

# BAR*briefs*

Louisville Bar Association

November 2019

## Health Care Law







**LOUISVILLE BAR  
ASSOCIATION**

Pride in the profession. Service to the community.

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

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Are you itching to see what happened at Lawlapalooza 2019? The totally tubular event took place after this issue of Bar Briefs went to print. A photo gallery is online at [www.loubar.org](http://www.loubar.org) and will appear in the December issue.

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26th Annual Santa's Court Toy Drive



The deadline for collecting toys is Wednesday, December 11!

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## Honoring Those Who Have Passed

I confess that I'm an Oscar night junkie. Beyond the red carpet and glitzy outfits, however, my favorite segment of the annual opus is the "In Memoriam" honoring artists of all aspects of the film industry. Apropos of this recognition for those who have gone before, I have often wondered why the legal profession doesn't spend more time paying homage to the "artists" within our own circle. After all, with November we give thanksgiving, recognize Dia de los Muertos, All Saints Sunday and a host of other days dedicated to the memory of those who have passed. To this end, as my year as president draws to a close, I dedicate this column to those who left us in 2019 – apologizing sincerely for the inevitable omissions I will commit – yet hoping that future presidents will continue this "In Memoriam" in some fashion in the future.

Since **James G. "Jim" Apple** spent his final years practicing in Washington, D.C. few of my younger colleagues knew him or remember his considerable intellect and skills as a trial lawyer. Long before the currently recognized leaders of the medical malpractice defense bar, Jim was a peer of Jack Ballantine, Bill Guethlein, Frank Doheny and his law partner, Winfrey Blackburn. I knew Jim in my early days at what was then Stites, McElwain and Fowler. Later he developed a highly specialized maritime law practice and was a lead lawyer in the chlorine spill that followed a barge's collision with the Second Street Bridge.

My good friend and former LBA President, Mike Cronan, recalls that Jim was quiet, methodical and intellectual. We both remember that when Jim was focused he could stroll the halls so intent on whatever problem he was contemplating that he seemed oblivious to everyone and everything around him. In Washington he was director of the federal courts' Judicial College, a prestigious position, of which many of us back in Louisville were totally unaware. In his pre-law days Jim was part of Governor Louie Nunn's "kiddie corps" and throughout his time at Stites, like so many of the others remembered in this column, Jim went out of his way to nurture and socialize with young lawyers.

**John T. "Jack" Ballantine** was the consummate gentleman defense lawyer of the civil bar. The art and essence of the law ran deeply in his DNA and Jack was rightly proud of his father, brother and sons who preceded and followed him in the practice. Jack's skillful advocacy was coupled with a deep commitment to professional courtesy that underscored Jack's innate sense of when and how to choose his battles. His stories about his early years of practice were both entertaining and instructive, laced with humility and humor. Never petty nor petulant to an opponent, nor given to flaunting his skills and stature in the legal community, Jack seemed like the "hail fellow well met" – underestimated at one's own risk.

Jack consistently won, but he was never given to self-aggrandizement or "spiking the ball." To his younger partners – and I was honored to be in that number – he could be friend, mentor and "red pen" critic. To his Heffalump softball team-mates his hearty fellowship never failed, unless an outfielder – such as me – failed to hit the cut-off man in a misguided belief that one's arm and aim was powerful enough to peg the runner rounding third for home. Then Jack would let you know what he thought.

**Robert Brooks** died suddenly and far too young, literally in the midst of a mediation in Lexington. He epitomized the best character traits of the old school, civil defense lawyer. Robert made few enemies, many friends and was never one to puff his own skills and talents. Per his partner, friend and mentor, Ed Stopher, Robert specialized in the defense of architects and engineers in construction cases, as well as the defense of CPAs and their firms. One can readily imagine that his practice thus required considerable skill and knowledge in those specialized fields in addition to his acumen as a lawyer. Robert's deliberate approach to deadlines – though they were never missed – led to the angst of Ed and his partners as they stressed over completion of a final product.

Through it all, Robert was nonplussed, unflappable and ultimately thorough. Never one to take himself too seriously, Robert was nonetheless a standout basketball player in his high school years at Ballard and a better than average golfer who made all around him feel that no matter how much over par they were playing, they were doing just fine.

By Louis Waterman's assessment, **Mitch Charney** was the best family lawyer he knew. He singled out Mitch and Rebecca Westerfield as training him to be the lawyer he is today. Moreover, while many of us knew Mitch for his toughness and persistence as an advocate, Louis attested that he was not only brilliant, but extremely sensitive in dealing with clients and colleagues in difficult situations. He was also a scholar in his field, having written the book on private adoption in Kentucky. Active civically, Mitch was on the board of Jewish Hospital and many other local organizations and his national pre-eminence in family law was recognized by his selection as a Fellow of the American Academy of Matrimonial Attorneys. As Louis concluded: "He was an amazing lawyer and teacher, a great citizen of the Commonwealth, a cherished member of the bar and a damned fine friend to all who knew him."

**Robert "Bobby" Haddad** remembered the name of everyone he ever met. As Ron Hillerich – who grew up under Bobby's tutelage – related, this was one of Bobby's most remarkable talents: a photographic memory. Beyond saying hello on the street, I never had the pleasure of knowing Bobby. I knew his older brother, Frank, as an acquaintance and sensed that while Frank was the "outside" man, Bobby was the "inside" guy. Ron confirmed this as he reminisced

about Bobby's remarkable personality. When I saw Bobby holding court at a luncheon roundtable – now a lost tradition among Louisville's lawyers – I perceived his colleagues, young and old, listening spellbound. Ron was one of those colleagues and he recalls that Bobby was a remarkable raconteur and a priceless mentor.

Practicing primarily in the district courts, Bobby greeted everyone – police officers first and foremost – by first name, with a warmth that endeared him to all. Moreover, Bobby was his brother Frank's "secret ingredient" as Ron put it, "the real mayor of Louisville" whose social skills combined with a genius like knowledge, paving the way for Frank's and his successful careers. Ron confirmed that Bobby had a tremendous sense of humor, was a great mimic and through his overarching humanity served as a mentor to scores of young lawyers.



As with Robert Brooks, **Julie Lott Hardesty** passed in the prime of her career. Unlike Robert, Julie's end came after a long and tortuous battle with Stage 4 lung cancer. Mike O'Connell's eloquent obituary said much in a few words about Julie's many contributions as his First Assistant, brilliance as a lawyer and initiator of the County Attorney's Domestic Violence Unit. Julie's struggle to win the uphill battle of advanced cancer epitomized the persistence and determination she exhibited in her professional and

personal life. As Mike related to me, the role of First Assistant is demanding and one that Julie fulfilled for 20 years.

During that time, in Mike's words: "Julie was the heart and soul of our office: strategist, den mother, brilliant attorney – all the while finding the time to be a dedicated mother of three and wife to Joe (whom we lost last year)." In fact, Julie was, for countless women lawyers, a role model in maintaining the delicate balance between equal dedication to the law and family. As Mike remarked: "Julie never sought attention for herself. She simply looked out for the best interests of those around her." This was never so apparent as during Julie's public service as President of the Louisville Bar Foundation in 2017.

The role of mentor ran deeply in the character and soul of our deceased colleagues. Adam Goebel spoke of his partner, **Sam Hinkle**, as a mentor and a loving teacher, who navigated multiple attorneys through the process of truly learning the law. His office door was always open – not always the case with senior partners in large firms – and Sam was thrilled and invigorated by the process of lending his substantial intellect and wisdom to young lawyers.

Per Adam, he was a man of few pretensions, who gave no flip answers to questions posed and often revisited a query presented days before as he continued to cogitate on the issue at hand. At the same time he expected the best from his older and younger colleagues, remembered by Adam as carrying on with the examination of a difficult witness during an arduous arbitration, even on the day following the diagnosis of the illness that led to his death. From his four children – whom he deeply loved and nurtured through their admission and graduation from Yale, Harvard, and similarly pre-eminent graduate schools – to his partners and associates, he was truly a man who could make everyone around him better.

When I interviewed **David Jones, Sr.** for the KBA's *Lawyer's Speak* oral history project, his first question for me was: "Why me? I've never truly practiced law." I promptly retorted that one need not practice law to have the character traits of a lawyer. A lawyer's personality – molded in life leading to law school, shaped during the regimen of law school, and finely honed in the years that follow – is simply different from that of an MBA.

David and I knew each other from church, where for years we sat with our families a pew ahead or behind. David never asked me about my legal practice and I never made a pitch for Humana legal work. We talked community projects – such as the waterfront when it consisted of heaps of metal salvage, or The Parklands of Floyd's Fork – and Christmas books. David always asked if I was writing anything new and always bought a generous number of books in print.

As Humana's co-founder and longtime CEO, David was often in the public eye, admired for establishing Louisville as an innovative center for breakthroughs in the field of health care. He was perceived as a savvy businessman: tough, decisive and capitalist to the core. Yet unlike many CEOs of the current era, David was never self-absorbed or egocentric. He was supremely self-confident, but genuinely modest. He pursued what he felt was right for his company, his community and his family with essential humility and a strong moral compass. As a lifetime member of Highland Presbyterian Church he genially endured the liberal bent of our pastors, while monetarily supporting his Republican representatives in government.

Above all, David was a compassionate pragmatist – a west end Plebian who moved well in Patrician east end circles – and a philanthropist who was no one's fool. Frankly, I can't speak

continued on pg. 5

*As our life tasks are still incomplete, it is worthwhile and even necessary that we pause to reflect upon the lives of those who are at rest.*



FREE

## Jefferson County's New Business Court Docket: A Panel Discussion

Mark your calendars for November 20 (10am-12pm) for a FREE program about the Jefferson County Business Court Docket Pilot Project slated to begin early next year. Presented by the LBA Litigation Section, the program will feature a panel discussion with Kentucky Supreme Court Justice Lisabeth Hughes, Jefferson Circuit Court Judges Angela McCormick Bisig and Charles Cunningham and Business Court Docket Advisory Committee Members Janet Jakubowicz and Elizabeth Gray. The program will educate practitioners on the rules, procedures, jurisdiction and other unique aspects of litigating a civil dispute in the first-of-its-kind division in the Kentucky courts.

