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*Happy
Holidays*



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Pride in the profession. Service to the community.

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The Counselor

Editor's note: Gerald Toner's fondness for the holiday season shines through in many of the short stories and essays he has penned over the years. It is evident in the books he has published including Lipstick Like Lindsay's and Other Christmas Stories (1991), Whittlesworth Comes to Christmas (1992) and Holly Day's Café and Other Christmas Stories (1996). Here he reintroduces us to Wiley Oldfield, who first appeared in "The Appeal," one of 11 short stories collected in The Christmas Turkeys and Other Misadventures of the Season (2010).

Wiley Oldfield shuffled towards the four, worn limestone steps that lead to the sanctuary entrance. His knobbed, hickory cane crunched on the ice that had preceded a rare, Christmas Eve snowfall. He mounted the steps one by one, left foot up, then right, pausing on each to take a breath. Entering the church was cause for silent celebration, since he was alone, arriving a full hour before the 11 p.m. service.

His colleagues in the law had ceased counting Oldfield's years on the earth. He had passed eighty some time back. Most simply considered him beyond the milestone of relevance. Yet a small, influential committee of church elders – once coined the “wise ones” – had selected Oldfield as their legal counsel and messenger. After all, he possessed a certain gravitas born from efforts on the church's behalf in decades long ago. He had once navigated through the troubled waters of a will contest, challenging a decedent's generous bequest to the church; confronted a difficult insurer over the denial of a claim over a partial roof collapse; and even quieted a threatened suit over alleged sexual harassment.

Of course, those events were history, and privately – and in sworn secrecy – the “wise ones” acknowledged that Oldfield had long since surpassed his prime. Yet they also agreed that he would be perfect for the task at hand. They knew Oldfield would be flattered to be drafted one last time for service in the name of the church. He would also be pliable to their wishes and desires, and beyond reproach in the wisdom of his decision – which was preordained by the church's solid legal position.

The matter at hand, as well as the “wise ones” wishes – a few cynical members of the congregation would say agenda – was simple: raze the unremarkable house next door and construct a new recreation facility for youth as well as conference space for visiting church leaders. While an unquestionably sensible use for a property the church had purchased years before and since provided rent free for a church sponsored refugee family from Guatemala, their plan had encountered slow, but growing, opposition from within and without the church.

First, the neighborhood considered the house historic and had filed a lawsuit to preserve it – a cause the “wise ones” considered frivolous, but troublesome nonetheless. Rumors then circulated that evicting the refugee family, notwithstanding promised relocation, might trigger further investigation by ICE into the father's more questionable status. In addition, the house had been the first location for the church itself, nearly a century before. Increasingly the media had seized upon the controversy, adding fuel to the flames and increasing division within the congregation.

So they settled upon Oldfield as their agent. Besides his past church service, Oldfield had been a local and even national leader, acting as whispering counsel to three, long dead presidents. He was seen as a champion of progress and once darling of the press. Perhaps this would be remembered. At the very least, he might unify the now torn congregation.

Oldfield accepted their assignment with some trepidation, but also with the gratitude that the “wise ones” had foreseen. He then requested the project plans and applicable deeds – somewhat to their surprise – and asked for an extension of time to complete his analysis. He even visited several members of the congregation and knocked on the doors of and spoken to a few neighbors in the adjoining blocks. To complete his research he interviewed the refugee family who would be relocated. They were passionate in their desire to remain, but quietly understood it was ultimately the church's decision to make. Oldfield realized they were generally considered collateral to the fray by most of the other players in the church's drama.

Finally, he called the Reverend Courtney Cobb, inviting her to a private lunch where they might discuss her perspectives. She was young and new to the church, its first female pastor, and thus far silent as to the controversy, going about her normal duties per the “wise ones” recommendation. He assured her that his only intent was to listen, rather than lobby, keeping an open mind rather than presenting her with his legal opinions.

Arriving at the restaurant, he was met at their table by the female member of the “wise ones” – a former CEO and current community leader, universally respected as a gender trailblazer. She assured Oldfield that specific questions would be better addressed by herself, as she was more familiar with intimate details. She then conducted the luncheon with business-like efficiency. Oldfield participated in their discussion with a smile and a ready ear, all the while trying to read Reverend Cobb's silent expressions – the focus of her gaze, the movement of her fingers along the table's edge, the amount of iced tea that she consumed. The church was clearly his client and the elders its ruling body. Yet Reverend Cobb was its figurehead, its leader, its guiding light

and he sought assurance that she was resolved that the church's uncontested legal might was also right – and that she could unite the factions and quell external interference.

He didn't fault Reverend Cobb for inviting a ruling elder to join them, nor did he blame the “wise one” from shielding and shepherding the young and inexperienced pastor. He simply wanted more, and thus his unannounced Christmas Eve visit.

The week before his Christmas Eve visit with Reverend Cobb he had informed the “wise ones” that his legal analysis was complete, in line with their thoughts and ready for release by their desired deadline – the first Sunday after the New Year, when church attendance would be low and further outcry more easily deflected. The law was seldom an easy mistress. Hard decisions must be made. His words satisfied them and they ceased their protective watch over the Reverend Cobb.

As Oldfield approached the pastor's office he paused, lightly patting his left suit pocket to make sure that his official legal memorandum was there. Must not forget that, he thought. Her door was opened a crack and he could see the soft hue of her desk light. She was probably touching up her Christmas Eve homily. He knocked and her door swung slowly open. Courtney Cobb startled before he could apologize for his intrusion. Then he asked if he could have a moment of her time, acknowledging that she was probably deep in thought. For an instant she glanced around, silent, appearing to Oldfield that she might be yearning for the company of one of her other counselors. When she nodded and asked him to take a seat, Oldfield slipped into a chair across from her desk and cleared his throat.

“I thought it would be a good time to share my thoughts about the...” he carefully selected his words, “dilemma you face.”

As Oldfield approached the pastor's office he paused, lightly patting his left suit pocket to make sure that his official legal memorandum was there. Must not forget that, he thought.

She smiled, though the rapid blinking of her eyes conveyed her concern. “You mean the church's legal situation?”

“Well, yes.” He reached into his left suit pocket and removed a tri-fold sheath of papers. He placed them before her. “I have my legal analysis right here. But I meant what I said. It is the dilemma you face...as the congregation's pastor.”

“Of course. I understand. But I'm guided by the elders...and your counsel.”

“My counsel? But you and I haven't spoken yet...person to person. As for the elders, of course you are guided, but not controlled or compelled. Ultimately you will own the final decision.”

“I understand. But as I'm sure your legal analysis sets out, the legal issues are clear...so I must accept the advice of our legal counsel.”

“Meaning me, I presume?”

“Well, yes. And I imagine, like the elders, you believe the church's legal position is sound?”

“Sound? Certainly. Absolutely. But I was requested to give counsel, not simply a cold, legal assessment. What do you think?”

She swiveled in her chair, staring out the window at the house next door, the house that would soon be razed. Lights were on and through half drawn shades one could see the heads of children bobbing up and down on a bed. Oldfield leaned forward, trying to read her thoughts. She turned back to him. “I'm not a lawyer. I can only rely on...”

“What can you rely upon?” He interrupted.

“Well, I'm not sure.”

“Ah...that's a problem. Because you need to be sure. The recreation and conference center would be marvelous additions, right?”

“Yes. Absolutely.”

“But if you lose a goodly number of the congregation, those facilities won't be of much use, right?”

“No, they won't. So what is your point?”

“What was Jesus's advice about one's neighbors?”

“Well,” she paused, “to love them as yourself.”

“Ah...” Oldfield exhaled as if it were a sentence, looking upwards, then folding his hands across his unstylish vest. “Regarding your neighbors, setting aside the law for a moment, what do you think Jesus might advise about your neighbors – all of your neighbors – in this matter?”

continued on pg. 12

Parting Thoughts

Chief Judge Brian C. Edwards

I write this column with mixed emotions. When accepting the position as chief circuit judge, I was well aware of the challenges and expectations associated with the job. One notable expectation was that each month I would be expected to prepare a column for this publication. At times I have relished the opportunity to have a forum to address issues that weigh upon my mind. However, much like when I was practicing law and the judge asked me to give argument at the conclusion of a probable cause hearing that did not go well for my client, there were certainly months when I didn't have much to say and wished to simply "submit."

Beginning next month, I will no longer have the pressure of thinking about what I will write about for this column. But unfortunately, that will mean that my wife and others close to me will have the full burden of having to listen to me vent about the things that are weighing on my mind.

This platform has given me the opportunity to share my thoughts about a wide range of topics such as gun violence, the importance of mentoring, specialty courts and life in general. (And I must say, just as my jokes have become much funnier since being appointed to the bench, based upon the feedback I've received from lawyers who have read my columns, I have become a much more interesting writer too!)

In addition, as chief judge, I have had the opportunity to play amateur meteorologist and decide whether to close courts during inclement weather (which brought me a new understanding of the old adage "damned if you do, damned if you don't"). And finally, during my term I have had the opportunity to represent my circuit court colleagues, for whom I have great respect and admiration, on

a variety of boards and commissions related to the administration of our justice system.

I have great respect for all of my colleagues on the circuit court term. But I would be remiss if I didn't specifically acknowledge my predecessor as chief, Judge Charlie Cunningham. Judge Cunningham has served as a constant source of advice and wisdom throughout my time on the bench and is someone whom I proudly consider a friend. I was truly honored when he approached me four years ago about serving as his deputy chief judge although after reading his wonderful columns in this space each month, I was quite concerned about filling his shoes.

I must also thank my staff in Division 11 who have provided me with amazing support in handling the increased administrative responsibilities associated with my service as chief judge. And I cannot forget the fantastic folks in the Jury Pool and Court Administration Office - Jayne Jackson, Carla Kreitman, Angela Bilewicz, and the rest of their team who work valiantly behind the scenes to make sure that the courts run as smoothly as possible.

As we embark upon another holiday season and hopefully a bit of time away from our offices, I look forward to some much needed downtime with my family and I also look forward to preparing for my return to the classroom. As I've written about before, I have previously taught classes at both the undergraduate and the law school levels and this spring, I will be returning to serve as an adjunct professor one afternoon per week at the Brandeis School of Law. I very much look forward to filling some of the void of not preparing these columns with the excitement of preparing for and engaging our future lawyers.

When we all return to our offices to begin a new year, the column in this space will be written by my successor as chief, Judge Angela McCormick Bisig. I have known Judge Bisig since we were on opposite sides (Judge Bisig as an Assistant County Attorney and myself as an Assistant Public Defender) conferencing cases in the 305 conference room in the Hall of Justice. I have had the privilege of practicing cases against Judge Bisig, practicing cases in front of her when she served as a district court judge, and literally serving alongside her as circuit court judges in Divisions 10 and 11. You will not find a more conscientious, fair and honorable public servant than my friend, Judge Bisig, and I look forward to reading what I know will be thought provoking words on this page over the next couple of years.

