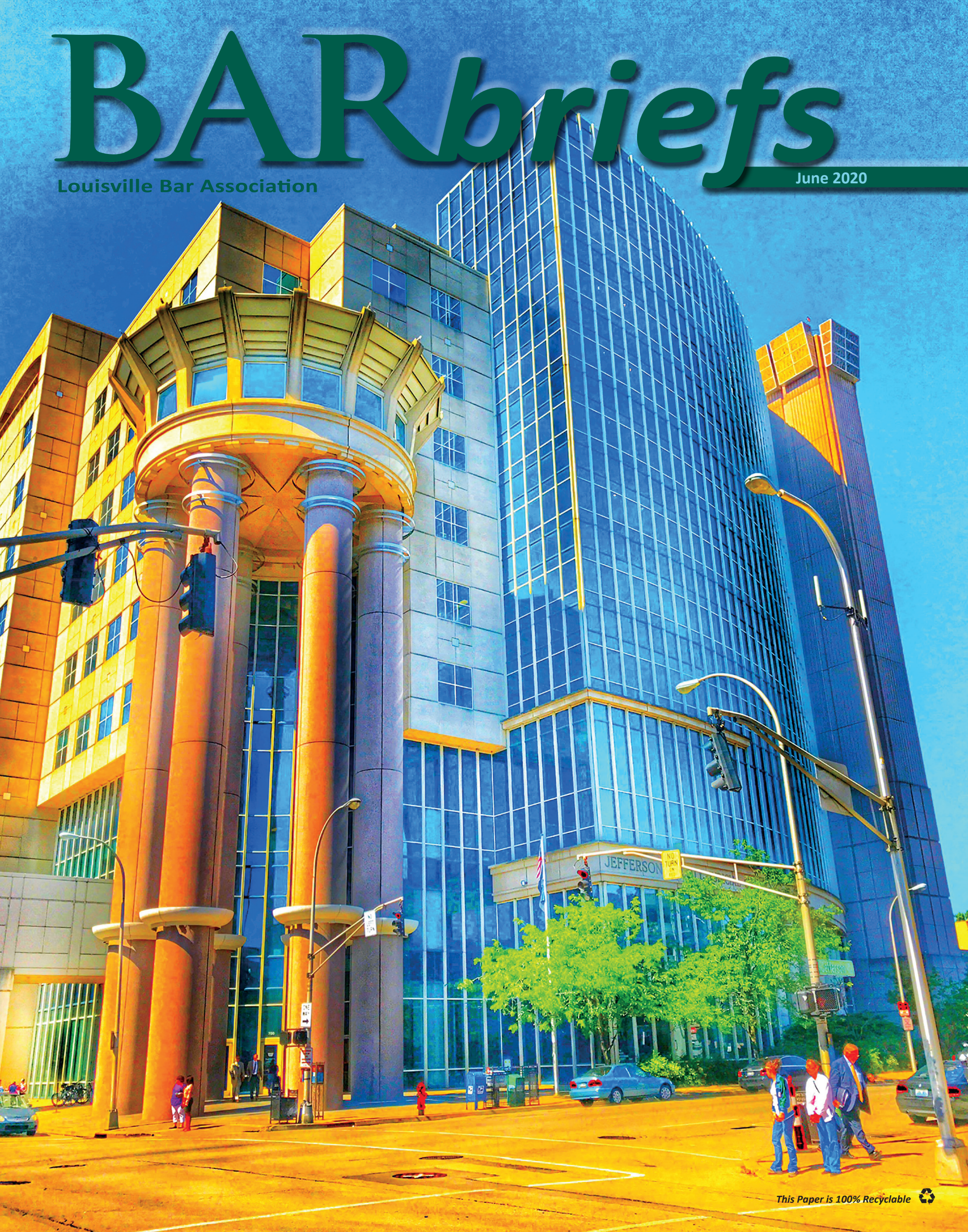
BARbriefs

Louisville Bar Association

June 2020



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LOUISVILLE BAR ASSOCIATION
Pride in the profession. Service to the community.

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Editorial Offices:
600 W. Main Street, Ste. 110
Louisville, KY 40202-4917
Phone: (502) 583-5314 · Fax: (502) 583-4113
admin@loubar.org · www.loubar.org

Lauren Butz
Managing Editor

Kimberly E. Kasey
Graphic Designer

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The mission of the Louisville Bar Association is to promote justice, professional excellence and respect for the law, improve public understanding of the legal system, facilitate access to legal services and serve the members of the association.

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This month's cover features a filtered photo of the Jefferson County Judicial Center that attorney Mark Dobbins snapped with his cell phone on a beautiful day in 2017.

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Life Happens, Plans Change

"Life is what happens when you're busy making other plans."

COVID-19 transformed this oft-quoted phrase into more than a mere bumper sticker platitude. As 2020 dawned, I had ambitious plans for my year as LBA president—updating our strategic plan, facilitating a dialogue about election year issues with journalists from Louisville Public Media's Center for Investigative Reporting and hosting luncheon forums with Kentucky Governor Andy Beshear and Attorney General Daniel Cameron to name a few.

Those plans changed on March 6 when Gov. Beshear issued Executive Order 2020-215 declaring a public health emergency in the Commonwealth. Soon thereafter, the Kentucky Supreme Court entered the first in a series of orders effectively closing the courts to all but a few emergency and time-sensitive matters. In similar fashion, the Louisville Bar Center closed on March 16 and LBA staff began working remotely. Across our city and state, professional offices, retail stores, restaurants, hotels, gyms, bars and all other manner of private businesses and public agencies were shuttered as we did our best to adhere to the new Healthy at Home guidelines.

Despite the ensuing disruption of our daily lives and the very real risk of serious illness we continue to face, we have managed to adapt to a "new normal"—including among other things the use of facial coverings, hand sanitizers and social distancing—and life has found a way to go on as it always does.

I am happy to report that the LBA has also adapted. During what would ordinarily be our CLE "high season," we have replaced in-person seminars with virtual programs that are keeping us up-to-date on substantive developments in our respective practice areas and supplying us with practical guidance on everything from deposition taking during quarantine to law firm succession planning. We've re-routed calls coming into the lawyer referral service so members of the public who need legal assistance can still find representation. We've converted *Bar Briefs,* our award-winning monthly publication, to a digital format so members won't miss an issue. Our commitment to pro bono service continues through a new joint project with the Legal Aid Society to provide free life-planning documents—such as advance directives, powers of attorney and simple wills—to frontline health care workers.

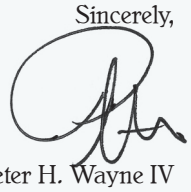
I am perhaps most proud of how the LBA has quickly become a source for important information about how the COVID-19 pandemic has impacted court operations. This has been accomplished through a series of free webinars featuring judges and court personnel—five already as of this writing with several more in the works—so members and non-members alike are better equipped to navigate district, circuit and family courts as we all work together to keep the wheels of justice turning. These webinars are recorded and available on our website for viewing without charge by anyone who may have missed them in real time. (As we begin to shift our focus from Healthy at Home to Healthy at Work, be sure to check out the webinar on how to safely re-open a law office.)

Throughout this crisis, the LBA has sought to model responsible citizenship by following all directives and recommendations of Gov. Beshear and the Centers for Disease Control and Prevention. That will continue as we begin a phased re-opening of the Bar Center this month. Great care has been taken to devise a plan that will safeguard the health and well-being of staff, members and visitors to our offices. The plan combines the use of personal protective equipment (e.g., masks and/or gloves as appropriate, a plexiglass shield at the receptionist's desk), hand sanitizing stations and disinfectant wipes with practical measures like daily employee health screenings, limiting the number of occupants in meeting rooms and temporarily eliminating communal coffee pots and water coolers. Going forward, we will strongly encourage all payments to be made online to reduce reliance on paper and continue to increase our technical capacity to offer virtual meetings in lieu of in-person gatherings until the risk of infection has abated.

"(T)he LBA has quickly become a source for important information about how the COVID-19 pandemic has impacted court operations . . . through a series of free webinars featuring judges and court personnel . . . so members and non-members alike are better equipped to navigate district, circuit and family courts as we all work together to keep the wheels of justice turning."

In short, like many of you, we're adjusting to life as it happened while we were busy making other plans. Before this year is up, my hope is that we will be able to gather once again—even if we're wearing masks and standing or sitting six feet apart—to celebrate making it through a 100-year global pandemic that tested our mettle as attorneys and human beings. Until then, stay safe.

Sincerely,



Peter H. Wayne IV
LBA President

The Dinner Conversation Continues

Chief Judge Angela McCormick Bisig

While around most dinner tables in our community I'm certain coronavirus concerns and the daily challenges it brings dominate the landscape, I hope we can still dedicate some airspace to getting to know the circuit bench better. My colleagues and I continue to find new and unusual ways to keep our court system functioning. We have a new website for information at *jeffersoncircuitcourt.com*. We laud your efforts and adaptability in withstanding the inconvenience and frustration brought about by the changing legal situation.

I'm attempting a bit of normalcy in this article by continuing our legal family dinners. As you will recall, we have previously heard from Judges Willett, O'Connell, Perry and Cunningham. This month we include Judge Mary Shaw and Judge Audra Eckerle at our table.

As you know if you read this publication regularly, I have been asking each judge what they like most and least about their job. This is rooted in a question I asked my family members at the dinner table each evening. I try to be optimistic, so originally the dinner tradition of asking the best part of the day was a way to focus on good things that happen. By thinking of one's favorite experience, one must consider the nice things that happen in a given day and then engage in the exercise of balancing those experiences to reach a favorite.

My mother, who had a life-long career in social work, urged me to also ask the worst part of my children's day. She argued that while it is great to reflect on what we enjoy, it is often the more troubling side of something we need to discuss. As it often happens with moms, her wisdom resulted in me adding the worst part of the day to the dinner discussion. So, without further delay, let's discover this month's best and worst.

Judge Mary Shaw – Division 5

Judge Mary "Arrow Fund" Shaw became a circuit court judge in 2007. I'm headlining her section with the Arrow Fund because you see it prominently displayed in her office suite and in her personality. Judge Shaw loves animals. She is passionate about her own pets and has been a huge advocate for rescue. Many of us know that a love of animals often translates into a kind and compassionate person…and such is certainly the case with Judge Shaw.

A few years ago, when our annual state-wide judicial college was in Louisville, I sat at the same table during the conference with Judge Shaw. In an early morning bout of clumsiness in the dark, I walked into a wood door frame getting ready for the day. My forehead and left hand were bruised and swollen from the incident. I reached the table at the seminar that morning, still a bit stunned and in pain. Judge Shaw immediately went on an errand to find a bag of ice for me. She made sure I had fresh ice and chuckled with me about my self-induced injuries. I remember then thinking how that level of compassion must translate into a caring demeanor on the bench. Judge Shaw has a quiet, thoughtful demeanor.

Little known fact about Judge Shaw, she was admitted as a solicitor of the Supreme Court of England and Wales in 2004. At that time, she had plans to move to London, England. Her plans of relocating changed, and we were fortunate to keep her as a member of the Bar here in Louisville. Prior to being elected to the bench, Judge Shaw worked for 11 years as a District Court Trial Commissioner. She also honed her skills for the job by serving as a staff-attorney for various circuit court judges.

Judge Shaw currently serves as a drug court judge. I've attended drug court graduation, and one can readily see her fondness and true caring attitude for her attendees. She is proud of each one of them, and takes considerable time in addition to her regular docket to do this important work.

