

Michael Losavio

## **Bench and Bar Exchange**

# **A Look at the Electronic Playing Field**

**C**ooperation between bar and bench created the remarkable system for data processing and analysis that is our system of justice. It shows that what helps each of us may help all of us in the cause of justice.

We continue to strive for truth, certitude and ease of administration of courts, cases and causes. We know truth suffers when things increase the cost of seeking it or decrease the reliability of what leads us to it.



Michael Losavio

### **Today's Technology**

In exchanges between attorneys or with the courts, the technology used is mostly that of pen and voice. Paper filings and oral discussion on the record are the primary secure, authentic and accessible media used. Technology-driven efficiencies largely happen within offices or within courts. Paper remains the official court record.

This is changing, as seen in simple e-mail between some lawyers and courts.

Kentucky courts now make appellate opinions, judicial ethics opinions, court forms, court dockets and case activity dockets available to lawyers on-line. This is part of a systematic use of electronic exchange to ease the work of both courts and counsel. See <http://www.kycourts.net>; <http://courtnetpublic.kycourts.net>; <http://dockets.kycourts.net>.

The federal bankruptcy and district courts go further, offering Electronic Case Filing ("ECF") for cases in federal court. ECF requires attorneys to notice and file documents electronically over the Internet with the court; the process will automatically store an electronic version of the document and fill in the necessary data for case management. The court e-files its documents, such as orders and judgments, and notifies counsel electronically. For the district courts, this requires attorneys to have web access, e-mail and Adobe Acrobat Writer software.

This improves ease of filing, ease of document access and the accuracy of court case data; in exchange, attorneys will need certain software and will need to be especially careful with the accuracy and timeliness of the data they file in the system.

While we'll review this more closely in later articles, you might want to take a look at the ECF system at <http://www.kywd.uscourts.gov> and the district court ECF tutorials at <http://pacer.psc.uscourts.gov/cmecf/dctrain.html>.

In planning for the future, we might look at the scale and diversity court technology must address. How lawyers and judges use technology may guide plans for technology in the future.

### **The Playing Field – What Is It Like?**

Finding that for Kentucky's 10,000 lawyers is a challenge. One guide is the American Bar Association's most recent survey of *Technology Use in Solo and Small Firm Practice* (2002) (<http://www.lawtechnology.org/publications/2002solosmalltech.pdf>). The survey offers some basic findings for planning.

About 95% of surveyed practitioners used MS Windows software with word processing the most common application. But the word processor of choice was split, roughly 60-40, between Microsoft Word and Corel WordPerfect, with some firms using both.

This mixed use contrasts with the universality of paper documents and oral discussion, and is a planning factor for a universal system of document exchange. These two proprietary programs use different coding schemes for their electronic documents that can hinder the reading of a document written in one by the other.

On-line use was more fractured. About half of on-line solo lawyers used MS Explorer over the Internet, with over a quarter (26%) using proprietary on-line services like AOL and MSN; two-thirds of small firms used

*Continued*

Explorer and almost one-third used Netscape, with less than 9% using proprietary services.

This more fractured use, though, may be overcome due to the Internet technologies themselves. The Internet was designed to be as universal in use as possible, so its basic rules and protocols apply to programs that use it. How best to take advantage of that?

On-line research differed as to solo and small firms. Solo lawyers were more likely to use free on-line research resources (84% solo to 64% small firm) than proprietary, fee-based resources (55% solo v. 87% small firm).

This indicates that solo lawyers will most readily use technology that does not require on-going maintenance costs and is as inexpensive as possible. This may be due to the nature of their clients and cases. In any event, it may be an important consideration as solo lawyers are a significant percentage of Kentucky practitioners.

### *Nota Bene*

An example of a free on-line service for attorneys is LexisOne.Com, <http://www.lexisone.com>.

This free service, while not as powerful as the regular Lexis service, offers a number of valuable research resources free of charge.

Further, new, lower-cost proprietary services, like <http://www.LawReader.Com>, may offer another options for solo lawyers.

E-mail was widely used (81% solo, 95% small firm), mostly for routine communications relating to cases. This indicates lawyers are careful with disclosures in e-mail, perhaps due to insecurity in that medium.

The courts are a bit more standardized, at least as to the technology deployed in Kentucky.

Intel, Windows-based systems are standard, although some judges have personal Apple systems. MS Word, Excel, Explorer and Outlook are the core office systems, with Adobe Acrobat Reader included; some courts may still use WordPerfect for some functions. WestLaw is the on-line research tool available to all judges.

Both judges and lawyers have some access to the collective database of electronic court docketing information.

This indicates some common elements in how lawyers and courts use computer and network technologies.

### **What Next?**

But how and what information will be exchanged between the courts and the bar? The process has already begun with on-line access to case information, from court to lawyer; what about from lawyer to court?

Options for data transfer include e-mail, web file transfer and file/file attachment transfer. Options for the format of the data exchange range from MS Word to web HTML to Adobe Acrobat .pdf format. Will one universal solution be mandated, or will several be supported?

What will be exchanged? The whole range of the court rules could be considered, from pleadings to judg-

ments, but each raise issues as to security, authenticity and notice to be reviewed.

Perhaps these are the key questions to ask: what do you want to exchange, and will it make things better?

How will we get the answers to these questions?

### **And Back In the Office**

And related is the question of how that information, once exchanged, can be analyzed and used within the court or office? Or, rather, what analysis and utility would you want? Would you want personalized, annotated docket reports? Do you need basic pleading, orders and documents generated?

Subsequent articles will look at some of these options and issues for us. If you'd like to share your thoughts on what would help the system of justice, send your comments to [Michael.losavio@louisville.edu](mailto:Michael.losavio@louisville.edu).

*The software mentioned herein are the trademarks or registered trademarks of their respective holders, including Microsoft Corporation (MS Windows, Word, Excel, Explorer and Outlook), Adobe Corporation (Acrobat), AOL (Netscape), Corel (WordPerfect.), Reed-Elsevier (Lexis) and LawReader.*

### *Nota Bene*

Before anyone wants to exchange electronic information with anyone else, they'll want some assurance the information is safe.

To see the importance of this, see the Western District's *Joint General Order RE: Privacy Policy Regarding Public Access to Electronic Case Files*, <http://www.kywd.uscourts.gov/pdf/generalOrder.pdf>.

For a quick review of some technologies to protect your information, visit the Speed School student ACM DHS/Security web page at <http://www.speedacm.org/dhs>. ■

## **BUSINESS VALUATIONS**

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## Endnotes

Continued from page 28

- ments of §§ 431.205 through 431.246 of this subpart [Fair Hearings for Applicants and Recipients] are met"); 907 KAR 1:563 § 2(1) (2003) ("An applicant, recipient or guardian shall be informed of his right to a cabinet level administrative hearing in writing if an adverse action is taken affecting covered services"); *Golberg v. Kelly*, 397 U.S. 254, 264 (1970) ("But we agree with the District Court that when welfare is discontinued, only a pre-termination evidentiary hearing provides the recipient with procedural due process").
9. 907 KAR 1:563 § 4(2)(c) (2003).
10. Formerly the Cabinet for Health Services (CHS). Throughout this article CHS is referred to as CHFS to avoid confusion.
11. 907 KAR 1:563 § 5 (2003).
12. 907 KAR 1:022 (2003).
13. <http://www.lrc.state.ky.us/kar/frntpage.htm>
14. See 907 KAR 1:022E (2003) ("This emergency administrative regulation is being promulgated to revise the Department for Medicaid Services nursing facility and intermediate care facility for the mentally retarded and developmentally disabled level of care criteria to ensure that only the most acutely ill or needy individuals qualify for nursing facility or intermediate care facility for the mentally retarded and developmentally disabled services. This action must be implemented on an emergency basis in order to ensure that necessary funds will be available for the continued operation of the Medicaid Program").
15. 907 KAR 1:022 § 4(3) (2003).
16. [http://www.kentucky.gov/Governor/NewsRoom/gov\\_longtermcare.htm](http://www.kentucky.gov/Governor/NewsRoom/gov_longtermcare.htm)
17. 42 C.F.R. § 431.244(g) (2003).
18. 42 CFR 431.300, *et seq.* (2003).
19. KRS 13B.090(7).
20. The PRO contracts with Medicaid and determines whether the recipient's request for services meets eligibility rules.
21. See *Kupper v. Kentucky Bd. of Pharmacy*, Ky., 666 S.W.2d 729, 730 (1983) ("[M]ovant appeared at the hearing on the charges and did not raise any question whatever that he did not understand that nature, time or place of the accusations or that he was not prepared to defend. He made no request to have the charges made more specific, and he did not request that the hearing be continued. Movant cannot raise this issue for the first time on appeal").
22. See KRS 13B.080(1) (providing in part that "[a] hearing officer shall preside over the conduct of an administrative hearing and shall regulate the course of the proceedings in a manner which will promote the orderly and prompt conduct of the hearing").
23. 42 C.F.R. § 431.210 (2003); 907 KAR 1:563 § 2 (2003).
24. See *Hagan v. Farris*, Ky., 807 S.W.2d 488, 490 (1991) ("A construction of a law or regulation by officers of an agency continued without interruption for a long period of time is entitled to controlling weight"); *Revenue Cabinet v. Humana, Inc.*, Ky. App., 998 S.W.2d 494, 496 (1998) (Even the rectification of an incorrect interpretation is subject to KRS 13A).
25. See *Weaver v. Colorado Dep't. of Soc. Services*, Co. Ct. App., 791 P.2d 1230, 1235 (1990) ("The presumption that a condition, once shown to exist, continues to exist, as well as the considerations that underlie the doctrines of res judicata and collateral estoppel, require a showing of some change in circumstances if the termination of benefits is not to be deemed arbitrary").
26. See 907 KAR 1:160 § 4(2) (2003) ("An NF level of care determination regarding an HCB recipient shall be performed by the department at least once every twelve (12) months, or more often if necessary"); 907 KAR 1:145E § 2(2)(c) (2003) ("An ICF/MR/DD level of care determination shall be performed by the department at least once every twelve (12) months"); 907 KAR 1:070 § 2(3) (2003) ("Redetermination of eligibility factors pursuant to subsection (1) of this section shall occur: (a) At twelve (12) month intervals; (b) More frequently if the individual's condition or needs change"); 907 KAR 3:090E § 3(6)(b) (2003) ("A reevaluation shall be conducted at least once every six (6) months to determine if the individual continues to meet the nursing facility level of care criteria established in 907 KAR 1:022").
27. KRS 13B.110(4).
28. See *Swatzell v. Commonwealth*, Ky., 962 S.W.2d 866, 869 (1998) ("holding that the filing of exceptions is mandatory is logical and consistent with the basic premise that questions should first be presented to the ultimate fact finder . . . for consideration before seeking judicial review"); *But see Philpot v. Tourism Dev. Cabinet*, Ky. App., 2002 WL 538467, *discretionary rev. granted*, (failure to file exceptions not fatal as Personnel Board did not meet KRS 13B.110(1) and 13B.120(3) obligations).
29. KRS 13B.120.
30. KRS 13B.140.
31. See 907 KAR 1:563 § 5 (2003); KRS 13B.140 (4) ("A petition for judicial review shall not automatically stay a final order pending the outcome of the review, unless . . .").

