

BAR *briefs*

Louisville Bar Association

November 2020

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LOUISVILLE BAR ASSOCIATION

Pride in the profession. Service to the community.

VOLUME 20, NO. 11

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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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Core Values

I write this article while watching the Save Our Stages Virtual Music Fest that is being produced to raise financial support and public awareness for independent music venues around the country that are at risk of shutting their doors permanently due to the inability to host live shows. The music is great, but watching each artist play to an empty venue, often an iconic venue, is a stark reminder of the varied ways COVID-19 continues to impact every aspect of our lives. No matter how hard you try, you simply cannot get away from the pain—financial, emotional and physical pain—every one of us endures because of this pandemic.

While this pain is very real, especially for those who have lost a job, or worse yet, a loved one due to the virus, it is important to not lose sight that the only way through this pandemic, at least successfully, is to support your fellow neighbor and to treat everyone with kindness and respect. Failing to support one another and to treat one another with respect only deepens the burgeoning divide in our country and makes it less likely that we will be able to recover quickly once science allows us the ability to embrace some form of our pre-COVID-19 life, such as seeing a live concert at a music venue.

Respecting your fellow citizen as referenced above is likely best accomplished by valuing and respecting every person's basic human rights. The Equality and Human Rights Commission defines human rights as shared values such as dignity, fairness, equality, respect and independence. These are not just words, but for many, including myself, core principles upon which we should live our lives. I don't, however, want to place too much emphasis on the words themselves, but rather focus on what they collectively create, which is a culture and society that allows us *all* to achieve success regardless of our gender, religious affiliation, race or sexual orientation.

As way of example, The Forge Companies, where I work, identified its core values, which are trust, respect, excellence, expertise and selflessness, in an effort to promote a culture within the workplace where people feel valued and respected. In addition, these core values serve as a constant reminder—a guidepost, if you will—for the executive team so that we never lose sight of the company we want to foster. We work hard to promote these core values because we believe that by doing so, we create a supportive and collaborative workplace environment, one that enables our employees to be successful at their jobs and enjoy coming to work each and every day. And, by establishing this type of workplace environment, we also believe our employees will want to stay and grow with the company while feeling comfortable and excited to contribute to our collective organizational success. This belief was effectively articulated by Sunil Mirani in his recent article for *BW Business World*, where he stated:

“Culture, which is unique to an organization, can enable it to retain talent, build loyalty, goodwill and inspire teams to perform better, thus helping an organization not just survive, but also thrive. But culture is by design and deliberate practice, not by chance. And, culture is not the job of the HR function or one team. It is owned and practiced by everyone in the organization. That is why it is essential to persistently nurture good work culture.”

While I agree with the entirety of Mirani's statement above, the final sentence is what stands out to me the most. Like everything in life, success is most often achieved by persistent hard work and dedication to a cause. And, creating a positive culture, one that helps respect every person's human rights, is not exempt from these same requirements. Therefore, whether you are trying to positively impact your family, your neighborhood, your chosen professional association, such as the Louisville Bar Association, your work or society as a whole, please don't forget to treat others with respect, the same respect you desire from others in return. Also, be mindful to make this a priority and not just something you do every now and again.

We are all better when we support and respect one another, and this has never been more important than today as we continue to navigate the COVID-19 pandemic. I know we all look forward to the day when we can relax, listen to live music or engage in whatever your passion is, all while feeling a deep sense of community and yes, respect, toward those around you. Until then, however, hang in there and be sure to remember that by respecting your fellow neighbor's basic human rights, you are helping ensure that we all get through this pandemic successfully—and, most importantly, that we get through it together.

Sincerely,



Peter H. Wayne IV
LBA President



“

(W)hether you are trying to positively impact your family, your neighborhood, your chosen professional association ... your work or society as a whole, please don't forget to treat others with respect, the same respect you desire from others in return.

The Court System and Our Legal Dinners Marshal On

Chief Judge Angela McCormick Bisig

As I pen this column for *Bar Briefs*, I have just completed an in-person competency hearing for a criminal case assigned to my court. The district, circuit and family courts have all moved forward in nontraditional ways to continue to hold court proceedings using Zoom, Skype, conference call-in lines and in-person hearings throughout the duration of the pandemic. In recent weeks, you may notice that more hearings are being held in-person. It is important that members of the Bar are aware that we are taking steps to comply with Health Department safety recommendations.

Everyone wears a mask in court. The judge enforces social distancing among the attorneys and parties. The circuit court also keeps a call-in phone line open during court proceedings for those interested in observing the activity on a given case. We are using plexiglass in creative ways in courtrooms. Many have a piece of plexiglass in front of the witness stand, the judge's bench or counsel table. Most of the courtrooms also have some type of taped designation as to where you may sit and maintain a safe social distance from other

participants. Considering the challenges of 2020, we have done our best to move forward with justice and keep cases moving forward.

With this column, I continue with my series of guests around our legal dinner table and my colleagues' thoughts about what they like most and least about their positions. I am excited because we have moved to the ninth floor of the Judicial Center—which is my floor and my judicial neighbors.

Today's bar association dinner guests will be Judges Brian Edwards and Susan Gibson. For those of you unfamiliar, our courtrooms are situated in front of an office suite that houses two judges. We cordially refer to the judge that works in the same office area with us as our "suite-mate" or "pod-mate." Judge Brian Edwards is my pod-mate, and Judge Gibson is one courtroom down from the two of us. I look forward to telling members of the bar association a bit more about each of them.

Judge Brian Edwards — Division 11



I feel very fortunate to share an office suite with Judge Brian Edwards. I have known Judge Edwards for many years dating back to his early days as a young attorney in the public defender's office. For those of you who have practiced before him, you know that his calm demeanor, compassionate outlook and steady hand follow him through everything he does. I appreciate being able to talk through issues on our cases with him, and I learn from his excellent rapport with members of the Bar.

Judge Edwards and I discuss cases we handle, and even off the bench, his cool-headed judicial temperament stays in place. I've learned that only his eyebrows raise a bit if something annoys him and even this subtle cue has taken a long time to notice.

Judge Edwards attended Northwestern University and received his law degree from the University of Kentucky College of Law. Early in his legal career, Judge Edwards worked for the Louisville Metro Public Defender's Office. There he represented individuals on all types of charges and gained a significant amount of trial experience.

Judge Edwards served as a professor at the University of Louisville College of Arts and Sciences Department of Pan-African Studies. He also served as the associate director for the Center for the Study of Crime and Justice in Black Communities.

In addition, Judge Edwards hung his own shingle and had a private law practice immediately before becoming a judge in 2009. Judge Edwards served as the Chief Circuit Court Judge from 2018 to 2020. I was always proud when he spoke on our behalf as he is thoughtful and well-prepared.

Judge Edwards is a dedicated father and speaks often of his sons' sports and artistic accomplishments. He is active in our community as a board member of the Louisville Urban League and is involved in Greater Louisville Inc. He has received numerous awards both from the University of Kentucky College of Law as its Distinguished Jurist and the Louisville Bar Association's Outstanding Young Lawyer.

When asked his favorite part of being a circuit court judge, Judge Edwards immediately responded he loves watching young lawyers develop in their practice. He enjoys seeing new lawyers, fresh out of law school, grow their own personal style for handling cases. When asked his least favorite part of the job, Judge Edwards stated that it is seeing the pain and suffering of crime victims as well as the family members and friends of individuals charged with the crimes. He says no matter how long you do this job, this human element still has an impact.

Judge Susan Gibson — Division 12

When I first began on the circuit bench, I often went to ask questions of Judge Susan Gibson. I have long been impressed by her even-tempered and professional court management style. Years ago, Judge Gibson sat as presiding judge in a notorious case in Louisville in which a high school football coach was charged after a player died from heat exhaustion at practice. The case garnered local and national attention. I remember being impressed by Judge Gibson's ability to navigate that difficult terrain and represent the judiciary in an even-handed and intelligent way. She takes her work on the bench seriously, and like Judge Edwards, they both have a "never let them see you sweat" ability to handle almost anything.

Judge Gibson attended the University of Louisville for undergraduate and law school. Little known fact, Judge Gibson worked for WHAS11 in college and in their promotions department right after law school. After her brief stint in media, Judge Gibson joined the Commonwealth's Attorney's Office in 1987, and the bulk of her career as an attorney was spent prosecuting cases for that office. Judge Gibson also worked several years for the Jefferson County Attorney's Office prosecuting gun crimes. She was elected to the circuit bench in 2007.

