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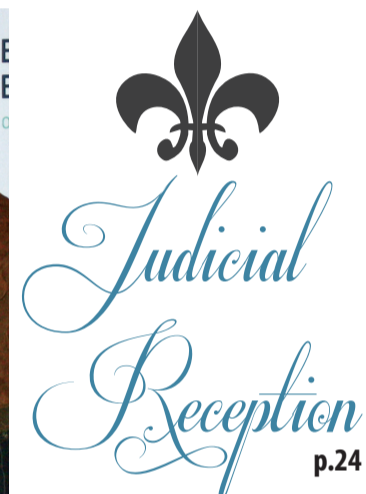
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Reflections on the “Business” of Law

According to a quick consultation with Professor Google, business is “an economic activity concerned with the production or purchase and sale of merchandise and rendering services with the purpose of earning profit.” By contrast, a profession is “a form of economic activities wherein special skills, knowledge and expertise is required to be applied by the person, in his occupation.” The Google reference then reiterates that a professional is possessed of “specialized knowledge and skills acquired by way of formal learning and practical experience...with a professional code of ethics...providing services...for a fee.”

Rather than elaborate further, these distinctions set the stage for my thesis: lawyers, doctors and teachers (and other professionals space does not permit me to discuss) are under ever-increasing pressure to subordinate and even abandon their role as professionals, becoming instead an extension of the business which retains, or in some instances, employs them.

I should distinguish at the outset many professionals who have earned a degree in their special expertise, but go on to fulfill their true calling as business men or women. This trend has rapidly increased in the second half of the twentieth century and is epitomized locally by the remarkable careers of David Jones and the late Wendell Cherry, co-founders of Humana following their early years at Wyatt, Grafton and Sloss. Many law schools now offer a combined JD and MBA as evidence of this pattern.

Similarly, some lawyers are primarily “fixers” for their single business client. For years the best example of this was Tom Hagan’s role (Robert Duvall) as consigliere to Don Corleone who conveyed the Don’s “offer that can’t be refused” and arranged for the horse’s head in the bed of he who declined the offer. More recently, Michael Cohen was our President’s consigliere, resolving untidy business and sexual affairs. While these lawyer characters have amused, titillated and confirmed the general public’s impression of lawyers as sleazeballs, they are also not the subject matter of this piece.

I am concerned with the tens of thousands of lawyers who engage in the day to day practice of law, unaware, ignorant or simply nonplussed by the slow and insidious transition of their profession—and the exercise of their professional judgment—into an extension of the business clients they represent or who retain them. Increasingly I hear of lawyers and law firms referred to as “contractors” or some years back as “captives.”

Many years ago I was technically a partner of the late Squire Ogden, one of the dozen or so true lions of the legal profession in Twentieth Century Kentucky. I say technically because in the firm once known as Ogden, Robertson and Marshall all of the lawyers were “partners” in name, the difference being in their relative involvement in partnership decisions. One of Squire’s “Statement for Services Rendered” went something like this:

“For my retention as counsel in the matter of *Smith v. Jones*, I responded to plaintiff’s complaint, answered discovery and propounded same, obtained deposition testimony from principal witnesses and represented our principals in same, then tried the matter to a successful conclusion. For services rendered: \$8,700.”

I am positive the client promptly paid the bill without question or request for further detail...and continued to consider Squire’s skills and advice invaluable.

My entry into practice segued with the advent of the “billable hour,” introduced by insurers and some businesses to create a more exacting oversight of time and detailed activity spent in the course of any given matter. Insurers insisted on a billable hour divided into tenths, or six minute segments; some businesses accepted billable hours parsed into quarters, or 15 minute segments. While adding greatly to the administrative labors of the lawyers now required to account for their efforts in segments, it was universally accepted as a reasonable curb on excesses in billing, a rational way for various businesses to better understand the nature of services rendered, and a method to penetrate the mystique of statements once common in Squire Ogden’s prime.

Of course, there were several obvious non-sequiturs in the logic of the billable hour as a sole method of compensation. First, it assumed that all “partners” in any region or venue were worth one stated hourly rate and all “associates” another slightly reduced hourly rate. Rates varied, of course, based on the business or insurer as well as specialized practice areas. But for the most part the skill set of a trial lawyer with over 100 trials or a commercial lawyer with dozens of successful major business transactions to his or her credit were lumped into the same category with “partners” with little or no trial experience or unique business acumen.

Secondly, it seemingly rewarded the tortoise versus the hare. Slow and methodical lawyers took longer for a task than the quick witted and efficient, thus earning a more substantial fee. Finally, the true masters of their profession no longer had a legitimate means to distinguish their ability to “solve the client’s problem” within minutes or hours

versus plodding forward into eternity, or simply failing to achieve an optimal result.

Despite these drawbacks, the creation of the billable hour arguably infused good business sense into the previous vagaries of the legal profession. As business philosophies have steadily become the driving norm in most economic settings over the past 50 years, the distinction and role of the “professional” as separate from “business” has insidiously deteriorated. In no particular chronological order, businesses developed a mindset that lawyers were simply contractors, performing given tasks in a fairly predictable manner with a fairly predictable degree of difficulty.

Firms and their lawyers were considered in a class with parts manufacturers or equipment suppliers—computers, copy machines, etc.—or a human resources consultant. All were important to the success of the business utilizing them, but not as much for their skilled and distinct professional skills as in the past. Accordingly, the client began to determine how much time a motion and memorandum should take to compose, or an opposing brief or a business contract to review, or the value of an intra-office conference with another lawyer regarding future strategies.

Clients began to define the functions and duties of paralegals or associates and when the work of either would be considered compensable or non-compensable overhead expense and thus struck from the bill for services. Clients then began to unilaterally determine the aspects of a lawyer’s representation that might be handled in house or by yet another contractor who, often at a substantially higher fee, would perform what were traditionally considered key functions of the lead attorney.

At first blush, these oversights made and make astute business sense. After all, it seems more practical and cost effective to constrain a lawyer’s professional choices at the outset, than to suffer an unpleasant controversy in the latter event of excessive fees, inflated time, purposeless effort or worse, inadequate effort in the course of representation. The often subtle fallout of these constraints, however, is seen in another profession that frustrates nearly everyone involved: medicine.

I am old enough to remember when nearly all doctors were in private practice, worked long hours including nights and weekends, missed time with family and friends, but were almost universally dedicated to their patients’ welfare as their professional life’s calling. Then came the age of medical coding and seminars on how to get rich by the manipulation of same. Coincident with this came the increase in malpractice cases. Both negatively affected the physician-patient relationship. Then came the health industry’s push for greater efficiency. More patients should be seen, slotted into 15 minute segments. The advent of electronic medical records made some care more coherent, but often absurdly inaccurate, and required the physician to spend as much time with the computer as with the patient.

The coup de grace was the mass purchase of medical practices by hospitals—a business entity—providing a means to control the profit centers of testing and provision of care/services. The professional physician was now officially an employee. While the new model assured regular hours and a contracted income, the implied paradise was elusive. Ask most physicians in a moment of candor whether they still enjoy professional freedom and discretion and they’ll respond in hushed tone: “No, but the young ones coming out of residency have a whole different attitude about the healing arts than I did.”

Teachers suffer the same strange evolution from teaching as a profession to teaching as the business of producing graduates. In public schools they are overwhelmed by an absurd teacher to student ratio. They are pressured by their employer (the state)



We must not passively and by inches abandon our identity as professionals—bound by an ethical code to our clients and dedicated to using our special skills to provide our best representation.

(Continued on page 6)

Business Courts: Coming Soon to Kentucky

Justice Lisabeth Hughes

Business Courts—sometimes referred to as Commercial Litigation Dockets or Complex Litigation Divisions—have become a national trend over the past two decades. Generally speaking, business courts are designated divisions of the general jurisdiction trial court that hear complex commercial and business litigation cases.

In some states, the business court is a separate division of the trial court that handles only business and commercial cases. In other states, one or more trial judges conduct a business court docket while also presiding over other civil and criminal cases. Twenty-four states have adopted some form of business court, with pilot projects underway in an additional five states. Kentucky is about to join the pack. But why?

Business courts allow for more effective judicial management of complex business and commercial cases by concentrating them in a docket with rules and processes specially designed for those types of cases. Because judges who preside over business dockets are more familiar with many of the issues raised, they can move the cases through the system in a more timely and consistent manner.

The benefits are not confined to business cases. Business courts also improve access to justice for *all* litigants by “unclogging” regular dockets, allowing the judges in those courts more time to address other civil cases and criminal matters. As one Kentucky attorney observed, “no one is going to miss attending a busy regular civil motion hour where a business case is called and 14 attorneys stand up!”

The types of cases eligible for business courts vary by state, though the focus is commonly on intra- and inter-company disputes. Some examples of cases eligible for business court include disputes involving corporate governance, securities, business contracts, commercial real estate, intellectual property and commercial torts.

Cases *not* within business court jurisdiction include personal injury, consumer claims, wrongful termination, landlord-tenant, individual torts and individual insurance/bad faith disputes. Along with limitations on the types of cases eligible for business courts, many states also have an amount in controversy threshold.

Although each state’s business court rules and procedures vary, there are some common elements found in all business courts. These elements include mandatory e-filing; early, mandatory case management conferences with the court; scheduling orders and discovery plans tailored to each case; protocols for discovery of electronically-stored information; and liberal use of telephone hearings and conferences.

The push to bring business courts to Kentucky began nearly 10 years ago when Chief Justice John Minton first proposed the idea to the Supreme Court. At the time, there was not a consensus among the Justices that business courts were warranted so the idea was shelved. Since then, the national movement towards civil justice reform and Kentucky’s own declining civil case filings and diminishing civil trials have compelled the Supreme Court to reevaluate our civil practices and procedures.

In 2018, Chief Justice Minton asked me to chair Kentucky’s newly-created Civil Justice Reform Commission. The initial membership of the commission included three Justices, two circuit judges, two legislators, one circuit court clerk, and five attorneys. We began our efforts by attending a summit in Little Rock, Arkansas, hosted by the National Center for State Courts, the Conference of Chief Justices, the Conference of State Court Administrators, and the Institute for the Advancement of the American Legal System. The two-day summit focused on several proven reform measures, including case triage and business courts.

Recognizing that we had a lot of work ahead of us and that we needed the perspective of more judges and lawyers from across the Commonwealth, the first order of business upon returning from Little Rock was to increase the membership of the Commission to include a Court of Appeals judge, two district judges, and several more attorneys. The second order of business was to create a workgroup to study business courts and present the issue to the Commission.

Business courts allow for more effective judicial management of complex business and commercial cases by concentrating them in a docket with rules and processes specially designed for those types of cases.

The Business Courts Workgroup consisted of Janet Jakubowicz with Bingham Greenebaum Doll in Louisville; Kenly Ames with English, Lucas, Priest & Owsley in Bowling Green; and Mitch Hall with Van Antwerp Attorneys in Ashland. The Workgroup’s presentation at the commission’s first meeting in August 2018 was met with overwhelming support and a recommendation that the Supreme Court adopt a business courts pilot project. In September, the court unanimously approved the proposal to launch a Business Court Docket Pilot Project.

Last October, we began the process of identifying jurisdictions that could support a business court docket by studying our case filing data. This was a challenge in and of itself due to the way data currently is collected and entered into the case management system when a case is filed. Civil cases are reported under one of a handful of broad, generic categories such as contract, personal injury or property. There is no mechanism to identify if the parties are individuals or businesses, the specific case type or the amount in controversy.

While we have plans to remedy this in the future with a detailed civil cover sheet and additional identification options for electronic filers in CourtNet, the limitations of the current case management system required a manual review of the data. That review ultimately determined, not surprisingly, that Jefferson County was the ideal location for a business court docket pilot project.

I am pleased that Judge Charlie Cunningham in Division 4 and Judge Angela Bisig in Division 10 of Jefferson Circuit Court have agreed to serve as our initial Business Court Docket judges. They, along with Chief Judge Brian Edwards and Judge Mitch Perry, have been involved with planning the design and implementation of the Jefferson County Business Court Docket. We are following the example of many other states that have created business court as a separate docket within a division of their general jurisdiction trial court rather than as a standalone court.

Judge Cunningham and Judge Bisig will still maintain their regular civil and criminal dockets, although the increased workload of the business court docket will require some adjustment to the non-business civil case assignments in their divisions. Once the rules and processes are in place and a start date is selected, cases will be assigned to the Business Court Docket on a going-forward basis only. In other words, cases eligible for the docket but then pending in other divisions of Jefferson Circuit Court will not be reassigned.

Taking a cue from other states with successful business courts, we have created a Business Court Docket Advisory Committee that will make recommendations on essential elements of the business court docket and provide oversight for the pilot project. The Advisory Committee members are: Louisville

attorneys—Philip W. Collier, Elizabeth (Libby) S. Gray, Janet P. Jakubowicz, Clark C. Johnson, Donald J. Kelly, Dustin E. Meek, Thomas E. Rutledge, Mary Ross Terry, and Grace M. Giesel; and Lexington attorneys—David Owen and Cassidy R. Rosenthal.