When asked about the best part of her job, Judge Shaw responded: "Getting to work with the people in Division 5 and Division 4 of circuit court. We have a wonderful pod—we affectionately call 45." (For those of you who may not know, our judicial spaces in state court are organized in common areas with two judicial offices per space. Accordingly, each judge has their own chambers but a common administrative area. We call our brother or sister judge our "pod-mate" or "suite-mate.") Judge Shaw's pod-mate is Judge Cunningham. She says that everyone gets along and will gladly help each other as needed. She noted, "Besides being good at their jobs, they sing, laugh, and joke around, which makes it fun to come to work."

When asked about the worst part of her job, she flatly says: "campaigning and public speaking." This is not surprising as despite her intellect and accomplishments, Judge Shaw is a humble person. She adds, "You would think by now I would be ok with this, but it still makes me nervous to stand and speak about myself before a large group. It's just not my personality."

Judge Audra Eckerle – Division 7

I've known Judge Audra Eckerle a long time. She and I often note some of the common experiences we shared before working side by side in circuit court. We both worked for the firm of Greenbaum Doll & McDonald early in our practice. We both are Francophiles and speak French. We both served in district court before being elected to circuit court. Judge Eckerle is a country woman at heart who enjoys hunting and nature. She has donkeys, goats and other animals in her care, and among other "outdoorsy" endeavors, she raises chickens. This results in my good fortune as I love fresh chicken eggs. She brought a couple of dozen eggs as a surprise and left them on my front porch at the beginning of the pandemic lock down. It was a very bright spot in an incredibly difficult time.

Judge Eckerle has been a judge for 17 years. She served as the Chief Circuit Judge in 2012-2013. Prior to becoming a judge, she clerked for a U.S. District Judge in Sacramento, California, and worked in both large and medium-sized civil firms. She served as general counsel for an assisted living company and worked as an assistant county attorney. She attended Boalt Hall School of Law in Berkeley, California. Her undergraduate work was from the University of California, Davis. She is intelligent and works hard. When she presents on a topic for our statewide judicial trainings, she is always well prepared, thoughtful and effective.

Judge Eckerle runs an organized court and she is serious about her work on the bench. When asked about what she likes best about being a judge, she responded that she likes making a difference in people's lives. She said in every case she thinks about the people, the lives and the broad impact of what she decides. She thinks that this focus on the impact and community keep her prompt in her work. She notes that the job can be interesting, entertaining and at times tragic, but she always finds it meaningful.

When asked about her least favorite part of the job, she said it has been the impact of the coronavirus pandemic. She is concerned about the level of contact a court system requires with a large number of people and the ways in which our system is changing. She discussed how the process for practicing in a courtroom will change in every aspect from not being able to pass papers to lawyers not approaching the bench. She noted it is fortunate that technology will allow us to continue our work, but looks forward to the day when "this too shall pass."

Chief Judge Angela McCormick Bisig presides in Division 10 of Jefferson Circuit Court. ■

Kentucky Courts Prepare for Phased Reopening

All Civil and Criminal Matters to Be Heard Again Starting June 1

A recent administrative order from the Kentucky Supreme Court details how courts across the Commonwealth can safely expand the matters they hear beginning this month.

Order 2020-39, issued May 15, directs judges to resume hearing all civil and criminal matters using available telephonic and video technology unless in their discretion they determine a proceeding requires in-person attendance. This marks a significant change as previous Supreme Court orders had limited dockets mostly to certain emergency and time-sensitive matters through May 31.

"We've all been thinking about you, the members of the bar . . . and what you're going through in your individual practices," said Chief Judge Angela McCormick Bisig (second row, far left) near the start of a webinar on May 28 featuring most of the Jefferson Circuit Court bench. One in a series of free programs about how court operations have been impacted by the COVID-19 pandemic, the webinar helped attorneys know what to expect when dockets expand this month.

"Our priority is to implement a limited, phased reopening that will allow greater access to the courts while keeping court personnel and the public safe through social distancing and other precautions," said Chief Justice John D. Minton Jr. He noted that the reopening plan is the product of three task forces—each headed by a Supreme Court justice—formed to determine how best to gradually resume in-person court proceedings.

The order, which can be found at *https://kycourts.gov/courts/supreme/Rules_Procedures/202039.pdf*, sets forth health and safety precautions that must followed for any in-person proceedings including:

- Limiting attendance to attorneys, parties, witnesses and other necessary persons not to exceed 33 percent of a courtroom's occupancy capacity
- Permitting persons in certain high-risk categories to participate remotely
- Requiring all participants to wear facial coverings and maintain social distancing
- Scheduling proceedings so as to reduce the number of persons entering, exiting or gathering at the same time
- Cleaning and disinfecting microphones, tables, and other exposed surfaces after each proceeding or use

The order also specifies measures designed to protect court personnel including:

- Limiting onsite court employees to those whose physical presence is necessary for the performance of their duties and not exceeding 50 percent of ordinary staffing levels
- Requiring all court officials and employees to self-administer a temperature and health check before reporting to work
- Requiring all court officials and employees to wear facial coverings when interacting with co-workers in common areas (although judges do not have to wear them while conducting court proceedings if doing so will impede their ability to make a clear record and no one is within a 10-foot radius)
- Limiting entrance to court facilities to attorneys, parties, witnesses, persons ordered to appear at in-person hearings and individuals seeking emergency protective orders, interpersonal protective orders and emergency custody orders
- Requiring all filings to be eFiled, mailed or conventionally filed using outside drop boxes
- Prohibiting members of the public from bringing purses or other similarly enclosed bags into court facilities unless items in the bag are medically necessary

The order encourages chief district and circuit judges to adopt local plans and procedures. A task force chaired by Chief Circuit Judge Angela McCormick Bisig developed a plan for reopening Jefferson County courts that relaxes some provisions of the order. Most significantly, Jefferson District Court will not move to expanded dockets until June 15. Also, the prohibition against bringing purses or bags into the courthouse will not apply in Jefferson County.

No Jury Trials Before August 1

In a subsequent order, the Supreme Court directed that all jury trials be postponed and rescheduled no sooner than August 1 with criminal trials involving in-custody defendants taking priority over all other matters.

Order 2020-40, issued May 19, also provides guidance on how grand jury proceedings are to be conducted. When grand juries resume June 1, jurors may participate remotely using available telephonic and video technology subject to the Rules of Criminal Procedure. If a grand juror is unable to participate in proceedings remotely, the chief circuit judge will excuse the juror and swear another juror from the current panel.

Grand jurors who are ill, caring for someone who is ill or in a high-risk category will have their service postponed to a later date as will those who cannot wear a facial covering due to medical reasons. Jurors who were laid off, became unemployed or otherwise suffered an economic loss due to the COVID-19 pandemic and can show they would suffer further economic loss by serving will have their service excused.

The order, which can be found at *https://kycourts.gov/courts/supreme/Rules_Procedures/202040.pdf*, further specifies health and safety precautions—including use of facial coverings by jurors, social distancing and disinfecting of microphones, tables and other exposed surfaces—that must be followed for in-person grand jury proceedings. Such proceedings are to be held in a large ventilated space and the number of persons is not to exceed 33 percent of its occupancy capacity. Proceedings are to be scheduled so as to limit the number of individuals entering, exiting or gathering at the same time.

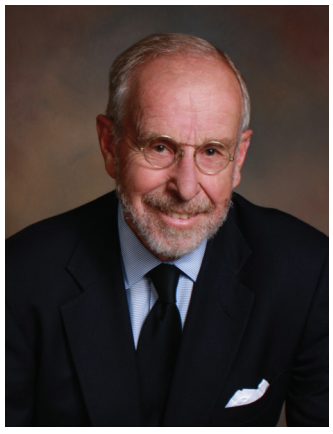
Per the order, members of the public and media are to be permitted to view the return of grand jury indictments by live audio/video or digital recording. ■

MEDIATION CLINIC
CONTINUES, ADAPTS DURING PANDEMIC

UNIVERSITY OF LOUISVILLE
BRANDEIS SCHOOL OF LAW

For recent Louisville Law graduate Zachary Trinkle, the experience of working at the School of Law's Mediation Clinic was so impactful that he enrolled in the course twice.

Trinkle, who had participated in the Robert and Sue Ellen Ackerson Law Clinic, learned about the Mediation Clinic from Professor Shelley Santry, who supervises both clinics. She let him know about the Edwin H. Perry Mediation Fellowship, which funds a one-week training where students can become certified mediators.



Ed Perry, long a legend in Louisville's legal community, says his interest in mediation began when he first added an arbitration clause to an acquisitions agreement he was preparing.

Later, in conversations with Louisville Law leadership about the importance of arbitration, the topic of family mediation came up, and Ed was inspired to establish the fellowship.

"I thought that family mediation was more important than arbitrating the amounts of accounts receivable," he says.

While Ed says his law school education did not focus much on mediation, its value has over time become apparent to him.

"Mediation expedites disputes, and we know family law disputes are the worst of all. The faster you get them resolved, the better all parties are," he says.

Thanks to the Perry Fellowship, Trinkle enrolled in the mediation training during spring break of his 2L year. That next semester, he began participating in the Mediation Clinic, work he continued in his final semester of law school.

"What piqued my interest was working with Shelley. She is phenomenal," says Trinkle about the Mediation Clinic. "Once I did the training, it was great to see a side of the legal field that was less combative and more about finding a happy ground that everyone could work with."

The Mediation Clinic, opened in the fall of 2017, is Louisville's only free mediation service. Students — supervised by Santry, adjunct professor Corey Shiffman and program coordinator Megan McDonald — work with low-income, pro se litigants who have been referred by Jefferson County Family Court judges. The Clinic mediates cases involving divorce, paternity, child custody and post-decree divorce problems.

For Trinkle, who plans to continue mediating professionally while pursuing a career in domestic violence work, the clinics are "hands-down, the best things I've done in law school."

He says his experiences at the clinics — he worked in both for the entirety of his 3L year — have prepared him for his legal career.

His biggest takeaway from the Mediation Clinic, he says, is communication and client counseling skills: "how to talk to your clients and how to make them feel comfortable and feel heard."

Trinkle says he's also gained a better understanding of how to be creative and think of new options outside of the typical legal sphere thanks to the Mediation Clinic.

Of course, like the rest of the world, the Mediation Clinic was affected by the coronavirus pandemic. When the University of Louisville suspended in-person classes in mid-March, the Clinic's leadership spent the week of Spring Break brainstorming a plan forward. Their aim was to fulfill students' credit hour requirements and continue to strengthen skills while following safety protocols.

The Mediation Clinic experienced a drop-off in referrals when the courts closed, says Shiffman. When the courts again began scheduling virtual mediations, the clinic's low-income litigants were often not able to access teleconference technology.

Instead, the Clinic's leadership created opportunities for students to participate in mock mediations.

For Trinkle, these mock mediations — held via videoconference — took some getting used to.

"A big part of mediation is building trust immediately. For me, that's a lot easier to do in person," he says.

But after a few weeks, the process smoothed itself out and the students found new ways to build the rapport needed in mediation, if only in virtual, mock mediations. For example, instead of offering clients a drink of water, they made small talk about various Zoom backgrounds.

As of this writing, the University of Louisville expects to hold in-person classes in the fall and the Clinic will open for business as usual. But what if the pandemic forces the university and all of us to change course again?

"We're going to have to find a way to do mediations purely telephonically or we're going to have to find ways to do them in the Clinic and do social distancing," Shiffman says.