Judge Gibson is an accomplished horse rider. I've heard tales of fun rides with friends and seen photos of her proud posture on a horse for competitions. She is a dog lover and has a glint in her eye when she speaks fondly of her beloved pets.

When asked what she likes most about the job as circuit court judge, Judge Gibson

responded that it is presiding over Mental Health Court. She explains that Mental Health Court is structured to deal with people who are struggling in the criminal justice system and getting arrested for crimes which are a direct result of untreated mental illness. She finds it rewarding to see some of those folks getting the treatment they need and allowing them to reconnect with their family, obtain employment and experience some peace in their life.

When questioned about the worst part of being a circuit court judge, Judge Gibson believes that is watching an individual heading down the path to incarceration. She notes that the system tries to come up with ways to intervene and prevent this outcome, and she is distraught to see when it fails. Particularly when this is a result of lack of financial resources, insurance coverage or an inability to access services. This concern for the people she sees in court is certainly exemplified by her respectful handling of court business. As she and Judge Edwards are both in the same hallway with me, I certainly learn from seeing their work on the important cases we all handle.



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

LBA Health Plan Renewal is a Rate Hold!

The LBA recently received some good news regarding the group health insurance plan members are eligible to access. Despite a health insurance inflation trend that is 12 percent nationally, Anthem Blue Cross Blue Shield announced that there would be no increase in the base rates for the LBA's plan for 2021.

This is unheard of in the world of health insurance. This puts the LBA health plan in a very competitive position in terms of pricing going forward. The plan has been advantageous to the small to medium-size firms historically, but with the recent favorable rating action by Anthem, the LBA plan should be a value for any size firm.

This also means that current LBA members who participate in the plan will see little change in the rates they are currently paying for their health insurance. The only changes members may experience would be the result of a covered individual moving into a higher age bracket as that is factored in to the overall rating calculation.

"This is a very positive development for the growth of the LBA health plan," said Steve Church of Logan Lavelle Hunt, the LBA's exclusive agency. "We have taken a significant step back on the health care escalator, and

that translates to better opportunities for savings in the future."

James Lobb, a partner at Lobb & Hurst PLLC, appreciates the value offered by the LBA health plan. "When Tom Hurst and I

set out recently to start our own firm, a lot of things we didn't think much about in a larger firm suddenly became very important to us," he explained. "How much are we paying for our various services? What are we getting for our money? And how soon can we speak to a real person who will work

with us to address any issues that might arise?"

"We've been very pleased with Anthem and the LBA's group health insurance," Lobb continued. "We like the product. We like the price. And we like the people who work on our account. Anthem and the LBA make our job of building a new firm much easier."

The LBA health plan was reorganized in January of 2018 and has seen consistent growth in member participation each month. To be eligible for the LBA plan you must have two or more participants in your firm and meet certain underwriting guidelines. For details or to find out if the plan might benefit you, call Leslie French at (502) 499-6880. ■

"The plan has been advantageous to the small to medium-size firms historically, but with the recent favorable rating action by Anthem, the LBA plan should be a value for any size firm."



Member Benefit Spotlight

Hey! Did You Know?

The LBA's CLE OnDemand Library currently hosts over 85 hours' worth of seminars. In Kentucky, you can satisfy all 12 required CLE hours via self-study from the comfort of your own home or office! Visit www.loubar.org and click CLE & Events to view the library and start learning today.

Louisville Association of Paralegals

Check out upcoming educational programs and special events on the Louisville Association of Paralegals website at www.loupara.org. The LAP offers joint membership with the Louisville Bar Association for voting members and joint LAP/LBA members may attend most LBA CLE programs at the discounted rate of \$15. To learn more about the benefits of LAP membership, visit www.loupara.org. ■

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Human Rights Advocacy Program offers students practical opportunities

Established in 2014, thanks in part to a grant from the Louisville Bar Foundation, the Human Rights Advocacy Program (HRAP) at Louisville Law now has an impressive list of projects under its belt.

In this program, law students receive modest, funded fellowships for each of their three years in law school. Along with co-directors Professor Enid Trucios-Haynes, Professor Sam Marcossan, Professor JoAnne Sweeny and Professor Dan Canon, the fellows engage in research and advocacy related to human rights issues.

Areas of focus have included the rights of immigrants, refugees and non-citizens, Title IX issues and voting rights. I was eager to talk with three HRAP fellows about their current work and why HRAP has been important to their legal education.

As you read their stories, I hope that in addition to learning more about HRAP's impact, you are inspired, as I am, by the work being done by these future lawyers.



RYAN CANNON
CLASS OF 2021

Why was HRAP appealing to you?

I applied to HRAP because I like the idea of getting involved with the community in which I want to practice, and using the skills I am learning in law school while I'm actually learning them. I didn't want law school to be an ivory tower experience. I wanted to make a difference during my 3 years in law school.

What have you learned as an HRAP fellow?

I've learned that meaningful community level change is difficult to achieve but not impossible. I've learned that no matter how passionate you are about an idea for positive change, it will take persistence, organizational skills and — perhaps most importantly — the ability to work effectively with others in order to actualize your vision.

How do you think your experience as an HRAP fellow will influence your legal career?

"I think that HRAP has exposed me to some structural societal issues that I really hadn't fully appreciated until they were brought to my attention. I have learned a lot from the

projects that the other students in the group have headed. It has expanded my perspective and enhanced my ability to perceive needs and deficiencies that I might have otherwise overlooked while in law school."

Ryan points to an exhibit called "What Were You Wearing?" that HRAP helped bring to the School of Law in 2019. In that exhibit, sexual assault survivors shared the clothing they were wearing at the time of their assault. The idea was to dispel the cultural myth that what a person is wearing can lead to sexual assault.

"While helping put the art exhibit together, even just talking to people in my family and friend circle about it opened up enlightening discussions about just how pervasive the problem of sexual violence is in our culture."

"Talking about it with my mentors in the Immigration field, I learned with more nuanced perspective how sexual violence creates a culture of fear, and has a deleterious effect on society, and how many people seeking asylum or refuge in the US are victims of, or fear being victims of, this kind of violence."



KATIE DAVIDSON
CLASS OF 2021

What are you working on now?

We are considering partnering with community partners such as Kentucky Refugee Ministries and La Casita to try to develop a bilingual "Language Access Card" and informational graphics to reach Limited English Proficiency (LEP) communities, and in particular the Spanish-speaking population, via social media and virtual community groups utilized by LEP communities.

Why was HRAP appealing to you?

I wanted to join HRAP because I think it is fundamentally important as law students and future lawyers to be mindful of everyone in our community, regardless of national origin, citizenship status or language ability. The legal education that Brandeis offers is a privilege, and HRAP offers ample opportunity to direct our education into community action.

What have you learned as an HRAP fellow?

There is a community within HRAP that facilitates teamwork and allows the intersec-

tion of vastly different interests in service of a common goal. The other fellows and I have different backgrounds and professional goals, but we have a common mission to improve our community with a public service lens. I'm so glad to have had this experience because this type of collaboration can be extrapolated to other professional and personal contexts.



BRITTANY GREENWELL
CLASS OF 2021

What are you working on now?

"I've been researching how law students can help support the racial justice protests and the movement."

Brittany learned about The Bail Project's work in Louisville and proposed a project focusing on reducing the impact of cash bail to Professor Dan Canon. Professor Canon, who has worked with The Bail Project, a national nonprofit that pays bail for people in need, approved the project, and HRAP fellows will soon begin assisting on cases to help represent protestors.

Why was HRAP appealing to you?

"When I was looking at Louisville Law, HRAP was definitely something I was interested in."

Brittany entered law school hoping to pursue a career in criminal defense, and through her work with HRAP has come to see that "criminal justice reform is definitely one of the biggest human rights issues."

How do you think your experience as an HRAP fellow will influence your legal career?

"I plan on living and working in Louisville for a long time, and HRAP has served me in so many ways: I've built relationships within the law school and within the community and I'm more well-equipped to tackle human rights issues."

She points specifically to her upcoming work with The Bail Project — she still hopes to work in criminal defense, and cash bail will be one of the first topics she needs to discuss with future clients.



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.



27th Annual Santa's Court TOY DRIVE

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



How to Participate

To sign up your firm, office or section, please contact Marisa Motley at mmotley@loubar.org or (502) 583-5314.

Important Dates

The deadline for collecting toys is Wednesday, December 9.

Pick up will take place on Friday, December 11.

Or you can drop off donations at the Bar Center:
600 W. Main St., Ste. 110.



With so many families affected by COVID-19, our help is needed more than ever this year. Please join us either once again, or for the first time. This holiday donation will put smiles on the faces of very deserving children.



