

# BAR*briefs*

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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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## In Defense of Trial

The word “trial” has a distasteful, if not downright scary, connotation. Demand letters to defendants often threaten “trial” in the event a specific monetary settlement is not met. As advocates, we are often urged to avoid trial by mediation or arbitration—topics addressed below. History’s euphemisms for trial include “Kangaroo Court,” “Star Chamber” proceedings, and trials portrayed in old westerns that begin with a shot of whiskey and end with a discarded sputum of tobacco as the swift justice of a hangman’s noose is prescribed.

Trials, more than any other single human activity—with the possible exception of sex—are the bread and butter of literature, movies and television. Yet again, there is always a dark and ominous aspect to a trial. Nine times out of ten the plot revolves around an innocent criminal defendant who is saved by the clever maneuvers and brilliant insight of the criminal defense counsel. Of the other one out of 10 trial stories, particularly since the miraculous appearance on Mother Earth of John Grisham, betrodren, persecuted, and underfunded plaintiffs are forced to go to trial because evil, civil defendants and their highly paid minions refuse to capitulate.

Frightening as the trial itself, are the lawyers and corporate/insurance entities who refuse to settle, forcing helpless litigants to appear in court. Robert Duvall’s “big firm defense lawyer” character in *A Civil Action* offers poor, cash strapped John Travolta a few paltry million dollars to— you guessed it—avoid trial. In *The Verdict*, pitiful, alcoholic Paul Newman is confronted by an immense team of civil defense lawyers, led by James Mason, practically salivating to force Newman to trial. I have to admit, the image of insurers throwing treasure chests of money for expenses, and hiring of dozens of lawyers, compensated at enormous hourly rates to win at any cost, comports very closely with my personal experience.

Pausing to take my tongue out of my cheek, the reality in the civil realm is this: since sometime in the mid-1990s, mediation and arbitration have become the norm and custom in civil litigation. Mediation is now “court ordered” in almost all cases, and arbitration has become a mechanism imposed by contract in life situations ranging from real estate deals to nursing homes disputes. In short, mediation and arbitration have supplemented old-fashioned “horse trading” of offers and counter-offers between opposing counsel, followed by trial when negotiations failed.

These alternative means of dispute resolution are certainly invaluable in many instances. Yet in many other instances, compromise means payments where there is truly *no* reasonably attributable wrong. My experience has been that in the case of doctors, who have the right by contract to withhold consent to settle, many are worn down by a skilled mediator and—again—the fear of trial, and agree to settlement simply to relieve stress. Likewise, plaintiffs sometimes come away from these alternative processes feeling that the compromise made was not just and that they were undersold out of expediency.

Cutting to the chase, trial, as a process, has its rightful place in the array of dispute resolution. It beats trial by combat or by ordeal—as comically portrayed in *Monty Python and the Holy Grail*. Trials—civil and criminal—are a basic right and cornerstone of justice. They have been assured by law since ancient times and are inculcated as part of a civilized society in every constitution throughout the federal and state governments. They have replaced violence as a rebuke to perceived wrongdoing. And as opposed to other forms of conflict resolution, they are the only venue where our peers are impaneled to hear evidence on topics that may be completely foreign to them. Not surprisingly, trials therefore require the skills of experienced barristers to distill—sometimes swiftly—then explain the facts of the case as they proceed.

Since the trend has been away from trials, the experienced trial lawyer has become a rarity. Before the passage of the Kentucky No Fault Act (KRS 304.39) in 1975, auto insurers posited they were being taken advantage of in countless cases where plaintiffs alleged soft tissue injuries, pain/suffering and economic loss. They lobbied for no-fault reform, assuming this would resolve the legal expenses incurred and the risk of undeserved awards. If there was a “reasonable cap” under which medical claims would be paid regardless of fault, the presumption was that “compensation” would be more

“reasonable.” (This was also an age precedent to comparative fault when any “contributory negligence” was grounds for dismissal of an otherwise meritorious claim.)

Suffice that in short fashion, even seemingly inconsequential injuries somehow managed to compile medical expenses over \$10,000. Insurance companies balked at the defense costs they felt would be incurred and eventually adopted a settle at any cost strategy. Regardless of the effect all of this had on insurance premiums, lawyer advertising, etc., it effectively eliminated or severely reduced the number of motor vehicle accident trials and, for better or worse, it robbed the bar of a generation or two of rising young barristers.

Get ready for the “when I was a boy” excerpt—because in my first or second year of practice—in 1976 sometime—I tried my first case. It lasted one or two days before retired senior Judge J. Paul Keith. No other lawyer from the firm accompanied me. In fact, I’m not sure anyone at the Stites firm knew I was in trial. The money at risk was in the tens of thousands of dollars, and I had a \$250 counterclaim for my client’s property damage. Virginia Klapheke, a long-time court reporter, guided me when I must have seemed unaware of what to do next; the jury was out an extra thirty minutes, determining whether to award my client’s counterclaim. They did—unanimously. By comparison, my very capable associates of today may be 40 before they try a case—and then, only with another partner.

What if “no-fault” was thoroughly reviewed and revised or even abolished? Personal injury lawyers could then decide whether rote compilation of “medical” expenses was good or bad for their case—let alone their clients. What if cases of contested liability, causation, or damages required a filing in district court with a jurisdictional limit based on frequently reviewed monetary limits? Perhaps a six-person jury could be mandated and the presence of “expert” witnesses severely constrained. The result of a one or two-day trial could then be accepted by the parties or submitted to mediation—and failing that a resumption of trial in circuit court.

Obviously, the state would push back vigorously at any “reform” or “creative mechanism” that might create more, rather than fewer, trials. So funding might have to come from a different source—though jurors seem to be readily available on the second floor (as I have previously attested) and district judges might be required to realign their schedules to accommodate a day or two of trial. If need be, special commissioners could be appointed for a modest fee—or CLE credit—or even pro bono to preside over such trials. It would be understood that the “subject matter jurisdiction” and “special rules of court” would carefully circumscribe the nature and conduct of such trials.

I have no desire to impose a damper on the livelihood of those who have developed skills in the fields of mediation/arbitration and alternative dispute resolution in general. And the idea I briefly threw out above is merely food for thought and further discussion. Yet, in the final analysis, trial by a jury of one’s peers is a basic and long cherished right in a free society. Trials and trial lawyers exist in a symbiotic relationship, and we are fast seeing the disappearance of both. Perhaps—just perhaps—it is time for the pendulum to swing back in the other direction, and we should continue to explore creative ways in which to achieve that realignment.



*(T)rial by a jury of one’s peers is a basic and long cherished right in a free society. Trials and trial lawyers exist in a symbiotic relationship, and we are fast seeing the disappearance of both.*

Sincerely,

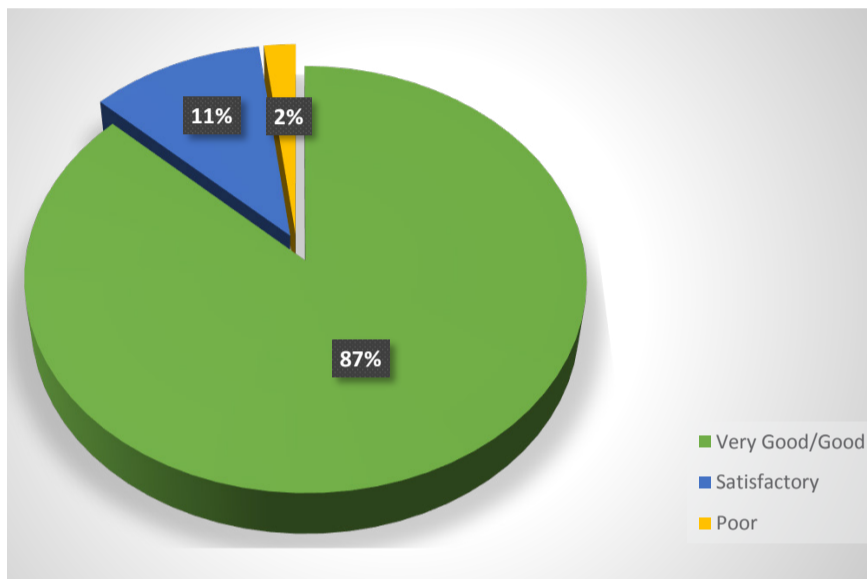
Gerald R. Toher  
LBA President

## Circuit Court Clerk's Attorney Survey Results

David L. Nicholson

The results of our annual attorney survey have been tabulated and I am happy to share those with you. We are pleased that our office delivered robust customer service as 87 percent of the attorneys who participated in the recent survey said that they received "Very Good" or "Good" overall service from our deputy clerk TEAM in 2018. When the number of those who rated our service "Satisfactory" is factored in, that figure rises to 98 percent. Considering that in 2018 we processed more than 155,000 new circuit, family and district court cases, a grade of 87 to 98 percent is a positive.

In addition, I was glad to see that 85 attorneys took a moment to offer their comments, suggestions and concerns. Rest assured that I discuss those comments, either good or bad, with my operational management TEAM in our thorough review of the survey results in our effort to address your concerns.



While I am pleased with our strong results, going forward we will continue to utilize data-driven decision-making, continuously measuring our throughput and recalibrating our operations to enhance service, streamline operations and embrace new technology.

In closing, I would like to emphasize that our success would not be possible without the hard-working and dedicated deputy clerks who do important work each and every day serving our fellow citizens. On behalf of the 327 women and men who comprise the Jefferson County Office of the Circuit Court Clerk, I would like to sincerely thank all the practitioners who took the time to complete the survey, as well as the Louisville Bar Association, Kentucky Bar Association and other stakeholders and partners for their assistance promoting the survey.

