

KENTUCKY BAR ASSOCIATION

# B&B

BENCH & BAR MAGAZINE

SEPTEMBER/OCTOBER 2018



IN THIS ISSUE:  
**CRYPTOCURRENCY**



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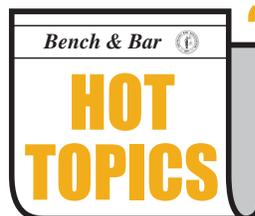
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**"A Little Party Never Killed Anybody: How Courts Should Abandon Partisan Gerrymandering Claims to Allow a Political Solution"**

BY COREY THOMAS

This article has been placed on the [KBA website](#) under the [Hot Topics](#) page.

# Giving Back:



*“I’ve learned that you shouldn’t go through life with a catcher’s mitt on both hands. You need to be able to throw something back.”* –MAYA ANGELOU

**A**s KBA President, I recently sent an email to all Kentucky attorneys encouraging a sustainer contribution to the Kentucky Bar Foundation (KBF) by checking the box at the bottom of our dues statement and contributing \$30. First of all, thank you to all of you who did so. But just why is it that the KBF is worthy of that support?

As a Kentucky attorney, I am honored to be a Fellow and board member of the Kentucky Bar Foundation (KBF), which represents the very best of our profession. The KBF is a nonprofit organization serving as the charitable arm of Kentucky’s legal community. Its mission is to further the public’s understanding of the judicial system and the legal profession through programs and philanthropic partnerships that help those in need. The KBF support has positively affected the lives of many citizens of our Commonwealth and furthered the administration of justice through programs that include:

- educating the public about law and the justice system;
- helping at-risk children;
- providing funding to assist abused women and children;
- assisting veterans with legal problems by funding clinics offering free legal services;
- providing funding to educate high school seniors about abuse of credit; and
- preserving legal history.

Since 1988, the Kentucky Bar Foundation has awarded grants totaling more than \$3.5 million to agencies promoting access to justice and law-related education for Kentuckians. In 2018, the KBF awarded \$250,000 in grants to worthy organizations, from a sexual assault center in Paducah to an educational program in Pikeville. Next year is expected to be another great year. The KBF could not support these efforts without the generosity of Kentucky attorneys and judges.

Although there are many examples of the good resulting from KBF grants, a couple of examples are below.

## **CATHOLIC CHARITIES’ IMMIGRATION LEGAL SERVICES**

Leonardo was imprisoned in Cuba in the 1970s. He eventually came to the United States in 1989 as a refugee and worked for several years with the Social Security number and work authorization he was provided. He never felt the urgency to apply for permanent residence. Then, depression and mental illness gripped him and he fell in and out of employment, and in and out of homelessness. Leonardo eventually found help, but needed to show eligibility for services by providing his green card, which he did not have. With the assistance of



**BY: DOUGLAS C. BALLANTINE**  
KBA PRESIDENT

# Kentucky is home to some champion fighters.



---

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Kentucky Bar Foundation funding, Catholic Charities has been able to assist Leonardo to secure the documents needed to submit an application for permanent residence. Soon he will be eligible for housing and mental health services to get back on his feet.

### ELDERSERVE, INC.

The Kentucky Bar Foundation provided a \$5,000 grant to help with ElderServe, Inc.'s Crime Victim Services (CVS) Program. CVS helps nearly one thousand older crime victims each year, including Mr. S, an 85-year-old man diagnosed with dementia, who, according to the neighbor who initially contacted CVS, was being financially exploited and robbed by drug users and prostitutes in his neighborhood. Mr. S was a Vietnam war veteran and former LMPD officer. His wife had already passed and he had limited interaction with family and friends. Although Mr. S had significant assets, he was only receiving limited assistance from the state guardianship program, in addition to some in-home care. Mr. S had no television, running water, or working phone. Mr. S received a check once a month for personal allowances that was frequently stolen from him. CVS and Guardianship Services worked with the state guardianship program to assume guardianship for Mr. S. The same day the guardianship was appointed, a social worker visited Mr. S to assess his living conditions and check on his health. The social worker found that Mr. S had significant cognitive impairment, had been eating food that was improperly stored, had standing water in the basement, was using a paint can as a toilet, had no heat, and had bed bugs. Emergency vouchers were obtained for immediate needs for clothing, food, and personal hygiene items. Mr. S was subsequently moved to a long-term care facility where he is receiving appropriate care.

There are a number of ways to get involved with the Kentucky Bar Foundation, ranging from monetary contributions to volunteer opportunities. The KBF's website, [www.kybarfoundation.org](http://www.kybarfoundation.org), contains a wealth of information about ways you can give back to the community through the KBF. Two ways by which you can contribute to the KBF are the Fellows program and membership in the Partners for Justice Society.

### FELLOWS

I am proud to be among the more than 1,000 Fellows of the Kentucky Bar Foundation. Last year, 20 more attorneys became Fellows, all of whom are recognized on pages 48-49 of this issue. I encourage you to consider becoming a Fellow as well. The KBF Fellows Program recognizes those members of the Kentucky Bar who have shown support for the KBF's mission through their success in the practice of law and their generosity in contributing to the KBF. Attorneys can become a KBF Life Fellow through a one-time contribution of \$1,250. Alternatively, attorneys may become a Fellow through an initial contribution of \$300 and a pledge to contribute an additional \$300 per year for the subsequent four years. You may also honor an esteemed colleague's past or present contributions to the legal profession with a Life Fellow membership.

### PARTNERS FOR JUSTICE SOCIETY

I am also fortunate to work at a firm, Stoll Keenon Odgen PLLC, which is a member of the Kentucky Bar Foundation's Partners for Justice Society. Members of the Partners for Justice Society are individuals, firms, or other groups who have made a major gift to the KBF. There are more than 90 members of the Partners for Justice Society. Levels of giving range from \$5,000 to \$75,000.

We are fortunate to be members of an incredible profession that holds great power. With such power comes a responsibility to do not only well for ourselves, but also good for others. Please join me in supporting the Kentucky Bar Foundation, which does so much good for so many throughout our state. Let's "throw something back" to those who are less fortunate in our Commonwealth.

To learn more about becoming a KBF Fellow, a Partner for Justice, or another contributor/volunteer, contact Kentucky Bar Foundation Executive Director Guion Johnstone at (800) 874-6582 or visit [www.kybarfoundation.org/donate](http://www.kybarfoundation.org/donate).

## Terms Expire on the KBA Board of Governors

On June 30 of each year, terms expire for seven (7) of the fourteen (14) Bar Governors on the KBA Board of Governors. SCR 3.080 provides that notice of the expiration of the terms of the Bar Governors shall be carried in the *Bench & Bar*. SCR 3.080 also provides that a Board member may serve three consecutive two-year terms. Requirements for being nominated to run for the Board of Governors are contained in Section 4 of the KBA By-Laws and the requirements include filing a written petition signed by not less than twenty (20) KBA members in good standing who are residents of the candidate's Supreme Court District. Board policy provides that "No member of the Board of Governors or Inquiry Commission, nor their respective firms, shall represent an attorney in a discipline matter." **In addition any member of the Bar who is considering seeking or plans to seek election to the Board of Governors or to a position as an Officer of the KBA will, if elected, be required to sign a limited waiver of confidentiality regarding any private discipline he or she may have received.** Any such petition must be received by the KBA Executive Director at the Kentucky Bar Center in Frankfort prior to the close of business on the last business day in October.

### The Current Terms of the Following Board Members Will Expire on June 30, 2019:

1<sup>st</sup> District

**Van F. Sims** Paducah

2<sup>nd</sup> District

**J. D. Meyer** Owensboro

3<sup>rd</sup> District

**Howard O. Mann** Corbin

4<sup>th</sup> District

**Amy D. Cubbage** Louisville

5<sup>th</sup> District

**Mindy G. Barfield** Lexington

6<sup>th</sup> District

**Todd V. McMurtry** Ft. Mitchell

7<sup>th</sup> District

**Rhonda Jennings Blackburn** Pikeville

# 2019 Distinguished Service Awards CALL FOR NOMINATIONS



The Kentucky Bar Association is accepting nominations for the 2019 Distinguished Judge and Lawyer, Donated Legal Services and Bruce K. Davis Bar Service Awards. Nominations must be received by December 31, 2018. If you are aware of a Kentucky judge or lawyer who has provided exceptional service in these areas, please call (502) 564-3795 to request a nominating form or download it from our website at [www.kybar.org/distinguishedawards](http://www.kybar.org/distinguishedawards).

## **DISTINGUISHED JUDGE AWARD** and **DISTINGUISHED LAWYER AWARD**

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

## **DONATED LEGAL SERVICES AWARD**

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

## **BRUCE K. DAVIS BAR SERVICE AWARD**

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

## KENTUCKY ATTORNEYS DOING GOOD



Do you and your firm or legal department enjoy volunteering in your community?

Do you have a great action shot from a recent community service project?

For a chance to be featured in "Kentucky Attorneys Doing Good" in a future issue of the *Bench & Bar*, please email pictures of you "in action" to KBF Executive Director Guion Johnstone at [gjohnstone@kybar.org](mailto:gjohnstone@kybar.org), along with the names of those pictured and a description of your project.

Your submission of a photograph constitutes your permission for it to be used by the Kentucky Bar Foundation, as well as the Kentucky Bar Association, in their programs, publications, e-newsletter, websites, social media pages, and any and all other print and online materials. By submitting, you acknowledge that you hold the rights to the photo for publication in all KBF or KBA materials.



## LETTER

FROM: SOHA SAIYED  
AND ERICA BINDER-WOOTEN

## to the Editor

“The most insidious tool of racial discrimination throughout the era of racial terror and its aftermath, the criminal justice system remains the institution in American life least impacted by the Civil Rights movement, and the system’s endorsement of racially biased narratives has never been meaningfully confronted. Understanding how today’s criminal justice crisis is rooted in our country’s history of racial injustice requires truthfully facing that history and its legacy.”

Upon reading this quote at the Legacy Museum in Montgomery, Ala., we initially recoiled at this bold accusation against our profession. Without the legal system and lawyers, there could not have been a civil rights movement. However, upon reflection (and a quick Google search of the statistics and data related to race and criminal justice) we knew the accusation was legitimate.

Erica and I were in Montgomery, Alabama with the ACLU of Kentucky for the Peace and Justice Summit presented by the Equal Justice Initiative (EJI). EJI is an organization founded by attorney Bryan Stevenson, committed to ending mass incarceration and excessive punishment, challenging racial and economic injustice, and protecting basic human rights for the most vulnerable people in American society. We also visited the new Legacy Museum, which explains the connections from the domestic slave trade, racial terrorism, the Jim Crow South to mass incarceration. The poignancy of these links cannot be understated.

In addition, we were some of the first visitors to the National Memorial for Peace and Justice, an artistic and impactful space remembering victims of lynchings in the United States. We have studied American history and we knew about lynchings.

We had seen the disgusting antique postcards of bodies hanging from trees sent from giddy onlookers to their relatives and friends. We knew the story of Mary Turner, a pregnant woman ripped apart by a mob in Georgia. What we did not fully appreciate was how powerfully such racism and dehumanization has clung to our collective American psyche. The ideas about the lack of humanness of Black people that allowed a family to attend a lynching with their children and a picnic lunch continue to persist. It is the often unrecognized persistence of these narratives that compel us to write this letter to the editor today.

After visiting the Museum and Memorial, we were motivated to organize a bus trip of lawyers and judges from Kentucky to visit these places. Why Kentucky? Besides the obvious (Erica and I are from here) the history speaks for itself: between 1877 and 1950, there were more than 150 documented lynchings in over 60 counties. We do not think of ourselves as a Deep South state and the negative associations that often accompany that term. But, Kentucky was a slave state; at the beginning of the Civil War, it is estimated that more than 200,000 people were enslaved here. Kentucky was in the top 10 of states with the highest number of slaves and lynchings.

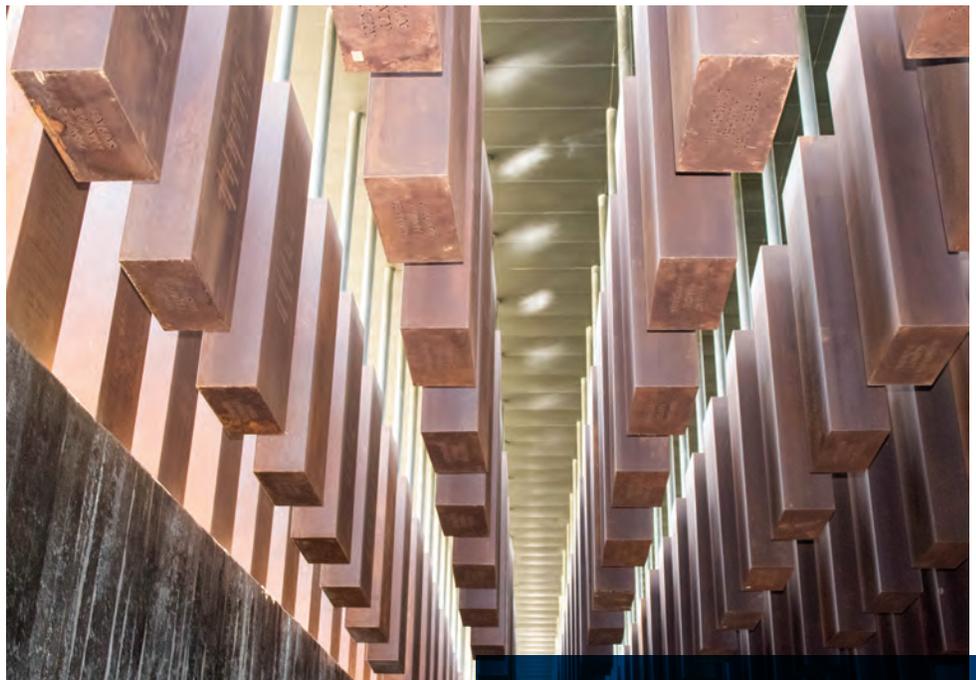




Jim Crow laws were ubiquitous here. People who lived in the era of lawful dehumanization of Black people continue to live in our communities today. What does that truly mean for our society?

Disparities in the criminal justice system are the progeny of that era. Kentucky has the seventh highest incarceration rate in the world. Black people are overrepresented in prisons and jails in the state; despite making up only eight percent of the population, they represent almost 30 percent of the incarcerated adult population (state and federal) and 30 percent of the confined juvenile population. Statistics show that African-Americans face harsher penalties for the same crimes committed by other groups. These are select statistics that reflect systemic issues that cannot be ignored.

The impetus for the bus trip is not just to acknowledge the past and current issues. The bus trip will be accompanied by a conference to reflect upon, and more importantly, lead the conversation forward on race and the justice system. We need thought leadership in this area from Kentucky lawyers and judges. We need innovative ideas to take the statistics and data and move them beyond paper. Chief Justice Minton is in support of this project as well.



David Walker, his wife, and their four children were lynched in Hickman, Kentucky, in 1908 after Mr. Walker was accused of using inappropriate language with a white woman.

If you are interested in attending or supporting the bus trip and conference or know a lawyer or judge who would benefit, please contact Soha Saiyed ([soha@abneylegal.com](mailto:soha@abneylegal.com)) or Erica Bindner-Wooten ([erbindner@gmail.com](mailto:erbindner@gmail.com)).



# Bitcoin

## for Kentucky Lawyers: A Primer

BY: R. MORGAN SALISBURY

## Bitcoin

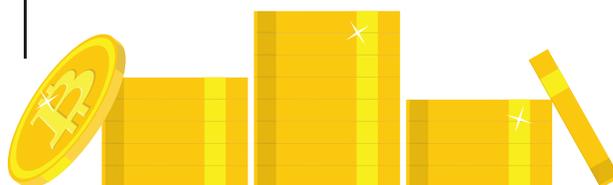
is growing in popularity and usage and has already made at least one appearance in Kentucky<sup>1</sup> state court. In May 2017, Bitcoin reached a new all-time high at a price of over \$1,800 per Bitcoin. In June, it was traded at nearly \$3,000. This “cryptocurrency” made international news when computer hackers seized control of hundreds of thousands of computers across the globe and demanded a ransom consisting not of cash, but of Bitcoin. Bitcoin (and cryptocurrencies like it) are undoubtedly the chosen medium of exchange for hackers and online “dark web” contraband. It is also the favorite pet of finance geeks and computer nerds the world over.

In December, 2017, Bitcoin became a household name as even moderately-savvy investors were drawn to it as the price skyrocketed to nearly \$20,000. While Bitcoin’s market value far exceeded that of an ounce of gold in 2017, Bitcoin’s longterm usefulness is less clear than gold’s. The usefulness of gold will undoubtedly be familiar to readers. However, the usefulness or value of Bitcoin is probably unclear to most. As Bitcoin grows in popularity and becomes more common, it is important for Kentucky lawyers to be aware of this digital form of money and how it may affect your practice areas.

### WHAT IS BITCOIN?

According to the Internal Revenue Service (IRS), Bitcoin is property. According to the Commodity Futures Trading Commission (CFTC), Bitcoin is also a commodity.<sup>2</sup> According to its users, Bitcoin is *money* or, at least, a store of value like gold. Because of how Bitcoin and other cryptocurrencies are commonly used, it is perhaps easiest for the uninitiated to think of Bitcoin as money. Instead of paper notes or metallic coins, Bitcoin is entirely digital—truly a “virtual currency.” However, Bitcoin does not enjoy legal tender status in any jurisdiction.

Unlike other currencies like U.S. dollars, Bitcoin is not currently regulated, sponsored, or controlled by any government or central bank. Instead, it is controlled essentially by its users. Unlike traditional fiat currencies like U.S. dollars, there is a finite number of Bitcoins that will ever exist. The total number of Bitcoins in existence is set to increase slowly based on pre-set parameters but is set at a maximum of just 21 million Bitcoins. To compare, there are currently \$1.63 trillion U.S. dollars in circulation.<sup>3</sup> Ideally, this means Bitcoins are not subject to currency manipulation, “quantitative easing,” inflation, or deflation like our modern dollars or other major world currencies.



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## HOW DOES BITCOIN WORK?

It's complicated. A useful but simplified illustration is to think of Bitcoin users each as their own, personal bank. All users work with the same set of recorded Bitcoin transactions, known as the "blockchain." Think of the blockchain as a public ledger recording all transactions and ownership of every Bitcoin in circulation. If a user wants to transfer a Bitcoin (or yes, even a very small fraction of a Bitcoin) to another user, that transaction is recorded on the public blockchain—just like an entry in your checkbook or bank statement. The difference is that the blockchain notation is then shared with all other users of the blockchain, who can verify that the transaction was in fact made.

Bitcoin's blockchain is not currently believed to be susceptible to manipulation because the blockchain ledger is public, recorded, and copied over and over on users' own computers. A clever computer guru

could not simply create counterfeit Bitcoins and then pass them off to others because there would be no record of those Bitcoins existing on the blockchain "ledger." When a transaction is submitted to the blockchain, it is essentially cross-checked against other copies of the ledger existing on other users' computers. Ideally, any forged Bitcoin would not be verified when legitimate copies of the blockchain ledger were referenced. The fake Bitcoin would be rejected and the fraud revealed as soon as the public blockchain ledger was referenced, which is done as part of any transaction. Many experts believe that the blockchain technology that makes Bitcoin "work" is where the true value of Bitcoin lies. The reasons for that belief are speculative and mostly outside the scope of this article, though some are mentioned at the end.

## WHAT KENTUCKY LAWYERS SHOULD KNOW

### BITCOIN IS ALREADY IN KENTUCKY.

Think Bitcoin will never make its way to Kentucky? Think again. It's already here! In 2013, Fox News reported that both the mayor and police chief in Vicco, Ky., were being paid in Bitcoin.<sup>4</sup> Kentucky's United States Senator Rand Paul accepted Bitcoin donations as part of his fundraising efforts in 2015.<sup>5</sup>

Bitcoin is in Kentucky courts, too. The Breathitt Circuit Court made headlines in 2015 when it granted summary judgment to a Plaintiff seeking to recover over \$67,000 after the defendant failed to repay a loan consisting entirely of Bitcoins.<sup>6</sup> When defendant failed to repay the loan,

the plaintiff went through an arbitration process and then sought to enforce the arbitration award.<sup>7</sup> Lexington attorney Kevin Palley believes he may be the first attorney in the United States to obtain a judgment based on a Bitcoin loan.<sup>8</sup>

Kentucky lawyers would do well to recognize that Bitcoin is no longer reserved for computer hackers or techies in Silicon Valley. Technologically savvy Kentuckians are already using Bitcoins—you just may not have realized it. As the value of Bitcoin continues to rise, its appearance in more Kentucky courtrooms is more and more likely.