Twenty-four states have adopted some form of business court, with pilot projects underway in an additional five states. 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.

Don't miss this opportunity to find out about the Jefferson County Business Court Docket Pilot Project! For more information or to register, visit [www.loubar.org](http://www.loubar.org).

## New Clerk Named for Kentucky Court of Appeals



Hon. Denise G. Clayton (right), Chief Judge of the Kentucky Court of Appeals, administered the oath of office to the court's newly-appointed clerk, Rebecca Combs Lyon.

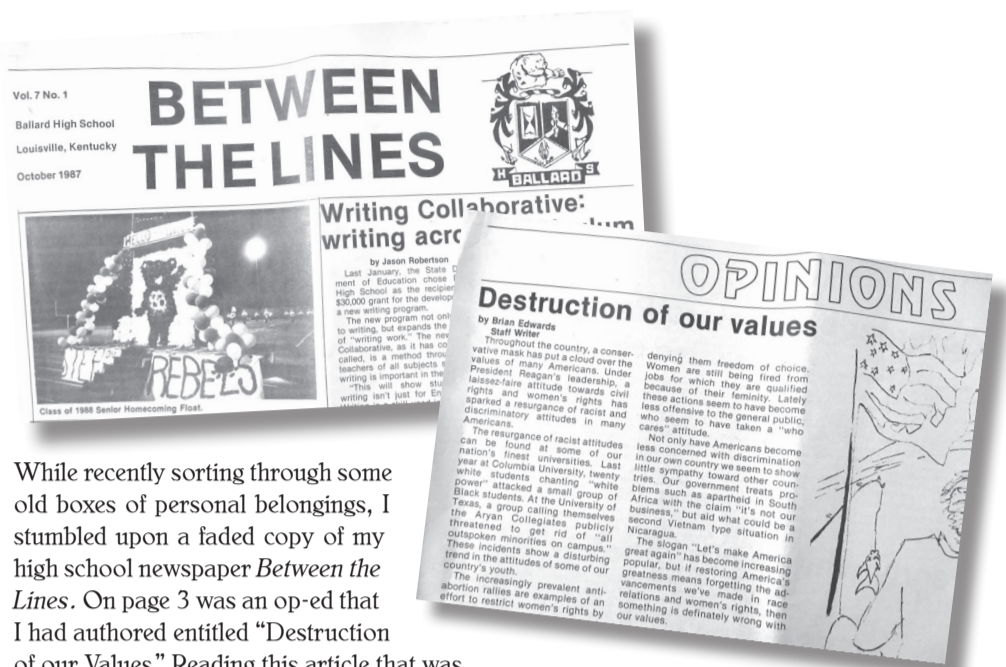
On October 1, Rebecca Combs Lyon became the first woman to serve as clerk of the Kentucky Court of Appeals since the Judicial Article was enacted in 1975. The appellate clerk is appointed and responsible for the custody, control and storage of all appellate records.

Lyon has served the Court of Appeals in various capacities for more than 30 years. She has been an appellate staff attorney at Central Office, the civil motions panel attorney and deputy chief staff attorney. She has also been an appellate staff attorney for Judges Anthony M. Wilhoit, Paul D. Gudgel, Michael L. Henry and James I. Howard. She most recently served as chief staff attorney for the court.

Lyon succeeds Samuel P. Givens Jr., who retired as clerk Sept. 30 after 30 years with the court system.

## In Praise of Responsible Journalism

Chief Judge Brian C. Edwards



While recently sorting through some old boxes of personal belongings, I stumbled upon a faded copy of my high school newspaper *Between the Lines*. On page 3 was an op-ed that I had authored entitled "Destruction of our Values." Reading this article that was written over 30 years ago brought back fond memories of a time in which I was strongly considering pursuing a career in journalism.

My journalism teacher and newspaper staff advisor, the late Virginia Scott, was one of my favorite high school teachers. I fondly recall conversations with her in which she encouraged me to pursue a career in journalism. Ultimately, I chose a different path, but I have always been a bit of a news junkie, regularly watching various news programs, listening to public radio, and reading multiple print and online news sources each day.

I have always had great respect for the role that responsible journalism plays in bringing transparency to our government and in enhancing our democracy. As I have written in this space previously, I believe that transparency in all branches of our government is necessary for our nation to continue its quest to live up to the lofty promises made in our Constitution.

It has become difficult to ascertain what is or is not a reputable news outlet and, at times, I find myself troubled with what "journalism" has become. We live in a time in which many media outlets choose to rely upon the work of individuals who have never studied journalism as opposed to those who have a learned appreciation for the value of responsible journalism.

This leads me to wonder what motivates today's generation of high school students to pursue a career in journalism. Is it a desire to provide the public with a transparent view of how our government operates? Is it a desire to hold those in positions of public trust accountable for their actions? Or is it a desire to advance a personal or political agenda and to obtain personal notoriety and financial gain?

In my role as an elected judge, my decisions are often written about and publicized by the media. And this is a good thing. Decisions that impact the lives of my fellow citizens should not be made by judges in a back room or under a cloak of secrecy. Nor should our decisions be immune from criticism. However, just as a judge's decisions should be rooted in good faith, a commitment to do the right thing

and the oath that we have taken to uphold the law, I believe that media coverage of those decisions should be rooted in equally egalitarian principles.

I appreciate the role of insightful opinion pieces, even those with which I may philosophically disagree. I also understand and value the role of the media in informing the public about what is going on within our nation's open courts. However, I do not know of a single judge who has not experienced concern, if not frustration, with the way in which the media sometimes covers cases that come before the courts. News outlets publishing the names of victims and minors, the breathless sensationalizing of cases (is everything breaking news?), live tweeting summaries of proceedings without providing the proper contextual perspectives, and stoking class and other divisions all push the boundaries of responsible journalism.

I appreciate the business aspect of modern journalism and the quest for more online clicks, Twitter retweets, and Facebook likes. However if those are the things that primarily motivate what our news institutions choose to publish, then the likelihood of these institutions fulfilling their obligations in a responsible fashion becomes fatally compromised. Likewise, judges who render decisions primarily based upon how the decision will impact his/her likelihood of being reelected will find themselves unable to honor the obligations of the oath to which they swore when becoming judges.

So as I conclude this column, I encourage us all to remind and encourage one another to remain committed to the principals and ideas that motivated us to pursue the careers that we have chosen.

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





to the David Jones who co-founded Humana and became both a wealthy entrepreneur and the object of *The Courier-Journal's* frequent inquiries. I can speak to the qualities of a lawyer that David possessed – though he was perhaps oblivious to them – a creative, unrestrained mind, a sense of basic fairness, and the realization that every decision is tempered by forces – external and internal – that may shape the course of future events.

**Bernard “Bennie” Lewis** was very simply a “nice guy” in the words of his friend and occasional, co-counsel, Harris Berman. Harris quickly added that Bennie was accomplished in his practice, a hard worker, loyal to his clients and a steady friend to those who knew him. He wasn't flashy, pretentious or self-aggrandizing in his approach to practice or the representation of his clients. Most of his practice was in the district courts or, before that, the old police courts. What he did, he did well. But he didn't stand out in the legal community, nor did he seek the accolades or remuneration that can accompany those who aspire to fame. Bennie did his job well and served his clients admirably.

Because Bennie was blessed with a long life, it took some effort to find a helpful resource who could remember him during his prime. In the final analysis, what emerged was the picture of a man who while achieving modest recognition, never faltered in his efforts to do the very best he could for his clients, his family and his community. May that be said of all of us.

**Theodore “Ted” Mussler** was forever proud of his appellate triumphs on behalf of his clients in civil litigation. Ted represented plaintiffs in personal injury cases and for him it was both a calling and an intellectual challenge. He wasn't boastful or obnoxiously self-centered, but he knew when he had moved the needle forward in minimizing what he felt were roadblocks to a plaintiff's recovery at trial. Let's be honest: Ted had his demons, and they sometimes hampered his innate skills and considerable intellect as an advocate. Yet he settled many a case with an insurance adjuster or opposing counsel over a second or third cocktail when one's guard relaxes and a baring of truths unfolds.

Moreover, Ted was an opponent who, while unafraid to try a case, was willing to admit potential weaknesses and attempt to reach a settlement. Always ready to beguile with accounts of legal adventures, Ted was good company. Never petty, nor overbearing, nor vicious, he paved the way for many a good lawyer who benefited by his efforts to ease the way to recovery for the personal injury plaintiff.

**Lynne Osterholt** worked with Denise Cunningham, her paralegal, for some 40 years, seldom missing a day, always prepared, and dedicated 110 percent to clients who felt free to call her day and night on her cell. Denise was still in the process of closing Lynne's office when I contacted her to provide insight into Lynne's practice and her character as a lawyer. Through her long career,

Lynne was a professor at the University of Kentucky, then attended law school, wrote appeals for the Public Defender's office, and ultimately ventured into private practice, specializing in family and criminal law. Lynne achieved all of this while wheelchair bound, suffering the loss of 97 percent of her muscles from polio at the age of 9, yet never considering herself disabled or alluding to this in her daily life. Instead, she disciplined herself physically and mentally to compete with her peers and excel.