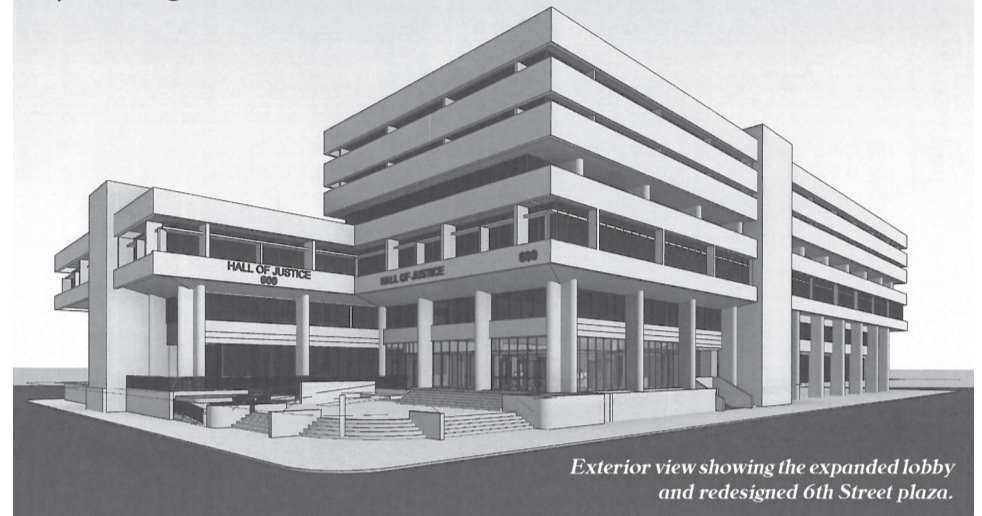


As always, I consider it a privilege and honor to serve our great community as Circuit Court Clerk. ■

## Supreme Court of Kentucky Issues Order Calling for Biennial Audits of Administrative Office of the Courts

In February, the justices of the Supreme Court of Kentucky approved an order requiring the Administrative Office of the Courts to conduct an external audit every two years, starting with Fiscal Year 2020, and to make public the results of those audits. The order also calls for the AOC to create administrative procedures to establish an Audit Oversight Committee and stronger internal auditing controls. ■

## City's Budget Woes Stall Hall of Justice Renovation



The long-anticipated first-floor renovation of the Jefferson County Hall of Justice was placed on indefinite hold following Louisville Metro Council's vote last month to table a bond ordinance that included partial funding for the project. The vote was in response to Mayor Greg Fischer's February announcement of a \$35 million shortfall in the city's next budget. According to the *Courier-Journal*, council members balked at issuing bonds to finance a number of previously-approved construction projects—including roads, sidewalks, a new public library and the Hall of Justice renovation—until consensus is reached on how to address the budget woes.

Last October's *Bar Briefs* detailed plans for updating the Hall of Justice's first floor which include removing existing escalators and replacing them with centrally-located elevators, adding new stairways on the east and west ends of the building and expanding the 6th Street lobby. At that time, it was anticipated that demolition and construction would begin as early as this January. Now it is not known when the project—the first major redesign of the building since it was built in the mid-1970s—will get underway. ■

## Kentucky Receives Grant to Help Improve Kentuckians' Access to Civil Justice System

Kentucky is one of 11 states to receive a Justice for All planning grant from the National Center for State Courts. The Justice for All project supports Access to Justice Commissions in their efforts to form partnerships with stakeholders in the civil justice community. The grant is supported by funding from the Public Welfare Foundation and the Kresge Foundation.

The grant will allow the Kentucky Access to Justice Commission (KAJC), created by the Supreme Court of Kentucky in 2010, to develop a strategic plan with the goal of giving all Kentuckians access to justice for their essential civil legal needs. The KAJC will also work with other organizations to assess and use available resources that will help low- and moderate-income citizens handle the legal aspects of matters such as foreclosure, bankruptcy and divorce.

The Justice for All project kicked off February 22, 2019 at the Administrative Office of the Courts in Frankfort. More than 100 representatives from Kentucky's legal, business and civic communities gathered to begin inventorying the civil legal resources and capabilities that currently exist in Kentucky.

The Justice for All grant will be implemented over the next 15 months in three phases:

1. Identify civil legal and legal adjacent resources and capabilities that exist in Kentucky to help citizens resolve legal issues.
2. Examine gaps and barriers in those resources, capabilities and the provider network.
3. Prioritize the most critical needs and implement achievable steps that ensure access to justice for all citizens.

Glenda Harrison, executive director of the KAJC, said that next steps include holding additional meetings, and using surveys and listening sessions to receive feedback from key stakeholders across the state. ■

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## Leadership Academy



### Applications for the Class of 2019

We are now accepting applications for the LBA Leadership Academy Class of 2019!

Applications are available for the next Leadership Academy class, which begins in July. The primary goal of the Academy is to build a core of practicing attorneys in Greater Louisville that will lead the legal community ethically, professionally and charitably — with high regard for service to our city and our region.

The Leadership Academy, which is designed for attorneys between their 3rd and 10th years of practice, accomplishes the following:

- Provides an opportunity to meet and discuss important business and professional issues with leaders at the local, state and national level;
- Helps refine leadership skills, enabling you to excel in your practice setting as well as in your community service roles; and,
- Invites you to examine important issues in every lawyer's professional life—ethics, justice, morality, service, professionalism, economics and quality of work.

**Application  
Deadline is  
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For details or an application visit [www.loubar.org](http://www.loubar.org) or contact Lisa Anspach, [lanspach@loubar.org](mailto:lanspach@loubar.org), (502) 583-5314.



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# Examining Water Quality and Management in the Commonwealth

Dean Colin Crawford

A recent *Courier-Journal* editorial cartoon by Marc Murphy, the Louisville-based artist-by-night and lawyer-by-day, depicts an alcohol bottle with the label “eastern Kentucky water—a failure of government.” Next to the bottle appears the caption: “in eastern Kentucky, there is more than one brown water.” Murphy’s cartoon—drawn by someone himself born and raised in the eastern part of the Commonwealth—points to a grim reality for many Kentuckians, and one perhaps not widely understood by Louisvillians who are famously proud of the quality and quantity of our water: Kentucky, as a Commonwealth and like much of the world, faces severe challenges of water and sewage infrastructure, quality and efficiency.

This came home to me in recent conversations with prominent local environmental law practitioners, beginning with Tom FitzGerald, director of the Kentucky Resources Council. As Fitz explained to me, the serious and well-publicized problems of Martin County, near the West Virginia border in our state’s far eastern corner, are “emblematic” of the “problems with smaller systems being able to serve the public given costs, regulatory requirements under the [federal] Safe Water

Drinking Act” and the need for infrastructure improvements and updates. The Commonwealth’s challenges ahead are monumental: the state has over 450 public drinking water systems and an aging and byzantine network of wastewater treatment systems.

Luckily, these concerns attracted legislative attention this session. Concurrent House and Senate Resolutions (HCR 56 & SCR 81) aimed to create a 21-member Public Water and Wastewater System Infrastructure Task Force, tasked with developing options to improve the sustainability and the technical, managerial and financial capacity of water and wastewater systems. As Fitz explained: “I’m looking forward to working towards solutions for what I take to be a fundamental human right, namely providing a safe drinking water supply at an affordable cost.”

Fitz’s concerns were echoed by members of the private bar. Greg Dutton, a member at Frost Brown Todd’s Louisville office, explained that “many water and wastewater utilities have struggled to generate sufficient revenue to allow the utilities to properly maintain and upgrade aging infrastructure.”

Dutton continued: “Aging infrastructure places many communities, utilities and regulators in the difficult position of trying to balance challenging economic conditions with the need to provide safe and reliable service.” Like Fitz, Dutton is eagerly following the legislative focus on this issue.

Concerns about water quality and management extend far beyond questions of water and wastewater infrastructure, however. For his part, Dutton drew my attention to two important issues that will have great effects for water management and, in turn, for U.S. society and the economy in the coming months and years.

The first is the “hotly debated topic” as to what constitutes “waters of the U.S.” under 1972’s federal Clean Water Act. As Dutton explained, this “has been a subject of rulemaking for 20 years” such that 22 states are now using an Obama-era rule and the remaining 28 states are using a rule that follows Justice Kennedy’s plurality opinion in *Rapanos v. U.S.*, 126 S.Ct. 2208 (2006), in which the Justice advocated a “significant nexus” test to establish what constitutes a “water of the U.S.” The Trump Administration’s Environmental Protection Agency is now poised to issue a new rule that would extinguish this practice, and in all likelihood will exclude many types of water as “waters of the U.S.”

Dutton also urged me to keep an eye on the question of whether and under what circumstances wastewater effluent that travels through groundwater and eventually discharges into surface water requires a Clean Water Act Permit. The practice was challenged in the case of *Hawai’i Wildlife Fund v. County of Maui* and deemed a violation of the federal Clean Water Act by the 9th Circuit in a February 2018 decision (883 F.3d 737). However, our own 6th Circuit disagreed with that position in *Kentucky Waterways Alliance v. Kentucky Utilities Company* (905 F.3d 925), decided in September 2018. This split sets the issue for likely resolution by the U.S. Supreme Court.

These and related issues are at the forefront of some of what we do here at the University of Louisville Brandeis School of Law. My colleague Tony Arnold, who serves on Kentucky’s statewide water research committee, has published two books and 18 articles on water law and policy.

Arnold teaches an innovative field study course in which students experience water issues directly through facilities tours, canoe trips and streamside hikes, all while speaking with experts from the Louisville Water Company, the U.S. Army Corps of Engineers, the Metropolitan Sewer District and watershed conservation groups. Arnold’s Resilience Justice Project, moreover, conducts several grant-funded studies on the impacts of water policies on marginalized communities across the country, from Washington, D.C., to Louisville and on to California.

At Arnold’s invitation, on March 27, the School of Law hosted Professor James Salzman, an internationally recognized water law expert now at UCLA School of Law. Salzman delivered the Boehl Distinguished Lecture in Land Use Policy—one of our marquis events each year. As Arnold says, “Jim Salzman is one of the world’s preeminent authorities on drinking water. He is an ideal expert to explore the many close inter-relationships between land use and water supply and quality.” Salzman’s lecture, entitled “Who Gets to Drink? The Past and Future of Drinking Water,” was free and open to the public.

I was pleased that our School of Law had the opportunity to host this lecture; issues of water safety and infrastructure are sure to be evermore present for and important to all of us, and deserve all of our focused attention.

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



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# LBA Ethics Webinars

## LBA Sean Carter

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### Yelp, I've Fallen for Social Media and I Can't LinkedOut: The Ethical Pitfalls of Social Media

Tuesday, April 2 | 1:00 p.m. - 2:00 p.m. | 1.0 CLE Ethics Credit

Facebook, Twitter, LinkedIn, and the other social media tools have become ubiquitous in our high-tech society. And while social media can undoubtedly help lawyers to enhance their networks of colleagues, clients and prospective clients, it can also ensnare the unwary in a web of ethical violations.

### Yakety Yak! Do Call Back!:

#### The Ethical Need for Prompt Client Communication

Tuesday, April 9 | 1:00 p.m. - 2:00 p.m. | 1.0 CLE Ethics Credit

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.

### May It Displease the Court?:

#### Keeping Your Head (and Your Law License) in Court

Tuesday, April 16 | 1:00 p.m. - 2:00 p.m. | 1.0 CLE Ethics Credit

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).

### Technical Fouls: Even Minor Ethics Violations Can Have Major Consequences

Tuesday, April 23 | 1:00 p.m. - 2:00 p.m. | 1.0 CLE Ethics Credit

When it comes to ethics violations, there is no such thing as a minor or "technical" foul. All ethics violations are serious matters, evidencing a breach of the trust that has been placed in the lawyer. As a result, lawyers must avoid falling into the mindset that a particular violation is "no big deal." To make this case, noted legal humorist Sean Carter will chronicle a number of recent ethics cases in which lawyers were surprised to discover that even minor ethics violations can have major consequences.