## WHAT KENTUCKY LAWYERS SHOULD KNOW



### **BITCOIN IS NOT ILLEGAL.**

Often, Bitcoin is mentioned in news stories in relation to illegal drug deals, computer hacking stories, money laundering arrests, or other unsightly transactions. Bitcoin advocates would be quick to point out that traditional, paper cash is also used often in drug and other criminal transactions. Of course, Bitcoin is also used for perfectly legal transactions. For example, the popular online retailer Overstock.com and travel website Expedia.com each accept payment in the form of Bitcoin. Others are slowly starting to accept it as payment as well.

Kentucky lawyers should understand that while Bitcoin is sometimes used for illegal transactions, it is not illegal merely to possess Bitcoin or to use it as a medium of exchange in the United States.

### **BITCOIN HAS IMPORTANT TAX IMPLICATIONS.**

In 2014, the Internal Revenue Service (IRS) published Notice 2014-21 to assist tax preparers in applying existing tax principles to transactions involving virtual cryptocurrencies like Bitcoin (yes, Bitcoin is the best known of a number of cryptocurrencies). According to the Notice, Bitcoin is to be treated as property that should not be treated as a foreign currency whenever there is a gain or loss in its value. The IRS also acknowledged that Bitcoin was being used to trade for goods and services and held for investment purposes. The IRS Notice suggested that tax preparers should compute the fair market value of the Bitcoin as measured in U.S. dollars on the date it was received. The IRS also suggested that a taxpayer “generally realizes ordinary gain or loss on the sale or exchange of virtual currency that is not a capital asset in the hands of the taxpayer.”<sup>9</sup>

Notably, Kentucky was among the first states in the nation to also issue tax guidance on Bitcoin. In June 2014, the Kentucky Department of Revenue’s Kentucky Sales Tax Facts, “A Revenue Publication for the Business Owner,” stated that Kentucky would follow the IRS guidance and added

that “[a]ny business that accepts Bitcoins as a form of payment must convert the Bitcoin into U.S. dollars, and charge six percent Kentucky sales and use tax on any taxable transaction for which Bitcoin represents the financial instrument of consideration. Documentation must be maintained to verify the value of Bitcoin at the time of the transaction.”<sup>10</sup>

In November, 2016, the New York Times reported that the IRS was investigating customers of Coinbase, a popular online Bitcoin marketplace or “exchange” based in the United States, to identify users who failed to report income from Bitcoin transactions.<sup>11</sup> An IRS agent swore in a related federal suit in California that only 802 taxpayers reported income from the sale of Bitcoin.<sup>12</sup> The IRS suspects there are many others who profited handsomely from sharp increases in Bitcoin’s value but who never reported those gains. Most popular Bitcoin exchanges do not provide convenient year-end forms detailing gains or losses like those sent to investors with retirement or brokerage accounts.

Clients might be tempted by the esoteric and relatively private nature of Bitcoin to underreport Bitcoin assets to the IRS, or not to report them at all. Their lawyers need to remind them that the gains and losses realized in Bitcoin trades must be reported and that the gains are, in IRS parlance, an accession to wealth clearly realized and are therefore taxable. For example, if you have a client who owned Bitcoin in October, 2016, that client likely recently enjoyed a nearly 300 percent or more increase in the value of those Bitcoins. If they were sold, that gain and the resulting income should probably be reported as income. The privacy afforded by Bitcoin and other cryptocurrencies paired with their volatile price could tempt your clients to underreport this income or the overall value of their assets. However, tax collectors at both the state and federal levels are already looking for these new, valuable digital assets.

### **GET EXPERT HELP LOCATING BITCOIN IN LITIGATION.**

Because Bitcoin users may serve essentially as their own bank, Bitcoin can be easy to hide. For example, an individual desiring to hide his or her assets might purchase Bitcoins and store them on a personal computer hard drive or even a common USB thumb drive, just as if the Bitcoins were cash stuffed under a mattress. Alternatively, the Bitcoins could be deposited with an online third-party exchange serving as a makeshift bank, though these third-party “banks” have little to no government oversight and many have a poor track record when it comes to security. Many of these exchanges are regulated as money transmitters rather than banks or traditional stock trading platforms, but more on that later.

There is no entity to subpoena or call upon to produce records of Bitcoin transactions. The blockchain ledger is public, but transactions are only identified by a long series of letters and numbers that is unintelligible that looks something like this: **1JC3etjG6oSA2AYZS5957B5zaZEWZbrMXW**—thus, Bitcoin is “semi-anonymous.” This can make tracking Bitcoin transactions and even specific “coins” possible, but difficult for the uninitiated. Enterprising companies are already developing ways to track transactions and identify users in order to make Bitcoin transactions less anonymous. If you’re intent on locating Bitcoin assets in discovery, it is probably prudent to engage an expert to guide you along the way.

For example, the \$1.6 million worth of Bitcoins seized by federal law enforcement as part of the infamous “Silk Road” investigation and then auctioned to the public in August 2016<sup>13</sup> could conceivably be traced to the buyers and then to whomever received them, though the actual identity of the buyers and subsequent holders would be much more difficult to ascertain if the only evidence available looks like source code or an impregnable internet password. Bitcoin can be easy to hide, is semi-anonymous, and

is not connected to any traditional bank. Lawyers interested in locating, tracking, seizing, or calculating an individual's assets would do well to be mindful of Bitcoin (or other cryptocurrencies) as a store of wealth. If you are not already searching computer hard drives, smartphones, tablets, and e-mails for evidence of virtual currencies like Bitcoin, then it may be good to include inspections in your next set of discovery requests or deposition questions.<sup>14</sup> At a current market price of nearly \$7,000 per Bitcoin, the extra step could be well worth your while.

### **BITCOIN PRESENTS PRACTICE OPPORTUNITIES.**

Perhaps more accurately, the blockchain (or "ledger") technology that makes Bitcoin work could change the legal profession. For example, primarily alternative cryptocurrencies have proposed "smart contracts," whose aim is to make contractual agreements work with the accuracy of a computer program. Essentially, parties would record a public, transparent but semi-anonymous computer code to a public blockchain that can trigger a payment or series of payments once other, predetermined events take place. To illustrate, a "smart contract" may assure that a payment is made once a certain date is reached (*e.g.* automatic rent payments or property closings) or when a publicly traded stock reaches a certain price. Ordinarily, these type of contracts would require an expensive lawyer or financial services professionals to perform and verify. "Smart contracts" promise to eliminate some of the middlemen—at least in theory. Last summer, insurance giant American International Group (AIG) reported that it was partnering with IBM to "develop a 'smart' insurance policy that uses blockchain to manage complex international coverage[.]"<sup>15</sup> Many other large companies are experimenting with similar technology as well.

Bitcoin's blockchain technology could change property law as well. Blockchain "tokens" promise to be able to replace real estate or other title records with public, digital "tokens" that are recorded on a public blockchain. Basically, it works like this: a digital "token" serves as the title. If you

possess the token, then you have title. This isn't *just* speculative theory. In February 2017, the Republic of Georgia "committed in a signing ceremony ... to use the bitcoin network to validate property-related government transactions."<sup>16</sup> The technology was tested there first using land title registrations but is presently being expanded "to purchases and sales of land titles, registration of new land titles, demolition of property, mortgages and rentals, as well as notary services."

To be sure, Bitcoin and the blockchain technology behind it are still far from changing Kentucky's real estate transaction recording process. However, the value of having a public ledger with title transfers recorded on the blockchain for anyone to view and inspect or transfer may be what the future of land and automobile title records looks like. Imagine transferring an automobile or real estate with the click of a button on your smartphone and for others to be able to immediately verify that transaction from anywhere in the world, nearly simultaneously. That technology is already being tested. We lawyers may have some catching up to do.

### **REGULATION IS COMING.**

Though Bitcoin has enjoyed what some would consider a "wild west" atmosphere

of no regulation or oversight, regulation is coming. Currently, regulators struggle to fit Bitcoin and other cryptocurrencies into existing regulatory framework. Is cryptocurrency a commodity or a security?

The U.S. Securities and Exchange Commission (SEC) has already indicated that it views "initial coin offerings" (ICOs) as traditional securities and is enforcing existing laws against companies offering and trading them.<sup>17</sup> Generally, ICOs are new, alternative cryptocurrencies similar to Bitcoin that are created new but initially controlled by a single person or business and then sold to raise capital for a variety of businesses and projects.

Regulation of more popular cryptocurrencies like Bitcoin has been more of a challenge. Regulators from both the SEC and the Commodity Futures Trading Commission testified before a Senate committee in February, 2018.<sup>18</sup> They signaled their intention to treat Bitcoin exchanges as "money transmitters," which must observe federal prohibitions on money laundering and the financing of terrorist organizations.<sup>19</sup> A few states (not Kentucky, not yet) require licenses for Bitcoin exchanges housed there—not something the novice cryptocurrency user will be overly concerned about. Many others provide no



oversight. Many popular cryptocurrency exchanges are headquartered in other countries also struggling to fit cryptocurrencies into their existing regulatory framework.

Utilizing ICOs or other cryptocurrencies to raise capital could subject entrepreneurs to federal banking regulations and securities laws. The regulatory environment of simply trading cryptocurrencies like Bitcoin is expected to be regulated in the near future, but until then, *caveat emptor* (“buyer beware”).

## CONCLUSION

Bitcoin and the blockchain technology are changing our world. As lawyers, we must recognize these changes and be prepared for them. Even if we aren't quite ready to dive into the world of cryptocurrencies ourselves, understanding that clients or opposing parties may be using Bitcoin as an investment or as “money” is important for us to best do our job effectively. **BB**



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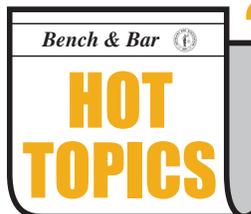
## ADDITIONAL ARTICLE

2018 KBA STUDENT WRITING COMPETITION WINNER

**“A Little Party Never Killed Anybody: How Courts Should Abandon Partisan Gerrymandering Claims to Allow a Political Solution”**

BY COREY THOMAS

This article has been placed on the KBA website under the Hot Topics page.





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# CRYPTOCURRENCY: Regulating Poetry?

BY: MICHAEL LOSAVIO, MARK WETTLE, ADRIAN LAUF

**Y**ou receive an inquiry from a potential client: “Do you accept Bitcoin?” The first thoughts that might spring into your head are the dark web, international gun running and drug dealing. You are afraid that, if you respond, your computer will be enslaved on some Russian troll farm. You might treat the inquiry as you treated an unsolicited fax from a foreign ministry official 20 years ago. And, wait, don’t you have to live in San Francisco to even spend it?

But then you consider your law partner, who every 10 minutes checks his smart phone to monitor the Bitcoin account his 20-something offspring created to keep him occupied. You realize that Bitcoins are everywhere. But what are they? Are they really money? Or is it as the poet/insurance lawyer Wallace Stevens said, “Money is a kind of poetry?” And is it singing our song?

Maybe. But so far, there’s not even an agreement on what song is playing. Is it a commodity?<sup>1</sup> A security?<sup>2</sup> Investment?<sup>3</sup> Tangible or Intangible property? Currency?<sup>4</sup>

Cryptocurrency may be all of these things, depending on the context. “Bitcoin”<sup>5</sup> itself is only one type of virtual currency, with “Ethereum,” “Ripple” and other “altcoins” being other examples.

Other articles in this issue explore *Bitcoin for Kentucky Lawyers* generally and the very real concerns of *Crime and Cryptocurrency* specifically. The focus of this article is to consider: (1) valuation, (2) regulation, and (3) how this new frontier is already affecting the practice of law, whether in divorce, probate, or other settings.



than money. To inquire therefore how it comes about that money has become what it now is is as idle as to inquire what makes evolution.<sup>6</sup>

All of this applies to these new forms of “money.” Or investment. Or whatever they are. Whatever Bitcoin is and however it came to be here, you may have to accept its presence for now in the same way some people accept television or a car engine—not being able to explain it fully, but understanding it enough to deal with it in everyday life.<sup>7</sup> Whether Bitcoin speculation will endure, or join tulipmania in history,<sup>8</sup> remains to be seen.

### **WHAT IS BITCOIN WORTH? HOW DO YOU VALUE IT?**

Money is always about value. And, where value has been lost, about litigation.

In what was described by Fortune magazine as “Bitcoin’s darkest chapter since its creation nearly a decade ago,”<sup>9</sup> the largest Bitcoin exchange in the world at that time, Mt. Gox,<sup>10</sup> collapsed in 2014 after its “850,000 Bitcoins valued at roughly \$473 million at the time” were lost to hackers. Although the hack had occurred back in 2011, the theft was either undetected or unreported until February 2014, when Mt. Gox went into bankruptcy in Japan.

Fast forward to March 2018, when Mt. Gox was reported to have “enough assets to pay off its claims with more than \$1.4 billion worth of Bitcoins left over.”<sup>11</sup> In June 2018, the Japanese court determined that creditors who want to recover the now-appreciated Bitcoins themselves (instead of the monetary equivalent at the time of Mt. Gox’s collapse) can get paid in that form in February 2019. But in a seeming hall-of-mirrors, even that decision (and “the prospect of hoards of Mt. Gox Bitcoins flooding the market”) may contribute to a drop in Bitcoin price once again.<sup>12</sup>

The Mt. Gox swing is not just related to theft by hacking, but fundamentally to the volatility in price. As The Verge reported, “The moment when Mt. Gox’s bankruptcy flipped upside down came in 2017, as the price [per Bitcoin] started to climb past \$2,000.” The price as of this writing is closer to \$6,500, but with predictions of an expected fall to \$4,000.<sup>13</sup>

As The Washington Post has reported:

[W]hen it comes to bitcoin, the price changes so quickly and so violently that it really matters what point you’re comparing it to. Over the last year, bitcoin is up 91 percent, but over the last nine months, it’s down 67 percent.

Indeed, the author goes on to explain that while the volatility of Bitcoin is somewhat “designed that way” (with no centralized system), some of the “roller-coaster ride” is due to “plain old manipulation,” and the “very lack of liquidity makes it pretty easy for a few fraudsters to push the price up quite a bit.”<sup>14</sup>

These same concerns have kept Warren Buffett scoffing at Bitcoin as “rat poison squared” and his vice chair at Berkshire Hathaway

## **(1) VALUATION**

Fundamentally, if you are talking about cryptocurrency, then you must be talking about currency, then you must be talking about money. Let’s start there.

### **IS BITCOIN MONEY?**

Well, what is money? As Henry Miller noted:

Money has no life of its own except as money. To the man in the street, unaccustomed to thinking of money in abstract terms, this obvious truism may smack of casuistry. Yet nothing could be more simple and consistent than this reduction to tautology, since money in any period whatever of man’s history has, like life itself, never been found to represent the absence of money. Money is, and whatever form or shape it may assume it is never more nor less

to call trading in it “dementia.”<sup>15</sup> As John McCauley notes, Ernst & Young research indicates that “valuation is often based on a ‘fear of missing out’ instead of” any measureable value.<sup>16</sup> Nevertheless, people do keep trading, and believing. Cameron Winklevoss has been quoted as predicting that Bitcoin “will some day take the place of gold as a store of value.”<sup>17</sup> He explains:

We believe bitcoin disrupts gold. We think it’s a better gold if you look at the properties of money.... Bitcoin is actually fixed in supply so it’s better than scare... it’s more portable... it’s more durable. It sort of equals a better gold across the board.

Nevertheless, the core issues of value and volatility are inherent and are key challenges in dealing with any cryptocurrency. This volatility is the making of a fiduciary’s heart attack.

Even accessing the assets may be challenging, as in misplaced access keys or theft as happened with Mt. Gox. Exchanges are beginning to look at protections for their clients, but that is a market that is not well-developed; the Gemini exchange, for example, has FDIC insurance for cash deposits but that insurance will not protect a deposit once it is converted to digital cryptocurrency.

## (2) REGULATION

### WHO REGULATES?

In a recent case from the Eastern District of New York, Judge Jack B. Weinstein gives a comprehensive overview of the issues and challenges of the regulation of cryptocurrencies.<sup>18</sup> This is a murky area indeed, without clear legal guidance for client and counsel. Judge Weinstein’s discussion covers the gamut of possible regulation for virtual currency, including the idea of “no regulation,”<sup>19</sup> but we are already beyond that. The remaining alternatives he discusses include:

- “Partial regulation through criminal law prosecutions of Ponzi-like schemes... or civil suits based on allegations of fraud.”
- Regulation as a commodity by the CFTC.
- Regulation as a security by the SEC.
- Regulation by the Treasury Department Financial Enforcement Network (“FinCEN”).
- Self-policing by private exchanges.
- Taxation by the IRS.
- Regulations by state legislatures.<sup>20</sup>

What we are already seeing is a combination of all of the above.<sup>21</sup>

Mike Orcutt notes this piecemeal approach could be an omen of worse things to come, particularly from individual states that do not understand or coordinate what they are doing.<sup>22</sup> Legislatures abhor a vacuum. Orcutt suggests that state legislation meant to encourage the use of the block chain technology could end up hurting it

instead as different states develop different and inconsistent laws. He notes that as Arizona and Tennessee have been the first states to pass such legislation, their statutes are different; if this trend expands to other states, it will become even more costly for the implementation of these technologies.

All of the regulatory uncertainty affects, in turn, the value and volatility issues discussed above. CNBC reported on August 9, 2018, that the price of Bitcoin “fell about 6 percent on [August 8] after the U.S. Securities and Exchange Commission delayed a decision on a proposed Bitcoin exchange-traded fund.”<sup>23</sup>

With this background on the problems of both valuation and regulation, we turn to some of the practical impact cryptocurrency is already having on the practice of law.

## (3) PRACTICE OF LAW

### CRYPTOCURRENCIES IN DIVORCE CASES

If nothing else, cryptocurrencies have been recognized as giving divorcing couples something new to fight about.<sup>24</sup> Robert Hackett, writing on the impact for divorces in the United Kingdom, details the greater potential for hiding assets, especially off-line on portable storage media. Problems include:

- specialty tools and services necessary to trace cryptocurrencies, which may include digital forensics specialists;
- valuation problems, especially with highly volatile cryptocurrencies, with a possible solution being simply the distribution of the cryptocurrency itself rather than a fiat currency conversion;
- decentralized ledgers making court orders against asset holders impractical, and
- the impact of future regulation.

Traditional methods of tracking assets may still be effective, such as bank transfers to cryptocurrency exchanges. Even where obfuscation techniques are used, if enough money is at stake, the case may justify retaining someone with the skills to track those transactions.

### CRYPTOCURRENCIES IN PROBATE MATTERS

What could go wrong?

Well, the very nature of the “crypto” currency creates some special concerns. Jonathan Bick notes that the lack of statutory or case law guidance in probate matters suggests more aggressive estate planning given the inherently secret nature of cryptocurrencies.<sup>25</sup> A risk is that neither the client nor the estate attorney has the experience in dealing with properly drafting and protecting such assets. The old adage that “you can’t take it with you” may mean that if the security control of the crypto keys for cryptocurrencies is lost with the holder’s passing, then nobody gets to take it. Bick says that cryptocurrency assets must be protected in a public court proceeding by preventing disclosure of the keys to avoid making heirs the target of malicious attacks to steal the assets.

Bick notes several concerns, with possible solutions:

- Estate counsel should inquire about cryptocurrencies and the procedure by which the client has secured information for others to access them upon the client's passing, such as a sealed letter with the recorded transfer keys.
- The client should either leave detailed authority to access cryptocurrency accounts in probate, or the client should retain third-party services to manage cryptocurrency accounts upon his or her passing.
- Tax issues relating to IRS treatment of cryptocurrencies as property will require that gains and losses be recorded and reported.

## RETAINER/FEE QUESTION

In concluding, we return to where we started, the phone call from the potential client, asking if you accept Bitcoin. Lawyers Mutual Insurance Company of Kentucky ("LMICK") has recently urged "all Kentucky lawyers and judges to inform themselves" on the risk management and ethical responsibilities of dealing with cryptocurrency.<sup>26</sup> Because price volatility could result in either underpayment (your risk) or an unreasonably high fee (the client's), LMICK recommends "converting Bitcoins into U.S. dollars immediately upon receipt" but also recognizes that this "fluid situation requires cryptocurrency continuing education." We hope this article is part of that. **BB**

## ABOUT THE AUTHORS



**MICHAEL LOSAVIO** teaches in the Departments of Criminal Justice and Computer Engineering and Computer Science at the University of Louisville on issues of law, society and information assurance in the computer engineering and justice administration disciplines. His focus is on law and social sciences as they relate to computer engineering, evidence and digital forensics.