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“ If you have built your life’s work around giving voice to the last, the least and the lost, there is no greater honor than recognition from an organization that pursues justice for those who have run out of options and sometimes even hope. The goal is not to continue preventing those who need us from falling through the cracks, but instead, to close the cracks. If we lived in a just world, we would need no Legal Aid Society to serve the poor, and we would certainly need no Urban League, but until then, we will continue to partner in the fight for equal access and equal justice for all. We honor each other not because it is required but to remind ourselves that we are not now, nor have we ever been, in this alone. I am humbled by your recognition and even more inspired to fight. I hope that you are too!

”



www.yourlegalaid.org

Since 2015, Legal Aid Society has awarded the Brown-Forman Spirit of Justice Award to a member of our community who has dedicated their life to the pursuit of justice. We are honored to recognize Sadiqa N. Reynolds, President and CEO of the Louisville Urban League, as the 2020 Brown-Forman Spirit of Justice recipient for her unparalleled service to the community and her unstoppable pursuit of equity and equality for all.

The Legal History of Thanksgiving

Kurt X. Metzmeier

The traditional imagery of Thanksgiving—turkeys, pilgrims with buckles on their hats, the whole ball of wax—gives the impression that it has been around as an American national holiday since the Mayflower discharged its passengers onto Plymouth Rock. It is old—but only as a regional holiday. Its legal status as the national holiday we know it today isn't much older than many of the candidates for president in 2020.

Searching HeinOnline's state session laws database for "thanksgiving," you find that before 1860 its regular observance was confined to New England and a smattering of other Eastern States. Even so it took awhile for it to attach to its "traditional" date in late November. Indeed, the first Thanksgiving in the printed statute books occurred on January 16, 1696. (1695-96 Mass. Acts, ch. 57).

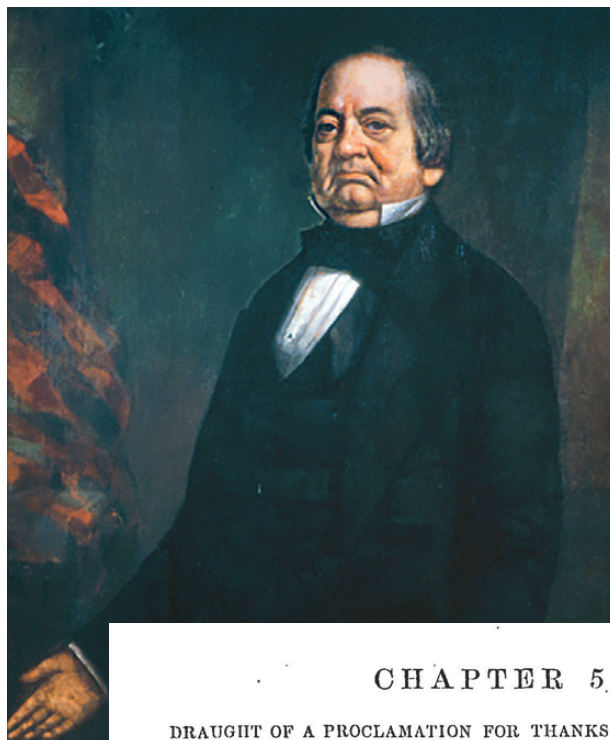
The exception is when the War of 1812 against the British formally concluded with the Treaty of Ghent and a national day of thanksgiving was proclaimed. Considering the war had involved the capital in D.C. being burned, a sigh of relief and a little cheer was in order.

Kentucky's First Thanksgiving

Thus, the first occurrence of the word "thanksgiving" on the Kentucky statute books occurs when the General Assembly resolved to hold a "day of *Humiliation and Thanksgiving to Him* that rules the Universe" to celebrate the end of that war and to thank the Kentucky militiamen under Gen. Andrew Jackson "for their gallant defense of the city of New Orleans and their splendid victory" over the British in January of 1815. (1814-15 Ky. Acts, p. 449).

Kentucky is a good example of how Thanksgivings were handled. Each state proclaimed these days independently, either through the executive or legislative branch, and they often were not annual holidays but celebrated a particular event, usually a military victory but occasionally the state's survival after a great storm or a deadly epidemic.

The state's first fall Thanksgiving was proclaimed in 1844 by Governor Robert P. Letcher for September 26. His day of "Prayer, Praise and Thanksgiving" was to thank "merciful Providence" for "abundant blessings," including freedom from war, want, and the "ravages of malignant disease." Kentucky in 1844 had pulled its economy out of the economic depression sparked by the Panic of 1837 and Letcher wanted to mark that accomplishment. The Louisville *Courier* for that day, while urging that Letcher's example be followed by future governors, caught a little of the New England tradition by declaring "Pumpkin pies, forever!"



National Holiday Evolves

Thanksgiving as a regularly occurring national holiday can trace its roots to 1863 when President Abraham Lincoln proclaimed a day of Thanksgiving to be celebrated on the last Thursday of November. Presidents would continue to proclaim that day thereafter, although without legal effect except as it encouraged some states to set the day as a holiday. That year, the Kentucky legislature enacted a public holidays statute that included "all thanksgiving or fast days appointed by the President of the United States or the Governor of this State," (1863 Ky. Acts, ch. 83). This Thanksgiving language remains unaltered in the current holiday statute, KRS §2.110.

However, in 1939, Franklin D. Roosevelt would break tradition when he proclaimed that the fourth (instead of last) Thursday of November would be Thanksgiving. Since the calendar decreed that would be November 23 that year, FDR hoped the extra week of Christmas shopping would help retailers recover from the Great Depression. (So Black Friday sales are technically a New Deal program).

Since the proclamation wasn't legally binding, states went their own way with some choosing "Franksgiving" and others celebrating the later "Republican Thanksgiving" a week later on November 30. (For those of you seeking a non-political Thanksgiving dinner in the "good old days," I am sorry to disappoint.) According to Melanie Kirkpatrick, "the president badly misread public opinion." Everyone from Plymouth Massachusetts merchants to the nation's football coaches condemned the change. College football in those days ended the season with Thanksgiving Day games. One coach in heavily Democratic Arkansas proclaimed, "We'll vote the Republican ticket if he interferes with our football." Ultimately 22 states followed FDR's lead and 23 kept the old date. ("Happy Franksgiving," *Wall Street Journal*, Nov. 24, 2009).

Thanksgiving is 'Legalized'

It was in the dark days after Pearl Harbor that Congress finally placed Thanksgiving Day as celebrated on the Fourth Thursday of November in the official roll of National Holidays. Thanksgiving was now the official law of the land. (55 *Statutes at Large* 862, Dec. 26, 1941).

Kurt X. Metzmeier is the associate director of the law library and professor of legal bibliography at the University of Louisville Brandeis School of Law. He is the



author of *Writing the Legal Record: Law Reporters in Nineteenth-Century Kentucky*, a group biography of Kentucky's earliest law reporters, who were leading members of antebellum Kentucky's legal and political worlds. ■

CHAPTER 57.

DRAUGHT OF A PROCLAMATION FOR THANKSGIVING, AND THE VOTE ORDERING THAT IT BE PRINTED AND PUBLISHED.

A BILL appointing of Thursday the sixteenth day of Jan^r. next to be a day for public Thanksgiving was read and past to be printed and published, — [December 13.

PROVINCE OF THE MASSACHUSETTS BAY IN N E:

By the Hon^{ble} the L^d. Gov^r. Council & Assembly

Considering the manifold Experience the Inhabitants of this Province have had of the Preventing Goodness of God, during the present War; inasmuch as thō we have been cast down; yet we are not destroyed thereby; and that in some Towns there has been a full Harvest; and in others, so much is reserved towards our necessary supply of Bread; and that there has been plenty of Grass in the field; Health in our Borders; And that Success has been granted to His Majesty & y^e Confederate Arms, this last Summer

This Court do Order that Thursday the sixteenth day of January, next be observed as a Day of solemn & publick THANKSGIVING throughout the Province; hereby forbidding all servile Labour thereon: And the Ministers & People of this Province are Exorted in humble & cheerful manner to attend so great a Duty: That so God may continue to grant us what is convenient for us; and that we may employ all the Gifts of God, only in His Service and to His Honor & Glory.

