

Michael Losavio

Computer Forensics

Differences with Paper and Electronic Documents

Computer forensics and information security deal with how bad things happen, and how to catch those that did them. They protect electronic operations and services, and guide response to electronic malfeasance. A review of the interplay between computer forensics and security can help bench and bar deal with problems to come - like the possible trial of the author of the malicious computer worm that fried my email and blitzed my calendar.



Michael Losavio

As I sit here in withdrawal from losing email and on-line calendar, I wonder if they'll ever catch the scoundrel. How can they catch that person, writing anonymous computer code that propagated over the Internet at the speed of light? How do the differences between paper and electronic documents affect the investigation, and prosecution?

With paper, what you see is what you probably have, unless someone has been exploiting the color copier or having fun with forgery. Even there, paper documents are as permanent as the Pyramids, compared to electronic documents in their evanescent "files." A signature is no mere ornament, as one court said; it can link a paper document to a person far more easily than a person can be linked to an electronic document. So how will investigators identify the worm-writer?

Perhaps there is a "hand-writing" test to see if the malware code- malicious software code- had an identifiable signature. Some programmers contend that they have their own, unique way of writing code by which they, and others, can be identified. Could code be linked to a particular programmer?

The code itself might contain information on its origin, as some programs leave trace information embedded in the code when written. Some coders even leave messages or other clues and commentary in their code that can be used to trace them. That might be difficult in this case as the attacking program was very minimal code, a very small program that might not have a provenance.

The tried and true use of informants, snitches and "hanging out" is a good technique even in cyberspace; the coder might be inclined to brag about this. On-line discussion groups, UseNet news groups, chat rooms: these might be fruitful sources of information. This kind of gumshoe investigation, the brute force method of detectives and Philip Marlowes, is still effective, even in cyberspace.

Tracing and mapping the date and time of each infection could lead to a timeline and place listing of the infection. File creation, file changes, file accesses and file transmissions are logged by date and time, down to the second; these are features of computer and network operating systems. Network systems track originating information for transmissions, such as an originating Internet Protocol (IP) address. This is like the return

address on a postal letter. A time and location map may permit investigators to backtrack on the source of the worm.

This may involve a tremendous amount of work. The topology of the Internet means such a trace might go point to point through all the routers and infected systems involved, requiring examination of the system log files on those systems.

The originating IP address can be “spoofed,” or faked, so that it doesn’t reflect its real origin. How many man-hours could be devoted to this possibly fruitless task?

Preserving electronic evidence requires special procedures because the very act of examining electronic information may change it.

If this kind of information leads to a suspect, what then? Is this sufficiently reliable for a search warrant or an electronic wiretap?

What would a search of a particular suspect computer reveal? Would it have a copy of the worm program, and, if so, where? Forensics and security deal with where files can be hidden and lost, or thought destroyed yet preserved. Would there be log file dates showing it to be the earliest known copy of the worm, rather than one of many infections? Would there be chat room postings or e-mail bragging about creating the worm? Would there be software tools used for creating such a worm?

And how might this evidence be used in a court? Are there special evidentiary considerations created by the technology, or will this be a simple application of the rules of evidence? How is such evidence authenticated? Is it hearsay that falls under one of the exceptions to hearsay exclusion?

Lots of questions. Answers depend on the character of electronic files and documents in their varied forms, how those characteristics relate to admissibility under the rules of evidence, and what factors might render the information “evidenced” by whatever we have unreliable. At the core of information science, revealed in the rules of

evidence, is the issue of reliability. How much should it be trusted, and how can that trust be tested?

E-mail, web pages, SYN packets, scripts, log files, page files, jpegs, word processing files, spreadsheets, databases, .wav files, .avi files: all electronic documents with authors, recipients and effects.

The mutability and lack of easy authentication of electronic evidence is troublesome as to reliability and integrity, just as its persistence and multiplicity create problems with privacy and confidentiality. These traits are special problems for electronic forensics. Preserving electronic evidence requires special procedures because the very act of examining electronic information may change it. Sometimes it simply evaporates with a power outage, static spark or a wayward magnet. More troublesome is the risk of a fake or altered record being created, without adequate tools to detect the fake or the alteration. With the Internet, there is a risk of “planting” evidence over the wire just as a malicious program can be inserted. Consider problems with child pornography, the heroin of cyberspace whose mere possession is a felony.

The next part of this review will focus further on these technical and legal issues associated with these different kinds of electronic documents. It will both prepare you for your own forensic issues as well as outline what precautions you should take with your own records and information. Should you have your own case study to share, please send it in for possible discussion here at Michael.Losavio@louisville.edu.

All of these issues of authenticity, confidentiality and reliability have been part of our debates for, oh, forever. It is, again, where others’ problems and troubles are brought to bench and bar to resolve, as best anyone can, under the firm and fair rule of law, as best anyone can.

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Advisory Ethics Opinions

KBA E-420

Opinion

Subject: Lawyer Borrowing Litigation Costs and Granting Lender a Security Interest in Lawyer's Contingent Fee

Question 1: May a lawyer who represents a client under a contingent fee contract borrow funds from a lending institution to cover litigation expenses?

Answer: Yes, subject to the cautions set forth below.

Question 2: May the lawyer pass the interest on the loan (along with other related fees) on to the client by deducting them from the proceeds of a judgment or settlement before computing the net sum owed to the client?

Answer: Yes, subject to the cautions set forth below.

Question 3: May the lawyer give a lender a security interest in the contingent fee in a particular case?

Answer: No, for reasons set forth below.

Principal References:

Utah State Bar Ethics Advisory Opinion 02-01 (2002); Ohio Board of Commissioners on Grievances and Discipline Opinion 2001-3 (2001); Utah State Bar Ethics Advisory Opinion 97-11 (1997); KBA Ethics Opinions E-216 (1979); *Chittenden v. State Farm Mutual Automobile Insurance Co.*, 788 So.2d 1140 (La. 2001); S.C.R. 3.130 [Kentucky Rules of Professional Conduct], Rules 1.4, 1.5, 1.6, 1.7, 1.8, 5.4.

The inquiry before the Committee raises the question of whether, in a contingent fee case, a lawyer may borrow funds from a lending institution to pay litigation costs. The inquiry raises a further issue as to whether the lawyer may pass the interest and related loan fees on to the client, deducting them from the proceeds of the judgment or settlement in the same manner as other disbursements. The final question raised is whether the lawyer may grant the lender a security interest in the lawyer's contingent fee as collateral for the loan.

I. Borrowing Litigation Costs from a Lending Institution

We begin with the issues of financial assistance to clients and lawyer borrowing. Rule 1.8 reflects the common law rule against providing financial support to a client "in connection with pending or contemplated litigation." The concern is that if a lawyer acquires a stake in the outcome, his or her ability to exercise independent judgment on behalf of the client may be impaired. Yet, despite this potential conflict, the prohibition has never been absolute. Rule 1.8(e)(1) embodies a long-standing exception to this general principle by providing that "[a] lawyer may advance court costs and expenses of litigation...." This exception reflects the reality that, without financial assistance to cover litigation costs and expenses, some clients would be unable to pursue their claims.

The inquiry before the Committee adds an additional layer of complexity to the transaction by interjecting a third party -- the lending institution --

into the relationship. The inquiry contemplates that rather than the lawyer lending his or her own funds to cover litigation costs and expenses, the lawyer will borrow the money from a lending institution. Upon conclusion of the case, the client will be obligated to reimburse the lawyer for the advanced litigation costs, along with interest charges and any related lender fees.

Although nothing in Rule 1.8(e) specifically prohibits a lawyer from borrowing money to cover litigation costs and expenses on behalf of a client, other relevant ethical rules, particularly those relating to personal conflicts of interest, client confidentiality and the lawyer's independent judgment, must be considered.

By borrowing money from a lending institution to cover advancements for costs and expenses, the lawyer assumes both a financial obligation and a debt management responsibility in the litigation. If these burdens become too great, particularly if a case becomes protracted, the lawyer's fidelity to the client could be compromised by the lawyer's perceived need to conclude the representation on a basis that will allow the loan to be paid and the attendant burdens to be lifted. These same observations might be made of any situation in which the lawyer has advanced costs and expenses to a client from personal funds or where a contingent fee is involved. Although we recognize the potential personal conflicts inherent with advancement of litigation costs and contingent fees, we permit these arrangements -- subject to Rule 1.7 -- because they benefit the client and may provide the only means by which a client can pursue his or her claim.

But borrowing money from a lending institution to finance litigation ex-

penses raises additional risks not present when the lawyer merely advances personal funds or takes a case on a contingent fee. Where a lending institution is involved, it might attempt to influence the lawyer's handling of a case in order to ensure timely repayment of the loan. Similarly, it might seek information about a case or its status and the client's right to confidentiality under Rule 1.6 might be jeopardized. These risks are substantially reduced if the loan is not tied to a particular case, but rather is a line of credit upon which the lawyer may draw upon for any case. In any event, the Committee recognizes that there are some risks, but also recognizes the client's interest in having adequate funds available to cover litigation costs and expenses. As a recent Ohio opinion observed:

Since clients are not always financially able to obtain a

loan to finance the expenses of litigation, the clients look to lawyers to advance the expenses of litigation. Depending upon the lawyer's financial position, a lawyer may need to obtain a loan in order to advance the litigation expenses. As a fiduciary for the client, the lawyer must negotiate appropriate and reasonable loan terms. Ohio Board of Commissioners on Grievances and Discipline Opinion 2001-3 (2001)

A number of other jurisdictions have addressed litigation-financing arrangements similar to those described above. Although many have acknowledged the potential problems discussed here, the overwhelming majority has concluded that such arrangements are permissible. See, e.g., *Chittenden v. State Farm Mutual Automobile Insurance Co.*, 788 So.2d 1140 (La. 2001); Utah State Bar Ethics Advisory Opinion 02-01 (2002); Ohio Board of Commissioners on Grievances and Discipline Opinion 2001-3 (2001); Association of the Bar of the City of New York Committee on Professional and Judicial Ethics Opinion 1997-1 (1997); Georgia Advisory Opinion 92-1 (1992). State Bar of Texas Opinion 465 (1990); New Jersey Supreme Court Advisory Committee on Professional Ethics Opinion 603 (1987).

The committee is in agreement with those jurisdictions that have authorized the lawyer to borrow funds to finance litigation costs and expenses. In our view, the rules do not prohibit such a loan transaction, as long as the lawyer guards against improper influences and improper disclosure of client confidences.

II. Charging the Client Interest on the Loan and Deducting It from Proceeds

The next question is whether a lawyer who borrows money from a lending institution can pass the interest charges and other related expenses on to the client. In KBA E-216, this Committee decided that with "full consent and disclosure" the lawyer could charge interest on advancements made from the lawyer's own funds. In the Committee's view, "an interest charge on advancements would seem to be only a further expense of the litigation and as such could be charged against the client." From the client's financial perspective, there is no difference between charging the client interest on the lawyer's money and charging the client interest on the financial institution's money – both are expenses occasioned by the litigation. See also, Ohio Board of Commissioners on Grievances and Discipline Opinion 2001-3 (2001).

But the inquiry does not end here. Recent decisions from other jurisdictions, as well as the current Rules of Professional Conduct, suggest that much more is required than mere consent and disclosure. Of particular importance are the rules dealing with client communications, business transactions and fees.

We begin with Rule 1.4, which addresses the importance of keeping the client informed and of explaining matters to the extent reasonably necessary to permit a client to make informed decisions. Thus, in the context of this inquiry, it would appear that the loan and other fees, along with the interest rate and its method of calculation, must be explained fully to the client and the client must consent. See, e.g., New Jersey Supreme Court Advisory Committee on Professional Ethics Opinion 603 (1987).

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Moreover, once the advancement authorized by 1.8(e) takes the form of a loan with interest, it takes on the characteristics of a business transaction and is subject to the mandates of Rule 1.8(a). See, American Law Institute, *Restatement (Third) of the Law Governing Lawyers* § 36, comment c (lawyer may advance costs and expenses of litigation, with client to repay the advance from proceeds of case, but any greater obligation on the part of the client, such as payment of interest, subjects the arrangement to rules governing business transactions between a lawyer and client).

Business transactions covered by Rule 1.8(a) must be "fair and reasonable." This assumes, among other things, that the charges to the client are reasonable in amount, that they do not exceed those paid by the lawyer, and that the lawyer does not have an interest in the financial institution that would violate Rule 1.7(b). See, e.g., Association of the Bar of the City of New York Op. 1997-1 (1997). Moreover, Rule 1.8(a) requires that the arrangement be "fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client." In addition, the client must have a "reasonable opportunity to seek the advice of independent counsel" and must "consent in writing." See, e.g., Ohio Board of Commissioners on Grievances and Discipline Opinion 2001-3 (2001).

This particular inquiry relates to a contingent fee case. Consequently, Rule 1.5(c) must be considered, because it sets out certain requirements about both the agreement's form and its content. Specifically, it provides as follows:

A contingent fee agreement shall be in writing and should state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be de-

ducted before or after the contingent fee is calculated.