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# Legal Aid Society and Partners Address Louisville's Eviction Crisis

Stewart Pope

Last November, The Metropolitan Housing Coalition (MHC) released its annual report on the state of affordable housing in the Louisville metropolitan area. The report focused on involuntary displacement from homes through eviction and foreclosure. MHC gathered data from the Eviction Lab at Princeton University which has created the first national database of eviction information. MHC examined this data for Jefferson County and for Kentucky for the years 2000-2016. The report reveals that Louisville Metro faces an eviction crisis.

Louisville Metro averaged 7,548 evictions per year during the period MHC studied. Their research also shows that the eviction rate for Jefferson County is twice the national average and much higher than that of many peer cities. The neighborhoods hit hardest by eviction are those with low-income and minority families and individuals.

Evictions are a losing proposition for tenants, landlords and the community. Evicted tenants face the cost of moving and relocation. Evicted tenants who cannot find suitable housing in the short time between eviction and set out, risk losing their property. Evicted tenants may lose housing subsidies or become homeless. Eviction causes stress and disrupts children's schooling.

Evictions cause substantial financial loss to landlords. Most evictions are for non-

payment of rent so several months of rent remain unpaid during the eviction process. Landlords also incur the expense of attorney fees, court costs and the costs associated with getting the property ready for a new tenant. These expenses often add up to thousands of dollars even for affordable housing units.

Evictions destabilize neighborhoods as residents become transient. This often leads to a decrease in property values and an increase in vacant properties. The community also bears the financial burden associated with the need for social and shelter services.

Several projects are underway to address Jefferson County's eviction crisis. With the support of Chief District Judge Anne Haynie and District Judges Jennifer Wilcox and Amber Wolf, the Legal Aid Society has a paralegal attending eviction court daily. The paralegal assists individuals who have been evicted by supplying them with information about alternative housing. The information packet includes lists of emergency shelters, public housing, site-based Section 8 apartments and other affordable housing options as well as names of social service providers. The paralegal is also available to conduct an intake for clients the judges may wish to refer to Legal Aid. Legal Aid hopes this program will decrease the risk of an evicted individual of becoming homeless.

Legal Aid is also participating in the Eviction Diversion Program which is designed to help individuals avoid eviction by resolving the problems that led to the eviction. Megan McGinn, the Chief Operating Officer at Alltrade Property Management ([www.alltradeproperties.com](http://www.alltradeproperties.com)), developed the idea for the program after reading Matthew Desmond's book, *Evicted: Poverty and Profit in the American City*. Megan studied eviction diversion programs in Cleveland and other cities and developed a plan for Louisville.

The basic plan is to connect tenants to a social worker who can connect them to social services and resources that may enable them to enter payment plans with their landlords and remain in their homes. A group of service providers worked with Megan to further develop and implement the plan. The work group consisted of Alltrade, Metropolitan Housing Coalition, Louisville Metro Department for Women, the Coalition for the Homeless and Legal Aid Society.

The project developed a brochure for delivery with the eviction notice. The brochure describes the eviction process and contact information for Legal Aid Society, Neighborhood Place and Louie Connect. The Jefferson Circuit Court Clerk's office and the Sheriff's office have been very supportive and have agreed to deliver the brochures with the eviction petition. By contacting these agencies

early in the eviction process, the agencies are better able to locate resources for the tenant and negotiate payment plans with the landlord.

Ultimately, the Eviction Diversion Program hopes to secure funding to hire a social worker who will be stationed near eviction court. Social service agencies and community ministries sometimes have emergency funds for tenants facing eviction. The social worker can monitor the availability of the funds and refer qualifying clients to the agency. The worker will also make referrals to Legal Aid for negotiation with the landlord or to agencies such as the Veterans Administration, the Center for Women and Families or a health-care provider to address what may be the root cause of the tenant's failure to pay rent.

Programs similar to the Eviction Diversion Program have successfully reduced the rate of evictions in other cities and it is our belief that it will help reduce the eviction rate in Jefferson County. The program also demonstrates the progress that can be made when both sides of an issue and members of the community work together to solve a problem.

Stewart Pope is the Advocacy Director of Legal Aid Society. ■



Tickets \$100. All proceeds benefit Legal Aid Society.

## Legal Aid Society's Sixteenth Annual BRUSH, BOTTLE, AND BARREL OF THE BLUEGRASS

Friday, April 26th, 2019 | 6:00 PM to 8:30 PM | Atria Senior Living



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# I'll See You in Court

Earl L. Martin III

## Across

- 1 UFO shapes
- 6 Certain seasoning, in chem class
- 10 Common abbreviation in legal citations
- 14 Feeder to a bay, perhaps
- 15 Tennis legend Arthur
- 16 Antonin Scalia, to his friends
- 17 Electronics component
- 18 It comes after chow on a menu
- 19 Nincompoop
- 20 Courtroom drama featuring Henry Fonda
- 23 Abner or Wayne descriptor
- 24 Member of a Colorado tribe
- 25 Common program file extension
- 26 Courtroom drama featuring Tom Hanks
- 32 Repetitive learning method
- 33 Thermal starter?
- 34 Came down, in a way
- 38 Deliver a speech
- 40 Abbr. found in many law firm addresses
- 42 Krispy \_\_\_\_
- 43 Minding one's manners
- 45 Hwy. with tolls
- 47 PG-rated, perhaps
- 48 Courtroom drama featuring Matt Damon
- 51 Cause of teen angst
- 54 "Able was I \_\_\_\_ I saw Elba"
- 55 Type of elevator, in a way
- 56 Courtroom drama featuring Spencer Tracy
- 62 "\_\_\_\_ and the Real Girl"
- 63 Take it slowly
- 64 Perfect
- 66 Popular consumer tech news site
- 67 Pick out, as in a crowd
- 68 "\_\_\_\_ Rae"
- 69 Pay attention to
- 70 Hardy woman?
- 71 Lays it on thick

## Down

- 1 "Who \_\_\_\_ this?"
- 2 Part of an acronym, for short
- 3 Not the brightest bulb
- 4 Give up
- 5 "Streetcar" cry
- 6 Unidentified
- 7 Between two shores, in a way
- 8 "Things'll get better"
- 9 One goes to these
- 10 Popular car race, familiarly

1	2	3	4	5		6	7	8	9		10	11	12	13	
14						15					16				
17						18					19				
	20					21					22				
				23				24				25			
26	27	28	29					30				31			
32						33				34			35	36	37
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43						44		45		46		47			
			48				49				50				
51	52	53		54					55						
56				57					58				59	60	61
62						63					64				65
66						67					68				
69						70					71				

- 11 Forest or tundra
- 12 This might be at the back of the book
- 13 Lorna \_\_\_\_
- 21 One third of a famous phrase
- 22 Replenish a stamp pad
- 26 Hold (up)
- 27 Prefix for scope
- 28 Slanted writing, for short
- 29 "\_\_\_\_ Be" (Beatles tune)
- 30 Led Zeppelin's "Whole \_\_\_\_ Love"
- 31 It comes from the heart
- 35 Thin, as tea
- 36 Single-named model
- 37 Blind sight?
- 39 Old fashioned anesthetic
- 41 These may be hurled
- 44 Most unnerving
- 46 This might be taken before a game
- 49 Ready an ankle for the second half, perhaps
- 50 Kitty cries
- 51 Not a one
- 52 Ridiculous
- 53 Number of D'Artagnan's companions
- 57 Shop sign letters
- 58 General \_\_\_\_ (part of a Chinese order?)
- 59 Museum piece, often
- 60 Famous fiddler
- 61 Like hair after a shower
- 65 Vegas opening?

Answers on page 19.



Earl L. Martin III is a partner at Boehl Stopher & Graves. His crossword puzzles have appeared in The New York Times and USA Today. ■

# 22<sup>ND</sup> ANNUAL AAML/LBA FAMILY LAW SEMINAR

APRIL 25 - 26, 2019

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12.0 CLE CREDITS  
(INCLUDING 2.0 ETHICS)

## "WE'RE NOT KIDDING AROUND"

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

### AGENDA

*(Agenda subject to change without notice)*

#### THURSDAY, APRIL 25

8:30 am – 9:00 am	Registration & Continental Breakfast
9:00 am – 10:30 am	Child Custody Issues <i>Donald G. Tye, Prince Lobel</i>
10:30 am -10:45 am	Break
10:45 am – 12:15 pm	Family Law Arbitration <i>Lynn P. Burselson, Tharrington Smith and William D. Tingley, Attorney at Law</i>
12:15 pm – 1:15 pm	Lunch <i>LBA Award Presentation and National AAML Remarks</i>
1:15 pm – 1:45 pm	Supreme Court Update <i>Lori Shelburne, Gess Mattingly &amp; Atchison</i>
1:45 pm – 3:45 pm	Expert Witness <i>Dr. Kelli Martin and Dr. McCrary, Marvin &amp; McCrary Forensic Evaluation Services</i>
3:45 pm – 4:00 pm	Break
4:00 pm – 5:00 pm	Ethics in the Courtroom: Civility and Professionalism in Family Court <i>Panel of Judges and Moderator: Steve J. Kriegshaber, Goldberg Simpson</i>
5:00 pm	Adjourn

#### FRIDAY, APRIL 26

8:30 am – 9:00 am	Registration & Continental Breakfast
9:00 am – 10:00 am	Bias: The Enemy of Persuasion <i>Peter M. Walzer, Walzer Melcher</i>
10:00 am – 10:15 am	Break
10:15 am – 11:45 am	Parental Alienation <i>Dr. Jennifer Cebe, PsyD and Louis I. Waterman, Goldberg Simpson</i>
11:45 am – 12:15 pm	Lunch
12:15 pm – 1:15 pm	Tax Issues <i>Dean Dorton Allen Ford Representative</i>
1:15 pm – 2:15 pm	Current Topics in Legal Ethics <i>Collin D. Schueler, U.S. District Court for the Eastern District of Kentucky</i>
2:15 pm – 2:30 pm	Break
2:30 pm – 3:00 pm	Presumption of Custody and New Child Support Guidelines <i>Jeffery P. Alford, Jeffery P. Alford, PLLC and Mark A. Ogle, Graydon</i>
3:00 pm	Adjourn

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LBA and/or AAML members: \$735  
Non-members: \$810

*Registration fee includes: electronic download of handouts (paper option available for additional cost), two continental breakfasts, two working lunches & networking opportunities*

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*For more information on CLE, hotel accommodations or to register, contact the CLE Department at (502)583-5314 or online at [www.loubar.org](http://www.loubar.org).*

#### Cancellation Policy:

All cancellations must be received by the LBA by April 22, 2019 to receive a refund or credit. Cancellations after April 22, 2019 will still require payment. Substitutions will be allowed.

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visit [www.loubar.org](http://www.loubar.org)  
call the LBA CLE Department  
(502) 583-5314

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## LBA IN PARTNERSHIP WITH JCUP

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

Thursday, April 11

The focus of the program will be on the method for establishing evidentiary foundations when using computers, projectors & projection screens, document cameras and tele-strators for the presentation of evidence, and how to make your record for appeal when using the newly installed digital technology in Jefferson Circuit, Division 1.