[CHAPTER 631]

JOINT RESOLUTION

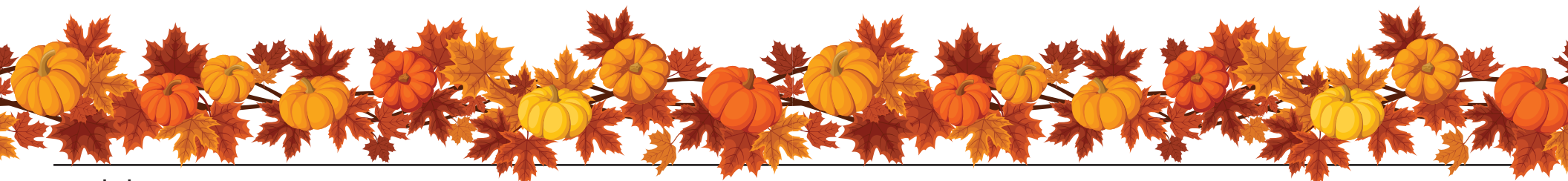
Making the fourth Thursday in November a legal holiday.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the fourth Thursday of November in each year after the year 1941 be known as Thanksgiving Day, and is hereby made a legal public holiday to all intents and purposes and in the same manner as the 1st day of January, the 22d day of February, the 30th day of May, the 4th day of July, the first Monday of September, the 11th day of November, and Christmas Day are now made by law public holidays.

Approved, December 26, 1941.

December 26, 1941
[H. J. Res. 41]
[Public Law 379]

Thanksgiving Day,
Fourth Thursday of
November made a
legal holiday.



Do We Have Enough Great Trial Lawyers?

Aron Solomon

Our collective perceptions of trial lawyers comes from the golden era of television, where the practice of trial law was romanticized over decades. Whether the public's perception of the lives and careers of trial lawyers were shaped by Mason, Matlock, Becker—or even Goodman, Chiles, and Hutz—these characters brought the lives of trial lawyers into our living rooms.

More importantly, the best of these portrayals influenced many people to go to law school and pursue litigation as a career path. As these characters kept coming into our homes, our law schools benefited from the influx of young people who wanted to be trial lawyers.

But in 2017, the American Bar Association warned of a shortage of trial lawyers. Not only was there a shortage of litigators, it was becoming much more difficult for young lawyers to get the practical experience in the courtroom that is critical to growing and evolving as a practitioner. One of the reasons this was happening is because fewer cases were going to trial. Dating back to the 1980s, more cases were settled before trial, to the point where in 2017 the ABA noted that only 2 percent of civil cases were going to trial.

The notion of a shortage of lawyers runs counter to what we have believed for a long time, about a saturated profession and far too many law schools given job prospects over the past two decades. But lawyers who are truly trial lawyers were a niche and remain a niche within the profession and many would argue that their training and skill set has not evolved much since that golden era of television.

Keeping in mind that trial lawyers actually spend far less time in trials than the public or even law students believe, and almost nothing they do resembles what we see on television, how do we make sure that tomorrow's trial lawyers have a chance to be as great as the fictitious and real trial lawyers of the past?

The answer may lie in a word that is like kryptonite to many in the legal profession.

Technology.

In early 2020, even before COVID-19 began to change the landscape of how law is practiced, a McKinsey study noted that 23 percent of lawyers' work can be automated and that law schools needed to be more responsive to meet that demand. If law schools must respond to this need then training programs for new lawyers will have an even greater burden in training these new lawyers. While powerful law firms continue to pay top dollar to new associates, are they equipped to teach and mentor the trial lawyer of the future? And if there's even any question as to the skill and interest set of the best-known firms to do this, what of smaller firms outside of the larger cities? Will they be as well-positioned and will the newest technologies be available to these firms as quickly as to the others?

So where do we ultimately land today in an era that is making trial law more complex and more intertwined with technology than it ever has been?

In late 2020, this is a question that is not yet even close to settled. What does seem clear is that the trial lawyer of the future (and maybe the trial lawyer of future TV and Netflix series) will have significantly deeper technology competencies than ever before. And as McKinsey notes, it's really going to be ride or die for law schools, who, in the next 5 years, will need to transform legal technology training from a niche thing often oriented towards students with already deep technology backgrounds into required, necessary skills for anyone training to be a trial lawyer.

It's not that trial lawyers themselves are going to need to write computer code, but they're definitely going to need to understand it. Moreover, they're going to need to have the technical and interpersonal skills to work with people who are deep technologists, whether those people work in their firm or in the modernized court system of the not very distant future. While saying this in 2017 might have been seen as aspirational, disregarding these guidelines today is simply poor risk management.

Aron Solomon is the Senior Digital Strategist for NextLevel.com and an Adjunct Professor at the Desautels Faculty of Management at McGill University. ■



William Hopper as Paul Drake and Raymond Burr as Perry Mason in the CBS-TV series, Perry Mason (1957-1958)

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LBA LABOR & EMPLOYMENT LAW ONE-HOUR

Preparing for (and Hopefully Avoiding) Pandemic-Related Employment Disputes

Monday, November 9

In the midst of the coronavirus pandemic, many companies executed employment decisions quickly out of necessity, amidst newly evolving administrative guidance and laws. In the current environment where some employees have returned to work and others are continuing to work remotely, or a hybrid of the two, businesses must act more deliberately (and cautiously) when applying this ever-evolving framework to address employee concerns.

The new regulatory scheme has created risks around every corner. Administrative agencies are testing new avenues for regulatory enforcement and plaintiffs' attorneys are creating novel theories to challenge business decisions during and after the crisis. Paul Goatley and Calesia Henson will discuss these new legal claims and administrative challenges, as well as provide practical risk-mitigation solutions as we continue to wade through the pandemic.

Speakers: **Calesia S. Henson**, Stites & Harbison and **Paul E. Goatley**, Fisher & Phillips

Time: Noon – 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 / \$80 Non-members

Credits: 1.0 CLE Hour — Pending with KBA and Indiana

Cancellation Policy: All cancellations must be received by the LBA 24 hours in advance to receive a credit or refund. Substitutes will be allowed.

November ETHICS Webinars

May It Displease the Court?: Keeping Your Head (and Your Law License) in Court

11-18-2020 | 1:00 pm | 1.0 CLE Ethics Hour

In this hilarious webinar, legal humorist Sean Carter reviews some of the most outrageous breaches of lawyer decorum in recent years. In doing so, he will address the underlying reasons for lawyers to act out in this manner and provide tips to prevent losing control of our emotions (and our law licenses).

Yakety Yak! Do Call Back!: The Ethical Need for Prompt Client Communication

11-20-2020 | Noon | 1.0 CLE Ethics Hour

While it is important to comply with every obligation of the ethics canon, the obligation to promptly communicate with the client may be the most important. Lawyers who flaunt this rule leave their clients with no choice but to contact the state bar in a desperate attempt to seek answers to their questions. And, of course, by that point, the disciplinary authorities will have a long list of questions of their own. In this insightful webinar, legal humorist Sean Carter will provide lawyers with practical tips for how to meet the increasingly difficult burden of talking, emailing and texting to each client's content.

LBA Member	\$55.00
LBA Sustaining Member	\$50.00
LBA Paralegal Member	\$25.00
Non-member	\$110.00

CLEs APPROVED by KBA & Indiana Supreme Court

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.

COPE with Your Content Creation Problems

Jim Ray

If you're like me, you're incredibly busy. You have to manage the tasks on your list, but also make time to continue driving brand awareness by marketing. Most of us do this via content creation. But where do you find the time? So far this year, I've produced almost 100 podcast episodes for clients and my own business. I'm consulting on marketing and business ideas with clients. I produce videos for client websites and social media. Oh, and I'm dealing with the internal, administrative issues of actually running a small business. Does this sound familiar? The good news is I believe I have a way to help you COPE with your content creation problems.

Two Types of Content Creation Problems

The first is ideation. What in the world am I going to write about? The second is consistency. How do I make sure I'm staying current on all my marketing properties (e.g. website, Facebook, LinkedIn, etc.)? It can begin to feel overwhelming.

COPE stands for Create Once Publish Everywhere. Think of it as repurposing your content. But is it really that simple? It depends.

Carving out time to sit down and write a piece of content can take time. This is a luxury you may not have, especially if you're balancing it with all of the other responsibilities mentioned above. This is a primary reason I've become such a proponent of podcasting. It's much easier to simply talk about a topic. When we sit down to write an article, we constantly fight the urge to self-edit. In fact, I've done it several times in these four paragraphs. It slows down the process.

However, when my client and I sit down for a podcast session, a natural conversation develops. We can cover a topic (in much more detail) in a fraction of the time it would take to write about it. Generally speaking, if I were to fully transcribe that podcast episode, it could be multiple pages long.