Shiffman, who has experience as a private mediator, says that virtual mediations don't have the same energy as in-person sessions, but are a good second option.

"You can't read body language, how they're reacting," he says. "But other than that, it's the next best thing because you still see people. It's certainly doable."

Virtual mediations also come with more practical concerns, says McDonald. All parties must have their technology set up and easy access to files — tasks that can be easier to accomplish in a typical office setting.

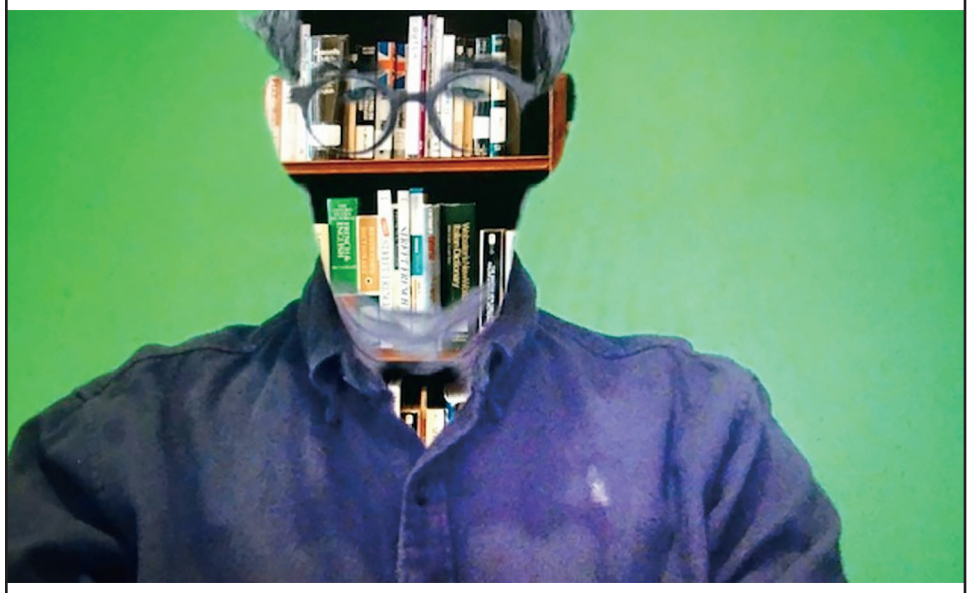
Regardless, says Santry, the Mediation Clinic stands ready to assist its clients.

"These times are very different and very awkward and very frustrating," she says. "But we're not stopping. We're going to continue to think outside the box and continue to provide services to our clients and for our students."

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.

Take One Pandemic. Add Several Computers...

Rick Horowitz



Suddenly, you're living in Zoomville.

Might as well make the best of it.

For instance? Well, why not spend one of these annoyingly-indoors-and-frustratingly-online days giving a major boost to your legal-writing skills? Why not join me (virtually, but nonetheless) on **Wednesday, June 3**, as the Louisville Bar Association offers the latest version of my lively and practical CLE workshop, **"More Effective Writing Makes More Effective Lawyers?"**

We'll be Zooming it this time, instead of gathering in LBA's wonderful downtown space as we've done the past two years. But you'll still get a day's worth of valuable tools and tips, strategies and support, to help you close the gap between your legal *knowledge* and your legal *communication skills*.

- "How do I get from all my research to a clear and coherent and effective document?"
- "How many arguments are *too* many arguments?"
- "Is there a cure for blank-screen panic?"
- "Should it take me 50 words to write down what I could tell you in 10?"
- "Is 'sounding like a lawyer' really the best approach to connecting with other human beings?"

Those are just a few of the topics we're likely to discuss when we get together. And you may have additional writing and editing questions on your mind; we'll try to cover a few of those, too. There's a reason I list myself as "Discussion Leader," not "Presenter"—and certainly not "Lecturer!" Even with attendees signing in from scattered locations in Louisville and beyond, I'm intent on having lots of back and forth, with multiple points of view, and even some disagreement. So, bring your experience. Bring your opinions, including your highly ingrained writing habits. Maybe we'll *all* find ourselves re-examining some default settings!

Let's be honest: Would I rather be back at 600 W. Main Street, working with you in person, and all of us in the same room? Sure I would. But that doesn't seem to be in the cards right now.

And as someone who's already led a couple of these online sessions (with at least one more on the calendar before we reach that first week of June), I can tell you that they work! There might be a technical stumble or two along the way—we'll survive it. Somebody will surely forget to mute a microphone at some inopportune moment—we'll be forgiving. But you'll still get a full day's worth of great conversation and great advice, plus all those CLE credits.

So, sign up now, and find out for yourself, *www.loubar.org/calendar/registration/?eventno=1747.*

We're all living in Zoomville — make it work for you.

Would you rather be alphabetizing your vegetable drawer?

See you on June 3.

Rick Horowitz is founder and Wordsmith in Chief of Prime Prose, LLC. He leads writing workshops for lawyers coast to coast — and sometimes from his dining room. ■

legal aid society

TOGETHER LAWYERS CAN

MAKE A DIFFERENCE CHANGE LIVES SOLVE PROBLEMS HELP OTHERS PURSUE JUSTICE BUILD COMMUNITY **RESTORE HOPE**

Together Lawyers Can is a collaboration between Legal Aid Society and Kentucky's other legal aid programs to encourage, recruit, and train attorneys from across the Commonwealth to provide pro bono assistance to Kentuckians impacted by COVID-19.

To learn more about the program and how you can join Together Lawyers Can team, visit www.yourlegalaid.org or contact Tracey Leo Taylor at ttaylor@laslou.org.

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LSC · Kentucky Access to Justice Commission · AppalReD Legal Aid · Kentucky Legal Aid · Legal Aid of the Bluegrass · Kentucky Equal Justice Center

The Five Golden Rules of Negotiation for Lawyers

Marty Latz

Let's say you're sitting at your desk Monday morning, your telephone rings, and it's Jane, opposing counsel in one of your cases, calling to see if you might be interested in discussing the offer she e-mailed you last week. Because you're mostly up-to-speed on it, you jump right in. What just happened? You—like thousands of lawyers in countless negotiations every day—just made a common negotiation mistake even the most experienced lawyers consistently make.

Who has the advantage here? Jane. Why? You agreed to speak with Jane before you had strategically prepared. Here's what you should have said: "I'm right in the middle of something. Can I get back with you shortly?" Then you should have strategically prepared. The fact is, lawyers negotiate constantly. Whether you're trying to settle a lawsuit or attempting to close a merger, you're negotiating. Yet relatively few lawyers have ever learned the strategies and techniques of effective negotiation. Instead, most lawyers negotiate instinctively or intuitively. It's natural. It can also be devastating. To avoid this mistake and others—and to strategically negotiate and thus increase your ability to get what you and your clients want, follow my Five Golden Rules of Negotiation.

1. Information is Power— So Get It!

Self-described "expert" lawyer-negotiators often enter negotiations with arguments intended to persuade the other side of the legitimacy of their positions. Unknowingly, they're giving up power from the first time they open their mouths. Negotiation power goes to those who listen and learn. It's thus critical to ask questions and get as much relevant information as you can throughout the negotiation process.

With information in your pocket, you have power. Without it, you'll be scrambling. Effective lawyer-negotiators know this well. Instead of trying to convince the other side of the strength of their case or why the other side should agree to the merger, they start by getting information. How? By building rapport, developing relationships, asking questions (especially open-ended ones like what, how and why), finding out their counterparts' negotiation reputations, and probing their and the other sides' fundamental goals, needs, interests and options.

2. Maximize Your Leverage

How much does your client want or need that deal or settlement, and how much does your client's counterpart need it? What are your and their client's alternatives if an agreement is not reached? What can you and your client do to strengthen your leverage? What might your counterparts be doing? Finding the answers to these leverage questions can be the key to success. Ignoring them can be a recipe for failure.

Maximizing leverage can be especially challenging for litigators. Why? They must, in effect, simultaneously send two seemingly inconsistent signals. On the one hand, they should convey to opposing counsel that they are ready, willing and able to take the case all the way through trial. After all, most litigators' best alternative to settling the case—a critical element of leverage—is trying it. And the higher the likelihood of their winning at trial, the stronger their negotiation leverage. Yet over 95 percent of litigation matters settle. So, litigators must also signal an interest in settling. But the more they signal an interest in settling (and thus not trying their case), the weaker their leverage.

So how can litigators credibly send both signals? Pursue each on parallel tracks in the following way. On the litigation track, always push forward to trial in an appropriately aggressive fashion. On the settlement track, get the other side to initiate the process (thus signaling their relatively strong interest in settling), or suggest that it's your policy in all your cases to discuss settlement at that stage of the matter (signaling that you do it then in your strong and weak cases, and avoid sending the "We're interested in settling because we have a weak case" message).

3. Employ "Fair" Objective Criteria

The quest for fairness and the perception of fairness are key elements in many legal negotiations. Fairness, in most instances, boils down to a matter of relatively objective standards, like market value, precedent, efficiency or expert opinion. If both sides can agree on a fair and reasonable standard, many negotiations will be successful. If not, it's far more difficult to reach agreement.

For transactional lawyers, standards can play an especially crucial role. Why? Because many transactions involve parties with future relationships, and standards can provide an independent and objective view of the issues. This can depersonalize the negotiation and help preserve their relationships. "The reason my client's purchase price and terms are fair and reasonable," you might suggest, "is because they are in line with the market and they are the equivalent of what it paid last year for a similar company, factoring in inflation and the unique elements of your client's business." Or "it's standard in the industry for the losing party to pay attorneys' fees if a future dispute goes to arbitration."

Focus on standards. While applicable also for litigators (critical standards include jury verdict research, expert opinions and precedent), it can be an especially powerful move in many transactional contexts. And it will give you credibility and help keep that "fair and reasonable" hat on your head—a critical factor in many legal negotiations.

> *[R]elatively few lawyers have ever learned the strategies and techniques of effective negotiation. Instead, most lawyers negotiate instinctively or intuitively. It's natural. It can also be devastating.*

4. Design an Offer-Concession Strategy

No one wants to leave valuable items on the table gratuitously. The best way to avoid this is to design the right offer-concession strategy. Doing this will require you to understand the psychological dynamics underlying concession behavior, as well as improve your ability to evaluate your counterpart's "flinch" point. It's not an exact science, but you can learn to draw out and recognize certain signals that will give you the edge in your negotiations.

A crucial offer-concession element in the legal arena involves making sure your counterpart walks away feeling like they achieved a good deal. How can you make sure of this? Build in sufficient "room to move" with your offers so your counterpart will feel like they received a decent result. How often have you left a negotiation feeling you achieved a good deal based on how far you were able to get the other side to move? "I know we negotiated a great deal when we settled that lawsuit," you might say, "because John increased his offer by $100,000 and we only moved down $35,000." This is common. So don't just start at one point and refuse to move. Instead, start more aggressively and make some significant moves. Provide them with the ability to walk away feeling like they negotiated a decent result

5. Control the Agenda

Effectively managing the negotiation process—overtly or covertly—is one of the most challenging elements in striking the perfect deal or settlement, even for the most expert negotiators. Understanding when to use deadlines, how to effectively operate within them, and the psychological tendencies underlying them will give you a leg up in your negotiations. Controlling the agenda can make or break your negotiation.