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

Speaker: TBA

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

\*This CLE program is repeated the second Thursday of each month.

## LBA ENVIRONMENTAL LAW IN PARTNERSHIP WITH THE UNIVERSITY OF LOUISVILLE'S JOURNAL OF ANIMAL AND ENVIRONMENTAL LAW HALF-DAY

### Kentucky Centric: Emerging Environmental and Animal Legal Issues in Kentucky

Friday, April 12

The LBA is excited to once again partner with the University of Louisville's Journal of Animal and Environmental Law for the next installment of this symposium.

#### Agenda

8:45 a.m.	Registration
9:00 a.m. – 9:30 a.m.	<b>Welcome &amp; Announcements</b> <b>Jesse A. Farler</b> , Associate Editor, <i>Journal of Animal and Environmental Law</i> <b>Dean Colin Crawford</b> , Brandeis School of Law <b>Lauren Freeman</b> , Editor-in-Chief, <i>Journal of Animal and Environmental Law</i>
9:30 a.m. – 10:30 a.m.	<b>State of Kentucky's Environment</b> <b>Tom FitzGerald</b> , Director Kentucky Resources Council, Adjunct Professor of Energy and Environmental Law at the Brandeis School of Law
10:30 a.m. – 11:30 a.m.	<b>State and Federal Legislative Updates</b> <b>Nolia G. Batey</b> , Batey Law Office, PLLC
11:30 a.m. – Noon	Lunch, provided by the <i>Journal of Animal and Environmental Law</i>
Noon – 1:00 p.m.	<b>Animal Rights Theories, Kentucky Law</b> <b>Professor Laura Rothstein</b> , Brandeis School of Law
1:00 p.m.	Adjourn

Lunch included with advanced registration. Please indicate if a vegetarian option is requested.

Time: 10:45 a.m. — Registration; 11 a.m. — 1 p.m. — Program  
Place: LBA, 600 W. Main Street  
Price: \$120 LBA Members / \$108 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$60 Government/Non-Profit Members / \$240 Non-members  
Add On: \$15 printed handouts (electronic is included with registration fee)  
Credits: 3.0 CLE Hours — Approved by KBA and Indiana Supreme Court

*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, and KY Wealth Management Conference, are different. Please visit our CLE Calendar at [www.loubar.org](http://www.loubar.org) for details.*

## LBA ETHICS BROWN BAG

### Annual Spring Ethics Program: 2019 Developments in Professional Responsibility

Wednesday, May 1

In this two-hour presentation, Professor Grace Giesel will discuss recent developments in professional responsibility, focusing on recent ABA opinions, recent changes to the Kentucky Rules of Professional Conduct, and several recent national cases raising interesting ethics issues.

Lunch included with advanced registration. Please indicate if a vegetarian option is requested.

This CLE program hosted by The Louisville Bar Association in partnership with the University of Louisville Brandeis School of Law.

Speaker: **Professor Grace M. Giesel**, University of Louisville Louis D. Brandeis School of Law

Time: 10:45 a.m. — Registration; 11 a.m. — 1 p.m. — Program  
Place: LBA, 600 W. Main Street  
Price: \$90 LBA Members / \$81 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$45 Government/Non-Profit Members / \$180 Non-members  
Add On: \$15 printed handouts (electronic is included with registration fee)  
Credits: 2.0 CLE Ethics Hours — Approved by KBA and Indiana Supreme Court

## LBA NATIONAL SPEAKER DAY-LONG

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

Thursday, June 6

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 session 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...)

Join us at LBA on Thursday, June 6, 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 program can be found on the LBA website, [www.loubar.org](http://www.loubar.org).

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

Time: 8:45 a.m. — Registration; 9 a.m. — 4:30 p.m. — Program  
Place: LBA, 600 W. Main Street  
Price: \$240 LBA Members / \$216 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$480 Non-members  
Add On: \$15 printed handouts (electronic is included with registration fee)  
Credits: 6.0 CLE Hours — Pending

See page 7 for Ethics Webinars with Sean Carter!

# The “Green” Benefits of a Conservation Easement

Scott Porter

With each passing day, the political spectrum in this country is beginning to become more and more polarized. This is no more apparent than in the environmental area where issues like climate change, regulatory roll-backs, solar power and “the green new deal” often spur contentious debate.

However, there is a very valuable conservation and preservation tool at both the state and federal level which has generated broad support from both the political right and left and has allowed millions of acres across the country to be protected and preserved while providing an economic benefit and incentive to property and land owners, farmers, hunters and conservationists.

Imagine the following situation where a piece of property has been in your family for years and you want to make sure that it remains in its undeveloped, natural condition as a habitat for songbirds, deer, wildflowers and grasses.

Or, picture another scenario where you have finally been able to purchase that ideal piece of property with woods, a stream and a pond that you want to make sure is available to the public for hunting, fishing and recreational opportunities long after you are gone.

Or envision yet even another situation, where you have a property that is of historical or natural significance and are looking for ways to offset your tax burden in the future through a charitable donation. There may also be an owner of a historical building or structure that may also want to give a local historical preservation society the right to overrule any proposed change to the building's exterior.

All of these different fact patterns can be resolved through the same legal mechanism of donating, dedicating and recording a conservation easement on the subject property. A conservation easement can be an important tool to: retain private ownership of land; conserve wildlife habitat, open space and other conservation values; protect productive agricultural land; preserve valuable family land as a legacy for future generations; maintain the scenic areas and the rural character of land in the path of development; preserve land which is historically important; reduce property, federal estate, income and reduce

capital gain taxes; and shift greater financial value to future generations.

## History

Based on the most recent figures from the National Conservation Easement Database ([www.conservationeasement.us](http://www.conservationeasement.us)), 27,036,976 acres are currently protected by and subject to conservation easements. Conservation easements have long been utilized to protect, preserve and conserve land as well as providing an economic benefit to those who dedicate such an easement.

Beginning in 1965, the federal government provided the states with a significant incentive to enact legislation facilitating the use of scenic easements in the form of the Federal Highway Beautification Act. That Act provided that three percent of the funds appropriated to a state during any fiscal year for the construction of highways had to be used for landscaping and scenic enhancement.

Coinciding with the growth of scenic highway easement legislation, states began enacting legislation that authorized the use of conservation easements to accomplish a broader range of land conservation goals. The earliest easement enabling statutes were enacted by California in 1959 and New York in 1960. By 1979, 40 states had enacted some type of conservation easement enabling statute.

At about the same times states began enacting easement enabling legislation, the Internal Revenue Service announced that federal tax benefits were available to landowners who made charitable gifts of conservation easements. In 1964, the IRS published a Revenue Ruling authorizing a federal charitable income tax deduction for the donation of a conservation easement to the United States for the purpose of protecting scenic land adjacent to a federal highway. A year later, the IRS issued a news release advertising the availability of the charitable income tax deduction for the

donation of scenic easements to government agencies and charitable organizations.

In 1980, following the enactment of a number of temporary provisions, Congress made the conservation easement deduction provision a permanent part of the Internal Revenue Code. Pursuant to section 170(h), which has changed little in the ensuing 35 years, a landowner donating a qualifying perpetual conserva-

tion easement to a government entity or charitable organization is eligible for a federal charitable income tax deduction generally equal to the value of the easement.

Kentucky enacted its own legislation to authorize and

govern the creation and use of conservation easements in 1988. KRS 382.800-860 establishes that a conservation easement is a legal agreement between a landowner and a land trust or other charitable or governmental organization for the purpose of “retaining or protecting natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.”

## What is a Conservation Easement?

The purpose of a conservation easement is to conserve property and protect its resources and natural value in perpetuity. A conservation easement is a voluntary legal agreement that is recorded and runs with the land *in perpetuity* that limits or prevents certain types of uses and/or development from taking place on the land for as long as the land remains in private hands. Since it is recorded, the easement runs with the land and stays in place, even if the property is sold or passed to heirs.

The landowner usually enters into the contractual agreement with a private environmental organization, wildlife conservation organization, such as a land trust, or a governmental or public agency, which then enforces the landowner's promise not to engage in certain types of activities on the land or to fulfill the landowner's commitment to make sure the property is available for a specific type of use such as farming, hunting or fishing.

If more than one person owns the property, all owners must consent to the granting of the conservation easement. If the property is mortgaged, the lender must agree to subordinate its security interest to the interest of the conservation organization so that the conservation easement would survive any foreclosure. If the landowner sells the land thereafter, the new owner takes the land subject to the terms of the conservation easement. Under KRS 382.850(1) though,

a conservation easement shall not be transferred by owners of property in which there are outstanding subsurface rights without the prior written consent of the owners of the subsurface rights.

In order to encourage the possible donation and keep conservation easements a viable and attractive option, conservation easements are flexible and are usually tailored to meet the natural characteristics of the land and a landowner's current use of the property as well as their wishes for its future use and availability. The landowner gets to retain private ownership and use of the property while protecting the land permanently.

Every conservation easement has prohibited uses and permitted uses. Conservation easements generally prohibit subdivision, residential and commercial development, construction and activities detrimental to the natural characteristics of the land and can also impose mandatory restrictions on the use of the property or require that the property continue to be available for certain purposes or access. This allows the owner to protect the scenic vistas, wildlife habitat, forests, waterways and open space character and other conservation values or recreational use of the property without unreasonable interference with the owner's continuing private property rights. Through the conservation easement, the owner conveys the right to enforce these restrictions in perpetuity to the donee, the qualified conservation organization or public entity.