As I conclude, let me thank you all for taking the time to read these columns, whether you've agreed or disagreed with some of the positions that I've taken. Let me wish each and every one of you a happy holiday season. And last but certainly not least, let me take this opportunity to thank the person whom I regularly tell people is not only the smartest person in our home (although my teenager, as teenagers do, might disagree at times - he's wrong) but the smartest person that I know, my wife and the unofficial grammar editor of these columns, Angie Edwards. Happy holidays!

Chief Judge Brian C. Edwards presides in Division 11 of Jefferson Circuit Court. ■



Walker Confirmed as Federal Judge



On October 24, the U.S. Senate voted 50-41 to confirm Justin R. Walker, associate professor of law at the Brandeis School of Law and partner at Dinsmore & Shohl, to a lifetime appointment as U.S. District Court judge for the Western District of Kentucky. He succeeds Judge Joseph H. McKinley Jr. who is now on senior status.

Judge Walker, who clerked for Justice Anthony Kennedy on the U.S. Supreme Court and Justice Brett Kavanaugh on the U.S. Court of Appeals for D.C. Circuit, was sworn in on October 30. Formal investiture ceremonies will be held at a later date.

Judge Deweese to Retire



Judge Deborah Deweese, who presides in Division 3 of Jefferson Family Court, will retire effective December 31. Having previously served as a Jefferson District Court judge from 1993-2013, she was elected to her current position in 2014. Before ascending to the bench, she was a staff attorney for the Kentucky Court of Appeals.

The vacancy resulting from Judge Deweese's retirement will be filled by gubernatorial appointment from nominees selected by the Judicial Nominating Commission.

New Chief Circuit Judge



Effective January 1, Judge Angela McCormick Bisig, who presides in Division 10, will begin a two-year term as chief judge of Jefferson Circuit Court. She previously served as a Jefferson District Court judge from 2002-2012 and was chief judge in 2012. Before ascending to the bench, she was a prosecutor in the Jefferson County Attorney's and a litigation associate at two local law firms.

As chief judge, Judge Bisig will be responsible for the general administration of court business, including implementation of local rules, random assignment of cases to circuit judges and reassignment of cases from one circuit judge to another as necessary. She was elected to the position by her peers on the circuit court bench.



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Per the Kentucky Court of Justice's holiday schedule, all courts will be closed on Tuesday and Wednesday, December 24 and 25 and again on Tuesday, December 31 and Wednesday, January 1.

A Minor Issue: Determining When a Minor is Competent to Testify under the Kentucky Rules of Evidence

Trent A. Taylor

What rule deals with the competency of minors?

Rule 601 of the Kentucky Rules of Evidence establishes when an individual is competent to testify. Generally, there is a presumption that “every person is competent to be a witness except as otherwise provided in these rules or by statute.” KRE Rule 601(a). However, the Rule does list four instances in which an individual is disqualified from testifying. Disqualification is warranted when an individual: “(1) Lacked the capacity to perceive accurately the matters about which he proposes to testify; (2) Lacks the capacity to recollect facts; (3) Lacks the capacity to express himself so as to be understood, either directly or through an interpreter; or (4) Lacks the capacity to understand the obligation of a witness to tell the truth.” KRE Rule 601(b).

Who is in charge of determining whether a minor is competent to testify?

The individual in charge of the proceeding ultimately makes this determination since “the issue of competency of any witness is squarely within the discretion of the trial court.” *J.E. v. Commonwealth*, 521 S.W.3d 210, 214 (Ky. Ct. App. 2017). Furthermore, “competency is an ongoing determination for a trial court, which continues throughout the proceedings, even after any competency hearing has been completed.” *Id.*

Is age a factor to consider in determining competency?

“[It is] rather well settled that no rule defines any particular age as conclusive of incapacity. Age is not determinative of competency and there is no minimum age for testimonial capacity. Additionally, the burden of rebutting the presumption of competency is on the party seeking exclusion of the witness’ testimony.” *J.E.*, 521 S.W.3d at 214.

Is expert testimony needed to determine the competency of a minor?

An expert evaluation is typically unnecessary when trying to determine a minor’s competency. *J.E.*, 521 S.W.3d at 214. However, there are some circumstances in which expert testimony is required, such as when an “independent expert would provide genuinely relevant and beneficial evidence on the question or concoction or transference from the child’s unfortunate past.” *Mack v. Commonwealth*, 860 S.W.2d 275, 277 (Ky. 1993). This most commonly occurs in cases regarding concerns for the mental health of a minor due to some type of victimization. See *Perry v. Commonwealth*, 390 S.W.3d 122 (Ky. 2012) (holding that defendant’s conviction for sodomy could not stand because the trial court erred in not allowing an independent psychological evaluation of the child victim; there was evidence that the victim might have had serious psychological problems that could have contributed to the ability to understand the truth and the importance of testifying truthfully).

What process takes place in order to determine whether a minor is competent to testify?

Since expert testimony is unnecessary in most circumstances, the determination of whether a child is competent to testify primarily hinges on a factual inquiry in each case. The issue of competency can easily be dealt with by questioning the child in order to determine the child’s understanding of “the obligation to tell the truth,” which is typically the most common issue in regard to a minor’s competency to testify. *Swan v. Commonwealth*, Nos. 2011-SC-000085-MR, 2011-SC-000086-MR, 2012 Ky. LEXIS 498, at *40 (Aug. 23, 2012). A formal hearing is not required. Instead, “though informally referred to as a hearing, what the judge must do in deciding a witness’s competency is better termed deciding a ‘preliminary question,’ which is controlled by KRE 104(a).” *Id.* at *39.

This inquiry merely “requires that [p]reliminary questions concerning the qualification of a person to be a witness . . . shall be determined by the court.” *Id.* Specifically, there are “no requirements as to the content or length of the court’s inquiry. In fact, it provides the judge with a great deal of discretion, since it obviates the requirements of the Rules of Evidence in making the determination.” *Id.* Therefore, “an extensive formal hearing, at which both sides have the right to put on evidence and question all the witnesses, is not required for such a preliminary determination.” *Id.*

What questions should a minor be asked to determine competency?

When questioning a minor in order to determine competency, ask questions that get to the heart of whether the minor is able to both tell the truth and sufficiently recall the important facts. For example, in *Howard v. Commonwealth*, 318 S.W.3d 607, 612 (Ky. Ct. App. 2010), the court held that “the trial court conducted an adequate competency hearing . . . [by questioning a child victim in a sexual abuse case] about school, her birthday celebration, and past immunizations at the doctor’s office.” This inquiry established that “she was able to recall those events . . . [and she] demonstrated a moral obligation to tell the truth and was able to recall most of the events surrounding the sexual abuse.” *Id.* Therefore, this simple line of questioning was sufficient to determine that “she was competent to testify.” *Id.*

What if there are inconsistencies in a minor’s answers?

Even in the face of alleged inconsistencies, courts are reluctant to find a minor incompetent. For example, in *Price v. Commonwealth*, 31 S.W.3d 885, 891 (Ky. 2000) (citing Commentary to KRE 601, Evidence Rules Study Committee, Final Draft (1989)), the court found that commen-

tary to KRE 601 explains the bar on competency “should be applied grudgingly, only against the ‘incapable’ witness, and never against the ‘incredible’ witness, since the triers of fact are particularly adept at judging credibility.”

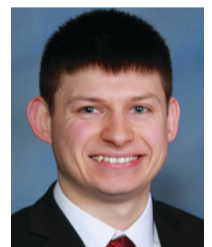
In other words, so long as a court determines that a minor understands the obligation to tell the truth, minor inconsistencies do not destroy competency. See *Grimes v. Commonwealth*, No. 2018-CA-000883-MR, 2019 Ky. App. Unpub. LEXIS 490 at *6-7 (Ct. App. July 12, 2019) (holding that an eight-year-old’s minor inconsistencies failed to rebut the presumption of competency). Therefore, precedent demonstrates that “a witness is not deemed incompetent solely because of young age or [their] inability to recall each and every detail of life with mathematical precision.” *Harp v. Commonwealth*, 266 S.W.3d 813, 823 (Ky. 2008).

Is Rule 601 closely related to any other rule?

The line of questioning used to determine competency is closely connected with Rule 603 of the Kentucky Rules of Evidence. Rule 603 plays an important part in the inquiry of a minor since all individuals are required to make an oath or affirmation before testifying. Specifically, KRE 603 states that “before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness’ conscience and impress the witness’ mind with the duty to do so.” KRE Rule 603.

In terms of what is deemed a satisfactory oath or affirmation, courts have “never required any ‘magic words.’” *Yarno v. Commonwealth*, No. 2007-SC-000260-MR, 2009 Ky. Unpub. LEXIS 62, at *4 (Apr. 23, 2009). Instead, “courts in this jurisdiction have long recognized that no particular word or form of oath is necessary as long as the child witness acknowledges that he or she will tell the truth, comprehends the nature of truth, and understands the consequences of lying.” *Id.* at *5.

Trent A. Taylor is a 3L at the University of Louisville Brandeis School of Law. With a lifelong goal to become an attorney, Trent hopes to practice civil litigation and employment law upon graduation this May. ■



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WE'RE A WONDERFUL BAR

D. Scott Furkin

It's a Wonderful Life – Frank Capra's classic 1946 film, ubiquitous at this time of year – reminds us all that our lives profoundly impact others in ways we often fail to appreciate. The familiar story follows the protagonist, George Bailey, as he is driven to the brink of disaster. Desperate and suicidal, poor George wishes he'd never been born until he is rescued by a guardian angel who gives him a glimpse of how much his beloved community would have lost had he gotten his wish.

Because this is also when the LBA makes its annual appeal for attorneys to renew their membership, it's a good time to take stock of how different our local legal community would look if the LBA – the oldest continuously operating bar association in Kentucky – had not been “born” 120 years ago.

Who would have joined with the Louisville Women's Club to found the Legal Aid Society which for almost 100 years has provided free civil legal services to the less fortunate in greater Louisville? This year alone, Legal Aid will assist almost 5,000 low-income individuals, including military veterans, with

problems related to government benefits, domestic violence and tenants' rights.

Similarly, who would have spearheaded and supported the creation of the first full-time public defender program in the state? In the nearly 50 years since it was formed, the Louisville Metro Public Defender's office has represented indigent defendants in over a million criminal cases in Kentucky's Court of Justice.

Who would have helped secure passage of a 1975 constitutional amendment establishing Kentucky's unified four-tier court system and, among other things, barring non-lawyers from serving as judges? In 2002, who would have helped garner public support for another constitutional amendment making family courts a permanent part of Kentucky's judicial system?

For more than 40 years, who would have conducted annual evaluations of trial judges sitting in Jefferson County both to give them feedback on how to improve their performance on the bench and supply voters with valuable information in judicial elections?

Who would have established the Louisville Bar Foundation – the LBA's charitable giving arm – which since its founding in 1982 has distributed more than \$2.9 million in grants to local organizations delivering legal services to the poor, providing law-related public education and improving citizen access to the justice system?