Although a business court docket will initially exist only in Jefferson County, the Lexington attorneys will be instrumental in our efforts to export the concept to Fayette County, our next pilot location. Some of the issues the Advisory Committee will consider include case eligibility and jurisdictional scope of the business court docket; the process for case assignment or transfer; the advisability of additional filing fees; and appropriate rules and processes.

We still have a lot to learn and some big decisions to make, but the goal is to have a business court docket operating before the end of 2019. This project has been a long time coming in the Commonwealth, and as an early proponent I am particularly pleased that it will be implemented right here in Louisville.

If you are interested in learning more, please join us at the Kentucky Bar Association Annual Convention at 9 a.m. on Friday, June 14, at the Galt House, for a panel discussion on business courts generally and the Jefferson County Business Court Docket Pilot Project specifically.

Justice Lisabeth T. Hughes is the Deputy Chief Justice of the Kentucky Supreme Court. ■



Racial Fairness Commission Conducting Survey, to Hold Listening Sessions

In an effort to gauge community perceptions of the justice system in Jefferson County, the Racial Fairness Commission is asking local residents to complete an online survey. Developed by researchers in the Department of Sociology at the University of Louisville, the survey is designed to elicit feedback from anyone who has interacted with the courts as a party, witness or juror. Attorneys may also complete the survey which can be found at <https://www.surveymonkey.com/r/JeffCoCOURTS>.

The survey touches on all aspects of the justice system, including civil and criminal courts, as well as ancillary agencies such as the circuit clerk’s office, probation and parole, and state and local corrections. Responses may be based on personal experience or that of close friends or family members. The results will be used to help make improvements to the justice system.

In addition to the survey, the Racial Fairness Commission will hold several “listening sessions” around town. According to Judge Denise Clayton of the Kentucky Court of Appeals, who chairs the Commission, the purpose of the sessions is to listen to community concerns and answer questions about the Court of Justice. Noting that recommendations contained in previous Commission reports have resulted in improvements to the court system, she added that “the Court wants to have a more immediate and public response and to implement a change in policy or procedure if we can.”

“We acknowledge that some issues may be outside our authority,” Judge Clayton continued. “For example, some issues may involve legislative changes which we cannot dictate.”

The first listening session, to be moderated by Jean West of Louisville Public Media affiliate WFPL (89.3 FM), will take place at Spalding Auditorium on May 16 beginning at 6 p.m. The session is free and open to the public. ■

KBA to Evaluate Trial Judges Statewide

After several years of discussion, the Kentucky Bar Association is proceeding with plans to conduct evaluations of state trial court judges across Kentucky. The evaluations may commence as early as this summer. As a result, the LBA will no longer conduct its annual evaluations of trial court judges in Jefferson County.

The KBA Board of Governors has approved the format of the evaluations, largely based on models successfully used by the LBA and the Fayette County Bar Association for their past evaluations. KBA President Douglas Ballantine will appoint a committee, chaired by current 4th District Bar Governor Amy Cabbage and comprised of practitioners and retired judges from around the state, to carry out the evaluations and present the results to the Board of Governors.

The initial evaluation, slated for later this year, will include all trial-level state court judges including those sitting in district, circuit and family courts. ■



Courts to Get Help Handling Opioid-Related Cases

At a news conference in Frankfort on April 11, the Kentucky Court of Justice launched a new initiative that will help judges, circuit court clerks and court personnel further address Kentucky's opioid epidemic.

The initiative is RESTORE which stands for Responsive Education to Support Treatment in Opioid Recovery Efforts.

"The opioid epidemic has placed a severe strain on the courts and substance use disorders have taken a toll on individuals and families throughout the commonwealth," Chief Justice John D. Minton Jr. said. "We want to give our judges, circuit court clerks and court staff the training and resources they need to effectively handle opioid-related cases. By working together, we can make a difference for Kentuckians affected by substance use disorders."

The Administrative Office of the Courts is carrying out the RESTORE initiative as a subrecipient of a grant from the Substance Abuse and Mental Health Services Administration. The grant was awarded to the Kentucky Cabinet for Health and Family Services as part of the collaborative Kentucky Opioid Response Effort.

Chief Justice Minton said the opioid epidemic has hit Kentucky particularly hard, with the state's overdose death rates among the top in the nation. "The good news is that Kentucky's outcomes are finally beginning to improve," he said. "Opioid-related drug charges are declining, opioid-related overdose deaths are down and access to medication assisted treatment is up. The bad news is that there were still nearly 8,000 heroin-related charges and more than 1,000 overdose deaths related to opioids in the state last year. We still have much work to do."

Kentucky judges and court staff will be invited to attend two one-day summits in 2019, which will be offered in each of Kentucky's seven appellate districts. The RESTORE Leadership Team is responsible for planning these events. The team consists of nine judges from Circuit, Family and District courts; a circuit court clerk; and representatives from the AOC Departments of Family & Juvenile Services, Pretrial Services and Specialty Courts. ■



Commissioner Wendy Morris speaks at the RESTORE news conference while (l to r) Saint Joseph-London Medical-Surgical Unit Director Shannon Adams, Operation UNITE President/CEO Nancy Hale and Chief Justice John D. Minton Jr. look on. Morris is commissioner for the Department for Behavioral Health, Developmental and Intellectual Disabilities.

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Louisville Law Alumni Share Insights about Developments in Real Estate Law

Dean Colin Crawford

One of the many joys I experience as Dean of the University of Louisville School of Law is talking with—and learning from—our alumni.

I recently had the opportunity to discuss real estate law with two of our graduates who have established themselves as experts in this field. As a property law scholar myself, I very much enjoyed hearing perspectives from practitioners who work daily to achieve the best outcome for their clients.

Tandy Patrick, a partner at Bingham Greenebaum Doll, has 40 years of diverse commercial real estate experience, with a particular emphasis on shopping center development and retail leasing. She spoke with me about the dramatic changes in retail, noting that the changes she has observed in the last five or 10 years have been the most significant she's seen in her career.

Due to the drastic increase in Internet sales, store sizes are shrinking and brick-and-mortar stores are struggling, she says.

In their place, entertainment venues are becoming more common. Tandy points to the current proposal to bring TopGolf to the shuttered Sears department store as a prime example.

Office space needs are also changing, she says. Thanks to technology, many more people work remotely, and business leaders are finding they no longer need the big, fancy offices that were once commonplace. Many companies are finding it possible to downsize their space without losing productivity.

But through all of these changes, Tandy points to the importance of legal counsel when it

comes to documentation, due diligence and negotiation. Quoting Abraham Lincoln, she says that "A lawyer's time and advice are his stock in trade."

Next, I spoke with Barry Hines, a partner at Frost Brown Todd. Barry's practice is heavily concentrated in representing lenders and servicers in connection with commercial real estate transactions.

Reflecting on developments in real estate law, Barry brought up a topic that may be under the radar for many of us, namely Delaware Statutory Trusts. He posed the following situation, formatted as a law school exam:

Question: Your client, who is age 70 and has owned an apartment complex for 30 years, is about to sign a contract to sell her apartment complex for a nice profit. Her accountant advised that she is going to incur a \$250,000 capital gain tax if she goes through with the sale. Your client wants to sell the apartment complex, invest the net proceeds to generate income and retire. She can't afford a property manager and she's tired of dealing with tenants who don't pay rent and who call at all hours to complain about the plumbing or HVAC system, among other things. However, she does NOT want to pay a \$250,000 capital gain tax. What do you recommend?

The issue is that the client wants the best of both worlds—she does not want to pay capital gain tax and she also does not want the responsibility of ownership of real property. That means a traditional IRC § 1031 like-kind exchange is not an option.

The best option for the client is to invest in a Delaware Statutory Trust (DST) that qualifies for IRC § 1031 treatment under Rev. Rul.

2004-86. This will enable the client to avoid a \$250,000 capital gain tax liability, will relieve her of the responsibility of managing and operating the replacement property and will provide retirement income with an investment vehicle that is significantly more liquid than ownership of real property.

In 2004, Barry continued to explain, the Internal Revenue Service issued a revenue ruling regarding the federal tax classification of a multi-owner DST formed to hold rental real property. As he said: "if the DST's activities are limited to the collection and distribution of income associated with the rental real property and the DST has a single class of interests, then the DST is respected as a trust, and thus a beneficial ownership interest in a DST qualifies for a tax-deferred like-kind exchange ... Stated differently, a properly structured DST allows investors to sell investment real estate, defer the capital gain taxation from the sale through IRC § 1031, and buy a beneficial ownership interest in a DST as the replacement property on a tax-deferred basis.

"The advantages of a DST include the following: (i) deferral of capital gain taxes upon sale of property; (ii) ease of identifying a replacement property in the statutory identification period (i.e., DST syndicators are always in the market selling beneficial ownership interests in DSTs); (iii) manageable minimum investment (i.e., generally, a DST investor can invest as little as \$100,000); (iv) elimination of all day-to-day management responsibilities; and (v) opportunities for appreciation from the real estate held in the DST."

The biggest disadvantage of a DST formed under Rev. Rul. 2004-86, Barry told me, is

that it is limited in its ability to take certain actions with respect to the property that affect its management and the role of a current or beneficial owner.

As Barry went on: "if the DST functions outside the scope of the limitations set forth in the revenue ruling, it will be classified as a business entity and lose the benefit of IRC § 1031. However, there are a variety of structuring techniques, such as a master lease of the property by the DST to an affiliate, that alleviate some of the limitations, particularly the prohibition on entering into new leases."

In short, Barry concluded, "although the IRS has set forth rigorous standards the DST must meet in order to be classified as a trust and receive the benefit of IRC § 1031, a DST, with appropriate structuring to accommodate leasing activities at the property, is still likely the best option to accomplish the client's objectives."

I want to extend my thanks to both Tandy and Barry for sharing their time and expertise on this topic. Real estate law shapes the built environment that all of us inhabit. Their work has consequences that affect the pocketbooks of owners and developers, as well as revenues that accrue to the government. We are lucky to have people of their caliber—and of course there are many others—here in Louisville.

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. ■



Reflections

(Continued from page 3)

to generate certain grade scores on standardized tests, and while many try desperately to exercise their innate training and skills to help students think, analyze and be prepared to become learned members of society, they are constantly constrained and controlled by state mandates. Even in some private schools, the trend lends toward a business model with administration and parents pressuring teachers to assure a child's admission to a prestigious private school.

Returning to the paradigm between the law as a profession versus a business, I will note the example of an attorney I know whose skills as a barrister are exemplary. The number of cases he has tried and won would match or exceed the record of his most seasoned peers. His skill in "cutting to the chase" and seeing through the legal fog is exceptional. Conversely, his personality is that of an eccentric non-conformist with a quirky sense of humor. He rankles at client dictates, guidelines and procedures. In short, though these characteristics would have had little effect on his demand as an advocate 40 or 50 years ago, today his phone is often silent in favor of competitors less skilled. There is simply no place for his contrarian personality in the context of business constraints—despite his professional acumen.

My thesis, now explained, is not to vilify businesses which are doing what they know how

to do best—control costs and provide a uniform, quality product. My words of caution are directed to my brothers and sisters of the Bar. We must not passively and by inches abandon our identity as professionals—bound by an ethical code to our clients and dedicated to using our special skills to provide our best representation. While we are obviously focused on making a reasonable income commensurate with our talents, we must never fall victim to becoming the greed driven straw man that is offered up to justify greater business constraints on our professional judgment. No lawyers seek to bite the hands that feed them, but if those hands can gently be guided to restoring the balance between honoring business interests without compromising professional judgment, the Bar and society as a whole will be to the better.

Sincerely,

Gerald R. Toner
LBA President



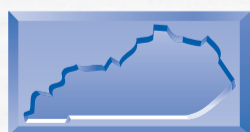
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When Value and Values Align: The Case of Corporate Support of Legal Aid

Julia M. Leist

For nearly a century, Legal Aid Society has been a mainstay of our legal community and social safety net. Sometimes quietly, sometimes not, we pursue justice for the most disadvantaged in our community, upholding what Alexander Hamilton called “the first duty of society.”

The very nature of our work requires that we remain flexible—always adjusting to the changing needs of our neighbors, always learning new techniques and technologies to reach a growing number of qualifying Kentuckians, and always seeking new and sustainable funding sources when economic or other winds change. But holding firm to the center is the principal that unites us all as Americans and legal professionals, the optimistic ideal that *justice is for all*.

A strong relationship with the private bar has been critical to our lasting success. Large law firms to solo practitioners have supported Legal Aid Society both financially and through extensive pro bono work for decades. It is through these established partnerships that Legal Aid Society has been able to survive significant reductions in federal, state, and local government funds.

As traditional funding streams face continued challenges, it is necessary that Legal Aid Society looks beyond the profession. After all, the law does not apply just to those who practice it; it intersects with all aspects of our lives and in all areas of the economy. Perhaps, it could be argued, nowhere more than in the business sector.