Thus, in the context of this inquiry, the contingent fee agreement must be in writing and must explain how the interest will be calculated, and that the interest and other loan related expenses will be deducted from the settlement or judgment as an expense of litigation. The contingent fee agreement also must clearly state

Continued

Advisory Ethics Opinions

Where to find them in the *Bench & Bar*

KBA E-336	Winter 1990	Volume 54, #1
KBA E-337	Winter 1991	Volume 55, #1
KBA E-338	Summer 1990	Volume 54, #3
KBA E-340	Fall 1990	Volume 54, #4
KBA E-341-343	Spring 1991	Volume 55, #2
KBA E-344-346	Summer 1991	Volume 55, #3
KBA E-347-348	Fall 1991	Volume 55, #4
KBA E-349	Spring 1992	Volume 56, #2
KBA E-350 & 351	Summer 1992	Volume 56, #3
KBA E-352-359	Summer 1993	Volume 57, #3
KBA E-360 & 361	Summer 1993	Volume 57, #3
KBA E-362 & 363	Spring 1994	Volume 58, #2
KBA E-364-367	Summer 1994	Volume 58, #3
KBA E-368 & 369	Fall 1994	Volume 58, #4
KBA E-370-373	Winter 1995	Volume 59, #1
KBA E-374	Spring 1996	Volume 60, #2
KBA E-375-379	Summer 1995	Volume 59, #3
KBA E-380-384	Fall 1995	Volume 59, #4
KBA E-385 & 386	Winter 1996	Volume 60, #1
KBA E-387	Spring 1996	Volume 60, #2
KBA E-388 & 389	Summer 1996	Volume 60, #3
KBA E-390 & 391	Fall 1996	Volume 60, #4
KBA E-392 & 393	Winter 1997	Volume 61, #1
KBA E-394	Spring 1997	Volume 61, #2
KBA E-395-399	November 1998	Volume 62, #5
KBA E-400	Summer 1997	Volume 61, #3
KBA E-401 & 402	Spring 1998	Volume 62, #2
KBA E-403	July 1998	Volume 62, #3
KBA E-404 & 405	September 1998	Volume 62, #4
KBA E-406	March 1999	Volume 63, #2
KBA E-407	July 1999	Volume 63, #4
KBA E-408	November 1999	Volume 63, #6
KBA E-409 & 410	January 2000	Volume 64, #1
KBA E-411	May 2000	Volume 64, #3
KBA E-412 - E-415	July 2000	Volume 64, #4
KBA E-416	July 2001	Volume 65, #4
KBA E-417	November 2001	Volume 65, #6
KBA E-418	March 2002	Volume 66, #2
KBA E-419	July 2002	Volume 66, #4

whether contingent fee percentages are computed before or after the deduction of these expenses. Finally, the agreement must advise the client of whether the duty to repay litigation expenses (including interest) is contingent upon the outcome of the case. *See, e.g.,* Ohio Board of Commissioners on Grievances and Discipline Opinion 2001-3 (2001); *Chittenden v. State Farm Mutual Automobile Insurance Company*, 788 So.2d 1140 (La. 2001); Association of the Bar of the City of New York Formal Opinion 1997-1 (1997).

The duty to inform the client about fees and other charges extends beyond the initial agreement. Once there has been a recovery, Rule 1.5 obligates the lawyer to provide the client with a written statement "showing remittance to the client and the method of determination," which would include deductions for the advances, interest and other reimbursable charges. This written statement should be sufficiently detailed so that the client can understand what costs, including loan-related expenses, the client has been charged. *See, ABA Formal Opinion 93-379* (1993).

Therefore, upon review of the applicable rules and the opinions from other jurisdictions, the Committee

finds no specific prohibition against a lawyer obtaining a third-party loan to cover litigation expenses and later deducting expenses – including interest and lender fees – from the proceeds recovered on behalf of the client. However, the lawyer is cautioned that several Rules of Professional Conduct are implicated in such a transaction, and the lawyer must consider each one of them carefully before entering into a loan transaction to finance the litigation expenses of a client.

Granting the Lender a Security Interest in the Lawyer's Contingent Fee

The final question — whether the lawyer may grant a security interest in his or her contingent fee as collateral for the loan — is more problematic. One of the primary purposes of the conflict of interest rules (Rule 1.7 – 1.12) is to protect the lawyer's independent judgment. Under these rules, the lawyer must avoid representations where the lawyer's own interest or those of another person may impair the lawyer's judgment on behalf of a client. If a loan is tied, either formally or informally, to a specific case the lender may try to protect its investment by attempting to influence the lawyer's management

of the case. This is always a risk, but it becomes even more so when the lawyer's prospective fee in a specific case serves as collateral for the loan. The fact that the agreement with the lender might recite a disavowal that the lender would interfere with the lawyer's independent judgment, or that the client has consented to the loan arrangement, does not alter the economic reality that the lawyer could feel pressured to bring the case to conclusion — thereby turning the unearned fee expectancy into an earned fee — in order to satisfy the claim of a creditor with a security interest in that specific fee. In addition, a secured creditor might deem itself insecure if the lawyer missed one or more monthly interest payments, and might seek to accelerate the loan, bringing even greater pressure on the lawyer to conclude the matter quickly or, perhaps, to relinquish control to another lawyer.

The Committee recognizes that lawyers and law firms borrow money from lending institutions every day and, in some cases, they secure those loans with various firm assets. But this is far different than the arrangement under consideration here. The circumstances in which a lawyer would borrow money and grant a security interest in the fee are those in which neither the lawyer nor the client has other access to funds (or other security) — thus setting the stage for the economic pressure that may compromise the lawyer's judgment.

For the above reasons, the Committee is of the view that it would be unethical for a lawyer to borrow funds to pay litigation expenses in a particular case and grant a security interest in the lawyer's contingent fee as collateral for the loan. ■



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IN RE:
ORDER AMENDING
SCR 3.130(7.03) - ATTORNEYS' ADVERTISING COMMISSION

2003-1



(1) There shall be created an Attorneys' Advertising Commission which shall perform such functions in regulating lawyer advertising as prescribed in these Rules.

(2) The Commission shall consist of nine (9) persons appointed by the President and approved by the Board. Each Commission member shall be appointed for a term of three years, with terms so established that the terms of the Commission members shall be staggered. Vacancies for unexpired terms shall be filled in the same manner as original appointees, but the appointees shall hold office only to the end of the unexpired term. No member may serve more than two (2) terms in succession, and may be removed at any time by a majority vote of the Board.

(3) Each Commission member shall be a citizen of the United States and licensed to practice law in the Courts of the Commonwealth.

(4) The Commission shall be provided with sufficient administrative assistance from the Director as from time to time may be required.

(5) The Commission shall have general responsibilities for the implementation of this Rule. In discharging its responsibilities the Commission shall have authority to:

(a) Issue and promulgate regulations and such forms as may be necessary, subject to prior approval by the Board. Each member of the Association shall be given at least sixty (60) days advance notice of any proposed regulations and an opportunity to comment thereon. Notice may be given by publication in the journal of the Kentucky Bar Association.

(b) Report to the Board at its last meeting preceding the Annual Convention of the Association, and otherwise as required, on the

status of advertising with such recommendations or forms as advisable.

(c) Delegate to an employee of the KBA designated by the Director of the Kentucky Bar Association the authority to approve advertisements on its behalf submitted pursuant to Rule 7.05(2).

(d) Hold hearings, conduct investigations, subpoena witnesses and documents and administer oaths or delegate this authority to a Commission member or a hearing officer who shall proceed in the name of the Commission.

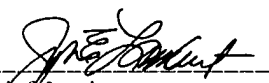
(e) Seek out violations of these Rules and resolve the violations under Rule 7.06(4).

(6) The Commission shall prepare a budget for the succeeding year and shall submit same to the Board of Governors for inclusion with the budget of the Association.

(7) The Commission shall act upon advertisements in panels of three (3) persons. A quorum to act upon an advertisement shall consist of not fewer than two (2) members of a panel. A quorum to do business in meetings of the entire Commission shall consist of not fewer than five of its members in attendance; provided, however, that one member, or a hearing officer appointed by the Commission, may conduct hearings and in an emergency where a quorum is unavailable one member may issue a notice of proposed disapproval under Rule 7.06.

All concur.

ENTERED this the 17th day of January, 2003.


Chief Justice

Notice *For Comment*

Proposed Regulations of the Attorneys' Advertising Commission, pursuant to SCR 3.130-7.03 (5) (a)

As approved by the KBA Board of Governors
January 17, 2003

Publisher's Note:

Supreme Court Rule SCR 3.130 contains the Kentucky Rules of Professional Conduct (KRPC) which include rules on lawyer advertising. KRPC 7.03 establishes an Attorneys' Advertising Commission (Commission) which has general responsibilities for implementing the lawyer advertising rules. In discharging its responsibilities, the Commission is given authority to issue and promulgate regulations subject to prior approval by the Board of Governors. When proposed regulations are issued, members of the Kentucky Bar Association are entitled at least sixty (60) days advance notice and an opportunity to comment. The Commission has promulgated the following enumerated regulations which were approved by the Board of Governors on January 17, 2003 subject to review and consideration of comments from the membership. Members wishing to comment on these proposed regulations must do so in writing. Any written comments must be sent no later than June 1, 2003 to the Attorneys' Advertising Commission, c/o Bruce K. Davis, KBA Executive Director, 514 West Main Street, Frankfort, KY 40601-1883.

AAC Regulation No. 1:

FALSE, DECEPTIVE AND MISLEADING ADVERTISING

not designed in any way to limit the authority of the Inquiry Commission with regard to any of the rules of professional conduct.

A. Authority, Purpose and Scope

1. SCR 3.130-7.03(5) provides in part that the Attorneys' Advertising Commission [identified throughout these regulations as "the Commission"] has general responsibility for the implementation of Rule 7 of the Kentucky Rules of Professional Conduct (SCR 3.130-7.01 et seq.) SCR 3.130-7.03(5)(a) provides, further, that the Commission may issue and promulgate regulations to discharge its responsibility. This Regulation implements SCR 3.130-7.15, prohibiting false, deceptive or misleading communications, pursuant to the authority conferred upon the Commission in SCR 3.130-7.03(5).

2. This Regulation No. 1 identifies certain types of content that render an advertisement false, deceptive or misleading within the meaning and intent of SCR 3.130-7.15. However, this Regulation is not intended to be an exhaustive listing of all ways in which an advertisement may be false, deceptive or misleading for purposes of SCR 3.130-7.15. Accordingly, this Regulation will not be construed as limiting the provisions of that Rule or as limiting the power of the Commission to determine that a particular advertisement is false, deceptive or misleading for reasons not specified in this Regulation. Further, it is

3. This Regulation No. 1 applies only to communications by or on behalf of a lawyer or law firm that concern legal services available from the lawyer or firm and:

- a. are disseminated over electronic broadcast media, including television and radio advertisements;
- b. are published in public print media, including advertisements in newspapers, magazines and telephone directories;
- c. appear in any print or electronic publication disseminated by a third party, including advertisements that appear in programs for public events or in newsletters, directories or other publications of civic organizations, charitable entities and educational institutions;
- d. are accessible to the public on the internet, including home pages and World Wide Web sites;

- e. are issued as unsolicited electronic mail ("e-mail") communications to one or more persons with whom the lawyer or firm has no family relationship or direct prior professional relationship;
- f. are contained in newsletters, brochures, pamphlets or other printed materials provided to prospective clients; or
- g. constitute solicitation of professional employment from a prospective client within the scope of SCR 3.130-7.09.

B. Advertising That Constitutes a Material Misrepresentation of Fact or Law Under SCR 3.130-7.15(1)(a)

SCR 3.130-7.15 (1)(a) provides in part that a communication about legal services is false, deceptive or misleading if it contains a material misrepresentation of fact or law. The Commission will consider an advertisement to be misleading and to contain a material misrepresentation of fact or law, in violation of the said Rule, if the advertisement:

- 1. contains any material misrepresentation regarding the nature of the services offered in the advertisement or the restrictions imposed upon those services by the Rules of the Supreme Court of Kentucky;
- 2. contains any material misrepresentation of fact regarding a lawyer's educational background, employment history, professional experience or other credentials;
- 3. contains any material misrepresentation of fact regarding a law firm's collective experience in a field of practice;
- 4. contains any material misrepresentation of fact regarding the identity of the lawyer(s) who will actually perform the legal services or the location of the office where the services will be performed;

- 5. includes an appearance by a non-lawyer in a manner that suggests or implies that he or she is a lawyer;
- 6. includes an appearance by an actor in a manner that suggests or implies that he or she is an actual client of the advertising lawyer or law firm; or
- 7. displays any "prop" (including any motor vehicle, product or other tangible item not actually involved in a legal matter) in a manner that suggests or implies that it was actually involved in a particular legal matter.

C. Information That Must Be Included in an Advertisement to Avoid a Misleading Omission Under SCR 3.130-7.15(1)(a)

SCR 3.130-7.15(1)(a) provides in part that a communication about legal services is false, deceptive or misleading if it omits a fact necessary to make the communication as a whole not materially misleading. The Commission will deem an advertisement to be misleading, within the meaning and intent of the said Rule, if the advertisement fails to include any information required by this Part C.

1. Office location; telephone number.

- a. Every advertisement must identify, by city, town or county, one or more bona fide office locations of the Kentucky lawyer or lawyers who will actually perform the services advertised. For the purposes of this requirement, a bona fide office is a physical location maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.
- b. An advertisement must not include a telephone number in a manner that misrepresents the geographic location of the office where the advertised legal services will be performed. If an advertisement includes a telephone number with an area code for a geographic region

in which the lawyer or law firm does not maintain a bona fide office, the advertisement must include a statement that the lawyer or firm does not maintain an office within the area code indicated by the telephone number. In the event of the use of a toll free number, the advertisement must indicate the location of the bona fide office(s) where a substantial amount of the services will be performed.

