that **Paul J. Krazeise, Jr.** has become Of Counsel with the firm. He will practice in the areas of bankruptcy, financial restructuring, and taxation. Most

Ferreri and Fogle, PLLC is proud to announce **Scott M. Brown** was named partner in the firm's Lexington office, effective January 1, 2009. The firm is also pleased to announce the addition of **Tonya M. Clemons** to its Lexington office. She joined the firm in 2008 as an associate. Clemons graduated from Hanover College in 2002 with her B.A. and earned her J.D. from the University of Kentucky College of Law in 2005.



Paul J. Krazeise, Jr.

Attorney for the Offices of the United States Attorneys for the Eastern and Western Districts of Kentucky. Krazeise earned his J.D. from the University of Louisville School of Law.

Jeffrey A. Savarise, Thomas J. Birchfield, Craig P. Siegenthaler, and George D. Adams have joined **Fisher & Phillips LLP** in Louisville. All four were formerly partners in the labor and employment practice group of the Louisville-based law firm of Greenebaum Doll & McDonald PLLC. Joining them as Of Counsel is Katherine A. Hessenbruch, who formerly held that

recently, he completed 19 years of service as a senior attorney with the Office of IRS Chief Counsel in Louisville, including appointments and duties as a Special Assistant United States

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Psychological & Neuropsychological Testing
Sex Offender • Litigation Support Services
Will Contest • Workers' Compensation

WHO, WHAT, WHEN & WHERE

position in Greenebaum Doll & McDonald's labor and employment practice group. Birchfield, who represents a wide variety of clients in Kentucky and elsewhere, will be the managing partner of the Louisville office. Savarise, who continues as national outside labor and employment counsel for Toyota Motor Engineering & Manufacturing North America, Inc. (TEMA), will chair the firm's automotive manufacturing practice group. Adams, Siegenthaler and Hessenbruch also will continue representing TEMA and a wide variety of other clients in various state and federal jurisdictions. All five attorneys are well versed in providing preventive planning and employment training programs tailored specifically to the automotive industry. Further expansion in the Louisville office, located at 220 West Main Street, Suite 2000, is expected soon.

The law office of **McNeely, Stephenson, Thopy & Harrold** has announced the opening of its first satellite office at 611 Spring Street in New Albany, Indiana. **Larry Church**, formerly with the firm of Wyatt, Tarrant & Combs, will be the partner in charge of the newly established office. The primary focus of this office will be client representation in the areas of litigation and corporate law.

Winfrey P. Blackburn, Jr. has announced that the Louisville law firm **Blackburn Hundley & Domene** was renamed **Blackburn Domene & Burchett, PLLC**, effective January 1, 2009. The firm will continue to focus its practice in insurance, commercial, prod-

ucts liability, and employment-related defense litigation. Its mailing address, telephone number, and all other contact information will remain the same.

IN THE NEWS



Donald C. Wintersheimer

Retired Kentucky Supreme Court Justice **Donald C. Wintersheimer**, of Covington, was recognized as the Northern Kentucky Bar Association's Distinguished Lawyer of the Year at the annual Christmas Dance in December 2008. Justice Wintersheimer served on the Kentucky Supreme Court for twenty-four years and earlier on the Court of Appeals for seven years. He is currently writing a memoir of his time on the Supreme Court. Justice Wintersheimer is an adjunct faculty member of the Chase College of Law at Northern Kentucky University and also teaches at Thomas More College in Crestview Hills.



Charles E. English, Sr.

Charles E. English, Sr. was recently re-elected to a four-year term on the Judicial Nominating Commission. In his role on the Commission, English will help select nominees to the Kentucky Supreme Court and Court of Appeals. He has served on the commission since 1985.

English, a founding partner of the Bowling Green law firm of English Lucas Priest & Owsley LLP, has long been committed to professional service. He is a member of the American Bar Association (ABA) House of Delegates and the ABA's Standing Committee on the Federal Judiciary. He is a life member of the Judicial Conference for the U.S. Court of Appeals for the Sixth Circuit.

Mary Burns, trust counsel at Johnson Trust Company, was recently elected to the board of directors of the Women's Crisis Center of Northern Kentucky. The organization's mission is to lead the community to the social change needed to end domestic violence, rape, and sexual abuse. In addition, Burns is on the board of directors of The Carnegie Visual and Performing Arts Center, as well as the Cincinnati Estate Planning Council and the Estate Planning Council of Northern Kentucky.

Stacy Hege Tapke, of Covington, recently began her term as president of Legacy, a young professionals' organization serving the Northern Kentucky/Greater Cincinnati Region. Tapke also serves as the chair of the Northern Kentucky Bar Association's Young Lawyer's Section and on the executive committee of the Kentucky Bar Association's Young Lawyers Section. She practices with the firm of Edmonson & Associates.



Thomas A. Prewitt

The Fort Mitchell office of Graydon Head is pleased to announce that **Thomas A. Prewitt**, a member of firm's executive committee and chair of the firm's commercial litigation and dispute resolution client service department, has been appointed to the Northern Kentucky University Research Foundation Board.