Think about it. How many paragraphs does a 15- or 30-minute conversation contain? Creating podcast content is a great way to COPE with your content creation problems.

Now let's go to the next step in the solution. It's very easy to upload a podcast episode to your website, Facebook page, LinkedIn profile and even your YouTube channel. You might decide that you'd prefer to extract snippets of the overall episode and cross-post them to your social media channels.

Whether you post the entire episode or simply snippets, the process just became much more efficient than trying to come up with separate articles and posts for each channel. More importantly, podcasting enables you to COPE with your content creation problems in different ways. Let me explain.

Making Your Content Stick

If you really want someone to remember something you said, you need to anchor it to an emotion. Because a podcast is an audio-based medium, your vocal inflection, your personality even your sense of humor stands out. People can easily connect with your voice; much more so than with an article you wrote. While podcast content is efficient, it's also emotive. This leads to a much more impactful way to market your product or service. Unless you tend to type in all caps, text-based content is pretty monotone. That's why

it's often forgettable.

To recap, busy professionals often struggle to commit time to producing marketing content. Podcasting enables you to develop deep content, it integrates easily with your marketing channels or platforms thus allowing you to be consistent and it's a much more impactful way to COPE with your content creation problems.

Interested in Developing a Podcast?

If you'd like to explore the idea of creating a podcast for your business, I can help. I produce them for clients on a regional basis, so you don't have to be located in Louisville to work with me. Take a few minutes to visit my podcast production services page. You'll be able to watch a few videos about how and why podcasting is something you should strongly consider.

Your competition is still trying to steal your clients. If you're not actively marketing, you may be conceding. Let's make it easier for you to stay in front of your target audience and to grow your business.

Jim Ray is a business consultant helping attorneys run their practices more effectively and profitably. He's worked with more than 70 law firms over the past 10+ years in the areas of practice management, business development and marketing. His firm, Jim Ray Consulting Services, is based in Louisville. For more information, visit JimRayConsultingServices.com. ■



6 Tips on Managing the Stresses of Working with Difficult Business Clients

Stan Popovich



Many lawyers can have a difficult time working with demanding business clients. It can be challenging to try to meet all of the things that need to be done in fulfilling your legal obligations with the people you do business with.

As a result, these situations can cause a lot of anxiety and depression for the lawyers who are involved in working with people who are difficult to please.

Here are six tips on how lawyers can effectively work with those clients who give them a hard time without getting overwhelmed with anxiety, stress and frustration.

No. 1: Prepare ahead of time

Regardless how good you are or how many awards you may have won, it is impossible to please everybody all of the time. It is important that lawyers develop a good reputation in their area of expertise to buffer the possible problems of dealing with difficult customers down the road.

No. 2: Get everything in writing

Sometimes it is your loyal customers who are most difficult. It is important that you get everything in writing when dealing with difficult people. Misunderstandings will happen and expectations will not always be met. In dealing with anybody, put everything down in writing to save money and heartache down the road.

No. 3: Learn to communicate effectively

Do not assume that you know what your clients want. Listen to them and view their circumstances through their eyes. Ask questions and make sure that everyone is on the same page. Effective communication with your clients will prevent misunderstandings down the road.

No. 4: Learn how to organize, delegate and plan ahead

Although there is not enough time in a day to get everything accomplished, you have to be smart in how to get things done. Lawyers can delegate part of their tasks to members of their legal team. In addition, organizing your tasks and planning ahead can reduce the chances of getting burned out. Finally, do not put things off until the last minute. Managing your tasks effectively can prevent you from getting overwhelmed and getting fatigued.

No. 5: Ask for some assistance

If you find yourself overwhelmed with a specific case or client, ask others in your firm for advice and assistance. Many lawyers may be reluctant to ask for help because of pride, but it doesn't do you any good if you're depressed, anxious and fearful. Getting advice or assistance from others on how to deal with a difficult client will prevent any problems from happening that could damage your reputation in the future. It's better to be safe than sorry.

No. 6: Learn from your experiences

Over time, lawyers can get a feel of what makes them stressed out and anxious at their legal profession. If possible, find ways to help overcome your stresses and anxieties. For example, some clients are more difficult to deal with than others.

If possible, pick those cases that are less stressful to deal with. A lawyer can also decide to work for another firm that better suits their needs and work habits. Every lawyer wants to be successful and have a great reputation among their peers, but the key is not to sacrifice your mental and physical health in the process.

Remember: Lawyers can't do their job if their anxieties, depression and other mental health related issues are out of control on a daily basis.

Stan Popovich is the author of the popular managing fear book, "A Layman's Guide To Managing Fear." For more information about his book, please visit www.managingfear.com. ■

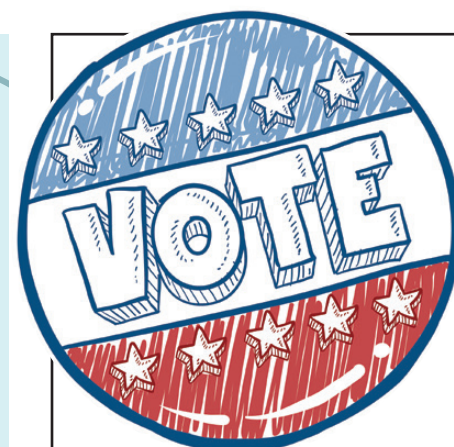


End your year
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There's still time to explore charitable
giving and tax-savings strategies for 2020



yearend@cflouisville.org



Your Voice
Your Vote

Election Day voting will take place on Tues., November 3 from 6 a.m. – 6 p.m. Jefferson County will have 20 polling locations, all which will be voting "super centers" where any Jefferson County resident may vote at any location. The locations for Election Day voting are listed on our website, www.loubar.org.

PROTEUS

“[Proteus Co-Founder and CEO] Ray Biederman is an industry leader on document production and has testified as an expert on this issue previously. The Court finds that testimony of Mr. Biederman to be informative and convincing.”

Bopp Law Firm PC v. Schock for Congress,
151 N.E.3d 286 (Ind. Ct. App. 2020)



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SB 150: Actual Immunity or an Additional Defense for Health Care Providers?

Colleen O. Davis and Tricia C. Le Meur

Over the last several months, many governors and state legislatures have enacted emergency orders and passed legislation affording health care practitioners greater protection against civil liability for COVID-19-related health care. These measures encompass a wide range of health care professions and types of care, and the scope of protections afforded range from additional liability defenses to blanket immunity. Kentucky's legislation has been characterized as "immunity," but it is far from clear how it will be applied and interpreted. This article evaluates Kentucky's "immunity" legislation for health care providers and discusses potential legal and practical concerns.

Senate Bill 150, sponsored by Sen. Ralph Alvarado (R-Winchester), originally dealt primarily with out-of-network insurance billing and was meant to ensure that insurers reimbursed providers for COVID-19-related health care. It received several conference committee amendments, including the following provision:

A health care provider who in good faith renders care or treatment of a COVID-19 patient during the state of emergency shall have a defense to civil liability for ordinary negligence for any personal injury resulting from said care or treatment, or from any act or failure to act in providing or arranging further medical treatment, if the health care provider acts as an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances. The aforesaid defense under this paragraph shall include a health care provider who:

1. Prescribes or dispenses medicines for off-label use to attempt to combat the COVID-19 virus, in accordance with the federal Right to Try Act, United States Public Law 115-176, and KRS 217.5401 to 217.5408;
2. Provides health care services, upon the request of health care facilities or public health entities, that are outside of the provider's professional scope of practice; or
3. Utilizes equipment or supplies outside of the product's normal use for medical practice and the provision of health care services.

SB 150, § 1(5)(b).

The amendment was added in a "free conference committee" on March 26, 2020. A "free conference committee" is created when the two legislative chambers disagree on a final version of a bill. The process gives lawmakers wide latitude to make other additions to legislation. However, in this case it is not clear who made the amendment, and any floor discussion or debate on the provision was not retained.

In any case, with § 1(5)(b) and several other amendments, SB 150 was passed unanimously (though eight senators and 18 representatives did not vote) the same day § 1(5)(b)

was added, and Governor Beshear signed the bill into law on March 30, 2020. On April 15, 2020, Governor Beshear issued a Governor's Message discussing the passage of the bill; he mentioned several of its provisions, but not liability protections for health care providers.

The provisions in SB 150 expire when the Governor declares an end to the public health emergency. In the meantime, the text of § 1(5)(b) raises immediate questions: does it provide actual immunity? Does it do anything beyond codify the standard of care? Is this a shield for rogue hydroxychloroquine proponents? How does it interact with federal and state law? Our best guesses are below.

a. Section 1(5)(b) appears not to confer actual immunity.