In preparing a conservation easement, there are several required elements. These elements require that the easement be described in particularity with regard to its location and legal description. It must also describe any potential use as well as restrictions or limitations. The language must also clearly enunciate that the easement runs with the land in perpetuity. The outline of the essential elements to be included are as follows:

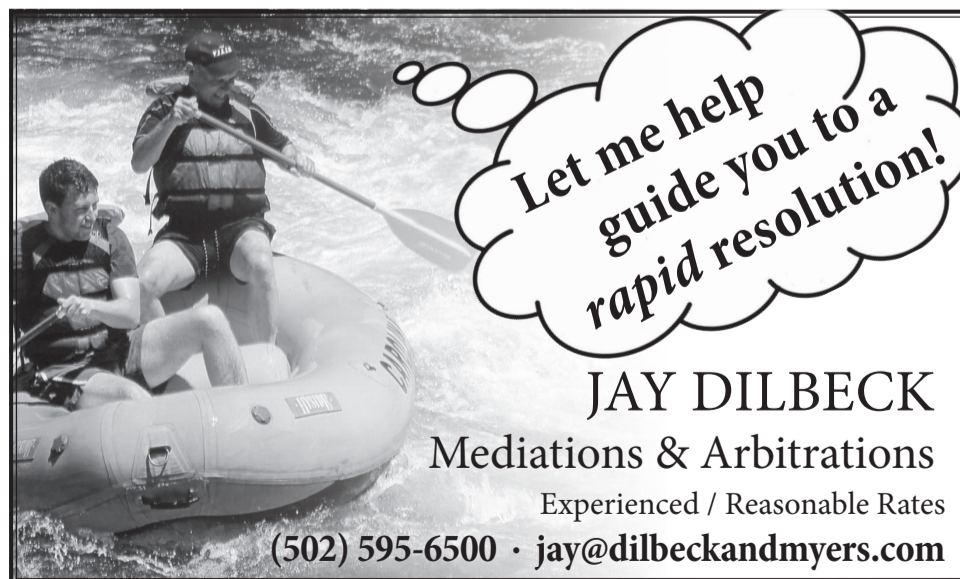
1. Form of conveyance;
2. Purpose and recitals;
3. Land use provisions including any and all restrictions, reserved rights, and holder's affirmative rights/permissive uses;
4. Administrative provisions and traditional boilerplate;
5. Signatures and corporate resolutions or authority; and
6. Exhibits

## Statutory Framework for Conservation Easements

### (i) Regulatory Requirements

As noted, under a conservation easement, a property's owner gives up the right to make certain changes to that property to preserve it for future generations. Such an easement usually limits the usefulness of the property and lowers its value. When a conservation easement meets the criteria spelled out in the Internal Revenue Code, the owner may qualify for a tax deduction based on the property's reduction in value.

“Conservation easements have long been utilized to protect, preserve and conserve land as well as providing an economic benefit to those who dedicate such an easement.”



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IRC section 170(h)(1) defines “a qualified conservation contribution” as “a contribution— (A) of a qualified real property interest, (B) to a qualified organization, (C) exclusively for conservation purposes.” Under section 170(h)(4)(A), four types of conservation purposes qualify for tax deductions:

- Easements that protect natural habitats for fish, wildlife or plants.
- Easements that preserve land for public recreational or educational use.
- Easements that preserve “open space,” or undeveloped land.
- Easements that preserve land or certified historic structures.

A property owner creates a deductible conservation easement by donating some or all property rights to a qualified party. Although under section 170(f)(3) donations of partial interests in property are generally nondeductible, section 170(h)(1) allows a charitable contribution deduction for a qualified conservation contribution of a qualified real property interest to a qualified organization that is used exclusively for conservation purposes. Treas. Reg. § 1.170A-14(b)(2) specifically provides that “a perpetual conservation restriction” is a qualified real property interest. A perpetual conservation restriction is one granted *in perpetuity* on the use of real property, including “an easement or other interest in real property that under state law has attributes similar to an easement.”

Treas. Reg. § 1.170A-14(c)(1) states that to be an eligible donee, the organization “must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions.” Organizations included as qualified organizations include governmental units, section 501(c)(3) organizations that meet the public-support test of section 509(a)(2), organizations described in IRC section 170(b)(1)(A)(vi) (those for which individuals may deduct contributions up to 50 percent of their AGI and that receive a substantial part of their support from a governmental unit or direct or indirect contributions from the general public), and charitable organizations described in section 501(c)(3) that meet the requirements of section 509(a)(3) and are controlled by any of the three types of organizations mentioned previously (supporting organizations).

Taking this requirement further, the Pension Protection Act (PPA) of 2006 (PL 109-280) added that, with respect to easements in registered historic districts, the donor and donee must enter into a sworn written agreement certifying that the donee is a qualified organization with a qualifying purpose and that it has the resources to manage and enforce the conservation easement (IRC section 170(h)(4)(B)(ii)).

Where property is subject to a mortgage, the lender must subordinate its interest in the debt to the qualified organization (Treas. Reg. § 1.170A-14(g)). The subordination must protect the easement even in the event that the property is foreclosed upon. This is

important, as the Treasury regulations state that the easement must be enforceable in perpetuity, so if foreclosure or some other future event would nullify the easement, then the charitable contribution deduction for the easement will be disallowed.

There are special rules for historic easements. The Code and regulations define “conservation purposes” for historic easements as required in IRC section 170(h) to include preservation of a “certified historic structure,” including any building, structure or land area listed in the National Register of Historic Places or any building located in a registered historic district with regard to which it is certified as historically significant by the Department of the Interior (which via the National Park Service administers the National Register) (IRC section 170(h)(4)(C)(ii) and Treas. Reg. § 1.170A-14(d)(5)). In addition, a significant part of the historic exterior must either be visible from a public area or the public be permitted access to see it regularly (Treas. Reg. § 1.170A-14(d)(5)(iv)).

#### (ii) Deduction

Provided a property owner can satisfy these requirements, they may claim a deduction for the donated easement. Putting a dollar value on the easement is usually one of the biggest stumbling blocks and subjects of IRS audits when it comes to taking a deduction for a donated easement. The law requires that the value of a conservation easement must be determined in a qualified appraisal prepared and signed by a qualified appraiser to determine the fair market value of the land and property rights being surrendered at the time of the contribution.

To the extent there is a substantial record of sales of conservation easements comparable to the donated easement, the fair market value is based on the sales price of such comparables. If there is no substantial record of market-place sales, the value is generally the difference between the fair market value of the underlying property before and after the easement is granted to the donee. Because there is usually no substantial record of comparable sales, a before and after valuation is used in most cases.

Once the value of the easement has been determined, it can now qualify as a charitable tax deduction on the donor’s federal income tax return. This incentive was first enacted temporarily in 2006 and became permanent in 2015. This increases the benefits to landowners by:

- (a) Raising the deduction a donor can take for donating a conservation easement to 50 percent from 30 percent of his or her annual income;
- (b) Extending the carry-forward period for a donor to take a tax deduction for a conservation agreement to 15 years from five years; and
- (c) Allowing qualifying farmers and ranchers to deduct up to 100 percent of their income, increased from 50 percent.

What this means is best illustrated by an example provided by the Land Trust Alliance.

Prior to 2015, a landowner earning \$50,000 a year who donated a \$1 million conservation easement could take a \$15,000 deduction (30 percent of his or her income) for the year of the donation and for an additional five years, generating a total of \$90,000 in tax deductions. The new, permanent incentive allows that landowner to deduct \$25,000 (50 percent of income) for the year of the donation and for each of an additional 15 years. This would result in a total of \$400,000 in deductions. If the landowner is a farmer or rancher, he or she can deduct \$50,000 (100 percent of income) in the first year and then for each of the following 15 years, realizing a maximum of \$800,000 in deductions.

#### (iii) Reporting Requirements

Taxpayers report conservation easements and other noncash charitable contributions by filing Form 8283 with their tax return. Besides attaching Form 8283, Noncash Charitable Contributions, to their tax return, donors must also attach a qualified appraisal, photographs of the property or entire exterior of the building and a list of all of the restrictions on the development of the property. For tax deductions greater than \$10,000 on an easement for a building in a registered historic district, taxpayers are required to pay a \$500 filing fee with the tax return.

#### (iv) Monitoring Requirements

Through the creation of a tax-incentive based program to encourage and reward the donation of conservation easements to protect and preserve habitat, property and historic structures, Congress has emphasized and provided an effective protection or preservation mechanism consistent with the exempt purposes of the donee’s organization and mission statement, including nature conservancies, environmental trusts, wildlife and conservation organizations and state and local governments.

Accordingly, the donee, regardless whether a public entity or nonprofit organization, is required and obligated to enforce and protect its rights as holder of the easement to protect those purposes (Conference Report, Tax Reduction and Simplification Act, PL 95-30 (1977)). This responsibility generally includes documentation of the following:

- a. Establishing baseline documentation including maps and a description of the property’s characteristics at the time the easement is recorded;
- b. Monitoring the use of the land on a regular basis. This may require personal visits to the property to ensure that the terms of the easement are being upheld;
- c. Providing information and background data regarding the easement to new or prospective property owners;
- d. Establishing a review and approval process for land uses allowed by the easement.
- e. Enforcing the terms of the easement through the legal system if necessary;
- f. Maintaining property/easement related records; and

- g. Ensuring that there is an adequate endowment for management and legal defense.

### Conclusion

Kentuckians are proud and passionate about our land and our outdoor heritage. From the majestic mountains in eastern Kentucky to the rivers and valleys in the buffalo trace area of central Kentucky to the big lakes in the purchase area of western Kentucky, these lands have provided habitat for our vast and abundant supply of wildlife, incomes for farms, income opportunities for businesses associated with tourism and a fish and game supply to make Daniel Boone smile.

Now because of urban sprawl, development, industrialization and the past ravages of mining, conservation easements are more important than ever to protect, preserve and conserve Kentucky’s natural resources and environment. This is truly a “green concept” that not only allows the green of our environment to be protected but returns “green” back to a donor in the form of tax deductions.

It is a practice that can be encouraged and a tool that can be utilized to protect our Commonwealth and its resources. As Native American Chief Seattle said, “We do not inherit the Earth from our ancestors—we borrow it from our children.”

Scott Porter is an associate with the Vaughn Pettit Legal Group where his practice focuses on environmental and natural resources law, property matters and easement issues, contract and construction law, as well as the defense of government agencies and employees. He is currently the chair of the LBA’s Environmental Section. Scott can be reached at (502)243-9797 or sporter@vplegalgroup.com. ■



### Organizations that Can Accept and Hold Conservation Easements Include:

- The Kentucky Department of Fish and Wildlife Resources
- Ducks Unlimited
- The Rocky Mountain Elk Foundation
- The Louisville and Jefferson County Environmental Trust
- River Fields
- The Bluegrass Conservancy
- The Land Trust Alliance
- The Kentucky Natural Lands Trust
- Future Fund
- Sportsmen’s National Land Trust
- Woods & Waters Trust
- The Nature Conservancy
- American Farmland Trust
- Southern Conservation Trust

# New Membership Category and New Member Benefit!

## New Membership Category — Firm Membership

Looking to participate in a group health insurance plan?

Want to be included in the firm listing for the 2019-2020 pictorial roster?

Then be sure to join as an LBA firm member!

The LBA is excited to announce our partnership with Logan Lavelle Hunt Insurance to bring back a group health insurance plan (see article to the right). To be eligible for this new member benefit, you first will need to become a FIRM MEMBER of the LBA.

FIRM MEMBERS will be listed in the 2019-2020 LBA pictorial roster under Firms. *This year only those who are FIRM MEMBERS or who pay for their listing will be included.*

Dues are based on firm size:

1-5 attorneys	\$50
6-10 attorneys	\$75
11-20 attorneys	\$100
21-30 attorneys	\$125
31+ attorneys	\$150

Contact the LBA offices at (502) 583-5314 or [admin@loubar.org](mailto:admin@loubar.org) to request a Firm Membership application.