A corporation is, as Chief Justice John Marshall wrote, “an artificial being, invisible, intangible, and existing only in the contemplation of the law.” Being a very creature of the law, corporations have great incentive to ensure that the landscape from which it springs and is governed is fundamentally fair.

Kenneth C. Frazier, Chairman and CEO of Merck & Co., Inc. in an article entitled *Why Big Business Should Support Legal Aid* for the Winter 2019 issue of the journal *Daedalus* wrote, “By ensuring that everyone, regardless of his or her circumstances, has a path toward equal justice, a trustworthy legal system promotes social cohesion. Business has an interest in promoting this goal. The rate of which societies fall apart, and chaos ensues, accelerates exponentially when people have no stake in the social order, or at least believe they do not. Companies—no matter how strong or profitable—simply cannot operate in such an environment.”

Additionally, corporations gain if the justice system efficiently and fairly addresses and assists their employees with legal disputes; the workplace will be less disruptive and less earnings lost. For example, when a domestic violence survivor’s civil legal needs are met, he or she misses less work due to health problems resulting from violence.



General Counsel of Atria Senior Living, Inc., Bryan Hudson and 2018 Brown-Forman Spirit of Justice Award recipient, Stephen Reily, at the 2018 Brush, Bottle, and Barrel of the Bluegrass held at Atria Senior Living’s corporate office in Downtown Louisville.

The employee will be more productive while at work and more likely to be able maintain employment. In short, when employees suffer businesses suffer.

Civil legal aid can have a profound economic impact in the community, strengthening neighborhoods and building healthier and more financially stable individuals and families. Expungement services, for example, not only transform the lives of individuals, but create a broader workforce, utilizing skilled and talented individuals that have since been ignored due to prior criminal records. Some economic impact studies have found that investment in civil legal aid sees a \$6 to \$11 dollar return for every \$1 spent. Civil legal aid is GOOD business.

Over the past decade, Legal Aid Society has made a conscious effort to strengthen our ties to the business community. Through

campaigns like our annual Corporate Challenge to offering sponsorship opportunities, Legal Aid Society is working to connect corporations and their legal departments to the mission of Legal Aid and communicating that corporate values and our values are not in opposition, but are mutually beneficial.

Legal Aid Society’s partnership with Atria Senior Living, Inc. is a case study in good corporate citizenry. Atria Senior Living and Legal Aid Society began working together on Legal Aid Society’s annual Brush, Bottle and Barrel of the Bluegrass event in 2010 when Atria catered the event for the first time.

In 2016, when Atria first hosted the Brush, Bottle, and Barrel, the event was truly transformed, elevating it to a sophisticated and more profitable affair. By putting the weight and resources of a corporation behind the event, Atria and its team leveraged Legal

Aid’s resources (time and personnel) spent on planning the event, and allowed more room for growth of both attendance and income.

The event has not only become synonymous with the excellent food catered by Atria’s Executive Chef, Chad Welch, but has become a staple in our community and allowing us to reach beyond the legal community. Win. Win.

Beyond the Brush, Bottle, and Barrel of the Bluegrass, Legal Aid Society has seen tremendous support from Atria’s corporate legal team, led by General Counsel, Bryan Hudson. The Atria legal team has helped to raise additional funds, champion continued corporate support, and encourage members to provide pro bono assistance.

It is this type of corporate leadership that can push Legal Aid Society into the next century, opening doors for new sources of support, both in time and money. Bryan has also served for many years on both the Brush, Bottle and Barrel Host Committee and Legal Aid Society’s annual Justice for All Campaign Committee.

“Atria’s longstanding relationship with Legal Aid Society is very important to our company, not just the legal department. We believe in the mission of Legal Aid Society and are honored to provide support to the organization over the years. Our legal team is looking at ways that we can continue to be good community stewards and increase our involvement with Legal Aid. We look forward to growing our work together,” Hudson said.

“Corporate engagement in strengthening legal services in the United States is an expression of corporate self-interest,” wrote Mr. Frazier. “The best corporate citizens see *value* and *values* as aligned. They recognize the true reward of devoting time and energy into ensuring adequate justice: the opportunity to improve many lives.”

Julia M. Leist is the Director of Development and Communications at Legal Aid Society. ■

Thank You!

Thank you to Legal Aid Society’s corporate partners for their generous support of our programs and/or the Brush, Bottle, and Barrel of the Bluegrass.

Aetna*	LG&E and KU Energy*
Alltrade Property Management	MCM CPAs & Advisors
Atria Senior Living	NuYale Cleaners
Brown-Forman Corporation	PNC
Fifth Third Bank	GE, A Haier Company
Humana	Texas Roadhouse
Lawyers Mutual Insurance Company of Kentucky	YUM! Brands, Inc. and KFC

*100 percent participation from in-house legal team during the 2018 Corporate Challenge.

It's A Slippery Slope

Earl L. Martin III

Across

- 1 ___ *Macabre*
 6 Target for manicuring
 10 Yearn (for)
 14 NBA star Shaquille
 15 Like eggshell, maybe
 16 Volunteer's pronouncement
 17 First part of riddle
 20 Not pro
 21 "Give me ____, I'll be right with you"
 22 Tighten, in a way
 23 Introduction for Diego or Antonio
 25 ___ and kin
 27 Second part of riddle
 35 Poetic adverb
 36 "Get over it"
 37 Type of column
 38 Informal address of respect
 40 Scottish topping?
 42 Silver of stats fame
 43 Bars
 46 Subject of a jingle set to the theme of "Dagnet"
 49 Term of an engagement letter
 50 Third part of riddle
 53 Eyelid bump
 54 Actress Lucy
 55 Where one might dine *al fresco*
 58 Nincompoop
 61 Yarn
 65 Answer to riddle
 68 School grps.
 69 Knocked off
 70 Like most horse farm settings
 71 Bridge position
 72 Advance
 73 It might be set in a ring

Down

- 1 Qatar capital
 2 Poetic adverb
 3 Scamander, of *Fantastic Beasts and Where to Find Them*
 4 Cruelty
 5 Yale student, informally
 6 Permits
 7 Joint liability?
 8 Despite how it sounds, what reckless drivers often have
 9 Pencil too short to sharpen
 10 Most crucial component

1	2	3	4	5	6	7	8	9	10	11	12	13	
14					15				16				
17					18				19				
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			23	24			25	26					
27	28	29				30	31				32	33	34
35				36				37					
38			39			40		41		42			
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					72					73			

- 11 Minnesota Representative Ilhan
 12 Number of circles of Hell in work by 18-Down
 13 Bother, with "at"
 18 See 12-Down
 19 Always ___ behind
 24 Like a PhD candidate who just can't finish, for short
 26 Apostrophe-less possessive
 27 Dancer's teammate, for one
 28 Requirement of some parks
 29 Boiling
 30 What 40-Across is
 31 Send
 32 Goof-up
 33 Horse opera, by another name
 34 Naval force
 39 Like a stone that has rolled the least?
 41 Buttoned up
 44 Don
 45 Act like James Bond
 47 Noggin
 48 Like chem or bio
 51 Shrink
 52 Production
 55 Subject of a Magritte painting, or not
 56 Boy or girl lead-in
 57 First word in "A Visit from St. Nicholas"
 59 Crack into
 60 Former Connecticut Senator Christopher
 62 Dynamic start?
 63 Like Jack Sprat's diet
 64 *Vogue* competitor
 66 Up to, informally
 67 Spoken "cue" followers?

Answers on page 23.

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



Litigation Preparedness in the Age of E-Discovery

Part 3: Digital Forensic Investigations

Dr. Andy Cobb

“
(Digital forensic experts) work with specialized tools can that look past the file system structure ... and reconstruct files that have been deleted.

In the previous parts of this series, we discussed how electronically stored information (ESI) should be handled internally so that it could be searched and reviewed for production in a legal matter. This review would normally be handled by legal professionals, under the supervision of counsel. Often, however, either ESI does not come in the form of easily readable documents, the documents of interest cannot be found, or a deeper analysis of documents—and information surrounding those documents—is required. These scenarios require a deeper look at the underlying data, in the form of a digital forensics investigation.

Digital Forensics Investigations

Typical cases that require a forensic investigation by a digital forensics expert (DFE) are (1) those that have dates and times that are important to the case, (2) cases in which data has been deleted or destroyed, (3) those in which opposing counsel has hired an expert, (4) highly contentious cases, or (5) cases in which criminal activity has been alleged.

For example, if a former employee is accused of taking intellectual property or otherwise sensitive information when they left the organization, a digital forensics expert can identify what the employee was doing on their work computer prior to their departure and potentially identify any information that may have been taken, including related

dates and times. A typical former employee investigation might include several of the following tasks:

- Identify USB devices connected and files related to those devices
- Identify files recently deleted
- Identify e-mail attachments
- Identify and investigate cloud storage accounts

Deleted Data

Stored data works like a book. Books have a table of contents and the actual content, which is usually divided into chapters or sections. The table of contents points to the location (page number) of the chapter or section in the actual content. File systems work the same way, so that when a file is deleted by a user, the act of deleting that file is analogous to deleting an entry in the table of contents. With a book, the result of deleting the entry is that the table of contents entry is struck from the table of contents, but the actual chapter or section in the book remains completely intact. Similarly, when a file is deleted, only the pointer to the file is deleted, not the file itself. In fact, the only way to truly delete a file is to overwrite it with other data.

DFEs work with specialized tools can that look past the file system structure (the table of contents in our book analogy) and reconstruct files that have been deleted. Often only fragments of the files are available. But this is sometimes enough to be valuable in a legal matter.

File Metadata

Many investigations involve the timing of events. One of the most common requests we receive is to construct a timeline of activities performed on a device or set of devices. One of the methods used to identify activity related to documents or files is to analyze file metadata. File metadata is information about a file, like the date and time a file was created or modified, or the size and location of a file. File metadata is sensitive in that it can change when files are manipulated, such as when they are opened or copied from one medium to another medium. Metadata can also sometimes be destroyed when a file is deleted.

Certain files actually contain metadata inside them, called internal metadata. For example, Microsoft Word documents contain information like the last user to edit the document. This information actually stays intact when a file is deleted. Since it's internal to the file itself, even if the filesystem has lost metadata related to the file, the information inside the file may still be intact. Internal metadata can be helpful in investigations to corroborate other date information or when file metadata is not available.

Working with a Digital Forensics Expert

Typically, digital forensics experts are retained by the client to work under the direction of counsel. Often a DFE is hired as a consulting expert, in which the DFE assists in assessing

preliminary analysis of the data. DFEs are sometimes asked to draft letters, declarations or affidavits related to their findings. Those findings can then be used as part of court testimony or to be challenged by an opposing party. Counsel may “convert” the consulting expert to a testifying expert if counsel determines that the DFE’s testimony could be helpful evidence in their case or may help explain complex technological information to the judge or jury.

Since storage devices may contain volatile data, it's important to properly handle the original data from the start so it is copied in a way that (1) preserves the original data, and (2) creates an exact copy. This method is called a forensic data collection. Forensic data collections ensure the integrity of the data and minimize the likelihood that the analysis and results that follow will be called into question. Forensically collected data must be handled in such a way that analysis results are consistent and repeatable.

One of the significant changes introduced in the 2017 amendments to the Federal Rules of Evidence (FRE902) was the change in self-authentication. Specifically, the allowance for self-authentication for “Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person...” A properly trained DFE has the necessary qualifications and uses methods of digital identification, also known as hashing.

DFEs can also be helpful for internal investigations, such as human resource issues that crop up. These investigations are not necessarily legal matters; rather they are scenarios in which internal legal counsel, human resource or information technology departments require special expertise in fact-finding.

Conclusion

While counsel doesn't always need the help of a DFE, certain cases require their expertise. Most DFEs will provide a free consultation to discuss your case and provide an estimate and timeframe required to complete their work.

While the tips in this series have been meant to provide general guidelines that can be applied throughout litigation involving electronically stored information, one should always rely on outside counsel with specific experience as well as experts that deal with electronic discovery litigation every day. As similar as they may seem, each matter has specific issues that should be addressed in specific ways.

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. ■



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LBA IN PARTNERSHIP WITH JCUP

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

Thursday, May 9

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

CLE will be held at the Judicial Center, 700 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 BROWN BAG

Qualified Domestic Relations Orders (aka “QDROs”) at Kentucky Retirement Systems

Tuesday, May 14

This program will cover the review and enforcement of Qualified Domestic Relations Orders (QDROs) at Kentucky Retirement Systems. In order for a QDRO to be valid and enforceable by Kentucky Retirement Systems, the QDRO must meet stringent statutory and regulatory requirements. This seminar will provide clear instructions for meeting those requirements as well as explain how a QDRO will be enforced once approved by Kentucky Retirement Systems.