As Denise related, Lynne never lost her temper, snubbed another attorney – even when some got in her face – or became short-tempered with a client. In her early life Denise served as a speech writer for Louisville Mayor Frank Burke and is credited with naming the Belvedere. Fluent in French, she provided translation and assistance on occasions when Frank desired a French turn of phrase. Lynne's love of animals prompted her to spend countless hours and monetary support for the Kentucky Humane Society. She also served on the LBA board and appreciated the significance of a vibrant bar organization in creating and maintaining the character of our profession. Denise noted that at Lynne's sudden and unexpected death, her cell phone blew up with voice mails from clients who couldn't understand why Lynne hadn't returned their calls. Lynne was the type of lawyer whose clients expected much because she gave so much.

While working on this column I felt, at times, like the reporter (Thompson) in Orson Welles' classic *Citizen Kane* seeking the hidden meaning of “Rosebud.” In my case I sought more personal or intimate insights into the lives of lawyers who were old at their passing, had moved away from Louisville or whose specialty was outside of familiar practice circles. Sometimes I had to dig four to five lawyers deep, following one lead after another. The upsweep is that my search provided both personal satisfaction and enrichment. I was able to capture – if all too briefly – bits and pieces of the person beyond their curriculum vitae and list of accomplishments. After all, such insights are the true measure of a person's gravitas, too often lost after a eulogy is heard by close family and friends.

Moreover, these are the personal traits, wisdom and strengths of those who have passed, which those of us who remain should cherish and remember. As our life tasks are still incomplete, it is worthwhile and even necessary that we pause to reflect upon the lives of those who are at rest.

Sincerely,



Gerald R. Toner  
LBA President

**\$100 A TICKET AND ONLY 1,000 WILL BE SOLD!**

**SATURDAY  
NIGHT  
LIVE**



**RAFFLE!**

**Presented by the National Council of Jewish Women (NCJW)**

The NCJW is raffling off a trip to New York to see Saturday Night Live (SNL)! Prize will consist of two seats to a performance of (SNL) in 2020, two tickets for the NBC Studio Tour on the Friday before SNL, two nights at the New York Hilton and roundtrip flights for two from anywhere to New York on Southwest Airlines (up to \$700 on SW for airfare for two people).

100% of the proceeds will go to help addicted parents get sober and reunite with their children through Recovery Courts Kentucky.

Raffle drawing will be Monday, January 6, 2020, at 12:30 p.m. at the NCJW Nearly New Shop, in the lower level of the Mid-City Mall.

For more information and to purchase tickets, contact Jane Godchaux Emke at (502) 897-5057 or via email at [janege40@gmail.com](mailto:janege40@gmail.com). Or call the NCJW office at 502-458-5566.

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## HEALTH LAW UPDATES AT LOUISVILLE LAW



DEAN COLIN CRAWFORD

With the hiring of Professor Emily Whelan Parento, the health law strength of the Louisville Law faculty has received an exciting boost.

Professor Parento, who started in the Fall 2019 term, brings years of experience in practice, policy and academics to her work with us.

She comes to Louisville Law from the O'Neill Institute for National and Global Health Law at Georgetown Law- the leading international center of its kind. She has also taught at the University of the Pacific McGeorge School of Law and was a visiting professor at Louisville Law several years ago.

Her primary scholarly focus is the intersection of domestic health law

and policy with the human rights framework for the right to health and health equity.

Professor Parento, a Kentucky native, served as Executive Director of the Office of Health Policy for the Commonwealth of Kentucky, advising the administration of Gov. Steven Beshear during the implementation of the Affordable Care Act.

She also served as a federal judicial clerk for the Hon. John G. Heyburn II, U.S. District Court for the Western District of Kentucky and practiced litigation at Davis Polk & Wardwell in New York and California as well as at Stites & Harbison in Louisville.

In this column you will learn more about Professor Parento as well as additional health law news at Louisville Law.



PROFESSOR EMILY WHELAN PARENTO

## GETTING TO KNOW PROFESSOR PARENTO

### WHAT ABOUT LOUISVILLE LAW ARE YOU MOST EXCITED FOR?

I'm so excited to help shape the next generation of legal talent for the community. I was born and raised in Louisville and have the utmost respect for the legal community here, and it's an honor to join the Louisville faculty.

### WHAT SCHOLARSHIP ARE YOU WORKING ON NOW?

I'm currently working on a number of projects regarding access to healthcare, both in Kentucky and nationally. A particular area of focus is the impacts of supply side management programs such as certificate of need on healthcare quality and access. Another is the relative ability of individuals to access healthcare based on geography, type of insurance and additional factors.

### WHAT DOES IT MEAN TO YOU TO COME BACK TO THE COMMONWEALTH?

It was a tremendous opportunity to assist Governor Beshear's administration in implementing the Affordable Care Act here in Kentucky. It was through changes in law that nearly 500,000 Kentuckians gained access to insurance, many for the first time in their lives.

It is my goal that students develop the ability to use law in ways that benefit not only their clients, but society as a whole. To that end, I'm very fortunate to be able to teach students as part of a diverse student and faculty community at Louisville, where ideas can be challenged and improved through robust and respectful dialogue.

## HEALTH LAW CERTIFICATE PROVIDES SPECIALIZED CURRICULUM FOR PROFESSIONALS

As our country's health care system continues to evolve, professionals are challenged with keeping up to date on the latest rules and regulations. We are glad to help provide this valuable knowledge through our Certificate in Health Law.

This online, non-degree program is intended for non-lawyers who work in health care and are confronted with legal questions and regulations daily.

We are proud to partner in this certificate effort with iLaw, which works with law schools to offer online learning. iLaw is the brainchild of Ken Randall who was, for 20 years, a legendary and transformative Dean at the University of Alabama School of Law.



TAD MYRE

We have been helped greatly in this effort by alums like Tad Myre and his team at Wyatt Tarrant and Combs LLP, and other lawyers who specialize in health law and related fields. For our health law certificate, students enroll in courses such as Healthcare Payment Systems and HIPAA and Security to learn practical information at their own pace and in their own time. Courses are taught by practitioners, including many local attorneys and counsel for health care companies. And courses are competency-based, with assessments during each course to test students' comprehension.

**I would recommend this program to other health professionals that are without a law degree because we take too much on face value in a dynamic environment that affects both our livelihoods and our patients' health.**

**-Curtis Cary**  
Staff Physician  
Erlanger Health System  
Chattanooga, Tennessee

## HEALTH LAW CERTIFICATION INFO

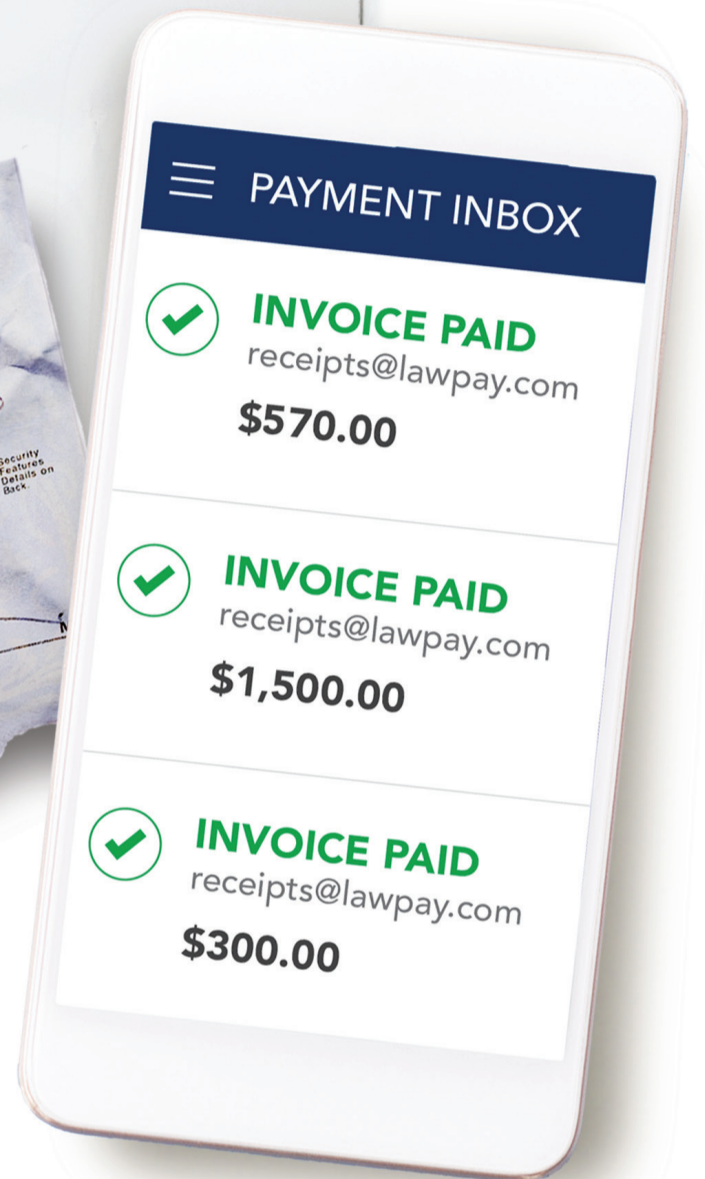
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## Legal Aid Society's Veterans Legal Assistance Program Changes Lives

Julia Leist & Meredith Greenwell



For Richard Lewis, it had been 50 years since he served in Vietnam, but the war was not over. In 1968, Richard, along with the other members of the 82nd Airborne, was deployed to Vietnam in support of the US forces fighting in the Tet Offensive. He served 120 days on the ground amidst some of the heaviest fighting of the war, receiving recommendation for awards and an on-the-spot promotion. Twenty-one years old and two years from his draft date, Richard was notified that he was going home. Back at Fort Bragg, North Carolina, Richard barely looked at his DD Form 214 (his discharge papers) and failed to notice that the form did not accurately reflect his combat service. At the time, all he wanted was to move forward with his life and leave the war behind him.