Early in my career, I set up an appointment for an hour with a prospective client and arrived promptly at our scheduled time. She kept me waiting for 30 minutes, and then escorted me to a conference room where she told me she was running late and that I had 15 minutes to explain what I could provide to her and my fee. "Cut to the chase," she told me. I did. And it was a mistake. I should have said "Wait a second. Before we discuss my fee, why don't you tell me what you want, why and how you think we might be able to help each other? Then we can discuss the value I add, which provides the basis for my fee. And if we run out of time, I'll be happy to come back or put together a written proposal for you based on your needs, what we've discussed and include my fee."

In short, control the agenda. And if your counterpart tries to control the agenda, negotiate it. Not in an overly aggressive way. But in a way that satisfies both parties' interests. Experienced lawyers often tell me they wish they had been exposed to the strategic elements of the negotiation process earlier in their careers. "Just think of the difference it could have made," they say. My response? "Experience does not equal expertise in negotiations. It's never too late to learn and improve." Remember that before your next negotiation.

Martin E. Latz is founder of Latz Negotiation Institute, a national negotiation training and consulting firm based in Phoenix and author of "Gain the Edge! Negotiating to Get What You Want." ■

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Pride in the profession. Service to the community.

Join lawyers from across the country and enjoy the witty one-liners, clever pictures and video clips, intriguing poll questions and hilarious anecdotes that have made his "lawpsided" programs popular with attorneys in more than 40 states.

Live Webinars

6-3-2020 | Noon | Ask the Tax-Girl: What Lawyers Need to Know About Tax During the COVID Crisis | 2.0 CLE Credits – pending

In response to the COVID crisis, Congress has made a number of changes to the tax laws that affect individuals and businesses. Needless to say, lawyers need to understand these changes to effectively advise clients; and even to manage our own affairs. As a result, we are calling on the "Tax Girl" – Kelly Phillips Erb, a Senior Contributor at Forbes. In this timely webinar, Ms. Erb will discuss some of the most common questions likely to be asked by clients. She will also take questions from the attendees.
Speaker: Kelly Phillips Erb

6-10-2020 | 1:00 pm | Lying, Loyalty and Lots of Ethics Rules: A CLE Destinations Film | 1.0 CLE Ethics Credit – pending

Stuart Teicher's CLE Destination Films feel like a Vlog, travel documentary, and substantive ethics lesson all rolled up into one. It's unlike anything you've ever seen.
Speaker: Stuart Teicher

6-17-2020 | 1:00 pm | Deposition Do's and Don'ts | 2.0 CLE Credits – pending

Over the last two decades, Joel Oster has been engaged in trial and appellate level litigation in state and federal courts across the country. As a result, he has been witness to the best (and worst) of deposition practice. Using the comedic style that has earned him the moniker "Comedian at Law," Oster will share the lessons he has learned about the do's and don'ts of depositions.
Speaker: Joel Oster

6-25-2020| 11:00 am | Ethical Jeopardy: A CLE Game Show 1.0 CLE Ethics Credit – pending

In Ethical Jeopardy, you will compete against lawyers from across the country in answering legal ethics-related questions, such as the one below:
Which of the following is NOT grounds to disclose client information?

- To prevent death or harm to another person
- To defend oneself against civil, criminal or disciplinary charges
- To impress prospective clients
- To prevent fraud

Through the polling feature on our platform, lawyers will be allowed to make their selections. At the end of the program, each participant will receive their score, along with their "player ranking." Oh yeah, and you just might learn something in the process.
Speaker: Sean Carter

BAR STATUS	PRICE
LBA Member	$55.00
LBA Sustaining Member	$50.00
LBA Paralegal Member	$25.00
Non-member	$125.00

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, www.loubar.org, for the link to register and the cancellation policy.

LBA ETHICS BROWN BAG

Witness Ethics

Tuesday, June 2

This two-hour program will cover various types of witnesses and discuss topics common and unique to each category. The program will also discuss pretrial and trial issues concerning witnesses, witness compensation, witness preparation, communications with witnesses, witness documentation and how to address potential and actual conflicts of interest.

The topics include:

- Clients as witnesses
- Lay witnesses
- Expert witnesses
- Lawyer as witness
- Conflicts of interest

Speaker: **Peter L. Ostermiller**, Attorney at Law

Time: 11 a.m. – 1 p.m. — Program
Place: Online – a link will be sent prior to the seminar
Price: $40 LBA Members | $36 Sustaining Members | $15 Paralegal Members
$15 for qualifying YLS Members | $25 Solo/Small Practice Section Members
$25 Government or Non-Profit Members | $180 Non-members
Credits: 2.0 CLE Ethics Hours — Pending with KBA and Indiana

LBA NATIONAL SPEAKER DAY LONG WEBINAR

More Effective Writing Makes More Effective Lawyers: Useful Strategies, Crucial Details, and Lots of Practical Tips

Wednesday, June 3

Knowing the law is essential—but so is being able to communicate about it. Join writing coach and former attorney Rick Horowitz for a lively and practical webinar that will reintroduce you to your legal-writing toolbox, including a few tools you didn't know were in there.

This class explores the fundamentals (and the critical details) of creating clear, well-organized, persuasive legal documents. Briefs, memos, client letters, even daily correspondence benefit from your deeper understanding of what goes into successful writing, so we'll examine good and not-so-good writing to see what worked, what didn't, and why:

- What should you include, and what can you leave out?
- What's the most effective structure for this document, and this audience?
- Should you use an outline? Are there better options?
- What has to happen between "first draft" and "Send"?
- How can you steer clear of those grammar and usage potholes that undermine your credibility?
- How do you survive the in-house editing process?
- And do you really need all that "legalese"? (There's a reason people tell lawyer jokes…)

Check out Horowitz's webinar on Wednesday, June 3, for this full-day workshop. You'll come away with new skills, new strategies, and new confidence. Sign up now—and spread the word! More details on this CLE program can be found on the LBA website: *www.loubar.org*.

Speaker: **Rick Horowitz**, Prime Prose, LLC

Time: 9 a.m. – 4:30 p.m. — Program
Place: Online
Price: $150 LBA Members | $135 Sustaining Members | $75 Paralegal Members
$75 for qualifying YLS Members | $75 Government/Non-Profit Members
$75 Solo/Small Firm Section Members | $480 Non-members
Credits: 6.0 CLE Hours — Approved by KBA and Indiana

PROBATE & ESTATE LAW SECTION CO-SPONSORED WITH THE KY CPA SOCIETY

The Future of Estate Planning

Thursday, June 18

This conference is available as a livestream virtual event only. You will be able to ask questions of the presenters during the conference.

Highlights

- Substance abuse and ethics
- Professional culture and ethics
- SECURE Act update
- Uniform Trust Code update and recent cases
- Tax update, including recent pandemic legislation
- Trust office panel with practical tips

For more information, full agenda, speaker information and to register visit: *https://www.kycpa.org/cpe/catalog/036308LL:estate-planning-conference-virtual*

Time: 7:45 a.m. — Registration; 8 a.m. – 4:15 p.m. — Program
Place: Online
Price: Register before June 4: $324.00; after June 4: $374
Credits: 7.0 CLE Hours (including 2 ethics) — Pending with KBA and Indiana

RSVP
for CLE WEBINARS

A reservation is required in advance of all CLE Webinars. Registrants will receive a confirmation e-mail prior to the event which will contain a link to join the meeting via Ring Central, as well as attachments of the handout material, the CLE activity code, and instruction on how to file with the KBA and Indiana Supreme Court (PDF files).

LOUISVILLE BAR ASSOCIATION IN PARTNERSHIP AMERICAN CONSTITUTIONAL SOCIETY

Annual U.S. Supreme Court Review

Tuesday, June 30

The American Constitution Society and the LBA's Appellate Law Section invite you to their seventh annual U.S. Supreme Court Review CLE program. The seminar will address the key cases before the U.S. Supreme Court during October Term 2019. The court will recap key opinions from the previous year, discuss any new or continuing trends at the court, and preview the upcoming term.

Speakers: **Michael P. Abate**, Kaplan Johnson Abate & Bird and more, TBA.

Time: 11 a.m. – 1 p.m. — Program
Place: Online
Price: $50 LBA Members | $45 Sustaining Members | $15 Paralegal Members
$15 for qualifying YLS Members | $25 Solo/Small Practice Section Members
$25 Government/Non-Profit Members | $180 Non-members
Credits: 2.0 CLE Hours — Approved by KBA and Indiana

CLE Cancellation Policy: All cancellations must be received by the LBA 24 hours in advance to receive a credit or refund. "No shows" or cancellations received the day of the program will require full payment. Substitutions will be allowed. Please Note: The cancellation policies for certain programs, e.g. the AAML/LBA Family Law Seminar, KY Commercial Real Estate Conference, MESA CLEs, etc., are different. Please visit our CLE Calendar at www.loubar.org for details.

Throwback to a Friendly BBQ Cook-Off Between Judges

A clipping from an old edition of *The Courier Journal*'s now-defunct Sunday Magazine gives a glimpse of a friendly feud between two former Jefferson Circuit Court judges, William E McAnulty Jr. and Charles M. Leibson, both of whom would later become Kentucky Supreme Court justices.

According to the article, the judges met annually at Leibson's home where together they prepared about 30 pounds of meaty pork back ribs. First they rubbed the meat with spices, each according to their own taste, then they prepared their sauces. Finally, they cooked the meat over coals for nearly an hour, taking care to turn and baste it constantly—Leibson using a mixture of vinegar and water and McAnulty using whatever was handy, including beer.

Below, just in time for summer barbequing, are their respective recipes as they appeared in the 1980s-era publication.

Food: Trial By Fire

Judge McAnulty's barbecued ribs

½ slab baby back ribs per person

For the rub:

Hickory salt
Onion salt
Garlic salt
Crushed red pepper
White pepper
Worcestershire sauce
A little vinegar

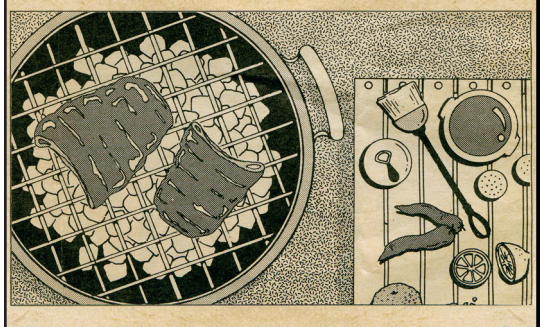
For the sauce:

4 to 5 cups brewed coffee
1 jar any barbecue sauce (brown is better than red)
1 orange
1 lemon
½ cup creole seasoning
1 tablespoon hickory salt
1 sliced onion
Garlic, to taste
½ can beer
½ cup crushed red pepper
1 tablespoon white pepper

Rub ribs with a combination of the rub ingredients. Refrigerate at least 3 hours.

Place coffee and barbecue sauce in a large pot. Slice orange in half, squeeze juice into pot and add the rind. Repeat with lemon. Add remaining ingredients and cook 45 minutes. Strain, discard solids.

Cook ribs over medium coals for about an hour. Flip them every 5 to 7 minutes, covering the grill between turns. Baste with barbecue sauce and cook 20 minutes more, turning and basting as the ribs cook.