Speaker: **Carrie Bass**, Kentucky Retirement Systems

Time: 11:45 a.m. — Registration; Noon – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$40 LBA Members / \$36 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$20 Government/Non-Profit Members / \$80 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 1.0 CLE Hours — Approved by KBA and Indiana Supreme Court

LBA BROWN BAG

Cell Phone Evidence Preservation & Spoliation, Wear Leveling & Garbage Collection

Wednesday, May 15

This program examines how cell phones store and manage information from an evidence preservation point of view. Information in a cell phone can be irretrievably lost during the normal operation of the phone. We will take a look at how to educate opposing parties on how to preserve the evidence we are looking for, as well as steps we can take to make sure our clients are in compliance with a preservation letter for his or her phone.

Benjamin Bierce consults with attorneys engaged in civil litigation through Revelation Cellular Forensics and is a Detective with the Franklin (IN) police department where he specializes in digital forensics. Bierce is a retired Special Agent with the U.S. Army Criminal Investigation Division and a former Detective with the Indianapolis Metropolitan Police Department.

Speaker: **Benjamin Bierce**, Revelation Cellular Forensics

Time: 11:45 a.m. — Registration; Noon – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$40 LBA Members / \$36 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$20 Government/Non-Profit Members / \$80 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 1.0 CLE Hours — Pending with KBA and Indiana Supreme Court

LBA SOLO/SMALL PRACTICE HALF-DAY

Create the Ultimate Communication Playbook for Your Small Firm: Optimize Your Resources to Sustain and Scale Your Firm, and Ethically Streamline Client Communication

Thursday, May 16

Over 80% of consumers expect an instantaneous response when contacting a business online or by phone. That's pressure almost every solo and small firm lawyer faces to stay competitive and earn new business. But how on earth can you do that without breaking the bank or working around the clock?

In this hands-on session, you will learn how to map out an ideal intake process that can be automated with technology and outsourced support services, so that every visitor on your website and inbound caller receives a prompt and personalized response.

Bonus workbook with templates, samples, and exercises:

Delivered as a “workshop,” this course includes a comprehensive workbook for attendees with dozens of templates, samples, and exercises. With the completed workbook in hand, you will be equipped to build a system custom-tailored to your needs as soon as you return to the office.

Valuable Takeaways:

- Design your intake process with step-by-step expert guidance. By creating a “map” of your lead sources, and then creating forms and follow-up processes for each, you will build a consistent and effective system for qualifying and onboarding new clients.
- Build phone call and web chat scripts for both prospects and clients from proven templates.
- Create processes to streamline appointment booking and payment collection.
- Write a simple and effective four-step e-mail drip campaign to nurture and convert leads.

Outline and more information available on the LBA website: www.loubar.org.

Speaker: **Maddy Martin**, Smith.ai

Time: 8:45 a.m. — Registration; 9 a.m. – 12:15 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 — Pending with KBA and Indiana Supreme Court

LBA ETHICS BROWN BAG

60 Minutes of Ethics: A Crash Course in Not Crashing Your Practice

Friday, May 17

No attorney is immune from ethical shortcomings. Judges, senior partners, junior associates, and solo practitioners have all found themselves in ethical quagmires. When this happens, the consequences can be severe—bar discipline, civil suits, firm break-ups, and possibly even criminal charges. In this course, we will review some recent stories of legal misconduct from all levels of practice. We will also review ethics opinions and case law that can help you avoid landing in similar situations.

Speaker: **S. Coy Travis**, Travis Law Office

Time: 11:45 a.m. — Registration; Noon – 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$40 LBA Members / \$36 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$20 Government/Non-Profit Members / \$80 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 1.0 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, etc., are different. Please visit our CLE Calendar at www.loubar.org for details.

LBA BROWN BAG**To Sue or Not to Sue: Helpful Hints in Collecting More of Your Receivables****Tuesday, May 21**

This program will cover the ethical obligations attorneys have with fee-splitting. Attorney Steve Snow will also cover ways to help manage your accounts receivables more efficiently and effectively.

Speaker: **Steven A. Snow**, Attorney at Law

Time: 10:45 a.m. — Registration; 11 a.m. — 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$80 LBA Members / \$72 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$45 Government/Non-Profit Members / \$160 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 2.0 CLE (Including 1.0 Ethics) Hours — Approved by KBA and Indiana Supreme Court

LBA BROWN BAG**Representing Domestic Violence Cases****Wednesday, May 22**

This is a practical course that provides an overview of the Domestic Violence Assistance Program with Legal Aid. The program will provide an opportunity for you learn the nuts and bolts of protective order cases.

Speaker: **Beth Robinson-Kinney**, Legal Aid Society

Up to **10** LBA members can attend this seminar **FREE** of charge by agreeing to represent **TWO** Legal Aid clients, pro bono, in their domestic relations matters. Please call the LBA CLE Department at 583-5314 for details and/or to register.

Time: 11:45 a.m. — Registration; Noon — 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$40 LBA Members / \$36 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$20 Government/Non-Profit Members / \$80 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 1.0 CLE Hours — Pending with the KBA and Indiana Supreme Court

LBA HUMAN RIGHTS LAW SECTION BROWN BAG**How You Can Help: Immigration Bond Hearings****Thursday, May 23**

Across Kentucky there are many immigrants who find themselves in a life-altering situation when they are detained by Immigration and Customs Enforcement (ICE). Immigration detainees do not have any constitutional rights to representation and often remain in detention for months when they are eligible for bond. Obtaining a bond allows individuals to be with their families and to better prepare for future hearings in their case. This program will provide a step-by-step guide for all attorneys to be able to represent detainees even if they do not have previous experience with immigration law.

Speaker: **Thomas D. Clines**, Clines Law Group

Time: 11:45 a.m. — Registration; Noon — 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$40 LBA Members / \$36 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$20 Government/Non-Profit Members / \$80 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 1.0 CLE Hours — Pending with KBA and Indiana Supreme Court

LBA BROWN BAG**Review of 2019 Kentucky General Assembly****Tuesday, May 28**

This program will provide an overview review of the legislation passed by the 2019 session of the Kentucky General Assembly. Topics will cover both the proposed legislation as well as bills that became laws that will impact the courts and lawyers.

Speaker: **Kelly Stephens**, Administrative Office of the Courts

Time: 10:45 a.m. — Registration; 11 a.m. — 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$80 LBA Members / \$72 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$40 Government/Non-Profit Members / \$160 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 2.0 CLE Hours — Approved by KBA and Indiana Supreme Court

LBA ANNUAL ETHICS BROWN BAG**Client Grab Bag: From Prospective Clients to Deceased Clients, and Other Types of Clients in Between.****Wednesday, May 29**

This seminar will discuss the particular legal ethics and professional responsibility duties and obligations concerning certain types of clients. Issues addressed will be your duties and obligations concerning such clients, problems which can develop regarding such clients, what remedial action, if any, you may or must take, and what action you should not take when confronted with such situations.

The types of clients covered will include:

- Prospective clients
- Missing clients
- Disabled clients
- Perjurer clients
- Difficult clients
- Fiduciary clients
- Deceased clients

Speaker: **Peter L. Ostermiller**, Attorney at Law*Lunch included with advanced registration.*

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

CLE Cancellation Policy: All cancellations must be received by the LBA 24 hours in advance to receive a credit or refund. "No shows" or cancellations received the day of the program will require full payment. Substitutions will be allowed.

Please Note: The cancellation policies for certain programs, e.g. the AAML/LBA Family Law Seminar, KY Commercial Real Estate Conference, MESA CLEs, etc., are different. Please visit our CLE Calendar at www.loubar.org for details.

LBA BROWN BAG**Expert Forensic Engineering Investigations****Thursday, May 30**

This seminar will provide attendees with an understanding of all the components of expert forensic engineering investigations from an expert's perspective. Attorneys will have better control and efficiency in processing such cases. The presentation will include a review of the various elements of how an engineering failure can occur and how to proceed in investigating and prosecuting such cases. Key case examples will be introduced to illustrate and provide clarity to important concepts. Although the focus of the cases is geotechnical engineering in nature, many of the concepts or principles disseminated through these cases would be applicable to prosecuting other expert engineering or forensic cases. Also, at the end of the presentation, some advice is provided from an expert's perspective.

Speaker: **Gennaro G. Marino, Ph.D., P.E., D.GE**, Marino Engineering Associates, Inc.

Time: 10:45 a.m. — Registration; 11 a.m. — 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$80 LBA Members / \$72 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$40 Government/Non-Profit Members / \$160 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 2.0 CLE Hours — Approved by KBA and Indiana Supreme Court

LBA LABOR & EMPLOYMENT LAW SECTION IN PARTNERSHIP WITH THE LBA GENDER EQUALITY COMMITTEE BROWN BAG**Sexual Harassment in the Legal Profession: A Review of Kentucky Law and the Rules of Professional Conduct****Tuesday, June 4**

You may have attended programs that discuss Kentucky law regarding sexual harassment, but this program specifically focuses on sexual harassment in the legal profession. While the program includes a review of Kentucky law, our panelists will also delve into how the Rules of Professional Conduct are implicated when sexual harassment occurs in the legal profession. In addition, panelists will review a series of scenarios to provide you with practical guidance for identifying and addressing these types of situations in your practice.

Speakers: **Demetrius O. Holloway**, Stites & Harbison, **Soha T. Saiyed**, Abney Law Office and **Robyn Smith**, Abney Law Office

Time: 10:45 a.m. — Registration; 11 a.m. — 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$80 LBA Members / \$72 Sustaining Members / \$20 Paralegal Members / \$15 for qualifying YLS Members / \$40 Government/Non-Profit Members / \$160 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee) \$8.50 for lunch, if ordered
Credits: 2.0 CLE Hours — Pending with 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 on Thursday, June 6, for this full-day workshop. You'll come away with new skills, new strategies, and new confidence.

More details on this program can be found on the LBA website, 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 / \$75 Paralegal Members / \$50 for qualifying YLS Members / \$120 Government/Non-Profit Members / \$480 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee)
Credits: 6.0 CLE Hours — Approved by KBA and Indiana Supreme Court

The seminars listed here were scheduled at the time of printing. For a full list of CLE programs and for complete details or to register, visit the LBA website at www.loubar.org or call the CLE Department at (502) 583-5314.

LBA IN PARTNERSHIP WITH JCUP

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

Thursday, June 13

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

CLE will be held at the Judicial Center, 700 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 NATIONAL SPEAKER

Stuart I. Teicher "The CLE Performer"

6/19/19



LBA NATIONAL SPEAKER ETHICS DAY-LONG

Wednesday, June 19

Speaker: **Stuart I. Teicher**, the CLE Performer

Tech Tock, Tech Tock: Social Media and the Countdown to Your Ethical Demise

(morning session)

Social media has become integrated with the practice of law, but the ethics rules are struggling to keep up. Sure, there are obvious concerns that everyone is talking about (like confidentiality), but there are hidden hazards that few people consider (our use of social media outside the office really matters). In this sometimes scary, sometimes empowering program, internationally renowned teacher Stuart Teicher, Esq., "the CLE Performer," will teach lawyers about the ethical dangers of using this new (and expanding) technology.

Topics include:

- The potential ways that lawyers might breach Rule 1.6 (Confidentiality)
- How LinkedIn profiles and other social media posts might trigger the rules governing attorney advertising
- How using social media to investigate lead to deceptive practices in violation of Rule 8.4
- The ethical concerns about related technologies like texting (communication issues, Rule 1.4), and using the cloud (Rule 1.15)
- And much more

Speaker: **Stuart I. Teicher**, CLE Performer

Time: 8:45 a.m. — Registration; 9 a.m. — 12:15 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$237 LBA Members / \$214 Sustaining Members / \$119 Paralegal Members / \$75 for qualifying YLS Members / \$120 Government/Non-Profit Members / \$475 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee)
Attend BOTH sessions and save 15% (must call the LBA to register and receive the discount!)
Credits: 3.0 CLE Ethics Hours — Approved by KBA and Indiana Supreme Court

All cancellations must be received by the LBA 72 hours in advance to receive a credit or refund. Substitutes will be allowed.

The Fear Factor—How Good Lawyers get into Bad Ethical Trouble

(afternoon session)

The scariest stories that lawyers hear are those tales where responsible lawyers who care about acting in an ethically appropriate way and end up getting into disciplinary trouble. In this program, Stuart Teicher, Esq., "the CLE Performer," reviews key rules that most lawyers sort-of know but might not appreciate in detail. Learn the key things to watch out for in misrepresentation (Rule 4.1), conflicts (Rule 1.7), reporting misconduct (Rule 8.3), and more.

You'll leave this seminar a safer, stronger attorney.

Time: 12:45 p.m. — Registration; 1 p.m. — 4:15 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$237 LBA Members / \$214 Sustaining Members / \$119 Paralegal Members / \$75 for qualifying YLS Members / \$120 Government/Non-Profit Members / \$475 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee)
Attend BOTH sessions and save 15% (must call the LBA to register and receive the discount!)
Credits: 3.0 CLE Ethics Hours — Approved by KBA and Indiana Supreme Court

All cancellations must be received by the LBA 72 hours in advance to receive a credit or refund. Substitutes will be allowed.