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# **CRIME** AND **CRYPTOCURRENCY** BY: CORINNE E. KEEL



Cryptocurrencies like Bitcoin have earned a dubious reputation for their use by criminals to do things like buy mail-order narcotics online or launder proceeds of illegal activities. The most well-known example of crime facilitated by cryptocurrency was on the now-defunct virtual marketplace “Silk Road.” The website was shut down—at least in its original incarnation—after its creator Ross W. Ulbricht, known on the site as the Dread Pirate Roberts, was arrested in 2013. Using Bitcoin as its currency, the site facilitated an estimated \$300,000 in sales of drugs and other contraband daily at its height. Ulbricht, referred to by prosecutors as “the kingpin of a worldwide digital drug-trafficking enterprise,” was accused of using the platform to solicit murder for hire. In 2015, Ulbricht was convicted on five criminal counts, including engaging in a continuing criminal enterprise and aiding and abetting in the distribution of drugs over the internet. Ulbricht received a life sentence from a federal judge in the Northern District of California, who made an example of the “unprecedented” criminal kingpin.<sup>1</sup> Other online black markets—where cryptocurrency is king—have proliferated on the “dark web” or “darknet” since then, through an ever-evolving array of sites like later law enforcement targets AlphaBay and Hansa (not to mention Silk Road versions 2, 3, and 3.1), accessible through encrypted browsers like Tor.<sup>2</sup>

When addressing a conference of law enforcement and financial regulation professionals, Deputy Attorney General Rod Rosenstein remarked that, “[e]merging currencies have the potential to transform the world, and to do so in a positive way[,] [b]ut criminals are also increasingly using virtual currency to perpetrate fraud schemes and conceal the proceeds.”<sup>3</sup> While the myriad criminal uses for and abuses of virtual currency are too vast to address fully here, this article will introduce some of the topics and trends at the intersection of cryptocurrency and law enforcement efforts. Like cash, virtual currency has become ubiquitous in the realm of criminal enterprises, based both on and off-line, as users are lured by the possibility of transacting their illicit business anonymously. The use of cryptocurrency to commit, facilitate, or cover up crime creates

new and ever-evolving challenges for law enforcement agencies and regulators. As governments and private sector security firms scramble to keep up with—and get ahead of—new technologies in the proverbial Wild West of cybercrime, private attorneys may also find it necessary to shield themselves and their clients from a growing wave of high-tech crime.

## BEYOND THE SILK ROAD

Contrary to expectations, committing cybercrime does not necessarily require high-level technical expertise. Roy Zur, a cybersecurity expert and the founder and CEO of Cybint Solutions (part of The BARBRI Group), emphasized the relative ease of accessing the criminal underworld online in an interview with the Association of Certified E-Discovery Specialists (ACEDS) in 2016. Zur holds both an LLM and an MBA from Tel-Aviv University, and he spent a decade on the frontline of cybersecurity in the Israeli military. As Zur warns, “the average hacker online is a criminal who is using, instead of a knife, or a bomb, or whatever you need to do your crime, he uses tools . . . you can search Google to find . . . [you can] find links to [the] darknet and then you can download the Tor browser. . . and then you can just get into the website and order a hitman in five minutes, using Bitcoin.” Zur concedes that, “maybe you need to be a bit tech savvy” to commit crimes online with cryptocurrency, “but not more than the average person who uses technology.”<sup>4</sup>

Online marketplaces, fueled by cryptocurrency, allow criminals to purchase ready-made and user-friendly online frauds like phishing scams or ransomware that they themselves would be unable to code or install. Many sellers also offer second-hand stolen information like credit card numbers and medical data. In an interview for this article, Zur added, “It’s quite easy to become a seller of one of these dark web platforms, and even easier to become a buyer. So if you obtained confidential information and anything that has value—from a stolen UBER account to top secret military documents—you can trade them while keeping your anonymity.”<sup>5</sup> One such forum, known as Darkode, was targeted in a large-scale 2015 takedown by the FBI, in

concert with investigators from 19 other countries. Darkode's users, added to the forum by invitation only, bought and sold criminal cyber products and shared trade information, in what the FBI called "a think tank for cyber criminals." The wholesale distribution of fraudulent schemes allows hackers to profit from their expertise, while lowering the barrier to entry for new cyber-criminals and multiplying the impact on potential victims.<sup>6</sup>

The Council on Foreign Relations warns of broader national security implications stemming from the malicious use of cryptocurrency, including as a known funding source for international terrorist organizations like Islamic State and in large-scale ransomware attacks like the global assault of the WannaCry worm, apparently deployed by the North Korean government in 2017.<sup>7</sup> The use of Bitcoin was also reportedly instrumental to the 12 Russian operatives indicted earlier this year for an alleged multi-faceted hacking scheme that was designed to influence the 2016 United States presidential election.<sup>8</sup>

Cryptocurrency is not only linked to crime as a tool of the trade, virtual currency and its investors may be more susceptible to fraud and theft than traditional investors using fiat currency. The U.S. Securities and Exchange Commission has issued specific warnings to investors that they may be more susceptible to theft and fraud in the process of investing in or with cryptocurrencies and could have a harder time recovering any losses incurred.<sup>9</sup> One research group estimates that as much as 14 percent of available Bitcoin and Ethereum, the two largest cryptocurrencies, may have been stolen or compromised by hackers.<sup>10</sup> With respect to investment in crypto-currency, Zur notes that "this is a highly speculative market and hard to predict in the long-term, so investors should be very cautious, especially when thinking about new trendy cryptocurrencies that hype and crash."<sup>11</sup>

## TWO SIDES OF THE SAME COIN

On its face, cryptocurrency seems like the perfect medium for illicit transactions, offering the anonymity of cash, without the logistical constraints of moving and storing

cash. A group of researchers in Australia posits that up to 44 percent of all Bitcoin transactions may be related to criminal activity in some way, arguing that Bitcoin's desirability to criminals is actually responsible for much of the currency's market value.<sup>12</sup> However, cryptocurrencies like Bitcoin and Ethereum are truly only pseudo-anonymous, as they rely on a recorded blockchain for their very existence. Blockchain provides a public and permanent ledger of all historical transactions made with the currency, which means the movement of cryptocurrencies actually can be traced, provided that the identity of the user holding the virtual wallet is known. Users can be unmasked through various data leaks, tracing methods, or when they interface with exchanges to convert their cryptocurrency to traditional fiat currency.<sup>13</sup>

Zur argues that criminal activity currently has less market impact on cryptocurrency value than it has in the past. Zur explained, "In the past we identified the rise of dark web marketplaces as a main factor in cryptocurrency value. For example, Bitcoin price plummeted after Silk Road had been seized. Today the cryptocurrency market is much bigger and more diverse, so the influence of dark web marketplaces on its value is less significant, but still exists." He added that "Ransomware and other cyber attacks that require ordinary people to buy cryptocurrency can also influence the value," particularly in the case of the a world-wide attack like the WannaCry in 2017.<sup>14</sup>

The traceability of Bitcoin transactions and the growing sophistication of law enforcement in analyzing its blockchain appear to be driving criminals to use more privacy-focused options like Dash, Monero, or ZCash, which further conceal users' information to shroud transaction histories.<sup>15</sup> Federal law enforcement groups have urged Congress to act to counter challenges raised by anonymity-enhanced currencies like Monero, by forcing cryptocurrency exchanges to follow established anti-money laundering standards required of traditional banking institutions and requiring them to provide access to user data when it is sought by investigators.<sup>16</sup>

Even with access to blockchain data,

tracing transactions made in cryptocurrency is more resource-intensive than tracing traditional bank transactions. The need for analytic support is met, at least in part, by partners and consultants from the private sector. For example, firms like Chainalysis, as its name suggests, specialize in analyzing and extracting evidence from existing blockchain data.<sup>17</sup> Chainalysis not only works with government entities to enforce criminal law, they also lend their services to currency exchanges and other private companies to aid in compliance and prevent crime online.

## AN OUNCE OF PREVENTION

As criminals continue to use cryptocurrencies in the shadowy corners of the web where law enforcement attempts to shine light, private attorneys can play an important role in protecting their own assets and those of their clients from threats. In a world where ready-to-use hacks can be purchased online, every attorney in every type of firm should be focused on protecting sensitive information stored on computer networks and transmitted digitally to clients and other parties. This includes obvious measures like keeping anti-virus software up to date and encrypting data. It also includes less obvious precautions like securing physical office spaces, wireless networks, and training employees to recognize—and resist—social engineering that is often at the heart of hacking attempts like phishing scams. For those who advise other businesses in the scope of their practice, advising clients to take these same preventive measures can provide mutual protection.

Zur told attendees at the 2017 International Bar Association Conference that attorneys should be on the defensive. "I work with several industries: financial, legal, law enforcement, corporate[] . . . the legal market is way, way behind in understanding the threats," Zur said. He also noted that attorneys often downplay their role in securing data, placing responsibility on IT support and saying things like, "[t]hat's a technical issue" or "[i]t's not our problem."<sup>18</sup> In his commentary for this article, Zur explained, "Lawyers are lucrative targets due to their access to confidential information and financial assets from one side,

and their lack of technical understanding from the other side. Thus, every law firm, attorney, and paralegal has to be cyber literate in order to protect themselves and their clients against cybercrimes.” Zur suggests a three-pronged approach to any firm or lawyer’s cyber-security plan: (1) a protection plan to reduce probability of cyber-attacks through proper “cyber hygiene;” (2) an incident response plan to detect threats and attacks as they happen and minimize damage; and (3) a recovery plan to have reliable back-up and recovery procedures in case of a breach.<sup>19</sup>

Finally, given the susceptibility of cryptocurrency itself to malicious attacks, attorneys with clients who hope to take advantage of investment opportunities in and around virtual currency markets should be equipped to counsel their clients on the potential risks. While many of those risks are beyond the scope of this article, the prevalence of crime and fraud in the world of financial technology warrants careful due diligence. **BB**

## ABOUT THE AUTHOR



**CORINNE E. KEEL** is an Assistant United States Attorney, Criminal Division, Western District of Kentucky, specializing in prosecuting financial crime. She previously worked in the office’s Financial Litigation Unit, collecting restitution for crime victims. Prior to joining the United States Attorney’s Office, she was an associate at Dinsmore & Shohl, LLP. She attended the University of Kentucky as an undergraduate and received her law degree from Stanford Law School.

She wishes to thank Roy Zur for contributions to this article.

The views expressed in this article do not necessarily represent the views of the Department of Justice or the United States.

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# EMPOWER YOUR FUTURE

By: Jennifer "Jenna" S. Overmann, YLD Chair

The KBA Young Lawyers Division motto is "Empower Your Future." The YLD strives to provide information, programming, and opportunities to assist our members to improve themselves and their futures. Two areas we are particularly focused on this year are attorney wellness and professional development. While both have always been important to the YLD, this year we created two new leadership positions in order to provide tools to empower lawyers to achieve success both professionally and personally.

## ATTORNEY WELLNESS

As young lawyers, we have a lot to juggle. Demanding careers, family obligations, commitments to professional associations and volunteer organizations, and much more. It often feels like a sprint that turned into a marathon. First, lawyers labor to get into law school only to spend three or four years studying continually and pushing themselves academically. When the end is in sight, most new graduates then head right into studying for the bar exam, which requires immense endurance and fortitude. Finally, young lawyers land in a profession that is challenging with increasingly high expectations from clients, judges, and employers. The stress and pressure are real and can take a toll unless a strong effort is made to pay attention to our minds and bodies and to take steps to stay healthy.

Attorney wellness is not a new concept. We have heard about it in the news, from bar associations, and on social media. Young lawyers today want and need balance. We want to excel in our careers without succumbing to stress or harming our bodies with unhealthy coping mechanisms.

The YLD recognizes this need and the desire of our members for programming and information on attorney wellness. The new position of Attorney Wellness Coordinator will work with the Membership Team to provide this service for our members. The goal is to have YLD blogposts, podcasts, and programming related to attorney mindfulness, work/life balance, dealing with stress, taking care of one's physical and mental health, substance abuse issues and other areas to ensure the KBA has a healthy and happy bar.

## PROFESSIONAL DEVELOPMENT

Young lawyers are always striving to be better professionally. When I speak with YLD members about what they want from the division I hear that they want networking opportunities and resources to help them be better lawyers and advance their careers. The YLD has a unique opportunity to help young lawyers broaden their professional lives after law school.

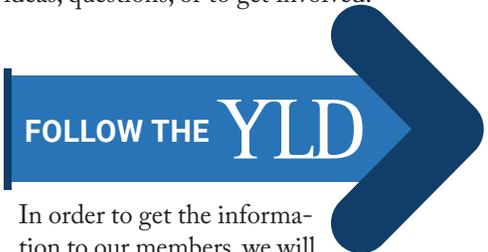
The new position of Professional Development Coordinator will work with the Membership Team to provide content and programming for our members related to furthering them professionally. We are developing the "members only" section of the website to provide contact information for attorneys throughout the state who are willing to answer questions for young lawyers, a forms bank, and other resources. All of this will be in addition to the free online CLE that is currently on the "member's only" page of the website.

The YLD believes it is important for the profession to have competent young lawyers

and that the YLD can serve a role by providing access to resources and information. While there are many resources available on various websites, blogs, etc., the YLD intends to create a "one stop shop" on the website for easy and quick access.

## PROVIDE THE YLD INPUT ON WHAT MEMBERS WANT

The YLD is open to ideas about what our membership needs. We want to hear from our members and provide services the members want. The YLD encourages members to weigh in, and if possible, volunteer. If attorney professional development or attorney wellness interests you, we still have availability on the Membership Team. Please reach out to me to let me know your interest or if you have any input about attorney wellness or professional development. We also would love to have guest bloggers provide content for us on Twitter and Facebook. Please contact me at [jovermann@dofamilylaw.com](mailto:jovermann@dofamilylaw.com) with ideas, questions, or to get involved.



FOLLOW THE YLD

In order to get the information to our members, we will be utilizing social media and our website. If you have not already liked our Facebook page, please do so here: <https://www.facebook.com/KBAYLD/>. Also, follow us on Twitter @KBAYLD.

**IF YOU ARE NOT A MEMBER OF THE YLD, BUT WANT TO GET INVOLVED**, please visit the "Join" section of the YLD website: <https://www.kybar.org/page/YLD>.

# Regulating **CRYPTOCURRENCY** Brings New Questions for Lawyers

BY: DEAN COLIN CRAWFORD

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BRANDEIS SCHOOL OF LAW

**C**ryptocurrency has been making mainstream headlines in recent years. Fortune and Forbes regularly cover the cryptocurrency market and the rise and fall of Bitcoin's value. And Fast Company and Time have been following a case that could determine whether cryptocurrencies are securities subject to regulations.

From a legal perspective, cryptocurrency is certainly covering new ground. But that's not uncommon when it comes to technology and the law, reports my colleague Lars Smith.



Lars Smith

**"Law always trails technology,"** says Professor Smith, Associate Dean for Academic Affairs and Samuel J. Stallings Professor of Law.

Professor Smith has written about the blockchain—technology that functions as a virtual ledger, tracking Bitcoin transactions.

He spoke with me about some of the current legal issues facing cryptocurrency.

"The problem of the people who invented Bitcoin is that it doesn't exist outside of the legal system. The inventors of Bitcoin wanted to get rid of banks and they wanted to have no single government have control over the system," he says. "But governments don't regulate dollars—they regulate human beings. They regulate what we do, so if we use cryptocurrency in a way that it violates some rule, then it's illegal. It doesn't escape it. The very first way we learned that is with the money transmittal business."

He points to the Federal Trade Commission and the New York State Department of Financial Services, which decided to regulate Bitcoin exchanges as money transmittal businesses in 2015.

"The money transmittal business is, in many states, a regulated industry. In New York, you need a license to do it. And if you don't have a license, you have violated New York state law in having an illegal money transmittal business," Professor Smith says. "So that was the first time that the law really stepped in, and the cryptocurrency industry was kind of shocked."

Federal laws against money laundering also apply to cryptocurrency, Professor Smith says.

"The federal government has a rule: Any company involved in the business of transmitting money has to know their customer," he says. "So if you're a money transmittal business, you have to comply with the Know Your Customer and the anti-laundering rules."

"That was the first shock to the system: that these regulations apply."

Another legal issue facing cryptocurrency: Are these currencies a security?

Says Professor Smith: "We don't know. They could be. A security is a partial ownership in some business represented by some share."

"If you set up a cryptocurrency to have an ownership interest attached to it in some business, then it's a security."

Professor Smith is referring to the emergence of initial coin offerings (ICOs). Like initial public offerings, ICOs offer businesses a way to raise money.

But while securities, of course, are regulated by the SEC, enterprising entrepreneurs use ICOs to sell coins.

"The sale of an asset isn't a security. A coin is just like a piece of property, so it's not a security," concludes Professor Smith. "Except, what are they doing? They're raising money to help fund the operation of a business. They're not selling an actual thing; they're selling this coin which doesn't actually exist except as a series of numbers. Boy, does it look like the issuance of stock. The question is: Is there a tie between the coin and a right to share in the profits of the business? That's what these cases are about."

He is referring to *US v. Zaslavskiy*, a case before the United States District Court for the Eastern District of New York. In *US v. Zaslavskiy*, the SEC and the Department of Justice are accusing a businessman of violating anti-fraud and registration provisions of federal securities laws after launching two ICOs that the agencies argue were fraudulent.

"This is the challenge for the legal system: People call it a coin but it's actually an electronically maintained ledger account of data," Professor Smith says. "We call it a coin but that's just because the guy who invented it called it a coin. We don't have to call it a coin. We can call it a widget. And that widget can do a lot of things. And many of those things are regulated by law."

Whatever the outcome of the case in New York is, one thing is for certain: **There will surely be new technology in coming years that the law will need to address.**

At the Brandeis School of Law, we are proud, under the guidance of Professor Smith and other colleagues, to be training this next generation of lawyers who will be ready to do just that.

# NKU CHASE COLLEGE OF LAW

## CHASE STUDENTS GO GLOBAL, STAY LOCAL TO EXPAND SKILLS

**Lazy days of summer?** Not for Chase College of Law students. For some of them, summer was a time to work with international lawyers in a European war crimes trial, investigate forced-labor cases in South Asia, research potential death-sentence appeals in the United States, try cases in municipal courts, and, generally, do what lawyers do. It was a time to apply and test what they have learned in classes, and to prepare for careers.

From law offices and courtrooms just a few miles from the Northern Kentucky University campus to venues thousands of miles away, students this summer were involved in the practice of law in:

### • THE HAGUE, THE NETHERLANDS, IN A WAR CRIMES TRIAL

Erik Crew was at The Hague to work with a British lawyer from Global Rights Compliance at the trial of a former Serbian intelligence officer. It was an opportunity to learn trial advocacy and focus on cross-examination of prosecution witnesses. How Chase prepared him: “The (Global Rights Compliance) interviewers tested my understanding of international humanitarian law and my legal research abilities, and I was able to respond successfully because of the knowledge I’ve developed from Professor Ursula Doyle.”

### • SOUTH ASIA, IN FORCED-LABOR CASES

Tanner Duncan was with the U.S.-based nonprofit International Justice Mission to provide legal research on forced-labor cases and to train public officials on applicable laws. How Chase prepared him: International law courses expanded his interest in international work and a legal writing course prepared him for memos he would need to write.

### • ATLANTA, IN DEATH-PENALTY APPEALS

Molly Bramble worked for the Federal Defender Program for the Northern District of Georgia on indigent inmates’ cases. “Representing someone on Death Row in later stages involves building that person’s story and filling in the blanks where information may have been lost or omitted at trial,” she says. How Chase prepared her: She would utilize what she learned in criminal law classes and from legal research for a clinic director.

Some places  
Chase students  
were involved  
in the practice  
of law this  
summer



The Hague,  
the Netherlands



Atlanta



South Asia



Cincinnati



Washington, D.C., area

### • METRO CINCINNATI, IN LOCAL TRIALS

Christy Hiance worked in the Hamilton County Public Defender Office to research, write motions, and assist in an expungement clinic. “This experience will allow me to gauge the nuances of the attorney-client relationship,” she says. How Chase prepared her: Experiences so far have pointed her toward indigent defense work. Amber Daniel was an extern in the City of Cincinnati Law Department, which involved work in Hamilton County Municipal Court and trying a case (which she won). How Chase prepared her: “If it wasn’t for oral arguments in my 1L year, I would not have felt as confident for my first trial,” she says.

### • WASHINGTON, D.C., AREA, IN MILITARY AND VETERANS’ MATTERS

Greg Bashford worked with the Navy Judge Advocate General at the Defense Health Headquarters, in Falls Church, Va., to research ethics questions and write reports on courts-martial preliminary hearings. How Chase prepared him: “My writing course taught me how to research any legal issue, no matter the complexity, and produce a persuasive and well-written work product.”

Russell Nelson spent the summer with the Alexandria, Va.-based Blinded Veterans Association, writing and lobbying for proposed legislation. How Chase prepared him: “My Chase education has changed how I look at things—more inquisitively and from the periphery. It has honed my abilities to recognize, read, and comprehend legal terminology.”

Other students worked in other positions, including in Cape Town, South Africa; Washington, D.C.; Richmond, Va.; Reno, Nev.; and, of course, Northern Kentucky and Cincinnati.



## **RICHARD AUSNESS** *Selected as* *UK Law's University Research Professor* for **2018-19 ACADEMIC YEAR**



**T**he University of Kentucky Office of the Vice President for Research, with approval by the Board of Trustees, selected Richard C. Ausness, Associate Dean for Faculty Research and Stites & Harbison Professor of Law at the University of Kentucky College of Law, as the college's University Research Professor for the 2018-19 academic year.