Judge Leibson's barbecued ribs

½ slab baby back ribs per person

For the rub:

Vinegar
Worcestershire sauce
Meat tenderizer
Hickory-smoked salt
Barbecue seasoning
Garlic salt
Finely crushed black pepper

For the sauce:

24 ounces smoky-flavored barbecue sauce
1 clove garlic, peeled and pressed
1 medium onion, diced
A little margarine
1 big juice orange
1 lemon
1 can warm beer
2 cups black coffee
1 cup white vinegar
1 cup Worcestershire sauce
¼ cup hot sauce (such as Tabasco)
3 tablespoons brown sugar
1 tablespoon paprika
1 tablespoon crushed red pepper
1 tablespoon salt
1 tablespoon yellow mustard
Crushed black peppercorns

Rub the ribs with vinegar and Worcestershire sauce. Sprinkle with meat tenderizer, hickory-smoked salt, barbecue seasoning, garlic salt and black pepper. Chill 3 hours or more.

Pour barbecue sauce into a large pot. Cook garlic clove and onion in margarine until transparent. Add to pot. Halve orange, squeeze the juice into sauce, then add rinds. Repeat with lemon. Add remaining ingredients and simmer 45 minutes. Strain and discard rinds and other solids.

Cook ribs over medium coals for about an hour, turning frequently and basting with a solution made of equal parts vinegar and water. Cover between turning/basting. After the ribs have cooked an hour, baste with barbecue sauce and cook 20 minutes more, basting occasionally with sauce.

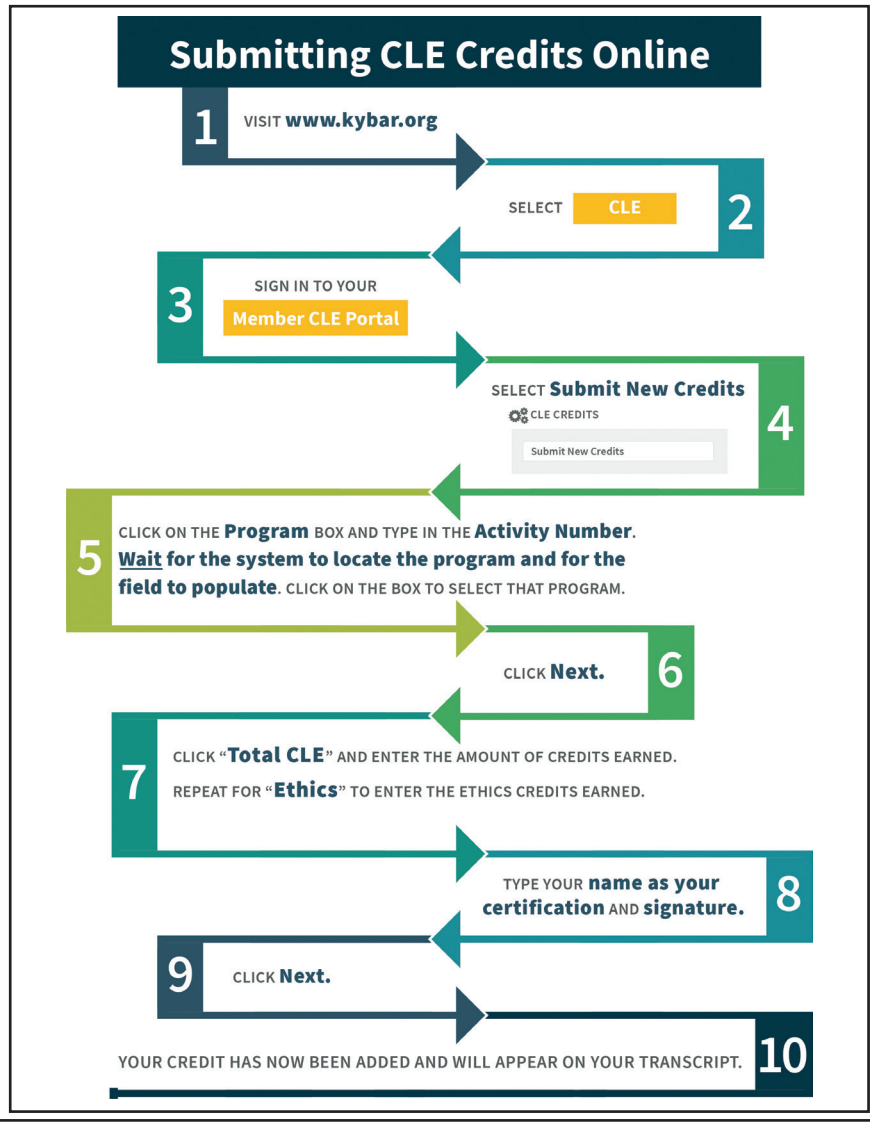
MEETING SCHEDULES

Legal Marketing Association

On Wednesday, June 17, from 12:30–1:30 pm EST, the Legal Marketing Association's Kentucky and Tennessee Chapters will host a webinar for legal marketing professionals and attorneys on Cultivating your Personal Brand. Guest speaker, Anne Candido is the co-founder of Forthright People, an "On-Demand" Marketing Agency for small and medium businesses. Please RSVP to Katie Lange, LMA KY Chair, at *katie.lange@protem.pro*, by June 15. The presentation is free to all LMA members and Louisville Bar Association members. ■

New Admittees Sworn In Remotely

In another adjustment to the COVID-19 pandemic, new members of the Kentucky bar were sworn in individually via videoconference rather than in a group ceremony in Frankfort as is usually the case. On April 21, Ann Michaelson, who sat for and passed the February bar examination, was administered the oath at home by Kentucky Supreme Court Justice Lisabeth Hughes. "I was sorry to miss the group ceremony," Michaelson said. "But I really appreciate that the Kentucky Office of Bar Admissions adapted so quickly once the in person swearing-in had to be cancelled." ■



Virtual Estate Planning Conference: June 18, 2020

Register at bit.ly/EPC6182020

LOUISVILLE BAR ASSOCIATION
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Cosponsored by the Lousiville Bar Association

8 CPE hours, 7 CLE hours (Including 2 hours of Ethics - CPE and CLE)

Ethics and substance abuse
Claudette Patton, JD, MEd, founding partner, Patton & Skeens, PLLC, Louisville

Ethics and culture during a crisis situation
Tiffany Cardwell, MSIR, CCP, SHRM-CP, PHR, principal advisor - HR Advisory Services, MCM CPAs & Advisors, Louisville

SECURE Act update
Alexander Say, JD, trust counsel/wealth planning specialist, Stock Yards Bank & Trust, Louisville

Tax Update, including Acts related to the pandemic
Faith Crump, CPA, CSEP, director of tax services, Dean Dorton, Louisville

Elizabeth Leatherman, CPA, JD, associate director of tax services, Dean Dorton, Lexington

Case law update
Turney Berry, JD, partner, Wyatt Tarrant & Combs LLP, Louisville

Uniform Trust Code (UTC) update and recent cases
Katherine Langan, JD, partner, Dinsmore, Louisville

Trust Officer Panel: Practical pointers and experiences with SECURE Act
Timothy Barrett, JD, senior vice president, trust counsel, Argent Financial Group, Louisville

Caroline Meena, JD, wealth advisor, Stock Yards Bank & Trust, Louisville

James Worthington, JD, sole proprietor, Worthington Law Firm, PLLC, Louisville

Early Bird Fee: $324 *Register by June 4* **Regular Fee:** $374 *After June 4*
Group discount: Register four or more from the same firm or company at the same time and save $25 per person. Contact kpuckett@kycpa.org to register as a group.

Practicing Law IN THE COVID-19 Era

How has the COVID-19 pandemic impacted the law practices of LBA members? It depends on who you ask. The workload has slowed significantly for many while others have seen an increased demand for certain legal services. All have had to adapt to videoconferencing, electronic filing and other technological tools to get the work done. Here's what a sampling of attorneys from different practice areas say about practicing law in these unprecedented times.

LAURA P. RUSSELL
EDDINS DOMINE LAW GROUP, PLLC

How has the COVID-19 pandemic impacted your practice?

As a full-time practicing family law attorney and mother, I've been required to balance work and family more than ever. I've had to work remotely from home and utilize technology more than I ever have while trying to remain flexible in an ever-evolving environment and meet both the needs of clients and my daughter with "digital learning" and entertainment.

What change do you see in your practice after the crisis has ended?

I think the crisis remains far from being over, and I think moving forward we're going to be utilizing technology more than ever in family court and in ways we'd never have imagined at the beginning of 2020. We're already seeing that happen with directives from the state and local levels. I also think as practitioners we're going to have to work harder at coming up with solutions to resolve our cases due to the backlog in our courts that is inevitably happening the longer this crisis continues. We're already seeing that gentle encouragement from local judges. However, I'm hopeful that client interaction and interaction with other attorneys will resume in a more traditional manner sooner rather than later.

JOHN H. HARRALSON III
ATTORNEY AT LAW

How has the COVID-19 pandemic impacted your practice?

I primarily practice criminal defense law. With people staying home and retail stores, restaurants, bars and other businesses closed, "bread and butter" district court cases are way down. These include theft, drug possession, DUI, various traffic offenses and more. With court closures, most new and pending district court cases are being continued into the fall. Pass dates currently being assigned are in October. With dates so far out, defendants are in no rush to hire attorneys. Since people are cooped up at home, family conflicts are inevitable and I have seen an uptick in domestic violence calls. Also, people are anticipating a tight job market as the economy reopens so I am taking more expungement calls from those looking to better position themselves when seeking employment.

What changes do you see happening in your practice after the crisis ends?

This is the great unknown. I am hopeful that as the economy reopens things will simply get back to normal. But we don't know when the economy will completely reopen. Once it reopens, we don't know if it will stay open. We don't know if people's routines will return to pre-virus days. There are many concerns across the criminal defense bar. Can the practices of younger lawyers or those not as established survive until things normalize? Even before the virus hit, arrests in Jefferson County were down for various reasons. For practices able to survive, will the volume of new cases be sufficient to sustain the remaining members of the defense bar? Only time will tell.

BETH H. MCMASTERS
MCMASTERS KEITH BUTLER, INC.

How has the COVID-19 pandemic impacted your practice?

Our firm represents doctors, hospitals, long-term care facilities and other healthcare providers in civil suits and administrative proceedings. Prior to COVID-19, a typical week included travel with overnight stays at least once a week, meetings with clients across the state, depositions, hearings and interaction with countless people every day. Since March 12, I have been working in my "mom cave." Our work doesn't fully depend on the courts being open, but there is only so much one can do over Zoom. I have had multiple mediations in these months and that seems to work fine. But many activities just have to wait. There are too many tasks that require a level of participation that in-person attendance is far preferable to any remote setup.

What changes do you see in your practice after the crisis has ended?

Given the population we serve, I anticipate ongoing telephonic or Zoom interviews of many witnesses. I expect we will be wearing masks in facilities and around clients and witnesses when we are in person through at least the remainder of 2020. I anticipate that each facility and every provider will have a little bit different direction in how they want us to interact with witnesses and handle meetings and depositions, and we will simply follow the instructions of each. What I think we will not be doing is shaking anyone's hand or getting in anyone's personal space. Bench conferences will be interesting. Jury trials may require much more space to seat counsel, clients and jurors—creativity will be the key.

C. SHAWN FOX
SEILLER WATERMAN, LLC

How has the COVID-19 pandemic impacted your practice?

As a probate practitioner, COVID-19 has had a drastic effect on some areas of my practice while having little effect on others. At one extreme, where motions are contested or even potentially contested, my probate practice has come to a screeching halt. At the other extreme, filing routine probate pleadings that do not require a hearing has been largely unaffected. My estate planning practice slowed at first from clients' initial hesitation to meet but has improved as we all become more comfortable with videoconferencing technology. On a sadly positive note, the devaluing of some clients' stock portfolios and other assets has created opportunities for additional estate planning that may not have been attractive before.