The legislative record for SB 150 summarizes § 1(5)(b) as conferring "immunity from civil liability for health care providers who provide care in good faith during the pandemic." The *Courier-Journal* also described the provision as "provid[ing] immunity from civil liability for health care providers who render good faith care to a patient with coronavirus." (Joe Sonka and Deborah Yetter, "Kentucky General Assembly passes coronavirus relief bill by a unanimous vote" *Courier-Journal*, Mar. 26, 2020.) Rick Rand, representing the 47th House District, described § 1(5)(b) as "extend[ing] Good Samaritan protections for those providers acting in good faith to provide care." (Rick Rand, "General Assembly Passes Senate Bill 150" *Trimble News*, Apr. 2, 2020.)

Black's Law Dictionary defines "immunity" as an "exemption from a duty, liability, or service of process." Immunity is a legal status wherein an individual or entity *cannot* be held liable for a violation of law. The text of the law does not use the phrase "immune," "immunity," or describe any exemption from liability. Rather, it provides "a defense to civil liability ... if the health care provider acts as an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances."

A "defense" is not a "get out of jail free" card; truth is it's a defense to defamation, but a defendant must still prove that the substance of the contested statement was true for the defense to succeed. More relevant to this discussion, a health care practitioner's conduct comporting with what a reasonable provider would do under the same or similar circumstances is a defense to a claim of medical negligence, but the parties to most medical negligence cases nonetheless spend years litigating that very issue. J. Palmore, *Instructions to Juries*, 5th ed., § 23.01; *Blair v. Eblen*, 461 S.W.2d 370 (Ky.1970).

Many state legislatures and governors have explicitly conferred immunity in their executive orders and legislation addressing health care liability for COVID-19-related treatment

(see, e.g., Arizona Exec. Order 2020-27; California's preexisting Gov. Code § 8659; Kansas HB 2016; Massachusetts's Bill S.2640). Kentucky's legislature chose, instead, to provide "a defense to civil liability" for good faith action in certain circumstances. Despite the word "immunity" in the legislative record summary, it is unlikely that courts will read immunity into § 1(5)(b) when its language does not appear to support such a finding, especially when the implication is necessarily a curtailing of patient remedies. The plain and ordinary language of § 1(5)(b) does not directly confer immunity to health care providers for treating patients with COVID-19.

b. Section 1(5)(b) appears, instead, to provide a defense by codifying certain categories of medical treatments as complying with the standard of care.

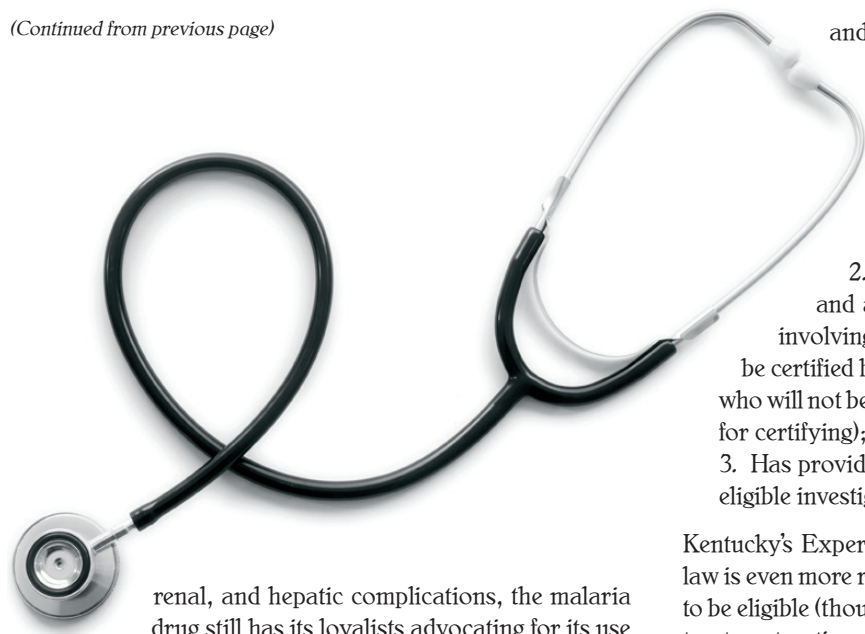
Rather than immunity, § 1(5)(b) of SB 150 purports to provide an additional layer of defense by identifying certain health care treatments and actions as complying with the standard of care, specifically: 1) off-label prescription and administration of drugs "to attempt to combat the COVID-19 virus, in accordance with the federal Right to Try Act" and its Kentucky counterpart; 2) provision of care outside the practitioner's scope of practice upon the request of a health care facility or "public health entity"; and 3) use of equipment or supplies "outside of the product's normal use."

Thus, a health care provider could be protected from liability for such treatment decisions if he or she can demonstrate (1) that the treatment at issue occurred during the COVID-19 state of emergency; (2) that it was a good faith attempt to render care to a COVID-19 patient; and (3) that an ordinarily reasonable and prudent health care provider would have done the same under the same or similar circumstances.

The enumerated protected treatment categories and the requirement that health care providers satisfy established standard of care requirements are potentially in conflict and will likely lead to variable application of this provision in courts throughout the Commonwealth. For example, what if a provider in good faith recommended ingesting disinfectant, or irradiating patients' bodies with UV light, as the president suggested in April? This would clearly fall under the third category of prescribed protections, but it may not be how "an ordinary, reasonable, and prudent health care provider would have acted under the same or similar circumstances." (See, e.g., "Coronavirus: Outcry after Trump suggests injecting disinfectant as treatment" *BBC* Apr. 24, 2020.)

The hydroxychloroquine is a more likely subject for this potential conflict; while the FDA has revoked its emergency authorization for hydroxychloroquine's use outside the hospital setting due to its significant cardiac, lymphatic, hematological,

(Continued on next page)



renal, and hepatic complications, the malaria drug still has its loyalists advocating for its use in treating COVID-19, even in the medical community. (Grant Gallagher, "FDA, Advocacy Group Clash Over Hydroxychloroquine" *Contagion Live: Infectious Diseases Today*, Aug. 3, 2020.) A provider may well recommend this treatment in good faith, ostensibly protected by § 1(5)(b), but with disastrous effects.

We anticipate this tension within the statute will be addressed differently by different judges, resulting in conflicting decisions among the circuits and likely requiring appellate consideration.

c. Interaction with Federal and State Right-to-Try Laws

Section 1(5)(b) protects providers using off-label drugs with an apparent qualifier; the off-label use must be "in accordance with the federal Right to Try Act, United States Public Law 115-176, and [its state counterpart,] KRS 217.5401 to 217.5408."

The Right to Try Act ostensibly provides terminally ill patients the right to seek drug treatments that remain in clinical trials

and "have passed Phase 1 of the Food and Drug Administration's approval process" but have not been fully approved by the FDA. A patient is eligible to receive the experimental drug if they have:

1. Been diagnosed with a life-threatening disease or condition;
2. Exhausted approved treatment options and are unable to participate in a clinical trial involving the eligible investigational drug (this must be certified by a physician who is in good standing and who will not be compensated directly by the manufacturer for certifying); and
3. Has provided written informed consent regarding the eligible investigational drug to the treating physician.

Kentucky's Experimental Treatments for Terminal Illnesses law is even more restrictive; a patient must be "terminally ill" to be eligible (though they need only have "considered" other treatment options rather than having "exhausted" them).

All right-to-try laws (most states have their own) have built-in practical and ethical issues. Most obviously, use of unapproved drugs could hasten death or increase suffering. Short of that, the experimental drugs by definition have no data regarding safety or efficacy, making informed consent a tenuous issue, and right-to-try laws do not require insurance companies to pay for experimental therapies or manufacturers to provide them. Today, we consider only how Kentucky's Experimental Treatments for Terminal Illnesses law and SB 150 might together affect COVID-19 treatments in Kentucky.

There is probably little question that COVID-19 is a "life-threatening disease," but is it a terminal illness? As of September 8, 2020, Dr. Fauci estimated its mortality rate throughout the country at 1 percent, but this has oscillated over time, and several factors impact mortality, including age, sex, cardiac or pulmonary illness, and tragically, race and

socioeconomic status.

Given the "and" in subpart (1), for a practitioner to be entitled to a defense under § 1(5)(b), will a health care provider invoking this provision need to show that the patient was eligible under both the federal and state right-to-try laws? Will they have to prove that the patient to whom they prescribed a drug off-label was dying? Does the availability of the defense depend on the patient's risk factors? Written consent forms notwithstanding, how can they show they apprised the patient of a drug's risks and benefits to treat COVID-19 when by definition, neither of those are known? The inclusion of the right-to-try laws creates more questions than answers.