A UK Law Committee chaired by Melynda J. Price, UK Law University Research Professor for the 2017-18 academic year and William L. Matthews, Jr. Professor of Law, and comprised of Professors Robert Schwemm and Louise Graham, reviewed a highly competitive pool of candidates. They chose Professor Ausness as the college's nominee because his application most clearly met the goals of the University Research Professor Award. Upon recommendation by the UK Law Committee, Professor Ausness submitted a thorough application for consideration to the University's selection committee.

"He was chosen not simply because of his scholarly record, but also because of the creativity of his current research agenda," said Professor Price. "His current work on opioid litigation has contributed to the national conversation and is of particular interest to the Commonwealth of Kentucky and its citizens."

The UK Board of Trustees established the University Research Professorships in 1976 to recognize outstanding research achievements. The University Research Professors

Program was revised to meet the overall objective of UK's 2015-2020 Strategic Plan. The program distinguishes excellence across the full spectrum of research, scholarship, and creative endeavors within each college that nominates a faculty member. Each University Research Professor receives a one-year award of \$10,000 to be used to further their research, scholarship and creative endeavors.

"The impact of these faculty to the University, and to the Commonwealth, cannot be overstated. They are shining examples of the tireless work that is moving the research enterprise forward, creating new knowledge, discovering new cures, and empowering the next generation of scientists and scholars under their mentorship to change their world for the better," according to Lisa Cassis, Vice President for Research at the University of Kentucky.

"I was honored and gratified to be chosen by the Vice President for Research as a University Research Professor," said Professor Ausness. "I applaud the University Administration for encouraging and supporting research in this way. Research and scholarship have always been an important part of my 50-year academic career. Not only do I find my research to be immensely creative and satisfying, but I hope that it provides a positive benefit to the public."

Professor Ausness' current research agenda is concerned with opioid litigation, and the opioid addiction epidemic more generally.

"Hopefully my work can make a small contribution toward solving this terrible social problem," said Professor Ausness.

Professor Ausness has been a member of the UK College of Law Faculty for 45 years. He has written and made a scholarly impact in several areas of law, including water and environmental law, products liability, land use and legal history. His work in these areas has been impactful. His scholarship has been well received by practicing lawyers and the legal academy alike. His scholarship has been cited by courts, including the United States Supreme Court, treatises and law reviews more than 1,500 times. He has recently been interviewed by and quoted in various magazines and newspapers, including the New York Times, London Financial Times, Washington Post, Boston Globe, Washington Times, Miami Herald, (Canada) Globe and Mail, National Law Journal and USA Today. He has also appeared on several radio and television programs, including BBC, RTI (Russian State Television), CBS News Sunday Morning, PRI, and Canadian television.

Fourteen University Research Professors were recognized for their accomplishments at a spring reception hosted by UK President Eli Capilouto.

# Tips for Concise Writing

By: Jennifer Jolly-Ryan



# S

Some writers think big words and long, complicated sentences impress their readers. They do just the opposite.<sup>1</sup> They are like the person Ranger Captain Jake Cutter describes in the 1961 John Wayne movie, *The Comancheros*. Ranger Captain Jake Cutter urges Paul Regret to “[f]orget it! He’s just spittin’ out words to see where they splatter.” Similarly, some writers spit out words and splatter them on the page with no purpose. As a result, the reader works much too hard to grasp the meaning of a sentence. Below are a few editing pointers to make sentences more concise and clear.

## 1 CUT EXTRA WORDS.

Every sentence contains two types of words; working words and glue words. Working words carry the important meaning of the sentence. They communicate the message. Glue words simply hold the working words together. In concise legal writing, there should be more working words than glue words. If the proportion of glue words to working words is high, the writer should edit the sentence. First, underline the working words.

### EXAMPLE:

A settlement was offered by the defendant.

Second, rewrite the sentence.

### EXAMPLE:

The defendant offered to settle.

The edits make the sentence one-third shorter and the sentence still contains the three important working words. The sticky glue words are cut from four to two.

## 2 USE ACTIVE VOICE.

The edited sentence above is also better than the first version because it is active instead of passive. When a sentence’s verb is used in the active voice, the subject does the acting:

The defendant offered to settle.

When a sentence’s verb is used in the passive voice, the subject is acted upon:

A settlement was offered by the defendant.

The advantage to the active voice is that it is more direct and uses fewer words. It is more easily understood.

# 3

## AVOID THROAT CLEARING PHRASES.

Unnecessary words and phrases are like “throat-clearing”—the “verbal tics that we use unconsciously as we clear our throats.”<sup>2</sup> For example, the words *actually, really, virtually, and certainly* provide no real meaning about what is to come in the sentence. Worse, the phrases *it is important to note* and *it is obvious that*, overplay the writer’s point and the writer loses credibility with the reader. The familiar phrase, *it may be argued that*, adds no meaning to what follows and dilutes the persuasiveness of any point.

# 4

## AVOID COMPOUND CONSTRUCTION.

Compound constructions use three or four words to do the work of one. For example, lawyers commonly use the phrase, “in order to” in place of “to.” Why use three words, when one will do? In the left column below are more examples of compound phrases found in legal writing and in the right column are suggested edits:

COMPOUND PHRASES	<i>for the reason that</i>	<i>because</i>	SUGGESTED EDITS
	<i>prior to</i>	<i>before to</i>	
	<i>subsequent to</i>	<i>after</i>	
	<i>in the event that</i>	<i>if</i>	
	<i>with respect to</i>	<i>about</i>	
	<i>by means of</i>	<i>by</i>	

Below is an example of how cutting compound construction can reduce a sentence from 21 words to 12 words.

The parties *were in complete agreement with respect to* the amount of rent *due and also as regards to* the due date.

The parties *completely agreed about* the amount of rent and due date.



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SEE THE NEXT PAGE FOR TIPS 5-7 ON CONCISE WRITING.

## 5

USE A POSSESSIVE  
INSTEAD OF THE  
PREPOSITIONAL  
PHRASE OF THE.

The phrase *of the* in place of a possessive noun is unnecessary. For example, *the liability of the defendant* easily becomes *the defendant's liability*.

## 6

USE BASE VERBS  
AND NOT  
NOMINALIZATIONS.

Base verbs are words that act (*decide, complain, pay, agree*). A base verb that has been turned into a noun is a nominalization (*decision, complaint, payment, agreement*). Nominalizations tend to add words to sentences. It is easy to spot nominalizations by their endings:

- al
- ment
- ant
- ence
- ion
- ent
- ancy
- ency
- ity

To avoid a nominalization in a sentence, rewrite the sentence with a base verb instead.

**EXAMPLE:**

*We are in agreement with your position, but if it is your intention to cause delay, we will stand in opposition to you.*

*We agree with your position, but if you intend to cause delay, we will oppose you.*

## 7

AVOID  
NESTED  
MODIFIERS  
AND KEEP  
SUBJECT,  
VERB, AND  
OBJECT  
CLOSE.

Readers' understanding of prose comes from clearly seeing the subject, verb, and object of a sentence. If a sentence is long and contains too many ideas, the sentence becomes such a mess that the reader cannot make sense of it. Nested modifiers are sets of modifiers placed within each other that separate the parts of speech. They make sentences long and confusing.

**EXAMPLE:**

Defendant, who was driving a tractor trailer that was loaded with logs some of which were not tied down securely, abruptly stopped.

Defendant, {who was driving a tractor trailer [that was loaded with logs (some of which were not tied down securely)]}, abruptly stopped.

The solution is to make the sentence less complicated and understandable. Take apart the nest of modifiers and put some of the information in a separate sentence.

**EXAMPLE:**

The Defendant, who was driving a tractor trailer, abruptly stopped. The trailer was loaded with logs, some of which were not tied down securely.



## CONCLUSION

The only real way to know if a sentence contains too many words is to read a draft many times, with an eye for editing for conciseness. The familiar quote “if I had more time I would have written you a shorter letter,” could apply to the hurried lawyers’ writing.<sup>3</sup> But lawyers owe it to their clients and judges to take the necessary time to edit for conciseness and clarity.

## ABOUT THE AUTHOR

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

## ENDNOTES

1. See Joseph M. Williams, *Style: Lessons in Clarity and Grace* 113 (9th ed. 2007) (“some writers plump up their prose to impress those who think complicated sentences indicate deep thinking”); see Anne Enquist & Laurel Currie Oates, *Just Writing*, 125-27 (2d ed. 2005).
2. Lisa Massey Hatlen, *Legal Writing: Less is More: Conciseness in Legal Writing*, *Wisconsin Lawyer*, <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?ArticleID=1772> (July 2018); eiiQcw. See also Joseph M. Williams, *Style: Lessons in Clarity and Grace* 113 (9th ed. 2007) (“some writers plump up their prose to impress those who think complicated sentences indicate deep thinking”); see Anne Enquist & Laurel Currie Oates, *Just Writing*, 125-27 (2d ed. 2005).
3. Although the quote has been attributed to many famous people, many credit Winston Churchill.

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*That*  
**VISION**

*Thing*

*By: Stephen E. Embry*

The other day I came across an article by one of my favorite writers, Lee Rosen. Lee is a successful lawyer who decided he didn't want to spend his life sitting in an office in North Carolina but instead wanted to see the world AND practice law. Exactly how he did that, and the lessons it holds is something you would be better served by asking him directly. Lee is now a consultant for lawyers and law firms on law practice management and marketing.

The essence of Lee's recent article that caught my eye was his conclusion about the need to have a vision first and then act. And about how formulating a vision is not easy.

The article resonated with me for two reasons.

First, I recently made a transition from the full-time practice of law with a large firm to a full-time blogger, writer and consultant and solo lawyer/strategist. As I wrote in my recent story of my journey, the actual change for me was pretty easy. (And yes, I'm enjoying it immensely). But it was only easy because I put in the hard, painstaking work of formulating and creating the vision of what I wanted to do and now trying to live that vision (the best I can) all the time. That's what I have found so hard, and I think that's what Lee is driving at. Without hard work to formulate a vision and then more hard work trying to always and everywhere achieve that vision, you will just keep running in place, always wishing for something more or different. (If you want to read about my transition, here's the link to the article I wrote: <https://www.lawsitesblog.com/2018/05/change-is-easy-leaving-is-hard-my-journey-from-big-law-a-special-guest-post-by-stephen-embry.html>)

Without hard work to formulate a vision and then more hard work trying to always and everywhere achieve that vision, you will just keep running in place, always wishing for something more or different.

The second reason Lee's post hit me was that it reminded me of a lesson I learned from one of my mentors. When I was a younger mass tort defense lawyer, my mentor in the business was Carl Henlein, who was famous for pioneering joint defense in the mass tort context and in successfully defending cases involving multi death fires, medical devices like breast implants and even the Oklahoma City bombing case.

Carl didn't get where he was by waiting for good luck to happen as some may have thought. (Let's face it, Louisville, Ky., isn't exactly the first place corporate America would think of when it needed a lawyer for a bet the company case). Carl got there by having a vision, a clear goal where he wanted to go. And by always working it. I remember many a night sitting in Carl's office overlooking the Ohio River (an office I inherited after Carl retired by the way), listening in awe as he formulated solutions for seemingly intractable litigation problems.

I remember one night after a hard day in the courtroom our team all retired to the local bar with Carl to unwind. As the evening and

beer flowed, Carl at some point asked us all what we thought the most important thing to do right off the bat, if, by some stretch of the imagination, we were ever contacted about handling a mass tort case. The answers were pretty much what you might expect from a bunch of young lawyers. One said research the law. Another said dig up and read as many facts as possible. Yet another said formulate a team. One enterprising and slightly more experienced/inebriated (not sure which, lol) fellow said, think how much money it's going to bring in.

Carl looked at us and said something along the lines, "as usual you all disappoint me with your sophomoric responses." (Carl did not suffer fools or the ignorant well). No, he said, the first thing you do is stare out the window and think. For as long as it takes until you have a vision for the case, what the best end goal for the client should be and how to get there. All the rest will always flow from that vision.

That advice stuck with me all these years. It stuck with me when I was handling mass tort cases on my own. And when I have made good life changing type decisions like the one I recently made, it was usually because I spent as much time as necessary "looking out the window."

Want to know how Carl built a successful national mass tort defense practice from Louisville, Ky.? Want to know how Lee Rosen was able to travel the world and still practice law all the while becoming one of the most respected legal practice pundits? Forget luck. Try the vision thing: it's as easy—and as hard—as looking out the window.

And oh yeah, don't forget to throw in a measure of hard work.

#### ABOUT THE AUTHOR

**STEPHEN EMBRY** is a frequent speaker, blogger and writer. He is publisher of TechLaw Crossroads, a blog devoted to the examination of the tension between technology, the law and the practice of law. He is also co-author of a book entitled, "Mass Tort Claims Resolution Facilities," and the 2017 and 2016 editions of the American Bar Association's "TechReports."

Formerly a member of Frost Brown Todd LLC and the firm's class action, privacy and mass tort groups, he is a national litigator and advisor who is experienced in developing solutions to complex litigation and corporate problems. He was recently recognized by *Best Lawyers In America* in the areas of Mass Tort/Class Actions. He now practices with his own firm, embryoLaw LLC. In addition to practicing law, his passions include education, officiating swimming on national and local levels and all things tech and travel related. And, finally, he is unabashedly and unapologetically a University of Kentucky basketball fan.



# SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING • JUNE 12, 2018

The Board of Governors met on Tuesday, June 12, 2018. Officers and Bar Governors in attendance were, *President* W. Garmer; *President-Elect* D. Ballantine, *Vice President* S. Smith, *Immediate Past President* M. Sullivan and *Young Lawyers Division Chair* E. Weihe. *Bar Governors 1<sup>st</sup> District* – F. Schrock, V. Sims; *2<sup>nd</sup> District* – J. Meyer, T. Kerrick; *3<sup>rd</sup> District* – M. Dalton, H. Mann; *4<sup>th</sup> District* – A. Cabbage, B. Simpson; *5<sup>th</sup> District* – M. Barfield, E. O'Brien; *6<sup>th</sup> District* – G. Sergent, T. McMurtry; and *7<sup>th</sup> District* – R. Blackburn, J. Vincent. Also present was incoming *Young Lawyers Division Chair-Elect* J. Overmann and *Bar Governor 2<sup>nd</sup> District* M. Cook.

In Executive Session, the Board considered five (5) default disciplinary cases, involving two attorneys. Judy McBrayer Campbell of Frankfort, Mike Cherry of Princeton and Dottye Moore Elizabethtown, non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

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

- Heard a status report from the KYLAP Task Force and Task Force on Judicial Evaluations.
- Young Lawyers Division (YLD) Chair Eric Weihe announced the Why Choose Law Diversity Pipeline Program will take place on Thursday and Friday of Convention week at UK. Weihe reported that the program aims to encourage high school juniors and seniors from diverse backgrounds to become interested in studying law. Weihe reported that YLD is sponsoring 10 programs at the annual convention and encouraged all board members to attend their annual luncheon scheduled on Thursday, June 14, at Noon.



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- President William R. Garmer reported that registration for the annual convention to date was 1,479 and anticipated approximately 200 more onsite registrations.
- Approved the appointment of Seth E. Fawns of Pikeville as the YLD Kentucky Delegate on the ABA House of Delegates for a two year term concluding at the end of the ABA Annual Meeting in 2020.
- Approved the appointment of Jason Coltharp of Paducah to the Attorneys' Advertising Commission for a three year term ending on June 30, 2021.
- President Garmer reported that funding has ceased and is no longer available for the KLEO program which is designed to increase the number of historically underrepresented students in Kentucky's three law schools. Plans are being discussed to appoint a task force to examine the best way to obtain funding for this program.
- Approved the list of the 2018 Honorary Members, pursuant to SCR 3.030(3) and Bylaw Section 2, who have reached the age of 75 or have been admitted to the practice of law for 50 years.
- Executive Director John D. Meyers reported that Humana has been selected as the new health insur-

ance provider and Nationwide Insurance and Kentucky Deferred Comp have been selected for the new retirement plans for the KBA staff. Meyers also reported that he recently met with the Frankfort City Commissioners to discuss a Kentucky League of Cities taxable bond through their pool loan program using the City of Frankfort as a conduit. Bond proceeds would be used to fund the KBA's buyout from the KERS.

- Meyers provided an update on bar litigation matters.
- Approved nominating Randal K. Epley and J. Stewart Wheeler, both of Russellville, as the two candidates for the Judicial Nominating Commission Special Election in the 7<sup>th</sup> Judicial Circuit.

## TO KBA MEMBERS

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

**November 9-10, 2018**

**January 18, 2019**

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.

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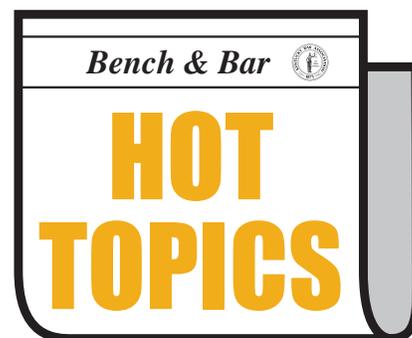
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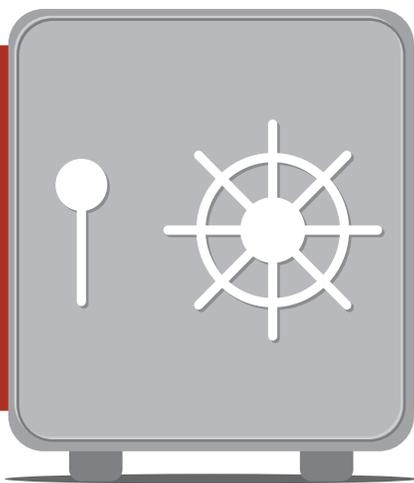
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# Kentucky Clients' Security Fund

The Kentucky Clients' Security Fund (CSF) was established by the Supreme Court of Kentucky (Rule 3.820) to be administered by the Kentucky Bar Association. It is funded by the Bar dues of the lawyers of Kentucky to reimburse clients for losses caused by their attorney's dishonest conduct, defined as the wrongful taking of clients' money or other property or failure or inability to return unearned fees. The amount of \$7.00 per lawyer, \$6.00 per member of the judiciary, is allocated from member dues by the Kentucky Supreme Court for this Fund. The CSF does not consider losses resulting from negligence, nor does it consider consequential damages. There are caps on recovery.

In the fiscal years 2005-2006 through 2017-2018 the CSF has paid \$2,159,820.96 to victims.

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

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

## CSF Payments in Fiscal Year 2017-2018

Attorneys Whose Clients Suffered Losses		Total Paid	Number of Clients Reimbursed
Brady, John D. T.	Georgetown, KY	\$5,940.00	3
Butler, Danny	Greensburg, KY	\$150,000.00	17
Dutra, John E.	Georgetown, KY	\$1,550.00	1
Edmondson, Christina	Hebron, KY	\$500.00	1
Gallagher, Damien	Ashland, KY	\$7,216.00	6
Hensley, Genon G.	Louisville, KY	\$1,306.00	1
Horton, Melanie	Pikeville, KY	\$6,666.67	1
Howard, Byron	Middlesboro, KY	\$5,000.00	1
King, J. Grant	Paducah, KY	\$150,000.00	16
Pridemore, Daniel	Paducah, KY	\$901.00	1
Rabits, Patricia	Lexington, KY	\$4,500.00	4
Scoville, Warren	London, KY	\$5,000.00	1
Varney, Roger	Hardy, KY	\$1,500.00	1
Ward, Michael D.	Benton, KY	\$2,500.00	1

### Address or e-mail changes?! Notify the Kentucky Bar Association

Over 18,000 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.

Members are also required by rule SCR 3.175 to maintain with the Director a valid email address and shall upon change of that address notify the Director within 30 days of the new address. Members who are classified as a "Senior Retired Inactive" or "Disabled Inactive" member are not required to maintain a valid email address on file.

There are several ways to update your address and/or email for your convenience.

VISIT our website at <https://www.kybar.org> to make ONLINE changes or to print an Address Change/Update Form -OR- EMAIL the Executive Director via the Membership Department at [kcobb@kybar.org](mailto:kcobb@kybar.org) -OR- FAX the Address Change/Update Form obtained from our website or other written notification to: Executive Director/Membership Department (502) 564-3225 -OR- MAIL the Address Change/Update Form obtained from our website or other written notification to:

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\*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.

## 2018 "Why I Love Casemaker" Writing Competition

Casemaker and the Kentucky Bar Association invite and encourage members who use Casemaker to enter the **2018 "WHY I LOVE CASEMAKER" WRITING COMPETITION**. This competition offers members the opportunity to tell other members why they love Casemaker. The top **WINNING ENTRY** as selected by Casemaker's independent panel of judges will be **FEATURED** in the January/February 2018 issue of the **KENTUCKY BENCH & BAR MAGAZINE**, and the **WINNER WILL ALSO RECEIVE A FREE IPAD MINI!**

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For more information or to submit your entry, visit <https://www.kybar.org/page/2018Casemakerwriting>.