- c. The information referred to in (a) and (b) is not required on advertisements by group pre-paid legal plans or non-profit legal services agencies that utilize an intake or "hot-line" number for the purpose of screening, referral or giving limited legal advice, provided however, that the advertisement must otherwise comply with the Supreme Court Rules and these regulations, including the requirement of SCR 3.130-7.2(3) that a Kentucky lawyer, or lawyer otherwise admitted as provided in SCR 2.112, be listed.

2. Fair disclosure of legal requirements.

- a. In every case where an advertisement refers to the recovery of money, it must include an appropriate explanation of the legal requirements for such recovery. In any reference to a tort case, or other case in which monetary damages may be recovered, the advertisement must include, at a minimum, information that liability must be proven, that recovery of money is related to damages suffered by the plaintiff that are recoverable by law, and that recovery may be dependent on the ability to collect from the responsible party(ies), provided, however, that such statement must be in reasonably understandable language directed to the consumer. Failure to include that information in a prominent manner will be considered a misleading omission.
- b. In every case where an advertisement refers to the defense of a claim for the recovery of money, it must include an

appropriate explanation of the legal requirements for such defense. In any reference to a tort case, or other case in which monetary damages are sought, the advertisement must include, at a minimum, an appropriate discussion of liability and damages. Failure to include that information in a prominent manner will be considered a misleading omission.

D. Advertising That Creates Unjustified Expectations or Makes Unsubstantiated Comparisons Under SCR 3.130-7.15(1)(b) and (c)

SCR 3.130-7.15(1)(b) and (c) provide that a communication about legal services is false, deceptive or misleading: if the communication is likely to create an unjustified expectation about results the lawyer can achieve, states or implies that the lawyer can achieve results by means that violate the rules of professional conduct or other law, or compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated.

The Commission finds that it is misleading or deceptive, and does constitute a material misrepresentation, to lead a consumer of legal services to have unrealistic expectations about those services. An advertisement violates SCR 3.130-7.15(1)(b) and (c) if it fails to comply with this Part D.

1. Testimonials. An advertisement must not contain or refer to a testimonial. For purposes of this provision, a testimonial is a statement by any person, or by an actor portraying any person, regarding any of the following:

- a. the quality of legal services rendered by the advertising lawyer or law firm in a particular legal matter,
- b. the results obtained by the lawyer or firm in a particular legal matter, or
- c. the client's level of satisfaction with the result obtained in a

particular legal matter.

2. Advertising that refers to particular matters

or results. An advertisement must not state or refer to any of the following:

- a. the dollar amount of a judgment, verdict or settlement in any particular legal matter, unless the reason for doing so is to disseminate information regarding a judgment, verdict or settlement in a class action for the purpose of notifying persons who may have a right to participate in the proceeds thereof;
- b. any result that the advertising lawyer or law firm obtained in any particular legal matter; or
- c. the cumulative dollar value of claims that the advertising lawyer or law firm has prosecuted or defended.

3. Advertising that claims or implies a unique level of prior success.

- a. An advertisement must not state or imply that the advertising lawyer or law firm has been more successful than other lawyers or firms in obtaining satisfactory results for clients, unless the statement or implication is factually substantiated by information provided to the Commission by the advertising lawyer or law firm. In determining whether the statement or implication about prior success is factually substantiated, the Commission will consider all relevant factors. Factors that indicate that an advertisement does not violate this provision include:
 - (1) A showing that the statement or implication about prior success refers to an identifiable arena of legal practice in which the lawyer's or firm's actual level of success can be accurately assessed; and
 - (2) A showing that the statement or implication about prior success is

supported by objective information and a statistically meaningful volume of data, as distinguished from information that is subjective or anecdotal in nature.

- b. The following types of content do not constitute statements or implications about prior success within the meaning and intent of this regulation:

- (1) Communications regarding fields of practice that conform to the requirements of SCR 3.130-7.40;
- (2) Factual information regarding a lawyer's or law firm's experience in legal matters of a particular nature, as distinguished from statements or implications regarding the lawyer's or firm's level of success in those matters.

4. Advertising that suggests a likelihood of satisfactory results irrespective of the merits of the particular matter. An advertisement must not state or imply that the advertising lawyer or law firm will be able to obtain satisfactory results for a client regardless of the actual merits of the client's particular legal matter. In determining whether an advertisement violates this provision, the Commission will consider all relevant factors, including any information submitted to the Commission by the advertising lawyer or law firm. Factors that indicate an advertisement violates this provision include:

- a. Content that states, implies or suggests that potentially adverse parties will be more likely to cooperate in resolving the client's legal matter because the client is represented by the advertising lawyer or law firm; or
- b. Content that states, implies or suggests that the client will more likely prevail in a legal dispute if the client is represented by the advertising lawyer or law firm, irrespective of the merits of the client's claim or defense.

AAC Regulation No. 2:**PERMISSIBLE CONTENT OF
ADVERTISEMENTS SUBMITTED
SIMULTANEOUSLY WITH PUBLICATION**

Pursuant to SCR 3.130-7.05(1)(a)(26) the Commission may specify additional information that may be contained in advertisements that are permitted to be simultaneously submitted. The following additional information may be included in any of these advertisements:

1. Participation by the lawyer in community groups or clubs and nonprofit charitable organizations or groups, either as a member or officer;
2. Previous employment positions, including governmental and non-governmental employment;
3. Enlargements of business cards that are not themselves advertisements under SCR 3.130-7.02(1)(a), but if the advertisement includes reference to a website, the website is considered a separate advertisement;
4. Listings of immediate family, such as spouses, children and parents;
5. Information identifying the offices of the firm in several jurisdictions or cities within or without the Commonwealth of Kentucky, if such offices meet the standards for an office contained in AAC Reg. No. 1. C. (1);
6. The length of time any particular law firm or lawyer has been in practice;
7. The types of information listed in SCR 3.130-7.05(1)(a)(6)-(13) may include both past and present participation or status, if the advertisement discloses, when necessary, that the lawyer is no longer a participant or no longer holds that status;
8. A photograph of the lawyer with no accompanying scene in the background of the photograph;

9. Words such as "congratulations" or "good luck," when used in program advertisements for charitable or educational functions;

10. Such variations on the items contained herein and in SCR 3.130-7.05(1)(a) (1-25) that are minor or technical in nature and may be reviewed and approved by the designee of the Commission named herein.

AAC Regulation No. 3:**COMMUNICATIONS THAT REQUIRE THE
DISCLAIMER
"THIS IS AN ADVERTISEMENT"**

SCR 3.130-7.09(3) requires that certain types of advertisements contain the disclaimer "THIS IS AN ADVERTISEMENT." In addition, SCR 3.130-7.25 authorizes the Commission to require the disclaimer "THIS IS AN ADVERTISEMENT". This Regulation No. 3 clarifies the relationship between SCR 3.130-7.09(3) and SCR 3.130-7.25.

1. SCR 3.130-7.09(3) does not apply to every written, recorded or electronic communication from a lawyer. Rather, it applies only to any such communication that solicits "professional employment from a prospective client known or reasonably believed to be in need of legal services in a particular matter, and with whom the lawyer has no family or prior professional relationship." The term "particular matter" includes any identifiable type or category of legal matter as well as any specific case of that consumer. An advertisement that is within the scope of SCR 3.130-7.09(3) must include the disclaimer "THIS IS AN ADVERTISEMENT."

2. Even if an advertisement does not constitute a solicitation of professional employment within the scope of SCR 3.130-7.09, the Commission may require the disclaimer "THIS IS AN ADVERTISEMENT", pursuant to SCR 3.130-7.25, if the Commission concludes that the advertisement may not be perceived by the consumer as a quest for clients because of its format, manner of presentation or medium.

AAC Regulation No. 4:**DELEGATION OF ADMINISTRATIVE TASKS**

Supreme Court Rule 3.130-7.03 provides that the Commission may delegate to an employee of the KBA the authority to approve advertisements submitted under SCR 3.130-7.05(2). The Commission hereby delegates this function to the advertising paralegal, with the supervision of the Office of Bar Counsel and the Director, to approve such submissions in the limited circumstances as follows:

1. The Commission has granted prior approval of the advertisement subject to a condition and the lawyer is making a resubmission to comply with that condition;
2. The Commission has reached an informal resolution and the attorney is resubmitting the advertisement to determine if the advertisement complies with the terms of the informal resolution;
3. To determine if a submission is properly made as a simultaneous submission. If it is determined not to qualify, then the KBA would be authorized, through its designee, to issue a letter informing the attorney that the submission does not qualify as a simultaneous submission and should be submitted under SCR 3.130-7.05(2) to the Commission;
4. Advertisements submitted for review which, on their face, comply with the rules and regulations of this Commission and contain no issues requiring the individual attention of the Commission;
5. If its designee determines a question exists concerning compliance with these regulations or the Supreme Court rules that requires the Commission's review, the advertisement or videotape may be submitted to the Commission by the designee.

AAC Regulation No. 5:**TIME PERIOD FOR REVIEW AND APPROVAL OF VIDEO ADVERTISEMENTS**

1. SCR 3.130-7.05(2) allows the Commission a period of thirty days to consider an advertisement. The thirty-day period runs from the date of submission of the videotape, transcript and fees. If a transcript is presented without three copies of the videotape, the Commission will attempt to review and respond to the submission within thirty days, but the thirty day period set forth in SCR 3.130-7.05(2) will not begin to run and the advertisement will not be deemed approved if the Commission fails to respond within thirty days.
2. If the Commission approves a transcript subject to a review of the videotape, the thirty-day time period set forth in SCR 3.130-7.05(2) will commence upon the Commission's receipt of the three copies of the videotape.
3. If a videotape is resubmitted to the Commission with changes in order to comply with suggestions by the Commission, the advertisement will be deemed approved if no notice of proposed disapproval is issued within thirty days after the date of the resubmission.

AAC Regulation No. 6:**REQUEST FOR HEARING; INFORMAL RESOLUTION PROCEDURE**

1. If a lawyer or law firm desires a hearing pursuant to SCR 3.130-7.06(1), a written request for such a hearing must be made within fifteen days following the date of the notice of proposed disapproval. The written request for a hearing must state whether the lawyer or firm wishes to seek informal resolution of the Commission's objections to the proposed advertisement as authorized by SCR 3.130-7.06.
2. If a lawyer or law firm requests a hearing and wishes to seek informal resolution, the following procedure will apply:
 - a. Within seven days after the request for hearing is received, the advertising paralegal will assign the

file to a member of the Commission panel that reviewed the advertisement.

- b. Within fourteen days after receiving such an assignment, the member of the Commission will attempt to reach a compromise with the advertiser. If successful, that member will promptly notify the other members of the Commission (or panel thereof) of the terms of the proposed resolution.
- c. Within fourteen days of being notified of the proposed resolution, the other members of the Commission (or panel thereof) will state any concern or objection to the proposed informal resolution.
- d. At the end of the time period set forth in (c) above, or after an unsuccessful resolution, the Commission will notify the lawyer or law firm in writing whether an informal resolution has been reached.
- e. Within fifteen days of the date of a notice that an informal resolution conference has not reached a successful resolution, the lawyer or law firm must notify the Commission in writing if the lawyer or firm wishes to proceed with a hearing.

AAC Regulation No. 7:

HEARING PROCEDURE

1. If a notice of proposed disapproval is not resolved through an informal resolution pursuant to Regulation No. 6, and if the lawyer or law firm wishes to proceed with a hearing, the Commission, through its designees, will appoint a hearing officer to preside over the hearing. The hearing officer will be a member of the panel of hearing officers designated by the Supreme Court for the hearing of disciplinary matters, or such other hearing officer as the Commission may select, under SCR 3.130-7.06(1) and SCR 3.130-7.03(5)(d). The appointment will be made within fifteen days after the lawyer or law firm notifies the Commission:

- a. that the lawyer or firm does not wish to pursue informal resolution, pursuant to paragraph 1 of Regulation No. 6; or
- b. that the lawyer or law firm wishes to proceed with a hearing after an attempt at informal resolution has failed, pursuant to paragraph 2(e) of Regulation No. 6.

2. In a proceeding under SCR 3.130-7.06(1), the parties will be the advertising lawyer or law firm and the Kentucky Bar Association ("KBA"). The KBA will be represented in the proceeding by the Office of Bar Counsel. Any notice to the advertiser will also be sent to the Kentucky Bar Association Office of Bar Counsel.

3. Pursuant to SCR 3.130-7.06(1) and SCR 3.130-7.07, the hearing will be held within thirty days of the date of the appointment of the hearing officer as reflected in the notice to the parties.

4. The hearing officer may provide for pre-hearing conferences, disclosures of witnesses, and proposed exhibits. The hearing officer will conduct a hearing to be recorded by a court reporter. The parties will have the rights secured to a party by the Rules of Civil Procedure and the Kentucky Rules of Evidence with respect to the introduction of evidence, the right to compel the attendance of witnesses and the production of books, papers and documents and other writings except those contained in the files of Bar Counsel, and the right to cross examination. The hearing officer may also permit the filing of simultaneous briefs by the Kentucky Bar Association Office of Bar Counsel and by the lawyer or law firm. The briefs must be filed within ten days after the hearing.

5. The hearing officer must issue written recommended findings of fact and conclusions of law to the Commission within twenty days from the last date for filing simultaneous briefs. If no briefing schedule is established, the hearing officer must issue written recommended findings of fact and conclusions of law within twenty days after the hearing.