Who would have developed and disseminated self-help forms that pro se litigants can use to dissolve broken marriages? Who would offer the free bi-monthly divorce clinics where litigants receive guidance in completing the forms?

Who would have served as incubator for nonprofit organizations like Restorative Justice Louisville, which brings a new victim-centered approach to juvenile justice, or Doctors & Lawyers for Kids, which joins the medical and legal professions to address

problems that impede the health of indigent children and their families?

Who would have installed and maintained state-of-the-art audiovisual technology systems in eight circuit courtrooms in the Jefferson County Judicial Center that over the last seven years have transformed the way evidence is presented to judges and jurors?

Who would host the Bench & Bar Social, Judicial Reception and other gatherings that allow us to build camaraderie and have fun with colleagues? Who would organize the Legal Bowl, Ramble 5K, Back to School, Lawlapalooza or Santa's Court fundraisers?

Reflecting on 2019, here are a few other things that would not have occurred if the LBA didn't exist:

- 1,135 attorneys could not have chosen from 80+ seminars certified for over 200 hours of continuing legal education credit, including 80 hours of ethics, to help them stay current in the law and satisfy their mandatory requirement (not including the 165 attorneys who downloaded an additional 270 hours of programming from the LBA's on-demand CLE library)
- Nearly 10,000 members of the public could not have received referrals to attorneys equipped to handle their unique legal issues and the 150+ attorneys enrolled in the Kentucky Lawyer Referral Service could not have earned over \$1.4 million in fees on matters referred to them
- 20 law firms and legal agencies could not have turned to the LBA's Placement Service for help in hiring qualified pre-screened attorneys, paralegals, secretaries and legal assistants
- More than 1,000 seniors in 17 area high schools could not have learned about the pitfalls of consumer credit or how to live on a budget, through the Credit Abuse Resistance Education program
- 32 area high school students aspiring to legal careers – many of them from groups historically underrepresented in the legal profession – could not have attended the Summer Law Institute to learn how to prepare for law school, tour state and federal courts, hear from 60+ seasoned attorneys and judges or prepare and present a mock trial
- 21 young attorneys from different practice settings could not have joined the nearly 200 graduates of the Leadership Academy to develop the skills and sensibilities needed to become future leaders of the bar and community

I could go on, but you get the point: Without the LBA, we'd be missing a lot of worthwhile things that elevate the public image of lawyers and make life in a stressful and competitive profession a little easier.

It's no secret that the LBA, like many local voluntary bar associations across the country, is facing some challenges. Older attorneys are retiring without being replaced on the rolls by newer ones who don't necessarily see the value of belonging to a professional association. Podcasts and webinars are rivaling live seminars as a source of continuing legal education. Increased reliance on social media is supplanting in-person meetings as a means of networking and sharing information. In short, the legal landscape is changing and the LBA must change with it or risk extinction.

Don't misunderstand. Unlike George Bailey, the LBA is by no means ready to end it all. But as we forge forward we need guardian angels – in the form of members' support – to help us create a future as venerable and vital as our past.

So this holiday season, as you take a well-deserved break from the rigors of practicing law and iconic scenes from *It's a Wonderful Life* once again fill television screens, pause for a moment to reflect on how much the LBA has enriched Louisville's legal community – and where we would be without it. Then complete and return your membership renewal form.

After all, we're a pretty wonderful bar.

D. Scott Furkin is LBA executive director. He served as LBA president in 2004. ■



Effective In-House Counsel Requires Legal and Business Acumen, Practitioners Say

Dean Colin Crawford

Because we are situated in the largest city in the Commonwealth, the University of Louisville School of Law is fortunate to be in close proximity to many in-house lawyers at a variety of national organizations.

This month, I chatted with four of our alumni who are serving as in-house counsel. They provided insights on trends in corporate practice and what they see coming on the horizon. What struck me was the unanimity about the influence of certain trends (IP and technology, for example), as well as what they tend to enjoy in their work — above the variety of it. Here is what they had to say.



Mary Barrazotto, Vice President, Associate General Counsel, Brown-Forman Corp., Class of 1986

WHAT ARE SOME TRENDS YOU HAVE SEEN IN THE PRACTICE OF IN-HOUSE COUNSEL?

Here at Brown-Forman, instead of using extensive legal counsel globally, we'll do as much work in-house as we possibly can. If we need a unique specialty or local counsel, we will use outside counsel. I think that is a trend I see, at least in the beverage/alcohol industry, with other companies globally.

We are unique in that it's rare to find a beverage/alcohol lawyer...we've always needed to have that expertise in-house. As we've grown globally, we have hired more counsel to come in-house around the world to manage our changing businesses.

WHAT DO YOU LOOK FOR WHEN HIRING IN-HOUSE COUNSEL?

We usually hire for an expertise such as a corporate counsel or a securities lawyer or a trademark lawyer and then we teach them what is unique about beverage/alcohol.

I often like to hire litigators. I think they are trained effectively in learning how to argue any side of a case. You want the flexibility and adaptability I think that litigators are typically trained in more so than corporate lawyers.

WHAT DO YOU LIKE ABOUT YOUR JOB?

No two days are ever the same. I have a lot of different areas that I have responsibility or oversight for, from production to marketing to HR to sales. No two days — no two hours — are the same. It's a lot of diversity.

That is a nice aspect to being in-house in companies that are big but not too big. Some mega-companies will have 10 lawyers that do nothing but product liability. We are smaller in that respect, so you become more of a generalist and you become much more tuned in to the business and thus...you become more engaged in providing practical legal advice.



Cecilia Hagan, Vice President and Attorney, Education Associates Inc., Class of 1986

WHAT ARE SOME CHANGES YOU HAVE OBSERVED IN THE PRACTICE OF GENERAL COUNSELS DURING YOUR CAREER?

Technology advances make it much easier to communicate, proof and execute documents with outside counsel and external partners. From that perspective, the role of general counsel is more efficient. Due to technology,

however, there are higher expectations on turnaround time and immediate substantive responses from internal and external partners. Every day, I am reviewing a lengthy document on my phone in addition to on my office computer.

ARE YOU SEEING CHANGES IN THE PRACTICE THAT ARE DRIVEN BY CORPORATIONS?

Corporations have always had expectations to effectively manage legal costs and that continues. More often, corporations are now asking firms to provide project costs rather than typical billable hour arrangements.

Newer corporate expectations are for internal counsel to be proactive in areas of cybersecurity, data-sharing policies, intellectual property preservation and maintenance of the confidentiality of documents on the cloud (corporate-wide). Aside from the cloud, Google makes it very easy for recipients who are being "shared" with to modify documents that could be viewed as proprietary to the company.

What are some trends you see on the horizon?

Technology makes it easier to get work done and to share information, but it also requires anticipation of how others can use "shared" information to the detriment of a corporation's intellectual property rights. In that respect, the role of general counsel is to be diligent in keeping management informed of how best to protect its information in the rapidly evolving tech space.



Jeffrey Hellmann, Corporate Counsel, Long John Silver's, Class of 2015

WHAT ARE SOME CHANGES YOU HAVE OBSERVED IN THE PRACTICE OF GENERAL COUNSELS DURING YOUR CAREER?

This is somewhat hard to answer given my time out of law school, but in my experience (and working with some more tenured in-house counsel during those years), I would say what is important in the restaurant/franchise business is to be able to understand how business and the law work together.

CEOs, COOs and CFOs are not really looking for a rundown of codes and statutes but instead looking for explanations that they can understand and explanations of how the various laws and regulations specifically affect our business/company. To me, an extremely important asset of a general counsel/corporate counsel is the ability to explain complicated legal topics in a way that non-legal professionals can understand.

WHAT ARE SOME TRENDS YOU SEE ON THE HORIZON?

1. The restaurant industry (and the rest of the business world) is becoming much more technological. The ability for counsel to understand these IT concepts and how the legal world intersects (IT contracts, data security solutions, privacy laws like the California Consumer Protection Act) is very important.
2. I think it is becoming more and more important to show the value that your legal team provides, whether this is cost savings by handling tasks that were previously handled by outside counsel at high rates or providing efficient and cost-saving resolutions/processes to problems and complicated regulations.
3. It is becoming more and more important for in-house counsel to be able to understand and work collaboratively with non-legal professionals. I do not think you can afford to stay in your legal bubble and be oblivious to outside issues/trends. Again, the ability to explain complicated legal concepts in a way that non-legal professionals understand and will listen to is vital. Being able to work in cross-functional teams is extremely important.



Chris Sternberg, Senior Vice President and General Counsel, Sun Tan City, Class of 1990

WHAT ARE SOME CHANGES YOU HAVE OBSERVED IN THE PRACTICE OF GENERAL COUNSELS DURING YOUR CAREER?

Today's general counsel is expected to be both a legal and business adviser to the company. This means having a seat at the table to participate in setting strategy and direction for the business. Whereas the focus in the past may

have been largely reactive, responding to legal challenges presented to the company, there is more of a demand today to be proactive. This includes looking for ways to grow the business, as well as managing risk across business lines.

ARE YOU SEEING CHANGES IN THE PRACTICE THAT ARE DRIVEN BY CORPORATIONS?

I would say many legal departments today are insourcing work that maybe they farmed out in the past. By that I mean legal departments are investing in staff, attorneys and paralegals, who become subject matter experts on various aspects of the business and thus often able to manage legal work in their area more efficiently than outside counsel.

Having said that, there is still a great need to hire outside subject matter experts, particularly in highly specialized areas of the law. The other change in practice I have observed is the use by companies of alternative fee arrangements with outside counsel, including flat fees for projects.

WHAT ARE SOME TRENDS YOU SEE ON THE HORIZON?

We have a changing workforce with an increasing number of millennials practicing law today. They demand more of a work-life balance than we did in the past, and rightfully so, I think. They are also very technologically savvy and this presents a great opportunity for in-house teams to leverage this skill to work smarter.

Many thanks to Mary, Cece, Jeffrey and Chris for sharing their perspectives. Their experience is a testament to the contributions this School of Law makes to the corporate vitality of our city and region. We are proud to be able to claim them — and so many others — as star corporate counsel performers.

Colin Crawford, dean of the University of Louisville Brandeis School of Law, serves on the boards of both the Louisville Bar Association and the Louisville Bar Foundation. ■



A Letter to My Colleagues...

Dear Colleagues,

There are over 170,000 Kentuckians in Legal Aid Society's 15 county service area who are income eligible for Legal Aid's assistance. We know that over 70 percent of low-income Americans have at least one unmet civil legal issue in a given year, and many face more than one. Their issues aren't trivial. They are about their families and homes and incomes. These statistics are staggering, especially considering that the need is far greater than the resources.

When we talk about support for Legal Aid Society, we often speak about "closing the justice gap." This metaphor describes the distance between ordinary Americans who need an attorney and their ability to access one. While it springs to mind a great chasm that is seemingly impossible to overcome, indeed, the challenges to providing access to justice are solvable.