For the next 50 years, the errors on Richard's DD Form 214 would impact his ability to access health care and other VA benefits. The error even isolated him from the comradery of veteran organizations. Richard spent decades of his life reliving the war as he appealed to the VA for a correction. In 2018, Richard, a resident of Elizabethtown, KY, sought the help of Legal Aid's Veterans Legal Assistance Program. It took Legal Aid attorney Roy Berwick one year of work and research, but finally Richard was issued a correction. "For all these years, I felt like I had been left behind," Richard said.

***Mr. Lewis, a man who sacrificed so much for his country, finally had someone fighting for him; but, he is not alone in his need for our assistance. Each year thousands of Kentucky veterans face legal crises impacting their health, home, family or financial security.***

Legal Aid Society has a strong tradition of serving those who serve our country, providing free legal assistance to veterans in need. In the last decade, more veterans than ever are returning home from deployment in need of support and resources to reacclimate to civilian life. In 2011, Legal Aid Society made veterans a formal priority through the Veterans Legal Assistance Program (VLAP) (formerly the Kentucky Corps of Advocates for Veterans Program). Since then, Legal Aid has assisted over 2,000 veterans and their families when their health, safety or stability was threatened. But for every one client we serve, one is turned away due to lack of resources.

Veterans make up an integral part of our community. According to the Department of Veterans Affairs, Kentucky is home to over 275,000 veterans. Of those veterans, almost 9 percent of households live in poverty with income at or below 200 percent of the federal poverty guidelines, the second highest rate in

the nation. Unemployment among veterans across the state is 4.9 percent, twelfth highest in the United States. Kentucky also has the sixth highest veterans disability rate in the country at 33 percent.

These men and women have sacrificed a life at home with their families and their own personal safety to protect and defend the rights we all enjoy as Americans. For many veterans, however, access to equal "justice for all," a right so important that we recite it in our nation's pledge, is financially out of reach.

Veterans face a broad range of civil legal concerns, including family, housing, consumer and probate matters; however, Veterans also face needs exclusive to their time in service, such as issues involving veterans benefits and discharge status. The circumstance most unique to veterans is the vulnerable position that they occupy when they return from active duty. Veterans frequently face complicated legal problems that are exacerbated by physical and mental injuries sustained during their military service including post-traumatic stress, traumatic brain injuries and alcohol or drug dependencies.

Legal Aid Society's Veterans Legal Assistance Program is uniquely positioned to resolve the civil legal issues facing veterans, staffed and supported by attorneys with expertise in matters specific to veterans and their

service. With this extensive knowledge, VLAP attorneys are able to provide veterans with exemplary assistance in navigating the complex system of benefits claims and appeals.

All of Legal Aid Society's services are free to clients like Mr. Lewis, but our work is only possible due to our funders, including Texas Roadhouse, The William E. Barth Foundation, The Wood and Marie Hannah Foundation, and the V. V. Cooke Foundation. To contribute to the Veterans Legal Assistance Program, send your gift to Legal Aid Society, C/O Veterans Legal Assistance Program, 416 W. Muhammad Ali Blvd., Ste. 300 Louisville, KY 40202 or visit [www.laslou.org](http://www.laslou.org).

*Julia Leist is the Director of Development and Communications at Legal Aid. Meredith Greenwell is the Associate Director of Development at Legal Aid. ■*

### In Memoriam



**Robert "Bobby" Haddad**, age 87, died on September 30. A graduate of the University of Louisville Brandeis School of Law, he practiced criminal

law for more than 50 years before retiring earlier this year.

Renowned for his quiet kindness and endless humor, he founded what later became the Kentucky Lawyer Assistance Program which helps lawyers struggling with depression, substance abuse, stress and compulsive gambling. He will be honored posthumously with the Justice Martin E. Johnstone Special Recognition Award at the LBA's award luncheon next month.

He is survived by his wife, two children and four grandchildren among others. Memorial gifts can be made to Kosair Charities or Hosparus Health.

### New Attorneys Admitted to Kentucky Bar

Swearing-in ceremonies for applicants who passed the July bar examination were held in Frankfort on October 21. A total of 236 new attorneys were admitted to the Kentucky Bar.

The overall passage rate was 66 percent. Passage rates for applicants from Kentucky's three public law schools were as follows:

- University of Kentucky College of Law - 77 percent
- University of Louisville Brandeis School of Law - 69 percent
- Northern Kentucky University Chase College of Law - 51 percent

A complete list of those who passed the exam can be found at [www.kyoba.org](http://www.kyoba.org) (click on July '19 Pass List).

Beginning with the February 2020 administration of the exam, SCR 2.080(4) requires that applicants must pass both the essay and MBE portions in one sitting.

If you or a colleague in your firm were admitted for the first time in the fall of 2019, please contact Marisa Motley at [mmotley@loubar.org](mailto:mmotley@loubar.org) for your free 2020 LBA membership. Membership in the Young Lawyers Section is also included for free!



## Legal Aid Society Announces Upcoming Dates for Free Legal Clinics

The Legal Aid Society announces dates for free legal clinics offered during the months of November and December of 2019. Legal Aid Society's offices will be closed on November 28, 2019 in observance of the Thanksgiving holiday, on December 24 & 25, 2019 in observance of the Christmas Eve & Christmas Day holidays and on December 31, 2019 & January 1, 2020 in observance of the New Year's Eve & New Year's Day holidays.

### Foreclosure Clinics

*Funded in part by Louisville Metro Government and the PNC Foundation*  
**WHEN:** Tuesdays at 2 p.m. (November 5, November 12, November 19, December 3, December 10)  
**WHERE:** Legal Aid Society (416 W. Muhammad Ali Blvd., Louisville, KY)  
**PURPOSE:** An attorney will be on hand to provide information on the judicial mortgage foreclosure process and alternatives to foreclosure.  
**RSVP:** Jefferson County residents only. Reservations are required. Please call (502) 584-1254 to make a reservation.  
**WHAT TO BRING:** Documents related to your mortgage and foreclosure.

### Tenants' Rights Clinic: What You Should Know about Your Landlord's Obligations and Your Rights

*Funded in part by Louisville Metro Government and the PNC Foundation*  
**WHEN:** Thursdays at 2 p.m. (November 7, November 14, November 21, December 5, December 12.)  
**WHERE:** Legal Aid Society (416 W. Muhammad Ali Blvd., Louisville, KY)  
**PURPOSE:** An attorney will be on hand to answer questions about the eviction process, landlord obligations, and tenants' rights.  
**RSVP:** Jefferson County residents only. Reservations are required. Please call (502) 584-1254 to make a reservation.  
**WHAT TO BRING:** Documents related to your tenancy.

### Project H.E.L.P. (Homeless Experience Legal Protection) Clinic at St. John Center

*Funded in part by Louisville Metro Government and The Gheens Foundation*  
**WHEN:** 2nd and 4th Tuesday of the month at 9 a.m. (November 12, November 26, December 10)  
**WHERE:** St. John Center (700 E. Muhammad Ali Blvd., Louisville, KY)  
**PURPOSE:** Attorneys will be on hand to provide free legal advice and assistance to homeless or housing insecure men.  
**RSVP:** Reservations are not required. Attorneys will meet with clients on a first-come, first-served basis.

**WHAT TO BRING:** Any documents related to your legal matter(s).

### Project H.E.L.P. (Homeless Experience Legal Protection) Clinic at UP for Women & Children

*Funded in part by Louisville Metro Government and The Gheens Foundation*  
**WHEN:** 1st & 3rd Wednesday of the month at 9 a.m. (November 6, November 20, December 4, December 18)  
**WHERE:** UP for Women & Children (425 S. 2nd St., Ste. 100)  
**PURPOSE:** Attorneys will be on hand to provide free legal advice and assistance to homeless or housing insecure women and children.  
**RSVP:** Reservations are not required. Attorneys will meet with clients on a first-come, first-served basis.  
**WHAT TO BRING:** Any documents related to your legal matter(s).

### Small Claims Clinic

**WHEN:** Wednesday, November 20, 2019 at 1 p.m.  
**WHERE:** Legal Aid Society (416 W. Muhammad Ali Blvd., Louisville, KY)  
**PURPOSE:** Clients are provided with information about Small Claims Court and the forms necessary to file a claim. There will be an opportunity to meet with an attorney after the clinic to discuss individual cases.  
**RSVP:** Reservations are required. Please call (502) 584-1254 to make a reservation.

**WHAT TO BRING:** Any documents related to your legal matter(s).


### Jefferson Co. Pro Se Divorce Clinic

**WHEN:** Friday, November 15, at 9:30 a.m.  
**WHERE:** Legal Aid Society (416 W. Muhammad Ali Blvd., Louisville, KY)  
**PURPOSE:** Attorneys will be on hand to provide advice on filing pro se for divorce in Kentucky. Attorneys will help to prepare & review all proper forms and provide instructions on how to proceed with your divorce case once you leave the clinic.  
**RSVP:** Reservations are required.  
**WHAT TO BRING:** Invitation, a valid picture ID, money for parking, and all information on your spouse & your marriage.

### Debt Collection Defense Clinic

**WHEN:** Tuesday, November 19, 2019 at 1 p.m.  
**WHERE:** Legal Aid Society (416 W. Muhammad Ali Blvd., Louisville, KY)  
**PURPOSE:** Clients are provided with information about how to defend themselves in debt collection lawsuits. The presentation will also cover the Fair Debt Collection Practices Act.  
**RSVP:** Reservations are required. Please call (502) 584-1254 to make a reservation.  
**WHAT TO BRING:** All paperwork related to the debt and the lawsuit.