6. Under SCR 3.130-7.07(1), the Commission will issue and serve a final decision on the parties and the hearing officer within sixty days after the issuance of the written recommended findings of fact and conclusions of law by the hearing officer.

**AAC Regulation No. 8:
TIME FOR FILING APPEAL**

An appeal pursuant to SCR 3.130-7.07(1) must be filed within thirty days after service of the Commission's final decision.

**AAC Regulation No. 9:
PUBLICATION OF REGULATIONS**

The Commission will provide copies of these regulations upon request to any attorney or member of the public.

**AAC Regulation No. 10:
COPYING AND RETRIEVAL CHARGES**

SCR 3.130-7.08 permits the records of the Commission to be inspected and copied. The Kentucky Bar Association may charge a reasonable fee for copies of any Commission records that are requested, not to exceed \$.50 per page. It may also charge a search fee

of \$25.00 per hour for staff time spent responding to requests for inspection of records or making copies in the event its designee determines such is appropriate given the time required for the assembly or copying of the records.

**AAC Regulation No. 11:
REQUIREMENT FOR COMPLETE
INFORMATION**

In submitting an advertisement the lawyer or law firm must provide sufficient information to the Commission with the submission to enable the Commission to review the advertisement, and must respond to any requests for additional information that the Commission deems necessary to the review of the advertisement.

**AAC Regulation No. 12:
OTHER PROCEEDINGS**

Proceedings before the Commission do not preclude or preempt other proceedings before the Court or any of its agencies as authorized in the Supreme Court Rules.

LAWYERS PROFESSIONAL LIABILITY INSURANCE

In today's volatile and highly competitive professional liability insurance marketplace, what differentiates one organization from another?

- Is it access to many highly rated professional liability providers?
- Is the policy information and market savvy made available to you?
- Is it a willingness to assist you with underwriting and claim issues?
- Is it convenient access to a variety of other insurance products, such as businessowners coverage, or court bonds?
- Is it the level of comfort you develop by working with the same experienced account executive year after year?

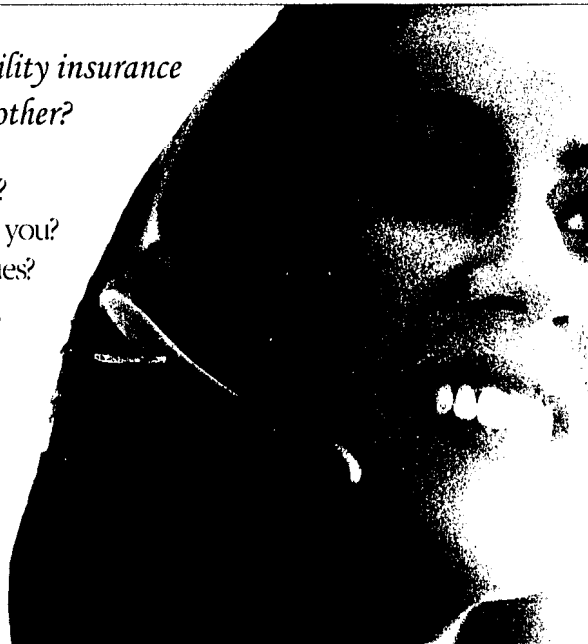
*At Daniels-Head, you'll receive all this, and more.
Give us a call!*

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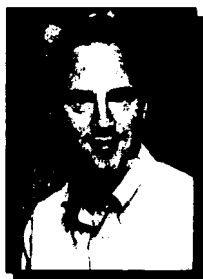
ENDNOTES

1. INA § 101(a)(48), 8 USC § 1101(A)(48).
2. *Matter of Ibarra-Obando*, 12 I&N Dec. 576 (BIA 1966, A.G. 1967); *Matter of Luviano*, Int. Dec. 3267 (BIA 1996).
3. See *Matter of Lettman*, Int. Dec. 3370 (BIA 1998) (holding that the grounds of deportability are completely retroactive and apply to all convictions no matter how old). But see *Lettman v. Reno*, No. 97-5283 (11th Cir., Feb. 26, 1999) (reversing BIA decision).
4. INA § 101(a)(43), 8 USC § 1101(a)(43), "the term applies regardless of whether the conviction was entered before, on, or after the date of enactment."
5. Deportation (or removal as it is currently known) is a legal proceeding before an immigration judge to determine whether an alien will be forced to leave the U.S.
6. The term admission implies that the alien has presented himself or herself to an immigration officer at a port of entry to the U.S. and given the officer an opportunity to decide the alien's admissibility. A finding of inadmissibility means that the alien (even a lawful permanent resident "green card holder") may be barred from re-entering the U.S. if they travel abroad. A finding of inadmissibility may also prevent an alien from becoming a permanent resident alien, even if they are otherwise already lawfully present in the U.S.
7. Pub. L. No. 100-690, 102 Stat. 4181 (Nov. 18, 1988).
8. For a history of the expansion of the concept of an aggravated felony see the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990), the Immigration and Nationality Technical Correction Act of 1994, Pub. L. No. 103-416, 108 Stat. 4320 (Oct. 25, 1994), the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (Apr. 24, 1996), and the Illegal Immigration Reform and Immigrant Responsibility Act, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996).
9. INA § 101(a)(43)(A), 8 USC § 1101(a)(43)(A); for a discussion of the treatment of the section by the federal circuit courts see *In re: Anderson David Justin Small*, 23 I&N Dec. 448 (BIA 2002).
10. INA § 101(a)(43)(B), 8 USC § 1101(a)(43)(B).
11. *Matter of Roldan*, Int. Dec. 3377 (BIA 1999).
12. INA § 101(a)(43)(F), 8 USC § 1101(a)(43)(F) and 18 USC § 16. 18 USC § 16 provides that the term "crime of violence" is defined as:
(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
13. *Matter of Magallanes*, Int. Dec. 3341 (BIA 1998) and *Matter of Palacios-Pinera*, Int. Dec. 3373 (BIA 1998), but see *In Re Luis Manuel Ramos*, 23 I&N Dec. 336 (BIA 2002) (overruling *Matter of Magallanes*) which discusses the conflicting decisions of the federal circuit courts.
14. See *United States v. Pacheco*, 225 F.3d 148, 154-55 (2d Cir. 2000) (conviction for misdemeanor simple assault under Rhode Island law constituted a crime of violence); *In re: Jacques Martin*, 23 I&N Dec. 491 (BIA 2002) (conviction for third-degree assault which is a misdemeanor under Connecticut law constitutes a crime of violence).
15. INA § 101(a)(43)(G), 8 USC § 1101(a)(43)(G).
16. INA § 101(a)(43)(M), 8 USC § 1101(a)(43)(M).
17. INA § 101(a)(43)(K), 8 USC § 1101(a)(43)(K).
18. INA § 274(a)(1)(A), 8 USC § 1324(a)(1)(A).
19. INA § 101(a)(43)(N), 8 USC § 1101(a)(43)(N).
20. INA § 101(a)(43)(C), 8 USC § 1101(a)(43)(C).
21. INA § 237(a)(2)(C), 8 USC § 1227(a)(2)(C).
22. INA § 101(a)(43)(S), 8 USC § 1101(a)(43)(S).
23. INA § 101(a)(43)(Q)-(T), 8 USC § 1101(a)(43)(Q)-(T).
24. *Jordan v. De George*, 341 U.S. 223, 229 (1951).
25. *In re: Fernando Alfonso Torres-Varela*, 23 I&N Dec. 78 (BIA 2001).
26. *Id.*
27. *Id.*
28. *Jordan v. De George*, *supra*, at 229.
29. *In re: Fernando Alfonso Torres-Varela*, *supra*.
30. INA § 237(a)(2)(A)(ii), 8 USC § 1227(a)(2)(A)(ii).
31. INA § 237(a)(2)(E), 8 USC § 1237(a)(2)(E).
32. Vienna Convention on Consular Relations and Optional Protocols, Apr. 24, 1963, 596 U.N.T.S. 262-512, art. 36.
33. *Ademodi v. State of Minnesota*, No. 90063152 (Henn. Co., 4th Jud. Dist., Minn. Dec. 21, 1998).
34. "AILA Issue Paper- Mandatory Detention: Immigrants Detained and American Families Pay the Price", posted on the Internet at the American Immigration Lawyers Association Infonet at Doc. No. 21ip1003 (May 30, 2002).
35. See footnote 2 *supra*.
36. INA § 237(a)(2)(A)(v), 8 USC § 1227(a)(2)(A)(v).

Form and Substance

In legal writing, form is substance.¹ If you are sloppy about matters like grammar and spelling and citation form, your reader will assume that you are equally sloppy in your legal research and analysis. Even worse, your readers may find your prose so difficult to read that they simply stop trying. Here are four tips that will help avoid embarrassing prose.

1. Use proper case citations. Garbled citations make a judge or lawyer question the writer's ability to practice law. If a writer can't even cite a case correctly, how can he possibly get the holding right?



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Use the Bluebook² as the default guide to legal citation. The Bluebook is Byzantine, but once you have mastered the basics, you will need to refer to it less and less often. Some jurisdictions have jettisoned the Bluebook in favor of the simpler ALWD Manual.³ Many jurisdictions have their own idiosyncratic citation rules. For Kentucky civil citation rules, see C.R. 76.12(4)(g). In Ohio, effective May 2002, the Ohio Supreme Court requires that citations in Ohio courts to Ohio cases must include a website citation, with secondary citation to printed sources.⁴ If you play on an Ohio field, play by Ohio rules.

2. Check your spelling. I take it personally when I am given something to read that has not been Spellchecked. Why should I spend my time reading something that the *writer* obviously has put so little effort into? Spellcheck is ubiquitous and easy to use, so there is no excuse for not using it on every piece of writing to which you attach your name.

Do not, however, rely blindly on spelling or grammar programs. Spellcheck, for example, can validate or substitute words that are spelled correctly, but that are not what you mean. My Spellcheck, for example, changes *Baylor* (a Southern Baptist university)

to *Babylon*. Similarly, if you type *trail attorney*, Spellcheck will miss the obvious error.⁵

3. Try to avoid split infinitives, end-of-phrase prepositions, and beginning-of-sentence conjunctions. Grammar experts disagree over whether these are rules or simply preferences.⁶ However, since many people believe fervently that they are rules, it is best to avoid the risk that your reader will think you a grammatical cretin. Disregard the "rules," however, if they create ambiguity or interfere with readability, as in: *You don't know that about which you are talking*. See, for example, the first paragraph of Tip #2.

4. Proofread everything. Proofreading may be laborious, but it's far better to discover embarrassing mistakes *before* you've filed the brief rather than afterward. Read not only for accuracy, but also for consistency. If headings of equal weight appear different (e.g., one is bold; the other is double-indented), you are likely to confuse your reader.

In addition to proofreading a document yourself, ask someone who has not worked on the document (*i.e.*, not the staff person who typed it) to proof it for you. We see what we expect to see, so a fresh set of eyes is invaluable.

Conclusion

Words are the lawyer's stock-in-trade. Use them carefully to enhance your effectiveness as a legal writer.

Footnotes

1. Pamela Samuelson, *Good Legal Writing: of Orwell and Window Panes*, 46 U. PITT. L. REV. 149, 162 (1984).
2. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (17th ed. 2000).
3. THE ALWD CITATION MANUAL: A PROFESSIONAL SYSTEM OF CITATION (2009).
4. MARK PAINTER, THE LEGAL WRITER 48 (2002).
5. *Id.* at 55.
6. Compare, for example, Samuelson, *supra* note 1, at 163 ("Never (well, almost never) split infinitives.") with TERRI LECLERCQ, EXPERT LEGAL WRITING 181-82 ("There is no 'rule' in English about split infinitives.").

CLE Award Recipients

Congratulations to the following members who have received the CLE award by obtaining a minimum of 62.5 CLE credit hours within a three year period, in accordance with SCR 3.680. The CLE Commission applauds these members for their efforts to improve the legal profession through continuing legal education.

Due to a space limitation, the members who have renewed their CLE Award this year are not listed. A comprehensive list of new award recipients and renewal recipients may be accessed through the Kentucky Bar Association website at www.kybar.org.

Eldred E. Adams Jr.
Charles Clay Adams Jr.
Judge James G. Adams
Judge John R. Adams
Pamela K. Addington
Jim Alexander
Kenneth P. Alexander
Paul Thomas Allen Jr.
Paul Alley
Bruce MacNeil Allman
Kurt Walter Anderson
Cynthia Miller Armstrong
Gregory John Bailey
John H. Baird
Ronald C. Bakus
Susan Jackson Balliet
Carrie Lynn Balthrop
Judge Joseph E. Bamberger
David Jeffrey Barberie
James W. Barnett
Patricia Todd Bausch
Larry D. Beale
Gregory Gerald Beck
Richard Isaacs Beckley III
Joseph Harold Bennett
R. Barry Benton
Herbert P. Berlejung
Richard W. Bertelson III
Judge Allan Ray Bertram
Audrey Renee Biggar
Paul Joseph Bishop
Robert T. Blackburn Jr.