Daily, the staff and volunteers of our Legal Aid Society smash the barriers to justice; connecting individuals and families to the attorneys they need to resolve legal issues impacting the quality, and sometimes quantity, of their lives.

Civil legal aid is powerful. It changes lives, empowers families, and strengthens entire communities. It is a transformative tool that improves the economic, social and health conditions of our neighbors and neighborhoods. Civil legal aid means that:

- families facing foreclosure or eviction receive the legal defense they need to remain in their homes;
- survivors of domestic violence receive legal protections to keep their families safe;
- caregivers facing crippling debt are given second chances at income stability; and
- parents struggling to put food on their table, access healthcare for their children or ensure that their families' basic needs are met are enrolled in government assistance programs to help them in the darkest of times.

The power of civil legal aid, and our justice system, is only as great as the community that supports it. It takes donors, volunteers, and advocates ensuring equal access for all. With your support your Legal Aid Society served over 4,100 clients last year. Yet, the need is still great. For every one client served, one is turned away due to insufficient resources.

As the chair of Legal Aid Society's 2019 Justice for All Campaign, I call on you to help us remove barriers to justice. A donation to Legal Aid Society is not just a charitable gift; it is an investment in a fair and fully functional judicial system.

To make a gift to the 2019 Justice for All Campaign, visit Legal Aid's website, laslou.org, or send a check to 416 W. Muhammad Ali Blvd., Suite 300, Louisville, KY, 40202.

The barriers to access justice are found in courtrooms and communities across our nation, and indeed across the globe. These aren't new stories or issues, but it is in our power to change the outcomes. It is incumbent upon those in our profession to pick up the torch, to light the way for justice, and be part of the solution.



Sincerely,

Mandy Wilson Decker

2019 Justice for All Campaign Chair
Member, Stites & Harbison

LAW POEM

THE RISK

Douglas Haynes

We seem to jump into trial most easily
Against those who fear the risk.
Their fear almost glows
With the devil
In the 3:00 am dark above our beds.
We embrace their fear of the risk.

But fools, gamblers and lovers
Know the real truth.
Risk is just an excuse.
It is far more painful to not know the
possibility
Than it is to know the loss.

Douglas Haynes is a family law attorney and mediator with Fernandez Haynes & Moloney in Louisville. ■



Legal Aid Announces Dates for Free Clinics

The Legal Aid Society has announced dates for free legal clinics offered during December. Clinics include:

Foreclosure Clinic

Tenants' Rights Clinic: What You Should Know About your Landlord's Obligations and Your Rights

Project H.E.L.P. (Homeless Experience Legal Protection) Clinic

Visit www.laslou.org for a full list of clinics, dates and times. ■

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Confusing, False Connections and Common Expressions: Highlights from the Patent and Trademark Office in 2019

Peter J. Rosene

2019 has been a moderately busy year in trademark law. The Supreme Court delivered its second trademark opinion in two years discussing the scope of the First Amendment in relation to section 2(a) of the Lanham Act resulting in allowing registration for the word mark FUCT. The Court also extended the ability of a trademark licensee to continue use of a trademark even after the debtor-licensor attempts to reject the license agreement, a type of executory contract, under section 365(n) of the Bankruptcy Code.

However, I believe it is the application and registration stage with the U.S. Patent and Trademark Office (PTO) that has maybe yielded the most entertaining, if not educational, trademark developments. In fact, you may have come across several of these trademark applications filed on behalf of various celebrities, with some marks quirky enough to make their way through the media circuit. 2019 is certainly not the first year, nor will it be the last, that celebrities have applied for trademarks for things like song lyrics, catch phrases and even the names of their children. Nevertheless, 2019 produced an amusing mix.

The best examples I came across covered a fairly wide, yet predictable, variety of goods and services, such as advertising, posters, clothing and other apparel and entertainment. Notable examples include TACO TUESDAY from LeBron James for social media services and other downloadable works as well as Tom Brady's TOM TERRIFIC (apparently a nickname some sportscasters use for the quarterback) for goods like trading cards and posters. Other extraordinary applications include Melissa Jefferson's, known professionally as Lizzo, 100% THAT BITCH for audio/visual performances, clothing and sound recordings and Belcalis Almánzar's, known professionally as Cardi B, mark OKURR, translated into an audible chirp-

like sound, which I'm told appears in one or more of her songs. Also, Ohio State is taking a go at trademarking the word mark THE for clothing.

With the exception of Lizzo, each of the applicants' marks have been met with a refusal to register, also called an "office action." While the PTO examining attorneys in each of these cases may or may not have a sense of humor, their refusals reiterate what trademarks are and how to properly use one.

*A trademark,
in its simplest
terms, is a brand.*

A trademark, in its simplest terms, is a brand. All of the applications introduced above, with the exception of THE, are not *currently* used in commerce at the time of filing, so maybe the first thing to point out that may or may not be obvious is that a *trademark*, unlike copyrights, patents, and trade secrets must be in commercial use in order to be registered. There is a procedure to "reserve" a trademark in advance of use in trade, but its active commercial use must nonetheless commence shortly after the mark is "pre-approved" for registration.

This was one of several issues with Brady's TOM TERRIFIC application. Although not cited in the Examining Attorney's Office Action as a ground for refusal, ESPN and the Washington Post quoted Brady as stating his personal reason for applying for a trademark was because he disliked the nickname and wanted to prevent others from using it. Again, trademarks, unlike copyrights and patents, are not passive forms of intellectual property, but instead must be used in commerce and maintained by the registrant.

The commercial-use requirement for trademarks is not arbitrary but instead serves practical policies. The U.S. economy imposes an absurd amount of emphasis on branding as a signifier of quality and status in the minds of consumers. Considering the weight of importance given to brands, it therefore stands to reason the PTO and those corporations attempting to enforce their trademark rights want to ensure (1) that customers know who is selling them their cars, shoes, bourbon and dry-cleaning services just by looking at a label or sign and (2) that consumers are basically not confused between the companies peddling them.

If a given mark can't accomplish these two basic goals, refusal is likely, and a mark can fail to achieve these goals for a variety of reasons. For instance, creating a likelihood of confusion with another registered mark (TACO TUESDAY), as well as creating a false connection with a living individual (TOM TERRIFIC), being a mere commonplace expression (OKURR), or simply "failing to function" as a trademark (THE) will all warrant a refusal from the PTO.

These examples, along with the thousands of other marks which receive refusals from the PTO every year, raise other serious questions about when or whether you should advise your client to spend the time and resources to attempt the registration process or to fight a refusal once it has been issued. Whether an application's likelihood for success is readily apparent or not, part of the challenge is knowing you might get the refusal while also keeping one step ahead of the game and assessing the strength of your available counterarguments under substantive trademark law, such as the Lanham Act and Trademark Trial and Appeal Board case law.

Using our examples, I might advise a client to give OKURR a shot before TACO TUESDAY or THE. This is because the former example is an arbitrary stylization of a word, "okay," that seems to function as a popular catch-phrase specifically associated with a well-known music artist. This is not unlike 100% THAT BITCH, which similarly functions as Lizzo's catch-phrase. On the other hand, the latter two examples are in such common usage, "the" word "the" being "the" most commonly used word in "the" English language, they are rendered all but generic or fail to sufficiently indicate the source of the goods or services.

By no means is it a simple or certain calculation. While it is worth noting that anticipating and preparing the basis for overcoming a potential refusal of your client's mark is a central concern, simply keeping in mind a trademark's basic purpose is an important first step in your initial assessment.

Peter J. Rosene received his J.D. from the University of Kentucky College of Law in 2017, after which he served as staff attorney for Judge Ernesto Scorsone in Fayette Circuit Court. He now practices as an intellectual property attorney at McBrayer PLLC. ■



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Establishing Evidentiary Foundations with A/V Presentation Equipment at Judicial Center

Thursday, December 12

The focus of the program will be on the method for establishing evidentiary foundations when using computers, projectors & projection screens, document cameras and tele-strators for the presentation of evidence, and how to make your record for appeal when using the digital technology in Jefferson Circuit courtrooms.

CLE will be held at the Judicial Center, 700 W. Jefferson Street

Speaker: TBA

Time: 11:45 a.m. — Registration; Noon – 1:15 p.m. — Program
Place: Jefferson Circuit Court, Division One, Courtroom TBA
Price: \$100 LBA Members / \$150 Non-Members / \$20 Paralegal Members
Credits: 1.0 CLE Hour — Approved by KBA and Indiana Supreme Court

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Legal Writing -- Grammar Kills

Speaker: Joel Oster, Comedian of Law

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The Fear Factor: Good Lawyers Get Into Bad Ethical Trouble

Speaker: Stuart Teicher, The CLE Performer

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Social Media Horror Stories From the Trenches

Speaker: Ruth Carter, Carter Law Firm, PLLC

12.17.19 | 1:00 PM | 1.0 CLE Ethics

Who Wants to be Disbarred?: A CLE Game Show

Speaker: Sean Carter, MESA CLE

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The Code of Kryptonite: Ethical Limitations on Lawyers' Superpowers

Speaker: Stuart Teicher, The CLE Performer

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Legal Side of Blogging for Lawyers

Speaker: Ruth Carter, Carter Law Firm, PLLC

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The Weakest Lawyer: A CLE Game Show

Speaker: Sean Carter, MESA CLE

12.23.19 | 1:00 PM | 1.0 CLE Ethics Credit

Discipline or No Discipline: A CLE Game Show

Speaker: Sean Carter, MESA CLE

12.30.19 | 1:00 PM | 1.0 CLE Ethics Credit

If You Can't Say Something Nice, Shut Up!: The Ethical Imperative for Civility

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It's Not the Fruit, It's the Root: Getting to the Bottom of Our Ethical Ills

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Due to the partnership with Mesa CLE, the LBA will NOT be accepting registrations for these webinars. Please visit the LBA website's CLE calendar for the link to register and the cancellation policy.

Website Accessibility – Is Your Website Compliant with Title III of the ADA

Vince Antaki

Many of us take for granted the ability to “surf” the Internet. Individuals with disabilities, especially those who are visually impaired, must rely on technology that can read aloud the information on a website; however, web reader programs can only read the information if it meets certain criteria. Several large corporations have faced legal challenges over the last decade related to website accessibility.

In recent years there has been a growing trend in the number of lawsuits involving smaller businesses alleging violations of Title III of the ADA based on website accessibility. Title III prohibits discrimination against individuals with disabilities in places of public accommodation. There is a split among federal courts whether a website is a “place of public accommodation.” But the growing trend is that a website is a place of public accommodation if it offers information or items for sale to the general public.