LBA NATIONAL SPEAKER DAY-LONG

The New Negotiation Advantage Winning Others Over vs. Winning Over Others

Thursday, June 20

DON'T BELIEVE IT! Don't believe for a second that being dogmatic ... even when you get your way ... is the same thing as being *influential*!

Strongly felt differences that end up in conflict initiate the intuitive path for most of us, whether in business or personal relationships - to win - EVEN at the EXPENSE of OTHERS. The road from confrontation to agreement is not the elimination of these differences. That is not even possible. So, how do you "win" the cooperation of others in an environment of such strongly felt differences? It is accomplished by mastering the negotiating principles consistent with and supported by both research and experience.

Ultimately, if people are critical to your success, you must know and master the means to win their hearts as well as their minds. Successfully guiding your client and/or opposing counsel to agreement will only come when you can - clearly - convincingly - persuasively communicate the benefit to them...to win them over not win over them.

INTERESTING is far removed from USEFUL! Therefore, this session is unlike any other program you have attended. It is not a listen and learn program; instead, you will - listen - learn - and do each of the following aspects.

Program Highlights:

- The 3 Negotiating Axioms that effect the outcome of every negotiation and the real world application of each
- The 3 Predictable forms of Resistance and how to overcome each
- Appropriate responses to each "critical choice point" of the "Cognitive Mind Map" leading to YES!
- Probing for and discovering underlying interests and motivations
- "Pre-Framing" Questions to redirect conflict to cooperation
- The 4 Basic Personalities and how to structure your presentation to accommodate each
- A research-based and experience proven strategy for creating and maintaining trust with your clients and/or opposition
- A 5-Step Strategy for handling and overcoming last minute objections

For more information and the agenda visit the LBA website at www.loubar.org.

Speaker: **Edward D. Hatch**, The Professional Education Group

Time: 8:15 a.m. — Registration; 8:30 a.m. — 4:30 p.m. — Program
Place: LBA, 600 W. Main Street
Price: **Early-bird (prior to May 23):**
 \$420 LBA Members / \$378 Sustaining Members /
 \$210 Paralegal Members / \$199 for qualifying YLS Members /
 \$210 Government/Non-Profit Members / \$840 Non-members

After May 23:
 \$520 LBA Members / \$478 Sustaining Members /
 \$310 Paralegal Members / \$299 for qualifying YLS Members /
 \$210 Government/Non-Profit Members / \$940 Non-members
Add On: \$75 printed handouts (electronic is included with registration fee)
Credits: 6.0 CLE Hours — Approved by KBA and Indiana Supreme Court

{Registration includes: electronic course material, continental breakfast, and a box lunch}

Cancellation Policy: All cancellations must be received by the LBA by June 17, 2019 to receive a credit or refund. Sorry, financial commitments do not allow us to refund for cancellation or "no show" received by the LBA AFTER JUNE 17, 2019; however a substitute may attend for a registered participant.

P.E.G. guarantee of registrant satisfaction — if any registrant is not convinced that her/his understanding of the topic has improved as a result of attending the program, P.E.G. will refund 100% of that registrant's paid tuition.

FAMILY LAW DAY-LONG

Nuts & Bolts of Family Law

Friday, June 21

This annual primer on litigating the domestic relations case from A to Z is always a popular program. The program is a valuable update for those attorneys currently practicing family law and for those who might practice in this area in the future. Speakers will review the forms and procedures needed to take a case from client interview to entry of a decree and give tips on how to keep the case simple and keep it moving quickly to a resolution.

Up to **10** LBA members can attend this seminar **FREE** of charge by agreeing to represent **TWO** Legal Aid clients, pro bono, in their domestic relations matters. Please call the LBA CLE Department at 583-5314 for details.

Agenda and speakers to be announced.

Time: 8:45 a.m. — Registration; 9 a.m. — 5 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$240 LBA Members / \$216 Sustaining Members /
 \$20 Paralegal Members / \$15 for qualifying YLS Members /
 \$120 Government/Non-Profit Members / \$480 Non-members
Add On: \$15 printed handouts (electronic is included with registration fee)
Credits: 6.0 CLE Hours — Pending with KBA and Indiana Supreme Court

LBA IN PARTNERSHIP WITH THE KY CPA SOCIETY

Estate Planning Conference: Raise the Bar

Wednesday, June 26

This conference is designed for attorneys, CPAs and other professionals advising clients and/or planning their own or their organization's estates.

Topics:

- Ethics of trust administration: Advising clients on roles as a trustee
- Panel Discussion: Practical pointers on IRS audits
- Blended families
- Tax update panel
- Retirement benefits and wealth management

Speakers: **Kelli Brown**, Goldberg Simpson; **Christopher Egan**, Ackerson & Yann; **Bea Rosenberg**, DMLO CPAs; and more

Fee Includes: electronic manual, continental breakfast, lunch, and refreshment breaks. If you have special dietary or other needs, please contact the Society Office, (502) 266-5272.

Group Discount: Register four or more from the same firm or company at the same time and save \$25 per person. All courses include electronic manuals. Printed copies are available for \$30, please order when registering.

Registration: The LBA is not accepting registrations for this seminar. Register online at kycpa.org.

Time: 7:30 a.m. — Registration; 8 a.m. — 4 p.m. — Program
Place: KyCPA Society, (Gratz Education Center) 1735 Alliant Ave., 40299
Price: **Early-bird (prior to June 12):** \$324
After June 12: \$374
Add On: \$30 printed handouts (electronic is included with registration fee)
Credits: 7.0 CLE Hours — Pending with KBA and Indiana Supreme Court

Thank you to our sponsor: Corporate Finance Associates

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

10TH ANNUAL LIVELY M. WILSON MEMORIAL LECTURE SERIES ON ETHICS, PROFESSIONALISM AND CIVILITY

Thursday, June 27

Mark your calendars for the 10th Annual Session of the Lively M. Wilson Memorial Series on Professionalism (formerly known as the Louis D. Brandeis Inn of Court Annual Ethics Program).

Speakers: to be announced

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

This CLE is a partnership with The Louis D. Brandeis Inn of Court, the Louisville Bar Association and Stites & Harbison, PLLC

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)
 Lunch included
Credits: 2.0 CLE Ethics Hours — Pending with KBA and Indiana Supreme Court

The seminars listed here were scheduled at the time of printing. For a full list of CLE programs and for complete details or to register, visit the LBA website at www.loubar.org or call the CLE Department at (502) 583-5314.

LBA IN PARTNERSHIP THE AMERICAN CONSTITUTIONAL SOCIETY

U.S. Supreme Court Review

Friday, June 28

The American Constitution Society and the LBA's Appellate Law Section invite you to their sixth annual U.S. Supreme Court Review CLE program. The seminar will address the key cases before the U.S. Supreme Court during October Term 2018. The court will recap key opinions from the previous year, discuss any new or continuing trends at the Court, and preview the upcoming Term.

Speakers include: **Michael P. Abate**, Kaplan & Partners and more, TBA

Lunch included with advanced registration.

Time: 10:45 a.m. — Registration; 11 a.m. — 1 p.m. — Program
Place: LBA, 600 W. Main Street
Price: \$90 LBA Members / \$72 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 Hours — Approved by KBA and Indiana Supreme Court

LBA Ethics Webinars

Sean Carter

Mesa CLE Seminars

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



The Truth, The Whole Truth and Nothing But the Truth: The Ethical Imperative for Honesty in Law Practice

Tuesday, May 7 | 1:00 p.m. - 2:00 p.m. | 1.0 CLE Ethics Credit

Dr. Martin Luther King once said, "A fact is the absence of contradiction, but the truth is the presence of coherence." As lawyers, we are duty bound to be more than just factual. Lawyers must tell the truth to clients, judges, and even opposing counsel and third parties. In this eye-opening webinar, legal humorist Sean Carter will deal frankly with the very human inclination for dishonesty and explain how to avoid the traps from which dishonesty most often springs. In doing so, he will draw upon current and past nominees from his annual Ethy Awards to show the consequences of dishonesty.

Show Me The Ethics!: The Ethical Way to Bill for Legal Services

Tuesday, May 14 | 1:00 p.m. - 2:00 p.m. | 1.0 CLE Ethics Credit

While it is important for lawyers to be compensated for their services, it is even more important for lawyers to use ethical billing and collection practices in securing such compensation. Drawing on examples provided by current and past nominees from his annual Ethy Awards for the worst ethical behavior, Sean Carter will provide a poignant reminder of how NOT to bill clients and collect fees. And in the process, he will reinforce the relevant legal ethics principles underlying such practices.

The 2019 Ethy Awards

Saturday, May 18 | 10:00 a.m. - noon | 1.0 CLE Ethics Credit

Each year, Hollywood celebrates the best performances in motion pictures at the Oscars. Well, in this program, we note the worst ethics violations in the legal profession at the Ethys. Sean Carter will host the festivities and announce the award winners in such categories as: Worst Original Excuse, Best Courtroom Outburst, Most Creative Billing, Least Competent, and much more. In the process of recapping some of the most egregious instances of unethical behavior, Mr. Carter will demonstrate how the rest of us can avoid more common ethical violations.

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

Tuesday, May 21 | 1:00 p.m. - 2:00 p.m. | 1.0 CLE Ethics Credit

While it is important for lawyers to be compensated for their services, it is even more important for lawyers to use ethical billing and collection practices in securing such compensation. Drawing on examples provided by current and past nominees from his annual Ethy Awards for the worst ethical behavior, Sean Carter will provide a poignant reminder of how NOT to bill clients and collect fees. And in the process, he will reinforce the relevant legal ethics principles underlying such practices.

Nice Lawyers Finish First

Wednesday, May 29 | 1:00 p.m. - 2:00 p.m. | 1.0 CLE Ethics Credit

It's been said that nice guys finish last. And while that might be true in the rough and tumble arenas of politics, professional prize fighting and marriage, nothing could be further from the truth in the practice of law. Zealous representation doesn't require us to be zealots. In fact, the most effective representation requires just the opposite. Nice lawyers finish first... and so do their clients!

Place	Online. Visit the LBA website calendar for registration link: www.loubar.org/calendar/events
Price	\$55 LBA Members (per credit hour) \$125 Non-Members (per credit hour) \$25 Paralegal Members
Credits	CLE Ethics Hour – Approved Please note: This webinar counts as live CLE credit

Due to the partnership with Mesa CLE, the LBA will NOT be accepting registrations for these webinars.

A LINK TO REGISTER IS PROVIDED ON THE LBA WEBSITE'S CLE CALENDAR: WWW.LOUBAR.ORG.

MISS A LIVE WEBINAR?

No worries! The LBA and MESA CLE have partnered to offer ON Demand CLE programs. Visit the On-Demand CLE page on the LBA website at: www.loubar.org/online-cle/



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 May 31!

For details or an application visit www.loubar.org or contact Lisa Anspach, lanspach@loubar.org, (502) 583-5314.

Creditor, You Got to Let Me Know, Should I Stay or Should I Go?

Christopher B. Madden

On March 4, 2019, the Bankruptcy Appellate Panel of the Sixth Circuit (BAP) held in *Wohleber v. Skurko (In re Wohleber)* that a creditor has an affirmative duty to prevent a non-bankruptcy court from continuing collection activity in violation of the automatic stay.

The automatic stay of section 362(a) of title 11 of the United States Code (the "Bankruptcy Code") serves as a fundamental debtor protection and promotes the goal of equal treatment among creditors in bankruptcy. Under section 362(a), the filing of a bankruptcy petition operates as a stay of the commencement or continuation of any action or proceeding against the debtor or the debtor's estate, or any action to exercise control over property of the debtor's estate, which relates to a pre-petition claim against the debtor.

Subject to certain exceptions, the automatic stay requires creditors to immediately cease any efforts to collect pre-petition claims against the debtor by non-judicial or judicial means, and to maintain the status quo as it existed prior to bankruptcy. Generally, the responsibility to enforce the automatic stay is placed on creditors. Where circumstances impose a duty on creditors to act affirmatively in order to maintain the status quo, courts have found a refusal or failure to take action to constitute an "act" in violation of the automatic stay.

Most often, courts apply this rule where a creditor fails to reverse its own action which would otherwise constitute a stay violation (e.g. failing to return property of the bankruptcy estate). In *Wohleber*, the BAP joined several other courts in extending this reason-

ing to hold that a creditor has an affirmative duty to stop a state court from continuing a civil contempt proceeding in violation of the automatic stay. Although in *Wohleber*, the state court, not the creditor, committed violations of the stay, the BAP held that the creditor had a duty to prevent the violations and may be held liable for passively failing to do so.

The BAP's reasoning could be applied to other scenarios in which a non-bankruptcy court or other party is poised to violate the automatic

stay, and the creditor holding the claim at issue fails to take preventative action.

The State Court Contempt Proceeding

The automatic stay dispute in *Wohleber* arose out of divorce proceedings between the

meeting and again asked the husband's counsel whether he had any case law or authority contrary to the conclusion that the automatic stay did not apply. The husband's counsel did not have any such contrary authority.