Kimberly C. Blair
James Bradley Blakeman
Sara Dianne Blanford
Judith S. Boggs
Sandra Anne Bolin
Steven G. Bolton
Judge Janet Carroll Booth
Edward Kyran Box
John J. Brady
H. Howell Brady Jr.
Judge Linda Rae Bramlage
Carolyn S. Bratt
Darron Lee Brawner
Douglas Frank Brent
Christopher W. Broadus
Judge Brandy Oliver Brown
Judy Sheryl Brown
Robert L. Brown
Vickie Yates Brown
Christopher M. Brown
Rebecca C. Brown
Kelli E. Brown
Bridget S. Brown
Mark R. Brown
Carol Dan Browning
Judge Renona Carol Browning
Jerry Doyle Bryant
Judge Royce Buck
Judge Kimberly Nell Bunnell
Pervis C. E. Burcham III
Charla McNally Burchett
Tracey E. Burkett

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Michael Lee Burman
Judge Joan Lisa Byer
Judge Karen Caldwell
Gerry L. Calvert II
Andie Brent Camden
Floyd Scott Cammack
John Ledyard Campbell
Rutheford B. Campbell Jr.
Kristin Marie Carlton
Bryan Mark Carson
Melody Kay Carter
Eric Michael Case
Joseph L. Cashen
Judge Joseph W. Castlen III
Frances E. Catron
Stephen C. Cawood
James M. Cawood
Susan Pugh Chaplin
Mitchell A. Charney
Anne Adams Chesnut
Kyle Anne Citrynell
Dennis M. Clare
Eric Ryan Clark
J. Kirk Clarke
Susan Stokley Clary
Daniel W. Clifton
James Timothy Cocanougher
Judge Jo Ann Spinks Coleman
Reford H. Coleman
Judge Douglas C. Combs
Philip R. Combs
Kimberly H. Compton
John A. Conlon
Judge Karen Ann Conrad
Francis Thomas Conway
Cynthia Gale Cook
Robin Renee Cooke
Stacy E. Coontz
Thomas E. Cooper
Elizabeth D. Corr
Judge Robert Vincent Costanzo
Julia Field Costich
Richard Ayres Counts
William Bruce Cowden Jr.
Benjamin Cowgill
Judge John Reed Cox
D. Michael Coyle
William G. Craig Jr.
Jesse C. Crenshaw
Laura Lee Critz
Terry Martin Cushing
Marilyn S. Daniel
Lori Vanhoose Daniel
Christopher R. Daniels
Brian K. Darling
Denise Moore Davidson

O. Curtis Davis
 Deborah DeLong
 John Michael Debbeler
 James Lee Deckard
 Jason Allen Denney
 Jeffery Rance Derouen
 Kevin Charles Dicken
 Barbara K. Dickens
 Henry H. Dickinson
 Lothair E. Dickinson
 Stephanie A. Dietz
 Judge Donna Dixon-Rollings
 Frederick C. Dolt
 Steve Downey
 Danna E. C. Droz
 Martin P. Duffy
 Misty Jenine Dugger
 Stefanie Lynn Durstock
 Clifford R. Duvall
 Harold F. Dyche II
 Judge Robert Dyche
 Thomas Wilson Dyke
 Judge Kelly Mark Easton
 Mary Gilpin Eaves
 C. Houston Ebert
 Judge Matthew K. Eckert
 Scott Taylor Ecton
 Lloyd R. Edens
 Daniel F. Egbers
 Larry Chad Elder
 Cecilia Akin Ellis
 Shan Fox Embry
 Charles R. Epperson
 Philip Carl Eschels
 Danny L. Evans
 John Charles Evans
 Catherine M. Fahling
 Bernard Martin Faller
 Todd Andrew Farmer
 Eric Griffin Farris
 Michael W. Federle
 Ingrid Lea Federspiel
 James Owen Fenwick III
 Todd Dryden Ferguson
 Richard I. Fleischer
 Charles L. Paul Flynn
 Jerry L. Foster
 John T. Fowler III
 Joseph D. Fowler Jr.
 Hal Daniel Friedman
 Ivan Joel Froekt
 John Gregory Frye
 Richard L. Frymire Jr.
 Dana Carol Fugazzi-Smith
 Steven Brent Fuller
 Puja Gakhar
 Richard J. Gangwish II

Judge Eleanore M. Garber
 Bryan Daniel Gatewood
 Evelyn Freer Gee
 Joseph W. Gelwicks
 Eli J. George Jr.
 Judge Stephen M. George
 Grace McLane Giesel
 Stephen Graves Geurin
 Charles R. Geveden
 Kevin Robert Ghassomian
 Reid Allen Glass
 Scott Jonathan Goldberg
 Nathan Goldman
 Jane E. Graham
 Matthew R. Grant
 Tara A. Grause
 Justice William Graves
 Joni L. Grayson
 William Alfred Green III
 Bart Loveman Greenwald
 George D. Gregory
 Robert Withers Griffith
 Joanne Frances Grogan
 Judge Monte D. Gross
 Judge Paul D. Gudgel
 Julie Kaye Hackworth
 Donna R. Hale
 Martin Ellison Hall
 Matthew Brent Hall
 Michael Shane Hall
 Ryan M. Halloran
 Eric Allen Hamilton
 Traci Snyder Hancock
 Charles Wayne Hancock II
 Michael Louis Harned
 James G. Harralson
 Johnny Ray Harris
 Judge William R. Harris Jr.
 Martha Blair Harrison
 Judge Michael Wade Harrod
 David Hare Harshaw III
 John Cary Hatcher Jr.
 Lucius P. Hawes Jr.
 Walter Aden Hawkins
 William A. Hayes
 Paul Cleon Hayes
 Loretta Marie Helfrich
 Judge Juda Maria Hellmann
 T. Kennedy Helm III
 John H. Helmers
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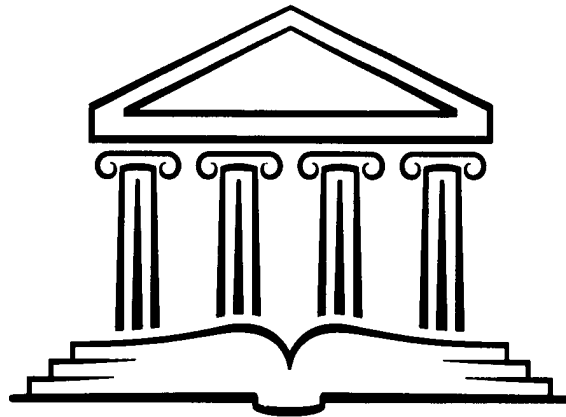
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(859) 255-9913

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Northern Kentucky Bar Association
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(859) 781-1300

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

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

MARCH 2003

- 18 Environmental Brown Bag
Louisville Bar Association
- 19 Mastering the Web-Tips for
Effective Internet Research
Cincinnati Bar Association
- 19 Technical Seminar
*Kentucky Academy of Trial
Attorneys*
- 19 Solo/Small Firm Brown Bag
Louisville Bar Association
- 20 Technology for the Rest of Us
(includes ethics)
Louisville Bar Association
- 21 Criminal Law Brown Bag
Louisville Bar Association
- 21 Solo/Small Firm Seminar
Cincinnati Bar Association
- 26 Real Estate Brown Bag
Louisville Bar Association
- 26 Basic Wills and Trusts
Cincinnati Bar Association
- 27 Labor & Employment
Brown Bag
Louisville Bar Association
- 27-28 Workplace Litigation: Workers
Comp and Employment Law
*Kentucky Academy of Trial
Attorneys*
- 28 In-House Counsel Brown Bag
Louisville Bar Association

APRIL 2003

- 2 LBA Brown Bag
Louisville Bar Association
- 2 The Nuts and Bolts of
Landlord/Tenant Law
Cincinnati Bar Association
- 4 Presidential Series-Monroe
Freedman
Louisville Bar Association
- 8-10 Spring Break Seminar in
Destin, FL
*Kentucky Academy of Trial
Attorneys*
- 9 Bankruptcy Law Update
Cincinnati Bar Association
- 10 Legal Writing
Cincinnati Bar Association
- 10 SEC Primer (satellite)
Louisville Bar Association
- 11-12 23rd Annual Conference on
Legal Issues for Financial
Institutions
UK-CLE
- 16 Employment Discrimination/
Religious Aspects
Relating to 911
Cincinnati Bar Association
- 16 LBA Brown Bag
Louisville Bar Association
- 17 Family Law Half Day
Louisville Bar Association

- | | | | | | |
|-------|---|-------|---|----|--|
| 18 | LBA Brown Bag
<i>Louisville Bar Association</i> | 13 | LBA Brown Bag
<i>Louisville Bar Association</i> | 20 | Intellectual Property
Day Long
<i>Louisville Bar Association</i> |
| 22-23 | New Lawyers Program
<i>Kentucky Bar Association</i> | 14 | Representing Closely Held
Businesses, Their Owners &
Employees: A Study of
Conflicts (Ethics)
<i>Louisville Bar Association</i> | 21 | CLE at Churchill Downs
<i>Louisville Bar Association</i> |
| 23 | PI/Auto Accidents
<i>Cincinnati Bar Association</i> | 14 | Bankruptcy Half Day
<i>Louisville Bar Association</i> | 22 | Appellate Half Day
<i>Louisville Bar Association</i> |
| 23 | ADR/Mediation Half Day
<i>Louisville Bar Association</i> | 15-16 | Annual Convention &
Seminar
<i>Kentucky Academy of Trial
Attorneys</i> | 23 | Health Law Half Day
<i>Louisville Bar Association</i> |
| 24 | Probate & Estate Day Long
<i>Louisville Bar Association</i> | 16 | Litigation Ethics-Steve
Easton
<i>Louisville Bar Association</i> | 28 | ADR/Mediation Half Day
<i>Louisville Bar Association</i> |
| 25 | Persuasion in the Courtroom-
Joe Guastaferrro
<i>Louisville Bar Association</i> | 16-17 | 11 th Biennial Joe Lee
Bankruptcy Law Institute
<i>UK-CLE</i> | 29 | Solo/Small Firm Half Day
<i>Louisville Bar Association</i> |
| 25 | Subrogation/ERISA
<i>Kentucky Academy of Trial
Attorneys</i> | 30 | Litigation Half Day
<i>Louisville Bar Association</i> | | |
| 27 | Employment Law
Fundamentals
<i>Kentucky Academy of Trial
Attorneys</i> | | | | |
| 30 | ABC's of Successful Law
Office Management for Small
& Medium Firms
<i>Cincinnati Bar Association</i> | | | | |
| 30 | Young Lawyers Half Day
<i>Louisville Bar Association</i> | | | | |
| 30 | 18 th Annual National Equine
Law Pre-Conference
<i>UK-CLE</i> | | | | |

MAY 2003

- | | |
|-----|--|
| 1-2 | 18 th Annual National Equine
Law Conference
<i>UK-CLE</i> |
| 8 | Domestic Relations Institute
<i>Cincinnati Bar Association</i> |
| 8-9 | Sixth Annual Family Law
Seminar (AAML)
<i>Louisville Bar Association</i> |

NEW LAWYERS' PROGRAM REQUIREMENT

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

Upcoming programs are as follows:

April 22-23, 2003
Louisville
The Hurstbourne Hotel

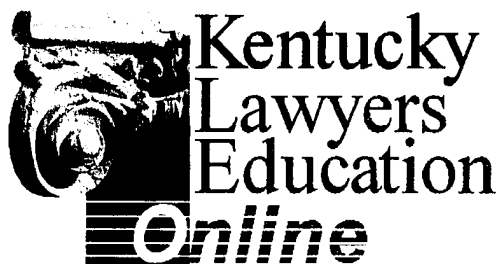
October 2-3, 2003
Covington
**Northern Kentucky
Convention Center**



- 30 Auto Litigation Seminar
Kentucky Academy of Trial Attorneys
- 30 Labor & Employment Law Seminar
Cincinnati Bar Association

JUNE 2003

- 3 Environmental Day Long
Louisville Bar Association
- 4 Social Security Brown Bag
Louisville Bar Association
- 5 In-house Counsel Brown Bag
Louisville Bar Association
- 6 Criminal Law Half Day
Louisville Bar Association
- 6 Auto Litigation Seminar-Live Repeat
Kentucky Academy of Trial Attorneys
- 8-13 Trial Advocacy Institute
Cincinnati Bar Association
- 10-12 DPA Annual Conference
Department of Public Advocacy
- 11-13 KBA Annual Convention
Kentucky Bar Association
- 13 Auto Litigation Seminar-Live Repeat
Kentucky Academy of Trial Attorneys
- 18 Real Estate Brown Bag
Louisville Bar Association
- 19 Business Law Half Day
Louisville Bar Association
- 19-20 Employee Benefits Conference
Cincinnati Bar Association



Important CLE Reminders

Don't forget the CLE year ends June 30th!

That means you must have *completed* 12.5 credits, including 2.0 credits in the ethics area, *on or before* June 30th. Take advantage of the KBA's growing catalogue of on-line programs to get those last-minute credits. The KBA, as part of KLEO (Kentucky Lawyers' Education Online) will introduce several new programs in April, including: "Actual Innocence," featuring **Barry Scheck** of Cardozo Law School; "Terrorism Within," featuring **Morris S. Dees, Jr.** of the Southern Poverty Law Center; "Advocacy for Us: The Wisdom of Pogo," featuring **A.P. Carlton**, 2002-2003 President of the ABA; and "Life, Liberty and Pursuit of Security: Life & Liberties in the Aftermath of 9/11," featuring **Julian Epstein**, Washington, D.C., **Dianna P. Kempe**, Hamilton, Bermuda, **A.P. Carlton, Jr.**, Raleigh, North Carolina, **Dan L. Owens**, Louisville, and **Frances E. Catron**, Lexington. These programs and other features from the 2002 KBA Annual Convention will debut on-line for your year-end viewing convenience through the facilities of **West LegalEdcenter.com**. It's easy! Just go to http://www.kybar.org/CLE/cle_online.htm, select a program, purchase it and learn!