Recently, the Supreme Court of the United States (SCOTUS) was presented with the opportunity to consider the issue of whether a website and mobile app must comply with Title III of the ADA in the case of *Domino’s Pizza v. Robles*. Guillermo Robles is blind and lives in the Los Angeles area. He uses screen reading technology to navigate the Internet. When he was unable to order pizza online because Domino’s website did not comply with WCAG standards, Robles filed suit. Domino’s Pizza was granted dismissal at the trial court level on a motion to dismiss. Guillermo Robles appealed the decision to the Ninth Circuit Court of Appeals, which reversed, holding that Title III of the ADA applies to websites of companies that have a nexus to a physical place of public accommodation. On October 7, 2019, SCOTUS denied certiorari.

It is important to understand the implication of the denial of certiorari, as well as to appreciate the impact on your company’s website. First, SCOTUS did not directly state that the ADA applies to websites. SCOTUS merely denied certiorari, meaning it was not willing to hear the case. Given the potential implication of the appellate decision from the 9th Circuit, SCOTUS’s denial of certiorari has the effect of indirectly affirming the notion that Title III of the ADA does apply to websites. However, the more likely reason for SCOTUS to deny certiorari is

because the dismissal at the trial court level took place before any development of facts. Nonetheless, it still leaves all business entities that have a presence on the Internet and that use mobile apps with uncertainty.

While the Department of Justice has issued extensive regulations regarding accessibility standards for physical locations, it has avoided doing so for websites. Without clear guidance from the government, industry standards have been developed.

The World Wide Web Consortium (W3C) develops web standards, including Web Content Accessibility Guidelines (WCAG) that makes web content accessible to people with disabilities. In fact, several federal courts have recognized WCAG as the industry standard for compliance with the ADA. The most recent version, WCAG 2.1, was just published in June 2018. The prior version, WCAG 2.0 has been in effect since 2008. Whether you are a large business or a sole proprietorship, if you have a website intended to provide information or sell your wares to the general public, it is important to ensure that the website at least meets the standards of WCAG 2.0.

The Department of Justice has postponed the issuance of accessibility standards for websites for several years, and there has been no specific deadline set for issuing regulations. Likewise, it is unlikely that Congress will get involved.

It is necessary for all business entities to be proactive by monitoring or auditing a website periodically to ensure continued compliance. Moreover, given the state of technology, and the prevalence of mobile apps, it is just as important to ensure that any mobile app associated with your company is also compliant. In any industry it is important to make products and services available to all customers. It is also important to recognize that technology will continue to play a larger role in commerce.

Vincent Antaki is a member in Reminger Co., L.P.A.’s Cincinnati office and is licensed to practice in Kentucky, Ohio and Indiana. ■



The Counselor, continued from pg. 3

“Well...to honor their wishes. But the church’s legal rights...”

“I told you to set aside the law for now. Let’s not forget, the law forbid much of what Jesus preached. And it ultimately led to his trial and execution.”

“What are you saying?”


Oldfield reached into his right suit pocket and removed another, tri-fold sheath of papers. He gently laid it on her desk blotter. “I am saying that in each person’s life, there comes a time when we find ourselves at a crossroads. One path is obvious. One not so much. The obvious path has been laid out for you. Here.” He pointed to the first sheath of papers he had withdrawn from his left suit pocket. “It is legal, reasonable and supported by the advice of your elders. The other,” his finger tapped upon the papers he had removed from his right suit pocket, “is difficult, controversial, and counter to at least some of the advice you have received. But it may very well be what you feel in your heart is right. That is what you must decide. It’s your choice.”

With that, Oldfield slowly arose and, reliant on his cane, departed. The Reverend Courtney Cobb picked up the second set of papers he had set before her and began to read.

The Reverend Courtney Cobb rose from the simple, but massive walnut chair situated in front of the organ, and stepped to the pulpit to deliver her Christmas Eve homily. Starting from the front row, the “wise ones” and their families awaited a gentle message of Christmas. In the last row of the sanctuary, in a corner where little light shone, Wiley Oldfield also awaited the Reverend Cobb’s Christmas Eve message to the congregation. The Reverend Cobb cleared her throat, took a sip of water and began.

“On Christmas Eve, we celebrate the coming of Jesus. His birth is immersed in uncertainty, but his teachings are clear and leave little doubt: love thy neighbor as thyself. As he said, this is the first and greatest commandment...and we must do so today, in this place and in this time...”

Wiley Oldfield listened to the words and insights he had suggested for the heart of a pastor challenged by the law. They had become her words, her phrases, inspired by his own. She would have to stand by them. Near the front of the church he could see the “wise ones” turning to each other and whispering. They had sought his counsel and he had given it. He listened to her passion grow with each of the points he had penned, taking no satisfaction with the criticism she stood to receive. But he would be there if she needed him. He was, after all, the church’s counsel. And as the congregation began the strains of “Silent night...holy night...” by candle light, Wiley Oldfield slipped gently into the dark night.

Sincerely,

Gerald R. Toner
LBA President



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Lawlapalooza

THE 80's

Lawlapalooza—the annual battle of legal bands—took place on October 18 at Diamond Pub Concert Hall. This year's theme was “Back to the 80s.”

Eight bands, each composed of at least one lawyer or law student, vied for the Cowbell Trophy which went to the group with the most money in its “tip jar” at the end of the evening. The winner was The Perpetual Motions.

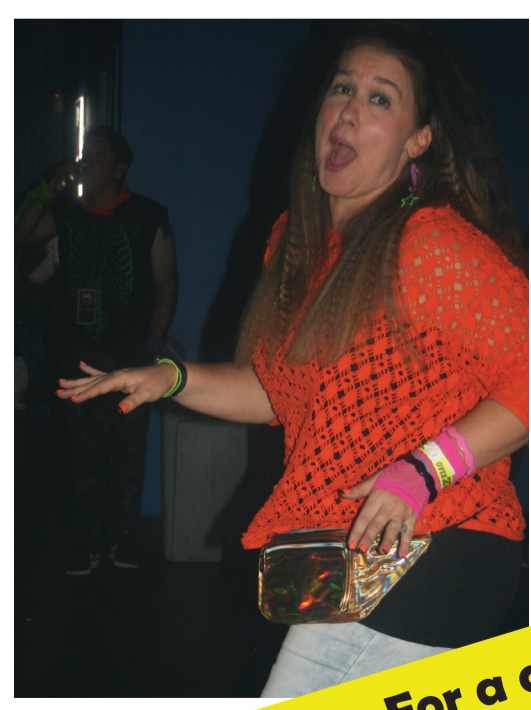
Lawlapalooza proceeds benefit the Judge Ellen B. Ewing Foundation which enables students at the Brandeis School of Law to perform summer internships at the Legal Aid Society.



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The Perpetual Motions



**For a complete photo gallery of the event,
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Employees' First Days on the Job Affect Their Willingness to Stay

Cara Silletto, MBA, and Leah Brown

The reasons behind employee turnover can be complicated – and hard to pin down. Below is part 3 of a 6-part series delving into retention strategies and tips that make it easier to keep your employees.

As companies prepare and adapt for the shorter-term workforce today, onboarding becomes an even more crucial piece to the retention puzzle. An evaluation and potential revamp of your orientation and onboarding processes may be critical for greater staffing stability moving forward.

BEFORE DAY ONE

Even before day one on the job, new hires should know what to expect. They should know where to go, what to wear (like no leggings), and whether they should bring their own lunch on their first day. These are things managers or HR can easily communicate to new staff and yet many fail to relay the message thinking those instructions are “common sense.” But it’s simple to avoid day-one misunderstandings by addressing common missteps of previous new hires, so make the easy effort to communicate your expectations more clearly before they arrive and they’ll be less likely to miss the boat.

“Keeping communication open throughout the risky periods of an employee’s early days can make a huge difference in your retention efforts.”

ORIENTATION & ONBOARDING

Once new hires get in the building, it’s important to keep the communication rolling to avoid future misunderstandings. If your company’s employees consistently miss the boat on certain issues, there’s likely an information gap. A clearer, more thorough employee handbook and day-one orientation plan can often fill in this gap. Without updating these over time,

managers shouldn’t be shocked when employees do something the managers never told them they couldn’t do.

Also be careful to not to force new hires to “hit the ground running” too soon if they’re not fully prepared. Take steps to ensure that your new employees are ready for the work situations likely to come up, and don’t throw them into the fire before providing adequate training. This lack of preparation often pushes good hires away who feel they were “set up to fail.” Provide the tools they’ll need, teach them about the company’s culture and history so they know who you are, and run through scenarios they could potentially see in their role early on – all before shoving them in front of clients and hoping for the best.

CHECKING IN WITH NEW HIRES

Even though most initial onboarding processes aren’t long (typically less than a week), managers shouldn’t assume that time period was enough. Managers should check in regularly with new hires...and be genuine about it. The reason is twofold: One, it helps employees see that their managers care about their staff and their development. And two, if the same questions from new employees are popping up time after time, managers can figure out what additional training and resources new hires need to educate them on the missing pieces. Sometimes figuring out how to best integrate your new hires can come straight from previous new hires: Let them tell you what they need.

Be intentional about when you have these conversations, too. If your company has high turnover at specific benchmarks of tenure (within a few weeks, at 3 months, etc.), schedule staff check-ins according to that timeline to try to close their intended escape route. This way, you can stay ahead of the curve and be able to handle new hires’ concerns before they escalate to a two-week notice (or none at all).

So much of a company’s problem with high employee turnover can be alleviated in the early stages. That’s why revamping and solidifying your onboarding processes and keeping communication open throughout the risky periods of an employee’s early days can make a huge difference in your retention efforts.

This article’s content is adapted from Cara Silletto and Leah Brown’s recent book *Staying Power: Why Your Employees Leave & How to Keep Them Longer*. The workforce thought leaders and speakers at Crescendo Strategies work with thousands of business leaders to help reduce unnecessary employee turnover. ■



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Thank You

Special Acknowledgments to the following individuals whose participation and assistance with the 2019 CLE programs have been invaluable. Most presentations are made on a voluntary basis. To the over 100 individuals who volunteer in this capacity, special gratitude is owed. Individuals contributing to this program are contributing to the professional development of all members of the Louisville Bar Association and the legal community.

