

Michael Losavio

Cybersecurity and Homeland Security

Cybersecurity is homeland security; protecting your computer systems protects others in the Internet world.

Though attention to homeland security looks to federal/state efforts and intimate airport encounters, homeland cybersecurity includes *your* desktop. What a firebomb might do to a building or highway bridge, so might a compromised office computer help storm the security bastions of any other computer on the 'Net.

In judicial and legal practice, we need system availability, data integrity and confidentiality. A primary concern is ethically protecting those we represent or come before the courts for justice.

But high-powered personal computers and broadband Internet lines create responsibility beyond this. Our personal computers handle millions of pages and computations of data. Broadband connections like DSL and cable modem services push vast amounts of code and commands in seconds. This electronic network is not one-way, passive delivery to our computer doorstep; its high interactivity and manipulability lets things flow from us out into the world. Lots of things. While our office and home computer systems are not deemed "critical infrastructures" like highways and power plants, they can affect and change the operations of systems anywhere in the world.

So a compromise of your system doesn't just threaten your court or your practice or your clients; it may threaten anyone else dependent on the Internet and computers. That threat is multiplied when hundreds of other systems are compromised by those with malice in their hearts. As medical and mechanical systems inexorably move to computer/network operations, real, live people face real, mortal threats from computer attacks.



Michael Losavio

Consider these threats to an unsecured home or small business system.

Remote Control of Your Computer

An unsecured computer with broadband, once cracked by an intruder, can have remote control software covertly installed. Your computer can become the cracker's plaything. Unpleasant uses for your computer may be:

- 1) to launch denial-of-service attacks against other computers by sending out signals that flood the network and tie up the computers trying to respond to those signals;
- 2) as a control computer to control other computers that flood the networks during a denial of service attack;
- 3) as a proxy computer to hack into another computer system or conduct fraudulent e-commerce transactions, so any trace comes back to you, not the actual criminal;
- 4) as a spam server to do bulk e-mail advertising from your e-mail account; and
- 5) as a file server where folks the world over can download mp3s, child pornography, warez, computer cracking programs, weapons blueprints, etc...

All without your knowledge, at least until the FBI, the RIAA or your ISP say they'd like to have a talk with you. What will you tell them?

And, of course, who knows what they may have done with your own files on your computer. What will you tell your clients, or parties before you, or the press?

Virus

The virus threat is a well-known problem for unse-

cured personal computers. Your machine, once infected, is part of the threat matrix for everyone sharing files such as e-mail or documents with you. If you are unprotected, you are a risk.

The Home-To-Business Back-door

Home computers present another risk; used for office business, they can be the back-door into an otherwise well-secured office computer network. Whether by diskette, dial-up modem, Internet portal or virtual private network (VPN), they are entry into trusted office systems. When those trusted systems are compromised via the unsecured home system of an otherwise diligent employee, they can crack the entire business wide open.

Protection

What can you do? There are suggested "best practices" that offer a level of protection. They boil down to two areas: use of protective technology and use of good security practices.

You can review some suggested security practices at:

<http://www.staysafeonline.info/sectips.adp> - The National Cyber Security Alliance

<http://www.dhs.gov/dhspublic/display?theme=76&content=336>
- The Department of Homeland Security

http://www.cert.org/tech_tips/home_networks.html - CERT Coordination Center at Carnegie Mellon University

If you are on the 'Net, you and your computer should have this protective technology:

- 1) a firewall;
- 2) an anti-virus; and
- 3) a spyware catcher (to remove advertising/monitoring software).

This basic suite can stop or warn of many attacks against you, if you set it up properly.

But, that is the simple stuff...

With evolving threats and life's daily distractions, you *must* adopt personal security practices in using on-line systems. Those personal practices, at times inconvenient, can assure the best security for your computer systems.

First, for your computer and its protective systems, you must use:

- 1) a management and frequent update policy for them and for *all the programs on your machine, including your anti-virus, firewall and spycatcher programs*; and
- 2) a recovery plan for your information and machine for when a compromise occurs (and it will)!

The firewall monitors incoming and outgoing data and commands, and let's you decide what to do. The anti-virus scans and protects against known viruses while the spy-catcher screens out potential risks created by spyware, the increasingly ubiquitous advertiser-supported computer monitoring programs that track and report on your computer activities.

But they are only as effective as you are in managing, monitoring and maintaining them. Firewalls must have their filtering rules checked and re-checked. Anti-virus and spycatcher programs need regular updates. And so do your other programs, particularly your operating system, which, with millions of lines of computer code, is full of possible security loopholes. Patches for those holes are regularly posted to fix them, but you've got to use them. (Automatic updating can help; in Windows XP you can activate this via Control Panel >System >Automatic Updates.)

You need a recovery plan, basic to any information security plan. If you've been compromised, you may need to pull the plug, and fast. Recovery and backup systems to get you back in business means you're less likely to hesitate at a crucial time, and will suffer less damage from an attack.

Don't forget: you, using your machine, must be careful! Some recommended security practices, many you may already use, include:

- 1) do not open stranger e-mail;
- 2) do not download stranger files off the 'Net, including music files, or use unclean diskettes;
- 3) do not let others, whether staff, janitors, clerks, etc... download stranger files;
- 4) for your home computer, do not leave your Internet connection on when you are not on the machine (if no one is using it and the modem lights are blinking madly, you might have a problem!); and
- 5) *do* use and protect strong passwords, for everything.

Lastly, *you* must be on guard for unusual computer activity. A com-

puter slowdown might be time to reboot, or a sign covert programs are running in the background. That frenzied blinking modem light that might be the sign you have visitors you really don't want. Messages from the firewall that someone outside wants in, or a program you're not using wants to send something out, may be benign or a sign of possible compromise. Technology simply is never enough; constant human vigilance is essential.

You might even subscribe to an email warning service of new threats to your computer security, just to get ahead of the game.

Nothing's perfect, but these practices can help. Especially if your children follow them at home.

How safe are you? Take a Cybersecurity Self-test Challenge online at <http://www.staysafeonline.info/selftest.adp>.

The cybersecurity threat from homes and small businesses is detailed in The National Strategy to Secure Cyberspace. The Strategy finds these systems "...are being increasingly subverted by malicious actors to attack critical systems." Given the sheer numbers involved, community "awareness" and training on basic cybersecurity techniques is needed for home and small business users. The Strategy advocates collaboration between government, business and consumers to improve security by reducing exploitation of home and small business systems.

A concern is the cost and complexity of protection. Anti-virus software, including updates, can be very pricey. ZoneLabs, LavaSoft, and Microsoft, on the other hand, make their basic firewall, spycatcher and update products available free of charge. While training may help support basic protection, the cost model for consumer-level security may need serious review.

On the other hand, there are people stepping up to help, not just government. For example, the student chapter of the Association for Computing Machinery at the University of Louisville plans a public cybersecurity education and installation project to help home and small business computer users in Kentucky. Information is at <http://www.speedacm.org/>.

It is a shame that "the most participatory form of mass speech yet developed," (Reno v. ACLU), is being trashed by criminals. Yet we can't only blame the miscreants or leave their deterrence to others. Cyber-security for the homeland

needs all of our efforts to preserve this remarkable engine of knowledge, discourse and liberty for everyone.

Thanks to Keith Stevenson for his editorial comments on this article. You can read The National Strategy to Secure Cyberspace at http://www.dhs.gov/interweb/assetlibrary/National_Cyberspace_Strategy.pdf.

For an intense review of your system security, the Symantec Security Check has security test tools at <http://www.symantec.com/> to do some basic auditing of your system features. The results, some of which are highly technical, can give you a further sense of vulnerabilities. The Symantec Security Check is available under the Downloads section, as is a free security alert service. Be aware that both will download code to your system!

Microsoft security downloads, including those for the most recent vulnerabilities, are available at <http://www.microsoft.com/downloads>.

The ZoneAlarm basic firewall, and Zone Lab's commercial products ZoneAlarm Pro and Plus are available at <http://www.zonelabs.com>.

The Ad-aware spycatcher is available from Lavasoft at <http://www.lavasoftusa.com>.

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Apostrophes

Apostrophes punctuate words. They properly are used for two purposes: to form possessives and to represent omitted letters in contracted abbreviations.

1. Possessives. Add an 's to the end of a word to form the possessive of a singular noun or a plural noun that does not end in an s or z sound.¹ *The defendant's accomplice tried to hide in the women's restroom.* This rule applies for singular nouns even if the base word ends in -s or is a proper noun. *The witness's testimony indicated that the accident was caused by Jones's negligence.*

If a plural noun ends in an s or z sound, add an apostrophe to the end of the noun to form the plural possessive. *The three defendants' testimony was disputed by the plaintiff's photograph.* *Defendants'* is plural-possessive; *plaintiff's* is singular-possessive.

Possessive pronouns sometimes are confused with contractions. Never use an apostrophe with a possessive pronoun. *It's* (contraction for "it is") *wonderful to eat a turkey basted in its* (possessive) *own juices.* *They're* (contraction for "they are") *convinced that their* (possessive) *vote was not counted.* *Who's* (contraction for "who is") *going to whose* (possessive) *house?*

Use the same rules with numbers, letters, and abbreviations. *The EEOC's decision was based on its finding that the discharged employee was replaced by an employee in her 50s.*

2. Contracted Abbreviations. Apostrophes, in addition to forming possessives, also are one of two ways to indicate omitted letters in contracted abbreviations. The other way is the use of a period. Examples include *it's* for *it is*, *don't* for *do not*, *Mr.* for *Mister* or *Monsieur*, and *Dr.* for *Doctor*.



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Contracted abbreviations often are used in case names, particularly for words that are long and that commonly appear in case names. The Bluebook² usually uses the apostrophe to substitute for omitted letters (as in *Ass'n*, *Dep't*), though the Bluebook sometimes uses the period (*Corp.*, *Co.*). The ALWD Manual uses the period (*Assn.*, *Dept.*).

The use of common contractions (e.g., *it's*, *can't*, *shouldn't*, *won't*) has long been discouraged as too informal for most legal prose.³ Make an exception, however, if the formal language sounds stilted. ■

Footnotes

1. BRYAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* 93 (2002).
2. *THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION* (17th ed. 2000).
3. ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS* 137 (2d ed. 2000).



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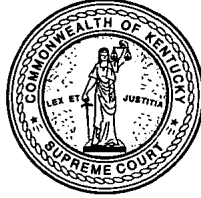
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Supreme Court of Kentucky



IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)

2003-4

The following rules' amendments shall become effective January 1, 2004.

AMENDMENTS TO THE RULES OF THE SUPREME COURT

The following rules' amendments shall become effective January 1, 2004.

1. SCR 2.015(2)

Section (2) of SCR 2.015 shall read:

- (2) No person shall sit for the Bar Examinations administered under SCR 2.080, 3.500 or 3.510 unless he or she has first passed the Multi-State Professional Responsibility Examination administered by the National Conference of Bar Examiners by attaining a scaled score thereon of at least 75.

2. SCR 2.042(4)

A new section (4) of SCR 2.042 shall read:

- (4) Any member whose license is revoked by the Court for failure to comply with the terms of a conditional admission agreement shall be deemed to have been subject to a disciplinary action and restoration or reinstatement shall be subject to the rules set forth in SCR 3.510.

3. SCR 2.110(3)

Section (3) of SCR 2.110 shall read:

- (3) Admission under this Rule shall be conditioned on the applicant establishing that the district or state from which the applicant applies and in which the applicant performs the major portion of his or her professional activities has rules or other provisions providing for admission without examination and by reciprocity or comity which are no more restrictive than the rules of this Commonwealth.

4. SCR 2.111 (5)

Section (5) of SCR 2.111 shall read:

The performance of legal services in this Com-

monwealth solely for such attorney's employer, its parent, subsidiary, or affiliated entities, following admission to the Kentucky Bar on a limited certificate shall be considered to be the active engagement in the practice of law for all purposes.

5. SCR 3.010 General Definitions

SCR 3.010 shall read:

As used throughout this Rule 3, the following definitions shall apply unless the context clearly requires a different meaning:

"Association" is the Kentucky Bar Association.

"Attorney" is a person licensed or authorized to practice law.

"Board" is the board of governors of the association.

"Bylaws" means the bylaws of the association.

"Chairman" means the chairman of the house of delegates.

"Chairman-elect" means the chairman-elect of the house of delegates.

"Charge" means the pleading by which the association charges an attorney with unprofessional conduct.

"Circuit clerk" is the clerk of the court of respondent's present or last known residence.

"Clerk" is the clerk of the Supreme Court of Kentucky.

"Committee" means the committee on character and fitness defined in Rule 2.040.

"Complainant" means the party who causes to be initiated an investigation of an attorney, or who causes to be initiated a proceeding under Rule 3.160. The complainant may be a person or entity.

"Court" is the Supreme Court of Kentucky.

"Delegate" is a member of the house of delegates of the association.

"Director" is the director of the association.

"District" means a prescribed geographical and political area of the state.

“Governor” is an elected member of the board.

“House” means the house of delegates of the association.

“Law student” means any person enrolled in an approved law school who has successfully completed the first year therein.

“Member” means an attorney in good standing as required by the rules of the court.

“Officer” means a member elected or appointed pursuant to the rules.

“President” is the president of the association.

“President-elect” is the president-elect of the association.

“Registrar” is the registrar of the association.

“Respondent” is an attorney against whom a charge is filed.

“Rules” are the rules of the court.

“Section” means a body of members actively interested in and promoting improvements in a particular branch of law.

“Time” is computed as under the Rules of Civil Procedure.

“Treasurer” is the treasurer of the association.

“Trial commissioner” means the commissioner appointed pursuant to the provisions of Rule 3.230 and other rules governing disciplinary procedures.

“Vice-chairman” is the vice-chairman of the house of delegates.

“Vice-president” is the vice-president of the association.

6. SCR 3.050

COLLECTION OF DUES; SUSPENSION FOR NONPAYMENT

SCR 3.050 shall read:

On or before September 15 of each year, the Treasurer shall notify a member in writing of his or her delinquency and an additional late payment fee of fifty dollars shall be assessed. On or before October 15 of each year, the Treasurer shall in writing certify to the Court the names of all members who remain delinquent. The Clerk shall docket the matter and the Court shall issue to such members a rule requiring each to show cause why he or she should not be suspended from the practice of law. The member shall file a response with the Clerk within twenty days of the date of the entry of the show cause or-

der, and shall serve a copy on the Director, in addition to making the required payment of the delinquent dues and the late payment fee paid to the Association. The Association shall be permitted to file a reply within ten days after the filing of a response by a member. Unless good cause is shown by the return date of the rule or within such additional time as maybe allowed by the Court, an order shall be entered suspending respondent from the practice of law. An attested copy of the order shall be delivered by the Clerk to the member, the Director, and the Circuit Clerk of the member’s residential district for recording and indexing. The suspended member may apply for reinstatement to membership under the provisions of SCR 3.500.

7. SCR 3.166(1)

AUTOMATIC SUSPENSION AFTER CONVICTION OF A FELONY

Section (1) of SCR 3.166 shall read:

- (1) Any member of the Kentucky Bar Association who pleads guilty to, or is convicted by a judge or jury of, a felony in this State or in any other jurisdiction shall be automatically suspended from the practice of law in this Commonwealth. “Felony” means an offense for which a sentence to a term of imprisonment of at least one (1) year was imposed. The imposition of probation or parole or any other type of discharge prior to the service of sentence, if one is imposed, shall not affect the automatic suspension. The suspension shall take effect automatically beginning on the day following the plea of guilty or finding of guilt by a judge or jury or upon the entry of judgment whichever occurs first. The suspension under this rule shall remain in effect until dissolved or superseded by order of the Court. Within thirty (30) days of the plea of guilty or finding of guilt by a judge or jury or entry of judgment whichever occurs first, the suspended attorney may file a motion with the Clerk of the Supreme Court of Kentucky setting forth any grounds which the attorney believes justify dissolution or modification of the suspension.

8. SCR 3.175
EFFICIENT ENFORCEMENT; NOTICE OF
ATTORNEY'S ADDRESS

SCR 3.175 shall read:

- (1) In order to facilitate the efficient enforcement of the Kentucky Rules of Professional Conduct, the rules of the Continuing Legal Education Commission, the dues obligations of attorneys, and such other communications of importance to the profession as the Supreme Court may consider appropriate, each attorney licensed by the Supreme Court to practice law in this Commonwealth shall:
 - (a) maintain with the Director of the Association a current address at which he or she may be communicated with by mail, the said address to be known as the member's Bar Roster address, and shall upon a change of that address notify the Director within thirty (30) days of the new address; and
 - (b) include his or her five (5) digit member identification number in all communications to the Association including, but not limited to, any and all communications relating to his or her membership status, membership record, dues obligations, compliance with continuing legal education requirements or disciplinary proceedings in which he or she is a respondent.
- (2) After July 1, 2004, every member of the Association shall be deemed to have appointed the Director as that member's agent for service of any document that is required to be served upon that member by any provision of Supreme Court Rule 2 or 3, provided that service of a document upon the Director shall constitute constructive service of that document upon the member only upon proof that all of the following requirements have been satisfied:
 - (a) Reasonable efforts have been made to achieve actual service of the document upon the member;
 - (b) Two (2) true copies of the document have been provided to the Director, accompanied by a written request that the Director serve the document upon the member at the member's current Bar Roster address;
 - (c) Within seven (7) days after receipt of such request, the Director mailed one (1) copy of the document to the member at the aforesaid address, posted by certified mail, return receipt requested, restricted delivery - addressee only, in an envelope bearing the return address of the Director and marked on the outside as "OFFICIAL COMMUNICATION - IMMEDIATE ATTENTION REQUIRED"; and
 - (d) No less than thirty (30) days after mailing the document pursuant to subparagraph (c), the Director shall enter a Return of Service which attests:
 - (i) that the Director mailed one of the copies of the document mentioned in subparagraph (b) to the member's Bar Roster address in accordance with the requirements of subparagraph (c);
 - (ii) that the Director has attached to the Return of Service all communications received in response to the service or attempted service of the document, including any certified mail receipt or other postal notice or return receipt relating to the delivery or attempted delivery of the document and any communication from the member of the Association or other person acting on behalf of such member; and
 - (iii) that the Director has provided a true copy of the Return of Service, with copies of all attachments, to the person or entity who requested service of the document upon the member of the Association.