## COREY THOMAS NAMED WINNING AUTHOR OF THE 2018 KBA STUDENT WRITING COMPETITION

Congratulations to Corey Thomas, the winning author of the 2018 Kentucky Bar Association Student Writing Competition. His article, "*A Little Party Never Killed Anybody: How Courts Should Abandon Partisan Gerrymandering Claims to Allow a Political Solution*" was selected as the first place entry by members of the student writing competition judging panel.

Thomas is a lifelong resident of Spencer County, Ky., and a 3L at the University of Louisville Brandeis School of Law. At Brandeis he serves as the Student Bar Association's executive vice president, the Honor Council chair, and associate symposium editor of the University of Louisville Law Review. Thomas graduated from the University of Louisville in 2016, *magna cum laude*, with a major in political science and minors in economics and history.

To read his winning entry, visit: <http://www.kybar.org/page/hottopics>.



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# FORMAL ETHICS OPINION

KENTUCKY BAR ASSOCIATION

ETHICS OPINION KBA E-446 · ISSUED: JULY 20, 2018

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

**SUBJECT:** Cybersecurity

**QUESTION #1:** Does an attorney have an ethical responsibility to implement cybersecurity measures to protect clients' information?

**ANSWER:** Yes

**QUESTION #2:** Does an attorney have an ethical responsibility to advise clients about cyberattacks against the law practice and/or breaches of security?

**ANSWER:** Qualified Yes.

**QUESTION #3:** Can an attorney utilize third parties and/or non-lawyers to plan and implement cybersecurity measures?

**ANSWER:** Yes.

**QUESTION #4:** Does an attorney have an ethical responsibility to ensure that law firm employees, as well as third parties employed by, retained by, or associated with the lawyer, comply with the attorney's cybersecurity measures?

**ANSWER:** Yes.

## INTRODUCTION

An attorney's use of technology in the practice of law has evolved considerably since this Committee first addressed communicating with clients through electronic mail services in 1998.<sup>1</sup> Since that time, Ethics Opinions have discussed the use of domain names,<sup>2</sup> cloud computing,<sup>3</sup> and most recently, communications between attorneys by email.<sup>4</sup> As noted previously, "Technology provides an ever-changing environment in which to apply the Rules of Professional Conduct."<sup>5</sup> Whether an attorney uses email to communicate with clients; e-files documents with the courts; stores client information electronically; shares files with others; employs mobile devices and/or accesses the internet, care must be taken to avoid disclosure of confidential client information.

As technology has evolved, so has the ability of third parties to attack or 'hack' a lawyer's electronic systems, not only to obtain

confidential client information, but also to disrupt the law firm's operations by threatening to destroy client files to collect ransom payments. "Creating, using, communicating, and storing information in electronic form greatly increases the potential for unauthorized access, use, disclosure and alteration, as well as the risk of loss or destruction (of client information)."<sup>6</sup> Attorneys must therefore be cognizant of cybersecurity measures that can be employed to preserve their client's information.

Unfortunately attorneys are considered 'easy targets' for cyberattacks.<sup>7</sup> If 'techno-challenged', or even 'technophobic', the lawyer may not appreciate the cyber risk of electronically communicating with clients, and/or storing collected client information on the law firm's computer systems. Further, the technology employed by an attorney to protect from unauthorized access, theft, or destruction of client information may not be as sophisticated as the client's own cyber defenses. Moreover, while solo practitioners or small law firms may think they are immune to cyber attacks, the size of a law firm doesn't matter when it comes to cyberattacks. Instead, the 'sophistication or lack thereof' of the attorney's computer system becomes the issue. As learned from the 'Panama Papers' breach, even the largest of law firms whom one would believe would have tech-savvy security in place to prevent 'hacks', are not exempt from cyber attacks.<sup>8</sup>

In 2012, the American Bar Association ("ABA") established a "Cybersecurity Legal Task Force" that recommended 'technology amendments' to the Model Rules of Professional Conduct ("Model Rules") 1.0; 1.6; and 4.4. Those amendments were subsequently approved by the ABA House of Delegates to specifically provide information and guidance to attorneys on use of electronic communications; intrusions on a law firm's systems and networks; and ethical obligations to protect a client's confidential information. The ABA Standing Committee on Ethics and Professional Responsibility subsequently issued Formal Opinion 477R on May 22, 2017, that interpreted these amendments to the Model Rules to further explain ethical issues involving the use of electronic means to communicate regarding client matters.<sup>9</sup> While the Kentucky Supreme Court did not adopt the ABA Model Rules, nor has it amended the Kentucky Rules of Professional Conduct ("Rules")<sup>10</sup> to discuss technology issues as the ABA has done, the discussion in Formal Opinion 477R provides a background to an attorney seeking guidance on technology issues impacting confidentiality of client communications.

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## DISCUSSION

**QUESTION 1:** An attorney's ethical responsibility to implement cybersecurity measures to protect clients' information is founded upon four (4) separate requirements of the Rules as they relate to competence (SCR 1.1(6)); communications (1.4); confidentiality of information (1.6) and safekeeping of client's property (1.15). Paramount among these ethical obligations is the requirement to "... not reveal information relating to the representation of a client unless the client gives informed consent."<sup>11</sup> The Commission has previously acknowledged that this provision not only applies to traditional paper communications, but it also applies to the use of emails with clients and opposing counsel, as well as the storing of client information 'in the cloud'. Above all, the attorney must use 'reasonable care' to ensure that the client's confidential information is protected, and that the client's property is safeguarded.<sup>12</sup>

Comment (8) to ABA Model Rule 1.1 states that for an attorney to maintain the 'requisite knowledge and skill' required by this provision of the Model Rule, the attorney must keep abreast of the changing risks and benefits of relevant technology.<sup>13</sup> Effective January 1, 2018, the Kentucky Supreme Court similarly revised its "Maintaining Competence" Commentary (6) of SCR 3.130 (1.1) to include "... the benefits and risks associated with relevant technology..." Further, KBA Opinion E-437 makes it clear that Kentucky lawyers should be competent in the use of technology in their law practices. This 'competence requirement' includes the knowledge of traditional cyber defense tools to protect client data. Thus, "(b)ecause the protection of confidentiality is an element of competent lawyering, a lawyer should not use any particular mode of technology to store or transmit confidential information before considering how secure it is, and whether reasonable precautions such as firewalls, encryption, or password protection could make it more secure."<sup>14</sup>

It should be noted that the type of communication with a client, and/or the method of storing a client's data may require different levels of security. "At the beginning of the client-lawyer relationship, the lawyer and the client should discuss what levels of security will be necessary for each electronic communication about client matters. Communications to third parties containing protected client information requires analysis to determine what degree of protection is appropriate. In situations where communication (and any attachments) are sensitive or warrant extra security, additional electronic protection may be required."<sup>15</sup>

Due to the constant changing of technology, it is impossible to give specific requirements of what constitutes 'reasonable efforts' by an attorney to prevent cybersecurity breaches.<sup>16</sup> What is 'reasonable' depends upon the facts and circumstances taken to prevent access or disclosure of confidential information. Comment 18 to the Model Rules provides some guidance:

"Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of

implementing the safeguards and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (eg. By making a device or important piece of software excessively difficult to use)"

By no means, however, is an attorney ethically held to a 'strict liability' standard in efforts to prevent cyber attacks. Nor do we mandate specific measures or suggested safeguards that an attorney must take to avoid 'hacks' in order to satisfy this ethical responsibility.<sup>17</sup> Instead, this Opinion updates historically held ethics guidelines for keeping client information confidential in light of the ever-changing use of technology in the practice of law.

Furthermore, as an attorney is under a continuing obligation pursuant to SCR 3.130 (1.1) to "... keep abreast of changes in the law and its practice ..."<sup>18</sup> so too is the attorney to undertake continuing technology education to increase cyber-preparedness, and to continually reevaluate policies and procedures in place to minimize data breaches of a client's confidential information.

**QUESTION 2:** An attorney is required to "... reasonably consult with the client about the **means** by which the client's objectives are to be accomplished."<sup>19</sup> The 'means' employed by the attorney includes discussing the use of technology in client communications, the handling of confidential client information within the law firm, and the storage of that information.<sup>20</sup>

Further, an attorney is required to "... keep the client reasonably informed about the status of the matter (that the attorney is handling for the client."<sup>21</sup> The Commentary to this Rule<sup>22</sup> explains that this includes telling the client about 'significant developments' affecting the time or the substance of the representation. While an attorney is allowed to withhold certain information from the client in limited circumstances, "(a) lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person."<sup>23</sup>

SCR 3.130(1.4) does not mandate the disclosure to a client about general cyber attacks against the law firm, or breaches of security within an attorney's computer systems. However, if there is a disclosure of the client's specific confidential and/or privileged information to third parties, which we believe would constitute a 'significant development' affecting the client's representation, then a disclosure must be made to the client about this development.

We are further mindful of KRS 365.732 which imposes a statutory duty upon an 'information holder'<sup>24</sup> to give written notice to persons affected by a computer security 'breach' involving their unencrypted 'personally identifiable information'. While this statute does not establish a cause of action for a violation, KRS 446.070 allows a person injured by the violation of any Kentucky statute to recover damages sustained as a result of that violation. Thus, if an attorney failed to disclose to the client a breach involving the client's unencrypted personally identifiable information then the attorney may be unethically withholding that information to protect the lawyer's own interest to avoid a lawsuit or an ethical charge by the client.

Similarly, the duty imposed by SCR 3.130 (1.15) to ‘safekeep’ a client’s ‘property’ not only applies to a trust account in which a client’s funds are maintained, but also to the client’s files; client data stored on the law firm’s computer system or ‘the cloud’; and the client’s intellectual property retained by the attorney because of pending matters. The Commentary to this Rule explains: “A lawyer should hold property of others with the care required of a professional fiduciary.” Accordingly, the theft or loss of a client’s funds or property as a result of a cyberattack must also be disclosed to the client.

**QUESTION 3:** An attorney may not delegate ethical responsibilities to third parties. However, when the attorney lacks sufficient information, education and/or training to comply with the Rules, then the attorney should seek assistance from others, including nonlawyers and/or support services. “Any lack of individual competence by a lawyer to evaluate and employ safeguards to protect client confidences may be addressed through association with another lawyer or expert, or by education.”<sup>25</sup>

Due to the rapid change of cybersecurity options, an attorney may determine that taking ‘reasonable measures’ to avoid a theft or loss of confidential client information includes contracting with a professional to create and/or maintain the cybersecurity plan for the law firm. “When a lawyer selects a provider of any support services, the duty of competence, the duty to protect a client’s property, and the duty of confidentiality require the lawyer to investigate the qualifications, competence and diligence of the provider.”<sup>26</sup> A lawyer who does not investigate whether a warehouse he or she is considering for the storage of files had adequate security to safeguard client files fails in his or her confidentiality and competence obligations to the client. Likewise, an attorney selecting an online provider of storage or other services must investigate the provider to be sure that client information is reasonably sure to remain confidential and secure.”<sup>27</sup>

Notably, each attorney within a law firm does not need to personally have all of the requisite technology competencies to meet this ethical responsibility. The lawyer can utilize another attorney within the law firm, the expertise of the law firm’s nonlawyer staff, and/or outside experts to comply. “Getting expert help is a recurring theme (as well as good advice) in ethics opinions on this<sup>28</sup> subject.”

**QUESTION 4:** Partners or managers of attorneys, as well as supervisory lawyers, are required under the Rules to make ‘reasonable efforts’ to ensure that those lawyers that they manage or supervise conform to the Rules.<sup>29</sup> That requirement extends to nonlawyers or assistants employed or

retained by, or associated with, a lawyer. Thus, the attorney who has direct supervisory over the nonlawyer must ensure their conduct complies with the Rules.<sup>30</sup>

At the same time, lawyers who have managerial authority within a law firm are required to make “... reasonable efforts to establish internal policies and procedures designed to provide reasonable assurances that nonlawyers in the firm will act in a way compatible with the Rules...”<sup>31</sup> While all lawyers have a duty to evaluate their client data and systems and take reasonable steps to secure confidential information, attorneys who have managerial roles have the added duty of evaluating and correcting security issues within the law firm and prescribing policies and procedures to reduce cyber threats. Having an effective data security program will reduce the risk of confidential client information being disclosed for all lawyers in the law firm.

The Opinion does not mandate the specific policies or procedures that an attorney must employ to have an effective data security program, nor does it contend that there is a ‘one shoe fits all’ solution for every attorney for cybersecurity. Instead, each attorney must understand what devices the law firm uses that are connected to the office network or the internet; how client information is exchanged or stored through that system and who has access to the data, and make ‘reasonable efforts’ to combat cyber threats. An attorney’s policies will thus depend upon an attorney’s use of electronics; the method used to communicate with clients and the nature of the client’s information.<sup>32</sup> “These requirements are as applicable to electronic practices as they are to comparable office procedures.”<sup>33</sup>

Establishing policies and procedures for cybersecurity alone, however, does not end the partner, attorney manager or supervising attorney’s responsibility under the Rules. Implementation of the

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policies and procedures, specific training for employees on those policies and ongoing supervision is warranted. Because a law firm's data security practices are only as strong as its weakest link "(all lawyers) must make sure that subordinate attorneys, interns, paralegals, case managers, administrative assistants, and external business partners all understand necessary data security practices and the critical role that all parties play in ensuring the protection of client information."<sup>34</sup>

## NOTE TO READER

*This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.*

## ENDNOTES

1. KBA Ethics Opinion KBA E-403.
2. KBA Ethics Opinion KBA E-427.
3. KBA Ethics Opinion KBA E-437.
4. KBA Ethics Opinion E-442.
5. *Id.*
6. ABA Cybersecurity Legal Task Force & Section of Science & Technology Law, Report to the House of Delegates: Resolution 109 A.B.A. 4 (August 2014) ("Cybersecurity Resolution").
7. Jane LeClaire & Gregory Keeley, *Cybersecurity in Our Digital Lives* (2013) at 128.
8. "... (T)he Mossack Fonseca (law firm) attack was *dead simple*. So simple, in fact, that a teenager with no hacking knowledge other than basic googling skills could have done it... Furthermore, the security mistakes Mossack Fonesca made were *appallingly common*. So common, in fact, that it's fair to say most of the readers of this article work for organizations that are making at least one of the same mistakes." Jason Bloomberg, "Cybersecurity Lessons Learned from 'Panama Papers' Breach," *Forbes Tech Journal* (April 21, 2016).
9. For an extensive discussion of this topic, refer to the ABA *Cybersecurity Handbook: A Resource for attorneys, law firms, and business professionals* (2nd Edition) by Jill D. Rhodes and Robert S. Litt (2018)
10. SCR 3.130 *et seq.*
11. SCR 3.130 (1.6).
12. See, KBA Ethics Opinion E-437; For a discussion of this Opinion and its practical application to the practice of law, see "Ethics Still Apply: Even When Your Head Is In The Cloud", Lawyers Mutual Insurance Company of Kentucky Risk Management (2016).
13. The ABA stated that the change to Model Rule 1.1 did not create a 'new requirement' for an attorney, but instead made explicit what was previously considered 'implicit' in the Model Rule; See also, "Andrew Perلمان, "The Twenty First Century Lawyer's Evolving Ethical Duty of Competence", *The Professional Lawyer*, Vol. 22, No. 4.
14. California State Bar Opinion 2010-179 (undated).
15. ABA Formal Opinion 477R at 7.
16. For a discussion of Data Breach Cyber Security Risk Management see "Attorney's Liability for Data Breaches" Lawyers Mutual Insurance Company of Kentucky *Risk Management* (2016).
17. See, Arizona State Bar Opinion 09-04 (2009) which tells attorneys who store client information to consider firewalls, password protection schemes, encryption, certain anti-virus measures, etc.
18. Supreme Court Commentary (6).
19. SCR 3.130 (1.4)(a)(2).
20. See, KBA Opinion E-437 discussing with a client the attorney's use of the cloud if the client's matter is sufficiently sensitive.
21. SCR 3.130(1.4).
22. Commentary (3) to SCR 3.130 (1.4).
23. Commentary (7) to SCR 3.130 (1.4).
24. KRS 365.732(1) (b) defines an 'information holder' as "... any person or business entity that conducts business in this state."
25. ABA Formal Opinion 477R at 9.
26. For a discussion of what information lawyers should consider in this regard, refer to KBA Opinion E-437 at 6; See also, ABA Formal Opinion 08-451 regarding outsourcing legal and nonlegal services.
27. *Id.* at 4-5.
28. ABA *Cybersecurity Handbook*, *supra* at 66.
29. SCR 3.130 (5.1).
30. SCR 3.130 (5.3).
31. Commentary (2) to SCR 3.130 (5.3); See also Commentary (2) to SCR 3.130 (5.1).
32. For a thorough discussion of this topic, refer to the *Cybersecurity For The Home and Office: The Lawyer's Guide to Taking Charge of Your Own Information Security* by John Bandler (American Bar Association Section of Science & Technology, 2017).
33. ABA Formal Opinion 477R at 9.
34. Drew T. Simshaw, "Legal Ethics and Data Security: Our Individual and Collective Obligation to Protect Client Data", 38 *Am. J. Trial Advocacy*, 549, 550, 554 (2015).

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## KENTUCKY JOINS NATIONAL MOVEMENT TO IMPROVE PRETRIAL JUSTICE THROUGH 3DAYS COUNT CAMPAIGN

BY: LEIGH ANNE HIATT, APR, ADMINISTRATIVE OFFICE OF THE COURTS



**K**entucky has become part of a cohort of states committed to commonsense pretrial reform and supported by the Pretrial Justice Institute's nationally recognized expertise and resources.

Chief Justice of Kentucky John D. Minton Jr. and Cherise Fanno Burdeen, chief executive officer of the Pretrial Justice Institute, held a joint news conference in June at the Capitol in Frankfort to announce that Kentucky Pretrial Services, a department within the Administrative Office of the Courts, will take part in 3DaysCount.

3DaysCount is a national initiative to make pretrial justice safer, fairer and more effective by reducing the number of people in jail without sacrificing public safety. Pretrial is defined as the period from a person's first contact with law enforcement through the resolution of any resulting charges, usually through trial, plea or dismissal.

"There's a growing call for reform against financial bail, which can penalize the poor," Chief Justice Minton said. "Kentucky Pretrial Services is joining the wave of pretrial justice reform, which is propelling changes to bail systems across the country. I appreciate the ongoing work of the court system's Pretrial Bail Practices Committee and of all of our judges who are working to improve alternatives for pretrial release. As part of 3DaysCount, Kentucky will have access to national best practices and the support of the Pretrial Justice Institute as we work to educate the judiciary, law enforcement and the public about the importance of pretrial reform."

3DaysCount is based on the premise that even three days in jail can leave many people less likely to appear in court and more likely to commit new crimes because of the stress incarceration places on jobs, housing and family connections, and that commonsense solutions can lead to better outcomes, enhanced public safety and more effective use of public resources.

"PJI is delighted to welcome Kentucky to 3DaysCount," said CEO Burdeen. "Kentucky has long been a leader in pretrial innovation and our work together through 3DaysCount will help the state ensure that these improvements reach their full potential. By joining the 3DaysCount community, Kentucky is adding momentum to a national movement that is using commonsense improvements to make communities safer, enhance outcomes for people who come in contact with law enforcement, and use scarce public resources more effectively. We

look forward to working with Chief Justice Minton and other leaders in Kentucky to realize these important goals."

Those speaking at the news conference were U.S. Sen. Rand Paul's State Director Jim Milliman, State Rep. Jason Nemes, Chief Regional District Judge Karen A. Thomas of Campbell County, Kentucky Public Advocate Damon Preston, Jefferson County Commonwealth's Attorney & PJI Board Member Thomas B. Wine and Christian County Jailer Brad Boyd.

Kentucky's participation in 3DaysCount came about from the work of the court system's Pretrial Bail Practices Committee. In 2017, Chief Justice Minton asked a group of 14 circuit and district judges to create a new risk assessment tool and recommend ways to improve current pretrial practices and court rules in an effort to ensure a fair and just pretrial process for all defendants.

In 2017 in Kentucky, more serious crimes (A, B and C felonies) only resulted in 10 percent of the arrest population. That translates to 90 percent of defendants charged with violations, misdemeanors and Class D felonies. Of the defendants arrested, 37 percent were held in custody until their court dates.

PJI has been working with its partners in various states to reduce unnecessary arrests that destabilize families and communities, replace money bail with practical alternatives that are based on objective assessments, and restrict pretrial detention to the small number of people who pose unmanageable risk to public safety or of flight.



Chief Justice John D. Minton Jr. speaks at the 3DaysCount news conference while U.S. Sen. Rand Paul's State Director Jim Milliman (far left) and Pretrial Justice Institute CEO Cherise Fanno Burdeen look on.