What changes do you see happening in your practice after the crisis has ended?

There will inevitably be a backlog of probate cases for at least a short time. In the future, I foresee increased use of electronic filing in the district courts and availability of remote virtual hearings like those that are taking place now. I also foresee more use of technology in client meetings. One practice I hope does not continue is decreased decorum resulting from more informal proceedings. I hope lawyers do not allow less formal meeting standards affect their appearance and demeanor before courts and judges. I have heard stories about just how casual some have been during hearings taking place on Zoom from the comfort of their homes. During a recent remote hearing, one judge was surprised I was in a suit and "looked like a lawyer."

(Continued on next page)

Practicing Law IN THE COVID-19 Era

(Continued from previous page)

MELINDA T. SUNDERLAND
MORGAN POTTINGER MCGARVEY

How has the COVID-19 pandemic affected your practice?

The impact on our banking and finance practice has been varied. Attorneys at our firm who typically handle foreclosures, workouts and litigation have experienced a significant decrease in work as foreclosure moratoriums and other borrower financial accommodations have been put in place by lenders and the courts have all but closed. However, other attorneys have stayed quite busy assisting clients with loan modifications and the SBA Paycheck Protection Program loans. We assisted lenders with preparing a note form to be used for the loans, types of resolutions required, advice on the regulations, etc. The regulations are voluminous and are still changing!

What changes do you see happening in your practice after the crisis has ended?

We expect to see a reversal of our current referrals once the crisis has ended. Given the significant impact the COVID-19 pandemic has had on our national and state economies, we are planning for a large increase in foreclosure and workout referrals. As our attorneys are trained in handling both sides of the deal, so to speak, we'll be ready to make the transition when the time comes.

PETER D. PALMER
PETE PALMER LAW, LLC

How has the COVID-19 pandemic impacted your practice?

My mediation practice has gone from "very busy" to "incredibly busy." Since the pandemic, dates have flown off my calendar and I have gone from being booked 60 days out to nearly 120 days out. I've been scheduling mediations on the occasional Saturday just trying to accommodate all the people asking for dates. With the courts having been closed and all the civil trials from the last few months having been cancelled, litigants know it will be slow going getting their trials rescheduled. From the chatter I hear, I don't think anyone feels there will be any civil trials in 2020 so folks are increasingly anxious to push their cases to mediation to try to get them resolved.

Roughly 90 percent of our mediations during the pandemic have been via videoconferencing with just a handful being telephonic only. These have been every bit as successful as in-person mediations were before the pandemic as long as everyone shows up with similar intentions to resolve their cases. It took everyone a little while to learn how to master the technology, share documents and whatnot, but at this point I think we have learned that with patience, flexibility and extra effort, we can be very successful in resolving cases.

What changes do you see happening in your practice after the crisis ends?

That's a hard question to answer. While videoconferencing is a very good alternative to live mediations, I think there are cases for which the in-person approach will still be necessary—especially catastrophic cases or those with very delicate emotional issues. At this point, I am not daunted by the idea of meeting in person but hopefully everyone will be cautious about how and where we meet as well as whether anyone needs to participate remotely for their own logistical or personal health reasons. But generally speaking, I do not foresee the volume of cases decreasing as mediation continues to be an effective, cost-efficient and reasonable alternative to litigation and will always have a role in the civil justice system.

LORI N. GOODWIN
LEGAL AID SOCIETY

How has COVID-19 impacted your practice?

With the quarantine and social distancing orders, my practice as a poverty law attorney has been impacted in several different ways. While work is at an all-time high, our office has been closed to both clients and staff. Remote work with my clients is challenging due to the population I serve. Many clients who are survivors of domestic violence or sexual assault are understandably reluctant to answer blocked or unknown phone numbers, many do not have internet access to participate in virtual meetings or hearings, and others are experiencing extreme delays due to limited in-person court access. I have scheduled, cancelled and rescheduled hearings for clients who are unable to participate in proceedings virtually and I have become heavily reliant on written versus oral advocacy so client issues and objections are readily before the court.

Aside from case work, our office is disseminating information about economic stimulus payments, rent assistance and current eviction practices as well as how to effectively co-parent during this difficult time.

What changes do you see happening in your practice after the crisis has ended?

As offices slowly reopen, there will be procedures and protocols to ensure Legal Aid clients, visitors and staff remain safe in our office. It is likely that these safety measures will remain in force for some time as we do not know the residual effects of COVID-19. This could include wearing face masks, reduced in-office staff and a limit on the number of visitors and clients in our office simultaneously. It's also likely that virtual proceedings and meetings will become part of the "new normal." For my clients who are unable to participate virtually, my practice will be packed with court appearances and mediations for the foreseeable future. I will continue to focus on settlement negotiations to resolve cases expeditiously and assist with reducing the courts' dockets.

Kentucky Supreme Court Hears Virtual Oral Arguments

The Kentucky Supreme Court made history in April, hearing oral arguments online for the first time. The justices and attorneys met by videoconference April 22 about a family law case on appeal from Oldham County. The arguments were held remotely to observe social distancing during the COVID-19 pandemic. The presenting attorneys were Allison S. Russell (middle row, far left) and James K. Murphy (middle row, middle). To view the archived livestream of the oral arguments, visit *www.ket.org/ky-supreme-court*.

> I stood at my desk. I wore a new suit and tie and I practiced, practiced, practiced. However, I also had the challenge of possible internet interruption, of third parties entering my office at the appointed time and the fact that I could see, up close, the reactions of the justices and my co-counsel. Nevertheless, it was one of the best experiences of my legal career. — *James K. Murphy, Hoge Partners, PLLC*

> It was certainly a unique experience. Prior to Kentucky courts' closures, we had been fully prepared to argue per the normal custom. All of that changed suddenly, and we had to adapt within the span of a month. We underwent multiple trial runs beforehand, and thankfully, everything ran smoothly, which hopefully means courts will continue to use this technology well into the future. —*Allison S. Russell, Simms Russell Law, PLLC*

Advancement Rights in Officer and Director Liability Cases

Jennifer M. Barbour

Advancement and indemnification rights can radically change the analysis and strategy in bringing or defending officer and director liability cases. As such, it is critical to understand the potential rights and liabilities in such cases. Indemnification and advancement rights are corollary rights, both providing mechanisms by which a company may reimburse its officers, directors or managers for expenses incurred in legal proceedings.

Indemnification provides for an officer, director or member to have his or her legal fees and expenses, and perhaps a judgment against him or her, paid by the company at the conclusion of the legal proceeding. If successful in defending an action, the officer or director of a corporation is entitled to mandatory indemnification pursuant to KRS 271B.8-520. There are no similar mandatory indemnification provisions under Kentucky's Limited Liability Act. Both the Kentucky Business Corporation Act and the Kentucky Limited Liability Company Act provide companies with the discretion to indemnify an officer, director or manager even if not successful on the merits.

Companies may also elect to provide advancement rights to officers and directors pending the outcome of the legal matter. Unlike indemnification rights, advancement rights provide for interim relief from the legal costs to an officer, director or manager during the pendency of a legal matter. Because the costs associated with a legal matter can be staggering, any attorney representing an officer, director or manager should consider whether advancement rights are available.

Companies frequently exercise their discretion to offer expanded indemnification and advancement rights to officers, directors, managers and sometimes even other employees. When recruiting competent and capable officers, directors, managers and employees, indemnification and advancement rights can be a recruiting enticement.

Additionally, indemnification and advancement rights can deter frivolous claims by shareholders or corporate officials against officers, directors or managers because of the knowledge the fees and expenses of the officer, director or manager would be borne by the corporation. One Delaware Court in *VonFeldt v. Stifel Fin. Corp.*, 714 A.2d 79, 84 (Del. 1998) (citations omitted). described the purpose of advancement rights as follows:

> We have long recognized that Section 145 [of the Delaware Code] serves the dual policies of: allowing corporate officials to resist unjustified lawsuits, secure in the knowledge that, if vindicated, the corporation will bear the expense of litigation; and encouraging capable women and men to serve as corporate directors and officers, secure in the knowledge that the corporation will absorb the costs of defending their honesty and integrity.

This article will focus on understanding the nature of the advancement right and how to enforce such rights. Few Kentucky appellate decisions exist with regard to advancement and indemnification rights. However, Kentucky courts frequently seek guidance from Delaware courts regarding corporate law. Thus, in the absence of Kentucky case law, this article will refer to Delaware law.

What is an Advancement Right?

Advancement refers to the right provided to an officer, director or manager to have certain legal fees and expenses paid by the company in specific circumstances when the officer, director or manager becomes involved in a legal matter. While similar to indemnification rights in many respects, advancement rights are distinct rights. Unlike indemnification rights, advancement rights do not require the officer, director or manager to be successful in the legal proceeding before she may enforce her advancement rights. The primary goal of advancement rights is to provide interim relief from the financial pressures a legal action may put on a company official.

The scope of the advancement right is determined by the governing documents of the company that provide the right. Companies frequently provide advancement rights in their articles of organization, articles of incorporation, by-laws and/or operating agreement. If those documents are silent as to whether the company has assumed advancement obligations, there may be other documents affording the rights to the officer, director or manager. Attorneys should inquire into the existence and contents of other contracts or agreements between the company and the official, such as employment contracts or director indemnification agreements.

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While these documents may be drafted in numerous ways, they typically provide something similar to the following:

> Each person who was or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (the "Proceeding"), by reason of the fact that such person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as an officer or director of another corporation, shall be indemnified and held harmless by the corporation to the fullest extent permitted by law. The corporation shall pay all expenses (including attorney's fees) incurred by such director or officer in defending any such Proceeding as they are incurred in advance of its final disposition.

Under Kentucky and Delaware law, the only prerequisite to receipt of the advancement rights is a written document whereby the officer or director agrees to repay the advanced expenses and attest that the facts known to him or her at the time would not preclude indemnification. The obligation to repay triggers only if he or she is later determined not to have met the appropriate standard of conduct for an officer or director. As held in *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 212 (Del. 2005) and *Reddy v. Electronic Data Sys. Corp.*, 2002 WL 1358761, *4 (Del. Ch. 2002), absent a provision in the governing document or agreement to the contrary, the officer or director need not establish he or she has the means to actually repay the company.

Enforcement of Advancement Rights

Frequently, officers, directors and managers, both current and former, find themselves at odds with current leadership or shareholders of a company. In those cases, the company frequently seeks to avoid enforcing the advancement rights it elected to provide. When a dispute arises, the enforcement of the advancement right is pursued through a legal action. Kentucky's statutes are silent as to nature of that legal action. In Delaware, the statute provides for the dispute to be resolved in a summary proceeding to avoid delay of the advancement.

The logic of this supports the policy behind advancement rights—absent a summary proceeding, the officer or director could not receive the benefit of her advancement rights for years while the parties litigated numerous factual and legal issues in an advancement proceeding. As the Delaware Supreme Court explained in *Homestore, Inc. v. Tafeen*, 886 A.2d 502, 505 (Del. 2005), "to be of any value to the executive or director, advancement must be made promptly, otherwise its benefit is forever lost because the failure to advance fees affects the counsel the director may choose and litigation strategy that the executive or director will be able to afford."

Because of the summary nature of the proceeding, the scope of it is narrow—as explained in *Tafeen v. Homestore, Inc.*, 2004 WL 556733, *4 (Del. Ch. 2004), the court should not inquire into the conduct-related allegations or make any determinations as to the state of mind of the officer or director. Rather, the court in *Holley v. Nipro Diagnostics, Inc.*, 2014 WL 7336411, *8 (Del. Ch. 2014) explained courts should be "focused on determining whether the claims asserted against an officer or director fall within the category of claims that the corporation agreed to advance." The officer or director is not required to prove that he or she will be indemnified in order to obtain advancement.