Please remember to report your credits to the KBA CLE office. Supreme Court CLE Rules limit certain categories of CLE, including on-line offerings, to a total of 6.0 credits. So make sure to check SCR 3.663 (6), (7) and (8).

- 20 All Stars and Litigation Support Staff Seminar
Kentucky Academy of Trial Attorneys
- 20 Family Law Day Long
Louisville Bar Association
- 23-30 Ethics Express Seminar and Golf Outing
Kentucky Academy of Trial Attorneys

- 25 Tax Brown Bag
Louisville Bar Association
- 26 Labor & Employment Half Day
Louisville Bar Association
- 26-27 Last Chance Video
UK-CLE

Update 2002

Every year hundreds of individuals and organizations make it possible for the Kentucky Bar Association to bring CLE to your doorstep, free of charge. Through the contributions of

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Thank You Thank You
Thank You!

Kentucky Bar Foundation

*Helping
Those
Helping
Others*

The Center for Women and Families

Serving fourteen counties, The Center for Women and Families in Louisville is a non-profit organization rendering assistance and advocating on behalf of women and families victimized by rape, sexual assault and domestic violence.

In June 2002, the Kentucky Bar Foundation awarded the Center a grant that has been utilized to provide underlying financial support for the Center's Immigration Attorney, Gretchen Hunt, who has furnished critical legal services to battered immigrant and refugee women and their children. Gretchen Hunt initially came to the Center as a National Association of Public Interest Law Fellow. During her two-year fellowship, Gretchen demonstrated her commitment to serving battered immigrant women and created a statewide presence by providing legal representation, as well as conducting training and consultation to social service providers throughout Kentucky. The Bar Foundation's support through its grant has been critical in maintaining this valuable and unduplicated service to the immigrant and refugee victims, such as "Ms. R" - one of the first participants to take advantage of the Center's newly developed immigrant services program.

Far too long after Ms. R's husband attacked her in front of their young child, she went to the Center out of desperation, seeking emergency shelter, legal assistance and counseling. Battered and speaking little English, she was at that time a stranger in a strange land.

Though she had contacted the police when her husband attacked her, the police did not use an interpreter. She was never advised of her rights as a victim, and no one explained what would happen during the criminal justice process. When Ms. R sought legal counsel for a divorce, she was ultimately given papers in English and eventually told only that she was divorced. Her legal questions remained unanswered, and she continued to struggle both economically and emotionally.

After coming to the Center, Ms. R was provided with direct counseling and legal assistance in her own language. With the help of the Center's immigration attorney, Ms. R began to remove, one by one, the barriers to her safety and survival. First, she was helped to understand how to pursue the criminal charges against her ex-husband and to translate her divorce agreement. Next, the Center assisted Ms. R in navigating the public benefits system to obtain benefits for her daughter. Under the Trafficking Victims and Violence Protection Act of 2000, a new visa program had been created for individuals like Ms. R, non-citizen victims of crimes who had suffered substantial harm and had cooperated with authorities in the investigation and/or prosecution of the crime. With the

assistance of Gretchen Hunt, Ms. R obtained a certificate from the police officer that had investigated her case. She compiled documentation of her injuries, mental and physical, and submitted the evidence to the INS. Ms. R is one of the first individuals in the country to obtain interim relief under this recently enacted federal law.



While counseling, safe shelter and support groups were essential to her survival, it was access to legal representation and a work permit that enabled Ms. R to begin to become independent and free of violence.

Ms. R remains today an active client of the immigrant services program. Her journey and struggles illustrate the problems of many immigrant victims of violence whom, even when they do seek help within our justice system, find

themselves vulnerable, or at worst, disenfranchised due to language barriers and lack of appropriate services. Her story remains an inspiration to the many immigrant victims of domestic violence and sexual assault who have been assisted by the Center, and a daily reminder to us of the work that must yet be done. The Kentucky Bar Foundation is proud to play an important role in making a difference in the lives of these families.

Big Sandy Area Child Advocacy Center

The Kentucky Bar Foundation is further helping to make a difference in abused children's lives in Eastern Kentucky through recent grants to the Big Sandy Area Child Advocacy Center (BSACAC). Based in Pikeville, BSACAC has been able to serve both victims of abuse and the professionals involved in criminal child abuse investigations. According to Rick Bartley, Pike County Commonwealth's Attorney, "BSACAC was created with the mission to lessen the trauma experienced by the child victim of abuse by providing a child-friendly center with a warm, home-like, supportive environment where intervention efforts can be offered to reduce the stress to the abused child and the non-offending parent or adult caregiver. The Center further commits to raise public awareness for the need to stop and prevent physical and sexual abuse against innocent children."

There are numerous services provided by BSACAC. A 'Kids In Court Program,' funded by a 2001 Bar Foundation grant, furnishes information to child victims and their families to help them better understand the law and our judicial system as they prepare for court. The program also provides an orientation for the child to the court system. A Non-Offending Parent Support Group allows victims' parents to discuss issues and find answers from other parents that have had similar experiences. A Resource Library offers a variety of materials specific to child abuse. A Training Library houses both videos and texts that provide information for child abuse investigators. The Center employs both a Child and Family Advocate and a Forensic Interviewer to work with the children and families as they go through the criminal investigation process.

Unfortunately, access to reliable transportation is an ever-growing issue to the clients of the Center. Due to poverty or other mobility issues, some clients cannot travel to BSACAC to access these valuable services. In response to

this need, the Bar Foundation has provided a 2002 grant to fund the 'Reliable Transportation Program.' The Bar Foundation grant has enabled transportation to the Center's coordinated services to be furnished in a timely, reliable manner at no cost to those in need of the Center's services. By removing the barrier of transportation to BSACAC support services, the 'Reliable Transportation Program' accomplishes three goals. First, services are made available to participants who could not otherwise access needed services. Secondly, families experience reduced stress, as coordination of transportation for urgent appointments are provided at no cost. And lastly, families maintain a level of privacy and dignity by feeling less obligated to divulge details of the abuse in order to arrange for transportation with friends or family. This allows for more of the family's emotional and financial resources to be spent on care-giving to the abused child.

The Bar Foundation is helping both parents and children have access to services they would not otherwise obtain, and is allowing BSACAC to coordinate child abuse services through a more home-like setting. The Bar Foundation's financial support is allowing the Center to meet a critical need of Eastern Kentucky and to better serve the child victims of abuse.

Become a Fellow!

YES... I do wish to invest in my Bar Foundation as a Fellow!

..... Enclosed is my check for \$1,250 representing full payment of my Life Fellow Membership.

..... Enclosed is my check for \$300 and I pledge to pay \$300 annually for the next four years, for a total contribution of \$1,500.

Name: _____ Tel. #: _____

Mailing Address: _____

City, State, Zip: _____

Questions? Call us at 1-800-874-6582 or 502-564-3795.

Kentucky Bar Foundation, 514 W. Main St., Frankfort, KY 40601-1883

*Note: KBF is an IRC Section 501(c)(3) organization.
Contributions are tax-deductible to the full extent of the law.*

1-800-356-5141 (code 9)
CLE Info Now!
KBA-CLE's Fax on Demand Service

Technology Advances Bring Changes: CLE Fax-on-Demand Phases Out

Generally the changes brought about by technology mean expanded member services. Unfortunately, this is not always the case. Specifically, the long-offered CLE Fax-on-Demand service that provides CLE forms, rules, schedules and other information, will no longer be available after April 30, 2003. The contractor that provides the technology framework of this information service for the KBA CLE Office, KRM, Inc., has announced that because of sharply declining demand from KBA members, it is no longer economically feasible for them to provide the service. Fax-on-Demand (FOD) has declined in use from almost 2,000 requests per month to no requests for the past five months. The information available through FOD is now readily available on the KBA website at www.kybar.org and with the ever-expanding use of internet resources, KBA members no longer seek the lower technology information resources provided by FOD. Make sure you check our website for the CLE information you need after April 30th. If the internet is not your style, simply call the CLE Office at (502) 564-3795 and any of the staff members will be happy to assist you.

Employment of an Alien *continued from page 22*

ENDNOTES

1. 8 CFR §274a.1(g).
2. 8 CFR §274a.2(b)(2)(ii).
3. 8 CFR §274a.2(b)(1)(i), (ii).
4. 8 CFR §274a.2(b)(1)(iii).
5. 8 CFR §274a.2(b)(1)(vi).
6. 8 CFR §274a.2(b)(1)(v).
7. INA §274B(a)(6), 8 USC §1324b(a)(6).
8. INA §274A(b)(1)(B).
9. INA §274A(b)(1)(C).
10. INA §274A(b)(1)(D).
11. 8 CFR §274a.2(b)(3).
12. 8 CFR §274a.2(b)(1).
13. 8 CFR §274a.2(c)(1)(i).
14. INA §274A(e)(4).
15. For criminal cases *See U.S. v. DavCo Food, Inc.*, Case No. 88-00253-A (E.D. Va. 1988); *U.S. v. Chauvin*, Case no. 88-00236-A (E.D. Va. Oct. 4, 1988).

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THIS IS AN ADVERTISEMENT

The Kentucky Bar News

SURVEY PARTICIPANTS REQUESTED

The Chief Justice's Jury Study Commission is surveying Kentucky lawyers about various issues relating to jury service. The multiple-choice survey may be completed on-line at:

<http://www.kycourts.net/onlineresponseforms/default.asp>

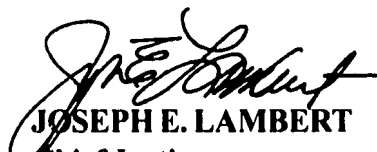
Lawyers who have previously provided an e-mail address to the Kentucky Bar Association will receive an e-mail asking them to complete the on-line survey. A hyperlink will be provided in the e-mail, and the practitioner can simply "click" on the web address and fill out the survey. Participants' identities will remain confidential.



Your responses are important and will be considered when the Commission makes its final report and recommendations. Results of the lawyer survey will be compared to answers provided by the judiciary, circuit clerks and jurors. All lawyers are encouraged to take this opportunity to express their opinions about these important issues.

The Jury Commission was established in the fall of 2001 to review jury service and to recommend any needed changes. James E. Keller, Associate Supreme Court Justice, chairs the Commission.

Please take a few minutes to answer the multiple-choice questions and to assist the Court of Justice and the Jury Study Commission in this endeavor. Your responses are important, and your participation is greatly appreciated.


JOSEPH E. LAMBERT
Chief Justice
Commonwealth of Kentucky

The Right to Counsel in Kentucky

by Ernie Lewis
Public Advocate

The Kentucky Bar Association has been a significant part of the development of the right to counsel in Kentucky. In the recent past, KBA Presidents Dick Clay and Don Stepner played an important role on the Kentucky Blue Ribbon Group on Improving Indigent Defense in the 21st Century, whose recommendations have had a lasting impact on improving funding levels for the Department of Public Advocacy. At its 2002 Annual Meeting, the KBA recognized Governor Patton for his role in improving indigent defense in Kentucky. The KBA has been a partner in supporting a vigorous right to counsel in our Commonwealth.

It was appropriate then for the assistance of the Kentucky Bar Association to be sought in response to the recent budget crisis as it effects public defender services in Kentucky. Chairman of the Public Advocacy Commission Robert Ewald and Public Advocate Ernie Lewis appeared before the Board of Governors on January 17, 2003 to seek the Board's approval of a Resolution which would accomplish two things. First, the resolution addressed the 40th Anniversary of the *Gideon v. Wainwright*, 372 U.S. 335 (1963) decision. Second, the resolution addressed the budget crisis. The Board was told that the resolution was needed to both celebrate Gideon and to communicate that the KBA was appreciative of the work of Kentucky's public defenders. The Board was also told that the budget crisis had the potential of requiring case appointments to be declined resulting in the accused not being represented by counsel as a result of insufficient funding. The Board was informed that Kentucky was on the verge of committing a systemic constitutional violation in regards to its obligations under Gideon.

The Kentucky Bar Association Board of Governors in response passed unanimously the attached resolution. By doing so, the Board of Governors is asking local bar associations to recognize March 18, 2003 as Gideon Day, as well as to educate the bar and the public regarding the importance of equal access to justice in our democracy. The Board of Governors also communicated to the Governor and the General Assembly to their desire that the policy makers in Kentucky "ensure that budgetary reductions that threaten the quality of services provided by and impose excessive caseloads upon Kentucky's public defenders be avoided, and that reasonable and adequate funding levels be made available to the Department of Public Advocacy during this biennium."

A RESOLUTION recognizing March 18, 2003 as *Gideon Day* throughout the Kentucky Bar Association and supporting a reasonable funding level for Kentucky's public defenders.

WHEREAS, Clarence Earl Gideon, a 51-year-old man with an eighth-grade education, was charged with breaking into a Florida poolroom on June 3, 1961 and stealing coins from a cigarette machine. He said that he was innocent.

WHEREAS, Gideon's request for counsel was denied by the State of Florida trial judge. Gideon was forced to defend himself against the case presented by the state's prosecuting attorney. Gideon tried to cross-examine the witnesses against him. He was convicted of felony breaking and entering with intent to commit a misdemeanor, and was sentenced to five years in state prison.