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# Supreme Court of Kentucky

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

2018-13

The following rules' amendments shall become effective January 1, 2019.

## AMENDMENTS TO THE RULES OF CIVIL PROCEDURE (CR)

### I. CR 73.08 Certification of record on appeal

CR 73.08 shall read:

The record on appeal as constituted under Rule 75 or Rule 76 shall be prepared and certified by the clerk of the court from which the appeal is taken within 10 days after the filing of the transcript of evidence by the court reporter. If the proceedings were taken exclusively by video recording, if no proceedings are to be transcribed, or if the appeal is from a Circuit Court order determining paternity, dependency, abuse, neglect, domestic violence, juvenile status offense, or involuntary termination of parental rights, then the record on appeal shall be certified by the clerk within 30 days after the date of filing the first notice of appeal. In *Forma Pauperis* cases, the time for certifying the record on appeal in cases taken exclusively by video recording or where there are no proceedings to transcribe shall run from the date the Motion to Proceed In *Forma Pauperis* is granted. If CR 76.03 applies to the appeal, the time for certifying the record shall begin to run as provided in CR 76.03. The appellate court, in its discretion, may extend the time for certification of the record upon motion and a showing of good cause.

### II. CR 76.03(1) Prehearing conference

CR 76.03(1) shall read:

(1) This Rule, 76.03, applies to all civil actions appealed to the Court of Appeals, except prisoner applications seeking relief relating to confinement or conditions of confinement and appeals from Circuit Court orders determining paternity, dependency, abuse, neglect, domestic violence, juvenile status offense, or involuntary termination of parental rights.

### III. CR 76.12(2) Briefs

CR 76.12(2) shall read:

#### (2) Time for filing.

(a) *Civil cases.* In civil cases, including workers' compensation appeals and excluding appeals from Circuit Court orders determining Paternity, Dependency, Abuse, Neglect, Domestic Violence, Juvenile Status Offense, or Involuntary Termination of Parental Rights, the appellant's brief shall be filed with the clerk of the appellate court within 60 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief (or combined briefs, if the appellee is also a cross-appellant) shall be so filed within 60 days after the date on which the appellant's brief was filed. The appellant's reply brief shall be filed within 15 days after the date on which the last appellee's brief was filed or due to be filed. If the appellant is also a cross-appellee, a combined brief may be filed within 60 days after the date on which the last appellee's brief is filed or due to be filed. When a motion for discretionary review has been granted by the Supreme Court, the time in which the movant's brief must be filed shall be computed from the date of entry of the order granting review.

(b) *Civil appeals from Circuit Court orders determining Paternity, Dependency, Abuse, Neglect, Domestic Violence, Juvenile Status Offense, or Involuntary Termination of Parental Rights.* Appeals in these cases shall be expedited. The appellant's brief shall be filed with the clerk of the appellate court within 30 days after the date of the notation on the docket of the notification required by Rule 75.07(6). The appellee's brief shall be filed within 30 days after the date of filing of the appellant's brief. The appellant's reply brief shall be filed within 10 days after the date of filing of the appellee's brief. Motions for extension of time will not be considered except under extraordinary circumstances.

(c) *Criminal cases.* The times in which briefs are required to be filed in criminal cases shall be the same as in civil cases, except as follows:

(i) If counsel for the appellant is the Public Advocate of the Commonwealth or the Attorney General of the Commonwealth, or designee, the appellant's brief shall be filed within 60 days after the date on which the record on appeal was received by the clerk of the appellate court (notice of which shall be sent); and

(ii) If counsel for the appellant is someone other than the Public Advocate of the Commonwealth or the Attorney General of the Commonwealth, or designee, the appellee's brief shall be filed within 60 days after the date on which the appellant's brief was filed or within 60 days after the date on which the record on appeal was received by the clerk of the appellate court, whichever is the later.

## AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE (RCr)

### A. **RCr 4.50 Exoneration of bond at the request of surety; Surrender the Defendant**

New rule RCr 4.50 shall replace the current RCr 4.50 and shall read:

(1) At any time before forfeiture, any surety or any party acting at the request of the surety, may move the court before which the defendant has been held to answer, for exoneration from liability on the bond or recognizance and that any money or bonds that have been deposited as bail be returned to the surety. The motion must be in writing and served upon all parties.

(2) After a hearing upon the motion, for good cause shown, the court may exonerate the surety or sureties, subject to the interests of any valid lienholder, from liability on the bond or recognizance. Any money or bonds that have been deposited as bail shall be returned to the surety or sureties once the defendant is remanded to custody or released on such conditions required by the court.

### B. **RCr 13.10 Search Warrant: who may issue**

RCr 13.10 shall read:

(1) Upon affidavit sufficient under Section 10 of the Kentucky Constitution and sworn, either in the presence of or through reliable electronic means, before an official authorized to administer oaths as provided in Rule 2.02 for the swearing of complaints, a search warrant may be issued by a judge, trial commissioner, or other official authorized by statute to issue search warrants.

(2) Where a reliable electronic means is being used in lieu of actual presence before an official authorized to administer oaths, the official administering the oath must be in oral communication with the person completing the affidavit, so that the official administering the oath may comply with the requirements for administering oaths. The official administering the oath shall certify on the affidavit or an accompanying document that the oath was taken while in oral communication, and shall state the name and title of the official administering the oath and the time the affidavit was sworn.

(3) A copy of the search warrant and supporting affidavit shall be retained by the judge or other official issuing the warrant and promptly filed with the clerk of the court to which the warrant is returnable.

(4) The officer authorized to execute a search warrant shall make return thereof to the appropriate court within a reasonable time of its execution. The return shall show the date and hour of service.

### C. **RCr 13.15 Biological Evidence**

RCr 13.15 shall read:

(1) The custodial agency holding evidence, pursuant to a valid court order, involved in a criminal prosecution of a defendant where the penalty of death, life without parole, or life without parole for 25 years is imposed shall preserve all biological evidence for as long as the defendant remains incarcerated under the sentence.

(2) Upon request, all biological evidence shall be made available to defendants enumerated in subsection (1) and said defendants may seek appropriate relief notwithstanding any other provision of the law.

(3) "Biological evidence" includes the content of sexual assault examination kits, and any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that is collected as part of a criminal investigation which may reasonably be used to incriminate or exculpate any person for a criminal offense.

All sitting. All concur.

ENTERED: August 20, 2018

  
CHIEF JUSTICE

# Are you Mindful of Your Law Practice?

By: Yvette Hourigan, KYLAP Director



In the last issue of the *Bench & Bar*, we focused on the first of the “3M’s” which was “movement.” We discussed the positive impact of exercise on physical and mental well-being. In this issue, we’ll focus on how the act of *mindfulness* can improve your mental functioning, reduce stress, and make you a better lawyer.

**WHAT IS MINDFULNESS?** It’s a Zen-inspired blend of meditation, breathing, and focus techniques that has been adopted by employers like Google, Inc., as a simple but effective mind-sharpening tool. The term has been used in the Buddhist tradition for thousands of years to describe a state of

well-being. Other religions and philosophies recognize the practice of mindfulness in similar ways. St. Francis of Assisi and Christian texts describe it as “the peace that passes all understanding;” The Buddha called it “awakening;” and athletes call it “the zone.”

What each of these descriptions has in common is that they all squarely focus on the now.

Mindfulness is being aware. It’s noticing and paying attention to thoughts, feelings, behavior, and everything else. Mindfulness can

be practiced at any time, wherever we are, whoever we are with, and whatever we are doing, by showing up and **being fully engaged in the here and now.**

That means being free of both the past and future—the “what ifs” and “what maybes”—and free of judgment of right or wrong—the “I’m-the-best” or “I’m-no-good” scenarios—so that **we can be totally present** without distraction.<sup>1</sup>

Being mindful means “paying attention in a particular way: on purpose, in the present



moment. It cultivates access to core aspects of our own minds and bodies that our very sanity depends on, says Jon Kabat-Zinn, from *The Unexpected Power of Mindfulness Meditation*. Mindfulness, which includes tenderness and kindness toward ourselves, restores dimensions of our being. These have never actually been missing, [it's] just that we have been missing them, we have been absorbed elsewhere. When your mind clarifies and opens, your heart also clarifies and opens.<sup>4</sup>

The “non-judgmental” part of mindfulness allows us to simply be a part of. One of my favorite adages is that “things are neither good nor bad, they simply are.” William Shakespeare wrote it in “Hamlet,” Act II, Scene 2, as “for there is nothing either good or bad, but thinking makes it so.” Flash forward a few hundred years to the TV show *Mad Men*, and Don Draper reminds a client that “change is neither good nor bad, it simply is.”

When we allow ourselves to look at our circumstances, our cases and clients, our families, and our jobs not in the realm of judgment, but just as they are, we eliminate all of the noise our head makes trying to classify, affirm negative thinking, and pigeon-hole the information into categories and nice, neat, little boxes. In truth, things simply are. Our own perspective defines the circumstance and we get to choose what that is . . . good or bad, or perhaps nothing at all.

Consider the “glass half full” versus “glass half empty” personalities. It’s the difference between an optimist (half full) and a pessimist (half empty). Since lawyers are trained to think pessimistically, and indeed studies show we excel using pessimistic thinking, we are typically “glass half empty” folks. But what if you looked at the glass and it just was? It was neither good (half full) nor bad (half empty); it was simply a glass with liquid in it. That doesn’t change one single fact about the glass, what’s in it, or how much. But the absence of judgment frees your mind to simply accept that there’s a glass with some liquid in it and you don’t

have to choose whether that’s good or bad. It removes the exercise of evaluating, labeling and then trying to extrapolate “what’s next” or what the labels “good” and “bad” actually mean in the situation.

This mode of non-judgmental thinking provides tremendous relief for your busy lawyer brain and allows you to simply observe and accept. It sharpens your focus on what exactly something is—without all of your assessment and judgment. This is vastly different from the critical thinking we spent three years learning in law school, and that we carry into every moment of our daily law practice and unfortunately at home after we end our work day. It allows our brain a “breather,” if you will, from all of the critical thinking and judgment we necessarily exhaust it with on a daily basis. It is mental respite. “Mindfulness is simply awareness, something you don’t have to practice for 20 minutes at a time. You can be mindful anywhere, anytime and with anyone you like.”<sup>5</sup>

The other gift of mindfulness, which might be especially helpful for lawyers, is that by its very nature it takes us out of our tomorrows and our yesterdays and demands that we focus on the only thing we truly have, the now. Lawyers live by calendars. We ruminate on past losses (more so than on past wins). We worry about future hearings, depositions, and trials. Our past and our future get so jumbled together that the “now” becomes lost. When we are able to slow down, be in the moment, and fixate (our laser focus) on being exactly where we are in this instant, the tangled thoughts in our heads can begin to unsnarl. Thoughts become clearer. Colors become brighter. Food is more flavorful (there’s a practice called “mindful eating”). Complex decisions become less complex. Stress is reduced. Life is easier and better in the now.

To better understand, and perhaps develop your own mindfulness practice, consider watching some of the videos and reading some of the articles and books listed in the footnotes.

In his number one best seller “The Power of Now: A Guide to Spiritual Enlightenment,”

moment, and non-judgmentally.”<sup>2</sup> It was first introduced into the legal profession in 1989 when Jon Kabat-Zinn, Ph.D., Director of the Center for Mindfulness in Medicine, Health Care and Society in Boston conducted a program for judges. Since judges must pay attention to everything going on in the courtroom, they wanted to learn mindfulness and meditation to reduce stress and have a “systematic way of handling one’s own intrusive thoughts and feelings.”<sup>3</sup>

Mindfulness is the awareness that arises when we non-judgmentally pay attention in the present

Eckhart Tolle's words hit home for someone driven by a calendar:

All negativity is caused by an accumulation of psychological time and denial of the present. **Unease, anxiety, tension, stress, worry**—all forms of fear—are caused by too much future, and not enough presence. **Guilt, regret, resentment, grievances, sadness, bitterness, and all forms of nonforgiveness** are caused by too much past, and not enough presence. [Emphasis added].<sup>6</sup>

Judge Jeremy Fogel, Director of the Federal Judicial Center, has written about the important role of mindfulness in assisting judges in “slowing down one’s mental processes enough to allow one to notice as much as possible about a given moment or situation, and then to act thoughtfully based on what one has noticed.”<sup>7</sup> In the 1990s, mediators for the United States Court of Appeals for the Ninth Circuit attended training on mindfulness. In between its inception in the late 1980s and now, many law firms and law schools have started providing mindfulness training for law students and lawyers.

When asked how we’re doing, we invariably say “we’re fine.” But our profession is decidedly not fine. We can do better. We can take better care of ourselves physically, mentally, and spiritually. And in the process of doing better, we will feel better; we will practice better; and we will BE better. Perhaps the easiest way to start is with the practice of mindfulness. All of the research shows that we will perform better when we incorporate mindfulness into our daily lives. And spoiler alert: it’s easy, it’s free, and you don’t have to move to do it. There are plenty of Apps to help you begin. Try starting with five minutes of mindfulness a day for a couple of weeks. Then increase it to 10 minutes a day for a couple of weeks. At the end of a month, you will be amazed, as I was, at the changes in your resting heart rate, short-term memory, and your mental acuity.

By making small changes we can write a very different narrative for ourselves. We

can experience joy, peace, and happiness in our law practice. How many lawyers have you heard talking about having those experiences (joy, peace, and happiness) in their law practices at bar functions or at happy hour recently? Not many. But things *can* change, and it starts with taking a deep breath . . . and smelling the roses.

## ABOUT THE AUTHOR



**YVETTE HOURIGAN** is the director of the Kentucky Lawyer Assistance Program (KYLAP). KYLAP provides assistance to all Kentucky law students, lawyers and judges with mental health issues and impairments including depression, substance or alcohol addictions, process addictions and chronic anxiety disorders. Hourigan is a graduate of the University of Kentucky College of Law, and practiced in all areas of civil litigation in Lexington before she was appointed as the KYLAP Director.

Hourigan is credentialed as a Certified Employee Assistance Professional and an Adult Peer Support Specialist. She is a member of the ABA Commission on Lawyer Assistance Programs, Chair of the ABA/COLAP Diversity & Inclusion Committee, and a member of the National Task Force on Lawyer Wellbeing.

In 2014, she was awarded the Dave Nee Foundation’s Uncommon Counselor Award which is given to a member of the legal profession who exhibits “extraordinary compassion and concern for co-workers, family, friends, and community.” You may contact her at yhourigan@kylap.org and (502) 226-9373.

## ENDNOTES

1. <https://medium.com/thrive-global/mindfulness-meditation-whats-the-difference-852f5ef7ec1a>.
2. Jon Kabat-Zinn, *Wherever You Go, There You Are* 4 (1994).
3. Jon Kabat-Zinn, *Full Catastrophe Living* 125 (1990).
4. <https://medium.com/thrive-global/mindfulness-meditation-whats-the-difference-852f5ef7ec1a>.
5. <http://www.oprah.com/own-super-soul-sunday/is-there-a-difference-between-mindfulness-and-meditation-video>.
6. Eckhart Tolle, *The Power of Now: A Guide to Spiritual Enlightenment* (page unknown).
7. Judge Jeremy D. Fogel, *Mindfulness and Judging*, <http://www.fjc.gov/public/pdf.nsf/lookup/Mindfulness-and-Judging-Fogel-FJC-2016.pdf>.

## RESOURCES

Jon Kabat-Zinn, *Mindfulness—An Introduction* (YouTube) <https://www.youtube.com/watch?v=xecXhXDkzpw>

Why Mindfulness is a Superpower: An animation (YouTube) <https://www.youtube.com/watch?v=w6T02g5hnT4>

The Science behind Mindfulness Meditation <https://www.youtube.com/watch?v=VTA0j8FfCvs>

After Watching This, Your Brain Will Not Be the Same | Lara Boyd | TedxVancouver <https://www.youtube.com/watch?v=LNHBMFCzznE>

J. Patton Hyman, *The Mindful Lawyer: Mindfulness Meditation and Law Practice*, Vt. B.J., Summer 2007, at 40

Scott Rogers, *Stop, Look, and Listen: Regain your Focus Through Mindfulness*, *Young Lawyer*, vol. 15, no. 4, at 3 (2011)

Susan R. Miles, *What is Mindfulness Based Stress Reduction and Why Should I Care?* (Minn. Bar Assoc., Aug. 2015)

James Doty, MD, *Into the Magic Shop: A Neurosurgeon’s Quest to Discover the Mysteries of the Brain and the Secrets of the Heart* (APA, 2016)

Robert Zeglovitch, *The Mindful Lawyer*, 70 *Tex. B.J.* 234 (2007) J. Kabat-Zinn, *Mindfulness for Beginners* (2012)

Cho, Jeena, and Karen Gifford. *The Anxious Lawyer: an 8-Week Guide to a Joyful and Satisfying Law Practice through Mindfulness and Meditation*. American Bar Association, 2016.

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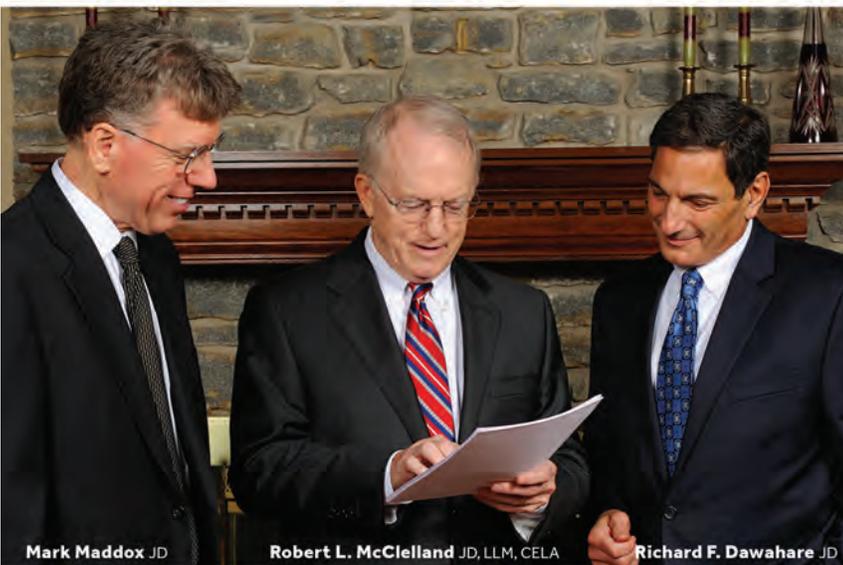
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## The Kentucky Bar Foundation Welcomes New Fellows

The Kentucky Bar Foundation (KBF) is proud to welcome 20 new Fellows from across the Commonwealth. The Fellows Program recognizes attorneys who have shown support for the KBF's mission through their success in the practice of law and their generosity in contributing to the KBF.

**LESLIE W. ABRAMSON** is a professor of law at the University of Louisville Brandeis School of Law. He completed his undergraduate degree at the University of Michigan, law school at Cornell University, and his LL.M. and S.J.D. at the University of Wisconsin. He was admitted to the Kentucky Bar in 1971. Professor Abramson is a Life Fellow.



**SUSAN L. ANDREWS** of Lexington practices dispute resolution as Andrews Dispute Resolution. A graduate of Mount St. Mary's College and Southwestern University College of Law, she was admitted to the Kentucky Bar in 2016. Ms. Andrews is a Life Fellow.

**DARRIN W. BANKS** of Paintsville practices law with the law firm of Porter, Banks, Baldwin & Shaw, PLLC. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1993.

**J. KIRK CLARKE** practices law in Maysville with the law firm of Clarke and Clarke. A graduate of Centre College and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1973. Mr. Clarke is a Life Fellow.

**ELIZABETH A. COMBS** practices law with the law firm of Wilkes & McHugh in Lexington. A graduate of Transylvania University and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2015.



**COLIN CRAWFORD** is the dean of the University of Louisville Brandeis School of Law. A graduate of Columbia University and Harvard Law School, he was previously tenured at Tulane University Law School and Georgia State University College of Law.



**M. CHRISTOPHER DAVIS** of Louisville serves as an administrative law judge with the Department of Workers' Claims. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1998.



**ASHLEY WITTE DAWSON** practices law with the Cincinnati law firm of Blielle & Dawson. A graduate of Morehead State University and the Salmon P. Chase College of Law at Northern Kentucky University, she was admitted to the Kentucky Bar in 2010. Ms. Dawson is a Life Fellow.

**J. HADDEN DEAN** of Danville practices law with Sheehan, Barnett, Dean, Pennington, Little & Dexter, P.S.C. A graduate of the University of Louisville and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 1994. Mr. Dean currently serves on the Board of Directors of the Kentucky Bar Foundation.





**THOMAS N. KERRICK** practices law in Bowling Green with the law firm of Kerrick Bachert, PSC. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1980. He currently serves as Vice President of the Kentucky Bar Association. Mr. Kerrick is a Life Fellow.