- (3) After July 1, 2004, the Association may reject any communication to the Association which fails to comply with paragraph (1) (b) of this Rule 3.175, provided that a member's failure to include his or her member identification number in a document shall not result in a default in any disciplinary proceeding.

9. SCR 3.370(6)

PROCEDURE BEFORE THE BOARD
AND THE COURT

Section (6) of SCR 3.370 shall read:

- (6) The Board shall decide, by a roll call vote, whether the decision of the Trial Commissioner as to the finding of a violation and degree of discipline imposed is supported by substantial evidence or is clearly erroneous as a matter of law. The Board, in its discretion, may conduct a review *de novo* of the evidence presented to the Trial Commissioner. Both the findings and any disciplinary action must be agreed upon by eleven (11) or three-fourths (3/4) of the members of the Board present and voting on the proceedings, whichever is less. The result of each of the two (2) votes shall be recorded in the Board's minutes and in a written decision of the Board setting forth the reasons therefore as stated in paragraph seven (7) of this rule. The President shall sign and file with the Disciplinary Clerk an order setting forth the action and decision of the Board. The Disciplinary Clerk shall mail copies of such order and decision, together with a copy of the Trial Commissioner's report, to the Respondent and his/her counsel, and to each member of the Inquiry Commission, and shall place ten (10) copies in the file. The Board by a vote of a majority of the Board present and voting, may remand the case to the Inquiry Commission for reconsideration of the form of the charge, remand the case to the Trial Commissioner for clarification of the Trial Commissioner's report, or for an evidentiary hearing on points specified in the order of remand. The Board may order the parties to file additional briefs on specific issues.

10. SCR 3.500

Section (3) of SCR 3.500 shall read:

- (3) If the Committee recommends approval of the application and the Board concurs, then the application shall be referred to the Board of Bar Examiners, which Board shall administer a written examination which shall cover the subject of ethics and five (5) of the subjects listed in SCR 2.080(1). Each of these subjects must be passed by the Applicant, and not averaged or combined with each other, or with the score obtained on the examination required by Rule 2.015. The fees required by Rules 2.022 and 2.023 shall be paid prior to taking the examination.

If an Applicant passes an examination, such fact shall be certified to the Court together with a recommendation that the Applicant be readmitted to membership. If the Applicant fails to pass an examination, the Board of Bar Examiners shall certify the fact of failure to the Association and the Court for entry of an order denying the Applicant for reinstatement.

The provisions of Rules 2.015 and 2.080 shall apply where not inconsistent.

11. SCR 3.505(3)

Section (3) of SCR 3.505 shall read:

- (3) The Applicant or Bar Counsel shall have the right to a hearing before the Character and Fitness Committee prior to the issuance of its decision. The hearing shall be held within sixty (60) days from the request. The report of the Committee shall be filed within sixty (60) days of receipt of the transcript of hearing.

12. SCR 3.510(5)

Section (5) of SCR 3.510 shall read:

- (5) A suspended member of the Association who desires to resume practice as quickly as possible following a period of suspension may

file an application to do so at any time during the last ninety (90) days of the period of suspension.

13. SCR 3.600
CONTINUING LEGAL EDUCATION `
DEFINITIONS

New rule SCR 3.600 shall read:

As used in SCR 3.610-3.690, the following definitions shall apply unless the context clearly requires a different meaning:

“Approved activity” is a continuing legal education activity that has been approved for credit by the CLE Commission.

“Attorney Identification Number” is the five (5) digit number assigned to each member of the Association upon admission.

“Award” is the Continuing Legal Education Award.

“Commission” is the continuing legal education commission.

“Continuing legal education,” or “CLE,” is any legal educational activity or program which is designed to maintain or improve the professional competency of the practicing attorneys and is accredited by the Commission.

“Credit” is a unit for measuring continuing legal education activity.

“Educational year” is the reporting period for mandatory continuing legal education and runs from July 1st each year through June 30th of the successive year.

“In-house activity” is an activity sponsored by a single law firm, single corporate law department, or single governmental office for lawyers who are members or employees of the firm, department or office.

“Legal writing” is a publication which contributes to the legal competency of the applicant or other attorneys or judges and is approved by the Com-

mission. Writing for which the author is paid shall not be approved.

“Non-compliance” means not meeting continuing legal education requirements set forth in Rule 3.661 and Rule 3.652 and includes both lack of certification and lack of completion of activities prior to established time requirements.

“Technological transmission” is a CLE activity delivery method other than live seminars and includes video tape, audio tape, live broadcast transmission, satellite simulcast, teleconference, video conference, CD-ROM, data conference, computer on-line services, or other appropriate technology as approved by the Commission.

14. SCR 3.652(7)
NEW LAWYER SKILLS PROGRAM

Section (7) of SCR 3.652 shall read:

(7) Members required to complete the New Lawyer Skills Program pursuant to paragraph (5) of this Rule may, upon application to and approval by the Commission, be exempted from the requirement if the member is admitted to practice in another jurisdiction for a minimum of five years, and will certify such prior admission to the Commission, or if the member has attended a mandatory new lawyer training program of at least twelve and one-half (12.5) credits, including two (2) ethics credits, offered by the state bar association of another jurisdiction and approved by the Director.

15. SCR 3.661
CONTINUING LEGAL EDUCATION
REQUIREMENTS: COMPLIANCE AND
CERTIFICATION

SCR 3.661 shall read:

(1) Each educational year, every person licensed to practice law in this Commonwealth, not specifically exempted pursuant to the provisions of Rule 3.666, shall complete and certify a minimum of twelve and one-half (12.5) credit hours in continuing legal education activities approved by the Commission, includ-

ing a minimum of two (2) credit hours devoted to continuing legal education specifically addressing the topics of legal ethics, professional responsibility or professionalism. All continuing legal education activities must be completed not later than June 30 of each educational year.

- (2) Certification of completion of approved CLE activities must be received by the Director not later than August 10th immediately following the educational year in which the activity is completed. Certification shall be submitted to the Director by the sponsor of the accredited activity or by individual attorneys. Sponsors submitting certifications to the Director shall comply with all requirements set forth in SCR 3.665(6).
- (3) Programs or seminars or designated portions thereof devoted to legal ethics or professional responsibility include but are not limited to programs or seminars or designated portions thereof with instruction focusing on the Rules of Professional Conduct and/or the Rules of Professional Conduct as they are directly related to law firm management, malpractice avoidance, attorneys fees, legal ethics, and the duties of attorneys to the judicial system, public, clients and other attorneys.
- (4) Integration of legal ethics or professional responsibility issues into substantive law topics is encouraged, but shall not count toward the two (2) credit minimum annual requirement.
- (5) A member who accumulates an excess over the twelve and one-half (12.5) credit requirement may carry forward the excess credits into the two successive educational years for the purpose of satisfying the minimum requirement for those years. Carry forward is limited to a total of twenty-five (25) credits. All excess credits above a total of twenty-five (25) credits will remain on the member's records but may not be carried forward.
- (6) Carry-forward credits shall be allowed to satisfy the two (2) credit annual requirement for continuing legal education addressing the topics of legal ethics, professional responsibility and professionalism, and may be carried forward into the two years next succeeding the year in which the hours were earned. Carry forward for ethics, professional re-

sponsibility and professionalism is limited to a total of four (4) credits.

- (7) Certification may be submitted by sponsors or by individuals on approved Association forms, or uniform certificates, or any other format adopted by the Commission.
- (8) Compliance and certification requirements concerning the New Lawyer Skills Program are set forth at SCR 3.652(5) and (6).

16. SCR 3.662

QUALIFYING CONTINUING LEGAL EDUCATION ACTIVITY AND STANDARDS

Section (2) of SCR 3.662 shall read:

- (2) The following categories of activities shall not qualify as a continuing legal education activity.
 - (a) Activities designed primarily for non-lawyers.
 - (b) In-house activity which has not been accredited at least thirty (30) days in advance.
 - (c) In-house activities for which less than half the instruction is provided by qualified persons outside the firm, department or agency, and which members of the Court, the Commission or Commission designee are prohibited from observing for compliance without charge of fees.
 - (d) Technological transmissions as set forth at SCR 3.662(1)(j) which do not meet the standards set forth in SCR 3.662 and which have not been submitted and accredited pursuant to SCR 3.665, or which are of such poor audio and video quality that participants cannot see or hear the content under reasonable circumstances.
 - (e) Home study or self-study which does not meet the standards set forth in SCR 3.662 and which has not been submitted and accredited pursuant to SCR 3.665.
 - (f) Bar review courses taken in preparation for bar examinations for admission to the highest court in a state or jurisdiction.
 - (g) Correspondence classes.
 - (h) Any activity competed prior to admission to practice in Kentucky except the program required pursuant to SCR 3.661(9)

and 3.652(5).

- (i) Undergraduate law or law-related classes.
- (j) Programs taken in preparation for licensure exams for non-lawyer professionals.
- (k) Business meetings or committee meetings of legal and law-related associations.

17. SCR 3.665(6)(f)

PROCEDURE FOR ACCREDITATION OF CONTINUING LEGAL EDUCATION ACTIVITIES AND OBLIGATIONS OF SPONSORS

New subsection (f) of section (6) of SCR 3.665 shall read:

- (f) Sponsors may submit member activity certifications to the Director as required by SCR 3.661(2), via electronic means so long as the sponsor maintains the member's original certification, or copy thereof, of the completion of the activity on file for two (2) subsequent educational years following the year in which the activity was completed.

18. SCR 3.675(3)

CONTINUING LEGAL EDUCATION REQUIREMENTS FOR RESTORATION OR REINSTATEMENT TO MEMBERSHIP; PROCEDURES

Section (3) of SCR 3.675 shall read:

- (3) The requirements for completion of continuing legal education as a condition to restoration or reinstatement as set forth above may only be satisfied with credits earned in the current educational year during which the application is submitted and the preceding two educational years. Credits so earned shall be applicable to requirements imposed by the Commission upon application or other actions undertaken in pursuit of restoration or reinstatement.

KENTUCKY LAWYER ASSISTANCE PROGRAM (KYLAP)

19. SCR 3.900 DEFINITIONS

New rule SCR 3.900 shall read:

As used in SCR 3.900 through SCR 3.980:

- (1) "Impairment" means and includes any mental, psychological or emotional condition that impairs or may foreseeably impair a person's ability to practice law or serve on the bench. Impairment may result from addiction to intoxicants or drugs, chemical dependency, substance abuse, mental disease, mental disorder or defect, or psychological or emotional illness.
- (2) "The Kentucky legal community" means and includes (a) all members of the Kentucky Bar Association, including judges; (b) all applicants for admission to the practice of law in Kentucky; (c) all students enrolled at law schools in the Commonwealth; and (d) all members of the Association who have been suspended from the practice of law pursuant to the Rules of the Supreme Court.

20. SCR 3.910

KENTUCKY LAWYER ASSISTANCE PROGRAM (KYLAP)

New rule SCR 3.910 shall read:

- (1) There is hereby established a state-wide program to be called the Kentucky Lawyer Assistance Program (or "KYLAP"), which shall be operated by the Association in accordance with these Rules. It shall be the mission and purpose of KYLAP to address impairment issues within the Kentucky legal community in a manner that serves and promotes the general mission and purpose of the Association as set forth in SCR 3.025.
- (2) KYLAP shall offer certain types of assistance as described in this Rule to members of the Kentucky legal community who suffer from actual or potential impairment, and may proceed to provide such assistance to any

- member of the said community as requested or authorized. The types of assistance offered and provided by KYLAP in a particular case may include lay counseling and encouragement; assisting, planning and execution of interventions; providing information about treatment alternatives; monitoring progress of recovery from impairment, which may include assistance in arranging, scheduling and tracking attendance at recovery programs, appointments with counselors, therapists and medical care providers and compliance with alcohol or drug screens; monitoring compliance with voluntary or involuntary treatment or recovery programs, which may include documentation and reports concerning compliance or non-compliance; obtaining authorizations in conformity with federal and state law; and other related tasks that may assist a member of the said community in addressing an actual or potential impairment; provided, however, that KYLAP shall perform the aforesaid types of assistance in such a manner that KYLAP's staff does not render legal or medical advice and does not engage in any activity which constitutes the practice of law or medicine.
- (3) KYLAP shall develop and present educational programs for the Kentucky legal community regarding issues of impairment and shall pursue other appropriate opportunities to increase awareness and understanding of such matters and cultivate an environment in which issues of impairment are properly addressed.
 - (4) KYLAP shall serve as a resource within the Association with respect to matters of impairment, so that all functions and activities of the Association may benefit from KYLAP's information and expertise in matters of impairment.
 - (5) KYLAP may engage in other activities consistent with these Rules and as authorized by the operating policies and procedures adopted by the KYLAP Commission.
 - (6) KYLAP shall perform all of the aforementioned duties in a manner consistent with the confidentiality provisions of Rule 3.990.
 - (7) KYLAP shall be funded from the annual dues collected by the Association pursuant to these Rules. KYLAP may also charge reasonable and appropriate fees for services rendered and accept monetary gifts in support of its activities, to the extent authorized by the KYLAP Commission and approved by the Board.
21. SCR 3.920
KENTUCKY LAWYER ASSISTANCE
PROGRAM COMMISSION
(KYLAP Commission)
- New rule SCR 3.920 shall read:
- (1) The Board of Governors shall appoint a Commission to be called the Kentucky Lawyer Assistance Program Commission or "KYLAP Commission," which shall have general responsibility for the administration of KYLAP in accordance with these Rules.
 - (2) The Commission shall consist of fifteen (15) persons, as follows: (a) two members of the Board of Governors; (b) an active member of the Association (either a lawyer or judge) from each of the seven Supreme Court Districts; (c) two other active members of the Association (either lawyers or judges); and (d) four (4) citizens of the Commonwealth who are not members of the Kentucky legal community. The Board shall appoint persons who have a demonstrated interest in issues of impairment and shall also endeavor to make appointments which create a diversity of knowledge and life experience within the Commission's membership.
 - (3) Each member of the Commission shall be appointed for a period of four (4) years. However, in order to achieve staggered terms, the initial members of the Commission shall be appointed as follows:
 - (a) Five of the Commission members who are lawyers or judges shall be appointed for two-year terms;
 - (b) Four of the Commission members who are lawyers or judges shall be appointed for three-year terms;

- (c) Two of the Commission members who are lawyers or judges shall be appointed for four-year terms;
- (d) Two of the Commission members who are not members of the Kentucky legal community shall be appointed for three-year terms; and
- (e) Two of the Commission members who are not members of the Kentucky legal community shall be appointed for four-year terms.

Thereafter, when any vacancy occurs in the membership of the Commission, that vacancy shall be filled by appointment by the Board of Governors. When a vacancy occurs prior to the expiration of a member's term, the new member shall be appointed for the remainder of the unexpired term. When a vacancy occurs because of the expiration of a term, the new member shall be appointed for a four-year term.

- (4) The Commission shall have a Chair and a Vice-Chair. The Chair shall be appointed annually by the Board of Governors with input from the Commission and the KYLAP Director. The Vice-Chair shall be elected annually by the members of the Commission.
- (5) The Commission shall meet quarterly or upon call of the Chair or upon the request of five (5) or more members. A member's failure to attend three (3) consecutive meetings will automatically result in the vacancy of that member's position on the Commission.
- (6) The Commission shall have general responsibility for the administration of KYLAP in accordance with these Rules. In discharging its responsibility KYLAP shall have the authority to:
 - (a) Adopt operating policies and procedures as necessary and appropriate to implement these Rules and administer KYLAP, provided that, before such policies and procedures are implemented, they shall receive approval of the Board; and

- (b) Make reports to the Board and Court annually or as otherwise required, provided that such reports shall be of a statistical and summary nature and shall not compromise the confidentiality of any referral under SCR 3.950 or any assignment under SCR 3.960.

22. SCR 3.930 KYLAP PROGRAM DIRECTOR AND STAFF

New rule SCR 3.930 shall read:

The Board of Governors, through the Executive Director of the Association, shall appoint a KYLAP Program Director and sufficient staff to provide administrative support for the KYLAP Commission and the KYLAP program. The Program Director shall be responsible for the administration of KYLAP.

23. SCR 3.940 KYLAP VOLUNTEER COUNSELORS

New rule SCR 3.940 shall read:

KYLAP may enlist volunteer counselors to assist KYLAP in discharging KYLAP's duties under these Rules. Such volunteer counselors shall be subject to all provisions of these Rules including the provisions of SCR 3.910(2) limiting the types of assistance provided by KYLAP and the confidentiality requirements of SCR 3.990.