# Advisory Ethics Opinions

KBA E-422

**Subject:** Use of Subpoena *Duces Tecum* to Obtain Documents from a Non-party in a Civil Case in state court.

**Question 1:** May a lawyer who has noticed a deposition and served a subpoena *duces tecum* on a non-party witness, cancel the deposition upon receipt the subpoenaed documents, without providing the other parties with copies of all documents obtained?

**Answer:** No

**Question 2:** May a lawyer serve a trial subpoena *duces tecum* on a person or entity and orally or in writing request the subpoenaed person or entity to “certify” the records and provide them directly to the requesting lawyer in lieu of attending the trial, without giving notice of the subpoena or the documents produced to the other parties?

**Answer:** No

**References:** Rules 3.4, 4.1 and 8.3, Kentucky Rules of Professional Conduct (SCR 3.130); KBA E-356 (1993); CR 30.02, 45.01, 45.02, 45.03; KRS 422.305; Anderson v. Commonwealth, Ky., 63 S.W.3d 135 (2002); Munroe. v. KBA, Ky., 927 S.W.2d 839 (1996).

## Opinion

Once again, the Committee has received inquiries about the ethical limitations on the use of a subpoena *duces tecum* to compel the production of documents from a non-party witness in a civil case. The two questions presented raise different but related concerns about the ethical duty to give notice and share information about documents obtained pursuant to a lawfully issued sub-

poena. Although both questions implicate the Rules of Civil Procedure — particularly those rules relating to discovery and subpoenas — this opinion is confined, to the extent possible, to a discussion of the Rules of Professional Conduct. We emphasize that the discussion that follows relates only to civil cases in state court. Additional considerations arise in the context of criminal cases and they are addressed in KBA E-423.

### I. The Use of a Subpoena *Duces Tecum* in Discovery in a Civil Case

Before beginning the discussion of the ethical issues presented by this inquiry, a brief description of the discovery process may be useful. The Kentucky Rules of Civil Procedure authorize litigants to engage in various forms of discovery and set forth the procedures to be followed. See CR 26.01 – 37.05. Under the civil rules, if a party wishes to compel the production of documents from a non-party witness, a deposition must be noticed and a subpoena *duces tecum* must be issued.<sup>1</sup> Under the rules, written notice of both the deposition and the documents subpoenaed must be given to all parties to the action.<sup>2</sup>

CR 45.01 reinforces the limited purpose of the subpoena and states that subpoenas shall not be used for any purpose except to command the attendance of the witness and production of documentary or other tangible evidence at a deposition, hearing or trial.”<sup>3</sup> In the interest of fairness, CR 45.03(2) requires that all documents received pursuant to a subpoena be shared with all other parties. Specifically it provides that “copies of all documents received in response to the subpoena (or in lieu of proceedings hereunder) shall be forthwith furnished to *all* other par-

ties to the action except on motion and for good cause shown (emphasis added).” Although it is not the Committee’s goal to analyze all of the intricacies of the discovery rules, it is clear that they are designed to ensure that all participants have notice and equal access to information obtained from non-party witnesses pursuant to these procedures.

This inquiry contemplates that the requesting lawyer will notice a deposition of a non-party witness; cause a subpoena *duces tecum* to be issued and served for production of designated documents and, without notice to the other parties, arrange for the non-party witness to supply the documents, and then unilaterally “cancel” the deposition without providing opposing counsel with copies of the documents. The implication is that the requesting lawyer obtains the subpoena under the authority of the discovery rules and provides the required notice, but then leads opposing counsel to believe that the entire discovery request has been “cancelled” (including the request for documents) when in fact the lawyer still is relying upon the power of the subpoena to obtain the documents. Reduced to its most basic terms, the question asks whether a lawyer may use the court authorized discovery procedures and the legal power of a subpoena to secretly obtain documents from a non-party witness. The answer is clearly no.

The Rules of Professional Conduct are designed to preserve the integrity of the adversary system – to insure that all parties are treated fairly and that lawyers observe not only their obligations to their clients, but also their obligations as officers of the court. These goals and values are reflected throughout the rules, but are clearly apparent in RPC 3.4, 4.1 and

8.3. The most important of these rules is RPC 8.3, which declares that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” A lawyer who uses the discovery process and subpoena power to compel a witness to provide documents, but then leads the other parties to believe that the procedure and accompanying obligations have been cancelled, clearly violates RPC 8.3. The lawyer has not only misused the power of the subpoena and misled the non-party witness with regard to his or her obligations, but the lawyer also has deceived the other parties to the proceeding. The lawyer also has violated RPC 4.1, which provides that “a lawyer shall not knowingly make a false statement of material fact or law to a third person.” In addition, such conduct violates RCP 3.4(c), which provides that “a lawyer shall not knowingly or intentionally disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.” In this case, the rules of the tribunal require that a subpoena only be used to require attendance at a proceeding and that all documents obtained pursuant to a subpoena shall be furnished to all other parties to the proceeding. By failing to share the documents, the lawyer has not only engaged in deceit and misrepresentation, but he or she also has “knowingly and intentionally disobeyed an obligation under the rules of the tribunal” in violation of RPC 3.4(c).

This devious conduct is similar to that described in KBA E-356 (1993), which involved a lawyer who scheduled a deposition, then advised opposing counsel that it had been cancelled, but proceeded to take statements from the non-party witness “under the cloak of the previously issued

subpoena.” In the view of this Committee, the latter conduct “circumvented the rules and misled opposing counsel and witnesses” in violation of Rules 3.4(c), 4.1 and 8.3. (See *Munroe v. KBA*, Ky., 927 S.W.2d 839 (1996) where a lawyer was disciplined for, among other things, using an *ex parte* subpoena to obtain documents from a non-party.)

For the reasons discussed above, it is the Committee’s view that a lawyer violates the Rules of Professional Conduct by giving notice of a deposition and causing a subpoena *duces tecum* to be served on a non-party witness and then canceling the deposition upon receipt of the subpoenaed documents, without furnishing the other parties with copies of the documents.

## II. The Use of a Trial Subpoena

The second question differs from the first in that it involves a subpoena compelling the production of documents at trial, rather than a subpoena issued pursuant to the discovery rules. In this scenario, it is contemplated that the trial subpoena will be accompanied by an invitation to certify or otherwise provide the records directly to the lawyer in lieu of appearing at trial. In some cases, the lawyer even provides the subpoenaed witness with a prepared certification form. As in the question above, the lawyer causing the subpoena *duces tecum* to be issued and served obtains the documents and does not share them with opposing counsel. The prejudice to the opposing party is compounded by the fact that, unlike the discovery situation where the opposing party has notice that the subpoena has been issued, the Rules of Civil Procedure do not appear to require any kind of notice of a trial subpoena.

As in the question above, CR 45.01 is relevant in that it prohibits the use of a subpoena except to compel attendance and production of documents at an official proceeding. Here the letter or other request accompanying the subpoena suggests that the lawyer’s primary purpose is not to compel the attendance at trial, but only to obtain the documents. It appears that the lawyer is engaging in discovery, armed with the power of a subpoena, without complying with any of the procedural safeguards of notice provided for under the discovery rules. By using the subpoena for a purpose other than authorized by the rules, the lawyer has violated the ethical rules relating to dishonesty and deceit as discussed above (RPC 8.3). Moreover, irrespective of the lawyer’s initial motive, the failure to provide opposing counsel with copies of the documents obtained, as required by CR 45.03(2), is a violation of the rules of the tribunal and, as a consequence, is an ethical violation under RPC 3.4.

In both Questions I and II, the Committee has addressed the obligations of the lawyer under the Kentucky Rules of Professional Conduct. Those rules prohibit dishonest and deceitful conduct and obligate the lawyer to comply with the rules of the tribunal, except for an open refusal that no obligation exists. It is the view of the Committee that the conduct contemplated by both questions violates RPC 3.4, 4.1 and 8.3. The Committee expresses no view on whether, as a matter of law, a lawyer in a civil case has the power to “cancel” a subpoena and relieve the subpoenaed person of his or her obligations to appear.<sup>4</sup>

In conclusion, it should be noted that this opinion focuses on the ethical issues that arise in conjunction with the

use of a subpoena in civil cases in state court. It was not drafted to reflect the practice in federal court or before administrative agencies. The Committee notes, however, that all members of the Kentucky Bar Association are bound by the same ethical rules, irrespective of where they practice. Lawyers must comply with the procedural rules of the tribunal and may not engage in conduct that is dishonest or otherwise violates the Rules of Professional Conduct.

#### Footnotes

1. CR 30.02 provides in relevant part: "If a subpoena duces tecum is to be served on a person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached or included in the notice." CR 45.02 provides: "A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein..." Although the state rule seems to require a deposition in order to obtain documents from a non-party witness, the federal rules have eliminated such a requirement. FRCP 45 was amended in 1991 to provide that "a person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things,... need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial." The Advisory Committee Notes state that one of the reasons for the amendment was to "facilitate access outside the deposition procedure provided by Rule 30 to documents and other information in possession of persons who are not parties."

2. CR 30.02 (1) provides:

A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined .... If a subpoena duces tecum is to be

served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached or included in the notice.

3. The rule creates one exception to the deposition requirement by providing "upon order of the Court, with the agreement of the parties, documents may be produced without a deposition." In addition, KRS 422.305 provides a special procedure for the production of medical records and permits hospitals to produce "certified" records in lieu of attending a deposition (KRS 422.305). These are the only exceptions provided for by rule or statute.
4. The issue of the authority of a civil litigant to cancel a subpoena is mentioned because of the recent decision in *Anderson v. Commonwealth*, Ky., 63 S.W.3d 135 (2002). In that case, a criminal defendant sought a new trial on several grounds, including newly discovered evidence. His motion was based, in part, upon the fact that the prosecutor had "released" a trial witness who he previously had subpoenaed. Although the Court declined to reverse on this basis, it took the opportunity to express its view that the prosecutor had acted improperly, in part because "he knew the defense was relying on the Commonwealth's subpoena and purposefully did not disclose that he intended to, or had already, released..." The majority noted that subpoenas are issued by the court (though requested by a party) and stated further that once a subpoena is issued, the witness can only be excused by the court. Three Justices dissented.

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#### KBA E-423

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**Subject:** Use of Subpoena to Obtain Extrajudicial Witness Statements or Documents in a Criminal Case.

**Question 1:** May a lawyer use a subpoena to compel the attendance of a witness at a pretrial court proceeding and then, after service, invite the

witness to make a statement or execute an affidavit in the requesting lawyer's office without notice to opposing counsel, where required, and thereafter relieve the witness of the obligation to appear at the court proceeding?

**Answer:** No.

**Question 2:** May a lawyer issue a subpoena to a person or entity accompanied by a letter (or by other means) inviting that person or entity to "certify" requested documents and provide them directly to the requesting lawyer, in lieu of attending a pretrial hearing or trial, without notice to opposing counsel, or a grand jury proceeding where such notice is not required?