Taylor King, America Place • **Steven J. Kriegshaber**, Goldberg & Simpson • **Lauren Kuley**, Squire Patton Boggs • **Sarah Laren**, Littler Mendelson • **Stephen Lukinovich**, MCM Advisors • **Jessica R.C. Malloy**, U.S. Attorney's Office • **Gennaro Marino**, Marino Engineering Associates, Inc. • **Maddy Martin**, Smith • **Al Mark Martinez**, Martinez Immigration Law PLLC • **Dr. Kelli Marvin**, Marvin & McCrary Forensic Evaluation Services • **LaToi Mayo**, Littler Mendelson • **Hon. Toni Murden McClure**, Spalding University • **Melanie McCoy**, Frost Brown Todd • **Dr. Kristen McCrary**, Marvin & McCrary Forensic Evaluation Services • **Megan McGinn**, Alltrade Property Management • **Patrick Michael**, Dinsmore & Shohl • **Ken Michul**, The Webb Companies • **Tanner Nichols**, Frost Brown Todd • **Mark A. Ogle**, Graydon • **Peter L. Ostermiller**, Attorney at Law • **Tandy C. Patrick**, Bingham Greenebaum Doll • **Josh Peifer**, CPA, Ernst & Young • **Joe Pusateri**, Elite Homes • **Francisco "Frank" Ramos, Jr.**, Clarke Silvergate • **Jim Ray**, Jim Ray Consulting Services • **Brett Renzenbrink**, Buechner Haffer Meyers Koenig Co., LPA • **Patrick Richardson**, JLL • **Beth Robinson-Kinney**, Legal Aid Society • **Christopher J. Roby**, US Department of the Treasury IRS Criminal Investigation Division • **Steven R. Romines**, Romines Weis & Young • **Beatrice M. Rosenberg**, DMLO CPAs • **C. Carter Ruml**, Ruml PLC • **Anthony L. Schnell**, Stoll Keenon Ogden • **Collin D. Schueler**, U.S. District Court for the Eastern District of Kentucky • **Anne Chamberlin Shaw**, Lifetime Financial Growth • **David N. Shearon**, Thriving Lawyers • **Lori Shelburne**, Gess Mattingly & Atchison • **Rebecca Sim**, Catholic Charities of Louisville • **Tom Sims**, CBRE • **Diana L. Skaggs**, Diana L. Skaggs + Partners • **Steven A. Snow**, Attorney at Law • **Greg Solomos**, Bellwether Enterprise Real Estate Capital • **Steven Stein**, Exeter Property Group • **Kelly Stephens**, Administrative Office of the Courts • **Sabine Kudmani Stovall**, The Wealth Planning Group • **Robert Benjamin Straus**, Wyatt, Tarrant & Combs • **Stuart I. Teicher**, The CLE Performer • **William D. Tingley**, Attorney at Law • **Shelby Coy Travis**, Travis Law Office • **Mike Troop**, Troop ADR • **Donald G. Tye**, Prince Lobel • **Kathy Urbach**, The Joyful Workplace • **Justice Daniel J. Venters**, Kentucky Supreme Court (Ret.) • **Robert Walker**, Cushman & Wakefield | Commercial Kentucky • **Peter M. Walzer**, Walzer Melcher • **Louis I. Waterman**, Goldberg & Simpson • **Leah Brown Waterman**, Crescendo Strategies & Certified Dare to Lead™ Facilitator • **Cyndi Whitmer**, Integra Realty Resources • **Karen Williams**, Louisville Tourism • **Thomas D. Wyatt**, Lifetime Financial Growth • **Deborah G. Yetter**, Courier Journal

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Honorees



JUDGE OF THE YEAR

HON. JOSEPH H. MCKINLEY JR. has served with distinction as a trial judge in both state and federal courts. A graduate of the University of Louisville Brandeis School of Law, he was elected to Daviess Circuit Court in 1991 where he presided until his appointment as a U. S. District judge in 1995. During more than two decades on the federal bench, he has overseen civil and criminal cases in every division of the Western District of Kentucky – Bowling Green, Louisville, Owensboro and Paducah – forging a reputation as a “lawyer’s judge” who runs an orderly and efficient courtroom and is fair and reasonable in his rulings. A past president of the Sixth Circuit District Judges Association, he was the Western District’s chief judge from 2011-2018. Now on senior status, he continues as a jurist hearing cases primarily in his hometown of Owensboro.



**JUSTICE MARTIN E. JOHNSTONE
SPECIAL RECOGNITION AWARD**

ROBERT “BOBBY” HADDAD, who passed away in September, practiced criminal law for more than 50 years before retiring earlier this year. The son of a Lebanon-born butcher raised above the family’s meat shop, he earned his law degree by attending night classes at the University of Louisville Brandeis School of Law. He never forgot his roots and was as friendly to janitors as to judges. A consummate professional who many considered the “King of District Court,” he was renowned for his quiet kindness and endless humor. He was instrumental in founding what later became the Kentucky Lawyer Assistance Program which helps lawyers struggling with depression, substance abuse and compulsive gambling. Along with his older brother, Frank, he also mentored dozens of young lawyers who have gone on to successful legal careers.



**JUDGE BENJAMIN F. SHOBE
CIVILITY & PROFESSIONALISM
AWARD**

K. GREGORY HAYNES, senior counsel at Wyatt Tarrant & Combs, is a master and past president of the Louis D. Brandeis American Inn of Court which promotes legal skills and values with a special emphasis on ethical and responsible advocacy in state and federal courts. A commercial litigator with over 40 years of experience, he has been lead counsel in many class action, shareholders derivative and complex securities cases involving multiple parties and counsel. Yet he has always found time to serve both the legal profession and the community at large in leadership positions ranging from chair of Citizens for Better Judges to board member of the Kentucky Opera. A graduate of the University of Kentucky College of Law, he was also LBA president in 2011.

COMMITTEE OF THE YEAR

The **AUDIT COMMITTEE** is responsible for ensuring that the combined financial statements of the Louisville Bar Association and Louisville Bar Center are independently audited on an annual basis. This includes engaging an auditor as well as reviewing the completed audit report. Earlier this year, the committee – composed of LBA board members Bruce Brightwell, Katherine Crosby and Dean Furman – put the auditing services out for bid, asking six different accounting firms to submit proposals; it then interviewed representatives from three firms before recommending one for engagement. As a result, the next audit will be conducted not only within generally accepted accounting principles but also at a substantial cost savings.





PAUL G. TOBIN PRO BONO SERVICE AWARD

JAMES P. "JAY" DILBECK JR. is a graduate of the University of Louisville Brandeis School of Law and a partner at Dilbeck & Myers where his practice focuses on insurance defense, subrogation and general civil litigation. For the last several years, he has been a steadfast volunteer in the LBA's Call A Lawyer program which enables members of the public to speak by phone with attorneys about legal issues, big and small, on the third Tuesday of every month. He has also volunteers at Metro Christian Legal Aid clinics held around the city and mentors a refugee family he met through Refuge Louisville.



FRANK E. HADDAD JR. YOUNG LAWYER AWARD

LANA M. FAZIO joined the juvenile trial division of the Louisville Metro Public Defender's office in 2014 and immediately distinguished herself with her strong work ethic, passionate advocacy and dedication to clients. Now as deputy division chief, she supervises a team of nine attorneys while representing children charged with public offenses in district court, status offenses in family court and as youthful offenders being tried as adults in circuit court. Her service extends beyond the courtroom to a subcommittee of the Juvenile Justice Advisory Committee, part of the Louisville Metro Criminal Justice Commission. She is a graduate of the Thomas M. Cooley Law School at Western Michigan University.



DANIEL M. ALVAREZ CHAMPION FOR JUSTICE AWARD

SADIQA N. REYNOLDS has worn many hats since graduating from the University of Kentucky College of Law just over 20 years ago: public defender, private practitioner, inspector general of the Cabinet for Health and Family Services, Jefferson District Court judge and chief of community building for Louisville Metro government. Now as president and CEO of the Louisville Urban League, she draws on all her past experiences to help African Americans, other minority groups and the disadvantaged attain social and economic equality and stability. The League's free expungement clinics – at which volunteer lawyers help people clear their records of old misdemeanor and low-level felony convictions keeping them from employment, housing and other opportunities for advancement – are a case in point. She is currently spearheading an effort to build a sports and learning complex on a rehabilitated vacant lot in Louisville's west end that promises to revitalize an area of the city that has long been neglected.



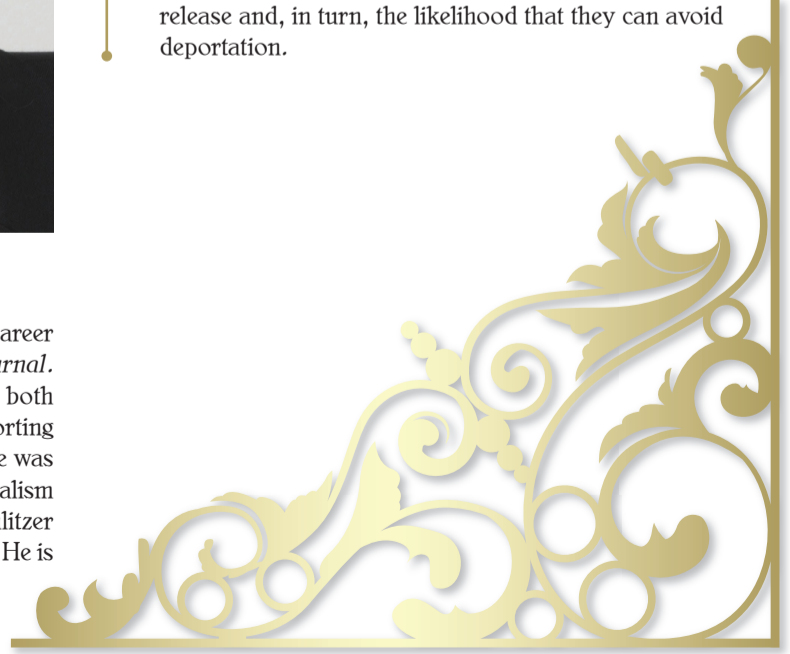
GAVEL AWARD

TOM LOFTUS recently concluded a journalistic career that spans 43 years, the last 35 at *The Courier Journal*. As Frankfort bureau chief, he held politicians of both parties accountable with dogged and accurate reporting that sometimes drew their ire – a sure sign that he was doing his job well. A member of the Kentucky Journalism Hall of Fame, he was part of the team that won a Pulitzer Prize for its coverage of the Carrollton bus crash. He is a graduate of Ohio State University.