24. SCR 3.950 SELF-REFERRALS

New rule SCR 3.950 shall read:

Any member of the Kentucky legal community may contact KYLAP to obtain information about KYLAP's services or to request assistance from KYLAP regarding an actual or potential impairment. Any such communication with KYLAP shall be confidential in nature and shall be held in strict confidence by KYLAP's staff and by all other persons involved in the implementation and delivery of KYLAP's services. Upon receiving any such inquiry, KYLAP may offer assistance of the nature described in Rule 3.910(2) as appropriate to the person's situation and circumstances, and may proceed to provide such assistance as authorized by that person.

25. SCR 3.960

THIRD PARTY REFERRALS

New rule SCR 3.960 shall read:

- (1) Any person may contact KYLAP and request or suggest that KYLAP offer assistance to a member of the Kentucky legal community who is suffering or may be suffering from an actual or potential impairment.
- (2) When a person contacts KYLAP pursuant to this Rule, his or her communication with KYLAP shall be confidential in nature and shall be held in strict confidence by KYLAP's staff and by all other persons involved in the implementation and delivery of KYLAP's services. Further, if KYLAP proceeds to communicate with the member of the Kentucky legal community who is the subject matter of the contact, KYLAP shall not disclose any information about its communications with the person who made the third-party referral, except as authorized by that person.
- (3) Any person who contacts KYLAP pursuant to this Rule shall be immune from any liability to the person who is the subject matter of the contact, or to any other person, by reason of contacting KYLAP.

26. SCR 3.970

AGENCY REFERRALS

New rule SCR 3.970 shall read:

- (1) A member of the Kentucky legal community who is the subject of a pending admission or disciplinary proceeding before an agency of the Supreme Court of Kentucky may authorize that agency to make a confidential request for assistance from KYLAP in evaluating or addressing any actual or potential impairment that may be relevant to the issues which the agency is charged with considering in the proceeding. In particular:
 - (a) A member of the Kentucky legal community who is the subject of an application for admission, restoration or rein-

statement to the practice of law in the Commonwealth may authorize the Office of Bar Admissions to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to the OBA's consideration or disposition of the application for admission, restoration or reinstatement.

- (b) A member or former member of the Association who is the subject of a disciplinary complaint or investigation pending before the Inquiry Commission may authorize that Commission to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to that Commission's consideration or disposition of that complaint or investigation.
- (c) A member or former member of the Association who is the subject of an investigation or prosecution by the Office of Bar Counsel may authorize OBC to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to OBC's recommended disposition of that investigation or prosecution.

- (2) Before an agency of the Court makes any contact with KYLAP pursuant to paragraph (1) of this Rule, it shall obtain a written authorization from the person who is the subject of the proposed assistance clearly evidencing the fact that such person has authorized the agency to communicate with KYLAP for one or more purposes set forth in paragraph (1).
- (3) Upon receiving any request for assistance from an agency of the Court pursuant to paragraph (1) of this Rule, KYLAP shall satisfy itself: (a) that the person who is the subject of the proposed assistance has autho-

rized the agency to communicate with KYLAP, in accordance with paragraphs (1) and (2) of this Rule; and (b) that the requested assistance falls within the scope of KYLAP's mission and services as set forth in Rule 3.910. KYLAP shall not take any other steps in response to the request until it has satisfied itself of these two threshold matters.

(4) After satisfying itself of the threshold matters set forth in paragraph (3), KYLAP shall determine whether it is able to provide any assistance to the requesting agency and respond appropriately to that agency. KYLAP is not obligated by these Rules to accept any request for assistance or become involved in any proceeding before any agency of the Court, and shall do so only when it determines that it is able to provide assistance in accordance with these Rules.

(5) Before providing any assistance pursuant to a request from an agency of the Court, KYLAP shall obtain a written authorization, waiver and release from the person who is the subject of the proposed assistance, in which that person authorizes KYLAP to:

(a) provide appropriate status reports to the requesting agency, and to any other appropriate agencies of the Court, regarding any aspect of the assistance provided by KYLAP after the date KYLAP has accepted the request for assistance, including, without limitation, (i) any assessment or diagnosis of the person's condition rendered after the date KYLAP has accepted the request for assistance, (ii) the person's progress in addressing the actual or potential impairment after the date KYLAP has accepted the request for assistance, and (iii) the person's compliance or non-compliance with any terms or conditions imposed by the Court, any agency of the Court, or KYLAP, after the date KYLAP has accepted the request for assistance;

(b) disclose to the requesting agency, and to any other appropriate agencies of the

Court, any information gathered or received by KYLAP after the date KYLAP has accepted the request for assistance, for use as evidence in any admission, disciplinary, restoration or reinstatement proceeding, subject to the rules of evidence and procedure in that proceeding; and

(c) provide testimony in any admission, disciplinary, restoration or reinstatement proceeding regarding assistance provided by KYLAP after the date KYLAP has accepted the request for assistance, subject to the rules of evidence and procedure in that proceeding.

27. SCR 3.980

SUPREME COURT ASSIGNMENTS TO KYLAP

New rule SCR 3.980 shall read:

- (1) The Supreme Court may assign appropriate tasks and responsibilities to KYLAP relating to the evaluation of an impairment or the monitoring of a person's progress toward recovery from impairment as part of the Court's final disposition of any application for admission to the bar, petition for temporary suspension, charge of professional misconduct or application for restoration or reinstatement, where an issue of impairment has been raised in the proceeding, provided that in no event shall KYLAP become involved in any proceeding prior to the final disposition of that proceeding without the consent of the lawyer. .
- (2) The Board of Governors may recommend that the Court assign appropriate tasks and responsibilities to KYLAP as described in paragraph (1) of this Rule as part of the Board's recommendation to the Court in any disciplinary, restoration or reinstatement proceeding, where an issue of impairment has been raised in the proceeding.
- (3) When KYLAP receives a matter by assignment from the Court pursuant to paragraph (1) of this Rule:

- (a) KYLAP shall proceed to provide assistance of the nature described in Rule 3.910(2) in accordance with the terms of the Court's order, and may impose additional requirements on the person who is the subject of the assignment as necessary to perform the assignment;
- (b) KYLAP may provide reports to the Court, and to one or more agencies of the Court, as authorized or required by the terms of the Court's order;
- (c) Any information gathered or received by KYLAP after the date of the Court's order and in the course of discharging the tasks and responsibilities assigned by the Court as part of a final disposition under paragraph (1) of this Rule may be used as evidence in any admission, disciplinary, restoration or reinstatement proceeding regarding the person who is the subject of the assignment, subject to the rules of evidence and procedure in that proceeding; and
- (d) One or more representatives of KYLAP may be called as witnesses in any admission, disciplinary, restoration or reinstatement proceeding for the purpose of testifying about information gathered or received by KYLAP after the date of the Court's order and in the course of discharging the tasks and responsibilities assigned by the Court as part of a final disposition under paragraph (1) of this Rule, subject to the rules of evidence and procedure in that proceeding.

28. SCR 3.990

CONFIDENTIALITY

New rule SCR 3.990 shall read:

- (1) All communications to KYLAP and all information gathered, records maintained and actions taken by KYLAP shall be confidential, shall be kept in strict confidence by KYLAP's staff and volunteers, shall not be disclosed by KYLAP to any person or entity,

including any agency of the Court and any department of the Association, and shall be excluded as evidence in any proceeding before the Board of Governors or the Office of Bar Admissions, except that:

- (a) if the person who is the subject of KYLAP's assistance has provided a written release authorizing disclosure of communications to KYLAP or information gathered, records maintained or actions taken by KYLAP, KYLAP may disclose such information in strict accordance with the terms and conditions of that written release;
 - (b) if the matter was assigned to KYLAP by the Court pursuant to paragraph SCR 3.980, KYLAP may issue reports, disclose information and provide testimony as set forth in paragraph (3) of that Rule, and this Rule 3.990 shall not be construed as a basis for excluding otherwise admissible evidence from any admission, disciplinary, restoration or reinstatement proceeding; and
 - (c) if KYLAP provided assistance pursuant to an agency referral under SCR 3.970, KYLAP may issue reports, disclose information and provide testimony as set forth in paragraph (5) of that Rule, and this Rule 3.990 shall not be construed as a basis for excluding otherwise admissible evidence from any admission, disciplinary, restoration or reinstatement proceeding.
- (2) The foregoing requirement of confidentiality shall apply to all members of the KYLAP Commission, all KYLAP staff members and volunteers, all employees of the Association, all volunteer counselors, all persons who provide information or other assistance to KYLAP in connection with any referral or assignment, and all other persons who participate in the performance or delivery of KYLAP's services.

29. SCR 3.995
IMMUNITY

New rule SCR 3.995 shall read:

The duties imposed by these Rules are duties owed to the Supreme Court, not to any other person or entity. Nothing in these Rules shall be construed as creating any cause of action or right of suit against any person or entity.

committee and, if the movant is someone other than the party who initiated the request for the opinion, upon the initiating justice, judge or commissioner. The filing fee for docketing such motion shall be as provided by Civil Rule 76.42(1) for original actions in the Supreme Court. Notwithstanding the provisions of this subsection of the rule, the Supreme Court on its own initiative may review a judicial ethics opinion at any time.

30. SCR 4.310(2), (3), (4)
JUDICIAL ETHICS COMMITTEE AND
OPINIONS

Sections (2), (3), and (4) of SCR 4.310 shall read:

All concur.

ENTERED: October 2, 2003.

- (2) Opinions as to the propriety of any act or conduct and the construction or application of any canon shall be provided by the committee upon request from any justice, judge, trial commissioner or by any judicial candidate. If the committee finds the question of limited significance, it shall provide an informal opinion to the questioner. If, however, it finds the question of sufficient general interest and importance, it shall render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form. Likewise, the committee may issue formal opinions on its own motion under such circumstances as it finds appropriate.


Chief Justice

- (3) Both formal and informal opinions shall be advisory only; however, the commission and the Supreme Court shall consider reliance by a justice, judge, trial commissioner or by any judicial candidate upon the ethics committee opinion.
- (4) Any person affected by a formal opinion of the ethics committee may obtain a review thereof by the Supreme Court by filing with the clerk of that court within 30 days after the end of the month in which it was published a motion for review stating the grounds upon which the movant is dissatisfied with the opinion. The motion shall be accompanied by a copy of the opinion or synopsis as published and shall be served upon the ethics

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Mediation Center of Kentucky
Gail Tingle
(859) 246-2664

Northern Kentucky Bar Association
Sharmaine Fink
(859) 781-1300

UK Office of CLE
Melinda Rawlings
(859) 257-2921

Following is a list of **TENTATIVE** upcoming CLE programs. REMEMBER circumstances may arise which result in program changes or cancellations. **You must contact the listed program sponsor** if you have questions regarding specific CLE programs and/or registration. ETHICS credits are included in many of these programs — please check with the program sponsor for program details.

NOVEMBER 2003

18 Video: Professionalism,
Ethics and Substance Abuse
Cincinnati Bar Association

19 Professionalism
Cincinnati Bar Association

20 Law & Film: Do Films
Influence the Law or
Reflect It?
Cincinnati Bar Association

21 How to Find the Courthouse
(Young Lawyers)
Louisville Bar Association

21 Murder, Culture & Injustice:
American Culture's Effect on
Criminal Justice
Cincinnati Bar Association

9 Getting Along with People:
Behavioral Styles for
Lawyers
Cincinnati Bar Association

9 Legal Writing 201-Writing to
Persuade
Cincinnati Bar Association

10 "Lest We Be Marshall'd"
Cincinnati Bar Association

10 Cross Examination and
608B
Cincinnati Bar Association

12 Famous Political Trials-The
Scopes Monkey Trial
Cincinnati Bar Association

16 Time Management for
Lawyers
Cincinnati Bar Association

DECEMBER 2003

3 Ethics
Cincinnati Bar Association

3-4 Kentucky Law Update –
Covington
Kentucky Bar Association

5 Boundary Law in Kentucky
UK-CLE

5 Eminent Domain in Kentucky
UK-CLE

JANUARY 2004

7 Criminal Law from a
Prosecutor's Perspective
Cincinnati Bar Association

14 From the Halls of Justice: An
Inside Look at New Judges
Cincinnati Bar Association

continued

CLEvents

January, continued

- 21 How Much Should I Ask For: The Proper Way to Value Damages in PI Cases
Cincinnati Bar Association
- 28 Electronic Discovery
Cincinnati Bar Association

FEBRUARY 2004

- 4 Show Me the Money: Collecting on a Judgment When the Loser Refuses to Pay
Cincinnati Bar Association
- 11 Immigration Law
Cincinnati Bar Association
- 18 The Latest in Real Estate Development
Cincinnati Bar Association
- 25 Baseball and the Law: Negotiating a Contract for a Professional Baseball Player
Cincinnati Bar Association

MARCH 2004

- 3 Corporate Entity
Cincinnati Bar Association
- 10 Domestic Relations
Cincinnati Bar Association
- 17 In the Middle of the Night: Advice on Handling Late Night Calls from Friends, Clients and Employees in Trouble
Cincinnati Bar Association

APRIL 2004

- 7 Retirement Plans for Small Businesses
Cincinnati Bar Association
- 14 Copyright/Trademark
Cincinnati Bar Association

- 21 Basic Estate and Gift Tax Planning
Cincinnati Bar Association
- 28 Real Estate Issues in Bankruptcy
Cincinnati Bar Association

LAST CHANCE TO ATTEND THE KLU 2003

The final Kentucky Law Update program for the 2003 season will be held in Covington on December 3-4, at the Northern Kentucky Convention Center.

You can register online at www.kybar.org or call the CLE office at 502.564.3795. It's not too late to register!

If you miss the Kentucky Law Update program, you can view it on videotape! Copies will be available for rent by individual groups or for bar association viewings. Please call our office for more details about reserving your copy of the Kentucky Law Update 2003. *Credits limited to 6.0 pursuant to SCR 3 for individual viewing.

IT'S FOR LAWYERS. IT'S FOR JUDGES. IT'S CLOSE TO HOME. AND, IT'S FREE.



The CLE Commission welcomes its newest member, George "Greg" M. Carter. Mr. Carter is from Benton and represents the First Supreme Court district, replacing J. Daniel Kemp of Hopkinsville. He is a partner in the law firm of Owen, Harvey & Carter in Benton. Mr. Carter was sworn in by Justice Martin E. Johnstone, Supreme Court Liaison, at the July 18, 2003 CLE Commission meeting in Owensboro.

**Need to Check Your
CLE Credits?
www.kybar.org**



**KENTUCKY BAR
ASSOCIATION**

Advancing the Profession through
Leadership, Ethics and Education.

NEW LAWYERS' PROGRAM REQUIREMENT

New admittees of the Kentucky Bar Association are **required** to complete the New Lawyer program ***within twelve months*** of the date of admission unless they have practiced in another jurisdiction for a minimum of five years. For answers to questions about the New Lawyers' Program or your completion deadline, please contact Sherry Hayden at 502-564-3795 or register online at www.kybar.org.

Upcoming programs are as follows:

APRIL 20-21, 2004

**Four Points Sheraton
Lexington, Kentucky**

OCTOBER 13-14, 2004

Louisville/Frankfort

Credit Cards, Firm Trust Accounts, *and Thou*

A friend of mine, an excellent lawyer and writer, reviews these articles for me prior to my submitting them to the *Bench & Bar* thereby saving me from many a foible. Recently, when returning an article he said, "Del, you took an intrinsically boring subject here and made it half-way interesting." Lest you think he was damning me with faint praise, that is as good as it gets for those of us who scribble on professional responsibility. This article will really challenge him because it deals with that most mundane professional responsibility of all, management of firm trust accounts.

My motivation to risk an article on this subject is a recent Maryland case disciplining a lawyer for improper management of a trust account and an Oregon bar ethics opinion concerning payment of fees by credit card. Looking further into credit card fee payments I was surprised by the number of ethical considerations that apply to these transactions. I will hedge my bet by keeping this as short as possible. First, the story of the kind of trouble to which "eyeball" management of trust accounts can lead and then an overview of ethical issues concerning payment of fees by credit card. Credit cards are featured in this article as a proxy for the increasing number of ethical questions created by evolving banking practices. Technology allowing customers to transfer funds in and out of accounts electronically, ATM transactions, the trend away from paper records to facsimile and electronic records, and the corresponding reduced ability of banks to verify double signature checks before clearing all introduce new professional responsibility issues. The ultimate point is that lawyers must keep up with these developments and apply hands-on trust account management to assure compliance with their professional responsibility to safeguard client funds and property.



*Del O'Roark is the
Loss Prevention
Consultant for
Lawyers Mutual
Insurance Com-
pany of Kentucky*

The Dangers of Trust Account Management By "Eyeball"¹

A Delaware two-lawyer firm followed the usual practice of one of the two taking responsibility for managing the firm's bookkeeping including the trust account. The firm's bookkeeper assisted the managing partner in this duty. Audits of the firm's books by the Lawyers' Fund for Client Protection revealed the following defects:

- Failure to reconcile operating and trust accounts.
- Overdrafts in the operating account.
- Checks in the amount of \$27,800 written on the trust account deposited in the firm's operating account to cover shortages.
- Fabrication of a \$27,800 "deposits in transit" entry in the trust account.
- Checks amounting to \$26,500 written on the firm's operating account charged to legal and accounting fees, but actually used to pay personal debts of the managing partner.
- Late payment of and failure to pay taxes.