**LOGAN LAVELLE HUNT**  
a Shepherd partner

## New Benefit

Beginning April 1, the LBA will partner with Logan Lavelle Hunt to offer group health insurance as a member benefit. Logan Lavelle Hunt will once again be the agent for the insurance plan underwritten by Anthem.

Requirements to participate include:

- Firm membership in the LBA with at least one attorney member
- Minimum of 2 eligible employees and/or owners (*only one would need to participate*)
- Qualified Standard Industrial Classification (SIC) Code related to the legal field
- Domiciled in Kentucky
- Pay at least 25% of the employees' single premium
- All employers in the LBA health plan renew 1/1 each year

For more information or to see if this plan is right for you and your employees, please contact Darren Epperly at [darrenepperly@llhins.com](mailto:darrenepperly@llhins.com) or Leslie French at [lesliefrench@llhins.com](mailto:lesliefrench@llhins.com) or (502) 499-6880.

In addition to the group health insurance plan, Logan Lavelle Hunt offers business insurance, personal insurance and wealth management.

More information can be found at [www.loubar.org](http://www.loubar.org) under Member Benefits.

Be on the lookout for another new member benefit announcement!



**QUINTAIROS, PRIETO, WOOD & BOYER, P.A.**  
Attorneys At Law

Due to their continued growth, a multi-office national law firm is seeking **ATTORNEYS** for its Louisville and Lexington offices. The litigation department seeks individuals with experience in civil trial and/or insurance defense litigation.

Portable book of business is a plus.

E-mail resume to [resume@qpwblaw.com](mailto:resume@qpwblaw.com)

## Inn of Court Accepting Membership Nominations



The Louis D. Brandeis American Inn of Court, founded in 1996 to foster professionalism and civility among lawyers in the Louisville area, is accepting nominations for new members in the Barrister, Associate and Pupil categories. Nominees should be lawyers with 15 years or less litigation experience. Membership is open to solo, small practice or large firm attorneys; members of the plaintiff and defense bar; prosecutors and public defenders.

The first American Inn of Court was founded in 1980, and today there are more than 300 Inns with more than 18,000 state and federal judges, lawyers and legal scholars as members. Each Inn is run independently, but the structure is the same.

The Brandeis Inn, with 84 active members, is comprised of Masters (senior litigation lawyers, members of the judiciary and law school faculty, all of whom have more than 15 years of legal experience); Barristers (lawyers with 6 to 15 years of experience); Associates (lawyers with 1 to 5 years of experience); and Pupils (3rd year law students).

Member benefits include opportunities for mentor relationships, substantive law and skills training, interaction with legal scholars and judges, and networking with litigators in different types of trial practice, all of which are intended to facilitate communication among the bench, the bar and the law school for the betterment of local practice and the improvement of the profession.

Meetings are held on a "semester" basis in September, October, November and February, March, April, and include dinner and CLE programs that focus on issues that arise in litigation and other topics of interest to trial lawyers, ranging from ethical challenges and professionalism concerns to innovative trial techniques and new developments in the law.

To nominate a litigation attorney in the Louisville area for membership,\* or if you are interested in further information about the Brandeis Inn, please contact:

Daniel T. Goyette, Chair  
Membership Committee of the Brandeis Inn  
Advocacy Plaza  
701-719 W. Jefferson Street  
Louisville, KY 40202  
(or forward via e-mail to: [goyette@thepoint.net](mailto:goyette@thepoint.net))

\*Candidates may be nominated by a third party or may self-nominate. In either case, nominations should be submitted as soon as possible, but no later than April 19, 2019. ■

# Litigation Preparedness in the Age of E-Discovery

## Part 2: Data Reduction and Document Review

Dr. Andy Cobb

### Searching/Filtering

In Part One of this series, we discussed the proper preservation of data—including when the duty to preserve arises, litigation holds and the repercussions of not properly preserving data when litigation is possible. Once data is properly preserved and/or collected, the focus shifts to review of the data.

It is important to remember that not all data is created equal, in terms of relevance to the matter. While a large amount of data may have been properly preserved in previous phases, the challenge now becomes separating the wheat from the chaff in a cost-effective way. In a 2012 study the RAND Corporation found that over 70 percent of costs of eDiscovery were in the document review phase. Thus, reducing the amount of potentially relevant documents to review has a large impact on the overall cost of eDiscovery.

Several approaches can be applied to narrow down the amount of data to be reviewed, ranging from technical best practices, which can/should be applied to almost any data set, to focused, case-specific tactical solutions. Two general approaches for data reduction are De-NISTing and De-Duplication. Both are general methods that should almost always be employed. De-NISTing is the process of culling known files from the data set. Windows system files are examples of known files. When De-NISTing is applied, these known files are “ignored” or removed from the review set.

De-Duplication is the process of culling out documents that have the same content. De-duping can be helpful so that reviewers are not seeing and coding the same document two or more times, which saves time and money.

Other document culling techniques can be applied that depend on the nature of the case. A few examples of case-specific techniques are:

- **Filtering documents by custodian.** Many cases involve key custodians of interest. One widely used practice is to review emails to/from particular individuals of interest, then expand the scope of review out, as needed.
- **Filtering by dates of interest.** Eliminating documents outside a particular date range can be a very effective method of reducing data size.
- **Keyword searches.** This method involves searching for relevant documents using keywords. The first—and often most difficult—aspect of this approach is settling on a set of keywords that return relevant data, rather than false positives.

Unless the document review is for an internal investigation and not discovery, the criteria used to reduce documents will most likely need to be agreed upon by both parties. Courts are generally agreeable to—and may even be order—reasonable methods of reducing the number of document for review.

### Document Review

Document review is the process by which documents are coded or categorized—and can be

overwhelming. But having the right review platform and right people managing and performing the review process can dramatically reduce the heartburn. Look for a review platform that is efficient and has been time-tested by professional litigators that review routinely. Outside counsel may be a good resource for this.

Experienced reviewers and review managers can greatly improve the efficiency of the review process—they’ve got the battle scars and know what can go wrong and how to address the typical problems that arise. And they usually have a well-defined process by which to efficiently perform review for large or complex projects.

Document review, which is the most costly phase of the eDiscovery process, requires preparation of the documents to help reduce the costs of overall discovery. The phases leading up to document review are critical since they set the stage for both defensibility and lowering costs.

### Technology-Assisted Review (TAR)

One other set of techniques, which might be considered a hybrid between data reduction and document review, are those that use software to aid in the review process known as Technology-Assisted Review (TAR). Predictive coding, now called TAR 1.0, was introduced a few years ago as a technique in which reviewers “train” and test the software until it can accurately predict how documents should be coded.

Predictive coding evolved into the latest form of TAR called continuous learning, or TAR 2.0. In this technique, the software automatically learns as the reviewers code documents. When the software reaches a certain confidence level, it “takes over” and begins to automatically code the remaining documents as long as the confidence level is maintained. TAR techniques have been accepted in court under certain circumstances, especially for extremely large document sets.

### Conclusion

In this article we’ve discussed several best practices that can be employed to reduce the volume of documents that need review. These techniques can be instrumental in reducing the overall cost of eDiscovery. As TAR is increasingly accepted in courts for large document sets, the costs of document review for those cases will also dramatically be reduced.

In Parts One and Two of this series, we’ve focused on the scenarios where attorneys handle the review of documents for discovery. In the final part of this series of articles, we’ll tackle digital forensics investigations, in which a digital forensics expert is needed to perform a deep dive into devices to find the story the data tells.

Dr. Andy Cobb currently serves as Partner at One Source Discovery, a local, full service eDiscovery firm. He developed the strict procedures used during forensic collections and analysis to ensure accuracy, verifiability and repeatability, and he is the creator of BlackBox, the patented remote forensic collection software tool. ■



And these are just the volunteers! Photo courtesy of Stephen Reily.

## More Than 400 Helped During Second Annual Reily Reentry Project Expungement Clinic

On Saturday, March 2, the Louisville Urban League hosted the Second Annual Reily Reentry Program Expungement Clinic at Roosevelt Perry Elementary School. Nearly 100 volunteers from local law firms, including Wyatt Tarrant & Combs, Frost Brown Todd, the Administrative Office of the Courts, the University of Louisville Brandeis School of Law, the Louisville Urban League and the Legal Aid Society gathered to process cases and help community members expunge their records. The expungement clinic, which is believed to be the largest ever held in Louisville, was named in honor of Urban League board member Stephen Reily for his generous donation to offset the significant cost of expungements.

Research shows that expunging one’s record allows applicants to make on average \$6,000 more per year, while also restoring the right to vote, apply for tuition assistance, volunteer at their child’s school and find better jobs and housing.

The expungement process is just a band aid effort, and as noted by Louisville Urban League President Sadiqa Reynolds, “what we really need is policy change.” There are currently two bills pending in the Kentucky legislature which would improve the expungement process.

Stephen Reily posted information about the expungement clinic on Twitter, <https://twitter.com/StephenReily>, and the Louisville Urban League posted highlights of the day, which can be found here: <https://twitter.com/LouisvilleUL>. ■

# The Digital Footprints of Intellectual Property

Jason Hale

## Introduction

Intellectual property can take many digital forms: contact lists, custom software, audio and video recordings, spreadsheets and much more. Each file will have its own story to tell, leaving behind digital footprints just waiting to be uncovered. The proliferation of technology in our everyday life plays a unique role in often being necessary to efficiently perform in the workplace while at the same time enabling unscrupulous actions of all shapes and sizes. An employee's actions on their digital devices often come into question when he or she leaves the company, particularly if they are moving to a competing company. This article will highlight some of the challenges and important steps when facing a matter involving suspected intellectual property theft.



## Challenges

One of the challenges presented by IP theft cases is the number of ways in which digital information can be transferred. The technology revolution perpetuated by cloud-based services such as Dropbox, iCloud, OneDrive and more can further blur the line between personal and business data and allow individuals and companies to transfer sensitive files between multiple devices—sometimes without even knowing it! This makes stopping a determined insider from surreptitiously moving trade secrets difficult and adds complexity to post-incident examinations.

As an example, consider the scenario where an employee is using an iPhone to make and receive business-related calls and text messages, e-mails and more in addition to using the phone as a personal device. The device may be storing hundreds of contacts and other documents related to the business, but will also contain personal photos, videos, text messages and more. If the iPhone is connected to an iCloud account, copies of all business and personal data may be stored in the employee's iCloud account.

In addition, mobile backups on computers may provide yet another copy of the iPhone's data. Much of the syncing/transferring in this scenario happens behind the scene—often without alerting the user that it's happening. Without an understanding of the technology, relevant data in these iPhone backups could easily be overlooked.

## Seek and Preserve

If your client is involved in a case where intellectual property theft is suspected, one of the most important first steps is to preserve the data sources containing potentially relevant information. This includes computers, mobile phones, e-mail accounts and removable storage devices (e.g. flash drives). Proper forensic preservation ensures that the evidence remains protected from intentional or inadvertent changes and the digital footprints in the data remain intact. Thorough and accurate preservation is the first step in determining whether a company's intellectual property has made its way outside the

control of the company.