The state court judge sentenced the husband to 30 days in jail, provided that he would be released earlier upon payment of the property settlement. The husband spent the next 10 days in jail until he was released by an agreed order holding his contempt in abeyance until the completion of his bankruptcy.

After the debtor-husband was released from jail, he dismissed his pending bankruptcy case because he had lost confidence in his attorney. The wife then filed a motion in the state court to reimpose the contempt sentence. In March 2014, the husband then filed a second chapter 13 bankruptcy case and the divorce proceeding was again stayed pending the resolution of the second bankruptcy case.

Bankruptcy Court Finds Defendants Not Liable for the Stay Violations

Nearly three years after his jail sentence, the husband filed an adversary proceeding in his bankruptcy case seeking damages under section 362(k) of the Bankruptcy Code for violations of the automatic stay by his former wife, her attorney and the state court judge. The bankruptcy court subsequently dismissed the state court judge on the grounds of judicial immunity.

After the husband's presentation of evidence at trial, the bankruptcy court granted the defendants' motion for judgment on the partial evidence. The bankruptcy court implicitly found that the state court's contempt sentence was a violation of the automatic stay. However, as the contempt sentence was an action of the state court judge, the wife's and her counsel's liability turned on whether they had an affirmative duty to take action to stop the sentencing hearing from proceeding.

The bankruptcy court found that, because the state court was acting on its own contempt order, there was no motion for the wife to withdraw to stop the sentencing. The bankruptcy court further noted that the state court judge was fully aware of the issue of the automatic stay, and that short of waiving the property settlement claim at the hearing, the bankruptcy court did not see what else the wife and her counsel could have done to stop the sentencing. Finding that the circumstances did not give rise to a duty to act, the bankruptcy court concluded that the wife and her counsel did not themselves violate the automatic stay.

BAP: Defendants "Had an Affirmative Duty to Prevent the Collection Activity"

On the debtor-husband's appeal, the Sixth Circuit BAP first addressed the issue of whether the continuation of the contempt proceeding against the husband and his confinement were violations of the automatic stay. The BAP began by noting that a property division awarded in a divorce proceeding is a debt of the debtor, and that absent an exception to the automatic stay, the continuation

(A) creditor cannot remain silent and allow a non-bankruptcy court to proceed with any action to enforce its pre-petition claim against the debtor in violation of the automatic stay, even if the court is proceeding on its own order.

debtor-husband and his former wife which preceded the husband's chapter 13 bankruptcy. The Ohio state court granted their divorce and entered a marital property settlement in the wife's favor in 2006. In October 2012, after several appeals, the state court ordered the husband to pay the wife approximately \$36,500 for her share of the marital estate within 21 days. The parties litigated and appealed several issues relating to the property settlement over the next nine months. In July 2013, the state court ultimately resolved all issues regarding the property settlement at a hearing at which the court found the husband in contempt for failure to timely pay the property settlement.

The state court allowed the husband to purge his contempt by paying the property settlement in full by October 1, 2013. The state court further set a sentencing hearing for the husband for October 8, 2013 in the event that he failed to pay the property settlement and purge his contempt. The husband did not pay the property settlement by October 1. Prior to the October 8 sentencing hearing, however, on October 4, the husband filed a chapter 13 bankruptcy petition giving rise to the automatic stay, and then filed a suggestion of bankruptcy in the state court divorce proceeding.

Before the sentencing hearing on October 8, the state court judge met with counsel in chambers to discuss whether the sentencing hearing was stayed. She informed counsel that she had done her own research and had concluded that the automatic stay did not apply to the sentencing hearing, and asked whether either party had case law contrary to her conclusion for review prior to the hearing. She also provided the parties a final opportunity to negotiate a compromise to purge the husband's contempt.

At the brief sentencing hearing, the state court judge concluded that because the husband had neither purged his contempt nor reached a compromise with the wife, she had no choice but to sentence the husband to 30 days in jail. The husband's counsel then stated for the record that he had filed a suggestion of the husband's bankruptcy. The state court judge recounted for the record the in-chambers

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of a proceeding to collect a divorce property settlement is stayed.

The wife and her counsel argued the state court applied either the stay exception for “a criminal action or proceeding against the debtor” under section 362(b)(1) of the Bankruptcy Code, or a “court-made” exception for contempt orders designed to “preserve the dignity of the court.” The BAP found that the contempt proceeding was civil in nature, as it was calculated to coerce payment of the property settlement rather than to punish, and the contempt order provided the husband an opportunity to purge the contempt at any time prior to the sentencing hearing.

Further, there was nothing in the record suggesting that the contempt proceeding was designed to preserve the dignity of the court such that the sentencing hearing fell under a “court-made” exception to the automatic stay. Having found no applicable exceptions to the automatic stay, the BAP concluded that the state court violated the stay by proceeding with the sentencing hearing and confining the husband.

The BAP then turned to the question of whether the wife and her counsel violated the automatic stay by failing to take action to stop the state court from proceeding with the sentencing hearing designed to coerce payment of the property settlement. In examining the issue, the BAP held that, under the circumstances, the wife and her counsel had an affirmative duty to prevent the contempt hearing and confinement of the debtor-husband, which was collection activity regarding the pre-petition property settlement.

The BAP based its conclusion predominantly on the rule that, “as a general matter, the responsibility to enforce the automatic stay is placed on creditors” and “it is incumbent upon creditors to take the necessary steps to halt or reverse any pending [s]tate [c]ourt actions or other collection efforts commenced prior to the filing of a bankruptcy petition ... and, thereby, maintain, or restore, the status quo ...” The BAP rejected the wife’s and her counsel’s efforts to flip this burden of enforcing the automatic stay on its head. The state court judge invited counsel for both parties to explain why the stay applied to the sentencing hearing. There was nothing in the record to suggest that the wife or her counsel tried to convince the state court judge that she should not proceed with the sentencing hearing.

Further, the state court’s finding of contempt prior to the bankruptcy did not relieve the wife and her counsel of their responsibility for enforcing the automatic stay. The BAP noted that recent cases outside the Sixth Circuit have similarly held that “creditors have a duty to stay the post-petition enforcement of pre-petition civil contempt orders issued by state courts.”

Accordingly, the BAP concluded that the wife and her counsel “had a duty to take affirmative action to prevent the use of the sentencing hearing and [the husband’s] confinement to coerce payment of the dischargeable property

settlement.” The wife and her counsel could therefore have violated the automatic stay by remaining silent and failing to prevent the state court from proceeding with the sentencing hearing, notwithstanding the fact that the state court acted of its own volition and the wife and her counsel did not themselves engage in any collection activity.

The BAP was unable to rule on the issue of liability under section 362(k) of the Bankruptcy Code based on the record. As such, the BAP reversed the decision of the bankruptcy court and remanded the matter to allow the wife and her counsel to present evidence on whether they took affirmative action to prevent the state court’s violation of the automatic stay.

Discharging the Affirmative Duty to Prevent Collection Activity

Although the BAP was unable to make a determination on liability without evidence of action taken by the wife and her counsel, the BAP suggested several courses of action that the wife and her counsel could have taken to avoid breaching their affirmative duty and violating the automatic stay. Namely, the wife and her counsel could have: (i) filed a motion for relief from the automatic stay in the bankruptcy court and sought to stay the state court contempt proceeding pending a ruling on that motion; (ii) filed a motion in the state court to vacate the contempt order in light of the bankruptcy proceeding; (iii) submitted an agreed order in the state court to stay the contempt proceeding until a resolution of the property settlement in bankruptcy (which is what they *belatedly* did); or (iv) requested that the bankruptcy court determine the effect of the stay promptly after the sentencing hearing.

Under *Wohleber*, it seems that a creditor cannot remain silent and allow a non-bankruptcy court to proceed with any action to enforce its pre-petition claim against the debtor in violation of the automatic stay, even if the court is proceeding on its own order. The BAP’s reasoning could apply beyond the context of a contempt proceeding to, for instance, a court’s conducting a status hearing in a collection action or a third party’s collection efforts.

Parties should be mindful of the persuasive authority of *Wohleber* in any scenario in which a non-bankruptcy court or third party is positioned to violate the automatic stay by an act to collect on a creditor’s claim. That creditor’s failure to take action to prevent the third-party stay violation may itself constitute a violation of the automatic stay. Where in doubt, creditors should seek clarification from the bankruptcy court regarding the applicability of the stay, as outlined in *Wohleber* or otherwise. Debtors should be aware of the potential grounds for a finding of a separate stay violation by the creditor.

Christopher B. Madden is a member of Bingham Greenebaum Doll’s bankruptcy and restructuring group. ■



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 to request a Firm Membership application.



New Benefit

The LBA has partnered 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.

For more information or to see if this plan is right for you and your employees, please contact Darren Epperly at darrenepperly@llhins.com or Leslie French at 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 under Member Benefits.



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Legal Bowl Raises Almost \$16,000 for Big Brothers Big Sisters of Kentuckiana

On March 21, 60 members of the legal community gathered at Main Event for the annual Legal Bowl for Kids' Sake, raising almost \$16,000 for Big Brothers Big Sisters (BBBS) of Kentuckiana. For the second year in a row, the team from Weber Rose was the top fundraiser with over \$2,000, with the Frost Brown Todd and ONI Risk Partners teams close behind. Steve Nassau with ONI Risk Partners was the top individual fundraiser with more than \$1,300.

Bowlers were treated to free bowling and pizza that to Main Event's support and sponsorships from Steel Technologies and Middleton Reutlinger. This allowed every penny raised to go directly to BBBS right here in our community.

Last but not least, thanks to the LBA's Public Service Committee members, under the direction of Chair, Loren Prizant, who helped make the bowl happen, to Melissa Gerald's of BBBS and to our amazing team captains and their respective firms:

- Blackburn Domene & Burchett, Leigh Herm & Diane Laughlin
- Coulter Reporting, Elizabeth McGill
- Dinsmore & Shohl, Young-Eun Park
- Frost Brown Todd, Georgia Connally
- Legal Aid Society, Jenn Perkins
- Louisville Bar Association, Gerald Toner
- Middleton Reutlinger, Loren Prizant
- ONI Risk Partners, Steve Nassau
- Reminger Co., Andrew Pettijohn
- Schiller Barnes Maloney, Chapin Scheumann
- Stites & Harbison, Neil Barton
- Weber Rose, Stacia Roberts



Using Gmail for Practice-Related Communications May Violate Ethical Rules

Stuart I. Teicher, Esq.

Lawyers need to stop using Gmail for their practice right now. An article in the *Wall Street Journal* made it very clear that lawyers who use the system are doing so at their ethical peril.

To understand why I feel this way you need a slight history lesson. Go back to the 90s when e-mail first became popular. For those of us who are old enough to recall, lawyers couldn't use e-mail in their practice because it was unencrypted. Our duty to safeguard client confidences per Rules 1.1 and 1.6 prohibited us from using the tool. The ABA and state bars across the country deemed that unencrypted e-mail was too insecure and that lawyers who used it weren't taking the necessary steps to fulfill their duty of protecting clients' confidential information.

So what changed? Today e-mail is generally still unencrypted, but lawyers use it every day (yes, there have been recent opinions which question whether we should *continue* to use unencrypted e-mail, but it is permitted in a variety of instances). Here's the change—Congress criminalized the interception of e-mail.

Once Congress made the interception of e-mail a crime, the powers that be then agreed that lawyers had a reasonable expectation of privacy in using the medium. The key phrase is "a reasonable expectation of privacy." The ABA issued a formal opinion in 1999 confirming that idea:

"The Committee believes that e-mail communications, including those sent unencrypted over the Internet, pose no greater risk of interception or disclosure than other modes of communication commonly relied upon as having a reasonable expectation of privacy. The level of legal protection accorded e-mail transmissions, like that accorded other modes of electronic communication, also supports the reasonableness of an expectation of privacy for unencrypted e-mail transmissions. The risk of unauthorized interception and disclosure exists in every medium of communication, including e-mail.

It is not, however, reasonable to require that a mode of communicating information must be avoided simply because interception is technologically possible, especially when unauthorized interception or dissemination of the information is a violation of law. The Committee concludes, based upon current technology and law as we are informed of it, that a lawyer sending confidential client information by unencrypted e-mail does not

violate Model Rule 1.6(a) in choosing that mode to communicate. This is principally because there is a reasonable expectation of privacy in its use."

So what about the Gmail connection? Well, that standard—the reasonable expectation of privacy—was a key consideration for the New York State Bar Association when it opined about the permissibility of free e-mail services like Gmail. In its Opinion 820, the New York State Bar Association voiced concern about systems like Gmail because

There are real human beings who are reading the contents of Gmail messages... (I) f human beings are reading the lawyer e-mails, then lawyers no longer have a reasonable expectation of privacy in Gmail.

Google used advertising to keep the service free. In return for providing the e-mail service, "the provider's computers scan e-mails and send or display targeted advertising to the user of the service. The e-mail provider identifies the presumed interests of the service's user by scanning for keywords in e-mails opened by the user. The provider's computers then send advertising that reflects the keywords in the e-mail."

The obvious problem is that if we're using the e-mail system for client work, then we're allowing the provider to scan confidential information.