The managing partner defended himself with the classic defense that it was all the bookkeeper's fault – he claimed that he neither instructed that any of the improper actions be taken nor was he ever told of problems in meeting firm bills. The Delaware Supreme Court flatly rejected this defense finding that the managing partner had *no* procedures for supervising firm bookkeeping and records functions other than eyeballing them on an ad hoc basis. This sustained and systematic failure to supervise the firm's bookkeeper was a failure to exercise even a modicum of diligence and could not be passed off as simple negligence; rather it rose to the level of knowing misconduct in violation of Delaware's Professional Responsibility Rule 1.15, Safekeeping Property.² The Court concluded that managing partners have an enhanced duty over that of other lawyers in the firm to assure compliance with rules governing safekeeping of client property and are held accountable to this higher standard. The

Court pointed out that some practical techniques a managing partner can use to perform this responsibility effectively are conducting periodic employee performance reviews, employing outside auditors, implementing operational systems to ensure rule compliance, and requiring co-signatures on trust account checks to limit access to the account.

The upshot of the case was that the managing partner was found to have violated Rule 1.15 by commingling firm and client funds, failing to deliver property belonging to another promptly, and failing to maintain books and records. Additionally, he was found to have failed to supervise nonlawyer assistants and to have engaged in conduct involving dishonesty. The disciplinary action imposed was a suspension from practice for six months and a day.

I suggest you take a moment to reflect on your firm's trust account and bookkeeping procedures. Even if you are not responsible for supervising these functions, this does not mean you have no professional duty to be knowledgeable of their adequacy and how well they comply with Kentucky's Professional Responsibility Rule 1.15.³ My experience is that if you want to get a blank stare from a Kentucky lawyer, ask how the firm's trust account is managed. A typical answer is, "Not my job." This misses the principle, that while a lawyer may delegate authority for trust account management to an employee, the professional responsibility for safeguarding client property cannot be delegated. Additionally, while a managing partner may have an enhanced duty to comply with Rule 1.15 over other lawyers in a firm (at least in Delaware), every lawyer in a firm shares responsibility in some degree for proper safeguarding of client property. In my view, given the egregious nature of the Rule 1.15 violations in the Delaware case, the non-managing partner had some disciplinary action coming too – at least a letter of admonishment.

Credit Cards and Trust Accounts

The KBA Ethics Committee first approved credit card payment for legal services performed by law firms in KBA E-172 (Nov. 1977). My research revealed only one other Kentucky ethics opinion dealing with credit cards.⁴ I could find no case law or other KBA guidance on point. This is puzzling because a number of questions not answered by either ethics opinion are raised when a firm accepts payment by credit card. Specifically:

- May all billing to a client be paid by credit card or only earned fees? What about retainers (unearned fees) and advance expense payments?
- In what kind of firm bank account should credit card payments be deposited when received by the

bank – a business account or a trust account?

- Is it permissible to arrange for automatic charges against a client's credit card?
- How are bank credit card service charges applied? Does the full amount charged apply to the client's bill or only an amount net of bank service charges?
- If a client disputes a charge and directs the credit card issuer to "charge back" the payment against the firm's trust account, is the firm at risk of using other client funds to cover firm obligations?

What follows is a review and analysis of how some other states have answered these questions. While other state rulings are not authority for our bar, they offer helpful guidance pending KBA instruction. When in doubt, call the KBA Ethics Hotline.

May all billing to a client be paid by credit card or only earned fees? What about retainers (unearned fees) and advance expense payments?

There is no dispute that earned fees can be paid by credit card, but some states distinguish between earned fees and advance fee and expense billings in deciding what and how firms may collect by credit card. For example:

- Colorado allows credit card payment of earned fees, expenses, and advance payments, but notes that some credit card providers allow charges only for services that have been performed. Thus, as a practical matter retainers could not be charged on those cards.⁵
- Oregon allows retainers to be charged provided the bank deposits them in a firm trust account and not a business account.⁶
- North Carolina permits credit card payment of earned and unearned fees and expenses that must be deposited in a firm's trust account.⁷
- Missouri permits retainers, advance fees, and earned fees to be charged provided funds are deposited in a firm's trust account.⁸

KBA E-172 approved credit card payment for "legal services performed by that firm." A strict interpretation of this language does not include retainers or advance expense payments as fees that can be charged. This unfortunately restricts the utility of accepting payment by credit card for Kentucky lawyers. The case can be made that KBA E-172 is outdated. It is a 26-year old brief opinion and is one of first impression concerning the basic question of whether credit card payments may be accepted at all by law firms in Kentucky.

No attempt was made to delve into the numerous ethical issues underlying this form of fee collection. It seems a reasonable prediction that an updated KBA ethics opinion would be in line with other states and permit credit card payment of retainers and advances on expenses. Nonetheless, some Kentucky authority to this effect is required to be sure.

In what kind of firm bank account should credit card payments be deposited when received by the bank – a business account or a trust account?

The ethical issue here is the potential for commingling client and firm funds if the bank deposits charged earned fees, retainers, and other advance payments in the same firm account. If only earned fees can be charged in Kentucky, this is a moot issue. On the assumption, however, that updated KBA ethics guidance would allow advance payment of fees and expenses to be collected by credit card the following information is offered:

- An Oregon bar ethics opinion advises that the “better practice may be to have separate ... accounts for credit card retainers and earned fees. However, if a lawyer’s bank insists on a single ... account, it should be a trust account ... It is not a violation ... to deposit all credit card transactions into a trust account, if the portion representing earned fees is promptly transferred to the lawyer’s business account.”⁹
- Maine lawyers may not comply with a bank’s requirement that all credit card payments be deposited in a general business account if the credit card payments are potentially refundable to clients.¹⁰

- While there is some variance among the states on this issue, most agree in principle with Oregon and Maine. The safest procedure, if possible, is to arrange with the bank to have two accounts for credit card payments reserving one as a trust account for unearned and unexpended client funds. In the likely event that the bank will permit only one account for deposit of credit card payments, it should be a trust account. This account then should be carefully monitored to assure that earned and expended client funds are promptly moved to the firm’s operating account.

Is it permissible to arrange for automatic charges against a client’s credit card?

The Missouri, South Carolina, and Nassau County (N.Y.) bars permit automatic credit card charges (*i.e.*, without the client signing the credit card slip) if the client agrees. The key consideration in all three states is clarity of client communications. It is not enough simply to include automatic credit card charges as part of the terms in a letter of engagement. A lawyer must discuss the procedure with the client and get specific approval. A receipt must be sent to the client notifying of the charge. South Carolina requires that the client be sent a bill for review before making the pre-authorized charge against the credit card. Nassau County requires a written agreement if charges are for prospective services.¹¹

By following the procedures developed in other states for automatic credit card payments, Kentucky lawyers should meet ethical requirements of client communication and fair dealing. Nonetheless, it is an aggressive method of collecting fees that sug-

gests a call to the KBA Ethics Hotline is in order before employing automatic credit card charge procedures.

How are bank credit card service charges applied? Does the full amount charged apply to the client’s bill or only an amount net of bank service charges?

Other states have addressed this issue as follows:

- Maryland requires that lawyers accepting credit card payments add funds to cover transaction fees. It is permissible, however, to pass these costs on to clients with their agreement.¹²
- North Carolina allows lawyers to deposit funds in a trust account to cover a bank’s service charges. These charges may be passed on to clients after full disclosure.¹³
- Conversely, New Mexico does not permit contribution of lawyer funds to cover a bank’s credit card service charges when the bank deducts charges before depositing retainers into the lawyer’s account. Retainers in New Mexico, therefore, cannot be charged under these banking terms.¹⁴

Kentucky Rule 1.15 (d) provides “A lawyer may deposit funds in an account for the limited purpose of minimizing bank charges.” I doubt if this provision was implemented with credit card service charges in mind, but there is no apparent reason why it cannot be fairly construed to permit lawyers to deposit funds to cover these charges as well. Accordingly, the more liberal Maryland and North Carolina approach to covering credit card service charges from firm funds should work in Kentucky. Bank service charges are typically considered

law practice overhead expenses. As such they are included in the lawyer's fee and should be absorbed by the lawyer. The client should receive full credit for the amount charged – not net of service charges. This view does not preclude passing on credit card service charges to clients with full disclosure and informed consent. This, however, in my opinion is not the best business practice and may conflict with some credit card providers' conditions for service.

If a client disputes a charge and directs the credit card issuer to "charge-back" the payment against the firm's trust account, is the firm at risk of using other client funds to cover firm obligations?

If a trust account contains funds belonging to a client other than the one obtaining a charge-back, the answer to this question is "yes." When a client is able to charge-back funds against a firm's trust account without the firm's prior consent and after the client's funds have been moved to a business account, other client funds in the account are depleted.

- Maryland's answer to the problem is to require lawyers to leave funds subject to charge-back in the account until any basis for charge-back is removed (e.g., client disagreement with the charge resolved, period for charge-back allowed by the credit card provider expires).¹⁵ Maryland also permits banking arrangements whereby a charge-back is taken from the lawyer's business account instead of the trust account.¹⁶
- A North Carolina ethics opinion advises lawyers to avoid the charge-back problem by arranging for the bank to debit a charge-back to an account other than the firm's trust account. If this is not

feasible, arrangements should be made for automatic transfer of charge-back amounts from another account to the trust account. After suggesting other more complicated banking arrangements, the opinion concludes that whatever arrangements are made the end result must be that the firm immediately deposit funds covering a charge-back in a trust account if it depletes funds of other clients in the account.¹⁷

Assuming that a Kentucky firm can accept credit card payment for advance fee billings, the firm must make banking arrangements that avoid a charge-back inadvertent depletion of other client funds in a trust account. The Maryland and North Carolina approaches offer good ideas on how to proceed. If you are not confident that your arrangements comply with Rule 1.15, call the KBA Ethics Hotline for advice.

Summing Up

The most discouraging thing about the practice of law is not getting paid after providing valuable service. Unfortunately, the surest way to be sued for malpractice always has been – is – and always will be to sue a client for fees. One of the best ways to avoid the problem is to get retainers and get paid as a representation progresses. Accepting payment by credit card facilitates both of these techniques and avoids client disputes over fees. What goes with the territory, however, is the need to make careful banking arrangements that comply with the professional responsibility to protect client funds from improper disbursement and that do not commingle client funds with firm funds. Fair dealing with clients requires clear client communications, full disclosure, and informed consent when collecting fees by credit card to include the advice that there is some minor loss of confidentiality when the

client charges fees. We live in a society that thrives on use of credit card payments. Offering this option for fee payment not only helps lawyers, it improves client service — a win-win situation. With a few KBA clarifications on trust account management, Kentucky lawyers can confidently provide this service in a professionally responsible manner. ■

Endnotes

1. In Re Bailey, 821 A.2d 851 (2003); Current Reports, p. 290, Vol. 19, No. 11, 5/21/03, ABA/BNA Lawyers' Manual On Professional Conduct.
2. Delaware's Rule 1.15 is more expansive than Kentucky's Rule 1.15, but is essentially the same.
3. SCR 3.130 (1.15).
4. Formal Opinion KBA E-370 (September 1994) permitting use of a specialized credit card called "LAWCARD."
5. ABA/BNA Lawyers' Manual on Professional Conduct 1101-1901, Colorado Op. 99, 5/10/97.
6. *Ibid*, Current Reports, Vol. 19, No. 9, p. 237 (4/23/03), Oregon Op. 2003-172, 2/03.
7. *Ibid*, 1101:6605, North Carolina Op. 247, 4/4/97.
8. *Ibid*, 1101:5263, Missouri Op. 2000202 9/00-10/00.
9. *Ibid*, Current Reports, Vol. 19, No. 9, p. 237 (4/23/03), Oregon Op. 2003-172, 2/03.
10. *Ibid*, 1101:4204, Maine Op. 173, 3/7/00.
11. *Ibid*, 1101:6255, Nassau County Op. 98-4, 3/25/98; 1101:7902, South Carolina Op. 96-07, 6/96; and 1101:5237, Missouri Op. 970040, undated.
12. *Ibid*, 1201:4302, Maryland Op. 2001-15, 6/19/01.
13. *Ibid*, 1101:6605, North Carolina Op. 247, 4/4/97.
14. *Ibid*, 1101:6001, New Mexico Op. 2000-1, undated.
15. *Ibid*, 1101:4305, Maryland Op. 97-14, 2/20/97.
16. *Ibid*, 1201: 4306, Maryland Op. 2002-23, 10/30/02.
17. *Ibid*, 1101:6609, North Carolina Op. 97-9, 1/16/98.



**Salmon
P. Chase
College of Law**



**Louis D. Brandeis
School of Law**

Salmon P. Chase College of Law Northern Kentucky University Alumni News

Chase College of Law welcomed four new faculty members this fall, including:

Annette Burkeen,
Assistant Professor of Law

Professor Burkeen graduated *magna cum laude* from Howard University School of Law, where she was general manager of the *Howard Law Journal*. She earned her Bachelor of Arts degree in Classical Civilization from the University of Southern California.

After law school, Professor Burkeen worked at the law firm of Latham & Watkins in Los Angeles, California and in the in-house legal department of The Procter & Gamble Company in Cincinnati, Ohio. She served as a law clerk to the Honorable Consuelo B. Marshall, Chief Judge of the U.S. District Court for the Central District of California. Professor Burkeen taught Contracts and Sales as a visiting professor at the University of Cincinnati College of Law before joining the Chase faculty.

Christopher Gulinello,
Assistant Professor of Law

Professor Gulinello received his J.D. from the University of Iowa in 1997, where he was a Note & Comment Editor for the *Iowa Law Review*. After graduating from law school, he briefly worked in New York City before moving to Taiwan to work as a foreign attorney for Huang & Partners and Baker & McKenzie (Taipei

continued opposite column

Classroom Renovations Honor Law School History

In the last *Bench and Bar*, the gifts honoring the Lively M. Wilson Oral Advocacy Program (including renovations of the moot court office and endowing some moot court programming) and the gift of a seminar room renovation by Charles and Bruce Moore of Owensboro were announced.

Other recent gifts will fund renovations honoring the history of the law school in different ways. A major gift from Wyatt, Tarrant & Combs and members of the firm will provide leadership funding for the renovation of a large classroom in honor of the firm's founding partner Wilson W. Wyatt. Humana Foundation has provided an additional major contribution to this project. WT&C former managing partner Stewart E. Conner is leading the fundraising effort. The room will include photographs and memorabilia about Wilson W. Wyatt, an extraordinary lawyer and leader.

The Women's History Project has made possible the initial renovations of a small classroom. Gifts by alums and friends have provided gifts in honor of and in memory of women students, faculty and role models. The room will include photographs and other information about the role of women in the law school's history and about some of the outstanding graduates.

The 1948-1954 era marked the merger of the Jefferson School of Law with the University of Louisville School of Law and the desegregation of the University of Louisville, a significant time in the law school's history. Through a major leadership gift by Harold Kelley (class of 1950) and additional gifts from members of the classes from those years, a classroom honoring that history is in the process of being funded. Class leaders from each year are engaged in ongoing efforts to obtain the full funding to make this room a reality. These individuals are Tom O'Shaughnessy (class of 1951), Edward Rothschild (class of 1952), Judge Edwin Schroering (class of 1953), Richard Trautwein (class of 1954) and Stanley Benovitz (class of 1954).

Fundraising for all three classroom renovation projects is ongoing. Those interested in contributing to any of these projects may contact development director Robert Micou at 502-852-3036.

Law School Hosts Several Oral Advocacy Competitions

One of the academic distinctions of the law school is its strong program in oral advocacy. The Lively M. Wilson Oral Advocacy Program includes approximately twelve intermural competitions in addition to the Pirtle-Washer Competition for second and third year students at the law school. As part of that program, the law school frequently hosts regional competitions.

During the fall semester, the law school will host the ABA Regional Negotiation Competition and the Kentucky Association of Trial Attorneys Competition. Students from Brandeis will compete in these events, and have the opportunity to participate in a number of other competitions during the year.

Trio of Supreme Court Justices Visit Brandeis Within a One Year Period

When Justice Stephen Breyer receives the Brandeis Medal and delivers the

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NEWS ALUMNI NEWS



The Goal of Diversity in the Bench and Bar . . .

As you walk down the hallways at the University of Kentucky College of Law, you pass the pictures of graduating classes back to the first class, in 1908. The pictures are in chronological order, so that as you walk the halls you get a series of snapshots of how the composition of the graduating classes has changed over time.

There are the predictable changes. The size of the graduating class shifted dramatically when the veterans of World War II returned and the GI Bill made law school accessible. Another increase in the size of the class came with the move from Lafferty Hall to the present building in the mid-1960s. There were the changes in the 1970s and 1980s as women became a numerically significant presence in the law school. There was the change as people of color enriched the community.

As you walk the halls you see where we as a community have been, and you get a sense of where we are going. We look more like the Commonwealth than ever before, and we are serving Kentucky – all of Kentucky – better than we ever have. Over the years, a few may have worried that bringing diversity to the College of Law would result in a diminution of the academic standards of the law school. Far from it, today's student body is clearly the most academically gifted in the history of the school.

A great many people have had a hand in this process at the College. Inside the law school, professors from Paul Oberst to the present generation, and administrators such as Paul VanBooven and Drusie Bakert, have helped advance the process. Outside the law school, as well, we have had assistance from good friends. Graduates such as Steve Reed, Chair of the University Board of Trustees, Representative Jesse Crenshaw, and Justice James Keller have provided remarkable support. We appreciate the efforts of all of these individuals.

Just recently, the work of another friend of the College in this area was recognized. Chief Justice Joseph Lambert of the Kentucky Supreme Court was selected to receive one of the inaugural President's Awards for Diversity. The award was presented to the Chief Justice as one who has "taken successful and exemplary actions to advance the University of Kentucky's mission of diversity."