If you are unsure what § 1(5)(b) accomplishes, either by its language or as a practical application, you are in good company. The courts interpreting this provision will have the daunting task of giving effect to the intent of the General Assembly, looking first—and if no other legislative materials surface, looking only—at the language of the statute, while also trying to avoid absurd or manifestly unjust results. *Richardson v. Louisville/Jefferson Cty. Metro Gov't*, 260 S.W.3d 777 (Ky. 2008). We have no doubt that § 1(5)(b) is well-intended, though we are nearly as confident that it will have unintended and perhaps undesirable effects.

Colleen O. Davis is an associate at Phillips Parker Orberson & Arnett. Licensed in Kentucky and Indiana, the bulk of her practice is devoted to medical negligence defense and employment law. She is a member of the LBA and the Kentucky Defense Counsel. Patricia C. Le Meur is a partner at Phillips Parker Orberson & Arnett, and her practice is primarily focused on medical negligence defense and appellate work. ■



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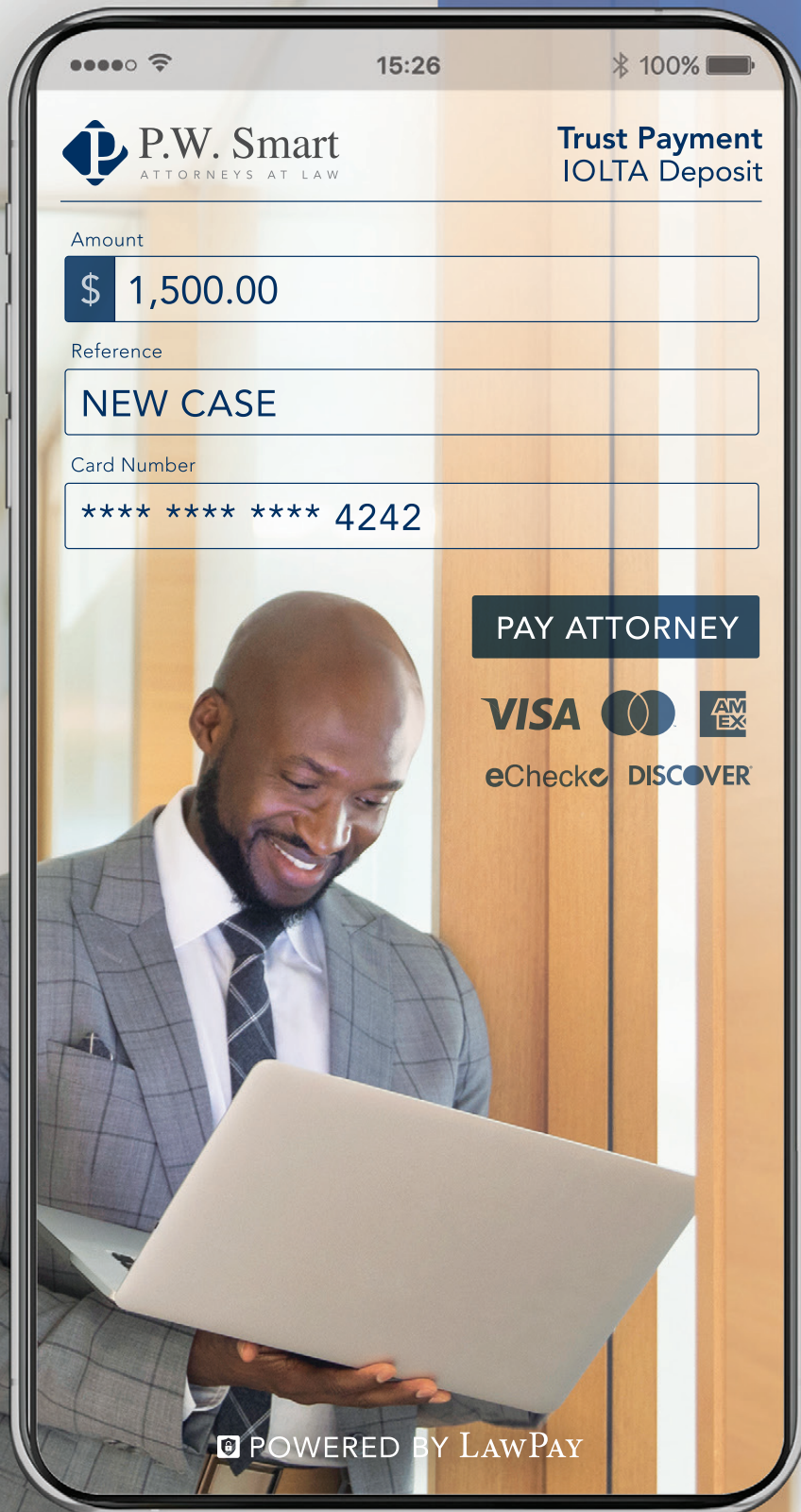


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Question eDiscovery!

What You SHOULD be Asking Your Vendors...

Rich Smith

Now is a great opportunity to be asking your eDiscovery vendors questions you may have not been asking in the past. Whether you are rolling out an RFP or just want updates, here are some questions you SHOULD be asking your vendors:

1. How are you keeping our data safe?

We all know eDiscovery providers will hold some of your firm's most confidential data including health records, social security numbers, banking information, etc. But WHERE are they hosting that data? What security protocols have been put in place? What security certifications do they have? ISO 27001, SOC II, and being GDPR compliant are pretty standard.

2. What are you doing to be innovative?

One of the biggest advantages of out-sourcing to an eDiscovery provider is always getting the most cutting-edge tools in the industry. What really helps cull down data the most efficiently and how is it doing so? What 3rd party agent is helping other firms like ours?

I recently discovered a firm using THREE different vendors for the exact same platform. Why? One vendor had a long-term relationship with the firm. They did everything fine and their pricing was decent. Another vendor was being used by co-counsel. The third firm was a little more expensive, BUT they constantly offered new technology tips to help the firm be more efficient. This type of innovation is crucial to help firms be successful with their eDiscovery needs.

3. What is your typical response time? Protocol after hours and weekends?

The new norm is an hour response time or less during business hours, 3-4 hours for nights and weekends. Everyone will tell you how amazing and responsive they are, but the best seal of approval comes from their current clients. Ask for references and follow up with them. A simple e-mail checking up on them is always effective.

4. What kind of training will you provide?

The eDiscovery world is constantly evolving and there is always a ramp up period for new platforms and tools. One of the biggest learning curve challenges involves the new technology vocabulary. Is your vendor breaking down things that your firm can fully understand? Are they investing time to fully train you on how to effectively utilize the technology? Most importantly, how much are they charging to train your firm?

As technology continues to evolve and data sizes grow immensely, it is imperative for the end-user to understand how to utilize the platforms and tools. Our education is a strong point and we are actively seeking certificates. Furthermore, we take the necessary steps to train our team so we can train your team. Does your eDiscovery vendor do this?

5. How do your MSAs / SLAs fit the firm's eDiscovery needs?

How flexible is the vendor, not just on cost, but with their package offerings? Have they done an analysis of your firm and advised what is really needed and why? No firm is the same and what may work for Am Law 100 may not be what a mid-sized firm needs (or wants). Are they reviewing current contracts to see if they are still what is needed? Is the firm constantly going into a burst rate and if so, can this be adjusted? You should review your vendor contract every 6 months to confirm you are getting what you originally signed on for.

6. What's your protocol for fixing issues?

Mistakes happen. How your vendor resolves them is huge. Ask for examples of past mistakes and what steps were taken to resolve them. Follow-up with reference e-mails and calls to confirm.

Recently, we had a mistake with billing for a client. After researching the issue, we determined the error was on our end due to a miscommunication. Immediately, we refunded the client and internally discussed better quality control moving forward. We then explained to the client how we would prevent this issue in the future. Communication is always key.

7. Do you have scalable and transparent pricing?

Every client should know what pricing will be based on the size of each matter and how many users will be involved. When pricing is transparent and scalable, hidden costs are eliminated. Also, when pricing is easily explained, some firms can pass cost onto their clients by leveraging technology for efficiency. At Page One, we can advise some helpful tips to pass these costs along and keep your clients satisfied.

As new challenges continue to arise and working remotely forces us to embrace technology, now is the time to find the best eDiscovery Provider fit for your firm. At Page One, we are always happy to discuss your firm's current ESI situation and provide solutions to fit your vision moving forward.