SECTION OF THE YEAR

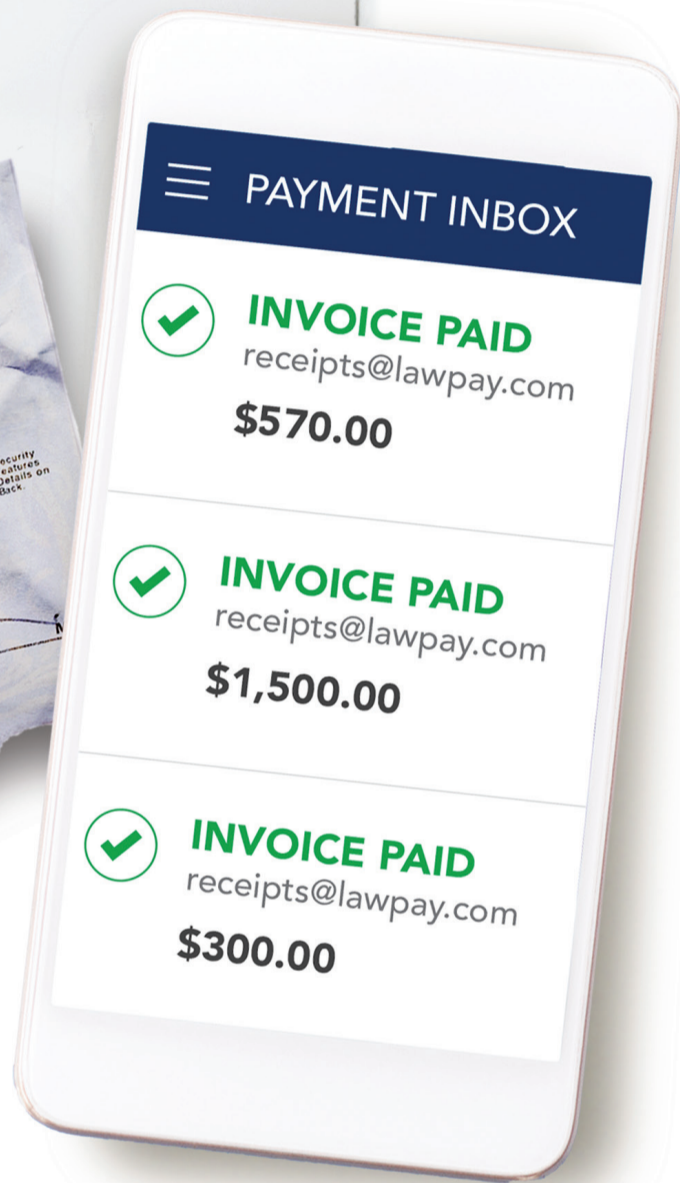
The **HUMAN RIGHTS SECTION**, co-chaired by Laura Landenwich and Tommy Clines, set an ambitious goal for this year: Establish a network of local volunteer attorneys to help undocumented immigrants win release from detention pending their removal hearings. When picked up by U.S. Immigration and Customs Enforcement officers, immigrants in Kentucky without permanent legal status are typically held in the Boone County Jail. Many remain there indefinitely even though they are bond eligible and have significant ties to their communities. To address this dilemma, the section has conducted trainings to equip attorneys to represent undocumented immigrants in bond hearings. Having representation greatly increases their chances of release and, in turn, the likelihood that they can avoid deportation.



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RESEARCHING THE LEGAL HISTORY OF SANTA CLAUS

Kurt X. Metzmeier

For most lawyers, the figure of Santa Claus in the law is an unpleasant memory of an establishment clause essay question on a Constitutional Law exam where they had to decide what combination of Christmas trees, electric menorahs and inflatable Santas a city-owned mall could display without being reprimanded by the U.S. Supreme Court.

Alas, *Lynch v. Donnelly* (1984) and *Allegheny County v. Greater Pittsburgh ACLU* (1989) have been a lump of coal in the fall semester grades stocking of many a law student.

But the white-bearded one made his first appearance in the law reports a hundred years before Justice Black erected “a wall of separation between church and State” in *Everson v. Board of Education* (1947).

Indeed, Santa Claus has featured in cases ranging in subject from IP law to maritime law to the law of personal injury. And a Westlaw or Lexis keyword search shows him joining the Easter Bunny and Tooth Fairy as symbols of naïve incredulity.

THE LIFE OF CLAUS

Despite his claims of antiquity, Santa Claus joins Bruce Springsteen in being “born in the USA.”

True, he can count Saint Nicholas of Myra, the Byzantine bishop from what is now Demre, Turkey, as a distant ancestor, but like the first Springsteen to enter the records of North America, Johannes Springsteen (ca. 1660), Santa Claus must point to the Netherlands for his immediate origins.

The entry for “Santa Claus” in the *Oxford English Dictionary*, 2d finds him an Americanized version of Sinterklaas or Sint Klaas. From the early published mentions of Santa Claus collected by the OED, it seems clear that he was born in New York (formerly New Amsterdam) in the early 1800s, out of the same marriage of Dutch culture and New York commerce that brought us Wall Street (called Da Wal Street on early maps).

Thus, it is not surprising that the first mention of the jolly elf in Louisville papers (in 1845) was in advertisements for “Santa Claus presents,” the small gifts associated with Christmas given children along with nuts and oranges in their stockings.

SANTA IN THE LAW BOOKS

The first legal notice of the name Santa Claus was in a federal admiralty case in 1846. Two vessels had collided, one of them the steamship *Santa Claus*. The ship had run into another boat, which was traveling with only one light burning although testimony indicated that it could be seen. (There is no evidence that the light was “so bright it could guide a sleigh” or steamboat that night). Sadly, in a decision that has gone down in history, the court ruled against the *Santa Claus*.

The facts and the actual legal claim in another early case is obscure, due to the extreme spoliation of the court record which was so egregiously mutilated that we have no idea what it was about. However, the case name may explain the problem: *Santa Claus v. Santa Claus of Santa Claus* (Ind. 1939). Clearly that much Santa Claus in one place warped the universe sending the court papers into a parallel dimension.



WHO OWNS SANTA CLAUS?

The use of the merry fat man’s image in commerce takes up much of the North Pole’s legal work.

Typical is *Santa’s Workshop Inc. v. Sterling*, (N.Y., 1956), which pitted a Christmas-themed entertainment attraction against a nearby private zoo/fur farm in the Adirondack region. Each attraction advertised to potential visitors via billboards.

The trouble started when the defendant decided to abandon his marketing theme “Nature’s Magnificent Killers” for a more family-friendly one based on that of the plaintiff’s advertising of his holiday park featuring Santa’s workshop at the North Pole. The new ad campaign included “large cutouts of Santa Claus” that bore a “marked resemblance to the plaintiff’s Santa Claus advertising.”

Now, while this seems like the plot of an Adam Sandler movie, no campaign of increasingly elaborate pranks followed, only a lawsuit, which Santa’s Workshop won on the state law tort of unfair competition. (Presumably, the defendant returned to his “death-dealing animals” advertising strategy).

In *Doran v. Sunset House Corp.*, (S.D. Cal., 1961), the case involved infringement of a copyrighted decoration, a printed plastic bag that when stuffed with paper created a 5’6” Santa Claus. The federal court ruled against the infringing party and ordered that all the offending figures of Santa Claus “must be destroyed.”

BAD SANTAS

“Santa Claus must be destroyed” might be the tagline for the next two cases. The first concerns a small 14-inch wooden Santa Claus figure, sold by Sam’s Club.

In November 1994 in the Kenner, Louisiana store, Mary Davis was shopping for the holidays. While crouching to view some goods, the three-pound figure fell from a shelf directly hitting her on the head, giving her a sizable knot. She continued to shop but later left and soon hired an attorney.

The trial court jury found against her, shocking the judge who set aside the verdict. Ultimately, the Louisiana Supreme Court in *Davis v. Wal-Mart Stores, Inc.* (2000) restored the jury verdict, leaving her with nothing more than an abiding dislike for Santa Claus and bayou juries.

The worst “bad Santa” case involves Jackie Onassis, the widow of the late president John F. Kennedy. A regal celebrity in the 1970s, she was tormented by one of the most notorious paparazzi photographers, Ronald Galella.

He ambushed her at many events, so often that her three Secret Service agents spent much of their time keeping him away. Finally, Galella was arrested. He then sued Onassis for false imprisonment but in the course of that trial the combative Galella was hit with a number of contempt and perjury allegations.

Among the matters discussed in *Galella v. Onassis* (S.D. N.Y., 1972) was an incident at the 21 Club in Manhattan. Onassis testified that “Santa Claus lunged up at me, trying to get next to me, pushing, scuffling and saying ‘Come on Jackie, be nice to Santa, won’t you. Come on, Jackie, snuggle up to Santa.’”

That “Santa” was Galella in costume and the court ultimately slapped him with multiple contempt fines and enjoined him from ever photographing Jackie O again. (The court was kinder to Galella than Marlon Brando who knocked out five of the photographer’s teeth).

ON THE NAME OF CLAUS

In two early 2000s cases, courts were asked to decide whether ordinary, non-elfin humans could change their name to Santa Claus. In 2001, Utah said yes.

However, in 2000, an Ohio court ruled firmly against the idea. In rejecting the name-change petition before it, the court summed up the cultural place of Santa Claus far better than I could:

“The petitioner is seeking more than a name change, he is seeking the identity of an individual that this culture has recognized throughout the world, for well over one hundred years. Thus, the public has a proprietary interest, a proprietary right in the identity of Santa Claus, both in the name and the persona. Santa Claus is really an icon of our culture; he exists in the minds of millions of children as well as adults. The history of Santa Claus—the North Pole, the elves, Mrs. Claus, reindeer—is a treasure that society passes on from generation to generation, and the petitioner seeks to take not only the name of Santa Claus, but also to take on the identity of Santa Claus. Although of people every year do take on the identity of Santa Claus around Christmas, the court believes it would be very misleading to the children in the community, particularly the children in the area that the petitioner lives, to approve the applicant’s name change petition. Therefore, for the foregoing reasons, the court finds that it would be against public policy to grant the application of the petitioner.” *In re Handley*, (2000).

Shipwrecked, fought over, sued, impersonated, arrested, dragged in and out of shopping malls and beloved, Santa Claus has trooped into American courts for almost 175 years. But the North Pole’s most famous resident remains jovial, distributing good cheer to all children, even those of lawyers.

So, in his famous, mostly non-denominational belly laugh (check the latest Con Law cases to be sure), I bid you a happy “ho ho ho” for the holidays!

Kurt X. Metzmeier is the associate director of the law library and professor of legal bibliography at the University of Louisville Brandeis School of Law. He is the author of *Writing the Legal Record: Law Reporters in Nineteenth-Century Kentucky*, a group biography of Kentucky’s earliest law reporters, who were leading members of antebellum Kentucky’s legal and political worlds. ■





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Tickets are \$25 each. The winning ticket will be selected at the 2020 Bench & Bar Social on Thursday, January 23 (need not be present to win.) Proceeds will benefit the Louisville Bar Foundation.

Thank you

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Human Rights Law: Laura E. Landenwich & Tommy Clines

In-House Counsel: Gregory S. Metzger & Lynn K. Fieldhouse

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Public Interest Law: Neil B. Riley

Real Estate Law: Nicholas R. Pregliasco & Clifford H. Ashburner

Solo & Small Practice: Carlos Hernandez Ocampo and Laurel Hajek

Young Lawyers: Abigail Fargen Riley, Ashlea Hellman, and James J. Wilkerson

MEETING SCHEDULES

December Meeting Announcements

Section meetings are held at noon at the Bar Center, 600 W. Main St., Ste. 110.

Tuesday, December 10: Environmental Law Section

Meetings scheduled at the time of printing. Please watch for announcements in eBriefs or e-mail blasts for additional confirmed meeting dates. Guests are welcome to attend a meeting before joining the section. For reservations or to join a section, call (502) 583-5314 or visit www.loubar.org.

Legal Assistants of Louisville

The next regularly scheduled meeting of the Legal Assistants of Louisville will be held on Tuesday, December 17, at 11:30 a.m. at the Bristol Bar & Grille Downtown located at 614 W. Main Street. This month's speaker will be Nicole George, Louisville Metro Council elected representative for District 21. For more information about the organization, please contact Loretta Sugg, Vice President, at (502) 779-8546.