In particular, the President's award was given in recognition of Chief Justice Lambert's long-standing commitment to increasing diversity in the bench and bar, his faithful participation in and support of the College of Law's efforts to increase diversity, and his creation of the Kentucky Legal Education Opportunities program. The KLEO program provides scholarships and educational opportunities for fifteen law students in each entering class, five from each of the Commonwealth's three law schools, who add to the diversity of their schools or who come from traditionally educationally-disadvantaged communities.

We are not yet where we want to be in terms of serving all of the citizens of the Commonwealth. Those who will walk the halls of the College years from now will see further progress recorded. But we have already made substantial progress, and it was highly appropriate for President Todd to recognize one individual who has helped us in our efforts.

Chase, continued

office). In Taiwan, Professor Gulinello practiced general corporate law and mergers and acquisitions. He played a major role in advising a local Taiwanese financial conglomerate in one of the largest corporate deals in Taiwanese history.

Professor Gulinello moved back to New York City to accept a contract teaching position (Associate in Law) at the Columbia University School of Law. He has also served as a guest lecturer at Soochow University in Taiwan.

Professor Gulinello's research interests include corporate governance, international business, comparative law, and the law of Taiwan and the People's Republic of China. His article, "The Revision of Taiwan's Company Law: The Struggle Towards a Shareholder-Oriented Model in One Corner of East Asia", will be published in volume 28 of the *Delaware Journal of Corporate Law* this fall. He is currently working on an article on venture capital in Taiwan. Professor Gulinello is admitted to practice law in New York State. He is a member of the American Bar Association and the Order of the Coif.

Davida Isaacs,
Assistant Professor of Law

Professor Davida Isaacs teaches Civil Procedure and Intellectual Property, including patents, copyrights and trademarks. She graduated from New York University School of Law in 1995, where she was Associate Editor of the *NYU Review of Law and Social Change*. She received her undergraduate degree *magna cum laude* from Brandeis University in 1992.

Before coming to Chase, Professor Isaacs was an intellectual property litigator for seven years in major New York and Washington, D.C. law

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Before You

Move...



Over 1,400 attorneys are licensed to practice in Kentucky, and it is vitally important that you keep the KBA informed of your correct mailing address.*

Pursuant to rule SCR 3.175, all KBA members must maintain "a current address at which he or she may be communicated with by mail."

If you move, you *must* notify the Executive Director of the KBA **within 30 days**. Please include your five (5) digit KBA member identification number.

Send address changes to:
**Kentucky Bar
Association
Executive Director
514 W. Main St.
Frankfort, KY
40601-1883**

* Announcements sent to the *Bench & Bar's Who, What, When & Where* column do not constitute a formal address change with the KBA.

SUMMARY OF MINUTES KBA BOARD OF GOVERNORS MEETING JULY 18, 2003

The Board of Governors met on July 18, 2003. Officers and Bar Governors in attendance were *President J. Stevenson, President-Elect K. Westberry, Vice President D. Sloan, Immediate Past President S. Catron and House of Delegates Chair L. York, House of Delegates Chair-Elect L. Hopgood, Bar Governors 1st District C. Woodall, M. Whitlow; Bar Governors 2nd District — C. English, Jr., C. Moore; 3rd District — J. Dyche, R. Madden; 4th District — J. White, M. O'Connell; 5th District — S. Kinkead, Jr., D. McSwain; 6th District — B. Bonar and 7th District — D. Combs, J. Rosenberg. Absent were: *Young Lawyers Section Chair S. Hiestand and 6th District Bar Governor M. Grubbs.**

In Executive Session, the Board considered one (1) discipline case and one (1) reinstatement case. Robert Coleman of Paducah and Roger Rolfes of Florence, non-lawyer members serving on the Board pursuant to SCR 3.375 participated in the deliberations.

In Regular Session, the Board of Governors conducted the following business:

- Approved the appointment of James E. Cleveland III of Ashland to fill the remainder of David Mussetter's term ending December 31, 2003 on the Joint Local Federal Rules Commission.
- Heard a report from President Stevenson regarding the plans for the 2004 Annual Convention to be held in Owensboro at the Executive Inn Rivermont during June 16-18 under the direction of Co-Chairs Mike Sullivan and Bob Webb.
- Heard report from the Office of Bar Counsel.
- Approved referring the American Bar Association's request for support and co-sponsorship for State Judicial Compensation and Amendments to the ABA Model Code of Judicial Conduct to the KBA Joint Study Committee on Judicial Concerns and the Judicial Conduct Commission for review and report back to the Board with their recommendations.
- Heard a report from Executive Director Bruce Davis regarding the WING II Construction project. The substantial compliance date is November 16, 2003.
- Approved the by-law changes for the following sections: Criminal Law Section, Civil Litigation Section and Young Lawyers Section.

To KBA Members



Do you have a matter to discuss
with the KBA's Board of Governors?
Board meetings are scheduled on

January 16-17, 2004

March 12-13, 2004

To schedule a time on the Board's agenda
at one of these meetings, please contact
Bruce Davis or Melissa Blackwell
at (502) 564-3795.

Brandeis, continued from page 62

Brandeis lecture on February 16, 2004, he will be the third United States Supreme Court Justice to be hosted by the law school within a one year period. In February 2003, Justice Ruth Bader Ginsburg received the Brandeis Medal and in May 2003, Justice Sandra Day O'Connor visited the law school in conjunction with the Kentucky Author Forum. Justice O'Connor had received the Brandeis Medal in 1992. For more information, contact Simone Beach at 502-852-6366 or email: sbeach@louisville.edu.

Save the Date

The Seventh Annual Estate Planning Institute is scheduled for April 23 in Louisville. The 21st Annual Carl A. Warns Jr. Labor and Employment Law Institute is scheduled for June 10 and 11 in Louisville. For information, contact Peggy Bratcher at 502-852-1669 or email: p.bratcher@louisville.edu.

Chase, continued

firms. During that time, she specialized in electronic and pharmaceutical patent cases, as well as e-commerce trademark and copyright disputes.

Professor Isaacs' scholarly focus is the balance between the rights of intellectual property owners and the public interest. More specifically, her academic interests range from e-commerce civil procedure issues to the Digital Millennium Copyright Act to national and international regulation of the innovator and generic pharmaceutical industries.

Lawrence Rosenthal,
Assistant Professor of Legal Writing

Professor Rosenthal taught at Stetson University College of Law (St. Petersburg, Florida) from 1998-2003, where he served as the Associate Director of Research and Writing, and taught Research and Writing, Employment Discrimination Law, and a Legal Drafting course.

Professor Rosenthal graduated from Union College (N.Y.), with a bachelor's degree in political science, and earned his J.D. from Vanderbilt University Law School. After practicing employment law for five years in Tampa, Florida and Washington, D.C., he earned his LL.M. (with distinction) from the Georgetown University Law Center in 1998.

Professor Rosenthal has published two articles. "Requiring Individuals To Use Mitigating Measures in Reasonable Accommodation Cases after the Sutton Trilogy: Putting the Brakes on a Potential Runaway Train" was published in 54 S.C. L. Rev. 421 (2002). "Motions for Summary Judgment When Employers Offer Multiple Justifications for Adverse Employment Actions: Why the Exceptions Should Swallow the Rule," in 2002 Utah L. Rev. 335 (2002).

THE KENTUCKY BAR FOUNDATION SALUTES ITS CURRENT FELLOWS

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Julie Muth Goodman
Flem Gordon
M. Kirby Gordon, II
Linda A. Gosnell
Douglas W. Gott
Jane E. Graham
William L. Graham
Charles D. Greenwell
William D. Gregory
Margo L. Grubbs
William D. Grubbs
Asa P. Gullett, III
Anne Fowler Gwinn
Frank E. Haddad, Jr.**
Robert Haddad
Howard Keith Hall
Benny E. Ham
John T. Hamilton
Glenn M. Hammond
Michael R. Hance
Robert E. Harding, Jr.
Robert M. Hardy, Jr.
David L. Hargrove
James E. Hargrove
Norman E. Harned
Paul C. Harnice
James G. Harralson
William Stokes Harris, Jr.
William Guy Hart, Jr.
C. Edward Hastie
Frederick D. Hatmaker

David L. Hausrath
Michael L. Hawkins
Lionel A. Hawse
Richard W. Hay
K. Gregory Haynes
James D. Heiple
Joseph B. Helm
James W. Hendricks**
Dale W. Henley
G. Edward Henry, II
Kevin G. Henry
Robert B. Hensley
Betty R. Herbert
H. Jefferson Herbert, Jr.
Henry R. Heyburn**
John G. Heyburn, II
Gary R. Hillerich
Ronald P. Hillerich
Frank Pryor Hilliard
Lisa English Hinkle
Paul C. Hobbs**
Robert C. Hobson**
Warren J. Hoffmann
Lanny R. Holbrook
Morton J. Holbrook, Jr.
Jeffrey H. Hoover
Christy Fiori Hornung
Eric S. Horstmeyer
Todd S. Horstmeyer
Elizabeth A. Horwitz
Glenn A. Hoskins
William A. Hoskins, III
Robert F. Houlihan, Jr.
Brian C. House
Gary B. Houston
John D. Hubbard
Martin J. Huelsmann
Winter R. Huff
David R. Irvin
John G. Irvin, Jr.
Sarah M. Jackson
Elizabeth McConahy Jenkins
A. Thomas Johnson
Donald L. Johnson
E. Louis Johnson
Gary C. Johnson
Joseph Russell Johnson
Lisa Lee Johnson
William E. Johnson
R. Harvey Johnston, III
E. Lee Jones
Paul E. Jones
Thomas P. Jones
David Jorjani
Margaret H. Kannensohn
William J. Kathman, Jr.
Louis Kawaja
Margaret E. Keane
Charles Dant Kearns
J. Warren Keller
Robert W. Kellerman
Harold E. Kelley
J. Daniel Kemp
William S. Kendrick
Carolyn L. Kenton
Ben L. Kessinger, Jr.
L. Daniel Key
Gregory A. Keyser
Daniel King, III
Frank N. King, Jr.
Nicholas N. King
Shelby C. Kinkead, Jr.
Henry E. Kinser
William D. Kirkland
Lois A. Kitts
Mark D. Knight
William L. Knopf
David L. Knox
Robert A. Kohn
James Scott Kreutzer

James R. Kruer
 John R. Kummer
 Eric M. Lamb
 Joseph E. Lambert
 Charles Landrum, Jr.**
 Raymond E. Lape, Jr.
 Meredith L. Lawrence
 William Ward Lawrence
 Robert G. Lawson
 Virginia L. Lawson
 Anne Noyse Lewis
 Barbara B. Lewis
 Erwin "Ernie" Lewis
 Jeremiah A. Lloyd**
 David C. Long
 George E. Long, II
 Jane Broadwater Long
 John M. Longmeyer
 Bernard F. Lovely, Jr.
 Susan Dabney Luxon
 Titus G. Lyle
 D. G. Lynn
 R. Scott Madden
 Allison J. Maggiolo
 Armer H. Mahan, Jr.
 Mary Kathryn Manis
 Samuel Manly
 Howard Oliver Mann
 David Russell Marshall
 John R. Martin, Jr.
 Richard W. Martin
 Steven C. Martin
 Timothy L. Mauldin
 Robert E. McBeath
 William H. McCann
 Denise H. McClelland
 Thomas A. McConnell
 R. Burl McCoy
 Scott F. McDaniel
 Patrick S. McElhone
 John Scott McGaw
 John R. McGinnis
 Earl M. McGuire
 Mary Porter McKee
 Scott D. McMurray
 Sam G. McNamara
 Jay D. McShurley
 Douglas L. McSwain
 Mark S. Medlin
 Austin Mehr
 Kurt J. Meier
 Henry Meigs, II
 Francis J. Mellen, Jr.
 Elizabeth Ullmer Mendel
 Creighton E. Mershon, Sr.
 Paul S. Meyer
 Thomas J. Meyer
 Charles C. Mihalek
 Daniel H. Miller
 Margaret A. Miller
 Mark T. Miller
 Guy E. Millward, Jr.
 Stephen D. Milner
 Mary K. Molloy
 Phillip M. Moloney
 Gregory L. Monge
 David R. Monohan
 Brucie W. Moore
 Charles E. Moore
 Robert C. Moore
 Elmer E. Morgan
 Mark L. Morgan
 McKinnley Morgan
 Leslie W. Morris, II
 Jesse T. Mountjoy
 Carrie Mullins
 Kevin L. Murphy
 Gerald A. Neal
 Gregg Y. Neal
 Henry C. Neel**
 Thomas R. Nienaber
 Eileen M. O'Brien
 Stephen M. O'Brien, III
 Joe O'Bryan

Michael J. O'Connell
 Len W. Ogden, Jr.
 Michael J. O'Hara
 Ann B. Oldfather
 Dulaney L. O'Roark, Jr.
 D. Bruce Orwin
 John S. Osborn, Jr.
 Thomas Lee Osborne
 Peter L. Ostermiller
 William Donald Overbey
 Jeanie Owen-Miller
 Charles E. Palmer, Jr.
 Carol M. Palmore
 John S. Palmore
 William J. Parker
 John Judson Patterson
 Peggy E. Patterson
 W. R. Patterson, Jr.
 Phillip R. Patton
 L. Edwin Paulson, Jr.
 J. Lewis Payne
 H. Harris Pepper, Jr.
 Peter Perlman
 Edwin H. Perry
 Roger L. Peterman
 Eugene B. Pflughaupt
 R. Scott Plain
 Debra S. Pleatman
 J. David Porter
 John G. Prather, Jr.
 David F. Pratt
 Glenn A. Price, Jr.
 Whayne C. Priest, Jr.
 Marvin C. Prince
 Gregory K. Puckett
 J. Luke Quentermous
 George F. Rabe
 F. R. Radolovich
 Harry David Rankin
 James B. Ratliff
 Barbara S. Rea**
 Carroll M. Redford, Jr.
 Carroll M. Redford, III
 Henry M. Reed, III
 John S. Reed, II
 Albert F. Reutlinger**
 William D. Reynolds
 Alice Graham Rhodes
 John R. Rhorer, Jr.
 Reed Rhorer
 Charles E. Ricketts, Jr.
 Marcia Milby Ridings
 Debra S. Rigg
 Ronald L. Rigg
 Roger T. Rigney
 Benita J. Riley
 Richard C. Roberts
 Phyllis L. Robinson
 William T. Robinson, III
 John Rogers
 John M. Rogers
 E. P. Barlow Ropp
 Jill Hall Rose
 John M. Rosenberg
 Martha A. Rosenberg
 Calvert T. Roszell
 Laura Rothstein
 Arthur B. Rouse, Jr.
 H. Douglas Rouse
 James D. Rouse
 Robert Rowe, Jr.
 Leonard G. Rowekamp
 Lee W. Rowland
 Donald J. Ruberg
 William J. Rudloff
 Stephen M. Ruschell
 Thomas B. Russell
 John C. Ryan
 William P. Ryan, Jr.
 Charles A. Saladino**
 George Salem, Jr.**
 Robert E. Sanders
 Joe C. Savage
 Paul J. Schachter

Glenn L. Schilling
 David A. Schneider
 George D. Schrader
 Wilfrid A. Schroder
 Michael J. Schulte
 David V. Scott
 Phillip D. Scott
 Warren N. Scoville
 John E. Selent
 Gary J. Sergeant
 William L. Shadoan
 James M. Shake
 James J. Shannon, Jr.
 Wm. Kevin Shannon
 Richard D. Shapero
 Billy Ray Shelton
 Mark A. Shepherd
 David C. Short
 W. Kennedy Simpson
 Bruce W. Singleton
 Lee E. Sitlinger
 Michael M. Sketch
 Herbert D. Sledd
 David B. Sloan
 Alan T. Slyn
 Bruce E. Smith
 John L. "Jack" Smith
 Neal Smith
 Raymond G. Smith
 S. Russell Smith, Jr.
 Thomas C. Smith
 Thomas M. Smith
 M. Gene Snyder
 Sheryl G. Snyder
 Perry N. Southard
 Elise Givhan Spainhour
 John E. Spainhour
 G. David Sparks
 Richard W. Spears
 Robert E. Spurlin
 Gerard A. St. Amand
 J. Robert Stansbury
 R. Lee Steers, Jr.
 Kathy W. Stein
 Henry L. Stephens, Jr.
 Robert F. Stephens**
 James G. Stephenson
 Donald L. Stepner
 John W. Stevenson
 Dennis J. Stilger
 Joseph E. Stopher
 Beverly R. Storm
 Daniel P. Stratton
 David C. Stratton
 George E. Strickler, Jr.
 R. Michael Sullivan
 Ronald M. Sullivan
 Larry F. Sword
 John S. Talbott
 Damon R. Talley
 Jeff S. Taylor
 Richard S. Taylor
 Joseph H. Terry
 George Thacker
 Linda B. Thomas
 Richard P. Thomas
 James E. Thompson
 William P. Thurman, Jr.
 James M. Todd
 R. William Tooms
 Brent Travelsted
 Penny Travelsted
 William Clifton Travis
 Regena Dawn Triplett
 J. Guthrie True
 Jerry D. Truitt
 Elizabeth J. Turley
 Robert J. Turley
 Job D. Turner, III
 Thomas E. Turner
 Walter W. Turner
 Richard H. Underwood
 Howard VanAntwerp, III
 Paul C. Van Booven

Palmer Gene Vance, II
 Laurance B. VanMeter
 Jim G. Vanover
 Elizabeth E. Vaughn
 Allan W. Vestal
 David B. Vickery
 Richard E. Vimont
 Donald H. Vish
 Donald D. Waggener
 T. Cody Wales
 H. Lawson Walker, II
 Reuben G. Walker, Jr.
 Terri Smith Walters
 Dandridge F. Walton
 Kathryn Warnecke
 David L. Waterman**
 Irwin G. Waterman
 Robert M. Watt, III
 Alvin D. Wax
 Lawrence R. Webster
 Harold R. Weinberg
 David O. Welch
 Terry Wells
 Richard E. Wentz
 J. Quentin Wesley
 Linsey W. West
 R. Kent Westberry
 Jay A. Wethington
 Robert E. Wheeler
 Jackson W. White
 Joseph L. White
 Frederick W. Whiteside, Jr.**
 Henry O. Whitlow
 Mark C. Whitlow
 Frank H. Wilcox, Jr.**
 William H. Wilhoit
 Fred G. Williams
 James W. Williams, III
 Timothy C. Wills
 Lively M. Wilson
 M. Gail Wilson
 Natalie S. Wilson
 Thomas D. Wingate
 Donald C. Wintersheimer
 Stephen D. Wolnitzek
 Kathryn G. Wood
 Clarence A. Woodall, III
 Catesby Woodford
 Frank C. Woodside, III
 Ben B. Wright, Jr.
 David L. Yewell
 Daniel J. Zalla
 Joseph J. Zaluski
 Robert C. Ziegler
 Wilbert L. Ziegler
 Laurence J. Zielke

10/1/03

*Enrolled posthumously

**Deceased Fellow

In Memoriam

Woolsey M. Caye
Louisville

John R. Groves, Jr.
Lexington

Benny E. Ham
Somerset

Edward R. Hays
Lexington

John S. Hoffman
Henderson

John C. Lavelle
Covington

William C. Oldfield
Covington

James F. Perkins
New Haven

Kurt A. Philipps, Jr.
Covington

Robert C. Stone
Lexington

IOLTA AWARDS GRANTS OF \$510,000

On September 10, 2003, the Justices of the Kentucky Supreme Court officially approved in total the 2003-2004 grant recommendations made by the IOLTA Board of Trustees, with the emphasis on providing funds to legal services, pro bono programs, and three law school Fellowship Programs throughout the Commonwealth. Further, the Kentucky Innocence Project has primarily relied on the IOLTA program for funding during the past four years.