Rich Smith is a Senior eDiscovery Consultant for Page One Legal. He has 7 years of Legal Technology experience and specializes in customizing eDiscovery workflows to help firms and corporations leverage technology to be efficient, effective, and secure. You can reach him at (502) 376-5829 or rsmith@pageonelegal.com. ■



LBA President Peter Wayne (right) presents a check representing proceeds from the Back to School fund drive to Dwight Bransford, head of the West End School. An academically rigorous boarding school for students in Pre-K through 8th grade, the school focuses on at risk boys from Louisville's West End neighborhoods. Funds from the drive will also help elementary students in Jefferson County Public Schools.



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Help Wanted

Through the LBA Placement Service

Associate Attorney:

The LBA is currently working with a law firm located on the east side of Louisville that is seeking to add a new Attorney to their growing practice. Their practice consists of a variety of defense work for public entities, and they frequently defend public service employees such as Police Officers, etc. They are seeking a candidate with at least two years of experience in civil defense work and licensed to practice in Kentucky. No new grads, unless they have years of related experience prior, as their ideal candidate will have 2-10+ years of experience as a practicing Attorney. No book of business needed, as there is plenty of work to keep the candidate busy. Salary is based on experience, plus incentive pay and full benefits, which includes payment of all license fees, CLE's, organizational dues and liability insurance. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Associate Attorney:

The LBA is currently working with a well-established law firm located on the east side of Louisville that is seeking to add a new Attorney to their growing practice. Their practice consists of a variety of work, but they are seeking a candidate licensed to practice in Kentucky to help support their Family Law group. No new grads, unless they have years of related experience prior, as their ideal candidate will have 2-6+ years of experience as a practicing Attorney. No book of business needed, as there is plenty of work to keep the candidate busy. Salary is based on experience, plus full benefits.

Associate Attorney:

The LBA is working with a well-established Litigation law firm located in downtown Louisville that's seeking a talented litigator with at least 2+ years of litigation experience. KY and IN licensed preferred. Must have strong writing skills, and experience in the courtroom, taking depositions and drafting legal documents. The candidate should also be very familiar with the discovery process and communicate well with all involved in the cases. The firm is offering a very competitive salary.

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Office space available on West Main Street within walking distance of all courthouses. Three executive offices and one secretarial office all partially furnished. Shared full kitchen with copier, fax and scanner. For details contact (502) 587-7400.

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Contact Lauren Butz
lbutz@loubar.org

MEMBERS *on the move*



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Napier Gault Schupbach & Stevens welcomes **Sarah L. Clark** to the firm. Clark is a member of the Louisville Bar Association's Gender Equity Committee. She received her J.D. from the University of Kentucky College of Law.

Wyatt, Tarrant & Combs is pleased to welcome **Elizabeth Penn** to the firm. Penn joins Wyatt's Corporate & Securities team in the firm's Louisville office. Her practice will focus on mergers, acquisitions and dispositions. She will also provide operational, regulatory and transactional support to an array of clients. Prior to joining the firm, Penn was a clerk for the Honorable Thomas B. Russell, U.S. District Court for the Western District of Kentucky. She received her J.D. from the University of Louisville Brandeis School of Law.

O'Bryan, Brown & Toner is pleased to announce that partner **Tracy S. Prewitt** has become a Fellow of the American College of Trial Lawyers. Fellowship in the College is extended by invitation only and only after careful investigation, to those experienced trial lawyers of diverse backgrounds who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Lawyers must have a minimum of 15 years trial experience before they can be considered for Fellowship. Prewitt has been practicing for 30 years and is an alumna of the University of Louisville Brandeis School of Law. Her civil practice includes the defense of clients in the areas of professional negligence and tort claims, professional licensure board actions, product liability, general personal injury, and insurance coverage.

In September Kentucky Governor Andy Beshear appointed **Bissell Roberts** to a four year term on the Kentucky Registry of Election Finance. Roberts received his J.D. from the University of Virginia School of Law in 1971. He also serves as Chairman of the Board of the Henry Clay High School Hall of Fame. ■

In Memoriam



Charles W. Hebel, age 89, died September 30 after a brief battle with leukemia. For more than five decades, his practice focused on real estate closings, estate planning and corporate and business organizations. He was also active in historical preservation and land conservation efforts, receiving Farmington's Anne Bruce Haldeman Award for helping ensure the preservation of several Kentucky homes and landscapes. A graduate of the Brandeis School of Law at the University of Louisville, he received its prestigious Lawrence Grauman Award in 2012.

Hebel is survived by his wife, two children and five grandchildren. Memorial gifts can be made to the Louisville Orchestra. ■



Backside Learning Center
AT CHURCHILL DOWNS

Looking for Speakers!

Did you always know what you wanted to be when you grew up? Did you have a teacher or mentor who helped guide you to your current career? Would you like to share why you love your job? Then join the LBA for our newest partnership with the Backside Learning Center to help introduce youth in their Front Runners Program to various careers.

The Backside Learning Center is a nonprofit organization building community and enriching the lives of backside workers and families at Churchill Downs. Their Front Runners Program is designed to give the families of equine workers the opportunity to develop their language and culture skills together and provide their children with the resources they need for successful academic and social development.

Our first event is tentatively planned for mid-February and will be held virtually. This is open to all professions, not just those in the legal community. If you are interested in participating or know someone who has a great story, please contact Marisa Motley at (502) 583-5314 or mmotley@loubar.org for more information. ■



Healthy Habits Help Your Heart and Brain

A healthy heart has many benefits, but did you know that a healthy brain is one of them? Brain health and heart health are closely connected, and forging healthy lifestyle habits at any age will help keep both your brain and your heart at peak performance. According to a recent survey from the American Heart Association, the greatest challenges adults in the United States face to maintain heart and brain health are stress and poor diet.

The American Heart Association conducted a market research survey of 2,000 adults across three age groups, including Generation X (aged 40–54 years), Millennials (ages 23–39 years), and Generation Z (18–22 years). The survey found that, overall, fewer than half of the adults surveyed rated their brain health as “very good or excellent.” The same survey also found that 1 in 4 respondents said they were unaware of the connection between heart health and brain health. In addition, the youngest adults (Generation Z) reported significantly lower levels of emotional well-being and brain health compared to older generations.

But it is never too early or too late to try these tips to improve your health.

Eat smart.

Research suggests that a cup of greens each day may slow brain aging and eating fish such as tuna and salmon can help maintain emotional balance and reduce inflammation from heart disease.

Sleep well.

Sleep lets the brain learn and grow; aim for seven to nine hours a night for optimal health and to allow your brain to process all of the thinking and learning from a day.

Get moving.

Physical activity is as good for the brain as it is for the whole body. Data shows that exercise increases a protein in the brain that impacts learning and memory. Aim to be active for 150 minutes per week to reap the benefits of a stronger body and mind. In essence, the more you move, the healthier your brain.

Stay connected.

Making social connections strengthens the brain, so make time for your friends and family. Make it a priority to connect with someone at least once a week, whether by phone or Zoom.

The American Heart Association is the world's leading voluntary organization focused on heart and brain health. Visit heart.org for more information and tips from the American Heart Association on living a longer and healthier life. ■

Family Court Forum

This free online forum will provide an update on how Family Court is operating during Covid-19.

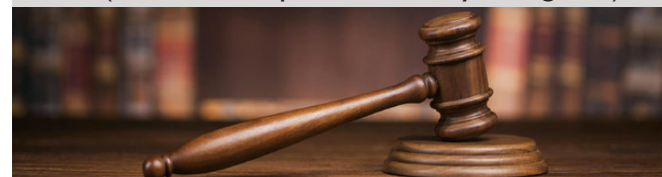
Registration is required to obtain a link to the forum. Register online at www.loubar.org or call 583-5314.

Hosted by: LBA & Jefferson Family Court

When: Friday, November 6 @ Noon

Where: Webinar

(A link will be provided after you register.)





Know Your Rights: Criminal Law Issues

Join the LBA's Public Service Committee for their next installment of Know Your Rights.

This community dialogue will touch on issues related to criminal law. Be sure to keep an eye out on *eBriefs* and social media for the date and list of speakers!

If you missed their first program on voting rights, you can find a recording of it on the LBA's YouTube channel.



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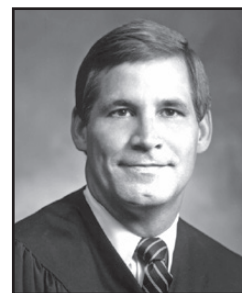
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