# 26th Annual Santa's Court Toy Drive




The holiday season is fast approaching! For those of you making your holiday shopping list, don't forget about the LBA's 26th annual Santa's Court Toy Drive benefitting The Salvation Army. The long partnership between the LBA and The Salvation Army has provided nearly 30,000 toys and \$126,000 in monetary contributions for the Angel Tree Program.

The Salvation Army says that donations from the LBA are consistently the best and highest quality and that without this support, many children hoping for gifts each year would go without. The LBA is one of only a few organizations to direct contributions to children not adopted from the Angel Trees.

**How to Participate**  
 Email or call today to sign up your firm, office or section. (Contact Lea Hardwick, [lhardwick@loubar.org](mailto:lhardwick@loubar.org) or at 583-5314).

**Important Dates**  
 The deadline for collecting toys is Wednesday, December 11. Pick up will take place on Friday, December 13. Or you can drop donations at the LBA offices, 600 W. Main St., Ste. 110.

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



The deadline for collecting toys is Wednesday, December 11!



# CMS' Enhanced Enforcement Authority Threatens Provider Enrollment

Joshua Stearns

On September 10, 2019, the Centers for Medicare & Medicaid Services (CMS) announced a final rule, *Program Integrity Enhancements to the Provider Enrollment Process*, significantly expanding CMS' authority to deny or revoke a provider/supplier's Medicare, Medicaid and Children's Health Insurance Program (CHIP) billing privileges (Final Rule). Under the Final Rule, CMS can deny or revoke a provider/supplier's billing privileges for certain "bad acts" of current and past affiliates.

Providers/suppliers should begin planning how to comply with the new enrollment disclosure obligations because they face severe penalties for regulatory non-compliance. These penalties include wide-spread enrollment denials and billing privilege revocation, which had been punished by financial penalties and corrective action. The Final Rule is effective on November 4, 2019.

## I. DISCLOSING "BAD ACTOR" AFFILIATIONS

In general, the Final Rule requires providers/suppliers to disclose any "affiliations" that it has or had within the previous five years with another enrolled Medicare, Medicaid, or CHIP provider/supplier that has been subject to one of the enumerated "disclosable events."

CMS is phasing-in the new disclosure requirement by requesting information from specific providers/suppliers that it determines, through its research of already-available data, have at least one affiliate that was subject to a disclosable event. CMS will request affiliation disclosures when both the paper CMS 855 forms and online Provider Enrollment, Chain, Ownership System (PECOS) enrollment application are revised to include an affiliation disclosure section. However, CMS ultimately intends to issue a "subsequent final rule" that extends the affiliation disclosure requirements to all providers/suppliers submitting initial enrollment and revalidation applications for Medicare, Medicaid and CHIP. States are required to include provisions in their state Medicaid plans that implement the affiliation disclosure requirement for Medicaid and CHIP enrollments.

### A. Determining and Tracking Affiliations

Providers/suppliers should start conducting due diligence to gather the necessary information needed to determine whether a relationship constitutes, or constituted an affiliation, and if so, whether that affiliate has been subject to a disclosable event. CMS expects the total annual cost associated with this due diligence to be \$937,500 for all providers/suppliers collectively. Providers and suppliers need to identify affiliations by determining whether, within the past five years, the provider/supplier or one of its owners/managing employees held any of the following interests in a currently or formerly enrolled Medicare, Medicaid or CHIP provider/supplier:

- (1) A 5 percent or greater direct or indirect ownership interest.
- (2) A general or limited partnership interest (regardless of the percentage).
- (3) An interest in which an individual or entity exercises operational or managerial control over, or directly or indirectly conducts, the day-to-day operations of another organization, either under contract or through some other arrangement, regardless of whether the managing individual or entity is a W-2 employee of the organization.
- (4) An interest in which an individual is acting as an officer or director of a corporation.
- (5) Any reassignment relationship.

### B. Reporting "Disclosable Events"

Once a provider/supplier has determined that it has an affiliation(s), it must then decide whether the affiliate(s) has been subject to a disclosable event. A provider/supplier is only required to report an affiliation if that affiliate has been subject to one of the following disclosable events:

- (1) Has uncollected debt with Medicare, Medicaid or CHIP;
- (2) Has been or is subject to a payment suspension under a federal health care program;
- (3) Has been excluded by the Office of Inspector General (OIG) from participation in Medicare, Medicaid, or CHIP; or
- (4) Has had its billing privileges denied or revoked.

Uncollected debt includes Medicare, Medicaid or CHIP overpayments for which CMS or the state has sent notice of the debt to the affiliated provider/supplier. Additionally, unpaid civil money penalties and assessments constitute uncollected debt. Notably, providers/suppliers must report *all* disclosable events, regardless of whether the disclosable event is subject to appeal and or occurred outside of the affiliation period.

For example, if a provider is completing an enrollment revalidation application with CMS and had a previous affiliation with a supplier that ended four years ago, the provider must make reasonable efforts to research and disclose all of the supplier's disclosable events, regardless of whether such events occurred before or after the affiliation ended. CMS promises to publish sub-regulatory guidance on what the agency considers to be reasonable efforts made by a provider/supplier to research and report disclosable events.

### C. Medicaid and CHIP Disclosure

States, in consultation with CMS, have the option to implement the affiliation disclosure requirements by either:

- (1) Requiring all new and revalidating providers/suppliers to report affiliations that have disclosable events, or
- (2) Requiring providers/suppliers to report affiliations that have disclosable events only when requested by the state.

Regardless, the affiliation disclosure requirements for Medicaid and CHIP are not effective until electronic and paper enrollment forms are revised. Providers and suppliers should pay attention to which implementation option is chosen by the states in which they do business.

## II. CMS' DENIAL & REVOCATION AUTHORITY

Under the Final Rule, CMS has the authority to deny or revoke a provider/supplier's Medicare, Medicaid and CHIP enrollment if:

- (1) The provider/supplier fails to fully and completely disclose affiliations with entities that have disclosable events;
- (2) The reported affiliations pose an undue risk of fraud, waste, or abuse;
- (3) The provider/supplier has had its Medicare, Medicaid or CHIP enrollment revoked under a different name, numerical identifier, or affiliated business entity;
- (4) The provider/supplier billed for services or items provided at a location that it knew or should have known did not comply with Medicare enrollment requirements; or
- (5) The provider/supplier fails to timely report any changes to Medicare, Medicaid and CHIP enrollment.

### A. Undue Risk of Fraud, Waste, or Abuse

Providers/suppliers that comply with the affiliation disclosure obligations are still subject to the risk of enrollment denials and revocation. Upon submission of the affiliation disclosure information, CMS reviews the information and, in its sole discretion, determine whether the affiliation poses an undue risk of fraud, waste or abuse. CMS states in the Final Rule that it considers the following factors when making "undue risk" determinations:

- The duration of the affiliation.
- Whether the affiliation still exists and, if not, how long ago it ended.
- The degree and extent of the affiliation.
- If applicable, the reason for the termination of the affiliation.
- The type of disclosable event.
- When the disclosable event occurred or was imposed.
- Whether the affiliation existed when the disclosable event occurred or was imposed.
- If the disclosable event is an uncollected debt, the amount of the debt, whether the affiliated provider/supplier is repaying the debt and to whom the debt is owed.
- If a denial, revocation, termination, exclusion or payment suspension is involved, the reason for the disclosable event.
- Any other evidence that CMS deems relevant to its determination.

If CMS determines that the affiliation poses an "undue risk," the provider's billing privileges for Medicare, Medicaid and CHIP may be denied or revoked.

### B. Non-Compliant Practice Location

Additionally, the Final Rule allows CMS to deny or revoke a provider/supplier's enrollment, "including all of the provider's or supplier's practice locations, regardless of whether they are part of the same enrollment, if the provider or supplier billed for services performed at or items furnished from a location that it knew or should reasonably have known did not comply with Medicare enrollment requirements."

EXAMPLE: A supplier of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) with four separately enrolled locations, moves an enrolled location to a non-enrolled location, and forgets to notify Medicare. If the DMEPOS supplier continues to submit claims under the enrolled location's provider agreement for DME furnished at the non-enrolled location, even if the enrolled location becomes an administrative office, CMS can terminate the participation of the non-enrolled location, as well as the four enrolled locations.

### C. Reporting Changes

CMS has made clear in the Final Rule that a provider/supplier's failure to timely report changes to Medicare, Medicaid and CHIP enrollment is grounds for revoking the provider/supplier's billing privileges. When determining whether to revoke a provider/supplier's enrollment for failure to timely report a change, CMS considers: whether the data was reported at all; if the data was reported, how late the reporting occurred; the materiality of the data in question; and any other information CMS deems relevant.

## III. ENROLLMENT RIPPLE EFFECTS

CMS' enhanced authority in the provider enrollment space is anticipated to lead to 2,600 new revocations per year. Large providers/suppliers with complex ownership structures should be especially wary of the ripple effects that one current or past disclosable event can have on *all* their enrollments. CMS' broad definition of affiliation can reach enrollments across multiple organizations and individuals, especially in the case of passive investors, such as private equity firms and publicly traded companies.

EXAMPLE: A private equity firm acquires the entire ownership interest of a home health provider with 25 enrollments between Tennessee and Ohio. The private equity firm also holds a 15 percent ownership interest in a Kentucky pharmacy provider that has 13 enrolled locations. In early 2019, CMS revoked the Medicare enrollment from one pharmacy location in Kentucky because the provider failed to report a change in address. When the home health provider is due for revalidation with both Medicare and Ohio Medicaid, it must disclose the pharmacy revocation to CMS and Ohio Medicaid as an affiliation with a disclosable event. CMS and or Ohio Medicaid could revoke the home health provider's Medicare and Medicaid enrollment if the provider fails to timely and fully report the pharmacy enrollment revocation as a disclosable event, or if CMS determines that the affiliation with the pharmacy provider poses an undue risk of fraud, waste or abuse.