The NY authorities, however, said that all of this was okay. Even though the e-mail messages in the current systems are scanned, humans don't actually do the scanning. Rather, only computers engage in that task. Thus, they stated that "merely scanning the content of e-mails by computer to generate computer advertising... does not pose a threat to client confidentiality, because the practice does not increase the risk of others obtaining knowledge of the e-mails or access to the e-mails' content." In other words, lawyers had a reasonable expectation of privacy when using the service.

Today there's been a big change. Big.

On September 21, 2018 the *Wall Street Journal* reported that Google shares Gmail information with its app developers. But what's important is the type of information that's being shared and who views it (remember something—here we're not worried about privacy issues related to data sharing...this is different...this is about the lawyer's duty to protect confidential information). The WSJ article revealed that:

Google Inc. told lawmakers it continues to allow other companies to scan and share data from Gmail accounts...the company allows app developers to scan Gmail accounts...outside app developers can access information about what products people buy, where they travel and which friends and colleagues they interact with the most. **In some cases, employees at these app companies have read people's actual e-mails in order to improve their software algorithms.** [emphases added]

Did you get that last part? There are real human beings who are reading the contents of Gmail messages. What we know from NY Opinion 820 is that if human beings are reading the lawyer e-mails, then lawyers no longer have a reasonable expectation of privacy in Gmail.

Sure, we lack some specific data about which e-mails are read, but that doesn't change the conclusion. We might not know if lawyers' messages in particular were included in the messages that were scanned. But that's sort of exactly the problem—we don't know. And we don't have any way to control or restrict the app developers from reading anyone's e-mails, including our practice-related e-mails.

Because of that reality I don't think that lawyers have a reasonable expectation of privacy in using Gmail any more. Our duty to protect client confidences set forth in Rule 1.6 precludes us from using the service. I'll tell you the truth—it actually looks like no one—lawyer or otherwise—has a reasonable expectation of privacy with the platform. That's why I think lawyers need to stop using Gmail for practice-related matters immediately.

Stuart I. Teicher, Esq. is a professional legal educator who focuses on ethics law and writing instruction. A practicing attorney for over two decades, Stuart's career is now dedicated to helping fellow attorneys survive the practice of law and thrive in the profession. ■



MEETING SCHEDULES

LBA Section Meetings

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

Thursday, May 30: 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. ■

Louisville Association of Paralegals

Check out upcoming educational programs and special events on the Louisville Association of Paralegals website at www.loupara.org. The LAP offers joint membership with the Louisville Bar Association for voting members and joint LAP/LBA members may attend most LBA CLE programs at the discounted rate of \$20. To learn more about the benefits of LAP membership, visit www.loupara.org.

The Kentucky Paralegal Association's Spring 2019 Certified Kentucky Paralegal (CKP) Examination will be held on Saturday, May 18, at the Louisville Bar Center, 600 W. Main St., Ste. 110, Louisville, KY 40202. The purpose of the KPAs 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 KPAs Certification Committee at certification@kypa.org. ■

Legal Assistants of Louisville

The next regularly scheduled meeting of the Legal Assistants of Louisville will be held on Tuesday, May 21, at 11:30 a.m. at the Bristol Bar & Grille Downtown located at 614 W. Main Street. For more information about the organization, please contact Loretta Sugg, Vice President, at (502) 779-8546.

Legal Assistants of Louisville is hosting its **2019 Cookout for the Homeless** at the Cathedral of the Assumption on Tuesday, May 28. As part of our community initiative, Legal Assistants of Louisville is collecting the following NEW items to distribute at our annual cookout to the folks in attendance:

T-shirts, socks, deodorant, Handi-wipes, toothbrushes/toothpaste, feminine products, new or gently-used handbags/purses.

Please drop off items at the Louisville Bar Center, 600 W. Main St., Ste. 110, by May 27. These items will be a daily reminder that our community cares! Thank you for your generosity. Contact Loretta Sugg (502) 779-8546 with questions. ■

Stuart I. Teicher, Esq. will be at the Bar Center on Wednesday, June 19 to present two CLEs:

"Tech Tock, Tech Tock: Social Media and the Countdown to Your Ethical Demise" and

"The Fear Factor—How Good Lawyers get into Bad Ethical Trouble"

See page 13 for details!

What *Hamilton* Can Teach Attorneys About Business Development

David H. Freeman



Lin-Manuel Miranda performs with the cast of "Hamilton." Photo by Joan Marcus.

Ever get a song stuck in your head? Have you ever felt inspired by exceptional composition, powerful lyrics or the virtuosity of a vocalist or musician? Personally, I check all three boxes when it comes to the soundtrack from the smash hit *Hamilton*. Rarely a day goes by without some lyrics popping into my mind, offering micro surges of endorphin-laced wisdom that inspires me to be my best. In its own way, the *Hamilton* soundtrack has become a silent companion, a constant reminder that subtly guides my thoughts and actions.

But there's more to my *Hamilton* relationship: Because I see the world through a business development lens, I interpret some of the lyrics in ways that apply as much to lawyers seeking to build a practice as they do to the Founding Fathers looking to build a new nation. The following are some of the legal business lessons I've discovered embedded within this musical masterpiece.

Song: "My Shot"

Lyric: "I am not throwing away my shot!"

What Lin-Manuel Miranda calls a "shot" is what we, in law-firm land, call a window of opportunity. The questions our lawyers need to ask themselves are:

- 1) Do we create these windows?
- 2) Do we notice them when they show up?
- 3) How do we respond when they appear?

Proactive rainmakers seek, develop and jump through their windows. They also recognize

these opportunities are fleeting and understand they must act swiftly and effectively before the windows close.

Lyrics: "Are we a nation of states?/ What's the state of our nation?"

What is the state of your firm? Where on the spectrum do you sit? Is your firm a disjointed gathering place for lawyers and practices, lacking cultural cohesion, and thus, missing out on revenue that comes from being tightly connected? Or do you operate as a highly integrated alliance, a collaborative confederation of teams and individuals that capitalize on your firm's potential? This is a big issue—and a bigger opportunity—in most firms.

Song: "Right Hand Man"

Lyric: "Dying is easy, young man. Living is harder."

Giving up when business development efforts don't yield short-term results is easy. Living through the pain of rejection; persevering over the long haul; investing time, effort and money to build a strong foundation; selflessly supporting team efforts; and developing deep, authentic, unbreakable relationships that turn clients into raving fans is much, much harder.

Lyric: "I'll rise above my station, organize your information..."

In this section, *Hamilton* has accepted a new role, taking on important responsibilities for General Washington, thus propelling

Hamilton to become a highly valued member of the team. Similarly, this approach can be used by lawyers seeking to move up in their firms. Lightening the load for highly influential firm lawyers can result in greater visibility, valuable experience and a faster path toward moving up the organizational ladder—plus, it also gets you "in the room where it happens" (see below).

Song: "Wait for It"

Lyric: "I am the one thing in life I can control."

Your lawyers must realize they are the masters of their own destiny. They can't wait for the firm, or some other rainmaker, to make magic happen. They must be self-aware, make decisions, identify their obstacles, build a plan to remove those obstacles and move unwavering toward achieving their desired goals.

Lyrics: "I am inimitable/ I am an original."

This reminds me that every lawyer's practice is a canvas upon which he or she makes a unique mark. You wouldn't know it when looking at most lawyers' bios. Rather than expressing their uniqueness, they are more likely bland, cookie-cutter descriptions that barely distinguish lawyers in similar practices from one another. This is because most lawyers don't tell good stories about themselves—their background, capabilities, interests or the experience clients have working with them.

While they often believe a more comprehensive bio would be perceived as bragging, the net effect is a missed opportunity to give clients enough information to learn why they should be hired. Challenge your lawyers to be more courageous, to fully express who they are and to allow their originality to shine through.

Song: "That Would Be Enough"

Lyric: "The worlds you keep erasing and creating in your mind."

I love this one! We're all filled with perceptions, some of which are right-on and others that get in our way. We may have internal stories that don't allow us to see the world clearly, and thus, impede our ability to grow our practices: e.g., "All the good clients are taken," "I don't trust any of my partners to work on my client's matters" and "I'm not comfortable at networking events so I won't go." Effective leaders must learn how their lawyers view business development, help them eliminate mindsets that get in their way and show them new approaches that can bring out their best.

Song: "Guns and Ships"

Lyrics: "If we manage to get this right.../ The world will never be the same..."

Doing the right things and developing a great book of business can change everything. Top rainmakers gain greater visibility, make more money, wield more internal clout and attract

WISDOM GROUNDED

Douglas Haynes

Where is it?

The wisdom

To sail through

Tough legal times?

Clients look to us

Expecting answers.

Many are people of science.

Of math.

Of facts.

They cannot comprehend

The seeming chaos and

Randomness of

Unpredictable results

In court.

What do they expect

When the definition of

Justice cannot be explained?

And yet

They all want it.

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



LBA Listservs

LBA Listservs are now available for the following sections:

ADR/Mediation · Appellate Law

Bankruptcy · Corporate Law

Criminal Law · Environmental Law

Family Law · Health Law

Human Rights Law · In-House Counsel

Intellectual Property · Labor & Employment

Litigation · Probate & Estate Planning

Public Interest Law · Real Estate

Social Security · Solo/Small Practice

Taxation · Young Lawyers

If you are a member of any of the above section(s) you should have received an e-mail allowing you to opt in or out of the listserv. The LBA hopes that you will utilize this form of communication to engage with your peers regarding topics relevant to your practice. If you are not a member and would like to join one of our sections, contact our membership department at (502) 583-5314 or mmotley@loubar.org.

Support the LBA's Summer Internship Program!

The LBA is in the process of finding full- and part-time summer internships for students in Central High School's Law & Government magnet program. 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 greatest need right now is for sponsorships to place students at a government or public interest office. The cost is as little as \$1,500 for part-time and \$3,000 for a full-time student. Last year, sponsorships allowed us to place students at the Public Defender's Office and the Office of the Jefferson Circuit Court Clerk.

Please contact Lea Hardwick at 583-5314 or at lhardwick@loubar.org if you are interested in supporting this program.

February Bar Exam Results Released

The Kentucky Office of Bar Admissions released the results of the February bar examination on April 5. Of the 178 applicants tested, 107 passed for an overall pass rate of 60 percent. Of those taking the exam for the first time, 74 percent passed.

Pass rates for applicants from the state's three public law schools were as follows: University of Kentucky College of Law, 83 percent; University of Louisville Brandeis School of Law, 69 percent; and Northern Kentucky University Chase College of Law, 41 percent.

Formal swearing-in ceremonies were held for successful applicants were held on May 1 in Frankfort.

(Continued from previous page)

more interesting matters. Just do it (right).

Song: "Yorktown (The World Turned Upside Down)"

Lyric: "And so the American experiment begins..."

I don't know why, but this line always gives me goosebumps. Maybe it's because it speaks to unlimited possibility, the power to craft a new future and the reality that life is a Petri dish in which new cultures can be grown. Whether someone is building their own practice or running the entire firm, it is all a grand experiment filled with hope and opportunity.

Lyric: "Immigrants, we get the job done."

In law firms, our immigrants are laterals who bring fresh ideas, new energy and important connections. Properly nurtured, they can enrich and invigorate cultures, share novel perspectives and add significant new revenue.

Lyric: "Hercules Mulligan, I need no introduction, when you knock me down I get the fuck back up again!"

This represents the ability to embrace failure through grit, resilience and determination, and the capacity to handle life's hard knocks. These are the building blocks of great success—the hallmarks that define champions. I've often seen this characteristic in top rainmakers, many of whom have failed more than most others even try.

Song: "What Comes Next?"

Lyric: "Do you know how hard it is to lead?"

Not only do lawyers in leadership positions have to bill client time, but they also invest hundreds of hours trying to lead others when given little to no power to influence their behavior. My heart goes out to you.

Song: "Non-Stop"

Lyrics: "Why do you assume you're the smartest in the room?/ Soon that attitude may be your doom!"

Being a successful lawyer has two major components: One is based on a lawyer's technical legal skills and the other is how people feel about working with him or her. While some lawyers are truly the smartest people in the room, without good social skills, emotional intelligence and a deep understanding of the needs of their clients and colleagues, their perceived arrogance can place serious limits on their careers.

Song: "The Room Where It Happens"

Lyric: "Oh, I've got to be in the room where it happens..."

Anyone who's been in any of my recent training programs knows this is my favorite business development quote from the musical (and I offer my sincerest apologies to anyone who has been subjected to my singing). This is all about face time—putting yourself in the posi-

tion to have live, in-person interactions with people who have the power to hire or refer work. If you boil business development down to a single endpoint, this is it—get yourself in the room where it happens.

Song: "One Last Time"

Lyric: "...and then we'll teach them how to say goodbye..."

Many firms need to develop better practices around succession planning. Transitioning clients can be difficult on all sides, so firms must build a consistent roadmap that shows how it should be done.

Song: "Hurricane"

Lyric: "...wrote everything down far as I can see."