125 Kentucky banks now participate in IOLTA. Due to this support so vital to the success of the IOLTA program, IOLTA has returned over 6.6 Million Dollars to Kentucky communities for law-related programs, including \$510,000 in grants this year. The following recipients are receiving IOLTA grants during this fiscal year:

IOLTA FELLOWSHIPS

Chase College of Law, Northern Kentucky University (\$20,000)

To fund law student IOLTA Fellows to assist public service and pro bono attorneys who are providing a wide variety of legal services to poor and indigent clients and in carrying out projects for improving the administration of justice. The IOLTA Fellowship grant helps to support a year-round fellowship with Northern Kentucky Legal Aid Society, the Kentucky Children's Law Center and the Kentucky Department of Public Advocacy.

UK Student Public Interest Law Foundation (\$20,000)

To fund IOLTA fellowships for student summer internships at legal public interest service organizations; sponsor speakers to provide information on public interest topics and public interest careers to the law school and legal community; and maintain information and resources on public interest careers and topics.

U of L Louis D. Brandeis School of Law Research Foundation (\$20,000)

The IOLTA Public Service Fellowships are designed to afford law students an opportunity to work for a legal service organization during the summer. Students apply for a fellowship with the Legal Aid Society, or may apply for a fellowship with the Jefferson County Public Defender. Through these fellowships, students are exposed to the work of legal service organizations and the needs of the underrepresented in Jefferson County.

Kentucky Department of Public Advocacy, Kentucky Innocence Project (\$10,000)

To further expand the efforts of the Innocence Project to continue the program by paying the cost of evidence sample tests for DNA cases.

Local Bar Association Pro Bono Programs

Bowling Green Lawyers Care Pro Bono Program (\$22,000)
Boyd and Greenup/Lewis County Bar Associations' Attorney Access Project (\$22,000)
Daviness County Lawyer Referral Service, Inc. (\$22,000)
Fayette County Bar Association Pro Bono Program, Inc. (LawCare) (\$22,000)
Louisville Pro Bono Consortium (\$22,000)
Northern Kentucky Volunteer Lawyers, Inc. (\$22,000)

Legal Services Programs

Appalachian Research & Defense Fund of KY, Inc. (\$109,835)
Kentucky Legal Aid (\$65,973)
Legal Aid Society, Inc., Louisville (\$63,632)
Legal Aid of the Bluegrass (\$68,560)

Please call the IOLTA office at 800-874-6582 for more information.

YOUNG LAWYERS

SECTION OF KENTUCKY

2003 - 2004 YLS Executive Committee

The Young Lawyers Section of the Kentucky Bar Association is pleased to announce its Executive Committee for 2003-2004. The following officers were elected or appointed at the KBA's Annual Convention on June 12, 2003: Sheila P. Hiestand, Chair; David B. Barber, Chair-Elect; Katherine J. Hornback, Vice-Chair; Andrew Schaeffer, Secretary/Treasurer; Kristi S. Schaaf, 1st District Representative; Scott D. Laufenberg, 2nd District Representative; Bradford L. Breeding, 3rd District Representative; Larry L. Jones, II, 4th District Representative; David T. Royse, 5th District Representative; Robert D. Dilts, 6th District Representative; and David F. Latherow, 7th District Representative. At-large members include Trey Moore, Ryan C. Reed, R. Michael Sullivan, Walter Aden Hawkins, Jennifer Moore and Jon Fritz. The Immediate Past Chair of the YLS is Michael J. Cox.

DO YOU KNOW AN OUTSTANDING YOUNG LAWYER?

The Kentucky Bar Association Young Lawyers Section is accepting nominations for the 2004 Outstanding Kentucky Young Lawyer Award. The award, which will be presented during the YLS luncheon at the 2004 KBA Annual Convention, recognizes an individual with distinguished service and accomplishments in legal, civic and community areas.

Young attorneys meeting either of the following criteria are eligible for nomination:

1. Attorneys under age 40; or
2. Attorneys who have practiced law fewer than ten years regardless of age.

KBA members may nominate fellow members of the bar. Self-nominations will be accepted. To obtain a nomination form, please call or write to:

Walter Aden Hawkins
P.O. Box 10120, Bowling Green, KY 42102
Phone: (270) 782-6000 Fax: (270) 782-8820
Email: whawkins@hughesandcoleman.com

**Nominations must be received
by April 9, 2004**

WHO, WHAT, WHEN & WHERE

ON THE MOVE

Eric S. Horstmeyer has re-joined the law firm of **Dudley, Topper and Feuerzeig, LLP** in St. Thomas, U.S. Virgin Islands as Of Counsel. He earned an LL.M. in taxation from New York University in May of this year. Horstmeyer graduated from Centre College in 1992 and earned his J.D. from Brandeis School of Law in 1995. He was most recently associated with the Lexington office of Dinsmore & Shohl, LLP. Horstmeyer will concentrate his practice in the areas of complex corporate transactions, real estate and corporate and international tax planning. He may be reached by telephone at (340) 774-4422.

The law firm of **Farmer, Kelley, Brown & Williams** is pleased to announce that **Bradford L. Breeding** has become a partner within the firm.



B. L. Breeding

Breeding received his B.A. from Morehead State University in 1991 and his J.D. from the University of Louisville School of Law in 1994. The firm has changed its name to **Farmer, Kelley, Brown, Williams & Breeding** representing the current partnership. The firm's office remains located at 502 West Fifth Street in London.

The Paducah law firm of **Whitlow, Roberts, Houston & Straub, PLLC** is pleased to announce that **James R. Coltharp, Jr.** has joined the firm as an associate. Coltharp graduated from the University of Kentucky with a B.A. in 1998 and earned his J.D. in 2001. He served as judicial law clerk to the Honorable

Thomas B. Russell, U.S. District Court, Western District of Kentucky, from 2001 to 2003.

C. Dean Furman and **D. Sean Nilsen** are pleased to announce their new partnership, the **Law Offices of Furman & Nilsen, PLLC**, located in the Jefferson Mall in Louisville. Furman, a University of Virginia Law School graduate, will continue his practice in personal injury cases, federal whistleblower litigation and white-collar criminal defense. Nilsen, a University of Louisville School of Law graduate, will continue his practice in construction and commercial litigation.

The Bowling Green law firm of **Hughes & Coleman** is proud to announce that **Walter Aden Hawkins** and **John McCracken** have joined the firm. Hawkins is a 1993 graduate of the University of Louisville and a 1996 graduate of Salmon P. Chase College of Law. Hawkins serves as the chair of the Kentucky Bar Association's Labor and Employment Law Section. He is also a member of the Attorneys' Advertising Commission. McCracken is a 1983 graduate of Western Kentucky University and a 1986 graduate of Cumberland School of Law at Samford University. He is admitted to practice law in Kentucky in both the Eastern and Western Districts of Federal Court. He will focus on the firm's growing Employment Law and Bad Faith Claims Division. Hawkins and McCracken may be reached by telephone at 1-800-785-2110.

The Louisville law firm of **Valenti Hanley & Crooks, PLLC** is pleased to announce that **Mark A. Robinson** has joined the firm as Of Counsel. **Brian R. Good** and **Jennifer A. Stosberg** have joined the firm

as associates. Robinson concentrates his practice in commercial litigation and creditors' rights. Good practices civil litigation, criminal defense, adoption and family law.

Stosberg concentrates her practice in general corporate, commercial lending and real estate transactions.

Tracey N. Wise and **Laura Day DelCotto** are pleased to announce the formation of **Wise DelCotto PLLC**, located at 219 North Upper Street in Lexington. Wise is a former partner at Wise & Warnecke. She earned her J.D., with distinction, at Indiana University and is a Fellow in the American College of Bankruptcy. DelCotto is a former partner and chair of the Bankruptcy Department at Stoll, Keenon & Park, LLP. She earned her J. D., with distinction, from the University of Kentucky College of Law and is certified by the American Board of Certification in Business Bankruptcy. Associates at the firm are Amber Arnett, a 2002 graduate of the University of Kentucky College of Law, and Erritt Griggs, a 1999 graduate of Salmon P. Chase College of Law. The firm will focus its practice statewide in debtor/creditor relations, commercial bankruptcy and financial restructurings/workouts.

Warren Keller and Bridget Dunaway, partners of the law firm of Taylor, Keller & Dunaway, PLLC announce the merger of their practice with R. William Tooms to form the firm of **Taylor, Keller, Dunaway & Tooms, PLLC**, with offices located at 1036 West Fifth Street in London. Attorneys in the firm are **Boyd Taylor**, **Warren Keller**, **R. William**



Mark A. Robinson

Tooms, Bridget Dunaway, John Carroll and Leslie Brown Beckner. Boyd Taylor is serving as Of Counsel. The firm also announces the opening of an additional office at Hamburg Place Office Park in Lexington located at 1795 Alysheba Way in Suite 2101. The telephone number at the Lexington law office is (859) 543-1613.

Wyatt, Tarrant & Combs, LLP announces that **Glen Krebs, John P. Brice** and **Richard B. Warne** have joined the firm's Lexington office. Glen Krebs is a member of the firm's International Trade and General Business Practice Groups. He speaks fluent Japanese and has assisted more than 40 Japanese companies in establishing a presence in Kentucky. Krebs received his bachelor's degree from Brigham Young University in 1979 and his law degree from California Western School of Law in 1981. John P. Brice is a member of the firm's Real Estate, Bankruptcy and Creditors' Rights and General Business Practice Groups. He concentrates his practice in bankruptcy and business law. Brice received his bachelor's degree from Northwestern University in 1976 and his law degree from the University of Kentucky in 1979. Before joining the firm, he was

a member in the law firm of Fleming, Ward & Brice, PLLC. Richard B. Warne is a member of the firm's Bankruptcy and Creditors' Rights Practice Group. His practice involves litigation and transactions in bankruptcy and intellectual property, including creditor representation and bankruptcy litigation; trademark, copyright and trade secret litigation; hardware and software acquisition agreements; software licenses and employment agreements. Warne received his bachelor's degree from the University of Texas in 1989 and his law degree from the University of Kentucky in 1994. He served as a judicial law clerk for U.S. District Judge Thomas B. Russell. Before joining the firm, Warne was an associate with Stoll, Keenon & Park.

Scott White, former Assistant Deputy Attorney General and Director of the Civil Law Division in the administration of Attorney General Ben Chandler, has joined the firm of **McCoy, West, Franklin & Beal** in Lexington. White earned his B.A. and his law degree from the University of Ken-



Scott White

tucky. He will practice in the areas of complex civil litigation, federal and state appeals, health care law, state regulation and licensing and government relations counseling. White may be reached by telephone at (859) 254-6363.

The Louisville law firm of **Fulton & Devlin** is pleased to announce that **M. Christopher Davis** has joined the firm. Davis received his B.A. from the University of Kentucky and his J.D. from the University of Kentucky College of Law. He concentrates his practice in the area of workers' compensation and insurance defense and subrogation.

J. Eric Rottinghaus has joined the Cincinnati law firm of **Javitch, Block & Rathbone** as an associate in the firm's Kentucky practice. Rottinghaus earned his B.A. from Xavier University in 1998 and his J.D. from Salmon P. Chase College of Law in 2001. His areas of focus are creditors' rights, commercial litigation, bankruptcy and subrogation. Before joining the firm, Rottinghaus was in private practice in Covington, focusing in the areas of civil litigation, bankruptcy and criminal defense.

Morris, Garlove, Waterman & Johnson PLLC is pleased to announce that **Richard M. Rubenstein** has joined the Louisville law firm. Rubenstein received his J.D. from the University of Louisville School of Law in 1985 and his B.B.A. from the University of Kentucky in 1976. He was attorney/advisor for the U.S. Trustee in the Western District of Kentucky. Since 1985, he has practiced both in house and in private practice in Louisville. Rubenstein continues to concentrate his practice in business reorganizations and debtor and creditor rights.

Have an item for Who, What, When & Where?

The *Bench & Bar* welcomes brief announcements about member placements, promotions, relocations and honors. Notices are printed at no cost and must be submitted in writing to:

Managing Editor, Kentucky *Bench & Bar*,
514 West Main St., Frankfort, KY 40601-1883.

There is a \$10 fee per photograph appearing with announcements. Paid professional announcements are also available. Please make checks payable to the Kentucky Bar Association.

The deadline for announcements appearing in the January edition of Who, What, When & Where is December 1, 2003.

IN THE NEWS

The American Bar Association General Practice, Solo and Small Firm Section has announced the appointment of **Olu A. Stevens**, a solo practitioner in Louisville, to its 2003-04 Diversity Fellows Program. The program was created in 1999 to promote ethnic diversity within the section, recruit members of color and provide leadership development opportunities within the section for members of color. Each appointee will participate in section committee appointments, national programs and other leadership initiatives for the bar year.

CPT Travis L. Rogers, a judge advocate for the U.S. Army, has returned to Fort Campbell after deployment to Iraq. He is a criminal defense attorney attached to the 101st Airborne Division (Air Assault). CPT Rogers was awarded the Bronze Star for his service during the war.

Beth Lewis Maze, 21st Judicial Circuit Judge, has been selected as a delegate to the Arab Republic of Egypt and the Hashemite Kingdom of Jordan for a two-week political study program. The program is sponsored by the American Council of Young Political Leaders (ACYPL), a bipartisan non-profit organization located in Washington, D.C. ACYPL delegates are chosen by nominations from a competitive, bipartisan field of candidates who are between the ages of 25 and 40 years old and have exhibited strong leadership during their careers in public or private service.



Judge Maze

The Kentucky Registry of Election Finance unanimously re-elected **John C. Rogers**, of Glasgow, to serve as chair and **Sam P. Burchett**, of Lexington, to serve as vice chair. Both were reappointed in September to 4-

year terms on the Registry. Rogers is a graduate of Eastern Kentucky University and the University of Kentucky College of Law. Burchett earned his undergraduate, M.B.A. and J.D. degrees from the University of Kentucky.

Martha Curley Eastman was

elected as the chair-elect of the national Nursing Home Litigation Group at the 2003 annual meeting of the Association of Trial Lawyers of America in San Francisco, California in July. She presented a paper on nursing home abuse issues at the ATLA Annual Convention. Eastman is a senior trial attorney at the Becker Law Office in Louisville.



Martha C. Eastman

Teresa A. Daniel has recently published an article entitled "Tools for Building a Positive Employee Relations Environment" in the summer 2003 edition of *Employment Relations Today*. Daniel's article entitled "The Development of a 'Culture of Compliance' — Preventing Sexual Harassment in the Workplace" has also been accepted for publication in

their fall 2003 issue. Daniel is the president of InsideOut HR Solutions PLLC in Ashland. She is also a faculty member of the Lewis College of Business at Marshall University in Huntington, West Virginia.

RELOCATIONS

Jill Brady, an attorney licensed in both Kentucky and Tennessee, is pleased to announce the relocation of her law office to 103 North Main Street in Henderson.

Bethanni E. Forbush-Moss is pleased to announce the relocation of the Forbush-Moss Law Office in Louisville to 730 West Main Street in Suite 450 of the Hart Block Building. Her telephone number (502-561-1000) remains the same.

Hughes & Coleman announce the relocation of their Bowling Green Office to Suite 201 at 1256 Campbell Lane in Bowling Green. You may contact Hughes & Coleman at 1-800-489-6000.