**Answer:** No.

**References:** Rules 3.4(a), 3.4(c), 4.1, 8.3, and 8.3(c), Kentucky Rules of Professional Conduct (SCR 3.130); KBA Ethics Opinions E-356 (1993), E-304 (1985) and E-140 (1976); Georgia State Bar Disciplinary Board, Opinion 40 (1984); Kentucky Constitution, Section 11; RCr 1.08(2)(a), RCr 3.07, RCr 4.40, RCr 5.06, RCr 7.02, RCr 7.02(3), RCr 7.10, RCr 7.10(1), RCr 7.10(2), RCr 7.10(3), RCr 7.12, RCr 8.06, RCr 9.78 and RCr 13.04; CR 30.02 and CR 45.02; KRS 422.300, KRS 422.305, KRS 422.305(2), KRS 422.320 and KRS 500.070; Fed.R.Crim.P. 17; 45 CFR § 164.512(e); *Bishop v. Caudill*, Ky., 87 S.W.3d 1, 4 (2002); *Anderson v. Commonwealth*, Ky., 63 S.W.3d 135, 142 (2001); *Munroe v. Kentucky Bar Association*, Ky., 927 S.W.2d 839, 840 (1996); *King v. Venters*, Ky., 596 S.W.2d 721 (1980); *United States v. Keen*, 509 F.2d 1273, 1274 (6<sup>th</sup> Cir. 1975).

## Opinion

Although discovery practices vary to some extent from one jurisdiction to another, the scope of discovery in Kentucky state courts is certainly broader and more expansive in civil cases than in criminal cases. For example, the deposition is a primary component of civil discovery. A party may depose any person thought to have relevant information, including the opposing party, without making any showing of need or justification. See CR 30.02. On the other hand, the use of depositions in the criminal justice process is sharply restricted and aimed at preserving testimony rather than discovery. And, unlike civil practice where the parties essentially control the deposition process, RCr 7.10 requires court authorization for a deposition<sup>1</sup>, except by agreement of the parties [RCr 7.10(3); *but cf.* RCr 7.12 (which indicates the ultimate need for entry of a court order)].

Similarly, the issuance of a subpoena in a criminal action, be it to testify or produce documents before the grand jury, in pretrial proceedings or at trial, is strictly circumscribed by the Rules of Criminal Procedure. The improper use of subpoenas has special implications in criminal proceedings. Generally, a subpoena is a process of the Court, not of the requesting party, and “once subpoenaed, the witness is answerable to the Court and can only be excused by the Court.”<sup>2</sup> Consequently, a lawyer who invites a person under subpoena to forego compliance in the indicated manner violates the Kentucky Rules of Professional Conduct (SCR 3.130) (hereinafter referred to as “RPC”), specifically RPC 8.3(c), by engaging in conduct involving dishonesty, deceit and misrepresentation; RPC 3.4(c), by disobeying an obligation

under the rules of a tribunal; and RPC 4.1, by making a false statement of law to a third person. Furthermore, the failure to provide notice to opposing counsel may contravene RPC 3.4(a), by obstructing another party’s access to evidence.

### **I. The Use of a Subpoena to Obtain Extrajudicial Witness Statements**

As the Committee indicated in KBA E-140 (1976), the use of a subpoena for “ex parte investigation” is strictly prohibited. Kentucky law provides for the compelled extrajudicial testimony of witnesses in criminal cases only by court order or, in limited circumstances, by agreement of the parties. See RCr 7.10(3) and 7.12. In such circumstances, there are specific notice requirements to opposing counsel and other protections that are intended to address constitutional concerns in depositions in criminal cases. See RCr 7.10(1) & (2) and 7.12. Other than the narrow deposition scenario provided in RCr 7.10, all testimony compelled by subpoena in criminal cases occurs in open court (unless taken in chambers pursuant to motion and order). This includes testimony that is sought and given in response to a subpoena at preliminary hearings (RCr 3.07), bond reduction hearings (RCr 4.40), competency hearings (RCr 8.06), various pretrial motion hearings (RCr 9.78), as well as at trial. Even grand jury subpoenas (RCr 5.06) may be used only for a proper purpose. For example, the Commonwealth may not use grand jury subpoenas as trial preparation or as a “substitute for discovery depositions which, absent court order or agreement of parties, are not permitted in a criminal case. RCr 7.10.” Such subpoenas must be quashed if found to be issued for the sole or dominant purpose of facilitating discovery.<sup>3</sup>

In short, testimony compelled by subpoena in a criminal case must be for a specific judicial proceeding at a designated time in court, or at such other place as the court may order. The only form of “extrajudicial” testimony that is authorized is pursuant to RCr 7.10, which provides for a deposition by court order, and requires “notice to the parties”. Otherwise, a witness deposition that meets the threshold requirements of the rule may be taken only by “agreement of the parties”, which by implication requires notice to all parties.<sup>4</sup> From an ethical perspective, the lawyer who directs a witness to comply with a subpoena in an unauthorized proceeding misleads the witness as to his or her obligation and thus violates RPC 8.3, which prohibits “conduct involving dishonesty, fraud, deceit or misrepresentation.” The lawyer who fails to give notice, where required, also violates RPC 3.4(c) by “intentionally disobey[ing] an obligation under the rules of a tribunal” and deceiving the other party in violation of RPC 8.3. Moreover, the improper use of a subpoena to obtain statements in a criminal case also may violate RPC 3.4(a), in that it could have the effect of “unlawfully obstructing another party’s access to evidence ....”

### **II. The Use of a Subpoena to Obtain Documents Ex Parte**

The ethical principles discussed above are equally applicable to situations when a subpoena is used improperly to obtain documents in a criminal proceeding. As previously noted, lawyers are not at liberty to alter the terms of a subpoena, once issued, by inviting a witness to comply through document production in lieu of attendance. According to the Rules of Criminal Procedure, subpoenaed documents may be produced

only before the Court in connection with a judicial proceeding or properly authorized deposition. Furthermore, a lawyer who fails to give notice to all parties of document production pursuant to a subpoena *duces tecum*, engages in deceitful conduct in violation of RPC 8.3(c), and obstructs another party's access to evidence in violation of RPC 3.4(a).

With the exception of one discrete statutory provision [see discussion of

KRS 422.305(2), *infra*], document production directly to a party's lawyer is in violation of the Rules of Criminal Procedure and, thereby, RPC 3.4(c). According to RCr 7.02, in addition to testimony, a subpoena may "also command the person to whom it is directed to produce the books, papers, documents, or other objects designated therein." The Rule contemplates that subpoenas *duces tecum* will normally direct the witness to produce documents in connection

with testimony at trial, a pretrial hearing, or at a duly authorized deposition.<sup>5</sup> However, provision is made for document production prior to trial or submission into evidence, but that production must occur "before the court", which may, in turn, "permit the ... documents ... to be inspected by the parties and their attorneys."<sup>6</sup> Additionally, KRS 422.305 provides a special procedure for the production of medical records, and permits hospitals to elect to produce "certified" records in lieu of attendance at a proceeding. Although KRS 422.305(2) allows delivery to the requesting party, that party must deliver the records to the clerk of the court after the records are no longer needed for a pretrial proceeding or deposition.<sup>7</sup> KRS 422.300 allows the use of such records in a criminal proceeding, but requesting lawyers must comply with the strict notice requirement to "all other attorneys of record".

The failure to give notice to opposing counsel of documents produced directly to a lawyer's office violates RPC 3.4(a) by obstructing the opposing party's access to evidence, RPC 3.4(c) by knowingly disobeying an obligation under the rules of a tribunal<sup>8</sup>, and RPC 8.3(c) because such conduct is deceitful. Additionally, a party not provided with notice is deprived of the right to object to "unreasonable or oppressive" demands<sup>9</sup> or to assert any applicable privilege. However, criminal cases present special concerns where a defendant is the requesting party. KRS 500.070 provides that a defendant shall not be required to provide notice of a defense prior to trial. Therefore, the Committee recognizes that circumstances may arise where merely furnishing a copy of the subpoena to opposing counsel will, in effect, give notice of a possible defense.<sup>10</sup> Such concerns are properly addressed to the appropriate tribunal, which may permit *ex*

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*parte* orders under RCr 1.08(2)(a).<sup>11</sup> Nonetheless, documents produced pursuant to an *ex parte* order must still comply with RCr 7.02(3) and be produced before the Court, not to the requesting lawyer.

From an ethical perspective, the issues raised by this question are no different than those raised by Question I. By using a subpoena *duces tecum* to obtain documents in a manner other than intended by the rules, or without proper notice, where required, the lawyer violates RPC 8.3(c) and 3.4(c), and may violate RPC 3.4(a). Such use of the Court's processes and procedures to deceive and gain an unfair advantage interferes with the orderly administration of justice and jeopardizes the right of fair trial.

In conclusion, it should be noted that this opinion focuses on the ethical issues that arise in conjunction with the use of subpoenas in criminal cases in state court. This opinion was not drafted to reflect rules of criminal procedure in federal court or proceedings before administrative bodies. The Committee notes, however, that all members of the Kentucky Bar Association are bound by the same rules of professional conduct, irrespective of where they practice. Each must comply with the rules of the tribunal and may not engage in conduct that is dishonest or otherwise violates the rules discussed in this opinion. ■

#### Footnotes

1. The rules require a showing that the prospective witness may be unable or unavailable to testify at a trial or hearing, that the witness's testimony is material and that it is necessary to take the witness's deposition in order to prevent a failure of justice.
2. See *Anderson v. Commonwealth*, Ky., 63 S.W.3d 135, 142 (2001) (finding that a prosecutor who *sua sponte* dis-

missed a witness the prosecutor had subpoenaed to testify at trial acted improperly.) See also KBA E-304 (1985), quoting Georgia State Bar Disciplinary Board, Opinion 40 (1984).

3. *Bishop v. Caudill*, Ky., 87 S.W.3d 1, 4 (2002) (finding that the Commonwealth's post-indictment issuance of subpoenas *ad testificandum* was for discovery purposes).
4. RCr 7.12 recognizes the special constitutional concerns in criminal cases, requiring that orders authorizing depositions "shall contain such specifications as will fully protect the rights of personal confrontation and cross-examination of the witness by the defendant." See *Anderson*, *supra*, note 2. Consequently, a lawyer who fails to provide notice to opposing counsel is in violation of both RPC 3.4(a) and (c). Furthermore, when a lawyer directs a witness to comply with a subpoena at an unauthorized proceeding, it is a usurpation of the Court's authority over its own process (See, e.g., *United States v. Keen*, 509 F.2d 1273, 1274 (6th Cir. 1975) finding a U.S. Attorney's act of subpoenaing a witness to a pretrial interview at his office to be the use of a subpoena for an unauthorized purpose under Fed.R.Crim.P. 17 and "highly improper"). It also may be an obstruction of another party's access to evidence, as well as the rights to confrontation and due process (See Ky. Const. Sec. 11 "in all criminal prosecutions the accused has the right ... to meet the witnesses face to face[.]"). See also KBA E-356, noting that the Kentucky Rules do not "suggest that a lawyer may dragoon witnesses into his or her office, under color of a 'sub-


poena' for a private interview").