In some cases, identifying the digital devices or storage to be preserved is a challenge in and of itself. Flash drives and cloud-based storage accounts used transiently could easily slide under the radar if they are not actively sought out and investigated. Leverage a digital forensic expert to help identify other sources of information that may need to be preserved in your case. Identifying and preserving auxiliary data sources can help to illustrate transparency or to uncover additional evidence supporting your claim.

For example, consider a case involving the suspected theft of trade secrets. An individual could install and utilize Dropbox on a company-provided PC to transfer troves of information

to a personal Dropbox account. Before departing the company, the employee could simply uninstall the Dropbox application from their work PC and access the data in their Dropbox account using their home computer, mobile device or even a system at a competing company.

Provided only with the company-owned PC, a digital forensic expert could help in identifying the use of Dropbox as well as the files stored in the Dropbox account the last time it was used on the computer—even after the application had been removed from the PC! Knowledge of the Dropbox account contents could help to identify whether the account was used to transfer benign family photos or industry trade secrets.

## Minutiae Matters

Investigating cases involving suspected intellectual property theft is fraught with a number of caveats and “gotchas” for an inexperienced digital forensic examiner, potentially resulting in inaccurate conclusions and those not based on sound and defensible evidence. For example, seemingly minute details—such as the version of Windows or the type of hard drive in a computer—can make significant and impactful differences in the necessary investigative methodology and the conclusions that can be drawn from that methodology.

A venture into the technical details is beyond the scope of this article, but expertise and experience in handling the unique challenges posed by IP theft cases can make the difference in finding the proverbial smoking gun and overlooking key evidence related to the matter at hand.

## Conclusion

The widespread use of technologies of all shapes and sizes, spanning from physical devices held in your hand to remote storage in a separate state or country, has empowered great gains in productivity and connectivity in the workplace. However, the always-connected, access-it-anywhere nature of many of the same services we depend on has enabled the theft of intellectual property to be carried out with minimal effort. In some cases, trade secrets can make their way to a personal device without the knowledge or understanding of the employee using the device. A qualified and experienced digital forensic expert can help to distinguish the facts from fiction.

Jason Hale is a digital forensic examiner at One Source Discovery who specializes in incident response. Hale has a Master's Degree in Digital Forensics and holds the Certified Computer Examiner (CCE) designation from the International Society of Forensic Computer Examiners and the GIAC Certified Forensic Analyst (GCFA) designation from the Global Information Assurance Certification. ■



## MEETING SCHEDULES

### LBA Section Meetings

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

Thursday, April 18: Young Lawyers

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

### Legal Assistants of Louisville

The next regularly scheduled meeting of the Legal Assistants of Louisville will be held on Tuesday, April 16, at 11:30 a.m. at the Bristol Bar & Grille Downtown located at 614 W. Main Street. This month's speaker will be Joe Gutmann, attorney and former KY prosecutor, and teacher at Central High School. For more information about the organization, please contact Loretta Sugg, Vice President, at (502) 779-8546. ■

### Women Lawyers Association

Women Lawyers Association will host a lunch meeting on Thursday, April 11 at noon (registration starts at 11:45 a.m.), at the Bristol Bar & Grille Downtown located at 614 W. Main Street. Attorney Marc Murphy will share and discuss his work as a political cartoonist at the *Courier-Journal*. Lunch costs \$18 (cash/check) or \$18.50 (credit card). Please send your RSVP to [womenlawyersassociation@gmail.com](mailto:womenlawyersassociation@gmail.com). If you cannot attend this month, we host meetings the second Thursday of every month and social events at various times throughout the year. ■

### Louisville Association of Paralegals

The Louisville Association of Paralegals is pleased to announce its officers for 2019: President Angela B. Sermon, Wyatt, Tarrant & Combs; Vice President Carcyle D. Barrett, University of Louisville; Treasurer Ann F. Ives, Norton Healthcare, Inc.; and Secretary Melissa S. Reynolds, CKP, U.S. Attorney's Office WDKY (Contractor). Director Barbara R. Russ, CKP, Poppe Law Firm, will serve as the Membership Chairperson. Check out the LAP's upcoming education programs and special events on the Louisville Association of Paralegals website at [www.loupara.org](http://www.loupara.org).

The Kentucky Paralegal Association's Spring 2019 Certified Kentucky Paralegal (CKP) Examination will be held on Saturday, May 18, 2019, at the Louisville Bar Center, 600 W. Main St., Ste. 110, Louisville, KY 40202. The purpose of the KPA's Certified Kentucky Paralegal Program is to implement Kentucky Supreme Court Rule 3.700 for paralegals in Kentucky by establishing a procedure for paralegal certification, which will promote competence and high standards of professional responsibility. The deadline to apply is Wednesday, May 8. For additional information and eligibility requirements, please contact the KPA's Certification Committee at [certification@kypa.org](mailto:certification@kypa.org). ■



## In Memoriam



M. Lynne Osterholt, age 73, died after a brief illness on March 2. A graduate of the University of Kentucky College of Law, she focused her practice on family and criminal law for nearly 40 years. She also held a PhD in French literature and served on the LBA Board of Directors.

Memorial gifts may be made to the Kentucky Humane Society. ■

## LAW POEM

## BREAKFAST TABLE VIEW

Douglas Haynes

As I watch from my breakfast table  
The cardinal couple builds their nest  
From straw and small twigs.  
They have perfectly placed the nest  
For the order and location of the tree.  
No expected winds or rain can topple the new home.  
No apparent communication flows between them.  
Each has an instinctual mental blueprint  
Of what is necessary for the new home to protect  
The chicks inside the eggs inside mamma's fat belly.

I have a trial in twelve days.  
I mentally build my arguments and strategy  
From instincts gathered after years of practice.  
I imagine the adversarial winds trying to shake  
My confidence and plans loose.  
I attempt to build a safe haven for my  
Presentation within the rules of evidence.  
Whether my client's hopes are realized  
Depends on so much more than me.  
A courtroom has its own weather.  
Like the cardinals, I must trust my instincts.



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

## Summer is Just Around the Corner... It's Time to Plan for Summer Interns

Summer will be here soon and the LBA is in the process of finding full- and part-time jobs for Central High School Law & Government students. Why not take a chance on a high school student? The impact on both the student and your firm just might have a lasting effect on our legal community

The Summer Intern Program (SIP) is a partnership between the LBA and Central High School that allows students the opportunity to intern for local law firms and offices, gaining insight into the legal profession and the opportunity to interact with legal professionals, as well as valuable work experience. In turn, the SIP affords employers increased productivity and the opportunity to impact the future of the profession.

These jobs have been life changing for many students. The cost to hire an intern is about \$1,500 for part-time and \$3,000 for a full-time student. If you are unable to host a student in your office, you can still support this program by sponsoring a student to work in a government or public interest office. Last year, sponsorships allowed us to place students at the Public Defender's Office and the Jefferson County Office of the Circuit Court Clerk.

Please contact Lea Hardwick at 583-5314 or at [lhardwick@loubar.org](mailto:lhardwick@loubar.org) if you can help a student this summer. ■



## Kentucky Legislature Seeks to Reestablish Employment Arbitration

Todd Logsdon

Kentucky Senate President Robert Stivers has taken the first step in attempting to restore an employer's ability to require employment disputes be resolved by arbitration. The legislation, Senate Bill 7, states that both employers and employees can agree to arbitrate claims, as long as it relates to employment.

### Impact of Recent State Supreme Court Decision

The bill, which was introduced on February 14, is viewed as a direct response to a recent Kentucky Supreme Court decision—*Northern Kentucky Area Development District v. Snyder*—that effectively negated the practice of arbitration for employment disputes. The ruling, which came in September 2018, shocked employers throughout the state and urged them to immediately update company policies and employment agreements. In short, the Kentucky Supreme Court case prohibited mandatory arbitration agreements—an incredibly common business practice—that employees are often required to sign as a condition of employment. With the *Snyder* decision, Kentucky became the first state to outlaw mandatory arbitration agreements.

The *Snyder* decision essentially decided the authority of Kentucky Revised Statute (KRS) 336.700, which bans specific agreements—including arbitration agreements—as a condition of employment. The Kentucky Supreme Court ruled that KRS 336.700 was not precluded by the Federal Arbitration Act (FAA), a federal statute that supports arbitration agreements from state statutes like KRS 336.700. The court was unmoved by the authority of the FAA over the Kentucky statute, however, ruling that the court did not read the state statute “as evidencing hostility to arbitration agreements.” Instead, it stated, the statute “simply prevents employers from conditioning employment on the employee's agreement to arbitration.”

This was the main discrepancy in the court's eyes; KRS 336.700 does not specifically call out arbitration agreements, but rather blocks employers from using those types of agreements as an excuse for firing an employee or refusing to hire a potential employee. Using this argument, the court protected itself from the possible appearance that the *Snyder* decision was a direct attack on arbitration agreements.

Instead, the court intended to prohibit employers from basing

employment decisions on whether the employee is willing to sign an arbitration agreement. The court indicated that other types of agreements should also be considered null and void under the statute's language—including “an agreement whereby the employee waives the ability to file a whistleblower claim against the employer, or an agreement that limits the amount of damages the employee can recover against the employer”—which proves that the KRS 336.700 should not be preempted by the FAA.

### What Does Senate Bill 7 Mean For Employers?

If passed, Senate Bill 7 would illustrate how employers can require that employees or applicants complete an “agreement for arbitration, mediation, or other form of alternative dispute resolution as a condition or precondition of employment.” While defining the rights of all parties to agree to arbitration is the main purpose of the proposed law, the bill would also provide Kentucky employers with several additional rights, including verifying that employers can require:

- Former employees to waive any existing claims as a condition for rehiring, as part of a settlement of pending litigation.
- As a condition of employment, employees or applicants agree to a reduced limitations period for filing claims against the employer (this may be the most significant detail, given the default five-year statute of limitations).
- Employees or applicants agree to allow the employer to conduct a background check.

### What's Coming Next?

The additional rights mentioned above would be a welcome relief for many Kentucky employers. While no one knows for sure if Senate Bill 7 will be approved and entered into law, the fact that the Senate President filed the bill is a strong indication that it is likely to pass.

Todd Logsdon is a partner in the Fisher Phillips Louisville office, where his practice is devoted to advising and representing employers regarding labor and employment law matters. ■



## Office Space

### 3 Attorney Offices:

3 Attorney Offices in the heart of St. Matthews. New offices with all utilities provided, conference room, efficiency kitchen and client waiting area/room. \$1,200.00 per month per office. Call (502) 895-5565 or (502) 418-6969.

### Offices Available in Downtown Louisville:

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

### Office Space Available:

One Riverfront Plaza - river view; 1 to 4 offices available (3 furnished) on 20th floor; library/conference room; secretarial services and/or space available. (502) 582-2277.