While CMS states throughout the Final Rule that "the decision to revoke will not be taken lightly" and that it is intended to keep "criminals" out of the Medicare program, providers/suppliers now face more severe penalties for provider enrollment non-compliance. The risk of billing issues grows exponentially with larger providers/suppliers that have several affiliations due to their corporate ownership structure. Consequently, providers/suppliers should not only begin due diligence that is necessary to determine affiliations and disclosable events but also start to think about how a prospective affiliation might affect their provider enrollments with Medicare, Medicaid and CHIP.

Joshua Stearns is an associate attorney with Steptoe & Johnson, PLLC. His practice focuses on health care, corporate law, business transactions and government contracts. ■





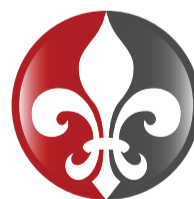
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- Betty's attorney during opening statement



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# Recruiting Strategies to Bolster Staff Retention

Cara Silletto, MBA, and Leah Brown

The reasons behind employee turnover can be complicated – and hard to pin down. Below is part 2 of a 6-part series delving into retention strategies and tips that make it easier to keep your employees.

Improving recruiting efforts alone will not fix a company's employee retention issues.

A company's first efforts in reducing unnecessary employee turnover should always start with the reasons people are leaving. If companies focus on gaining greater staffing stability and keeping the employees they have, over time there will be fewer positions to fill, and therefore less recruiting to worry about.

Retention efforts can and should involve creating a culture where people want to work, which happens to also be a great recruiting tool. This has the double result of making sure staff already working there want to stay, and attracting plenty of new applicants for openings that need filled.

So how does an organization make itself attractive in the eyes of potential candidates and current employees alike?

## DO YOU KNOW YOUR EMPLOYER BRAND?

When it comes to candidates, they normally have an opinion about a company before they set foot in the building for an interview.

What is your firm's reputation in the community? What are people saying about the organization? Building this brand can make a huge difference and can build up the excitement people feel when they apply for a job at your company – or squash that excitement pretty quickly if all they see and hear is negativity. Online sites like Glassdoor or Indeed allow people to review what it's like to work for your company. The more you know about what people are saying, the more you can improve any aspects that aren't top-notch and build a more positive employer brand.

Today's new workforce has grown up with reviews for basically everything in their life – restaurants, products, hotels, doctors – instantly at their fingertips. We should expect no different of these potential employees when they're researching places to work. So take advantage of what people are saying – and either use it to recruit candidates, or use the feedback to improve your company culture.

## HOW DO YOU DESCRIBE THE COMPANY & JOBS?

Once you have done your research on your employer brand, it can be helpful to adapt the job and company descriptions you're using in job postings to be more attractive. Yes, you should always start with the great work the

firm is doing and why people love working there. But if reduced turnover really is the goal, then retention efforts need to start early by being super transparent with candidates: Be honest about the good, the bad and the ugly regarding the open positions. This may seem crazy when you feel like you just need "warm bodies," but when you sugarcoat a job description, you're only setting yourself up for more pain down the road (extra time, money and turnover) whenever your new hire learns the less-than-glamorous aspects of the job and feels misled by their new employer. At that point, you've broken their trust, which takes a long time to regain.

Too many companies try to sell a culture that doesn't truly exist within their walls, and

it always comes back to haunt them as their new hires quit soon after training once they realize the reality of the situation.

## ARE YOU MAKING CANDIDATES WAIT TOO LONG?

We're in an employees' market today where they have choices since everyone's hiring – so companies should adapt their hiring process to fit the current environment. Speed it up! Whenever you are considering new candidates, it's important to expedite your hiring process.

Don't let applications languish on anyone's desk or in anyone's inbox. Be proactive with moving the process along – because if you don't, a competitor will. Streamline and automate where you can to ensure you don't lose more candidates as they wait for your checklist to be completed.

And above all, throughout the application process, continue communicating with the applicants about their status and your hiring timeline to remain their employer of choice as they consider working at several other places in your area.

Once leaders strengthen the organization's reputation and develop better, faster hiring processes, recruitment will improve automatically. And improved retention of that talent will follow.

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

Today's new workforce has grown up with reviews for basically everything in their life – restaurants, products, hotels, doctors – instantly at their fingertips.



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- Tuesday, November 12
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- Louisville Bar Center (600 W. Main St.)

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# Human Rights Advance by Individual Human Effort

Laura Landenwich & Tommy Clines

In the aftermath of World War II, the Universal Declaration of Human Rights announced standards and protections inherently owed to all human beings. Article 2 states that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” These grand ideals are susceptible to abstractions that make individual action seem futile. Human rights are the domain of governments and NGOs, big policy decisions and international efforts.

But making meaningful advances in human rights is also an individual pursuit. Louisville often feels like a bubble, untouched by the struggles of the world. The LBA recognized that this is an illusion when members Holly Houston and Nima Kulkarni petitioned the organization to form a section devoted to human rights. There are human rights issues in our community that, as lawyers, we have the opportunity to address one client at a time. This year, we are excited to tell members about the genesis of a program designed to facilitate individual contributions to this universal cause.

## ► I Knew Next to Nothing about Immigration Law

When I agreed to chair the LBA’s Human Rights section, I had a lot of sympathy for the plight of immigrants in our country, but little information about the process. I first met Tommy Clines at a Germantown pub to discuss what our section should do this year. There are an overwhelming number of issues to tackle in the area of human rights. As we brainstormed ideas for possible CLEs and community service, a theme started to crystalize. I don’t know many immigration attorneys, so while I admire what they do, I had little idea what the day-to-day challenges were. Turns out, there are a lot. And immigration lawyers aren’t hurting for clients. In fact, the opposite.

Over the course of our discussion and discussions with other immigration attorneys, I heard heartbreaking stories, discovered a byzantine conglomeration of rules, and digested incomprehensible statistics. I learned that employment-based green cards are allocated evenly between six categories of workers, regardless of economic demand. There are only 5,000 employer sponsored green cards available for workers without college degrees. It’s no wonder that, according to Pew Research Institute, 24 percent of farm workers and 15 percent of construction workers are undocumented. I also learned that within those six categories are limits based on nationality. No nationality may receive more than 7 percent of the total allotment of green cards. The result is both obvious and astonishing. According to the Cato Institute, the current wait time for Indian immigrants with advanced degrees to obtain a green card is estimated to be 151 years.

For workers lucky enough to score a green card, their families face additional hurdles. Family sponsored visas are also subjected to quotas based on relationship and nationality. When Americans opine that immigrants should “wait in line” to be processed, they surely don’t have any idea how long that line really is. The State Department publishes a monthly bulletin announcing where, or more accurately when, the front of the line is for each category of immigrant.

To illustrate, below is an excerpt from the April 2019 VISA Bulletin (No. 28, Vol.X). If you are a Mexican national who is an unmarried adult child of a U.S. citizen (F1), the State Department is currently issuing green cards to people who applied in 1997. The backlog for married children of U.S. Citizens from Mexico (F3) dates to 1996. In light of those numbers, we should be relieved to know that the backlog for minor children of lawful permanent residents (F2) is only about two years.

FAMILY-SPONSORED	ALL CHARGEABILITY AREAS EXCEPT THOSE LISTED	CHINA-MAINLAND BORN	INDIA	MEXICO	PHILIPPINES
F1	01DEC11	01DEC11	01DEC11	08AUG97	08APR07
F2A	01MAR17	01MAR17	01MAR17	15FEB17	01MAR17
F2B	22OCT12	22OCT12	22OCT12	01DEC97	01AUG07
F3	22SEP06	22SEP06	22SEP06	08FEB96	01JUN96
F4	01JAN06	01JAN06	15JUL04	08FEB98	01JUN96

While we have all heard about the plight of “dreamers,” undocumented residents who were brought into the country as minors, there are more unfortunate cases. Children of temporary workers who wait in line along with their parents for permanent residency are dropped from the green card queue when they “age out” at 21. Regardless of when they originally applied for permanent residence, they must self-deport or get in the back of the long line of adult children waiting for a green card. These are issues that must be addressed by policy changes. And they are the types of problems that make human rights seem beyond our ability to influence.

Among the many aspects of immigration law I had not considered prior to meeting Tommy was the issue of bail. Did you know that undocumented Kentuckians who get picked up by ICE do not automatically get a bail hearing? I didn’t. Nor did I realize that without bail, these folks are just left to rot in the Boone County Jail until their deportation hearing. The difference between getting a bond and not is huge. It means time with family, the ability to gather evidence to support a claim, and the opportunity to hire an attorney. This is a local human rights issue that can be impacted by local action.

## ► An Immigration Veteran Hatches a Plan

When Laura and I first met to discuss our 2019 plan for the Human Rights Section of the LBA, we decided that we wanted to make a tangible impact in our community. We asked ourselves “what human rights issues exist in Louisville and Kentucky at large?” As an immigration defense attorney, my mind went straight to the many immigrants who are detained each day by the Immigration Customs and Enforcement (ICE). Immigrants who do not have a legal status

in the United States such as a “green card” or those who have overstayed their visas are subject to removal proceedings (deportation).

Immigration is currently a highly polemic issue and you may have seen news about ICE raiding businesses and homes to look for undocumented immigrants. However, many people are detained after minor traffic infractions or by being in the same place as someone ICE is looking for.

Immigrants in removal proceedings do not have the right to an attorney such as a public defender. Thus, detained immigrants must find their own private counsel or hope that a non-profit organization can take their case. In many instances, people will be in a detention facility for several months before they have their first hearing, even though they are eligible for a bond.