The Louisville law firm of **Valenti Hanley & Crooks** has recently moved to One Riverfront Plaza in Suite 1950 at 401 West Main Street in Louisville.

LEGALLY INSANE
BY JIM HERRICK

"Yes, I know the rule says you can move for judgment on the pleadings at any time, but still..."



KENTUCKY BAR ASSOCIATION

**FINANCIAL STATEMENTS
AND
SUPPLEMENTARY INFORMATION
FOR THE YEAR ENDED JUNE 30, 2003**

TOGETHER WITH INDEPENDENT AUDITOR'S REPORTS



Kelley,
Galloway &
Company, PSC

CERTIFIED PUBLIC ACCOUNTANTS

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Kelley,
Galloway &
Company, PSC

CERTIFIED PUBLIC ACCOUNTANTS

• 1200 BATH AVENUE • P. O. BOX 990 • ASHLAND, KENTUCKY 41105-0990 •

• Phone (606) 329-1811 • Fax (606) 329-8756 • E-mail contact@kelleygalloway.com • Web site www.kelleygalloway.com •

Member of the SEC and Private Companies Practice Sections of the American Institute of Certified Public Accountants and Polaris International, North American Network

INDEPENDENT AUDITOR'S REPORT

Board of Governors
Kentucky Bar Association
Frankfort, Kentucky 40601

We have audited the accompanying balance sheet of the Kentucky Bar Association (the Association) as of June 30, 2003, and the related statements of support and revenue and expenses, changes in fund balances, and cash flows for the year then ended. These financial statements are the responsibility of the Association's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Kentucky Bar Association as of June 30, 2003, and the results of its operations and its cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America.

Kelley, Galloway & Company, PSC

August 13, 2003

KENTUCKY BAR ASSOCIATION
BALANCE SHEET
JUNE 30, 2003
(WITH COMPARATIVE TOTALS FOR 2002)

ASSETS	General Fund	Continuing Legal Education Fund	Client Security Fund
CURRENT ASSETS:			
Cash	\$ 174,547	\$ 33,504	\$ 2,767
Investments	887,464	356,472	737,804
Bond construction account	-	-	-
Bond sinking fund	-	-	-
Accounts receivable	22,572	6,988	-
Interfund receivable	-	-	-
Due from affiliate	44,452	-	-
Interest receivable	338	160	266
Prepaid expenses	<u>12,416</u>	<u>9,415</u>	<u>-</u>
Total current assets	<u>1,141,789</u>	<u>406,539</u>	<u>740,837</u>
PROPERTY, BUILDING AND EQUIPMENT:			
Land	-	-	-
Land and buildings for future use	-	-	-
Bar Center building	-	-	-
Bar Center building addition - Wing I	-	-	-
Bar Center building addition - Wing II - construction in progress	-	-	-
Furniture, fixtures and equipment	154,668	102,044	-
Vehicles	12,914	-	-
Equipment under capital leases	<u>-</u>	<u>-</u>	<u>-</u>
	167,582	102,044	-
Less - Accumulated depreciation	<u>120,968</u>	<u>96,897</u>	<u>-</u>
	<u>46,614</u>	<u>5,147</u>	<u>-</u>
	<u>\$ 1,188,403</u>	<u>\$ 411,686</u>	<u>\$ 740,837</u>
LIABILITIES AND FUND BALANCES			
CURRENT LIABILITIES:			
Accounts payable	\$ 276,974	\$ 8,954	\$ 1,230
Interfund payable	11,411	2,255	-
Accrued expenses	86,963	20,088	-
Current maturities of obligations under capital leases	-	-	-
Current maturities of vehicle note payable	4,040	-	-
Current maturities of mortgage note payable	-	-	-
Current maturities of bonds payable	<u>-</u>	<u>-</u>	<u>-</u>
Total current liabilities	<u>379,388</u>	<u>31,297</u>	<u>1,230</u>
OTHER LIABILITIES:			
Deferred revenue	1,693	-	-
Vehicle note payable, less current maturities	351	-	-
Mortgage note payable, less current maturities	-	-	-
Bonds payable, less current maturities	<u>-</u>	<u>-</u>	<u>-</u>
	2,044	-	-
Total liabilities	<u>381,432</u>	<u>31,297</u>	<u>1,230</u>
FUND BALANCES:			
Designated by the Board for financing building expansion	-	-	-
Designated by the Board for Wing II Recognitions	3,851	-	-
Designated by the Board for Sections	160,920	-	-
Designated by the Board for Mock Trial	16,268	-	-
Designated by the Board for Just Solutions	1,509	-	-
Designated by the Board for Lawyer's Assistance Program	173,145	-	-
Designated by the Board for Oral History Project	12,944	-	-
Undesignated	<u>438,334</u>	<u>380,389</u>	<u>739,607</u>
	<u>806,971</u>	<u>380,389</u>	<u>739,607</u>
	<u>\$ 1,188,403</u>	<u>\$ 411,686</u>	<u>\$ 740,837</u>

Bar Center Headquarters Trustees Fund	Bar Center Fund	Capital Construction Fund	Pro Bono Fund	June 30, 2003 Total	June 30, 2002 Total
\$ 3,954	\$ 10,082	\$ 4,073	\$ 4,894	\$ 233,821	\$ 408,283
135,777	43,130	521,875	169,874	2,852,396	2,851,817
1,334,902	-	-	-	1,334,902	-
39	-	-	-	39	-
-	-	-	-	29,560	43,746
70,048	-	-	-	70,048	126,330
1,200	-	-	-	45,652	41,683
130	42	3,341	165	4,442	16,451
9,460	-	-	-	31,291	59,923
<u>1,555,510</u>	<u>53,254</u>	<u>529,289</u>	<u>174,933</u>	<u>4,602,151</u>	<u>3,548,233</u>
80,000	-	-	-	80,000	80,000
327,126	-	-	-	327,126	324,651
762,292	-	-	-	762,292	762,292
1,175,386	-	-	-	1,175,386	1,169,697
1,035,123	-	-	-	1,035,123	69,670
1,075,949	-	-	-	1,332,661	1,233,383
-	-	-	-	12,914	12,914
-	-	-	-	-	55,031
4,455,876	-	-	-	4,725,502	3,707,638
<u>1,545,650</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>1,763,515</u>	<u>1,660,107</u>
<u>2,910,226</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>2,961,987</u>	<u>2,047,531</u>
<u>\$ 4,465,736</u>	<u>\$ 53,254</u>	<u>\$ 529,289</u>	<u>\$ 174,933</u>	<u>\$ 7,564,138</u>	<u>\$ 5,595,764</u>
\$ 187,326	\$ -	\$ -	\$ 263	\$ 474,747	\$ 404,228
-	53,254	3,128	-	70,048	126,330
-	-	-	-	107,051	94,883
-	-	-	-	-	11,416
-	-	-	-	4,040	3,731
-	-	-	-	-	88,471
80,000	-	-	-	80,000	-
<u>267,326</u>	<u>53,254</u>	<u>3,128</u>	<u>263</u>	<u>735,886</u>	<u>729,059</u>
-	-	-	-	1,693	379
-	-	-	-	351	4,391
-	-	-	-	-	312,293
<u>2,310,000</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>2,310,000</u>	<u>-</u>
<u>2,310,000</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>2,312,044</u>	<u>317,063</u>
<u>2,577,326</u>	<u>53,254</u>	<u>3,128</u>	<u>263</u>	<u>3,047,930</u>	<u>1,046,122</u>
-	-	526,161	-	526,161	411,976
-	-	-	-	3,851	3,851
-	-	-	-	160,920	220,916
-	-	-	-	16,268	8,371
-	-	-	-	1,509	1,509
-	-	-	-	173,145	104,603
-	-	-	-	12,944	7,944
<u>1,888,410</u>	<u>-</u>	<u>-</u>	<u>174,670</u>	<u>3,621,410</u>	<u>3,790,472</u>
<u>1,888,410</u>	<u>-</u>	<u>526,161</u>	<u>174,670</u>	<u>4,516,208</u>	<u>4,549,642</u>
<u>\$ 4,465,736</u>	<u>\$ 53,254</u>	<u>\$ 529,289</u>	<u>\$ 174,933</u>	<u>\$ 7,564,138</u>	<u>\$ 5,595,764</u>

The accompanying notes to financial statements
are an integral part of this balance sheet.

KENTUCKY BAR ASSOCIATION
STATEMENT OF SUPPORT AND REVENUE AND EXPENSES
FOR THE YEAR ENDED JUNE 30, 2003
(WITH COMPARATIVE TOTALS FOR 2002)

	General Fund	Continuing Legal Education Fund	Client Security Fund
SUPPORT AND REVENUE:			
Membership dues	\$ 1,799,505	\$ 554,870	\$ -
Investment income	34,360	8,649	13,793
Other dues and contributions	235,706	18,730	616
Sections income	123,046	-	-
Reimbursement of costs	4,053	-	-
Advertising - Bench and Bar	69,117	-	-
Conventions	377,808	-	-
Rent of building	-	-	-
Net increase (decrease) in the fair value of investments	101,776	40,355	103,371
Other support and revenue	<u>67,154</u>	<u>156,280</u>	<u>4,380</u>
Total support and revenue	<u>2,812,525</u>	<u>778,884</u>	<u>122,160</u>
EXPENSES:			
General and Administrative	1,945,848	-	-
Sections	164,374	-	-
Board of Governors and Presidents	126,755	-	-
Disciplinary and unauthorized practices	88,444	-	-
Publications	154,171	-	-
Conventions	456,902	-	-
Continuing Legal Education	-	782,749	-
Client Security	-	-	143,355
Bar Center	-	-	-
Pro Bono	-	-	-
Capital construction	<u>-</u>	<u>-</u>	<u>-</u>
Total expenses	<u>2,936,494</u>	<u>782,749</u>	<u>143,355</u>
EXCESS (DEFICIENCY) OF SUPPORT AND REVENUE OVER (UNDER) EXPENSES	<u>\$ (123,969)</u>	<u>\$ (3,865)</u>	<u>\$ (21,195)</u>

<u>Bar Center Headquarters Trustees Fund</u>	<u>Bar Center Fund</u>	<u>Capital Construction Fund</u>	<u>Pro Bono Fund</u>	<u>Year Ended June 30, 2003 Total</u>	<u>Year Ended June 30, 2002 Total</u>
\$ -	\$ 58,622	\$ -	\$ -	\$ 2,412,997	\$ 2,364,677
21,522	686	18,535	2,535	100,080	129,609
-	-	195,412	21,024	471,488	399,049
-	-	-	-	123,046	119,778
-	-	-	-	4,053	14,439
-	-	-	-	69,117	75,577
-	-	-	-	377,808	374,243
4,800	-	-	-	4,800	4,800
-	-	18,965	-	264,467	(165,771)
-	-	-	-	227,814	190,109
<u>26,322</u>	<u>59,308</u>	<u>232,912</u>	<u>23,559</u>	<u>4,055,670</u>	<u>3,506,510</u>
-	-	-	-	1,945,848	1,648,272
-	-	-	-	164,374	73,259
-	-	-	-	126,755	109,499
-	-	-	-	88,444	96,938
-	-	-	-	154,171	156,048
-	-	-	-	456,902	391,273
-	-	-	-	782,749	764,049
-	-	-	-	143,355	280,253
216,352	6,054	-	-	222,406	230,359
-	-	-	1,823	1,823	4,692
-	-	<u>2,277</u>	-	<u>2,277</u>	<u>1,351</u>
<u>216,352</u>	<u>6,054</u>	<u>2,277</u>	<u>1,823</u>	<u>4,089,104</u>	<u>3,755,993</u>
<u>\$ (190,030)</u>	<u>\$ 53,254</u>	<u>\$ 230,635</u>	<u>\$ 21,736</u>	<u>\$ (33,434)</u>	<u>\$ (249,483)</u>

The accompanying notes to financial statements
are an integral part of this statement.

KENTUCKY BAR ASSOCIATION
STATEMENT OF CHANGES IN FUND BALANCES
FOR THE YEAR ENDED JUNE 30, 2003
(WITH COMPARATIVE TOTALS FOR 2002)

	General Fund	Continuing Legal Education Fund	Client Security Fund
FUND BALANCES, Beginning of Year	\$ 993.804	\$ 382.624	\$ 760.802
EXCESS (DEFICIENCY) OF SUPPORT AND REVENUE OVER (UNDER) EXPENSES	(123.969)	(3.865)	(21.195)
TRANSFERS IN/(OUT)	<u>(62,864)</u>	<u>1,630</u>	<u>-</u>
FUND BALANCES, End of Year	<u>\$ 806,971</u>	<u>\$ 380,389</u>	<u>\$ 739,607</u>

<u>Bar Center Headquarters Trustees Fund</u>	<u>Bar Center Fund</u>	<u>Capital Construction Fund</u>	<u>Pro Bono Fund</u>	<u>Year Ended June 30, 2003 Total</u>	<u>Year Ended June 30, 2002 Total</u>
\$ 1,847,502	\$ -	\$ 411,976	\$ 152,934	\$ 4,549,642	\$ 4,799,125
(190,030)	53,254	230,635	21,736	(33,434)	(249,483)
<u>230,938</u>	<u>(53,254)</u>	<u>(116,450)</u>	<u>-</u>	<u>-</u>	<u>-</u>
<u>\$ 1,888,410</u>	<u>\$ -</u>	<u>\$ 526,161</u>	<u>\$ 174,670</u>	<u>\$ 4,516,208</u>	<u>\$ 4,549,642</u>

The accompanying notes to financial statements
are an integral part of this statement.

KENTUCKY BAR ASSOCIATION
STATEMENT OF CASH FLOWS
FOR THE YEAR ENDED JUNE 30, 2003
(WITH COMPARATIVE TOTALS FOR 2002)

	General Fund	Continuing Legal Education Fund	Client Security Fund
CASH FLOWS FROM OPERATING ACTIVITIES:			
Excess (Deficiency) of Support and Revenue Over (Under) Expenses	\$ (123,969)	\$ (3,865)	\$ (21,195)
Reconciliation of Excess (Deficiency) of Support and Revenue Over (Under) Expenses With Cash Flows From Operating Activities:			
Depreciation	14,809	4,505	-
Net (increase) decrease in fair value of investments	(101,776)	(40,355)	(103,371)
Realized losses on sales of investments	102,204	42,174	115,799
Loss on disposal of equipment	847	-	-
Changes in:			
Pledges and accounts receivable	17,883	(3,697)	-
Interest receivable	6,494	914	3,915
Interfund receivable	-	-	-
Due from affiliate	(3,969)	-	-
Prepaid expenses	26,687	2,266	-
Accounts payable and accrued liabilities	93,589	(5,448)	(200,124)
Accrued expenses	9,782	2,386	-
Interfund payable	(62,718)	2,255	-
Deferred revenue	1,314	-	-
Cash Provided by (Used for) Operating Activities	<u>(18,823)</u>	<u>1,135</u>	<u>(204,976)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchases of investments	(747,280)	(312,078)	(559,044)
Purchases of equipment	(46,375)	(1,771)	-
Proceeds from sale of investments	<u>787,001</u>	<u>254,657</u>	<u>766,361</u>
Cash Provided By (Used For) Investing Activities	<u>(6,654)</u>	<u>(59,192)</u>	<u>207,317</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Payments on debt	(8,196)	-	-
Proceeds from debt	-	-	-
Proceeds from bond issuance	-	-	-
Net change in bond funds	-	-	-
Transfers	<u>(62,864)</u>	<u>1,630</u>	<u>-</u>
Cash Provided By (Used For) Financing Activities	<u>(71,060)</u>	<u>1,630</u>	<u>-</u>
NET INCREASE (DECREASE) IN CASH	(96,537)	(56,427)	2,341
BEGINNING CASH BALANCE	<u>271,084</u>	<u>89,931</u>	<u>426</u>
ENDING CASH BALANCE	<u>\$ 174,547</u>	<u>\$ 33,504</u>	<u>\$ 2,767</u>
SUPPLEMENTAL DISCLOSURE:			
Cash paid during the year for interest	<u>\$ 805</u>	<u>\$ -</u>	<u>\$ -</u>

<u>Bar Center Headquarters Trustees Fund</u>	<u>Bar Center Fund</u>	<u>Capital Construction Fund</u>	<u>Pro Bono Fund</u>	<u>Year Ended June 30, 2003 Total</u>	<u>Year Ended June 30, 2002 Total</u>
\$ (190,030)	\$ 53,254	\$ 230,635	\$ 21,736	\$ (33,434)	\$ (249,483)
131,329	-	-	-	150,643	135,536
-	-	(18,965)	-	(264,467)	165,771
-	-	-	-	260,177	120,374
-	-	-	-	847	-
-	-	-	-	14,186	8,299
(28)	7	689	18	12,009	(6,788)
56,282	-	-	-	56,282	432
-	-	-	-	(3,969)	(9,763)
(321)	-	-	-	28,632	(10,029)
182,374	-	-	127	70,518	171,895
-	-	-	-	12,168	24,488
-	1,053	3,128	-	(56,282)	(432)
-	-	-	-	1,314	(2,250)
<u>179,606</u>	<u>54,314</u>	<u>215,487</u>	<u>21,881</u>	<u>248,624</u>	<u>348,050</u>
(53,825)	(13,639)	(156,097)	(22,345)	(1,864,308)	(5,399,874)
(1,024,750)	-	-	-	(1,072,896)	(157,272)
-	10,000	50,000	-	1,868,019	5,384,842
<u>(1,078,575)</u>	<u>(3,639)</u>	<u>(106,097)</u>	<u>(22,345)</u>	<u>(1,069,185)</u>	<u>(172,304)</u>
(400,764)	-	-	-	(408,960)	(100,417)
-	-	-	-	-	12,914
2,390,000	-	-	-	2,390,000	-
(1,334,941)	-	-	-	(1,334,941)	-
230,938	(53,254)	(116,450)	-	-	-
<u>885,233</u>	<u>(53,254)</u>	<u>(116,450)</u>	<u>-</u>	<u>646,099</u>	<u>(87,503)</u>
(13,736)	(2,579)	(7,060)	(464)	(174,462)	88,243
<u>17,690</u>	<u>12,661</u>	<u>11,133</u>	<u>5,358</u>	<u>408,283</u>	<u>320,040</u>
<u>\$ 3,954</u>	<u>\$ 10,082</u>	<u>\$ 4,073</u>	<u>\$ 4,894</u>	<u>\$ 233,821</u>	<u>\$ 408,283</u>
<u>\$ 63,113</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 63,918</u>	<u>\$ 30,493</u>

The accompanying notes to financial statements
are an integral part of this statement.