5. The use of coordinating conjunctions in the provisions relating to document production indicates that, usually, production will occur in connection with testimony. For example, RCr 7.02(3) indicates that in addition to testimony in subsection 1, a "subpoena may also command the person" to produce documents. Additionally, RCr 7.10 states that a "court may ... order that the witness's testimony be taken by deposition and that any designated ... documents ... not privileged, be produced at the same time and place."
6. RCr 7.02(3). Contrast CR 45.02, which provides for copies to all parties of documents produced in lieu of attendance. This provision is not applicable to criminal proceedings under RCr 13.04, because it is inconsistent with RCr 7.02(3) providing only for production and inspection before the court.
7. See KRS 422.320. See also 45 CFR § 164.512(e) requiring either a court order accompany a subpoena or satisfactory assurances from the requesting party that notice has been given to the subject of the records or that the requesting party has secured a qualified protective order.
8. See *Munroe v. Kentucky Bar Association*, Ky., 927 S.W.2d 839, 840 (1996).
9. RCr 7.02(3).
10. See *King v. Venters*, Ky., 596 S.W.2d 721 (1980) (holding that there is no authority for requiring a defendant to furnish a witness list to the Commonwealth).
11. "[E]very paper relating to discovery required to be served upon a party unless the court otherwise orders, ... shall be served upon each party."

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
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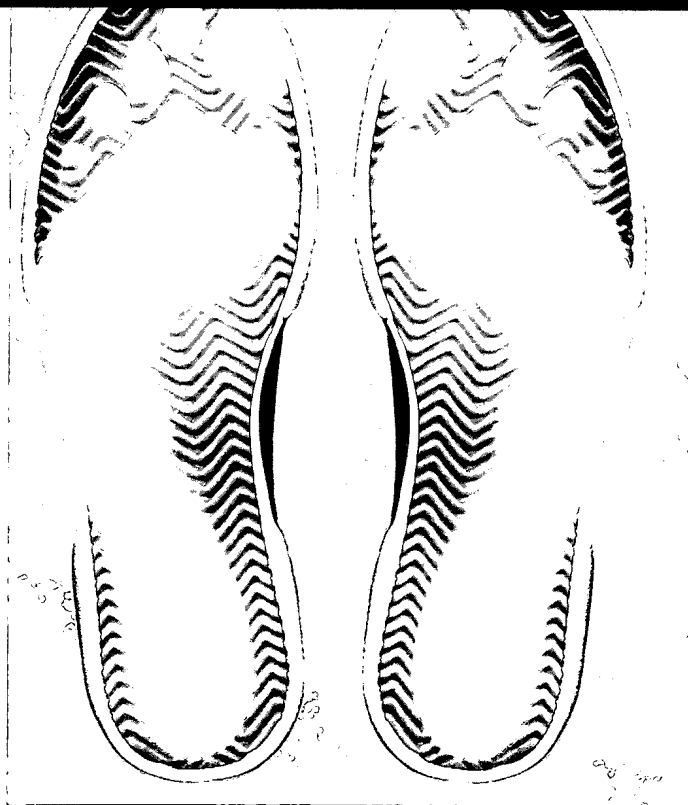


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*A Series*

By Professor Rick Bales

## Footnotes

**A**cademics footnote everything. Brief writers footnote nothing. Each has something to learn from the other.

Consider the following excerpt from an Ohio Supreme Court case:

The legislative process and accountability are the cornerstones of the democratic process which [sic] justify the General Assembly's role as lawmaker. In contrast, administrative rules do not dictate public policy, but rather expound upon public policy already established by the General Assembly in the Revised Code. "The purpose of administrative rulemaking is to facilitate an administrative agency's placing into effect a policy declared by the General Assembly in the statutes to be administered by the agency." *Doyle v. Ohio Bur. Of Motor Vehicles* (1990), 51 Ohio St.3d 46, 47, 554 N.E.2d 97, 99, quoting *Carroll v. Dept. of Adm. Serv.* (1983), 10 Ohio App.3d 108, 110, 10 OBR 132, 133, 460 N.E.2d 704, 706. Yet determination of public policy remains with the General Assembly. *State ex rel. Bryant v. Akron Metro. Park Dist. For Summit Cty.* (1929), 120 Ohio St. 464, 479, 166 N.E.407, 411-12, affirmed *State ex rel. Bryant v. Akron Metro Park Dist. For Summit Cty.* (1930), 281 U.S. 74, 50 S. Ct. 228, 74 L. Ed. 710. Administrative agencies may make only "subordinate" rules. *Beldon v. Union Cent. Life Ins. Co.* (1944), 143 Ohio St. 329, 342-43, 28 O.O. 295, 301, 55 N.E.2d 629, 635-

36; see, also, *Redman v. Dept. of Indus. Relations* (1996), 75 Ohio St.3d 399, 404, 662 N.E.2d 352, 357; *Blue Cross of Northeast Ohio v. Ratchford* (1980), 64 Ohio St.2d 256, 259, 18 O.O.3d 450, 452, 416 N.E.2d 614, 617.<sup>1</sup>



*Rick Bales is a Professor of Law at Chase College of Law.*

Fine enough through the first three sentences, but after that my eyes glaze over and I lose the text. Putting the citations into footnotes helps readers stay focused on the point the writer is trying to make; the readers need not look at the footnotes unless the readers intend to research the cases. Moreover, textual citations often substitute for transitions – delete the citations, and you'll often find a very poorly-written paragraph.

On the other hand,<sup>2</sup> overusing<sup>3</sup> footnotes,<sup>4</sup> or using textual<sup>5</sup> footnotes,<sup>6</sup> can be equally<sup>7</sup> distracting.<sup>8</sup> Cramming six footnotes into one sentence may increase an academic author's footnote count and tenure chances, but it's unlikely to enhance a reader's understanding of the article. Similarly, "talking" footnotes cause the reader to lose the point of the main text before the footnote ends.<sup>9</sup> If the point you are making is important to your argument, it belongs in the text. If not, cut it.

Here are some additional suggestions for using footnotes and citations. First, don't use small-type footnotes to evade page-limit restrictions.<sup>10</sup> Second, compose sentences so that, whenever possible, the footnote falls at the end of the sentence. Finally, always use proper citation form.

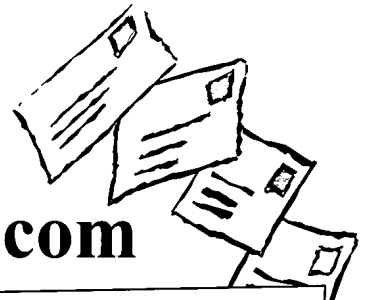
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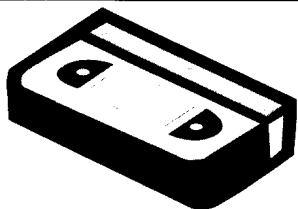
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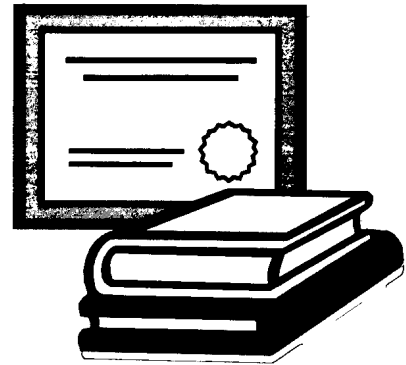
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 Clifton B. Clark  
 Leslie Gaye Clemons  
 Boyd Tristan Cloern  
 Lee Lawrence Coleman  
 Nancy M. Collins  
 Roy Glenn Collins  
 John Allan Combs  
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 Robert H. Cornett  
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 Jean Kelley Cunningham  
 Irwin H. Cutler, Jr.  
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 Denise Ann D'Angelo  
 David Craig Dance  
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 Walter W. Davis  
 Rodney G. Davis  
 Patricia Ann Day  
 G. Phillip Deeb, Jr.  
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 Timothy Denison  
 Lisa Ann Derenard  
 Kevin Michael Devlin  
 Richard J. Deye  
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 Denise A. Dickerson  
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 Robert Mark Doctrow  
 Laurel S. Doheny  
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 Jack Keith Eardley  
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 Jeffrey Galen Edwards  
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 Christie Joyce Foster  
 Christopher S. Fox  
 Bruce William Franciscy  
 Betty O. Freedman  
 Christopher W. Frost  
 Benjamin C. Fultz  
 Geordie Dean Garatt  
 Larry D. Garmon  
 Tiffany Leshea Gash  
 Robert P. Gettys  
 Gaylee W. Gillim  
 Mary Jo W. Gleason  
 Jessica Godsey  
 Alvin Lee Goldman  
 Steven A. Goodman  
 Ruthanne Whitt Goodman  
 Shawn Cody Goodpaster  
 Laura Kelly R. Goodridge  
 Katherine C. Gordon  
 Richard Allen Greenberg  
 Jeffrey Jay Greenberger  
 Richard G. Griffith  
 John L. Grigsby  
 Esther Algaze Grossman  
 Chad Eric Groves  
 Lester B. Guier  
 Stephen C. Hall  
 Susan Jean Ham  
 John Patrick Hamm  
 Earl Fant Hamm, Jr.  
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 Candice Elaine Hammons  
 Sharon Ruth Handy  
 Ronald Stephen Hansell  
 Albert Clark Harberson, II  
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 Kenneth Harrington  
 Robert E. Harrison  
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 Amy Jo Harwood  
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 Lisa Nicole Hayden  
 Gregg Garth Heckley  
 Thomas John Hellmann  
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 Guy Edward Hughes  
 Derek D. Humfleet  
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 Leslie G. Hyslop  
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 A. Thomas Johnson  
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 Daniel Lee Jones, Jr.  
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 Robert Grant Layton  
 Thomas John Leksan  
 Bobbi Jo Lewis  
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Colin Hugh Lindsay  
 Mary Janice Lintner  
 Beth Ann Lochmiller  
 Thomas Louis Lockridge  
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 Douglas Thomas Logsdon  
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 James Frank Lummanick  
 Margaret Anne Lyndrup  
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 Steven Hayden Lyverse  
 Linda Barth Magee  
 Kara Jill Mahaney-Justice  
 Ronald D. Major  
 T. Patterson Maney  
 Razvan A. Mares  
 Canton Gerald Martin  
 Matthew Joseph Martinez  
 Evaristo M.M. Martinez  
 Allie George Mason, Jr.  
 Andrea Leigh Mattingly  
 Kimberly Sue May-Downey  
 Kennis Maynard  
 Romano Louis Mazzoli  
 Robert E. McBeath  
 Tracey Jessup McCay  
 Robert Love McClelland  
 George Morris McClure, III  
 Lance Edward McComis  
 Jerry Lee McCullum  
 Tyson Stewart McDonald  
 Shaun C. McEntire  
 Stephanie L. McGehee-  
 Shacklette  
 John Robert McGhee, Jr.  
 Robert Daniel McIntosh  
 Bernard L. McKay  
 Arch Cox McKay, III  
 Colleen McKinley  
 Brendan Joseph McLeod  
 Beth H. McMasters  
 John Gary McNeill  
 Cory Wayne Meadows  
 J. Kenneth Meagher  
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 Christopher L. Muzzo  
 W. Douglas Myers  
 Patrick F. Nash  
 Mary Elisabeth Naumann  
 Kerry Lee Neff  
 Andrea Fried Neichter  
 Mark Allen Nelson  
 William D. Nesmith  
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 Nicholas M. Nighswander  
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 David A. Pike  
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 Neva-Marie Polley

Hans George Poppe, Jr.  
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 Delores H. Pregliasco  
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 Nancy Oliver Roberts  
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David Michael Ward  
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Diana Jean Werkman  
Susan Simpson Wettle  
Paul Lewellin Whalen  
Charles F. Whelan  
Tamela Jane White  
Natalie Moore White  
Robert Andrew White  
Robert Dee Wilkey  
Charles Evans Wilkinson  
David Lewis Williams  
Michael Lee Wilson  
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Dennis F. Wolford  
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Randall L. Wright  
Christina Sue Yager  
Jeffrey J. Yost  
Stephen A. Yussman  
Joseph J. Zaluski  
Laurence John Zielke, III  
Eric Peter von Wiegen

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## NEW LAWYERS' PROGRAM REQUIREMENT

New admittees to the Kentucky Bar Association are **required** to complete the New Lawyers' 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. Register online at [www.kybar.org](http://www.kybar.org).