The first bond determination is made by an ICE officer, not a judge. Bonds are based on whether the immigrant is likely to attend all scheduled hearings and whether they are a danger to the community. However, sometimes people are not given a bond amount or if so, the amount is prohibitively expensive (bonds start at \$1,500 but have no limit). In 2016, the average bond amount was set at \$9,000.

So, here is the problem. Many people who have significant ties to the US and have contributed to their communities are being held indefinitely in jails because they do not have a permanent legal status. Another issue is that there are simply not enough immigration attorneys to help. Finally, in many cases families cannot afford to retain a private attorney and pay the bond amount. So, there is a gross lack of due process and little recourse for immigrants and their families.

Certainly, there are cases where individuals are not eligible for a bond due to criminal convictions or prior deportation orders, but many people can be granted bond if there is someone that can help them present their case to the judge. In addition to determining whether a person is a flight risk or a danger to the community, immigration judges will consider other mitigating factors. These factors include the possibility of immigration relief, work history and family ties. For a *pro se* defendant, these arguments are not obvious. They do not know what to say to the judge. Having representation is critical.

Laura and I decided that this was an issue that has a solution. With the support of the LBA, in particular Lea Hardwick, we are developing a network of local attorneys who can help detained immigrants at their bond hearings. Having representation at such hearings can be the difference between staying in detention and being at home with their families. Importantly, getting a bond allows individuals to have a better chance in their removal cases.

Our hope with this program is to aid people with their bond hearings so that they can seek permanent counsel after release. The timeline for someone’s case when they are detained is a few months and it is extremely difficult to coordinate a good defense. When they receive a bond, they will generally have at least a year, and may be eligible to obtain a work permit while they wait for their final hearing on the merits of their case.

## ► An Invitation to Join

The limited-scope representation of a bond hearing is a great way to help out in this area without having to spend a lot of time learning a new area of law. The Human Rights Section has already provided one CLE training on how to handle bond hearings, and is planning another in the coming months. Those who attend the one hour CLE receive step-by-step instructions, form pleadings, and Tommy’s number just in case. The hearings themselves are short and telephonic. Thanks to a grant from the Louisville Bar Foundation, interpreters are available to facilitate client communications. And, volunteers in our program are covered by the LBA’s legal malpractice policy.

It doesn’t take a lot of time. You don’t have to speak a foreign language. You don’t need additional malpractice insurance. There is no reason YOU can’t help make a difference.

Laura Landenwich and Tommy Clines chair the LBA Human Rights Section. Landenwich is a civil rights attorney at Adams Landenwich Walton. Clines is a founding partner of The Clines Law Group. ■



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# Awards Luncheon

**Friday, December 6**  
**Marcus Lindsey, 801 E. Main St.**  
**11:00 am – 1:00 pm**

The LBA will be honoring those who have helped make the Louisville legal community great this year!

- Judge of the Year
- Justice Martin E. Johnstone Special Recognition Award
- Judge Benjamin F. Shobe Civility & Professionalism Award
- Paul G. Tobin Pro Bono Service Award
- Frank E. Haddad Jr. Young Lawyer Award
- Daniel M. Alvarez Champion for Justice Award
- Committee of the Year
- Section of the Year

\$30 per person (Govt/Public Service \$25)  
\$200 for table of 8

RSVP no later than Monday, November 25.  
Contact Marisa Motley, [mmotley@loubar.org](mailto:mmotley@loubar.org) or  
(502) 583-5314 for more information or to register.

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we will not be accepting walk-ins.**

## Mastering Life Balance: Achieving Greatness at Home and at Work 5 Tips from Former Businessman of the Year

**Gary Kunath**

People are overwhelmed with the complexities of their own lives and are desperately seeking a way to maximize happiness in their home and work lives, says Gary Kunath, an entrepreneur, speaker and former CEO who works with some of the world's top corporations and business schools.

"I used to be caught up in the spin cycle of thinking that net worth automatically afforded me life worth," says Kunath, a speaker at top business schools and author of *Life ... Don't Miss It. I Almost Did: How I Learned To Live Life To The Fullest*.

"I sacrificed time with my family with the justification that I was providing necessary material things, but at a certain point you realize that money doesn't make you rich, it just allows you to buy more stuff."

Priorities for professionals have shifted; now, U.S. workers seek family wellbeing above all else, he says. Companies need to recognize that it's imperative to positively affect their employees' lives, both inside and outside working quarters, he says.

"We need to bring humanity back to business," Kunath says. "Leading corporations are aware that most professionals today – 70 percent – would trade a pay raise for an increase in personal wellness."

But employers are struggling with that, he says, citing an American Psychological Association survey in which 48 percent of employees say their employers don't value a good work-life balance.

More professionals are trying to find a path to *life* worth, rather than centering their behavior on net worth, Kunath says. He offers five ways career-minded individuals can achieve both:

- **LOOK FOR SIGNS YOU'RE FALLING INTO THE NET-WORTH TRAP:** For Kunath, those signs were clear. One day, he says, "it was like someone had smacked me on the head," when his son, then 12, walked away in dismay after Kunath said he couldn't play baseball with him because he was too busy working on a business proposal. "The look of disappointment on my son's face was something I will never forget," he says. Kunath dropped everything and spent the day with his son. "I promised that would NEVER happen again." The next occurrence included a mental and physical breakdown after Kunath pushed himself to make an unnecessary business trip while sick. After a 19-hour ordeal on a delayed flight to Spain, "...I knew in my bones that if I did not draw the line right there ... I would ruin every part of my life that mattered to me."
- **DON'T BE AN EMPLOYEE, BE EMPLOYABLE:** Unless you are self-employed, you are always vulnerable to someone else controlling your professional destiny, and therefore, your life worth. But employees can empower themselves by diversifying their skills so that they can have more choices about where and for whom to work.
- **BAD THINGS HAPPEN TO GOOD PEOPLE:** Adversity finds us all. No one enjoys the worst, most painful moments of their lives. Nonetheless, life events like loss of a loved one, financial ruin, divorce, addictions or illness tend to define us. We *need* adversity in our lives. Anyone can be a rock star when life is perfect. But when adversity strikes, then the "real" you is revealed. How you face adversity can either extinguish you or distinguish you.
- **BELIEVE IN SOMETHING BIGGER THAN YOU:** There will be times when you are utterly helpless, with no control over an outcome. All the money in the bank and all the authority at work will do no good when it comes to, for instance, the death of a loved one. Believing in something bigger than you is an important part of having life worth; it helps you maintain your emotional health when you face life's biggest challenges.
- **DON'T MAJOR IN THE MINORS:** As Henry David Thoreau wrote, "The price of anything is the amount of life you exchange for it." For every evening spent late in the office there are moments professionals miss out on – and can never get back. Many of us spend time on things that ultimately don't matter. "The three greatest gifts you can give to your family are: Time, memories and tradition," he says. "These are things in life that matter."

Gary Kunath is the founder of *The Summit Group*, which is ranked among the top sales-training companies in the world by *Selling Power* magazine. ■



**LBA IN PARTNERSHIP WITH JCUP**

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

**Thursday, November 14**

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

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

Speaker: TBA

**Time:** 11:45 a.m. — Registration; Noon — 1:15 p.m. — Program

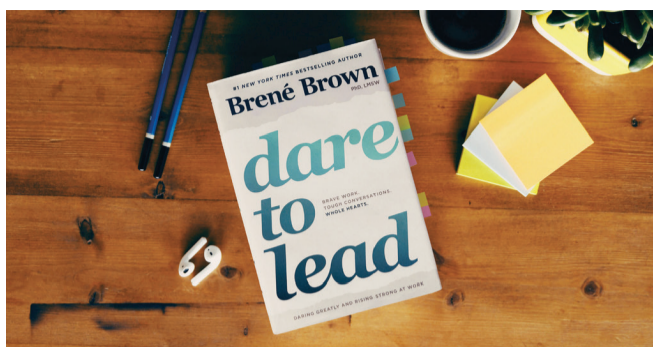
**Place:** Jefferson Circuit Court, Division One, Courtroom TBA

**Price:** \$100 LBA Members / \$150 Non-Members / \$20 Paralegal Members

**Credits:** 1.0 CLE Hour — Approved by KBA and Indiana Supreme Court

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

*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](http://www.loubar.org) for details.*



**NOVEMBER 8, 2019**

11:00 a.m. - 11:30 a.m.

Networking

11:30 a.m. - 1:00 p.m.

Program

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After October 11, 2019: \$75.00

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**Live Ethics Webinars**

11.5.19 | 1:00 PM | It's Not the Fruit, It's the Root: Getting to the Bottom of Our Ethical Ills | 1.0 CLE Ethics Credit

In this unique legal ethics seminar, Sean goes beyond the "dos" and "don'ts" of the Rules of Professional Conduct to get to the heart of the matter -- the common mindsets that result in ethical violations in the first place. Furthermore, he will provide tips and insights on how to heal ourselves from these mindsets so that the ethical canons become guide posts and not obstacles in our drive to become successful lawyers.

11.12.19 | 1:00 PM | Enough is Enough: Avoiding Vexatious Lawyering | 1.0 CLE Ethics Credit

While lawyers are expected to provide their clients with zealous representation, we are not allowed to become outright zealots in pursuit of our client's objectives. Yet, time and again, this is precisely what happens as lawyers become fixated on winning at all costs. And as a result, they end up paying the ultimate price -- the loss of their license to practice law. In this sobering but surprisingly funny presentation, legal humorist Sean Carter will distinguish permissible zealous legal practices from unethical legal zealotry.

11.19.19 | 1:00 PM | Keep It Classy (and Ethical): How Not to Market Legal Services | 1.0 CLE Ethics Credit

While lawyers are expected to provide their clients with zealous representation, we are not allowed to become outright zealots in pursuit of our client's objectives. Yet, time and again, this is precisely what happens as lawyers become fixated on winning at all costs. And as a result, they end up paying the ultimate price -- the loss of their license to practice law. In this sobering but surprisingly funny presentation, legal humorist Sean Carter will distinguish permissible zealous legal practices from unethical legal zealotry.