Charles H. Pangburn III, a member of the Fort Mitchell law firm of Hemmer Pangburn DeFrank PLLC, was recently elected to a two-year term as the secretary/treasurer of the Northern Kentucky

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- Corporate Labor & Employment In-house Counsel; United States Sixth Circuit Court of Appeals Staff Attorney; Private practice; Arbitration and Litigation, Employee Relations Consultant
- Chair - KBA Corporate In-house Counsel Division 2008-09
University Adjunct Faculty-Business Law/HR Management

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WHO, WHAT, WHEN & WHERE

Convention & Visitors Bureau, the organization responsible for promoting conventions and tourism in Boone, Campbell, and Kenton Counties.



John G. Cobey

Cohen, Todd, Kite & Stanford, LLC is pleased to announce member **John G. Cobey** has been elected CincySmiles Foundation President. For nearly 100 years, the CincySmiles Foundation has been

providing access to professional dental care for children and families who need it most in the Greater Cincinnati community.

Cincinnati's Hammond Law Group has announced that **Sherry L. Neal**, partner, has contributed a chapter on the history and challenges of immigration law enforcement for the new edition of *Inside the Minds: Working with Government Agencies in Immigration Law*. An Aspatore Books publication, *Inside the Minds* is sold at Barnes & Noble, Borders and other major bookstores nationwide.

Donna H. Terry has been elected as a Fellow of the American College of Workers' Compensation Lawyers. She will be inducted at a meeting sponsored by the Workers' Compensation Committees of the Tort Trial & Insurance Practice and the Labor and Employment Sections of the American Bar Association this month. Judge Terry recently retired as Chief Administrative Law Judge of the Kentucky Department of Workers' Claims.



Mary G. Eaves

Greenebaum Doll & McDonald PLLC is pleased to announce that **Mary G. Eaves**, a member in the firm's Louisville office, has been elected chair of the board of directors of

Family & Children's Place, the newly named social service agency resulting from the merger of The

Family Place: A Child Abuse Treatment Agency, Inc. with Family & Children First, Inc. Eaves had served on the board of directors of The Family Place: A Child Abuse Treatment Agency, Inc. since July 2004.



Alfred S. Joseph, III

The Greater Kentucky Chapter of the March of Dimes presented **Alfred S. Joseph, III** with the 2008 Commercial REACH Award at the 8th annual March of Dimes Commercial REACH Awards Breakfast at Churchill Downs. Joseph, counsel with Stites & Harbison in Louisville, was recognized by a blue ribbon committee of real estate professionals for his contributions to commercial real estate and to the community.

Kevin Weaver, a civil litigation and workers' compensation defense attorney in Lexington law firm of Sturgill, Turner, Barker & Moloney, PLLC, has been selected as a Fellow of the Litigation Counsel of America. Weaver

has also been selected as his firm's managing member-elect.

Governor Steve Beshear has appointed Lexington attorney **R. Winn Turney** as Kentucky Department of Aviation Commissioner. Turney, a member of the Kentucky Aviation Association and a former member of Senior Squadron 221 of the Civil Air Patrol, has long been involved in aviation activities. He is a former member of the Lexington-Fayette Urban Airport Board and was also vice chairman of the Scott-Fayette Airport Board (Georgetown/Marshall Field) from its inception. Turney is also a founding/charter member of the official Aviation Museum of Kentucky.

Sarah M. Jackson, executive director of the Kentucky Registry of Election Finance, is now president of the Council on Governmental Ethics Laws (COGEL). Jackson, of Frankfort, was elected to the steering committee of the organization at the end of September of 2007 and was immediately thereafter selected to serve as president-elect. Jackson will serve as president of COGEL for calendar year 2009.

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

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

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

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

WHO, WHAT, WHEN & WHERE

At its December 17, 2008 meeting, the Kentucky Registry of Election Finance unanimously re-elected **Craig C. Dilger** to serve as its chairman, marking a second consecutive term for the Louisville attorney. Dilger was first appointed to the Registry by former Governor Ernie Fletcher. He was re-appointed to the Registry by Governor Steve Beshear on October 29, 2008.

John Walters, of Lexington, has received an individual Golden Gavel Award from Westfield Group. The firm, Golden & Walters, PLLC, has also been presented with an award.



Britain H. Bryant

The readers of the *Virgin Islands Daily News*, in the United States Virgin Islands, recently voted to present **Britain H. Bryant** and his law office with an award.

Bryant, a graduate of the University of

Louisville and a member of the Kentucky Bar since 1965, practices at the law firm of Bryant Barnes Beckstedt & Blair, LLP in Christiansted, Virgin Islands.



Mitchell Charney



Melanie Straw-Boone



Martha Rosenberg



Louis Waterman

The Kentucky Chapter of the American Academy of Matrimonial Lawyers is pleased to announce the election of new officers who will serve until the end of 2010: **Mitchell Charney**, Goldberg & Simpson, Louisville, president; **Melanie Straw-Boone**, Pregliasco Straw-Boone, Louisville, president-elect; **Martha Rosenberg**, Lexington, vice-president; **Mark Ogle**, Ft. Mitchell, secretary; and **Louis Waterman**, Louisville, treasurer.