The Meaning of "By Reason Of"

Almost uniformly, indemnification and advancement provisions utilize the phrase "by reason of" in affording those rights to officers and directors. Several courts have considered what "by reason of" means in terms of actions for indemnification or advancement of expenses. As Amy L. Goodman & Bart Schwartz explained in, *Corporate Governance: Law and Practice*, §5.03 (2007), "[c]ourts have shown some latitude in interpreting this language such that if there is a nexus or causal connection between any of the underlying proceedings…and one's official corporate capacity, those proceedings are 'by reason of the fact' that one was" an officer or director.

Stated another way by the court in *Homestore*, 888 A.2d at 214, an officer or director is a party to a proceeding "by reason of" her status as an officer or director "if there is a nexus or causal connection between any of the underlying proceedings…and one's official corporate capacity." Under this test as described in *Paolino v. Mace Security International, Inc.*, 985 A.2d 392, 406 (Del. Ch. 2009), "the requisite connection is established if the corporate powers were used or necessary for the commission of the alleged misconduct." The question to resolve according to *Weil v. VEREIT Operating Partnership, L.P.*, 2018 WL 834428, *6 (Del. Ch. 2018) is "[w]hether an individual has been sued in an official capacity for purposes of advancement normally turns on the pleadings in the underlying litigation."

For instance, in *Reddy v. Electronic Data Systems Corporation*, Reddy sought advancement of expenses related to two proceedings against him that arose from his service for Electronic Data Systems (EDS). 2002 WL 1358761 (Del. Ch. 2004). In determining whether Reddy was entitled to advancement of fees and expenses in defending those actions, the court declined to apply "pleading formalism," i.e., to look only to formal words of the pleadings. *Id.* at *6. Instead, the court looked at the substance of the allegations against Reddy, which "could be seen as fiduciary allegations, involving as they do the charge that a senior managerial employee failed to live up to his duties of loyalty and care to the corporation." *Id.*

The court also placed emphasis on the fact that the alleged acts of misconduct were "in the course of performing his day-to-day managerial duties." *Id.* Therefore, if the alleged misconduct of the officer or director could not have been accomplished without some use of his or her official powers, then the officer or director has likely been sued "by reason of" his or her status as an officer or director.

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The Meaning of "At The Request Of"

Frequently, parent companies may request individuals serve as officers, directors or manager of a subsidiary. This fact can be critical, particularly if the subsidiary's governing documents or agreements do not provide for advancement rights, but the parent company's documents do so provide. Delaware courts focus on the extent to which corporate formalities are observed between the parent and subsidiary to determine whether the officer or director of the subsidiary is serving at the request of the parent.

For instance, in *VonFeldt v. Stifel Financial Corp.*, VonFeldt was a director of Stifel Nicolaus Corporation (SNC), a wholly-owned subsidiary of Stifel Financial. 714 A.2d 79, 80 (Del. 1998). VonFeldt was a party to four separate lawsuits relating to his conduct as an officer, director or employee of SNC, and he brought an enforcement action for indemnification and advancement rights against Stifel Financial. *Id.* SNC's by-laws did not include indemnification or advancement provisions, but Stifel Financial's did. *Id.* at 81. VonFeldt alleged that he served SNC at the request of Stifel Financial and presented two theories for this.

First, he alleged there was sufficient evidence showing Stifel Financial exerted control over its subsidiary's operations and the functions and duties VonFeldt performed for SNC. *Id.* at 83. Second, VonFeldt also advanced the theory that because Stifel Financial owned 100 percent of SNC's stock, Stifel Financial was the only entity with authority to select SNC's directors. *Id.* Thus, VonFeldt reasoned that he was serving at the request of Stifel Financial who had voted all of its stock for his election.

At trial, the chancery court ruled against VonFeldt on both theories. It concluded the evidence of Stifel Financial's control was in conflict and sided with Stifel Financial. *Id.* While not successful on this claim, the chancery court's consideration of it and the Supreme Court's review of it indicate in certain circumstances, such proof could be sufficient to prove a parent corporation requested the officer or director to serve. As to VonFeldt's second argument, the Supreme Court overturned the chancery court. Specifically, the court held that "[t]he vote of a 100 percent stockholder is a public expression of support" for the board of directors candidate and "must amount to a 'request' in the eyes of the law." *Id.* at 85.

Thus, an attorney considering whether advancement rights are available to her client should familiarize herself with the governing documents for parent companies and the facts surrounding how the client came to serve as an officer or director of the subsidiary. As the court in *VonFeldt* noted, "[o]ther cases will have to be decided on their own facts concerning what constitutes one corporation's request to serve another corporation." *Id.*

The Meaning of "Reasonably Incurred"

Some governing documents or agreements providing for advancement rights will define what expenses are covered. The only guidance provided by KRS 271B.8-530 is that the expenses be reasonably incurred by the officer or director. Generally, courts considering whether the fees and expenses are reasonable conduct a similar analysis to the lodestar method used in awarding attorneys' fees and expenses. As a result, courts like that in *Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 998 (Del. Ch. 2012) inquire as to whether the number of hours expended appear reasonable and whether the hourly rate appears within market norms. An attorney pursuing advancement rights should be prepared with proof concerning the reasonableness of her fees and expenses, by expert proof or affidavits or testimony from similarly practicing attorneys.

The Meaning of "In Defending"

Frequently, organizational documents or agreements that provide for advancement rights do so for expenses incurred "in defending" a legal action or proceeding. That raises the question of what exactly constitutes defending a proceeding. As many litigators know, often counterclaims are asserted for defensive purposes in addition to offensive purposes. Even Delaware courts have struggled with whether all counterclaims are within the scope of "in defending." Currently, Delaware law holds all compulsory counterclaims are within the scope of "in defending." Permissive counterclaims, however, appear to fall outside the scope.

In *Citadel Holding Corp. v. Roven*, the Delaware Supreme Court addressed whether a director's affirmative defenses and counterclaims were covered by the indemnification provisions. 603 A.2d 818, 824 (Del. 1992). The court concluded all affirmative defenses fall within the scope of "in defending."

Turning then to counterclaims, the court noted that certain counterclaims are permissive, while others are compulsory under the Federal Rules of Civil Procedure if they arise from the same transaction as the original complaint. *Id.* After reflecting on the types of counterclaims, the court then held "any counterclaims asserted by [the director] are necessarily part of the same dispute and were advanced to defeat, or offset" the claims against the director, the court concluded they were brought in order to defend the director. *Id.* However, the court was not clear if its holding applied to all counterclaims or only compulsory ones.

As a result, Delaware Chancery courts have reached opposing conclusions. For instance, in *Reinhard & Kreinberg v. The Dow Chemical Company*, the Delaware Chancery court adopted a bright-line rule that "the law requires advancement of legal fees incurred with respect only to *compulsory* counterclaims." 2008 WL 868108, *1 (Del. Ch. 2008) (emphasis original). If a counterclaim does not arise out of the same transaction or occurrence as the original complaint, then it is not asserted in defense of the officer or director. *Id.*

However, in *Zaman v. Amedeo Holdings, Inc.*, the Delaware Chancery court noted that adopting a bright-line rule was problematic, particularly because there are 16 states that do not have compulsory counterclaims in their civil rules. 2008 WL2168397, *34-36 (Del. Ch. 2008). In *Zaman*, a director sought advancement for legal expenses related to several actions—some pending in federal court and subject to the Federal Rules of Civil Procedure and some pending in New York state court and subject to that state's rules of civil procedure. *Id.* Under New York rules, all counterclaims are permissive, and the defendants to the advancement proceeding argued they were not obligated to advance litigation expenses related to those counterclaims. *Id.*

The court reasoned that the decision to assert a counterclaim, whether it be a permissive or compulsory counterclaim, is made with the goal of "negating the viability of the claim against the corporate official." *Id.* at 35. Further, the court feared that if a claim was only subject to advancement if brought in a forum recognizing compulsory counterclaims in its civil rules would encourage forum shopping. Thus, the *Zaman* court held that a counterclaim is subject to advancement if it satisfies the compulsory counterclaim requirements under federal rules and "when the counterclaim directly relates to a claim against a corporate official such that success on the counterclaim would operate to defeat the affirmative claims against the corporate official." *Id.*

As a result, it is clear that a compulsory counterclaim will almost always fall within the scope of an advancement right provision. Permissive counterclaims could potentially fall within the scope, if the attorney establishes the counterclaim was brought to offset or defeat the claims against the officer, director of manager.

Addressing Covered and Non-Covered Claims

As the counterclaim example demonstrates, frequently litigation can include claims that fall outside the scope of the advancement rights. Additionally, counsel for one officer or director can often find herself providing legal services to other individuals in the same litigation. Thus, a question arises on how to deal with advancement expenses when the officer or director's counsel is providing legal services for claims or parties that are not subject to an advancement claim. Should a court in an advancement proceeding allocate fees and expenses between non-covered claims or non-covered parties?

There are no Kentucky cases addressing allocation in indemnification or advancement settings. However, in other settings, Kentucky law does not require allocation when claims are inextricably intertwined. In *Young v. Vista Homes, Inc.*, 243 S.W.3d 352, 368 (Ky. 2007), homeowners brought various claims against a construction company and others related to the septic tanks installed for their homes. *Id.* at 357. The cases proceeded to trial, with the homeowners succeeding on some, but not all of their claims. *Id.* at 358. The homeowners were successful on a statutory claim that permitted an award of attorneys' fees, and the trial court allocated attorneys' fees for the statutory code violation claim only. *Id.* at 368. The Supreme Court reversed and remanded, holding that "where all of plaintiff's claims arise from the same nucleus of operative facts and each claim was 'inextricably interwoven' with the other claims, apportionment of fees is unnecessary." *Id.* (citations omitted).

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Delaware courts have adopted a method of addressing the presence of non-covered claims or parties, which acknowledges the "inextricably interwoven" reasoning Kentucky courts have adopted in other settings. The court in *White v. Curo Texas Holdings, LLC*, 2017 WL 1369332, *10 (Del. Ch. 2017) (internal citations omitted) articulated the following test when covered and non-covered claims are present:

> To determine whether expenses incurred defending both covered and non-covered proceedings are subject to advancement, the operative test is: Would the disputed expenses have been incurred in defense of the covered proceeding even if there was no non-covered proceeding? If the answer is yes, then the disputed expenses are advanceable. If the fee requests relate to both advanceable claims and non-advanceable claims, i.e., the work is useful for both types of claims, that work is entirely advanceable if it would have been done independently of the existence of the non-advanceable claims. Any doubts should be resolved in favor of advancement.

In *Danenberg v. Fitracks, Inc.*, Danenberg served as CEO of Fitracks and negotiated a deal for Aetrex to acquire Fitracks. 2012 WL 11220, *1 (Del. Ch. Dec. 14, 2011). The merger included an agreement that Danenberg and other shareholders could form a new company that would receive licensing benefits from Aetrex/Fitracks. *Id.* Following the merger, Danenberg no longer was an officer, but continued as an employee of Aetrex/Fitracks. *Id.* at *5. Danenberg formed a new company, Just4Fit, Inc., which entered into a license agreement with Aetrex/Fitracks. *Id.* at *2. Subsequently, Aetrex/Fitracks terminated the licensing agreement and Just4Fit sued for breach. *Id.* Aetrex/Fitracks counterclaimed, asserting claims against Danenberg personally for alleged misrepresentations before and after the merger in both his capacity as an officer and as an employee. *Id.* at *2-*3.