**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/](http://www.loubar.org/online-cle/)**

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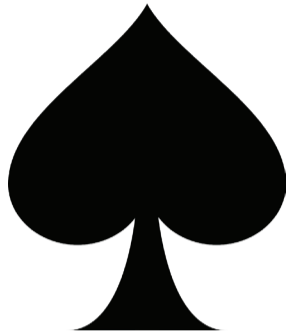
Due to the partnership with Mesa CLE, the LBA will NOT be accepting registrations for these webinars. Please visit the LBA website's CLE calendar for the link to register and the cancellation policy.





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## Bench & Bar Social



MORE DETAILS TO COME

### Section Meetings

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

Thursday, November 21: Young Lawyers

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

### Legal Assistants of Louisville

On November 19 the Legal Assistants of Louisville will host its annual Bosses' Luncheon. The luncheon will take place from 11:30 a.m. to 1 p.m. at the Bristol Bar & Grille, 614 W. Main Street. For more information about the organization, please contact Loretta Sugg, Vice President, at (502) 779-8546.

### Louisville Association of Paralegals

Check out upcoming educational programs and special events on the Louisville Association of Paralegals website at [www.loupara.org](http://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](http://www.loupara.org).

### Reception to Honor Prof. Connelly, KLEO Program

Professor Allison Connelly, director of the Kentucky Legal Education Opportunity (KLEO) program's Summer Institute, will be the guest of honor at a reception at the Bar Center on November 6 beginning at 5:30 p.m. The KLEO program provides academic and financial support to first-year students from populations underrepresented in the legal profession and enrolled at one of Kentucky's three public law schools - the University of Kentucky College of Law, Brandeis School of Law at the University of Louisville and Chase College of Law at Northern Kentucky University.

There is no cost to attend the reception, hosted by the KLEO Advisory Committee, but tax-deductible donations to support the KLEO program will be gratefully accepted. Checks payable to the Kentucky Bar Foundation Diversity Fund may be brought to the reception or mailed to the KBF at 514 W. Main Street, Frankfort, KY 40601.

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### Immigration Consultant:

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

### Discrimination Issues & Other Related Matters:

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## Help Wanted

*Through the LBA Placement Service*

### Associate Attorney:

The LBA is working with a busy law firm located in the Middletown area of Louisville. They are looking for an associate attorney with 1-5 years of experience handling civil litigation matters, (insurance defense experience preferred). Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, [dmohr@loubar.org](mailto:dmohr@loubar.org).

### Associate Attorney:

The LBA is working with a small, but growing, Plaintiff's firm located on the east side of town that is looking to add an Associate Attorney. They are seeking an attorney with at least 1-2 years experience in personal injury (Plaintiff or Defense). Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, [dmohr@loubar.org](mailto:dmohr@loubar.org).



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Lease Rate:	\$9.50 PSF (Annual)	Year Built:	1900
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-15 private offices. -2 conference rooms. -Full kitchen. -Alarm system. -Fully wired with Cat5. -New HVAC, 90% efficient. -10 car secured parking lot in rear. -All rooms meticulously refinished and ready for use. -Tesla charging station. Square Footage: 5,748 SF Finished Office Space. Basement Storage: 1,690 SF. Total Square Footage: 7,438 SF

### More Information Online:

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### Property Contacts



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[sgilmore@howelouisville.com](mailto:sgilmore@howelouisville.com)



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# MEMBERS *on the move*



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McGarvey

Jefferson County Attorney Michael J. O'Connell is pleased to announce that **Eric J. Graninger** has been named First Assistant, the office's highest appointed position. Graninger has been an Assistant County Attorney since 2009 practicing primarily in the office's Employment and Labor section. Most recently he served as Civil Division Director overseeing the office's duties as legal representative for all of Metro Government. He previously spent 18 years with the national office of the Presbyterian Church (USA) where he rose to be its general counsel.

In a corresponding move, **Sarah J. Martin** has been promoted to Civil Division Director. Martin became an Assistant County Attorney in 2008 and has served as the office's lead lawyer for matter related to the Metro Council since 2016. Her previous service with the office includes leadership roles with the Louisville Metro Human Relations Commission, Jefferson County Board of Elections and as a trial court prosecutor.

*Forbes* has named **Dinsmore & Shohl** among the nation's best law firms for labor and employment practice in its inaugural "America's Top Corporate Law Firms" list. Of the more than 400,000 law firms across the country, 243 made the list, and a mere 29 were recognized for their labor and employment work.

Dinsmore & Shohl has welcomed associate **Chase Cunningham** to the firm's Louisville office. He will practice with both the immigration and labor and employment groups. Cunningham is a 2018 graduate of the University of Louisville Brandeis School of Law. Before joining Dinsmore, he worked as a judicial term clerk for United States Magistrate Judge Colin H. Lindsay in the Western District of Kentucky.

**Dinsmore & Shohl** is proud to announce it has been named to *Women Inc. Magazine's* "Top 100 Law Firms for Women" list. The list celebrates firms that value female representation and leadership and was compiled with data including recognitions, recruitment, community outreach, firm prominence and more.

*Women Inc. Magazine* ranked **Frost Brown Todd (FBT)** one of its "Top 100 Law Firms for Women." The magazine's editorial staff selected firms based on factors including recruitment and community outreach, firm prominence and prior recognition. In addition to the Women Inc. award, the Women in Law Empowerment Forum (WILEF) recognized FBT as a seven-time "Gold Standard law firm" in 2019.

Wyatt, Tarrant & Combs is pleased to announce that **David Calhoun** has been appointed by the President of the Kentucky Bar association to the KBA's Ethics and Ethics Hotline Committees. Calhoun is a member of the firm's Litigation and Dispute Resolution Team, and is the firm's Deputy General Counsel and Partner in Charge of Ethics and Loss Prevention. On the KBA Ethics Committee, Calhoun will assist in advising Bar members on ethical questions based on contemplated attorney conduct, as well as assist in drafting opinions to be presented to the Board of Governors which may authorize formal or informal opinions. On the KBA's Ethics Hotline Committee, Calhoun will assist in rendering advisory ethics opinions which are of an emergency nature.

The law firm of Sitlinger & Theiler is pleased to announce that **Abigail Tudor** has joined the firm as an associate. Tudor is a 2019 graduate of the University of Louisville Brandeis School of Law.

The Uniform Law Commission (ULC) has appointed **John McGarvey** as Uniform Commercial Code (UCC) committee chair for a two-year term. McGarvey has served as Kentucky's legislative liaison for the ULC since 2006. He was appointed the Southern Region representative on the ULC's Legislative Council in 2011 and was chairperson of the Legislative Council from 2013-2015. In 2015, McGarvey was appointed as a division chair for the ULC and in that capacity serves on the Permanent Editorial Board for the UCC and as a liaison to several ULC committees. McGarvey also served on the ULC's Drafting Committee for the 2010 Amendments to Article 9 and as co-chair of the Enactment Committee for the Amendments, which earned him a Legislative Award in 2013.

## THE LOUISVILLE BAR FOUNDATION



Bolus



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The Louisville Bar Foundation recognizes and welcomes **James M. Bolus, Jr.** as a **Patron Fellow of the Foundation**. Bolus, a native of Louisville, is the founder of Bolus Law Offices where his practice focuses on representing plaintiffs in personal injury actions, including medical malpractice, nursing home negligence and products liability.

The Louisville Bar Foundation recognizes and welcomes **Hon. Angela J. Johnson** as a **Fellow of the Foundation**. Johnson serves as judge of Jefferson Family Court, Division One, following her election to the bench in 2015. She is also a member of the Board of Directors of the Louisville Bar Foundation.

The Louisville Bar Foundation recognizes and welcomes **A. Nicholas Naiser** as a **Fellow of the Foundation**. Naiser is the founder of the Naiser Law Office where his practice focuses on personal injury law in a wide variety of areas, including medical malpractice and tractor trailer negligence cases.

The Louisville Bar Foundation recognizes and welcomes **Loren T. Prizant** as a **Fellow of the Foundation**. Prizant is a director at the Middleton Reutlinger law firm where he is a member of the business litigation practice group and the firm's health care law practice group. He is also a member of the Board of Directors of the Louisville Bar Foundation.

The Louisville Bar Foundation recognizes and welcomes **Brennan J. Soergel** as a **Fellow of the Foundation**. Soergel is the founder of Soergel Law Office where his practice focuses on employment law, personal injury, select criminal law cases and general civil litigation.

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

## We Need Volunteers!

The LBA has 20 sections members can join and we need your help in leading them! Interested parties should contact Lisa Anspach at [lanspach@loubar.org](mailto:lanspach@loubar.org) for more information.

- ADR/Mediation
- Appellate
- Bankruptcy
- Corporate Law
- Criminal Law
- Environmental Law
- Family Law
- Human Rights Law
- In-House Counsel
- Intellectual Property
- Labor & Employment Litigation
- Probate & Estate
- Public Interest Law
- Real Estate
- Social Security
- Solo & Small Practice
- Taxation
- Young Lawyers

## New Address, Phone or Email??

The 2019-2020 LBA pictorial roster is out and in the hands of our members! Now is the time to be sure the LBA has your most current contact information. Be sure to let us know if you've recently switched firms, opened your own practice or simply gotten rid of your fax.

Dues statements for 2020 will be mailed in late November and will include your roster listing. While our 20-21 printed roster won't be released for several months, our online roster is updated daily!

So don't delay in letting us know of any changes! Simply email [mmotley@loubar.org](mailto:mmotley@loubar.org) any updates to your profile.



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