Upcoming programs are as follows:

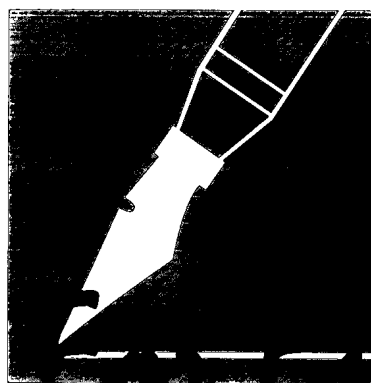
**APRIL 20-21, 2004**  
**Four Points Sheraton**  
**Lexington, Kentucky**

**OCTOBER 13-14, 2004**  
**Louisville, Kentucky**



**Footnotes**

1. *Chambers v. St. Mary's Sch.*, 697 N.E.2d 198 (Ohio 1998). I have borrowed this example from MARK PAINTER, *THE LEGAL WRITER* 44-46 (2002).
2. This phrase functions as a transition, see Rick Bales, *Transitions*, 66 BENCH & BAR 35 (Sept. 2002), that indicates negation. See TERRI LECLEERCQ, *EXPERT LEGAL WRITING* 106 (1995). Mid-sentence citations, like the first sentence in this footnote, are especially distracting.
3. "To use too much or too often." WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 1031 (1989).
4. See generally ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS* 105-20 (2d ed. 2000); BRYAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* 117-20 (2002); LECLEECQ, *supra* note 2, at 55-59; PAINTER, *supra* note 1, at 40-46.
5. See FAJANS & FALK, *supra* note 4, at 115 ("Textual footnotes provide discursive commentary supplementing the text."). Textual footnotes often are known as "talking" footnotes. See *infra* note 8 and accompanying text.
6. See *supra* note 4 and accompanying text.
7. I personally find textual citations more distracting than the overuse of footnotes, perhaps because I've been an academic for several years and have become more acclimated to them. Of course, that's just my opinion, and others may differ. Especially practitioners. See UNIVERSITY OF ILLINOIS LAW REVIEW MEMBERS' PACKET at V-1 (2002-03) ("The real thrill [of writing a footnote] is the feeling of freedom to ramble at the reader's expense.").
8. PAINTER, *supra* note 1, at 41.
9. UNIVERSITY OF ILLINOIS LAW REVIEW MEMBERS' PACKET at V-1 n.3 (2002-03). See, e.g., *supra* n.6.
10. See GARNER, *supra* note 4, at 120 (describing sanctions that courts have imposed for this transgression).



# Call For Entries

## Kentucky Bar Association

### Annual

# Student Writing Competition

Students currently enrolled in UK, Brandeis or Chase Law Schools may submit their previously unpublished articles into the competition.

**1st Place \$500**

and possible publication in Kentucky *Bench & Bar*, the official journal of the KBA.

**2nd Place \$300**

**3rd Place \$200**

Articles should be of interest to Kentucky practitioners and should be limited to 5000 words or less, which includes footnotes.

**Deadline: Entries must be received  
NO LATER THAN June 1, 2004 to:**  
*Communications Department*

*Kentucky Bar Association*  
514 West Main Street, Frankfort, KY 40601-1883

# The Kentucky Bar News

## Law Day 2004

### To Win Equality by Law: *Brown v. Board* at 50

*In a composite Nation like ours, made up of almost every variety of the human family, there should be, as before the Law, no rich, no poor, no high, no low, no black, no white, but one country, one citizenship, equal rights and a common destiny for all.*

Frederick Douglass

America's circuitous march toward equality has changed our society and our institutions in ways the founders could not have imagined, profoundly reshaping the nation's attitudes and values along the way. The law has been instrumental in these changes, and has been influenced by them in turn. Through law and the courts, one group of Americans after another has redefined "equality" in a fiercely contested process that may never be complete.

No milestone in this process is more important than the Supreme Court's 1954 ruling in *Brown v. Board of Education*. The culmination of a long line of court cases brought by the NAACP Legal Defense Fund, *Brown* not only struck down laws segregating public schools, but also sounded the death knell for government-sanctioned segregation generally, made all Americans more aware of our Constitution's promise of equality, and helped launch the civil rights movement.

Law Day 2004 will celebrate the 50th anniversary of this historic case. By commemorating the Court's decision in *Brown*, Law Day can help illuminate the meaning of equality in our democracy and the role of law, advocates, and courts in establishing and protecting our rights.

Local bar associations across the Commonwealth of Kentucky will participate in Law Day events and observances that will begin on May 1, 2004. The

Kentucky Bar Association will honor outstanding achievements in local bar activities through its Annual Law Day Competition. Local bar winners in the small, medium and large bar categories will receive monetary awards and will be recognized at the 2004 KBA Annual Convention. Deadline for entries into the KBA Law Day Competition is May 31, 2004. To obtain an entry form, call the KBA at (502) 564-3795.

**TO WIN EQUALITY BY LAW**

***Brown v. Board* at 50**

**LAW DAY** may 1, 2004

## 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](mailto:whawkins@hughesandcoleman.com)

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

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## Young Lawyers We Want You!

By Walter Hawkins &  
Tom Russell

# YOUNG LAWYERS

SECTION OF KENTUCKY

The Young Lawyers' Section (YLS) is always looking for ways to not only help its membership, but also to allow its membership to become involved. In the past, the YLS has offered informative CLE programs and others designed to help new lawyers become acclimated to their new profession. In addition, the YLS has undertaken several public and membership service projects with the aim of improving both communities and the young lawyers who practice in them.

The YLS is only as good as the members it tries to serve, and is therefore asking for your help in order to boost participation and offer services which are needed by Kentucky's young lawyers. The YLS Executive Board is made up of several committee chairpersons. Below is a list of the committees and their respective chairs. Please contact these chairpersons if you are willing to help or if you have an idea on how to make the YLS even better.

**MEMBERSHIP:** Membership is open to any attorney in practice for less than ten years or is under the age of forty. Contact Ryan Reed at [ryan@elpolaw.com](mailto:ryan@elpolaw.com) for more information.

**CLE:** Young lawyers do have a voice when it comes to CLE. Please contact Brad Breeding at [blbreeding@farmerlaw.com](mailto:blbreeding@farmerlaw.com) or Katherine Hornback at [khornback@crlawlex.com](mailto:khornback@crlawlex.com) for more information if you would like to get involved in this committee.

**OUTSTANDING YOUNG LAWYER:** Each year we recognize an Outstanding Young Lawyer at the KBA Convention. Please submit nominations to Walter Hawkins by calling (270) 782-6000 or via e-mail to [whawkings@hughesandcoleman.com](mailto:whawkings@hughesandcoleman.com) on or before April 9, 2004.

**NEW LAWYERS SKILLS PROGRAM:** Each year the YLS helps new attorneys transition from law school to the practice of law. We also host a reception after the first day of meetings to begin the networking process. If you would like to get involved in this program, please contact Walter Hawkins for more information at [whawkings@hughesandcoleman.com](mailto:whawkings@hughesandcoleman.com).

**PUBLIC SERVICE PROJECT:** Each year YLS members work to better local communities through public service. Please contact Robert Dilts at [rdilts@aswdlaw.com](mailto:rdilts@aswdlaw.com) for more information.

**NEWSLETTER:** The YLS is now proud to present a quarterly newsletter to keep all of our members informed of section news and other important information. Please contact Scott Laufenberg at [slaufenberg@kgsllaw.com](mailto:slaufenberg@kgsllaw.com) or Jennifer Moore at [jmoore@WHF-Law.com](mailto:jmoore@WHF-Law.com) for more information.

**MEMBER SERVICE PROJECT:** This year the project will center on providing information pertaining to young lawyers offering pro bono services as Guardian ad Litem. For more information, please contact A.J. Schaffer at [ajs@gdm.com](mailto:ajs@gdm.com) or Tom Russell at [trussell@kgsllaw.com](mailto:trussell@kgsllaw.com).



*Louis D. Brandeis*  
*School of Law*  
 Dean Laura Rothstein

## REFLECTING ON OUR HISTORY

The year 2004 marks the 50th anniversary of the landmark decision in *Brown v. Board of Education*, a decision that has had major impact on race and American society. The Brandeis School of Law is connected with three significant public figures whose work is relevant to issues of race and society. Justice Louis D. Brandeis, before going on the Court, wrote what is known today as the first "Brandeis brief," which was the first time law and economics and social science research was used in a Supreme Court brief. It was used to advocate for limited working hours for women. This model was used by advocates writing briefs in the *Brown v. Board of Education* case over half a century later. This research was persuasive in the Court's decision that separate schools could not be equal. Justice John Marshall Harlan was famous for his dissent in *Plessy v. Ferguson* in which he alone stated that separate could not be equal. The Brandeis School of Law houses many of Justice Harlan's most significant personal papers and others. And finally, Wilson W. Wyatt, Sr. for whom the main law school building is named was a significant figure in the desegregation of the University of Louisville.

*continued opposite column*

## **UK** *University of Kentucky* *College of Law*

### *Lifetimes of Service . . .*

Whenever I hear a "joke" in which a lawyer plays the cheap punch line, whenever I see a late-night huckster promising to make everyone involved in motor vehicle accidents rich, I remember those lawyers all around us who, in many different ways and in many different settings, quietly serve their communities. People like Professor Burt Ham, Governor Ned Breathitt, Carroll Redford, and Paul Van Booven, all of whom we have recently lost.

Each of these individuals exemplified the lifetime of service so cheerfully given by so many of our graduates; lives which change their communities in such positive ways but for which we so inadequately express our appreciation. They differed in how they contributed, but not in the qualities that made their contributions special.

Professor Burt Ham taught generations of students at the College of Law. A knowledgeable and effective classroom teacher and law reformer, Professor Ham was also a role model. A gentleman both in and out of class, his quiet grace demonstrated to his students that it is possible to be both effective and pleasant.

Governor Ned Breathitt's contributions to the Commonwealth are well-known; his contributions to the legal profession and the College of Law are perhaps less public. His service to the University of Kentucky and the College of Law was thoughtful and unstinting. I continue to be impressed by the number and range of lawyers who have told me how Governor Breathitt advised them, how his private words of encouragement helped them.

Carroll Redford's contributions came as a lawyer in private practice, a lawyer in public service, and as an active member of the bar association. Lawyers in Barren County and beyond speak fondly of Carroll and of his many contributions to the legal profession in the Commonwealth. He was also a loyal friend of the University and the College of Law.