I find this line highly insightful and inspiring. If you write about things everyone else is talking about, it's hard to truly stand out. But if you think (and write) deeply about what's happening around you, you can enter the realm of thought leadership. Look into the nooks and crannies of your practice, the companies and industries you serve; anticipate the future and start writing (and speaking) about things others have not yet discovered or discussed.

Song: "Who Lives, Who Dies, Who Tells Your Story"

Lyrics: "And when my time is up, have I done enough?"

Did your lawyers dial it in, or did they go for it? Did they take full advantage of their shots? If they could fast forward to the end of their careers and look back on today, how would they evaluate their current efforts? These are important questions to ask, especially because practicing law can often feel like a never-ending series of fire drills with little time given to strategically crafting one's career.

Hamilton is a powerful reminder that we possess free will and unlimited potential. How we think and act can make the difference in having a mediocre, good or great career as a rainmaker. Be passionate, rise up, take your shot and get into rooms where it happens.

David H. Freeman, J.D., is a law firm activist whose mission is to help firms build stronger cultures of leadership, business development and client service. For 24 years, he has worked with thousands of lawyers and leaders at hundreds of law firms worldwide, including more 40 percent of the Am Law 200. Founder of the Law Firm CultureShift, he is a best-selling author, speaker, consultant and coach.

This article was first published on ABAJournal.com in the ABA Journal's Your Voice section. ■



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

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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.

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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.

Law Office Space for Rent in Downtown Louisville:

Two beautiful furnished downtown offices available for rent on 6th Floor of established law firm on W. Main Street. Walking distance to courthouse, Center for the Arts, restaurants, Yum Center. Must have own phone and copier. All utilities included. Access to conference room when available, client waiting area, kitchenette and bathrooms. \$1,000 per month per office. All inquiries, please call Ann at 404-797-7571.

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.

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)
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3rd floor – 2 large offices approx... 16' x 16' 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.

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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

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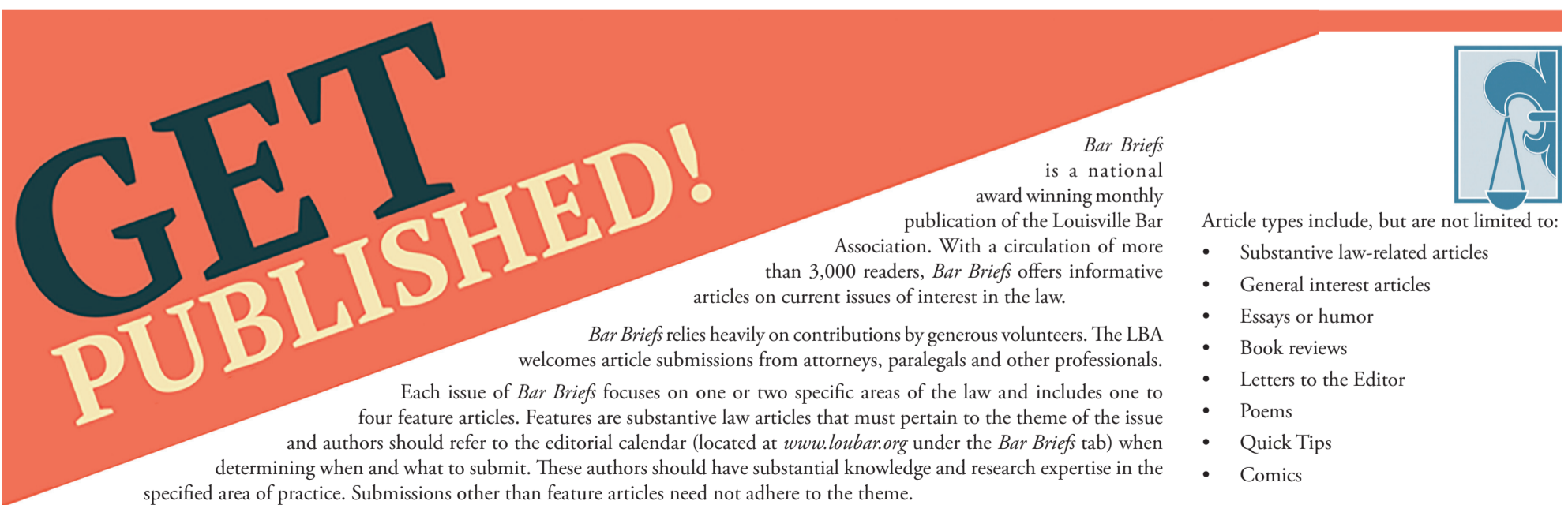
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AD SPACE AVAILABLE

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kkasey@loubar.org or (502) 583-5314 x106

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Each issue of *Bar Briefs* focuses on one or two specific areas of the law and includes one to four feature articles. Features are substantive law articles that must pertain to the theme of the issue and authors should refer to the editorial calendar (located at www.loubar.org under the *Bar Briefs* tab) when determining when and what to submit. These authors should have substantial knowledge and research expertise in the specified area of practice. Submissions other than feature articles need not adhere to the theme.

Article types include, but are not limited to:

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- Essays or humor
- Book reviews
- Letters to the Editor
- Poems
- Quick Tips
- Comics

If you are interested in submitting a piece for publication, contact Lauren Butz at (502) 583-5314 or lbutz@loubar.org.

MEMBERS *on the move*



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Wilson

H. Philip Grossman and **Abigale Rhodes Green** announce the formation of their new law firm Grossman Green PLLC with its office at 401 W. Main St., Ste. 1810. The firm has lawyers licensed in Kentucky and Indiana and concentrates in complex personal injury cases including cases that involve wrongful death and catastrophic injury. The firm is pleased to announce that **Frederick W. Moore III** has joined them as an associate.

The Legal Aid Society honored **Martha Hasselbacher**, a longtime advocate for equal justice, with the Fifth Annual Brown-Forman Spirit of Justice Award at Legal Aid's 16th Annual Brush, Bottle and Barrel of the Bluegrass fundraiser. The Brown-Forman Spirit of Justice Award is given annually to a member of the community who demonstrates deep dedication to upholding the principles of equal justice. Hasselbacher began her career as a litigator and health care law attorney with Stites & Harbison. Hasselbacher was one of the founding members of the Louisville Bar Association's Pro Bono Consortium. She joined Norton Healthcare in 1998 and was promoted to Senior Vice President and General Counsel. During this time, she served as President of the Board of the Legal Aid Society and President of the Louisville Bar Association.

Andrew Pellino, a partner in DBL Law's Civil Litigation practice group, has been selected to be a part of the Leadership Kentucky Elevate Class of 2019. Elevate offers young professionals in-depth personal and professional development while fostering a better understanding of challenges facing Kentucky. Pellino received his J.D. from the Saint Louis University School of Law.

The American Bar Association's Health Law Section recently honored Stites & Harbison attorney **Ozair Shariff** with the 2019 Emerging Young Lawyers in Healthcare Award at the Annual Emerging Issues in Healthcare Law Conference. The award honors young Health Law Section members who exemplify a broad range of achievement, vision, leadership and legal and community service in health law. Shariff is an attorney based in the Louisville office where he is a member of the Health Care Service Group. His practice focuses on regulatory, compliance, privacy and data security, physician contracting, antitrust, and general transactional and corporate matters.

Gordon & Rees Scully Mansukhani is pleased to announce that **Jean M. Terry** has joined the firm as Senior Counsel in the Construction Practice Group. A former civil engineer, Jean represents contractors, subcontractors, suppliers and other building professionals in all phases of project construction, from contract formation through arbitration and litigation. She is a Fellow with the Construction Lawyers Society of America and was recently selected as a Diversity Fellow by the American Bar Association's Forum on Construction Law. She received her J.D., *cum laude*, from The Catholic University of America, Columbus School of Law.

The American Institute of Steel Construction (AISC) recently honored **David B. Ratterman** with the 2019 Lifetime Achievement Award. The award honors individuals who have provided outstanding service to AISC and the structural steel design/construction/academic community for a sustained

period of years. Ratterman spent 30 years as AISC Secretary and General Counsel, serving under four presidents, 15 board chairs, and hundreds of board and committee members. Ratterman is a senior member (partner) of Stites & Harbison in the Construction Service Group. His practice focuses on general construction law, with particular emphasis on the fabricated structural steel industry.

Westcor Land Title Insurance Company is pleased to announce that **Danielle Wilson** has joined their team. Wilson is experienced in both residential and commercial underwriting and will serve as Westcor's Kentucky counsel, as well as agency representative for Kentucky, Indiana, and Ohio. She is a member of the American Land Title Association and is the 2019 president-elect of the Kentucky Land Title Association. ■

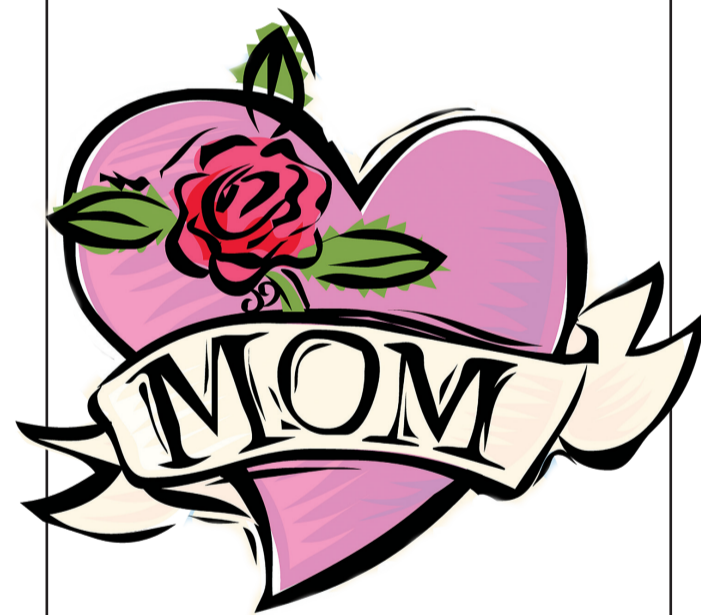
SPOILER ALERT!

It's A Slippery Slope

Crossword Puzzle by Earl L. Martin III on page 9

1	D	A	N	S	E	6	L	A	W	N	10	L	O	N	G
14	O	N	E	A	L	15	E	C	R	U	16	I	M	I	N
17	H	O	W	D	I	18	T	H	E	B	19	A	N	A	N
20	A	N	T	I	21	A	S	E	C	22	S	C	R	E	W
23	S	A	N	24	25	K	I	T	H	26					
27	C	L	I	M	B	28	T	H	E	S	29	T	E	P	S
35	O	E	R	36	D	E	A	L	37	S	P	I	N	A	L
38	M	A	A	39	T	A	M	40	41	N	A	T	E	42	
43	E	S	T	O	P	S	44	T	U	M	S	45	F	E	E
50	T	H	E	S	51	S	U	P	R	E	M	E	C	O	U
53	S	T	Y	E	54	L	I	U	55						
55	P	A	T	I	O	56	D	O	D	O	57	T	A	L	E
65	I	T	W	E	N	66	T	U	P	O	N	A	P	E	E
68	P	T	A	S	69	I	C	E	D	70	R	U	R	A	L
71	E	A	S	T	72	L	E	N	D	73	S	T	O	N	E

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 May 12 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 donations in lieu of cards are also welcome. Make checks payable to the Louisville Bar Center. Please indicate "Mother's Day Card drive" in the memo line. **The deadline for donations has been extended to Tuesday, May 7, 2019.** Please contact Jonathan Ricketts at (502) 896-2303 or jricketts@rickettslawoffices.com for more information. ■

In Memoriam



Julie Lott Hardesty, age 60, died on March 20 after a courageous battle with lung cancer. A graduate of the University of Louisville Brandeis School of Law, she was a career prosecutor in the Jefferson County Attorney's office and helped start its first domestic violence unit. She was serving as First Assistant County Attorney at the time of her death, a position she held for almost 20 years. A past president of the Louisville Bar Foundation, she was also a board member of the Jefferson County Public Law Library.

She is survived by three children. Her husband, Joseph Hardesty, also an attorney, predeceased her in February 2018. Memorial gifts can be made to the Kentucky Humane Society, Lung Cancer Alliance or Louisville Bar Foundation.



John T. "Jack" Ballantine, age 88, died on April 9. A graduate of Harvard Law School and highly regarded civil defense attorney, he practiced law for nearly 60 years before retiring as General Counsel to Stoll Keenon Ogden. He was a past president of the Louisville Bar Association and the inaugural recipient of its Judge Benjamin Shobe Civility & Professionalism Award. He was named the Kentucky Bar Association's "Lawyer of the Year" in 2003.

He is survived by his wife, five children and five grandchildren among others. Memorial gifts can be made to the Family & Children's Place or Legal Aid Society. ■

Judicial Reception

Members Only. Space Limited.

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 and 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.

Cost*: \$30 per person | \$25 per person for govt. and public service attorneys. Price includes drink ticket & hors d'oeuvres. This is an event exclusively for LBA members and their guests.

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

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



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