**MELINDA T. SUNDERLAND** practices law in Louisville with Morgan & Pottinger, P.S.C. A graduate of Transylvania University and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2003. Ms. Sunderland previously served as the Chair of the Kentucky IOLTA Fund Board of Trustees and currently serves on the Board of Directors of the Kentucky Bar Foundation.

**JEREMY KIRKHAM** practices law in Louisville with the law firm of Jeremy Kirkham, Attorney At Law, PLLC. A graduate of George Washington University and the University of Louisville Brandeis School of Law, he was admitted to the Kentucky Bar in 2007. Mr. Kirkham is a Life Fellow.



**LUCY A. VANMETER** practices law with Stoll Keenon Ogden PLLC in Lexington. A graduate of DePauw University and the University of Kentucky College of Law, she was admitted to the Kentucky Bar in 2001. Ms. VanMeter is a Life Fellow.



**KATHRYN L. MOORE** is a professor of law at the University of Kentucky College of Law. She completed her undergraduate degree at the University of Michigan and law school at Cornell University. She was admitted to the Kentucky Bar in 1999.



**ERNEST M. PITT, JR.** practices law in Ashland with the law firm of Holbrook & Pitt, LLLP. He completed his undergraduate degree at the University of Tennessee, Knoxville, law school at the University of Memphis, and his LL.M. at the University of London. He was admitted to the Kentucky Bar in 1977. Mr. Pitt is a Life Fellow.



**H. DOUGLAS WILLEN** practices law with Cotthoff & Willen, Attorneys at Law in Hopkinsville. A graduate of the University of Evansville and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1985. He currently serves on the Board of Directors of the Kentucky Bar Foundation. Mr. Willen is a Life Fellow.

**WILLIAM T. RATLIFF** practices law in Lexington with the law firm of Baird & Baird, P.S.C. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 2017. Mr. Ratliff is a Life Fellow.

**JEFFREY L. SCHUMACHER** of Maysville is a district judge for the 19th Judicial District. A graduate of the University of Kentucky and the Salmon P. Chase College of Law at Northern Kentucky University, he was admitted to the Kentucky Bar in 1992.



**CHAPPELL R. WILSON** of Cadiz is a retired judge who served for 21 years as a district judge in the 56th Judicial District. A graduate of the University of Kentucky and the University of Kentucky College of Law, he was admitted to the Kentucky Bar in 1968. Judge Wilson is a Life Fellow.



Thanks to the support and generosity of these and hundreds of other KBF Fellows, the Kentucky Bar Foundation is able to award significant annual grants to support law-related nonprofit programs and projects throughout the Commonwealth.

**We are actively seeking new Fellows.**

Please visit [www.kybarfoundation.org/donate/fellow](http://www.kybarfoundation.org/donate/fellow) or contact the Kentucky Bar Foundation at (800) 874-6582 to see how you can become a Fellow.



# “A PENNY for your THOUGHTS”

By: Leigh Gross Latherow

**B**lame it all on my (Appalachian) roots, but I speak in colloquialisms. And, I have a number in my arsenal. To my children when they get sassy: “Don’t get above your raisin!” To my husband upon commenting on another woman’s appearance: “Pretty is as pretty does.” To a colleague lamenting particularly bad case facts or a disappointing court ruling: “It is what it is.” To opposing counsel nearing the conclusion of a hard fought mediation: “Pigs get fat and hogs get slaughtered.” Although this may be my personal favorite and was learned from my dad, the one that I use most frequently because of its versatility and wide ranging application is: “The truth will stand when the world’s on fire.” This one I learned from my mom’s best friend, Ninny, who used the phrase frequently, always with a robust laugh, slap of her knee and measure of certainty that made me a little fearful of doing anything too far out of line.

As we gear up to start the 2018-19 Kentucky Law Update series and reflect on another successful KBA Convention, the Commission wanted to address some common misconceptions about the CLE programming at convention and the KLU events, and share these “truths.”

## 1 THERE IS NOT A VENUE IN EASTERN KENTUCKY LARGE ENOUGH TO ACCOMMODATE ANNUAL CONVENTION.

Holding the KBA convention in Lexington, Louisville, and Covington rather than in Eastern Kentucky is a frequent criticism. The location factors are based upon convention space and hotel availability, not prejudice toward any area of the state. There are approximately 2,000 convention attendees each year. The Galt House in Louisville is the only location in Kentucky that can fully accommodate the convention. Even in Covington and Lexington, the entire convention centers and two hotels are needed to fully accommodate the event. The beauty of the Appalachian Mountains and the fabulous outdoor adventures available for convention goers in an eastern venue cannot be questioned. Unfortunately, there is simply no venue to accommodate the event.



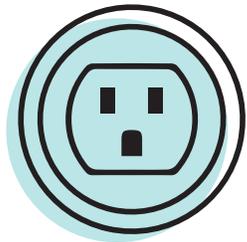
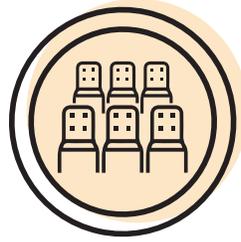
## 2 FREE COFFEE AT EACH OF THE NINE KLU PROGRAMS IS NOT ECONOMICALLY VIABLE.

Kentucky Law Update is presented nine times each educational year, with at least one program in each of the Supreme Court Districts. This allows easy access for all KBA members to fully complete their CLE requirements without additional cost to the members. The KBA is the only state bar association that provides this service at no additional cost to members. The annual budget for this benefit is \$250,000. Adding free coffee at each of the nine events would increase the cost by \$60,000. No doubt, free coffee would be nice, but as a matter of economics, the additional benefit is not feasible. Sometimes local bar associations sponsor coffee for the programs. Otherwise, coffee for KLU is on your own.



### 3 TABLES SOMETIMES HAVE TO BE SACRIFICED FOR SEATING SPACE AT THE CONVENTION.

Lack of tables for some of the more popular events was a complaint at convention this year. Tables are provided for nearly all the events. And, tables would be provided for all of the events, but sometimes, a particular event is so popular that additional space is needed for seating, which eliminates the space for tables.



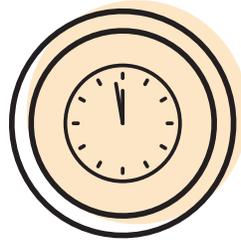
### 4 ELECTRICAL OUTLETS ARE AVAILABLE IN THE TABLES ALONG THE FRONT ROW.

The filling of seats at CLE programs is remarkably like filling pews in church on Sunday morning—the back seats are filled first, leaving the front rows open. For those who are brave enough to venture to the front of the room, they will find rows of tables with multiple outlets.



### 5 LUNCH-TIME CLE PROGRAMS ARE OPTIONAL.

Some convention attendees lament the lack of opportunity to go to lunch during convention because programming goes through the lunch hour. Lunch is optional, as is attending any CLE activity. We strive to provide as many CLE opportunities as possible during the three-days of convention and to make the offerings as flexible as possible. Therefore, events are scheduled through the lunch hour. All of the events are optional, though. So, if you find yourself hungry and want to leave for lunch, that is not a problem. If you want to participate in the event that goes through the lunch hour, you can go to lunch before or after the CLE. None of the sessions are mandatory. Attendees are free to come and go to lunch and the CLE events as they please.



Alas, we offered “a penny for your thoughts,” and you responded. The CLE Commission hopes we have addressed some of the more frequently raised concerns. While we recognize that “every garden may have some weeds,” we strive to provide cost effective, comprehensive, and convenient CLE offerings. I leave you with “all good things must come to an end,” or perhaps what you may be thinking, “silence is golden.” We hope to see you at a Kentucky Law Update coming soon to a city near you. Remember, “That which does not kill us, makes us stronger.”

#### ABOUT THE AUTHOR



**LEIGH GROSS LATHEROW** is a graduate of the University of Kentucky and the University of Kentucky College of Law. She is admitted to practice in Kentucky, Ohio, West Virginia, the U.S. District Court for the Southern District of Ohio, the Eastern District of Kentucky and the Western District of Kentucky, the Sixth Circuit Court of Appeals and the United States Supreme Court. Latherow is a partner with VanAntwerp Attorneys in Ashland and her practice is devoted primarily to civil litigation and employment consulting.



## 2017-2018 CLE COMMISSION MEMBERS

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**Justice Laurance B. VanMeter**  
Supreme Court Liaison

**The 2017-18 CLE Commission:** Back Row: **Mary Beth Cutter**, Director for CLE; **J. Tanner Watkins** of Louisville (4<sup>th</sup> S.Ct. District); **David B. Sloan** of Covington (6<sup>th</sup> S.Ct. District); **Graham C. Trimble** of Corbin (3<sup>rd</sup> S.Ct. District); **F. Hampton Moore III** of Bowling Green (2<sup>nd</sup> S.Ct. District); **Leigh Gross Latherow** of Ashland (7<sup>th</sup> S.Ct. District); **Jason F. Darnall** of Benton, Chair (1<sup>st</sup> S.Ct. District) and **LaToi D. Mayo** of Lexington (5<sup>th</sup> S.Ct. District). Not pictured: **Justice Laurance B. VanMeter** of Lexington (Supreme Court Liaison).

INTERESTED IN ASSISTING WITH A CLE? HAVE IDEAS FOR A PROGRAM? Contact Mary Beth Cutter, KBA Director for CLE at [mcutter@kybar.org](mailto:mcutter@kybar.org), or any member of the Continuing Legal Education Commission.

## KENTUCKY LAW UPDATE



2018

ADVANCING THE PROFESSION THROUGH EDUCATION

# REGISTER NOW!

The KLU program series is an exceptional benefit of KBA membership and Kentucky is the only mandatory CLE state that provides its members a way of meeting the annual CLE requirement at no additional cost.

Registration is now available online. For more information and to register visit <https://www.kybar.org/page/KLUDatesandlocations>.

## 2018 KENTUCKY LAW UPDATE DATES &amp; LOCATIONS

**BOWLING GREEN**

HOLIDAY INN UNIVERSITY  
PLAZA & SLOAN  
CONVENTION CENTER  
August 23-24 (TH/F)

**LONDON**

LONDON COMMUNITY CENTER  
September 13-14 (TH/F)

**ASHLAND**

BELLEFONTE PAVILION  
September 27-28 (TH/F)

**PIKEVILLE**

EASTERN KY EXPO CENTER  
October 4-5 (TH/F)

**LOUISVILLE**

KY INTERNATIONAL  
CONVENTION CENTER  
October 17-18 (W/TH)

**PADUCAH**

JULIAN CARROLL  
CONVENTION CENTER  
October 31- November 1 (W/TH)

**OWENSBORO**

OWENSBORO  
CONVENTION CENTER  
November 15-16 (TH/F)

**LEXINGTON**

LEXINGTON  
CONVENTION CENTER  
November 29-30 (TH/F)

**COVINGTON**

NORTHERN KENTUCKY  
CONVENTION CENTER  
December 13-14 (TH/F)

## LOOKING FOR UPCOMING KBA ACCREDITED CLE EVENTS?

Look no further...Check out

<http://web.kybar.org/clesearch/listprograms.aspx>



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

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

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

## 2019 New Lawyer Program

Essential Fundamentals for the Professional and Ethical Practice of Law

### Mark your calendars!

The February 2019 New Lawyer Program is scheduled for **February 5-6, 2019**, at the **Northern Kentucky Convention Center in Covington, Ky.** More details about the upcoming program and how to register will be made available on the KBA's website soon, [www.kybar.org](http://www.kybar.org).

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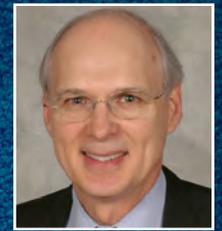
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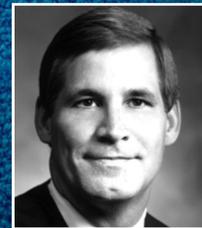
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# In Memoriam

**GARY BECKER**, the founder of the Becker Law Office, was a caring and compassionate man, not just to his family and friends, but to the many people his law firm represented. Becker was a driven and determined attorney and an energetic advocate for those less fortunate than him. He was born on May 8, 1939, in Tell City, Ind. He attended Indiana University, where he earned both a bachelors and a law degree. He was a distinguished trial lawyer for 20 years in Tell City. In 1985 he founded the Becker Law Office in Kentucky and grew it into a successful plaintiffs' advocacy practice that continues to this day. After his retirement from active engagement in the Becker Law Office, he moved to Santa Barbara, Calif., where his mission became totally focused on his charitable and philanthropic work. He died peacefully at home on June 21, 2018. Most people remember Gary for his pioneering advocacy for injury victims when he became one of the first lawyers to start advertising for his legal services on television in 1985.

*The preceding memoriam for Gary Becker is based upon information obtained from the Lexington Herald Leader, which published the obituary on July 15, 2018. To access the obituary in its entirety, visit: <https://www.legacy.com/obituaries/kentucky/obituary.aspx?n=gary-becker&pid=189596490>.*

**WILLIAM E. "BILL" FLETCHER**, age 65 of Princeton, Ky., passed away on Wednesday, September 13, 2017, at Ray & Kay Eckstein Hospice Care Center in Paducah, Ky. He was a former Caldwell County Attorney, a former Princeton City Attorney and was Domestic Relations Commissioner for the Judicial District 56. He is survived by his son, Will Fletcher of Murfreesboro, Tenn.; one sister, Ellen Franklin and husband, Bobby of Princeton, Ky.; one brother, Barry Fletcher and wife, Debbie of W. Palm Beach, Fla.; one granddaughter, Laney Fletcher and life partner, Sissy Redd.

*The preceding memoriam for William E. "Bill" Fletcher is based upon information obtained from the Lakeland Funeral Home and was published on their website in the fall of 2017. To access the obituary in its entirety, visit: <http://www.lakelandchapel.com/obituaries/William-E-Bill-Fletcher?obId=2550554#/obituaryInfo>.*

**A**s a final tribute, the *Bench & Bar* publishes brief memorials recognizing KBA members in good standing as space permits and at the discretion of the editors. Please submit either written information or a copy of an obituary that has been published in a newspaper. Submissions may be edited for space. **Memorials should be sent to [sroberts@kybar.org](mailto:sroberts@kybar.org).**

NAME	CITY	STATE	DATE DECEASED
Gary Earl Becker	Santa Barbara	CA	June 21, 2018
Frank Paul Campisano Jr.	Louisville	KY	March 3, 2018
Karl N. Crandall	Bowling Green	KY	April 2, 2018
George Morris McClure III	Danville	KY	June 19, 2018
Samuel Huston Monarch	Hardinsburg	KY	November 23, 2017
John A. Palumbo	Lexington	KY	July 15, 2018
James E. Prater	Paris	KY	October 31, 2017
Elizabeth Menke Redwine	Park Hills	KY	June 18, 2018
Jimmy Don Robinson	Kevil	KY	May 9, 2018
Robert K. Salyers Jr.	Louisville	KY	July 10, 2018
Herbert Lee Segal	Louisville	KY	February 8, 2018
Herbert D. Sledd	Lexington	KY	June 18, 2018
Thomas Edgar Swicegood	Shepherdsville	KY	July 27, 2018
Susan Lynn Williams	Louisville	KY	January 28, 2018
Garnetta P. Wylie	Mount Sterling	KY	February 15, 2018
Robert G. Zweigart	Maysville	KY	March 9, 2018

**SALLY HARDIN LAMBERT**, 70, of Louisville passed away on July 21, 2018, with her family by her side. She was born on March 13, 1948, in Ashland, Ky., to the late Josiah and Bess Lambert.

Hardin was an accomplished scholar having graduated with honors from Denison University, the Brandeis School of Law, and Indiana University's MBA program. She was a respected trademark attorney having worked for many years as legal counsel for Kentucky Fried Chicken and various law firms. Hardin was a long-time member of Zonta International, a former member of the Louisville Astronomical Society, the Louisville Ballet Board, and an Episcopalian by faith. She is survived by her son Josiah Lambert Keats (Katie), her grandchildren Hudson and Elliot Keats and cherished family friend, Jeff Sodowsky.

*The preceding memoriam for Sally Hardin Lambert is based upon information obtained from the Courier-Journal, which published the obituary on July 26, 2018. To access the obituary in its entirety, visit: <https://www.legacy.com/obituaries/louisville/obituary.aspx?n=sally-hardin-lambert&pid=189673791&fhid=4753>.*

**JOSEPH T. CONDIT**, who forged a long, successful, and public-spirited career in law, government, and politics, and who was among the most prominent figures in northern Kentucky of his day, died in Covington on his 76th birthday June 21, 2018.

Mr. Condit had been a Kenton County District Judge, and city manager, finance director, and solicitor for the City of Covington. He maintained a thriving private law practice for many years.

Mr. Condit also served as executive director of Neighborhood Foundations, formerly known as the Newport Housing Authority, a highly-regarded agency which has developed innovative residential solutions for its clientele.

Mr. Condit was Kenton County Democratic Chairman in the 1980s, when the party dominated local politics. He served numerous philanthropic endeavors, including St. Elizabeth's Hospital's board of trustees, St. Benedict's parish council, the Franciscan Daughters of Mary Rose Garden Home Mission, and the St. Vincent de Paul Society.

Mr. Condit was preceded in death by his wife Elizabeth, and one of his sons. He is survived by four children, six grandchildren, and numerous nieces and nephews.

— James P. Dady, from an obituary in the *Cincinnati Enquirer* June 24, 2018, and the writer's personal recollections.

**GEORGE MORRIS MCCLURE, III**, 83, of Danville, Ky., died on Tuesday, June 19, 2018. He was born on November 12, 1934, and was the oldest son of the late Dr. and Mrs. George McClure, Jr. He was also a grandson of the late Professor George M. McClure, Sr. McClure was married to Patsy Moberly McClure for 46 years, and leaves surviving him three sons, George McClure IV (Darcy), of Fort Collins, Colo., Joey Kirk (Laurie), of Danville, and Patrick McClure (Jennings), also of Danville. He is also survived by a sister, Edith McClure Crawford, of Colorado Springs, Colo., and the Kirk, Caudill, Moberly and Crawford families. He was predeceased by a brother Jimmy McClure. McClure attended Danville Schools through the eighth grade and then graduated from the Hill School in Pottstown, Pa., in 1952. He matriculated at Princeton University graduating in 1956. Upon graduation he was commissioned a 2nd. Lt. in the U.S. Marine Corps and was on active duty for three years. After military service he attended the University of Denver College of Law, Denver, Colo., graduating in 1963. He then commenced a career as a lawyer which extended over 50+ years, both in Colorado and in Kentucky. He returned to Danville in 1969 and in 1972 was appointed as the Boyle County Attorney, an elected position which he held for 30+ years, retiring in 2002. He thereafter practiced with his son, Patrick, for 15 years in the firm of McClure & McClure, which is now McClure, McClure, and Bailey.

*The preceding memorial for George Morris McClure III is based upon information obtained from the Lexington Herald-Leader, which published the obituary on June 22, 2018. To access the obituary in its entirety, visit: <https://www.legacy.com/obituaries/kentucky/obituary.aspx?page=lifestory&pid=189361699>.*



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

**Stites & Harbison, PLLC**, welcomes attorney **Laura Edelen** to the Louisville office. She joins the torts & insurance practice service group. Edelen's practice focuses on products liability litigation, mass actions, professional malpractice, and coverage disputes. Prior to joining Stites & Harbison, she was an attorney with a litigation firm in Louisville where she gained experience in insurance defense, medical malpractice defense, and general civil litigation. Edelen is a regular volunteer with Catholic Charities of Louisville Migration and Refugee Services Program.



**Bingham Greenbaum Doll (BGD)** is excited to announce that **Janet Jakubowicz** has been named to Benchmark Litigation's Top 250 Women in Litigation for 2018. The women selected are some of the most prominent litigators in the country, participating in a variety of impactful litigation matters and earning the respect of their peers. In her work as a member of the firm's litigation department, Jakubowicz has won this award every year since 2012, illustrating her success in a multitude of areas under the corporate litigation umbrella. She also serves as the Partnership Board chair at BGD and is a Litigation Counsel of America Fellow.



**Pete Pullen** has joined and is of counsel to the **Breit Law Office**. Pullen specializes in handling personal injury and wrongful death claims regarding health care and long-term care litigation and compliance, auto and trucking litigation, premises liability, products liability, construction litigation, and insurance and bad-faith law. Pullen is rated AV Preeminent by Martindale Hubbell and has also been recognized as a Super Lawyer Rising Star in 2017, 2018 and 2019. He received his B.A. from the University of Kentucky in 2001 and his J.D. from the Brandeis School of Law at the University of Louisville in 2006. He is licensed to practice in all state and federal courts in Kentucky and the United States Sixth Circuit Court of Appeals.