Women Lawyers Association

Women Lawyers Association will host our final lunch meeting of 2019 at the Bristol on Thursday, December 12, 2019 at 12:00 p.m. (registration starts at 11:45 a.m.). Our December meeting is all about socializing, and lunch is at a REDUCED price of \$10.00. We will have green chili wantons and will be collecting donations for Kentucky Refugee Ministries. Please send your RSVP to womenlawyersassociation@gmail.com. If you cannot attend this month, we host meetings the second Thursday of every month and social events at various times throughout the year.

Santa's Court Toy Drive: Just 2 Weeks to Go!

The holiday season is here! When you make your holiday shopping list, don't forget about the Louisville Bar Association's "Santa's Court Toy Drive" to benefit The Salvation Army's Angel Tree Program. The legal community has a long history of joining together each year to collect toys and monetary donations for the children participating in the Angel Tree program. The Salvation Army is always very grateful for our support.

How to Participate

Email or call today to sign up your firm, office or section. (Contact Lea Hardwick, lhardwick@loubar.org or at 583-5314).

Important Dates

The deadline for collecting toys is Wednesday, December 11. Upon request, LBA volunteers will pick up toys from your office on December 12 and the morning of December 13. Or, you can drop donations at our office at 600 West Main St, Suite 110.

Please join us either once again, or for the first time; this holiday donation will put smiles on the faces of very deserving children!



The deadline for
collecting toys is
Wednesday, December 11!

Office Space

Offices Available in Downtown Louisville:

An established law firm with offices in Lexington and Louisville currently has office space available for rent immediately. This office-share environment in our Louisville office includes 3-5 adjoining offices (each with fantastic views of downtown), building security, a secretarial workstation, access to conference rooms, lobby/receptionist and conveniently located kitchen/restrooms. Please call 859-514-7232 for additional information and/or to view the offices.

Office Space Available:

One Riverfront Plaza - river view; 1 to 3 offices available (2 furnished) on 20th floor; library/conference room; secretarial services and/or space available. (502) 582-2277.

Attorney Office space for Rent in Old Louisville (S. 4th St, Lou KY):

Office spaces for rent in Historic Old Louisville. Several options available in Magnificent Historic Mansion:

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1 office approx... 8' x 10'

1 office with adjoining room that can be used for secretarial office(s) or office with adjoining secretarial room. Approx. 8' x 10' each

1 large open space with enough room for 3 desks for support staff

(or)

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Access to conference rooms, copy machine, fax and postage machine, and full kitchen. Free parking. Available January 1, 2018. For more details email mmalaw1@aol.com or call Laura Garrett at 502-582-2900.

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Two furnished offices available for rent. Furnishings include a desk and a credenza along with some chairs and a small coffee table. There is also a small kitchenette available for use. Rent \$800. 144 Sqft. Call (502) 423-7023 or email wclark@gershlaw.com.

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The Best Things in Life are Free...

Did you know that Members on the Move announcements are a "member perk" and FREE of charge?! Let us know what you've been up to!

Send announcements to Lauren Butz: lbutz@loubar.org.

Notices are printed at no cost, must be submitted in writing and are subject to editing. Items are printed as space is available. News releases regarding lawyers who are not LBA members in good standing will not be printed. Peer review rating announcements are not published, these include, but are not limited to: Best Lawyers, Super Lawyers, Chambers and Martindale-Hubbell. Others will be considered on a case-by-case basis.

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Immigration Consultant:

Dennis M. Clare is available to practice immigration and nationality law. Member of the American Immigration Lawyers Association. Law Office of Dennis M. Clare PSC, Suite 250, Alexander Bldg., 745 W. Main St., Louisville, KY 40202, (502) 587-7400.

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Discrimination Issues & Other Related Matters:

Samuel G. Hayward is available for consultation of discrimination and other related matters for either plaintiff's or defendant's practice. Mr. Hayward has over forty years' experience in this area with Title 7, 1983, and sexual harassment cases. Samuel G. Hayward, 4036 Preston Hgwy, Louisville, KY 40213, (502) 366-6456.

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Will locate your missing witness anywhere in the country for the flat fee of \$150. Please send the name and one identifier - BD, SSAN or last known address - to jsniegocki@earthlink.net, or call 502-426-8100. Jim Sniegocki, Special Agent, FBI (retired) Capital Intelligence Corp. www.capitalintelligencecorp.com.

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Help Wanted

Through the LBA Placement Service

Associate Attorney:

Growing Louisville law firm located on the east side of town is currently looking for an Associate Attorney with at least 1-2 years of litigation experience to assist with the firm's civil defense litigation practice. Advancement potential is there due to the firm's growth. Salary is commensurate with experience, plus full benefits. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmoehr@loubar.org.

MEMBERS *on the move*



Coughlin



Yussman



Davis



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Schifano



Young

Wyatt Tarrant and Combs is pleased to announce that partner **Michelle Browning Coughlin** was recognized as one of the "100 Women Who Inspire Us" during the American Bar Association's Women in Litigation Joint CLE Conference in November. The conference highlighted women in the legal profession in celebration of the 100th anniversary of the passage of the 19th Amendment. Browning Coughlin, the founder of the nearly 4,000 member national organization, MothersEsquire, is an intellectual property lawyer representing large and small companies in their trademark matters, as well as celebrity and sports figures in their trademark, copyright and licensing matters.

Wyatt, Tarrant and Combs is also pleased to announce that partner **Jefferey Yussman** has been named president elect of the Special Needs Alliance (SNA). The invitation only national nonprofit association of attorneys serves individuals with disabilities and their families. Yussman concentrates his law practice in the areas of estate planning and administration, business succession planning and charitable planning. He is also the chair of the firm's special needs planning practice, which he runs under the trade name, Yussman Special Needs Law.

O'Bryan, Brown & Toner is pleased to announce that **Nicholas J. Davis** and **John F. Shockley** have joined the firm. Davis received his J.D. from the University of Kentucky College of Law, where he served as a member of the Moot Court Board and the Kentucky Law Journal. His practice includes insurance defense litigation with a focus on medical malpractice and the defense of general civil liability claims. Shockley earned his J.D. from the University of Kentucky College of Law. His primary areas of practice include insurance defense litigation with a focus on medical malpractice, long term care/nursing home negligence and the defense of general civil liability claims.

Sheffer Law Firm, is pleased to announce that **Thomas G. Schifano** has joined the firm. Schifano is a 2019 graduate of the University of Louisville Brandeis School of Law. He will practice in the areas of medical malpractice, product and premise liability.

Appriss Inc has welcomed **Dwight D. Young** as Legal Counsel. Young will serve as the lead attorney for Appriss' health care business unit, as well as the lead attorney for the company's mergers and acquisitions and corporate governance. Young was the vice-chair of the LBA's Young Lawyer Section in 2017 and the chair in 2018. He received his J.D., *magna cum laude*, from the University of Louisville Brandeis School of Law in 2015.

Dinsmore & Shohl was recognized as a top performer at this year's Leadership Council on Legal Diversity (LCLD) annual meeting in Washington, D.C. The designation is reserved for LCLD members and law firms most active in the council's programs and that most align with and promote its mission of "creating a truly diverse U.S. legal profession." This marks the second consecutive year the firm has received the honor, and the third time since 2015.

ACT NOW!

2020 Membership Renewals & Roster Photos

Please be on the lookout for your 2020 membership renewal statement. They were mailed in late November to the address on file with the LBA. If you have recently moved and did not submit a change of address, please contact our office and we will forward a new statement. The renewal statement also serves as a proof for your roster listing. Be sure to flip the page and verify that all the information is as you'd like it to appear. If you need to make any change, please note them on the form. Dues must be received no later than January 31, 2020.

If you'd like to submit a photo or update your current photo for the 2020-2021 pictorial roster, please visit our website at www.loubar.org for specifications and deadlines. Those who submit electronic photos will receive an e-mail as confirmation of receipt within two weeks.

THE LOUISVILLE BAR FOUNDATION



Chauvin

The Louisville Bar Foundation recognizes and welcomes **Hon. A.C. McKay Chauvin** as a **Fellow of the Foundation**. Chauvin serves as judge of Jefferson Circuit Court, Division Eight and is a member of the committee overseeing the Jefferson County Court Upgrade Project.



Wayne

The Louisville Bar Foundation recognizes and welcomes **Peter H. Wayne** as a **Fellow of the Foundation**. Wayne is the General Counsel to Advocacy Trust and its affiliated companies, Forge Consulting, LLC and Advocacy Wealth Management. He also serves as the president-elect of the Louisville Bar Association.



O'Connell

The Louisville Bar Foundation recognizes and welcomes **Hon. Annie O'Connell** as a **Fellow of the Foundation**. O'Connell serves as judge of Jefferson Circuit Court, Division 2 following her election to the bench in 2018.



Ward

The Louisville Bar Foundation recognizes and welcomes **Morgan T. Ward** as a **Fellow of the Foundation**. Ward is a Member of Stites and Harbison and is in the firm's Business Litigation and Service Group. His practice

focuses on commercial litigation, regulatory litigation, constitutional law, real estate litigation, trust and estates litigation, title insurance defense litigation, insurance coverage and bad faith litigation, trial practice, arbitration, mediation and appellate practice.



Fitzgerald

The Louisville Bar Foundation recognizes and welcomes **Thomas J. FitzGerald** as a **Fellow of the Foundation**. FitzGerald has served as the director of the Kentucky Resources Council since 1984. KRC is a non-profit environmental advocacy organization providing

free legal, strategic and policy assistance to individuals, organizations and communities concerning environmental quality, resource extraction, energy, and utility issues.

For more information on the Fellows Program at the LBF and how it recognizes leaders in the profession, contact the Foundation Director, Jeff Been, at jbeen@loubar.org or (502) 292-6734.

The LBF Gratefully Recognizes its Foundation Partners for 2019

In 2019, the Louisville Bar Foundation awarded more than \$145,000 in grants to local nonprofits for law-related projects. The LBF is grateful for the generous support from all the attorneys who made this possible and recognizes its 2019 Foundation Partners – those law firms and corporate law departments (with 5 or more attorneys) where 100 percent of members made a financial gift to the Foundation to support its grantmaking activities. The combined support from the attorneys represented by these Foundation Partners totals more than \$30,000. The generosity of the Foundation Partners and other individual LBA member attorneys makes it possible for the LBF to support and improve legal services for the poor, law-related public education and our judicial system.

The LBF thanks those generous Foundation Partners listed below. For more information about how you can become a Foundation Partner, please contact Jeffrey A. Been at (502) 292-6734 or jbeen@loubar.org.

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Leadership Academy

Class of

2019



Join us in congratulating this year's LBA Leadership Academy Class. Photos and recap will be published in the January 2020 issue of Bar Briefs and on the LBA website at www.loubar.org.

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