AT THE KBA



Amy Carman

The Kentucky Bar Association has selected veteran communication specialist **Amy Carman** of Frankfort to serve as the new KBA Director of Communications.

A native of Murray, Carman graduated

with honors from Western Kentucky University with majors in journalism and government. She has directed com-

munications for legislative leaders in both the Kentucky House of Representatives and the Senate in addition to serving as the Kentucky Community and Technical College System's Public Relations Manager. Carman is a former executive producer of KET's *Kentucky Afield* weekly television program and led public relations efforts in support of the construction of Frankfort's *Thomas D. Clark Center for Kentucky History*. Carman is also a former reporter for *The (Frankfort) State Journal* and the *Bowling Green Daily News*.

A Legacy of Liberty: Celebrating Lincoln's Bicentennial

2009 MARKS THE BICENTENNIAL OF THE BIRTH OF ABRAHAM LINCOLN, regarded by many as our nation's greatest and most eloquent president.

Many American presidents have been lawyers—Thomas Jefferson, Andrew Jackson, Grover Cleveland, William Howard Taft, Gerald Ford, Bill Clinton, and, of course, Abraham Lincoln among them. Barack Obama is the 44th president and the 26th lawyer-president.

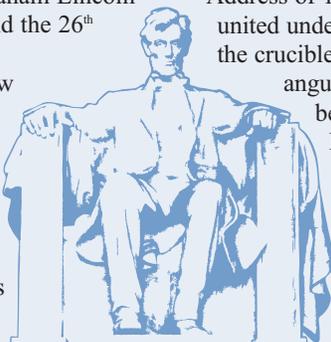
Admitted to the bar in 1836, Lincoln practiced law for nearly 25 years and his years as a lawyer significantly affected his actions and his oratory. Often referred to as the "prairie lawyer" for his humble beginnings, Lincoln tried more than 5,000 cases, frequently arguing before the Illinois Supreme Court and once before the U.S. Supreme Court.

In the famous *Almanac* murder trial, Lincoln was reported to have debunked the testimony of a prime witness by referring to an almanac and thus winning the case for his client, Duff Armstrong. The pivotal moment came when Lincoln introduced an almanac to discredit the witness who claimed the moon lay overhead and offered enough light for

him to identify Armstrong as the assailant, while the almanac stated the moon had not moved overhead until an hour after the alleged crime.

The ways in which Abraham Lincoln has left a lasting impression and impact on our nation are many. In his Gettysburg Address of 1863, Lincoln articulated his vision of an America united under the Constitution. The union would be forged in the crucible of a "great civil war" and tested by the shared anguish of national sacrifice. For Lincoln, this vision begins – fourscore and seven years before – with the Declaration of Independence. The Declaration marks the origins of "a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal."

What is the role of law in fulfilling the promises of the Declaration of Independence? For Law Day 2009, we encourage efforts to commemorate Lincoln by exploring this rich and resonant theme – *A Legacy of Liberty*.



A LEGACY OF
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- Go to the Kentucky Bar Association website
<http://www.kybar.org>
- Click on the "Login" button on the far left of the menu bar
- Enter your KBA Attorney Number in the first field (Username)
- Enter your Password in the second field
(Your password will either be your date of birth in the form 01/01/19xx or the password you have assigned yourself.)
- Click on the "Log In" button
After you have logged in, you will notice that the button to the far left on the menu bar now says "Logout" and your name will be on the menu bar to the right
- Casemaker® is the first item on the "Resources" menu
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2009

KENTUCKY BAR ASSOCIATION ANNUAL CONVENTION

JUNE 10-12

NORTHERN KENTUCKY CONVENTION CENTER

COVINGTON, KENTUCKY



FROM TRUTH TO JUSTICE

2009

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A Founding Father...

A Literary Superstar...

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THE 2009 KENTUCKY BAR
ASSOCIATION ANNUAL
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Scott Turow - Author & Attorney

WEDNESDAY, JUNE 10

Mr. Turow will make the keynote address and participate with other authors and attorneys in a panel discussion on how to "not write like a lawyer."

Tim O'Brien - Award Winning Journalist & Attorney

THURSDAY, JUNE 11

Mr. O'Brien covered the U.S. Supreme Court for more than twenty years for ABC News and received an Emmy for his contributions to CNN's coverage of 9/11.

Thomas Jefferson - President, Attorney, Author, Founding Father

FRIDAY, JUNE 12

Mr. Jefferson will provide a presidential perspective on our theme "From Truth to Justice."

Much More Awaits...

Please join us in "Bridging the Span" from the past to the future, and "From Truth to Justice" at our 2009 KBA Annual Convention, June 10-12.

Scott Turow

Thomas Jefferson

Tim O'Brien



Photo courtesy of NKY Convention & Visitors Bureau