Paul Van Booven made his contributions as a lawyer for a public institution, the University of Kentucky. Upon graduation from law school Paul immediately became an associate dean. Paul was central in the creation of the administrative structure of the law school. More importantly, the many students he advised, mentored and encouraged are a credit to his tenure. Paul later moved to the office of the University's general counsel, and once again he flourished. Two years ago Paul delivered the commencement address for the law school. I asked him to give the talk both to thank him for his years of service and to hold him out to the graduating students as a role model. In a lifetime of knowing and working with lawyers of all kinds, I said by way of introduction, I knew of none better than Paul and very few his equal.

Like Professor Ham, Governor Breathitt and Carroll Redford, Paul Van Booven was an exceptionally good lawyer in the technical sense. He had a wonderful memory for the law and the intuitive sense for what the precedents would prove to be that marks a good lawyer. He also had the far-ranging intellect to discover what the law should be in emerging areas by looking to other areas for guidance.

But, again like the others, it was Paul's traits of character that marked him as an exceptional lawyer. We all know lawyers who are smart and who are technically proficient, but who fail to inspire the confidence of their clients to turn them from lawyers into counselors. It was here that Paul excelled. Having the



University of Kentucky as his only client, Paul needed to deal with a tremendous range of individuals within the institution. He needed to have their confidence, he needed to make them comfortable enough with him that they would come to him early, as problems were developing, and not wait until a situation had gotten out of hand. He needed to be a trusted advisor, and he was. If he had the personal character within the University to make him a valued counselor, and he did, Paul also had the external character to make him a lawyer among lawyers. His word was good, he knew when the interests of his client were best served by cooperation rather than confrontation, he knew that his client was sometimes best served by admitting a mistake and taking appropriate action, and he valued the relationships he had with other lawyers in the community. And he was a wonderful companion and a renowned teller of stories, as are the best of our colleagues.

The careers of Professor Burt Ham, Governor Ned Breathitt, Carroll Redford, and Paul Van Booven are emblematic of the best in our profession. They represent all of the lawyers throughout the Commonwealth who make this an immeasurably better place. And all the tawdry witticisms and midnight hucksterism in the world will not change that balance.



**Northern Kentucky Law Review 2004 Symposium Focuses on Campaign Finance Reform**

The Northern Kentucky Law Review presented its 2004 symposium entitled "Campaign Finance Reform After *Federal Election Commission v. McConnell*" on Saturday, February 14, 2004, at the Radisson Hotel at 668 West Fifth Street in Covington. The symposium was hosted in conjunction with Keating, Muething and Klekamp PLL; Adams, Stepner, Wolterman & Dusing PLLC; Taft, Stettinius & Hollister LLP and Salmon P. Chase College of Law Alumni. The symposium featured prominent legal scholars and practitioners who are experts in the area of constitutional law, the First Amendment, and election law. Copies of the Campaign Finance Reform Symposium issue of the *Northern Kentucky Law Review* will be available for \$10 each. For more information, please call the *Law Review* office at (859) 572-5444.

**Chase Law Library Hosts "Prepare to Practice" Series for Chase Students**

The Salmon P. Chase College of Law Library once again hosted the "Prepare to Practice" series. The first program in the series entitled "Trial Practice: Investigating the Background of an Opposing Expert," was held on Tuesday, February 24, 2004. Jeff Rosenstiel, with the law firm of Frost Brown Todd served as speaker. The second program, entitled "Expert Advice for a Successful Summer Clerking Experience" was held on Thursday, March 4, 2004. The speakers were Barbara Silbersack of Thompson, Hine & Flory and Mary Lynn Wagner of Keating, Muething & Klekamp. Food and prizes were offered at each event. The events were co-sponsored by the Chase Law Library, the Cincinnati Bar Association, LexisNexis and Westlaw. Chase Professor Carol Furnish coordinated the event.

The anniversary of the *Brown* decision will be marked at the law school and the University of Louisville with a year of events and programs relating to issues of race in society. The kick-off event for the University was the February 3 presentation by Linda Brown Thompson and her sister, Cheryl Brown Henderson (whose family was part of the historic event). That event was attended by an audience of over 500 members of the university community. The Brandeis School of Law hosted a diversity forum on February 2, with a panel discussion on *Brown v. Board of Education: Its Legacy in Louisville*. Panelists Blaine Hudson, Dean of the College of Arts and Sciences; Joseph McMillan, professor emeritus of the College of Education and Human Development; attorney Steve Porter; and Professor Enid Trucios-Haynes discussed school desegregation in Louisville today.

The Harlan Lecture speaker will focus on our history and legal perspectives resulting from the *Brown* decision. Other events planned for the year include display of the briefs from the *Brown* Supreme Court case and a law library photo display about the segregation and desegregation of legal education in Louisville. The Warns Institute on Labor and Employment Law will include a discussion of race discrimination in employment. The law school has a partnership with Central High School. This year an essay contest for Central High School students will focus on the topic of *Brown v. Board of Education*. Finally, faculty members have been encouraged to include attention to this landmark decision in appropriate classes throughout the year.

## Before You

## Move...



Over 14,000 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 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 November 14-15, 2003

The Board of Governors met on Friday and Saturday, November 14-15, 2003. Officers and Bar Governors in attendance were *President* J. Stevenson, *President-Elect* K. Westberry, *Vice President* D. Sloan, *Immediate Past President* S. Catron, *Young Lawyers Section Chair* S. Hiestand, *Bar Governors 1<sup>st</sup> District* C. Woodall, M. Whitlow; *Bar Governors 2<sup>nd</sup> District* — C. English, Jr.; *3<sup>rd</sup> District* — J. Dyche, R. Madden; *4<sup>th</sup> District* — J. White, M. O'Connell; *5<sup>th</sup> District* — S. Kinkead, Jr., D. McSwain; *6<sup>th</sup> District* — B. Bonar, and *7<sup>th</sup> District* — D. Combs, J. Rosenberg. Absent: *House of Delegates Chair* L. York; *House of Delegates Chair-Elect* L. Hopgood; *Bar Governor* M. Grubbs and *Bar Governor* C. Moore.

In Executive Session, the Board considered nine (9) default cases, involving four lawyers, and one (1) restoration matter. 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:

- Heard status reports from the Budget and Finance Committee, Client Assistance Program, Donated Legal Services Committee, Lawyers Assistance Program, Office of Bar Counsel and Rules Committee.
- Heard a report from the Louisville Bar Association's Task Force on Diversity concerning diversity topics.
- Sheila Hiestand, Chair of the Young Lawyers Section, reported that there is a great group of new lawyers involved in the section this year, and that the YLS programming for the 2004 Annual Convention was well underway.
- Heard a report from President Stevenson regarding the plans for the 2004 Annual Convention to be held June 23-25 at the Lexington Convention Center and Radisson Plaza Hotel in Lexington.
- Approved the re-appointment of Stephen D. Wolnitzek as the lawyer member and J. David Boswell as the alternate lawyer member to the Judicial Conduct Commission for another four (4) year term.
- Executive Director Bruce Davis reported that Robert C. Ewald and David C. Stratton are candidates for the Office of Vice President. A statewide election will be held with ballots being mailed to all members of the Bar on December 15, 2003.
- Heard a report from Executive Director Bruce Davis regarding the status of the WING II construction project.
- Approved the 2004 Holiday Calendar for the KBA Staff.
- Approved a motion to refer the abolishment of the House of Delegates to the Rules Committee to draft a rule change as well as formation of a body to take responsibility of the arbitration function.
- Approved as a proposed formal ethics opinion KBA E-422 regarding the subject of the use of Subpoena Duce Tecum to obtain documents from a non-party in a Civil Case in state court. KBA E-422 will be scheduled for publication in the Bench & Bar magazine under the provisions of SCR 3.530.
- Approved as a proposed formal ethics opinion KBA E-423 regarding the subject of the use of a Subpoena to obtain extrajudicial witness statements or documents in a criminal case. KBA E-423 will be scheduled for publication in the Bench & Bar magazine under the provisions of SCR 3.530.

## Kentucky Bar Center Trustees Reappointed

The Supreme Court of Kentucky announces that **Justice Janet L. Stumbo** has been reappointed to the Kentucky Bar Center Board of Trustees. As a trustee of the Kentucky Bar Center, Justice Stumbo participates in the governing body for the headquarters of the Kentucky Bar Association, which serves more than 14,000 attorneys statewide. Members of the six-person board serve three-year terms. Justice Stumbo, of Prestonsburg, is the first woman elected to the Kentucky Court of Appeals and the Supreme Court of Kentucky. She earned her bachelor's degree from Morehead State University and her J.D. from the University of Kentucky College of Law.

Frankfort attorney **William M. Johnson** has been reappointed to the Kentucky Bar Center Board of Trustees by the Kentucky Bar Association Board of Governors. Johnson participates in the governing body for the headquarters of the Kentucky Bar Association as a trustee of the Kentucky Bar Center. He will serve a three-year term. Johnson earned his undergraduate degree from the University of Louisville and his J.D. from the University of Louisville School of Law.

## CLE Non-Compliance Suspensions

Please Take Notice: The following members have been suspended from the practice of law by the Supreme Court of Kentucky as a result of their non-compliance with the annual minimum continuing legal education requirements of SCR 3.661 for the 2002-2003 educational year. The suspension Orders were entered on January 16, 2004.

Jason Greg Amick  
William Henry Fogle  
Gregory Alan Gabbard  
Robert Michael Goldberg  
Ann Lindsay Haight  
Benjamin C. Hall

Douglas Edward Jones  
Jeffrey Calvin McKenzie  
John Jeffrey Patterson  
J. Randall Reinhardt  
Robert Lee Treadway, Jr.



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ASSOCIATION**

Advancing the Profession through  
Leadership, Ethics and Education.

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kybar.org**

## To KBA Members



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

Board meetings are  
scheduled on

**May 14-15, 2004**

**June 22, 2004**

**July 23-24, 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.

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## In Memoriam



William H. Bixler  
Covington

Allen R. Brown  
Louisville

Thomas B. Choate  
Richmond, VA

Clayton V. Cramb, Jr.  
Nashville, TN

Frank J. Dougherty, Jr.  
Louisville

Ellen B. Ewing  
Louisville

Julian R. Gabbard  
Lexington

Willburt D. Ham  
Lexington

M.B. Harlin, Jr.  
Bowling Green

Donald C. Morris  
La Quinta, CA

James A. Nolan  
Covington

Louie B. Nunn  
Versailles

George A. Rehtin  
Cleveland, OH

Carroll M. Redford, Jr.  
Glasgow

Patricia Joann Shipman  
Charleston, WV

Joseph C. Spalding  
Louisville

Paul C. Van Booven  
Lexington

## ON THE LOCAL SCENE



### Harrison County Bar Association Elects New Officers

New officers have been elected for the Harrison County Bar Association. Bradley K. Vaughn is serving as president; and Ed Culbertson is serving as vice president. Dorothy Jo Mastin is serving as secretary-treasurer. Charles W. Kuster, Jr., John Lair, and Bradley K. Vaughn are also serving as trustees of the Harrison County Law Library. The Harrison County Law Library is located on the second floor of the Harrison County Justice Center in Cynthiana.