### Law Offices for Rent:

Two offices side by side for rent at 125 South 6th Street. Includes surface parking next to building, utilities, phone, basic office supplies, copier, fax & internet. Call Lowen & Morris at 587-7000.

### East-End Office Condo for Rent:

Prime location off of Hurstbourne Pkwy close to I-64 and Shelbyville Road. Three private offices, attractively finished. Ready to move in. Reception Area, large library/conference room and private bath. Approx. 1000 sq. ft. \$950.00/month plus LG&E expenses. Call 426-1661.

### Office Space - St. Matthews:

Beautiful 2nd floor office suite in prestigious Brownsboro Park Office Condos. This suite offers 4 offices, a large resource area, a shared reception area and conference room, restroom and kitchenette. Proportional share of utilities and maintenance. Please call (502)386-8694 for additional information.

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

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

1st floor - Approx. 16' x 19' luxury office with separate secretarial office. (\$1,000/mth)  
1st floor - Approx. 21' x 17' office space (\$650/mth)  
3rd floor - 2 large offices approx... 16' x 16'  
1 office approx... 8' x 10'

1 office with adjoining room that can be used for secretarial office(s) or office with adjoining secretarial room. Approx. 8' x 10' each  
1 large open space with enough room for 3 desks for support staff

(or)

Entire 3rd floor - 5 Office Suite with open secretarial area

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

## Services

### Discrimination Issues & Other Related Matters:

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

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### Witness Location Service:

Will locate your missing witness anywhere in the country for the flat fee of \$150. Please send the name and one identifier - BD, SSAN or last known address - to jsniegocki@earthlink.net or call 502-426-8100.

Jim Sniegocki, Special Agent, FBI (retired)  
Capital Intelligence Corp.  
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### Immigration Consultant:

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

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## Help Wanted

Through the LBA Placement Service

### Downtown Litigation Attorney:

The LBA is currently working with a mid-sized law firm based in Louisville KY, that is seeking a Litigation Attorney for their downtown Louisville office. The successful candidate will have at least 3-5 years of civil litigation experience, (preferably on the defense side) and excellent references. This is a full-time position that may require some travel. Salary is based on experience, plus benefits. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

## Seeking Prosecutor

### Prosecutor Wanted:

BardstownInjustice.com  
Charles Monin  
(502) 249-0598

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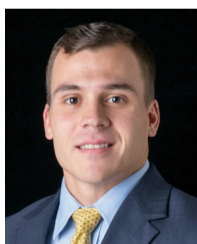
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**William H. (Bill) Brammell Jr.** has been named a partner in the Louisville office of DBL Law where he practices primarily in the areas of civil and commercial litigation, and white collar criminal defense. Brammell received his J.D. from the University of Kentucky College of Law and presently serves on the Home of the Innocents Associate Board and a number of other standing committees, the Kentucky SHRM (Society for Human Resource Management) State Counsel, and the NLC (New Leaders Council) State Board.

Stephoe & Johnson is pleased to announce that **Timothy B. George Jr.** has joined the firm's Litigation Group. His practice will focus on representing health care facilities, medical professionals, and insurance companies faced with litigation and pre-litigation matters. George earned his J.D. from the University of Louisville Brandeis School of Law. He is a graduate of the Young Professionals Association of Louisville (YPAL) Emerging Leaders Program and serves as general counsel for the Main Street Association executive committee.

Farmington Historic Plantation has elected Stites & Harbison attorney **Aaron Klein** to its Board of Regents. Farmington Historic Plantation, Louisville's first historic house museum, is owned by Historic Homes Foundation. Klein is a member of the firm's Construction Service Group. His practice focuses on advising owners, contractors, subcontractors, design professionals, and trade and materials contractors in all phases of the building process. He is a member of the Young Lawyers Division for the Louisville, Kentucky and American Bar Associations and a member of the Associated General Contractors of America.

*Finance Monthly* recently honored Stites & Harbison attorney **Mike Risley** in the 2019 edition of the Fintech Awards. Risley won in the category of Insurance & Reinsurance - Lawyer of the Year - USA. *Finance Monthly* is a global publication delivering news, comment and analysis to the corporate sector. Risley is co-chair of the firm's Appellate Advocacy Group. He has deep experience in disputes involving insurance bad faith and coverage, ERISA, and commercial and employment-related matters.

Wyatt, Tarrant & Combs is pleased to announce that **Mike Fine** and **Tad Myre** received the 2019 Nonprofit Advocacy Partner Award from the Kentucky Nonprofit Network (KNN). The award recognized Fine and Myre for their work in helping KNN clarify language and educational resources relating to new legislation governing Kentucky's nonprofit organizations. Fine and Myre are both partners in the firm's Health Care Service Team.

Wyatt, Tarrant & Combs is pleased to announce **Mary Elizabeth Anderson, Max Bridges,**

**Billy Hopkins, Jordan White** and **Sean Williamson** as senior associates. Anderson is a member of the firm's Trusts, Estates & Personal Planning Service Team. She concentrates her practice in the areas of estate planning, trust administration, estate tax, inheritance tax, gift tax, probate, business planning and elder law. Bridges is a member of the firm's Natural Resources and Energy Service Team and the Intellectual Property Protection & Litigation Service Team. He concentrates his practice on state and federal laws involving air, water, waste and endangered species, mineral and energy law, patent prosecution, enforcement, patent litigation, client counseling and transaction support. Hopkins is a member of the firm's Health Care Service Team. He has conducted financial statement audits for hospitals, not-for-profit entities, public companies and employee benefit plans. White is a member of the firm's Litigation & Dispute Resolution Service Team and Labor & Employment Service Team. He focuses his practice on complex commercial disputes, creditors' rights litigation, products liability law and labor and employment issues. Williamson is a member of the firm's Litigation & Dispute Resolution Service Team and works closely with the Intellectual Property Protection & Litigation Service Team. He concentrates his practice on product liability and warranty matters, fiduciary litigation and class actions and assists businesses and innovators with the protection of trade secrets and non-competition issues.

**Wyatt, Tarrant & Combs** is also pleased to announce its participation in a new legal industry diversity mentorship program launched by AdvanceLaw. AdvanceLaw announced in late February that it was launching a diversity mentorship program to build relationships between diverse senior in-house counsels and rising law firm associates. AdvanceLaw plans to match client service-oriented diverse associates in the mid-level and senior ranks with senior in-house mentors for professional support and career coaching to help them gain promotion to the partnership at their firms.

**Dinsmore & Shohl** earned high marks in *The Bond Buyer* 2018 rankings. In Kentucky, Dinsmore earned the second overall ranking by serving as bond counsel on 33 issues totaling more than \$1.2 billion Thomson Reuters compiles transaction data for *The Bond Buyer*. Dinsmore also ranked highly in many of the bond counsel sub-categories Thomson measures. Nationally, the firm ranked second for Commercial Paper Long-Term Municipal New Issues, ninth for Nursing Homes Long-Term Municipal New Issues and 10th for both Public Power Long-Term Municipal and Short-Term Municipal New Issues. ■



## Mother's Day Card Drive

*"All that I am, or hope to be,  
I owe to my angel mother."*

—Abraham Lincoln

Mother's Day is around the corner and the Public Service Committee is collecting Mother's Day cards and postage for inmates at the Louisville Metro Jail. Cards and stamps can be dropped off at the front desk at the LBA and the committee will ensure they get to the inmates of the recovery dorms, who can then write to their mothers in time for Mother's Day. Cash donation in lieu of cards is also welcome. Make checks payable to the Louisville Bar Center. Please indicate "Mother's Day Card drive" in the memo line. Deadline for donations is Wednesday, May 1, 2019. Please contact Jonathan Ricketts at (502) 896-2303 or [jricketts@rickettslawoffices.com](mailto:jricketts@rickettslawoffices.com) for more information. ■

**SPOILER  
ALERT!**

## See You In Court

Crossword Puzzle by Earl L. Martin III on page 9

1	D	2	I	3	S	4	C	5	S	6	N	7	A	8	C	9	L	10	I	11	B	12	I	13	D
14	I	15	N	16	L	17	E	18	T	19	A	20	S	21	H	22	E	23	N	24	I	25	N	26	O
17	D	18	I	19	O	20	D	21	E	22	M	23	E	24	I	25	N	26	D	27	O	28	D	29	O
20	T	21	W	22	E	23	L	24	V	25	E	26	A	27	N	28	G	29	R	30	Y	31	M	32	E
23	L	24	I	25	L	26	U	27	T	28	E	29	E	30	X	31	E	32	33	34	35	36	37	38	39
26	P	27	H	28	I	29	L	30	A	31	D	32	E	33	L	34	P	35	36	37	38	39	40	41	42
32	R	33	O	34	T	35	E	36	I	37	S	38	39	40	41	42	S	43	44	45	46	47	48	49	
38	O	39	R	40	A	41	T	42	E	43	S	44	45	46	47	48	49	50	51	52	53	54	55	56	
43	P	44	O	45	L	46	I	47	T	48	E	49	T	50	51	52	P	53	54	55	56	57	58	59	
48	T	49	H	50	E	51	R	52	A	53	I	54	55	56	57	58	59	60	61	62	63	64	65	66	
51	Z	52	I	53	T	54	E	55	R	56	E	57	58	59	60	61	62	63	64	65	66	67	68	69	
56	I	57	N	58	H	59	E	60	R	61	I	62	63	64	65	66	67	68	69	70	71	72	73	74	
62	L	63	A	64	R	65	S	66	E	67	A	68	69	70	71	72	73	74	75	76	77	78	79	80	
66	C	67	N	68	E	69	T	70	S	71	P	72	73	74	75	76	77	78	79	80	81	82	83	84	
69	H	70	E	71	E	72	D	73	T	74	E	75	76	77	78	79	80	81	82	83	84	85	86	87	

# Judicial Reception

Thursday, May 9, 2019

5:30 – 7:00 p.m.

Spire at Hyatt Regency Louisville

Please join the LBA and Republic Bank & Trust Company for the Judicial Reception on Thursday, May 9 at the newly renovated Spire at Hyatt Regency Louisville. Help us recognize those who serve the bench & welcome Kentucky's newest attorneys. Wind down with a cocktail, catch up with colleagues, and enjoy meeting new admittees with breathtaking 360° views of Louisville.

Members  
Only.   
Space  
Limited.

Cost\* prior to Wednesday, May 1: \$26.50 per person  
\$21.20 per person for govt. & public service attorneys

Price will increase \$5 for registration after May 1.

Price includes drink ticket & hors d'oeuvres.

\*Complimentary to sitting judges, new KBA admittees (Fall 2018 & Spring 2019), and LBA Sustaining Members

This is an event exclusively for LBA members and their guests.

To RSVP contact Marisa Motley at [mmotley@loubar.org](mailto:mmotley@loubar.org) or  
(502) 583-5314, or online at [www.loubar.org](http://www.loubar.org).  
Please respond by Monday, May 6.

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