WHEREAS, Gideon submitted a handwritten petition to the United States Supreme Court from his Florida prison cell, arguing that the United States Constitution does not allow poor people to be convicted and sent to prison without legal representation. Twenty-two state attorneys general submitted a brief supporting him.

WHEREAS, on March 18, 1963, the Supreme Court unanimously ruled that Gideon's trial and conviction without the assistance of counsel was fundamentally unfair and violated the Sixth and Fourteenth Amendments to the United States Constitution. It is an "obvious truth," the Court stated, that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."

WHEREAS, at his retrial with the assistance of counsel, Clarence Earl Gideon was found to be not guilty. This acquittal occurred partly as a result of appointed counsel's cross-examination of the taxi cab driver upon whose testimony Gideon had been convicted at the first trial.

WHEREAS, as a result of the *Gideon* decision, all states are now obligated to provide court-appointed counsel to persons who have been charged with a crime who are too poor to afford an attorney.

WHEREAS, later Supreme Court decisions have further expanded the states' obligation to provide counsel to accused individuals who cannot afford to hire a private attorney—most recently, misdemeanor defendants receiving a suspended sentence (*Alabama v. Shelton*). This obligation exists even as state budget revenues shrink and the pressure to cut expenditures grows.

WHEREAS, 40 years later, implementation of the right to counsel is uneven across the nation in terms of quality of representation, funding, staffing, training, caseloads, and

timeliness of appointment. The importance of *Gideon's* promise of equal justice has been reaffirmed by recent exonerations of the innocent as a result of DNA evidence including two such exonerations in Kentucky, and revelations of deficient and underfunded indigent defense systems.

WHEREAS, Kentucky has long recognized the right to counsel in Section 10 of the Kentucky Constitution and decisions of the appellate courts.

WHEREAS, in *Gholson v. Commonwealth*, Kentucky's highest court in 1948 stated that "common justice demands" that an attorney must be appointed when a person charged with a felony cannot afford to hire his own counsel.

WHEREAS, members of the Kentucky Bar Association have long represented indigents accused of crimes at little or no fee for many years before and after the *Gideon* decision. In *Bradshaw v. Ball*, the Kentucky Court of Appeals held that forcing lawyers to represent poor persons charged with a crime without compensation was unconstitutional.

WHEREAS, the Department of Public Advocacy was created in 1972 when House Bill 461 was passed by the General Assembly at the request of Governor Wendell Ford in order to implement fully in Kentucky the mandates of the *Gideon* decision.

WHEREAS, most recently in 1999, Kentucky's *Blue Ribbon Group*, upon which two Kentucky Bar Association Presidents served, found that the Kentucky public defender system was the poorest funded system in the country in terms of defender salaries, funding per case, and funding per capita.

WHEREAS, much progress with Kentucky's public defender system has been made since 1999, but recent budget reductions coupled with an increase in caseloads threaten to undermine that progress.

WHEREAS, the Department of Public Advocacy today represents over 108,000 persons each year who cannot afford to hire an attorney to represent them.

WHEREAS, Kentucky's public defenders, both public and private, number over 400 lawyers and staff, and include persons who have made representing the poor their career and vocation.

WHEREAS, numerous private lawyers continue to serve as contract public defenders at considerable cost to them.

WHEREAS, the Department of Public Advocacy, having had its budget reduced 4% during FY01 and FY02, is now

faced with the prospect of a 2.6% budget reduction in FY03 and a 5.2% budget reduction in FY04.

WHEREAS, Kentucky public defenders opened an average of 435 cases during FY02, 7.2% more than the previous year.

WHEREAS, rising caseloads and a declining budget threatens the quality of services being rendered by Kentucky's public defenders.

WHEREAS, the Kentucky Public Advocacy Commission, which includes representatives of the Kentucky Bar Association, has called upon the Kentucky Bar Association Board of Governors to take action to avoid a crisis in the delivery of public defender services in Kentucky.

NOW, THEREFORE,

Be it resolved by the Board of Governors of the Kentucky Bar Association:

Section 1. That March 18, 2003 is hereby designated as *Gideon* Day throughout the Kentucky Bar Association.

Section 2. That the Kentucky Bar Association hereby rededicates itself to the principle of equal justice for all regardless of income.

Section 3. That the Kentucky Bar Association Board of Governors hereby calls upon the Governor and the General Assembly to ensure that budgetary reductions that threaten the quality of services provided by and impose excessive caseloads upon Kentucky's public defenders be avoided, and that reasonable and adequate funding levels be made available to the Department of Public Advocacy during this biennium.

Section 4. That members of the Kentucky Bar Association, including representatives of prosecution, public defense, the courts, and the private bar, are encouraged to engage in appropriate commemorative activities to educate the public about the importance of equal access to justice in our great democracy, and the mandates of *Gideon's* constitutional mandate even in the face of periodic budgetary constraints.

Section 5. That the Kentucky Bar Association Board of Governors salutes public defenders and staff throughout the Commonwealth of Kentucky for their dedication to public service.

Section 6. That commemorative copies of this resolution shall be printed and made available to local bar associations, government agencies, schools and the public, to promote ongoing understanding of and commitment to the fulfillment of *Gideon's* promise.

Call For Entries



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.

Deadline:

**Entries must be received
NO LATER THAN
May 30, 2003 to:**
*Communications Department
Kentucky Bar Association
514 West Main Street, Frank-
fort, KY 40601-1883*

SUMMARY OF MINUTES

KBA BOARD OF GOVERNORS MEETING NOVEMBER 14 AND 15, 2002

The Board of Governors met on November 14 and 15, 2002. Officers and Bar Governors in attendance were *President* S. Catron, *President-Elect* J. Stevenson, *Vice President* K. Westberry, *House of Delegates Chair* F. Cook, *Young Lawyers Section Chair* M. Cox, *Bar Governors 1st District* C. Woodall, M. Whitlow; *Bar Governors 2nd District* — C. English, Jr., C. Moore; *3rd District* — J. Dyche, R. Madden; *4th District* — J. White, M. O'Connell; *5th District* — S. Kinkead, D. McSwain; *6th District* — B. Bonar, M. Grubbs and *7th District* — D. Combs, J. Rosenberg. Absent were: *Immediate Past President* B. Storm and *House of Delegates Chair-Elect* L. York.

In Special Session on Thursday, November 14, the Board of Governors continued their discussion on the current status of the law on lawyer advertising, the needed changes to the Kentucky regulation of lawyer advertising, and how to implement any suggested changes. At the conclusion of the special session, the Board approved the following recommendations:

- Recommend to the Supreme Court that the Court approve the necessary Rule change to increase the number of members on the Attorneys' Advertising Commission from three (3) to nine (9).
- Approved the adoption of twelve (12) attorney advertising regulations. The regulations will be scheduled for publication in the Bench & Bar magazine under the provisions of KRPC 7.03.

In Executive Session on Friday, November 15, the Board considered two (2) default cases, involving one lawyer and two (2) restoration matters. Robert A. Coleman, Paducah; John R. Crockett, Louisville; Sheila Mann, Tomahawk and Roger Rolfes, Florence, non-lawyer members serving on the Board pursuant to SCR 3.375 participated in the deliberations.

In Regular Session on Friday, November 15, the Board of Governors conducted the following business:

- Heard status reports from the 2003-2004 Budget Committee, Client Assistance Program, Office of Bar Counsel, Lawyers Assistance Program and Rules Committee.
- Approved the re-appointment of John G. Prather, Jr. of Somerset to the Joint Local Federal Rules Commission for a four (4) year term ending on December 31, 2006.
- Heard a report from House of Delegates Chair Forrest Cook regarding the future role of the House of Delegates.
- Approved the adoption of a resolution to increase the Access to Justice fee from \$10 to \$20 on circuit court filing fees and from \$5 to \$10 on district court filing fees.
- Heard a report from President Catron on the progress of the website development project.
- Approved the re-appointment of David Yewell of Owensboro to the Bar Center Board of Trustees for another three (3) year term ending on December 1, 2005.

- Approved the appointment of J. Warren Keller of London to the Kentucky Bar Foundation Board to fill the remainder of the unexpired three (3) year term of Elizabeth Broyles ending June 30, 2004.
- The following officers were unopposed and have been elected for the term commencing July 1, 2003: President-Elect John W. Stevenson, Owensboro and R. Kent Westberry, Louisville.
- The following members of the Bar, all of who were unopposed, have been elected to the Board of Governors for a two (2) year term beginning July 1, 2003: *1st District* C. A. Woodall, III, Cadiz, *2nd District* Charles E. Moore, Owensboro, *3rd District* Jane Winkler Dyche, London, *4th District* Joseph L. White, Louisville, *5th District* Shelby C. Kinkead, Jr., Lexington, *6th District* Barbara D. Bonar, Covington and *7th District* Donald H. Combs, Pikeville.
- Approved the 2003 Holiday Schedule followed by the Court of Justice.
- Heard a report from Executive Director Bruce Davis on the progress of the Bar Center WING II construction.
- Approved granting authority to the KBA Business Law Section to communicate its own legislative position with regard to the proposed amendments to the LLC Act and the new general and limited partnership acts.
- Approved as a proposed formal opinion KBA E-420 regarding a lawyer borrowing litigation costs and granting lender a security interest in lawyer's contingent fee. KBA E-420 will be scheduled for publication in the *Bench & Bar* magazine under the provisions of SCR 3.530.

To KBA Members

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

Board meetings are scheduled on

May 16-17, 2003

June 10, 2003

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.



In Memoriam



William R. Bagby
Lexington

Carl F. Engelhardt, Jr.
Lexington

Joseph L. Famularo
Lexington

Chas E. Gaines
Louisville

Raymond E. Jones, Jr.
Louisville

Harold E. Maddox
Pikeville

Joseph E. Rose
Louisville

Paul Shapiro
Lexington



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Leadership, Ethics and Education.

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ON THE LOCAL SCENE



Local Bar Associations Elect New Officers

Daviess County Bar

The Daviess County Bar Association has named the following new officers for 2003:

President, Ronald L. Presser;
President-Elect, Charles L. Lamar; Secretary, Shealia L. Murphy; Treasurer, Evan Taylor.

McLean and Muhlenberg Bar

The McLean and Muhlenberg Bar Association Winter meeting was held January 30, 2003. The association welcomes Brian W. Wiggins as its new District Court Judge. Hon. David Jernigan, Circuit Judge, swore in the following new officers for 2003:

Keith W. Virgin, President;
Stephanie Ritchie, Secretary;
and Cher Evans, Treasurer.

Keep Your Colleagues Informed!



For publication in the *Bench & Bar*, notify the Kentucky Bar Association of your local bar association news and events.

For more information call (502) 564-3795.

Floyd County Bar Association Exceeds Fundraising Record

The Floyd County Bar Association exceeded all its previous holiday fundraising efforts when it raised \$9000 this year to be distributed to the county's fifteen food pantries. This year's presentation of the funds was made in honor of the three Floyd County attorneys who passed away in 2002, John Allen, Phil Dameron and Dan Rowland.

The Bar Association remembered the former members with special tributes by John Allen's grandson, Lexington Attorney Jim Allen; Judge Danny Caudill, and local attorney Jerry Patton. Individual memorial plaques were given to each of the families, and a permanent plaque will hang in the Floyd County Courthouse remembering these attorneys who passed away as well as those who may do so in the future.



Photo by Sheldon Compton

The Floyd County Emergency Food Shelter Services Board more than doubled its efforts to collect food for the holidays this year with the last count resting at approximately \$8,730 worth of canned and boxed goods being donated across the county. Each of Floyd County's food pantries will receive \$582. Pictured are members of the board and representatives from four of the 15 shelters participating in the drive this year. From left to right, they are: John Rosenberg, FCBA treasurer; Gwen Hall, FCBA chair; Monta Gail Burchett of the Prestonsburg Food Pantry; Barbara DeRossett of Heaven's Harvest; Charles Hackworth and Milton Harvey of the Middle Creek Community Development Club Food Pantry, and John H. "Jay" Callis.

Law Day 2003: Independent Courts Protect Our Liberties

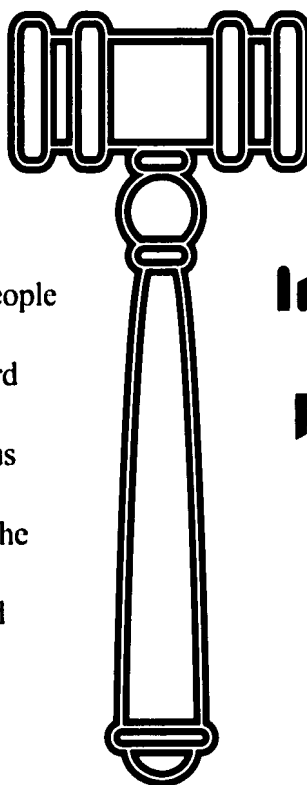
Law Day presents a unique opportunity for judges and lawyers to retell the story of the law and its role in America's democratic adventure. The many planned events enable us to help the public renew its understanding of the rule of law and the functioning of our independent courts that give meaning to the rule of law in our lives.

As lawyers, we have a special role in explaining and defending the rule of law. It is our challenge to engage the public, to help them understand and support our system of law so that the spirit of the law may be strengthened and revitalized. Nowhere is this challenge more critically important than in helping the American public understand and appreciate the importance of truly independent courts and the role they play in preserving the rule of law.