### Barbara Bonar Donates Oil Painting For Children's Law Center Event

The first annual Champion Chefs' Cooking for Children was held at the Marriott RiverCenter in Covington. The event raised awareness and financial support for Covington's Children's Law Center, Inc. Local artist and attorney, Barbara Bonar, donated a commissioned, signed and framed oil painting for the event. Bonar's work in oil entitled "Quality of Mercy" was auctioned by Margo Grubbs, local auctioneer and attorney. Thousands of dollars were raised for the Center from the auction. Bonar's oil painting was then donated back to the Center to hang in the office. Her art has been featured in exhibits across the nation, including the Frankfort Public Library, the York Street Café in Newport, the Covington First Annual Art of Discovery, and at Workplace Fairness in Seattle, Washington and Monterey, California. She has committed to donate certain paintings of hers to various charitable and non-profit organizations that include Dress for Success of Cincinnati, New Perceptions, Inc., Covington Catholic High School, St. Agnes School in Ft. Wright and the Northern Kentucky Bar Association. Bonar owns and manages a law practice in Covington where she focuses her practice primarily in employment litigation.

### Kentucky Bar Foundation

### 2004 Golf Scramble

at

### Marriott Griffin Gate Resort & Golf Club

Lexington, KY

*An event of the Kentucky Bar Association 2004 Convention*

Friday, June 25th



Shotgun Start  
1:30 p.m.

Entry fee – \$95.00

(includes cart & green fees, beverages and hors d'oeuvres)

*For registration and/or sponsorship information, please call the  
Kentucky Bar Foundation at 800-874-6582 (KY) or 502-564-3795.*

# WHO, WHAT, WHEN & WHERE

## ON THE MOVE

**Joe C. Savage, Robert L. Elliott, Cory M. Erdmann, Kris D. Mullins and Escum L. Moore, III** are pleased to announce the formation of the law firm of **Savage, Elliott, Moore, Mullins & Erdmann, LLP**. **Robert J. Turley and Escum L. Moore, Jr.** will serve as Of Counsel to the firm. The firm's offices are located at PNC Bank Plaza in Suite 810 at 200 West Vine Street in Lexington. The members of the firm may be reached by telephone at (859) 233-2700. Savage is a graduate of the University of Kentucky College of Law and Harvard Law School. Elliott is a graduate of Centre College and the University of Kentucky College of Law. Both Savage and Elliott are past presidents of the Kentucky Bar Association. Erdmann is a graduate of the University of Virginia and the University of Kentucky College of Law. Mullins is a graduate of the University of Kentucky and the University of Kentucky College of Law. Moore is a graduate of Centre College and the University of Kentucky College of Law. Robert Turley and Escum L. Moore, Jr. are both graduates of the University of Kentucky College of Law and fellows of the American College of Trial Lawyers. The firm will practice in the areas of general civil litigation, personal injury, medical negligence, products liability, employment discrimination, commercial litigation and construction litigation.



Joe C. Savage



Robert L. Elliott



Cory M. Erdmann



Kris D. Mullins



Escum L. Moore, III



Michelle L. Mees

The **Hume Law Office** in Louisville is pleased to announce that **Michelle L. Mees** has joined the office as an associate. Mees received both her M.B.A. and her J.D. from the University of Louisville. She will practice in the area of general civil litigation.

The Covington law firm of **Wolnitzek & Rowekamp, P.S.C.** is pleased to announce that **Shane C. Sidebottom** has become associated with the firm. Sidebottom will continue his practice in U.S. immigration law, civil litigation and criminal law.

**Bill Garmer and Steve O'Brien** are pleased to announce the continuation of their practice as the firm of **Garmer & O'Brien, L.L.P.** located at 141 North Broadway in Lexington. Their practice concentrates in products liability, medical negligence, personal injury and commercial litigation. Both Garmer and O'Brien earned a J.D. from the University of Kentucky College of Law.

**Woodward Hobson & Fulton, L.L.P.** is pleased to announce the election of **Donna King Perry** as managing partner. In addition, An-

gela Logan Edwards has been made a partner. **Rebecca L. Didat, Andrew D. Dill, Joseph P. Donohue, Puja Gakhar and Wendy C. Hyland** have joined the Louisville office as associates. **Todd D. Willard** has joined the Lexington office as an associate. Perry has practiced at Woodward's Louisville office since 1995 and has been a partner since 1997. She earned her B.A. from the University of Texas in 1986 and her J.D. from the University of Louisville in 1989. Perry practices in the areas of labor, employment and general litigation. Edwards practices



Donna K. Perry



Angela L. Edwards



Rebecca L. Didat



Andrew D. Dill



Joseph Donohue



Puja Gakhar



Wendy C. Hyland



Todd D. Willard

## WHO, WHAT, WHEN & WHERE

in the Louisville office. She is a 1991 *cum laude* graduate of Transylvania University and a 1994 graduate of the University of Kentucky College of Law. Edwards practices in the areas of commercial litigation, ERISA litigation, and accountant and attorney malpractice defense litigation.

**Dinsmore & Shohl LLP** is pleased to announce that **Sterling W. Colvin** and **J. David Brittingham** have been named partner in the Cincinnati office and **Michael M. Hirn** and **R. Kenyon Meyer** have been elected partner in the Louisville office.

**Whitney A. Howard** has also been hired to practice in the litigation department of the Lexington office. Colvin earned her B.A. with distinction from the University of Kentucky in 1992. She earned her J.D., *cum laude*, from Salmon P. Chase College of Law at Northern Kentucky University in 1995. Colvin focuses her practice on commercial and residential real estate acquisitions, leasing and financing. Brittingham earned his B.F.A. from the University of Mississippi in 1988 and his J.D., *cum laude*, from Salmon P. Chase College of Law in 1993. His practice includes general litigation and dispute resolution with an emphasis on products liability, mass tort and complex

litigation. Hirn earned his B.A. from the University of Virginia in 1987 and his J.D. from the College of William and Mary Marshall-Wythe School of Law in 1994. Hirn practices in the area of general litigation with an emphasis in business litigation, contract disputes, hospital and health care law, professional liability, products liability, intellectual property and construction law. Meyer earned his B.A. from the University of Notre Dame in 1992 and his J.D. from the Louis D. Brandeis School of Law at the University of Louisville in 1995. Meyer practices in the areas of labor and employment litigation, first amendment and media law, commercial litigation, business competition and criminal law. Howard earned her B.A., *summa cum laude*, from the University of Kentucky in 2000. She earned her J.D., *magna cum laude*, from the University of Kentucky College of Law in 2003 and was elected to the Order of the Coif.

**Wise DelCotto PLLC** is pleased to announce the addition of **Dean A. Langdon** and **Heather G. Pennington** to the Lexington firm. Both Langdon and Pennington earned their J.D. from the University of Kentucky College of Law. They will both focus their practice in debtor/

creditor relations, commercial bankruptcy and financial restructurings/workouts.

**Stites & Harbison** announces the hiring of nine new lawyers.

**J. Michael Brown** has joined the firm as a partner and will work out of the firm's Louisville and Nashville offices. **Jamie L. Cox**, **Whitney D. Frazier**, **Jeffrey A. Haeberlin**, **Lucy M. Leason**, **Anna R. Pray** and **Jennifer P. Stephens** are based in the firm's Louisville office. **Clark P. Case** and **Sasha Y. Wagers** are based in the firm's Lexington office. Brown earned his B.A. from the City College of the City University of New York in 1970. He earned his J.D. from the Louis D. Brandeis School of Law at the University of Louisville in 1979. Prior to joining Stites & Harbison, Brown was a partner with the Louisville-based law firm of Wyatt Tarrant & Combs, LLP for many years. Brown's practice will focus on airport law, labor and employment, entertainment and commercial litigation. Cox earned her B.A., *summa cum laude*, from the University of North Carolina in 1990. She graduated, *cum laude*, from the Brandeis School of Law at the University of Louisville. Cox is part of the firm's Real Estate Service Group. Frazier earned her B.A. from Davidson College and graduated from the University of Kentucky College of Law. Frazier is assigned to the firm's Business Litigation Service Group. Haeberlin earned his B.S. with high honors in 1988 from the University of Louisville Speed Scientific School and his M.S. with high honors in 2001 from the same institution. In 1994, he earned his J.D. from the Brandeis School of Law at the University of Louisville. Haeberlin is a member of the firm's Intellectual Property and Technology

### 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 May edition of Who, What, When & Where is April 1, 2004.

Service Group. Leason earned her B.A. in 1992 from Hanover College, her M.S. in 1994 from the Kent School of Social Work at the University of Louisville and her J.D. from the Brandeis School of Law. She is a member of the firm's Torts and Insurance Practice Service Group. Pray earned her B.A. in 1998 from Transylvania University and her J.D., *cum laude*, from the Brandeis School of Law. Pray is a member of the firm's Real Estate and Finance Service Group. Stephens earned her B.A. with honors from Bellarmine University and her J.D. from Indiana University School of Law. Stephens is a member of the firm's Business Litigation Service Group. Case earned his B.A., *summa cum laude*, from the University of Kentucky in 2000 and his J.D., *cum laude*, from the University of Kentucky College of Law, where he was elected to the Order of the Coif. Case is a member of the firm's Construction Service Group. Wagers earned her B.A., *summa cum laude*, from Transylvania University in 2000 and her J.D., *cum laude*, from the University of Kentucky College of Law. Wagers is a member of the firm's Torts and Insurance Practice Service Group.

The Louisville law firm of **Goldberg & Simpson** is pleased to announce that **Wayne F. Wilson** has been named partner and **Michael F. Lawrence** has become Of Counsel to the firm. Wilson received a B.A. from Transylvania University in 1993 and earned a J.D. from the University of Louisville School of Law in 1997. He practices in the areas of business and non-profit organizations law. Lawrence earned his J.D. from the University of Louisville School of Law in 1984. His practice concentrates in the areas of insurance defense, commercial litigation and realtor errors and omissions.



J. Michael Brown



Whitney D. Frazier



Lucy M. Leason



Jennifer Stephens



Sasha Y. Wagers



Jamie L. Cox



Jeffrey Haeberlin



Anna R. Pray



Clark P. Case



Wayne F. Wilson

The **Law Office of Michael Dean** is pleased to announce the opening of a new office located at 128 South Keeneland Drive in Richmond, Kentucky. The telephone number at the new law office is (859) 626-3757.

**Tyson A. Kamuf** and **Mark W. Starnes** have joined the law firm of **Sullivan, Mountjoy, Stainback & Miller, P.S.C.** as associates.

Kamuf, an Owensboro native, earned his undergraduate degree, *magna cum laude*, from the University of Kentucky. In 2003, he graduated from the University of Kentucky College of Law, where he was elected to the Order of the Coif. Starnes earned his undergraduate degree with honors from the University of Kentucky. He graduated from the University of Kentucky College of Law in 2003. Starnes' practice will concentrate in the areas of tax, business law, estate planning, wills and trusts.



Tyson A. Kamuf



Mark W. Starnes

**Mott V. Plummer** has joined the staff of the **Campbell County Commonwealth's Attorney Office** in Newport, Kentucky as an assistant Commonwealth's attorney.