**Wyatt, Tarrant & Combs, LLP**, is pleased to announce that **Jeff A. Woods** has been appointed by Kentucky Governor Matt Bevin as a member of the Mine Safety Review Commission for a four-year term. The Mine Safety Review Commission is a three-member commission that conducts hearings and issues orders relating to alleged violations of mine safety laws by coal operators, licensees and other persons involved in the mining of coal. Woods is a member of the firm's natural resources & environmental service team. He has concentrated his practice in complex litigation matters and has extensive experience litigating and arbitrating coal supply agreements, construction contracts, mineral property disputes and other claims affecting the coal industry. He is a trustee of the Energy & Mineral Law Foundation, former member of the Board of Directors of the Lexington-Fayette Urban County Blue Grass Airport and a Leadership Bluegrass graduate. Woods earned his law degree from the University of Kentucky and his undergraduate degree from Michigan State University.



The National Conference of Bar Presidents has awarded **Bruce Kleinschmidt** of Louisville a Diversity Scholarship to attend the American Bar Association's 2018 Annual Meeting in Chicago and the 2019 Mid Year Meeting in Las Vegas. Kleinschmidt is currently chair of the LGBT Law Section of the KBA and serves on the KBA's Diversity in the Profession Committee.



**Middleton Reutlinger** is pleased to announce that **Andrew Stosberg** has joined the firm's business law and litigation groups. Stosberg has over 18 years of experience and focuses his practice on the areas of federal bankruptcy law, creditors' rights litigation and business transactions. He received his undergraduate degree in business from the University of Kentucky. He then went on to receive his J.D. from the University of Kentucky. Stosberg is also an active member of the American Bankruptcy Institute (ABI) and, as a co-editor of the American Bankruptcy Institute Journal, has authored several articles for national publication in the ABI Journal.

The Leadership Louisville Center has selected **Stites & Harbison, PLLC**, attorney **Jennifer Cave** to participate in the Leadership Louisville Class of 2019. The 60-member class will spend 10 months of training and hands-on experiences with local leaders who currently tackle the community's biggest challenges. Cave is a member (partner) of Stites & Harbison based in the Louisville office. As a member of the environmental, natural resources & energy service group, Cave works with businesses to ensure compliance with state and federal environmental laws and regulations.



**Bingham Greenbaum Doll (BGD)** is pleased to announce the selection of **Jim Irving** to the Business Journals' "Influencers: Law Top 100." The list is a culmination of 100 attorneys who are making an impact in business and legal matters and their communities nationwide. Irving was selected by the Business Journals' editors and staff writers to be included and is one of only two attorneys listed from the Louisville area. He is an active member of the Louisville community and is a founding member of the Young Professionals Board of Legal Aid Society of Louisville, an ABI CARE Program volunteer and a Ruling Elder and Member of Session at 2<sup>nd</sup> Presbyterian Church. In addition to his civic and charitable involvement, he is also chair of the bankruptcy & restructuring practice group at BGD and the office managing partner of the Louisville office.

**Joseph L. Fink III** received the award for sustained contributions to scholarship in the field of social and administrative pharmacy from the Social and Administrative Sciences Section of the American Association of Colleges of Pharmacy. This occurred during the AACP Annual Meeting in Boston on Sunday, July 22, 2018. The Sustained Scholarship Award recognizes a member of the SAS

Section for sustained contributions to scholarship in social and administrative pharmacy. The intent of the award is to encourage mastery of a subject and sustained scholarly contributions to one's field. Dr. Fink is professor of pharmacy law and policy as well as the Kentucky Pharmacists Association Endowed Professor of Leadership at the University of Kentucky College of Pharmacy. He launched his lifelong learning about pharmacy and law with education completed at the Philadelphia College of Pharmacy and Science (B.S.Pharm., 1970) and Georgetown University Law Center (J.D., 1973).



**Wyatt, Tarrant & Combs** is pleased to announce that **Greg Haynes** will be awarded as the 2018 outstanding non-alum of the Brandeis School of Law at the University of Louisville at its annual award luncheon to be held on October 25th. The awards honor members of the Brandeis School of Law community who

have made significant achievements in the practice of law. Haynes was appointed by Governor Bevin to Kentucky's Public Advocacy Commission for a five-year term. Haynes' commitment to the community is reflected in his roles as adjunct professor of trial practice at the Louis D. Brandeis School of Law and director of the Kentucky Opera. He previously served as the president of the Louisville Bar Association, director of the Louisville Metro Parks Board and chairman of the Housing Authority of Louisville. He received his undergraduate degree from Davidson College and his J.D. from the University of Kentucky.

**Valenti Hanley PLLC** is pleased to announce that **James P. McCrocklin** has joined the firm as of counsel. McCrocklin focuses his practice on securities litigation/arbitration and business litigation. He was one of the first attorneys in Kentucky to become certified as a securities arbitrator, is chairman qualified by the

Financial Industry Regulatory Authority (FINRA) and its predecessor, and has been involved in hundreds of securities disputes, both as an arbitrator and as an attorney on behalf of customers. He graduated *cum laude* from the University of Louisville Brandeis School of Law and received his undergraduate degree in accounting from the University of Kentucky.

The law firm of **Gess Mattingly & Atchison** is pleased to announce that the following attorneys from the Taylor Law Group have joined in practice with Gess Mattingly on July 1, 2018. Joining as a member is **James W. Taylor** – business and commercial law, litigation. Joining as an associate is **Blake C. Nolan** – litigation. The firm will continue to operate from its offices at 201 W. Short Street, Suite 102, Lexington, Ky.



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Louisville native **James “Jamie” McKiernan, III**, joined the litigation team in **McBrayer’s Louisville** office. McKiernan is transitioning to private practice after four years with the Jefferson County Attorney’s Office, where he managed civil litigation cases, and was hired directly from a clerkship with their office. McKiernan enjoys his engagement in the Louisville community as a member of The Elks Lodge #8 where he is both on the scholarship board and the presiding justice of the lodge. He is also an active parishioner of St. Agnes.



**Embry Merritt Shaffar Womack, PLLC**, is proud to announce the addition of **Kevin Groseclose** to its growing practice. Groseclose joins the firm as an associate in its Leitchfield, Ky., office. He will focus in the areas of criminal law, family law, bankruptcy, personal injury and workers’ compensation. Groseclose is a graduate of Western Kentucky University and the University of Louisville’s Brandeis School of Law.

**Isaacs & Isaacs** is pleased to announce that **David M. Scott** and **Nicholas Haynes** have recently joined the firm. Scott is a 2008 graduate of the University of Louisville, Brandeis School of Law (J.D. 2008). He began his legal career as felony prosecutor on jury trials for victim involved criminal cases. Since 2012, Scott has been representing clients in personal injury cases. Scott was named “Plaintiff Attorney of the Year” for 2015 by The Kentucky Trial Court Review. Haynes practice includes car and trucking accidents, motorcycle accidents, pedestrian accidents, dog bites, premise liability (slip and fall) and medical and nursing home negligence including wrongful death. Haynes has handled complex litigation matters in state and federal court, with a focus in medical negligence. He received his J.D. from the University of Dayton School of Law and a B.A. from Butler University. He is a member of the Kentucky Bar Association, Kentucky Justice Association and the Louisville Bar Association.



**Bingham Greenbaum Doll** is excited to announce **April A. Wimberg’s** appointment as a member of the Executive Branch Ethics Commission by Kentucky Governor Matt Bevin. Wimberg will serve for a term expiring July 14, 2020. The Commission seeks to fulfill its mission of promoting ethical conduct of employees and elected officials in the executive branch and assists in the interpreting the ethics code by issuance of advisory opinions and recommending legislation to the General Assembly. Wimberg is a member of the firm’s bankruptcy and restructuring group. Her practice focuses on bankruptcy matters and creditors’ rights as well as commercial litigation. An active member of the community, she serves as the attorney for the City of Glenview Hills, president of the Louisville Federalist Society Chapter, vice-chair to

the Louisville Bar Association’s Bankruptcy Law Section and as a volunteer for the Legal Aid Society. She received her undergraduate degree from the University of Kentucky and her J.D. from the University of Louisville Brandeis School of Law. She also served as a Peace Corps volunteer in West Africa.



**Stites & Harbison, PLLC’s** Construction Service Group is pleased to announce the addition of two construction attorneys: **Megan George** and **Aaron Klein**. George will join the Lexington office while Klein will join the Louisville office. George counsels clients on construction matters and routinely drafts, negotiates and reviews contracts for clients. George serves as a member or board member of many organizations including, Lexington Public Library Board of Advisors, Kentucky Conservatory Theatre Board of Trustees and Junior League of Lexington. George earned her J.D. from the University of Kentucky College of Law. Klein’s practice focuses on advising clients on all types

of construction related matters. He provides construction clients with experience in both transactional and litigation practice. Klein is a Buddy Program volunteer for Uspiritus and serves on the Advice-ment Board for a local nonprofit focusing on addiction services. Klein earned his J.D. from Belmont University College of Law.

**Thomas Law Offices** is proud to announce its expansion with the opening of a new office in Cincinnati. The firm’s Cincinnati office will be located at 250 East Fifth Street, Suite 440, Cincinnati, OH 45202. The firm has also announced that two of its attorneys, **Lindsay Lopez** and **Lindsay Cordes**, have been named partner. Lopez has been with the firm since 2013 and practices primarily in the area of personal injury litigation with a focus on motor vehicle collisions and premises liability. Cordes, who is a past president of the Women Lawyers Association of Jefferson County, has been with the firm since 2014 and focuses her practice on products liability, nursing home neglect and abuse and Title IX. Cordes has also been named partner-in-charge of the Louisville office. Thomas Law Offices is also pleased to announce the addition of attorney, **Louis C. Schneider**, who will manage the firm’s Cincinnati office. Schneider, who practices in Kentucky, Ohio and Indiana, will supervise the firm’s Ohio personal injury cases but will also expand the firm’s representation of medium and small businesses. Schneider has experience handling not only personal injury litigation from both the plaintiff and defense sides, but also has extensive experience in business litigation, contract disputes, employment discrimination and trademark claims.



**Valenti Hanley PLLC** is pleased to announce that **B. Ballard Rogers** has joined the firm as of counsel. Rogers focuses his practice on business and employment law and litigation, and has over 20 years of experience representing clients in a variety of business and other disputes. Rogers started his career as an associate attorney at Winston & Strawn in Chicago before moving back home to Louisville to continue his career. He received his J.D. from Washington University's School of Law in St. Louis and his undergraduate degree from Duke University.



**O'Bryan, Brown & Toner, PLLC**, is pleased to announce that Managing Partner **Chris O'Bryan** was elected as a board member on the Baptist Health Foundation.

The Kentucky Horse Park Foundation recently elected **Stites & Harbison, PLLC**, attorney **Andy Jacobs** as vice-chair of its Board of Directors. Jacobs is a member (partner) of Stites & Harbison based in Lexington. He serves as the Lexington group leader for the business & finance service group. Jacobs concentrates his practice in the areas of employee benefits, executive compensation



and tax exempt nonprofit organizations. In addition to his role at the Kentucky Horse Park Foundation, he also serves as director of the International Museum of the Horse.



**Sturgill, Turner, Barker & Moloney, PLLC**, welcomes two associates to the firm's employment law and education law practice groups. **Jessica R. Stigall** graduated with a J.D. from the Salmon P. Chase College of Law in 2012, and a B.A. in political science from Eastern Kentucky University in 2009. Her litigation experience comes from her time in private practice and as an assistant county attorney. Stigall is a member of numerous legal organizations, including Central Kentucky American Inn of Court, the Kentucky Defense Counsel, the Kentucky and Fayette County Bar Associations, the FCBA Women Lawyers' Association, the National School Board Attorneys/Kentucky Council of School Board Attorneys, and the Defense Research Institute. **Donald C. Morgan** graduated with a J.D. from the Wake Forest University School of Law in 2016, and a B.B.A. from the University of Kentucky in 2013. He has experience helping clients achieve regulatory compliance with various government entities. Morgan is a member of several legal organizations, including the Central Kentucky Inn of Court, and the Kentucky, Fayette County, and American Bar associations.



**Tachau Meek PLC** is

pleased to announce that **Matt Swafford** has joined the firm as an associate. Swafford's practice areas will include general commercial litigation, insurance litigation, and prosecuting and defending employment disputes. For the past five years, he practiced primarily in insurance defense with a concentration on defending insurers from allegations of bad faith. Before joining Tachau Meek, Swafford clerked for Justice Will T. Scott of the Supreme Court of Kentucky and was a staff attorney for Jefferson Circuit Judge Barry Willett. He graduated *magna cum laude* from NKU Chase College of Law in 2011.



Benchmark Litigation recently named **Stites & Harbison, PLLC**, attorney **David Owsley** to the 40 & Under Hot List for 2018. This is the second time that Owsley has earned this honor. Owsley is a member (partner) of the firm

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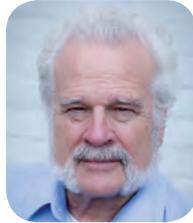
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based in the Louisville office where he works in the business litigation service group. His practice focuses on intellectual property litigation and complex civil litigation. The 40 & Under Hot List honors exceptional law firm partners in the U.S. who are 40 years of age or younger.

**Reggie Van Stockum** participated on a Kentucky Oil and Gas Association panel with Energy and Environment Cabinet Deputy Commissioner Bruce Scott, Tom Fitzgerald and Bill Barr at the Association's 2018 annual meeting in Louisville. All four sit on the Commonwealth's Oil and Gas Workgroup. Van Stockum maintains an active practice of law concentrating in air, water and waste issues, with offices in Shelbyville, Ky.



**Hare, Wynn, Newell & Newton; LLP**, congratulates partner **Brian Vines** who was named '40 and Under Hot List' in his market by Benchmark Litigation. Vines has represented individuals, small business, states, and Fortune 100 companies in a broad range of litigation. He focuses on nursing home abuse and neglect cases, serious personal injury cases, qui tam cases and complex litigation. Vines has been practicing law since 2007 and joined Hare Wynn in 2011. Vines graduated from Auburn University *summa cum laude* with a degree in civil engineering. After graduating from law school at the University of Virginia, he served as a judicial law clerk to the Honorable William H. Pryor Jr. on the United States Court of Appeals for the Eleventh Circuit.

**Derrick G. Helm, Terran Cross Helm, Kevin S. Shearer** and **M. Gail Wilson** are pleased to announce the opening of their firm **Helm Shearer Wilson** in Jamestown, Ky. Derrick Helm and M. Gail Wilson previously practiced with Bertram & Wilson in

Jamestown. Kevin S. Shearer previously practiced with Byrom & Shearer in Jamestown. Terran Cross Helm previously practiced with David M. Cross in Albany, Ky. Kevin Shearer serves as the Russell County Attorney and Terran Cross Helm serves as the Assistant Russell County Attorney and Assistant Commonwealth's Attorney for the 57th Judicial Circuit. Their practice will focus on personal injury law, Social Security disability, probate, and other general practice matters.



Derrick G. Helm Terran Cross Helm Kevin S. Shearer M. Gail Wilson

**Middleton Reutlinger** is pleased to announce that **Matt Dearmond** has joined the firm's litigation and IP litigation groups. Dearmond is a litigator whose practice focuses on general commercial litigation, insurance defense, and intellectual property. Prior to joining Middleton Reutlinger, he worked as an associate in the Louisville office of a regional law firm practicing in the area of insurance defense and general litigation, where he gained significant experience defending a variety of clients in cases involving automobile accidents, personal injury, UIM/UM claims, and premises liability. Dearmond received his undergraduate degree from the University of Kentucky in 2012 and received his J.D. from the University of Kentucky in 2016.



**Chief Judge Joseph H. McKinley, Jr.**, is pleased to announce the selection of **Regina S. Edwards** as the United States Magistrate Judge for the Western District of Kentucky. Edwards will fill the vacancy created by the retirement of the **Honorable Magistrate Judge Dave Whalin**. Edwards graduated with honors from the University of Kentucky obtaining bachelor degrees in psychology and sociology. She is a graduate of Vanderbilt School of Law where she was a GM Scholar and president of the Vanderbilt Black Law Students Association. She is currently employed as an Assistant United States Attorney for the U.S. Attorney's Office for the Western District of Kentucky.

The American Bar Association recently held its annual meeting and announced chairs for their numerous sections. Three Kentucky Bar Association members will be chairing ABA sections for the 2018-2019 year. Lexington

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attorney **P. Gene Vance II** will chair the ABA's Litigation Section, **Judge Judy Boggs** will chair the ABA's Administrative Law Section and Regulatory Practice Section, and Louisville attorney **Robert L. Brown** will serve as chair of the International Law Section.



**Stites & Harbison, PLLC**, is pleased to announce that attorney **Marshall Hixson** was recently elected president of the Fayette County Bar Association. Hixson will serve a one-year term. Hixson is counsel with Stites & Harbison in the torts & insurance practice service group. He is based in the Lexington office. His practice focuses on commercial litigation, coal supply litigation, product liability and professional liability. Hixson acts as counsel to Kentucky-Ecuador Partners, a not for profit organization and is a graduate of Leadership Lexington.

The American Bar Association recently appointed **Robert Misy** as a chair of its International Tax Committee. Misy is a partner at **Reinhart Boerner Van Deuren s.c.** in Chicago and Milwaukee. He practices primarily in the areas of international taxation and transfer pricing. CCH published the 11th edition of his first book, a "Practical Guide to Taxation of International Transactions," this summer. Misy is also an adjunct faculty member of the University of Wisconsin School of Law.



**Wyatt** has adopted a policy to provide support to breastfeeding lawyers during business travel. The firm will reimburse lawyers for expenses relating to the shipment of breast milk to their infants when the lawyer is out of town for conferences, litigation or other work-related travel. The American College of

Obstetricians and Gynecologists, American Academy of Pediatrics, Centers for Disease Control and World Health Organization all recognize the value of breast milk for infants during their first year of life, and Wyatt understands that work travel can create challenges for lawyers who elect to breastfeed. The chair of Wyatt's *Wyatt Women's Network* program, **Michelle Browning Coughlin**, said, "The attrition rate of women lawyers nationally continues to be a challenge for the legal profession, and Wyatt, Tarrant & Combs wants to be a leader in supporting women lawyers by adopting the kind of policies that ensure women will have the resources they need to practice." Wyatt is contracting with Milk Stork for this service.

**Dinsmore and Shohl LLP** has increased its paid leave offerings for attorneys who are new parents, underscoring a core commitment to

work-life balance. In a benefits expansion that significantly exceeds industry averages, the firm offers birth mothers up to 18 weeks in paid leave, while non-birth and adoptive parents are eligible for up to eight weeks. Attorneys have the option to take this time intermittently over the course of a year. In conjunction with this attorney benefits enhancement, Dinsmore is also increasing paid parental leave offerings for staff firm wide.



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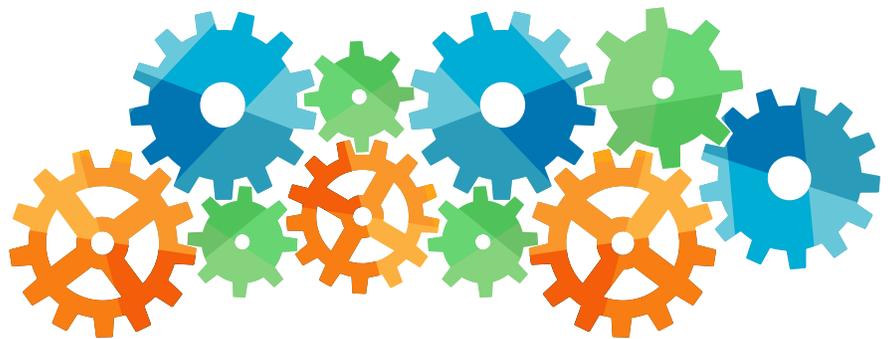
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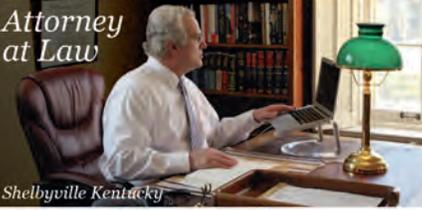
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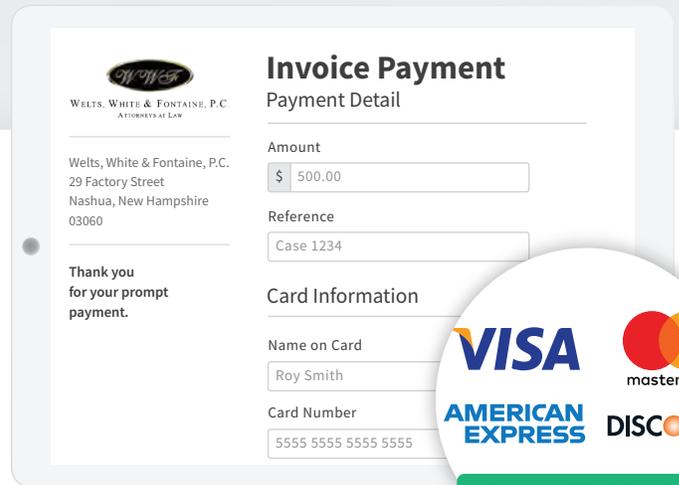
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