Danenberg filed an action seeking advancement of litigation fees and expenses from Aetrex/Fitracks. *Id.* at *4. Aetrex/Fitracks argued it had no obligation to advance expenses on three bases: 1) that it was only making claims against Danenberg for a time period when he was an employee of Aetrex/Fitracks, for which the bylaws did not provide advancement rights; 2) that it had no obligation to advance expenses for the entirety of the underlying action, but only for the claims asserted against Danenberg, i.e., not for Just4Fit's claims against Aetrex; and, 3) that the presence of third parties benefitting from Danenberg's counsel's work required allocation. *Id.* at *5-*6.

The court rejected each of Aetrex/Fitracks' arguments. First, the court held that despite Aetrex/Fitracks' representations as to what conduct of Danenberg formed the basis of the claims, the substance of the claims and arguments made in the underlying action indicated Danenberg's conduct both as an officer and as an employee formed the basis of the claims. *Id.* at *6. Moreover, the court determined that it was not "possible at the advancement stage to parse finely between Danenberg's pre- and post-merger conduct," i.e., between his conduct as an officer versus an employee. *Id.* The court reasoned that for advancement purposes, there was enough overlap in the claims asserted against Danenberg for his officer and employee actions as to make parsing the matter not feasible for an advancement determination. *Id.*

Second, the court determined that Aetrex/Fitracks was obligated to advance Danenberg 100 percent of his expenses and fees related to the underlying action. *Id.* at *6. The court again reasoned that all claims were premised on pre- and post-merger actions, making an allocation impossible at the advancement stage without getting into the merits of the case. *Id.* Finally, as to the argument that an allocation must be made between fees and expenses incurred for Danenberg's benefit versus the benefit of third parties represented by his attorneys, the court held that "[i]f a particular defense or litigation activity benefits multiple third-party defendants, but Danenberg would have raised or undertaken it himself if he were the sole third-party defendant, then Fitracks must advance 100 percent of the related fees and expenses." *Id.* at *7.

Delaware courts have looked to the attorneys representing the officer or directors to initially draw the line between covered and non-covered claims. The Court of Chancery of Delaware explained *Weil v. VEREIT Operating Partnership, L.P.*, 2018 WL 834428, *7 as follows:

> Determining whether work would have been incurred in the absence of the non-covered proceeding frequently requires a degree of judgment. The attorneys who coordinated the defense of the various actions are the most competent to opine as to what would have been required for the defense of the covered proceeding, even if the non-covered aspects did not exist. Absent clear abuse, counsel's good faith certification is sufficient to support an award of advancements.

Implications for the Company

If a company chooses to provide advancement rights to its officers and directors, that choice is likely to impact litigation decisions for the company. Any company considering legal action against an officer or director should consider whether any of the claims asserted would be subject to advancement. If so, the company could be responsible for not only its own litigation costs, but also those of the officer or director it is suing. Companies can minimize some of those costs by obtaining Director and Officer liability insurance.

Additionally, shareholders or members of a company considering claims against an officer, director or manager should be aware that advancement of expenses may be due to the officer, director or manager. This potentially results in the shareholder or member depleting cash or assets available for distributions.

Finally, companies should carefully consider whether to challenge an officer or director's request for advancement. As the cases discussed above indicate, advancement proceedings are not dependent on the outcome of the underlying suit or the alleged misconduct of the officer or director. Courts tend to resolve disputes in favor of advancement benefitting the officer or director.

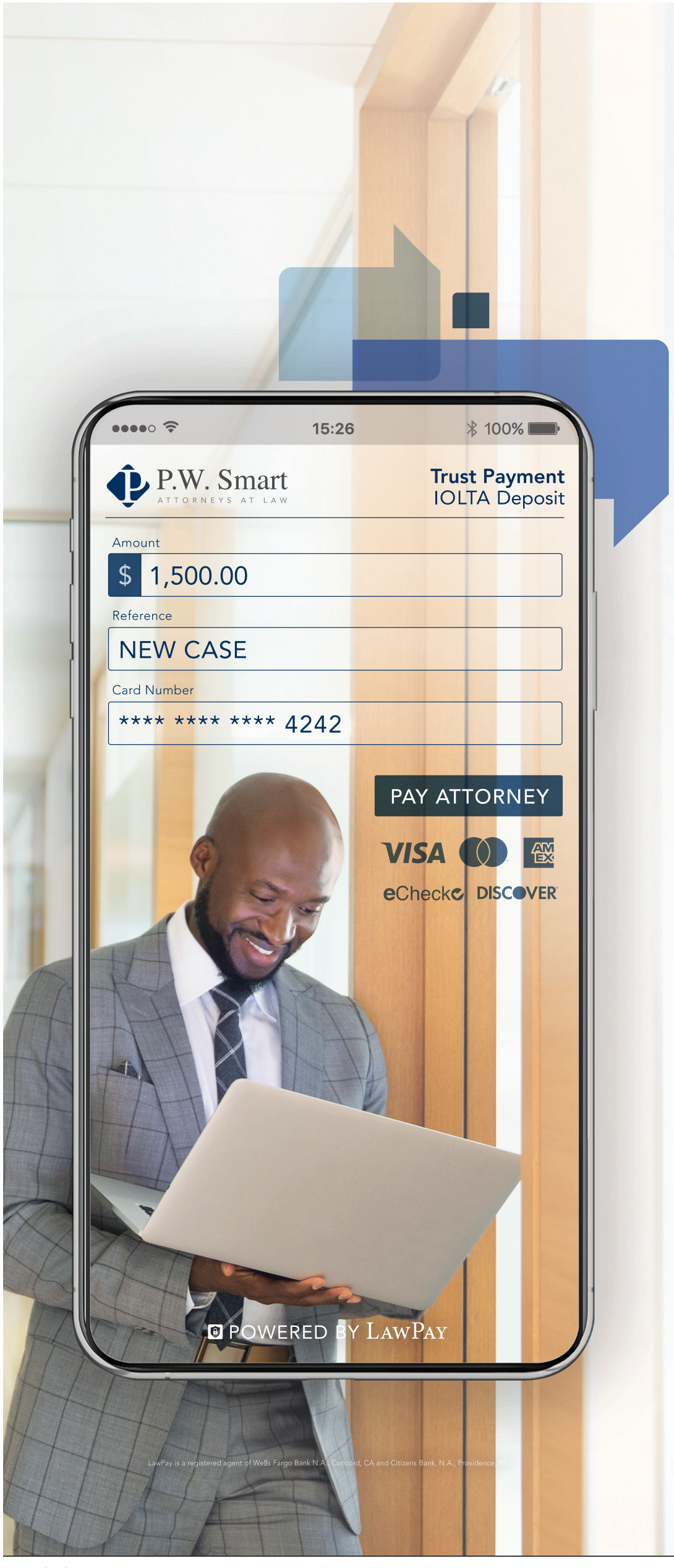
Importantly, an officer or director who brings an advancement action to enforce her rights is frequently awarded her fees in bringing the advancement action, resulting in an award of fees on fees, as occurred in *Fasciana v. Electronic Data Systems Corp.*, 829 A.2d 178, 182-183 (Del. Ch. 2003). Accordingly, unless fees on fees are expressly excluded under the organizational documents or agreements giving rise to the advancement rights, companies should carefully consider the benefits versus costs of denying a request for advancement.

Conclusion

As the court in *Heffernan v. Pacific Dunlop GNB Corp.*, 965 F.2d 369, 370 (7th Cir. 1992) aptly stated: "Litigation is an occupational hazard for corporate directors." Thus, savvy individuals considering service on a company's board or as an officer will frequently ensure the company affords not only indemnification rights, but also advancement rights. Companies seeking to attract talented leaders often choose to provide these rights to attract the best managers, officers and directors. Consequently, any attorney involved in a legal proceeding involving companies should be aware of the advancement right and its implications for the official and the company.

Any attorney representing an officer or director in a legal proceeding should carefully determine whether advancement rights are available. If so, those rights can provide a significant financial benefit to the officer and director to avoid out-of-pocket expenses in defending the proceeding. Similarly, a company considering any claim against an officer or director should weigh the costs and benefits of pursuing the claim if advancement rights are afforded. Otherwise, the company may find itself fronting not only its own litigation expenses, but also those of the individual against whom the claim is asserted. It is important, therefore, for attorneys to carefully investigate the existence and scope of advancement rights for their clients.

Jennifer M. Barbour is a member of the litigation practice group at Middleton Reutlinger. Her practice focuses on health care and commercial litigation. ■



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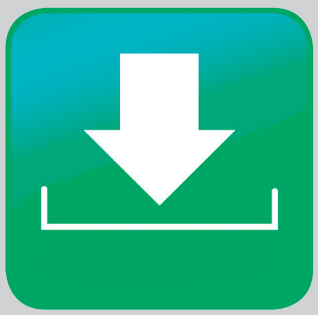

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MEMBERS *on the move*

Carpenter

The law firm of **Hoge Partners** is pleased to announce the relocation of its office to 231 S. Fifth St., Ste. 300. The phone (502) 583-2005, and fax (502) 583-1223 remain the same.

U'Sellis Mayer & Associates is pleased to announce that **Kate M. Carpenter** has joined the firm as an associate attorney. Carpenter is a 2015 graduate of University of Louisville Brandeis School of Law. She began her career practicing workers' compensation defense for several years with a Louisville firm. She subsequently left and gained experience practicing medical malpractice, premises liability, and nursing home defense litigation with another Louisville firm. She joined U'Sellis Mayer & Associates in March 2020 and will concentrate her practice in the area of workers' compensation defense.

Connolly

The Nature Conservancy recently elected **Robert M. Connolly** to its Board of Trustees of the Kentucky Chapter. Founded in 1951, The Nature Conservancy is a global environmental nonprofit working to create a world where people and nature can thrive. Connolly serves as Chair of Stites & Harbison and is a member of the firm's Torts & Insurance and Business Litigation Practice Groups. His practice includes defending complex product liability claims and construction and commercial disputes. Connolly is a member of the Board of Directors of the Friends of Kentucky Legal Education Opportunity Program, Inc. and a member of the Downtown Louisville Rotary Club.

In Memoriam

Catherine H. Spalding, age 72, died on April 10 at her home. A graduate of the University of Louisville Brandeis School of Law, she was for many years a prosecutor with the Jefferson County Attorney's office and a guardian ad litem in the local courts known for collecting and giving stuffed animals to children to comfort them during questioning. An active community member, she served on the boards of the American Association of University Women, Optimist Club, League of Women Voters and Colonial Dames. She was also a supporter of Spalding University and a member of St. Agnes Church.

She is survived by her husband and son, four siblings and many extended family members. Memorial gifts can be made to the Boys & Girls Clubs or Home of the Innocents. ■

Bar Exam to be Held in Summer and Fall

To protect staff, volunteers and applicants in light of the COVID-19 public health emergency, the Kentucky bar examination will be administered on July 28-29 and again on September 30-October 1, 2020. Applicants may register for only one of the testing dates and no applicant who takes the summer exam will be permitted to take the fall exam.

The summer exam will be held at three separate locations—the University of Kentucky, University of Louisville and Northern Kentucky University—with applicants having preference to take it at the university from which they graduated law school. The location(s) for the fall exam are to be determined.

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