The Lexington law firm of **Kinhead & Stilz, PLLC** is pleased to announce that **Laura A. D'Angelo** has been admitted as a member of the firm and **Kenton L. Ball** has become Of Counsel to the firm. D'Angelo earned a M.B.A. in 1990 from York University and is a 1996 graduate of the University of Kentucky College of Law. She concentrates her practice in the equine, securities, and corporate governance and finance areas. Ball is a 1984 graduate of the University of Kentucky College of Law. He earned a LL.M. in Taxation from Boston Uni-

# WHO, WHAT, WHEN & WHERE

versity School of Law in 1990. Ball concentrates his practice in the areas of taxation, tax litigation and banking law.

**Farrah D. Williams** has joined the Mount Sterling law firm of **White, Peck, Carrington, Williams & Neal, LLP** as an associate. Williams received her undergraduate degree from Morehead State University in 1998. She earned her J.D. from the University of Kentucky College of Law in 2002. Williams will be engaged in the general practice of law.



Farrah D. Williams

The Louisville law firm of **Tachau Maddox Hovious & Dickens PLC** is proud to announce that **Brian F. Haara** has become a member of the firm. Haara received his B.A., *magna cum laude*, from Alma College in 1993 and his J.D. from the University of Kentucky College of Law in 1996. He is licensed to practice law in Kentucky and Indiana, where he represents plaintiffs and defendants in a variety of business, employment, banking and insurance disputes.



Brian F. Haara

The Louisa law firm of **Michael T. Hogan, P.S.C.** announces that **William K. Bonilla** has joined the firm as an associate. Bonilla, a native of Hazard, is an alumnus of the Appalachian School of Law in Grundy, Virginia, where he graduated, *cum laude*, in 2002. He will be working in the areas of general civil litigation, personal injury and family law.

Bonilla will also work part-time as an assistant prosecutor in the Office of the Lawrence County Attorney. He may be reached by telephone at either (606) 638-9900 or (606) 638-4051.

**Julie A. Cobble** has joined the U.S. Bankruptcy Court for the Western District of Kentucky in Louisville as chief deputy clerk. Cobble earned her undergraduate degree, *summa cum laude*, from the University of Kentucky. She earned her J.D. from the University of Louisville School of Law.

The Louisville law firm of **Ogden Newell & Welch PLLC** is pleased to announce that **James H. Ball** has joined the firm in the estate planning practice area. A 1982 graduate of Eastern Kentucky University, Ball received his J.D., *cum laude*, from the Brandeis School of Law at the University of Louisville in 1993. He is licensed to practice law before the United States Tax Court.

**D. Scott Furkin** has been named general counsel for the Administrative Office of the Courts in Frankfort. He is also serving as the president of the Louisville Bar Association this year. Furkin was previously engaged in private practice in Louisville. He is a graduate of the Brandeis School of Law at the University of Louisville.



D. Scott Furkin

The Louisville law firm of **Hargadon, Lenihan, Harbolt & Herrington, PLLC** is pleased to announce that **Finis R. Price** and **Amy B. DeRenzo** have joined the firm. Price received his B.S. from the University

of Southern Mississippi in 1999 and his J.D. from the Brandeis School of Law at the University of Louisville in 2003. DeRenzo received her B.A. from the University of South Alabama in 1998 and her J.D. from Ohio Northern University in 2001. Price and DeRenzo will concentrate in personal injury law, including products liability, wrongful death and medical malpractice.

**Susan P. DeCoursey** has associated with the Kansas City, Missouri law firm of **Brown & Nachman, L.L.C.** to work with the firm's business litigation practice. DeCoursey, who is admitted to practice law in Kansas, Missouri and Kentucky, comes to the firm with a background in commercial and civil litigation.



Susan DeCoursey

The law firm of **McBrayer, McGinnis, Leslie & Kirkland, PLLC** is pleased to announce that **Stuart McCloy** has become associated with the firm's Lexington office. McCloy earned his B.A. from Vanderbilt University and his J.D. from Georgetown University Law Center in 1978. He concentrates his practice in the area of health law. McCloy may be reached by telephone at (859) 231-8780.

**Stoll, Keenon & Park, LLP** is pleased to announce that **James Hargrove, Roger Madden, Mary Meade-McKenzie, Lisa Hart, Kathryn Eberle, Kent Hatfield, D. Randall Gibson, John Bilby, Kenneth (K.T.) Williams, Douglas F. Brent, and William Jay Hunter, Jr.** have recently joined the firm. Hargrove, Madden, Meade-McKenzie,



and Hart practice in the Lexington office. Eberle, Hatfield, Gibson, Bilby, Brent and Hunter practice in the Louisville office. Williams practices in the Henderson office. Hargrove earned his B.A., *cum laude*, from Western Kentucky University and his J.D. from the University of Kentucky College of Law. Hargrove has joined the firm as a partner. His primary practice areas include estate and trust planning, charitable planning and taxation and business planning. Madden earned his B.S. with high distinction from the University of Kentucky and his J.D. with honors from Duke Law School. He earned his LL.M. in Taxation from New York University School of Law. Madden has joined the firm in an Of Counsel position. His primary practice areas include estate and asset protection planning, estate and gift taxation, probate administration, estate litigation and family and closely held business planning. Meade-McKenzie earned her B.A. from the University of Kentucky and her J.D. from the University of Kentucky College of Law. Meade-McKenzie's primary practice areas include estate planning, estate and gift taxation, probate administration and estate litigation. Hart earned her B.A., *summa cum laude*, from Murray State University and her J.D. from the University of Kentucky College of Law. Hart's primary practice areas include domestic relations, corporate litigation and insurance litigation. Eberle earned her B.A., *cum laude*, from Western Kentucky University and her J.D. from Vanderbilt University Law School. Eberle practices primarily in commercial litigation. Hatfield earned his B.S. from the University of Kentucky and his J.D. with high distinction from the University of Kentucky College of Law. Hatfield has joined the firm as a partner. His primary practice areas include antitrust and energy, telecom-

munications and utility law. Gibson earned his A.B. from Miami University and his J.D., *cum laude*, from the Brandeis School of Law at the University of Louisville. He also received his LL.M. in Taxation from New York University. Gibson has joined the firm as a partner. His primary practice areas include mergers and acquisitions, public finance, estate planning, and estate, tax and financial litigation. Bilby earned his B.B.A. and his M.B.A. from the University of Kentucky. He earned his J.D. from the Brandeis School of Law at the University of Louisville. Bilby has joined the firm as a partner. His primary practice areas include business litigation, environmental and toxic tort litigation and products liability litigation. Williams earned his B.S. and his B.B.A. from the University of Kentucky. He earned his J.D. from the University of Kentucky College of Law. Williams' primary practice areas include litigation and general corporate law. Brent earned his B.B.A. from the University of Kentucky and his J.D. from the University of Kentucky College of Law. Brent has joined the firm in an Of Counsel position. His primary practice areas include telecommunications and utility law. Hunter earned his B.A. from Northwestern University and his J.D. from George Washington University National Law Center. Hunter has joined the firm as a partner. His primary practice areas include antitrust, financial services regulation and complex litigation.

**Ulmer & Berne LLP** has named a new partner, **Jennifer J. Bouchard**, to its Cincinnati office. Bouchard concentrates her practice on product liability defense, mass tort defense and drug and medical device litigation. She is licensed to practice law in Kentucky and Ohio. Bouchard earned her undergraduate degree in

1992 from Xavier University. In 1996, she earned her law degree with honors from the University of Cincinnati.

**Thompson Hine LLP** has elected **Stephen L. Richey** to the firm's partnership. Richey received his B.A. and his M.Ed. from Xavier University.



Stephen L. Richey

He earned his J.D. from Salmon P. Chase College of Law. Richey counsels employers regarding all aspects of labor and employment.

**Karen Tosh**, formerly Of Counsel to Gault, Marshall & Miller in Paducah, has formed a law partnership with Nancy Baskin effective January 1, 2004. The new firm is **Baskin & Tosh, LLP** located at 77 Franklin Street in Boston, Massachusetts. Tosh earned her law degree from the Brandeis School of Law at the University of Louisville. She is admitted to practice law in Kentucky, Massachusetts and Alabama. The new firm's practice concentrates exclusively in family law.

The Tennessee law firm of **Bass, Berry & Sims PLC** is pleased to announce that **Joshua R.**

**Denton** has joined the firm's downtown Nashville office as an associate. He received both his undergraduate degree and his J.D. from the University of Kentucky. Denton will concentrate his practice in complex commercial litigation and debtor/creditor relations. He is licensed to practice law in Kentucky and Indiana.



Josh R. Denton

## IN THE NEWS

Graydon Head & Ritchey LLP has appointed partner **Thomas A.**

**Prewitt** chair of its Commercial Litigation and Dispute Resolution Client Service Department. Prewitt earned his B.S., *cum laude*, from Ohio University in 1985 and his J.D. from the University of Kentucky College of Law in 1988. He is licensed to practice law in Kentucky and Ohio.



Thomas A. Prewitt

The American College of Trust and Estate Counsel (ACTEC) has elected **Christine A. Buttress** as a Fellow of the College. Buttress earned her bachelor's degree from John Carroll University in 1976. She is a 1979 graduate of the University of Cincinnati College of Law. Buttress practices law in the estate planning area.

Dinsmore & Shohl LLP partner **Mary J. Healy** has been certified by the Ohio State Bar Association as a specialist in estate planning, trust and probate law. Healy received her B.A. from the University of Cincinnati in 1974. She earned her J.D. from Salmon P. Chase College of Law at Northern Kentucky University in 1978.

Hughes & Coleman is proud to announce attorney **John McCracken** of Bowling Green has been admitted to practice law in the state of Tennessee. McCracken practices in the areas of employment rights, employment discrimination, insurance disputes and personal injury litigation.

## RELOCATIONS

**Martin Schmidt**, an attorney licensed to practice law in Kentucky and California, is pleased to announce the relocation of his law office to 16236 San Dieguito Road in Rancho Santa Fe, California. His new telephone number is (858) 759-9533.



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### Videotapes

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(\$60/LBA members; \$120 Non-members)

- Anatomy of an Appeal
- Effective Appellate Advocacy
- Styles of Mediation

#### 2.0 CLE Ethics Hours

(\$60/LBA members; \$120 Non-members)

- Code of Judicial Conduct
- Ethical Concerns in the Electronic Age
- Ethics of Private Practice

#### 3.0 CLE Hours

(\$90/LBA members; \$180 Non-members)

- Persuasion Communication: Skills for the Courtroom
- A Practical Guide to Temporary Restraining Orders and Injunctions

#### 3.5 CLE Hours

(\$105/LBA Members; \$210 Non-members)

- Defending a Daubert Challenge

### CDs

#### 1.0 CLE Hour

(\$30/LBA members; \$60 Non-members)

- Representing the People vs. the "Goliaths"
- Helpful Hints on Collecting a Higher Percentage of Receivables
- Criminal Justice Issues

#### 1.5 CLE Ethics Hours

(\$45/LBA members; \$90 Non-members)

- Conflicts of Interest for Lawyers and Judges

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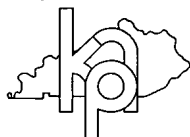
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