KENTUCKY BAR ASSOCIATION
NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2003

(1) ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations

The Kentucky Bar Association (KBA) is an agency of the judicial branch of the Commonwealth of Kentucky. The KBA implements, administers and enforces Kentucky Supreme Court Rules, regarding the discipline and education of the lawyers of Kentucky and is the professional association for the practice of law in Kentucky.

Measurement Focus/Basis of Accounting

The Kentucky Bar Association (the Association) maintains its accounting records and prepares its financial statements utilizing the accrual basis of accounting. The Association uses the guidance of the American Institute of Certified Public Accountants' "Not-for-Profit Model" under Statement of Position 78-10, *Accounting Principles and Reporting Practices for Certain Nonprofit Organizations* for the recording and reporting of its transactions as allowed by Statement No. 29 of the Governmental Accounting Standards Board, *The Use of Not-for-Profit Accounting and Financial Reporting Principles by Governmental Entities* (GASB 29). Under GASB 29, the Association adheres to all GASB pronouncements and all pronouncements issued by the Financial Accounting Standards Board prior to November 30, 1989.

The major sources of revenue are membership dues. All members are required to pay dues to KBA. Dues are determined annually and are recognized as revenues when assessed because they are measurable and are collectible within the current period.

The assets, liabilities, and fund balances of the Association are reported in seven self-balancing fund groups, a description of which is as follows:

General Fund

The General Fund is engaged in the administrative, general and disciplinary functions of the Association, primarily dealing with Kentucky attorneys and the practice of law within the State of Kentucky.

Continuing Legal Education Fund

The Continuing Legal Education Fund administers the continuing legal education rule of the Supreme Court, which includes mandatory continuing legal education attorney records, District Bar Education Programs and New Lawyers' Skills Programs.

Client Security Fund

The Client Security Fund provides assistance to individuals who have suffered financial loss due to misappropriation of client's funds by members of the Association. During the 2002-2003 fiscal year, 30 new claims were received alleging losses totaling approximately \$883,000 while there were 27 pending claims totaling approximately \$1,139,000. Pursuant to Supreme Court Rule 3.820(13)(a) the Board of Governors has established Fund claim limits of \$65,000 per claim and \$200,000 aggregate claims against one attorney.

Bar Center Headquarters Trustees Fund

The Bar Center Headquarters Trustees Fund acts for the Association in all matters incidental to the ownership, management and control of the Bar Center building.

Bar Center Fund

The Bar Center Fund is to be used for the furnishing and maintenance of the Bar Center building located in Frankfort, Kentucky.

Capital Construction Fund

The Capital Construction Fund is a segregation of membership dues and annual General Fund surplus to be used exclusively for financing the expansion and maintenance of the Bar Center building and property.

Pro Bono Fund

The Pro Bono Fund accounts for revenues and expenses associated with statewide Pro Bono efforts.

Property, Building and Equipment

Property, building and equipment accounts are stated at cost. Expenditures which increase values or extend useful lives of the respective assets are capitalized, whereas expenditures for maintenance and repairs are charged to expense as incurred.

Depreciation and Amortization

Depreciation and amortization are computed using the straight-line method over the assets estimated useful lives. Average estimated lives are as follows:

<u>Classification</u>	<u>Estimated Life</u>
Bar Center building	50 years
Furniture, fixtures and equipment	5-10 years
Equipment under capital leases	5 years

Interest Capitalized

The Association follows the policy of capitalizing interest as a component of building addition – Wing II constructed for its own use. During the years ended June 30, 2003 and 2002 the Association capitalized interest of approximately \$52,106 and \$ -0-, respectively.

Investments

Investments are reported at fair value in the balance sheet. Unrealized gains and losses are included in the statement of support and revenue and expenses.

Pension Plan

The Association participates as members of the Kentucky Employee Retirement System (KERS), a cost sharing multiple-employer, public employee retirement system. KERS provides retirement benefits based on an employee's final average salary and number of years of service. Benefits are subject to certain reductions if the employee retires before reaching age sixty-five, or less than twenty-seven years of service. The plan also provides for disability retirement, death and survivor benefits and medical insurance.

The Kentucky Employee Retirement System issues a publicly available financial report that includes financial statements and required supplementary information. That report may be obtained by writing to Kentucky Employees Retirement System, 1260 Louisville Road, Perimeter Park West, Frankfort, Kentucky 40601 or by calling (502) 564-4646.

Funding for the plan is provided from eligible employees who contribute 5.00% of their salary through payroll deductions and the Association, which also contributes 5.89% of current eligible employee's salary to the KERS. The Association's contribution rates are determined by the Kentucky Revised Statute and the Board of Trustees of the Kentucky Retirement Systems each biennium. The Association's contributions for 2003 totaled \$85,051.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported revenues and expenses during the reporting period. Actual results could differ from the estimated amount.

(2) CASH AND CASH FLOW INFORMATION

For purposes of the cash flows statement, cash includes cash in checking accounts. As of June 30, 2003, the Association had FDIC insured bank cash balances of \$100,000 and uninsured bank cash balances of \$190,373 which are invested in a cash sweep program.

(3) INVESTMENTS

Investments are administered utilizing the services of the trust department of a bank. A summary of investments at June 30, 2003 is as follows:

	<u>Cost</u>	<u>FMV</u>	<u>Unrealized Gain (Loss)</u>
General Fund -			
Money market funds	\$ 3,872	\$ 3,872	\$ -
Corporate bonds	309,880	313,411	3,531
Common stocks	311,939	304,468	(7,471)
Mutual equity funds	246,816	265,713	18,897
	<u>872,507</u>	<u>887,464</u>	<u>14,957</u>
Continuing Legal Education Fund -			
Money market funds	64,135	64,135	-
Corporate bonds	102,913	104,085	1,172
Common stocks	104,482	101,134	(3,348)
Mutual equity funds	81,107	87,118	6,011
	<u>352,637</u>	<u>356,472</u>	<u>3,835</u>
Client Security Fund -			
Money market funds	34,283	34,283	-
Corporate bonds	246,767	249,579	2,812
Common stocks	251,136	242,304	(8,832)
Mutual equity funds	197,275	211,638	14,363
	<u>729,461</u>	<u>737,804</u>	<u>8,343</u>
Bar Center Headquarters Trustees Fund -			
Money market funds	135,777	135,777	-
	<u>135,777</u>	<u>135,777</u>	<u>-</u>
Bar Center Fund -			
Money market funds	43,130	43,130	-
	<u>43,130</u>	<u>43,130</u>	<u>-</u>
Capital Construction Fund -			
Money market funds	96,802	96,802	-
U.S. Government agencies securities	150,000	154,973	4,973
Corporate bonds	250,757	270,100	19,343
	<u>497,559</u>	<u>521,875</u>	<u>24,316</u>
Pro Bono Fund -			
Money market funds	169,874	169,874	-
	<u>169,874</u>	<u>169,874</u>	<u>-</u>
	<u>\$2,800,945</u>	<u>\$2,852,396</u>	<u>\$ 51,451</u>

Investment return is summarized as follows:

Interest/Dividend income	\$ 100,080
Realized gains/losses	(260,177)
Change in fair value	<u>264,467</u>
	<u>\$ 104,370</u>

These investments are Category 2 investments, which include investments that are uninsured and unregistered held by the counterparty's trust department or agent in the Association's name.

Investment service fees of approximately \$14,149 have been included in general and administrative expenses in the statement of support and revenue and expenses for the year ended June 30, 2003.

All investments have been classified as current assets in the accompanying financial statements since proceeds would be available to the Association upon request to the trust department of the bank.

(4) INCOME TAX STATUS

The Association is not a private foundation and is exempt from the payment of federal income taxes under Section 501(c)(6) of the Internal Revenue Code of 1954, except on certain unrelated business income, which is not material; accordingly, the accompanying financial statements include no provision or credit for such taxes.

(5) LEASES

Operating

The Association leases office equipment under noncancelable operating leases expiring in various years through the year 2007.

Future minimum lease payments under noncancelable operating leases greater than one year at June 30, 2003, are as follows:

Fiscal Year	
<u>Ending</u>	
2004	\$ 45,556
2005	22,290
2006	21,634
2007	<u>10,437</u>
	<u>\$ 99,917</u>

Rent expense for all operating leases totaled approximately \$55,297 for the year ended June 30, 2003.

(6) LONG-TERM DEBT

Long-term debt consists of the following as of June 30, 2003:

2.0% - 5.0% Kentucky Bar Center Headquarters Project Bonds, Series 2002, payable with semi-annual interest payments and annual principal payments, with the final payment due April 1, 2023	\$2,390,000
Less current portion	<u>(80,000)</u>
	<u>\$2,310,000</u>

During October 2002, the Association issued \$2,390,000 in City of Frankfort, Kentucky Governmental Project Revenue Obligation Bonds with rates of 2.0% - 5.0%. In order to retire the revenue bonds, the Association is required to make deposits to sinking funds in amounts sufficient to meet the principal and interest payments due for the required semi-annual installments. The bonds are secured by membership dues revenue.

The principal and interest repayment requirements relating to the above long-term debt at June 30, 2003 are as follows:

Year Ending June 30,	Principal	Interest	Total
2004	\$ 80,000	\$ 104,362	\$ 184,362
2005	85,000	102,763	187,763
2006	85,000	100,850	185,850
2007	90,000	98,300	188,300
2008	90,000	95,600	185,600
Thereafter	<u>1,960,000</u>	<u>853,850</u>	<u>2,813,850</u>
	<u>\$2,390,000</u>	<u>\$1,355,725</u>	<u>\$3,745,725</u>

(7) VEHICLE NOTE PAYABLE

The vehicle note payable in the original amount of \$9,596 consists of the following as of June 30, 2003:

Fixed rate (8.0%) note payable to a bank, due in monthly installments of \$353.69 (including interest) until July, 2004	\$ 4,391
Less - principal payments due within one year classified as a current liability	<u>(351)</u>
	<u>\$ 4,040</u>

A 1998 Chevrolet van is pledged to secure the above note payable.

The principal and interest repayment requirements related to the above note payable are as follows:

Year Ending June 30,	Principal	Interest	Total
2003	\$ 4,040	\$ 204	\$ 4,244
2004	351	3	354
	<u>\$ 4,391</u>	<u>\$ 207</u>	<u>\$ 4,598</u>

(8) RELATED PARTY TRANSACTIONS

The Kentucky Bar Foundation, Inc. (the Foundation) is a related party to the Kentucky Bar Association in that both organizations share common facilities and that the Association provides payroll services for the Foundation.

The following summarizes significant transactions and balances between the two at June 30, 2003, and for the year then ended.

Account receivable from Foundation	<u>\$45,652</u>
Rent paid by Foundation to Association	<u>\$ 4,800</u>

(9) COMPENSATED ABSENCES

The Association allows for the carryover of a maximum of thirty unused vacation days accumulating through year end. Accordingly, the Association has in accrued expenses a liability of

\$65,722 and \$14,988 in the general and continuing legal education funds, respectively, at June 30, 2003, for these future compensated absences.

(10) COMMITMENTS

The Association has outstanding construction commitments in relation to the Wing II expansion of approximately \$713,000.

The Association is subject to certain legal proceedings arising from normal business activities. Administrative officials believe that these actions are without merit or that the ultimate liability, if any, resulting from them will not materially affect the accompanying financial statements.

(11) DESIGNATED FUND BALANCE

By Board resolution, surplus Sections, Mock Trial, Just Solutions, Oral History Project, Lawyer's Assistance Program and Swinford Lecture Series funds are allowed to be carried over to the next ensuing budget year and have been designated as such in the accompanying balance sheet. Any current year excess support and revenue over expenses of the General Fund excluding the current effects of the aforementioned carryforward funds less transfers made to other funds may be considered by the Board for transfer of all, part or none to the capital Construction Fund for future expansion and maintenance of the Bar Center building and property.

For the year ended June 30, 2003, there was no excess of support and revenue over expenses available for transfer from the General Fund to the Construction Fund under the above criteria. However the accumulated amount from prior years of General Fund excess available for transfer at June 30, 2003, is represented by the undesignated fund balance of \$438,334.

SUPPLEMENTARY INFORMATION



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Galloway &
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INDEPENDENT AUDITOR'S REPORT ON SUPPLEMENTARY INFORMATION

Board of Governors
Kentucky Bar Association
Frankfort, Kentucky 40601

Our report on our audit of the basic financial statements of the Kentucky Bar Association for 2003 appears on page 2. We conducted our audit in accordance with auditing standards generally accepted in the United States of America for the purpose of forming an opinion on the basic financial statements taken as a whole. The following supplementary information on page 14 is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Kelley, Galloway & Company, PSC

August 13, 2003

KENTUCKY BAR ASSOCIATION

SCHEDULE OF FUNCTIONAL EXPENSES

FOR THE YEAR ENDED JUNE 30, 2003

	General and Administrative	Sections	Board of Governors and Presidents	Disciplinary and Unauthorized Practices	Publications	Conventions	Continuing Legal Education	Client Security	Bar Center	Capital Construction Fund	Pro Bono	Total
Salaries	\$ 1,158,437	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 312,985	\$ -	\$ -	\$ -	\$ -	\$ 1,471,422
Payroll taxes	79,194	-	-	-	-	-	22,020	-	-	-	-	101,214
Postage	28,681	6,203	3,937	16,961	20,362	26,041	17,332	149	-	-	-	119,666
Printing	47,773	6,415	1,869	2,233	127,729	94,192	63,843	135	-	-	1,262	345,451
Travel and lodging	32,022	40,479	63,651	7,551	2,648	11,962	47,081	1,081	-	-	-	206,475
Telephone	18,481	-	-	-	-	-	999	-	-	-	-	19,480
Utilities	-	-	-	-	-	-	-	-	22,151	-	-	22,151
Professional services	116,168	1,855	1,863	17,961	-	-	7,861	3,401	170	2,272	209	151,760
Library	14,092	-	-	-	-	-	-	-	-	-	-	14,092
Meals and entertainment	26,343	27,451	40,961	7,379	325	76,133	26,976	485	-	-	237	206,290
Miscellaneous	44,156	55,102	5,435	21,743	3,107	89,503	36,220	5	888	5	61	256,225
Mock trial	19,623	-	-	-	-	-	-	-	-	-	-	19,623
Insurance	120,853	-	-	-	-	-	30,109	-	10,090	-	-	161,052
Equipment expense	26,683	-	-	-	-	-	3,235	-	-	-	-	29,918
Supplies	27,631	-	499	6,616	-	-	4,380	-	5,754	-	-	44,880
Sustainer contribution	-	26,328	-	-	-	-	-	-	-	-	-	26,328
Other	-	111	-	-	-	-	100	-	-	-	\$4	265
Stipends	-	-	8,000	8,000	-	-	-	-	-	-	-	16,000
Speakers	-	-	-	-	-	81,419	-	-	-	-	-	81,419
Rent	-	-	-	-	-	38,597	44,035	-	-	-	-	82,632
Contribution in lieu of taxes	-	-	-	-	-	-	-	-	6,000	-	-	6,000
Audio visual expense	-	430	540	-	-	39,055	77,090	-	-	-	-	117,115
Continuing legal education online	-	-	-	-	-	-	22,710	-	-	-	-	22,710
Janitorial and lawn maintenance	-	-	-	-	-	-	-	-	32,716	-	-	32,716
Repairs	-	-	-	-	-	-	-	-	2,301	-	-	2,301
Meeting expense	-	-	-	-	-	-	1,088	-	-	-	-	1,088
Payment on claims	-	-	-	-	-	-	-	22,300	-	-	-	22,300
Pension	67,046	-	-	-	-	-	18,005	-	-	-	-	85,051
Depreciation	14,809	-	-	-	-	-	4,506	-	131,329	-	-	150,644
Interest	805	-	-	-	-	-	-	-	11,007	-	-	11,812
Realized loss on disposal of assets	103,051	-	-	-	-	-	42,174	115,799	-	-	-	261,024
	<u>\$ 1,945,848</u>	<u>\$ 164,374</u>	<u>\$ 126,755</u>	<u>\$ 88,444</u>	<u>\$ 154,171</u>	<u>\$ 456,902</u>	<u>\$ 782,749</u>	<u>\$ 143,355</u>	<u>\$ 222,406</u>	<u>\$ 2,277</u>	<u>\$ 1,823</u>	<u>\$ 4,089,104</u>