The American people may have been exposed to theory about the rule of law in Civics 101, but it is our responsibility, as lawyers, to help them recall that this was at one time a revolutionary concept for which people were willing to put their lives and fortunes on the line. Our Declaration of Independence rang loud with the word that railed against King George III, charging that he had usurped the rule of law in favor of arbitrary and capricious policies. Two of the most vociferous accusations directly dealt with courts, alleging that the King had "obstructed the Administration of Justice" and had "made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries." In short, the actions of George III corrupted the intent of laws to secure the people in the living of their lives in a free society

Today, we must use the occasion of Law Day to convey our professional belief in the legal system, and its role in keeping America free.

Our challenge is to help the American people understand all that the law does for them, and strengthen their allegiance to it. I know that we are up to that challenge. Law Day gives us a good platform for public education efforts of this sort. It enables us to reach out to teachers and schools, to the media, and to the public.



celebrate
your
freedom

**Independent
Courts
Protect Our
Liberties**

law day
may 1, 2003

On The Move

The law firm of **Burnam, Thompson, Weldon, Simons and Dunlap, P.S.C.** is pleased to announce new associate, **Michael Scott Fore**.



Michael S. Fore

Fore earned his J. D. degree from Wake Forest University and his practice will focus on general litigation and insurance defense.



Clifton B. Clark



C. M. Parenti



P. A. Sammons



Michael G. Adams

Dinsmore & Shohl LLP is pleased to announce **Clifton B. Clark** has been named partner in the Lexington office and **Christopher M. Parenti** and **P. Anthony Sammons** have joined the Litigation department in the Lexington office. **Michael G. Adams** has been hired to practice in the Labor & Employment department in the Louisville office. Clark practices in the areas of corporate law, mergers and acquisitions, taxation, family wealth planning and financial institutions. He is a licensed C.P.A. in the state of Kentucky. Clark

received his J.D. from University of Kentucky. Parenti received his J.D. from DePaul University College of Law (1998). Sammons received his LL.M. from Georgetown University Law Center, with distinction (2002) and his J.D. from University of Louisville School of Law, *cum laude* (1995). Adams received his J.D. from Harvard Law School (2001).

Stites & Harbison announces **Charlotte H. Turner, John W. Gragg, B. Amy O'Nan, Cassidy E. Ruschell, Amanda Pope Thompson and Mauritia G. Kamer** have joined the firm's Lexington office and **Shawn E. Cantley, Christopher W. Haden, Jennifer L. Kovalcik, Mandy V. Wilson, J. Duncan Pitchford, Matthew W. Breetz, Jason P. Thomas and Marjorie A. Farris** have joined the Louisville office. Turner focuses her practice on business litigation, especially employment matters, and received a J. D. from University of Kentucky. Gragg is a member of the firm's Real Estate and Banking Service Group and earned his J.D., *magna cum laude*, from University of Dayton School of Law. O'Nan, member of the firm's Torts and Insurance Practice Group, received her J.D. from University of Kentucky. Ruschell is a member of the firm's Construction Service Group and earned her J.D., *magna cum laude*, from University of Kentucky. Thompson is a member of the firm's Liability Defense Service Group and earned her J.D. from University of Kentucky. Kamer, who is a member of the Employment Service Group and earned her J.D. from University of Kentucky, was elected as Counsel. Cantley is a member of the firm's Torts and Insurance Practice Service Group and the Business Litigation Service Group and earned his J.D., *cum laude*, from the University of



C. H. Turner



John W. Gragg



B. Amy O'Nan



C. E. Ruschell



M. G. Kamer



A. Pope Thompson



C. W. Haden



S. E. Cantley



J. L. Kovalcik



Mandy V. Wilson



J. D. Pitchford



Matthew W. Breetz



Jason P. Thomas



Marjorie A. Farris

Louisville. Haden is a member of the Business Litigation Service Group and earned his J.D. from the University of Louisville. Kovaleik, member of the Intellectual Property & Technology Service Group, earned her J.D., *summa cum laude*, from University of Louisville. Wilson is member of the Intellectual Property and Technology Service Group and earned her J.D., *magna cum laude*, from University of Kentucky. Pitchford is a member of the firm's Business Litigation Service Group and earned a J.D., *magna cum laude*, from Washington and Lee University. Breetz focuses his practice on the defense of complex professional liability claims, products liability and premises liability and is active in commercial business litigation and securities broker/dealer arbitration. He earned his J.D. from University of Kentucky. Thomas earned his J.D. from Indiana University School of Law and focuses his practice on complex business litigation claims, construction

law and administrative law matters for major corporate and institutional clients. Farris is a trial lawyer who focuses her practice on the defense of products liability claims, complex business litigation matters and class action defense. She earned her J.D., *cum laude*, from University of Louisville.

Stephen B. Pence, United States Attorney for the Western District of Kentucky, announces **Robert J. Kilmartin** and **Benjamin S. Schechter** have been appointed as Assistant United States Attorneys. Kilmartin has been assigned to the Office's Criminal Division where he will focus on the prosecution of a wide range of fraud cases. Kilmartin is a 1983 graduate of Villanova University School of Law and is a Lieutenant Colonel in the Marine Corps Reserve. Schechter is a 1996 graduate of University of Louisville Brandeis School of Law and will have litigation responsibilities in the Affirmative Civil Enforcement Unit of the Civil Division.

McBrayer, McGinnis, Leslie & Kirkland, PLLC is pleased to announce **Stephen G. Amato** has become a member, and **Stacy C. Kula, David A. Cohen, Chad H. Smith, Joshua J. Markham** and **Paul E. Craft** have become associated with the firm. Amato received

his J.D. from University of Kentucky. He concentrates his practice in Litigation. Kula received her J.D. from North Carolina Central University and her LL.M. from University of Florida. Her areas of practice include Corporate Law, Estates Planning and Tax Law. Cohen received his J.D. from the University of Kentucky. His area of practice is Litigation. Smith received his J.D. from the University of Louisville. His areas of practice include Litigation and Bankruptcy. Markham received both his M.B.A. and J.D. from Nova Southern University. His area of practice is Real Estate Law. Craft received his J.D. from the University of Cincinnati. His area of practice is general.

The law firm of **Boult, Cummings, Conners & Berry, PLC** has named **Russell B. Morgan** as Member of the firm. Morgan



R. B. Morgan

practices in the areas of business, healthcare, toxic tort and personal injury litigation and he received his law degree, with honors, from University of Kentucky.

Blackburn, Hundley & Domene, PLLC, is pleased to announce **Diane M. Laughlin** has been named a partner in the firm and **Angela D. Lucchese** has joined the firm as an associate. Laughlin, graduate of the Georgetown University Law School, will continue to concentrate her practice in general civil defense litigation. Lucchese graduated *cum laude* from University of Louisville and will also practice general civil defense litigation.

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, 2003.

WHO, WHAT, WHEN & WHERE

Gregory M. Reger has been named a partner at **Lorch & Naville, LLC**. Reger concentrates his practice in general law, litigation and business law. Reger earned his J.D. from Indiana University School of Law.

Diana L. Skaggs & Associates is pleased to announce **Melinda A.**

Whitten has joined the firm as an Associate. Whitten is a *magna cum laude* graduate of University of Louisville School of Law.



Melinda A. Whitten

W. Cravens Priest, III has been elected partner of **English, Lucas, Priest & Owsley** and **E. Kenly Ames** has become associated with the firm. Priest received his J.D. from Northern Kentucky University and concentrates his practice in employment and school law. Ames received her J.D. from Columbia University School of Law and focuses on litigation and arbitration of business disputes.



W.C. Priest, III



E. Kenly Ames

Ogden, Newell & Welch, PLLC is pleased to announce **Greg Cornett**, **Steve Hall** and **Kelly Henry** have become partners in the firm. Cornett received his J.D. from University of Kentucky and has experience with various administrative agencies and has represented clients in mediation and arbitration proceedings. Hall earned his J.D. from University of

Cincinnati and focuses his practice in defending physicians, hospitals and nursing homes in malpractice cases and defending manufacturers and pharmaceutical companies in civil liability. Henry, a graduate of University of Louisville Brandeis School of Law, has served as a tax consultant and is a frequent speaker on various estate planning and estate administration topics.



E. L. Moore, III



Kris D. Mullins

Escum L. Moore, III, Kris D. Mullins and **Cory M. Erdmann** are pleased to announce the formation of **Moore, Mullins & Erdmann, LLP**.



Cory M. Erdmann

The firm's offices are located at PNC Bank Plaza, Suite 810, 200 W. Vine St., Lexington, (859) 233-2700. Escum L. Moore, Jr. will serve as "Of Counsel" to the firm. Moore, III, Mullins and Erdmann graduated from the University of Kentucky College of Law.

Wade Helm was recently hired as staff attorney for Kentucky Real Estate Commission. Helm received his law degree from University of California-Hastings.

Weltman, Weinberg & Reis Co., L.P.A. welcomes new associate **Heather Estes Bell**. Bell earned her J.D. from University of Louisville and will be working in the firm's Foreclosure/Eviction Department.

Stoll, Keenon & Park, LLP announce **Shannon Bishop**, **Kif Skidmore** and **Jay Warren** have become associates in the firm's Lexington office.

Weber & Rose, P.S.C. is pleased to announce **Kirsten R. Daniel** has become a shareholder in the firm. Daniel concentrates her practice in medical malpractice, insurance defense and general practice. She earned her J.D. from University of Louisville.



Kirsten R. Daniel

Michael J. Bufkin is pleased to announce the opening of his practice at 730 West Main St., Ste. 490, Louisville. Bufkin's practice will include criminal law, civil litigation, personal injury, family court, employment discrimination and civil rights. He earned his J.D. from University of Louisville.

Dorsey, King, Gray & Norment announces the name of the firm has been changed to **Dorsey, King, Gray, Norment & Hopgood**. The firm is located at 318 Second St., Henderson.

Sherry R. Deatruck is pleased to announce the opening of her solo law office at 120 North Second St., Richmond. Deatruck received her J.D. from University of Louisville and focuses her practice on personal injury law, employment and civil rights law and administrative proceedings.

Ricketts & Travis is pleased to announce **A. Carl Platt** has become associated with the firm. Platt earned his J.D. from University of Louisville and is engaged in the general practice of law.

Kolesar & Leatham, CHTD is pleased to announce **Robert J. Caldwell** has become associated with the firm. Caldwell focuses his practice in commercial and other civil litigation, labor and employment law.

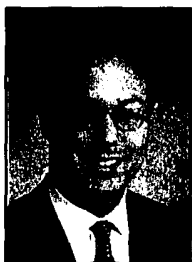
Walther, Roark, Gay & Todd, PLC is pleased to announce **Phillip B. Gross** has become associated with the firm. Gross obtained his J.D. from University of Kentucky and concentrates his practice in real estate and bankruptcy.

Katherine S. Sanford has joined **Yunker & Associates**. Sanford received her J.D. from University of Texas and will join the firm's practice in consumer law, complex civil litigation, intellectual property and utility regulation.

Mindy G. Wilson is pleased to announce the formation of **M.G. Wilson, PLLC**, 201 West Short St., Ste. 600, Lexington. Wilson earned her J.D. from University of Kentucky and will concentrate her practice in adoption, personal injury and general civil litigation.

Fulton & Devlin announces with pleasure **William J. Crowe** has joined the firm. Crowe received his J.D. from University of Louisville and concentrates his practice in the area of workers' compensation and insurance defense and subrogation.

Fernandez Friedman Grossman Kohn & Son, PLLC is pleased to announce **David W. Son** has become member of the firm and **Leanne Kittrell Diakov** has become associated with the firm. Son, graduate of University of Louisville Brandeis School of Law, concentrates his practice in the areas of medical malpractice, auto and general personal injury litigation. Diakov earned



David W. Son



Leanne K. Diakov



Penny R. Warren



E. C. Lewis

her J.D. from University of Louisville and concentrates her practice in civil and appellate litigation.

Woodward, Hobson & Fulton, LLP, announces that, due to consolidation of practices with Fleming, Ward & Brice, **Kermin E. "Ike" Fleming, Robert W. Fleming, Charles E. Ward** and **Wade C. Lawson**, have joined the firm.

Matthew W. Boyd and **Traci H. Boyd** announce the formation of **Boyd & Boyd, PLLC**, located at 200 West Second St., Ste. 100, Lexington, (859) 252-0222. Both Mr. and Ms. Boyd received their J.D.s from University of Kentucky and will concentrate their practice in criminal defense, post-conviction relief litigation, criminal and civil appellate work and domestic relations.

Joseph L. White, William T. Donnell and **Ronald E. Johnson, Jr.** are pleased to announce the formation of the law firm, **White, Donnell & Johnson, PLLC**. They will concentrate their practices in the areas of medical negligence, premises liability and personal injury litigation. The firm is located at 1469 South Fourth Street, Louisville, Kentucky, (502) 634-4454.

Wyatt, Tarrant & Combs, LLP has named **Penny R. Warren** partner in the firm and **E. Christine Lewis** as associate. Warren is a member of the firm's Commercial Litigation and Mineral & Energy Practice Groups.

She earned her J.D. from University of Kentucky. Lewis earned her J.D. from University of Kentucky.

Frost Brown Todd, LLC is pleased to announce that 17 attorneys have been named Partners, nine of whom are also members of the Kentucky Bar Association. **Douglas A. Bozell** is a member of the Personal Planning and Family Business Department. He earned his J.D. from Indiana University and his LL.M. in Tax from Washington University. **Stockard R. Hickey, III** is a member of the firm's Litigation Department. He earned his J.D. from University of Louisville. **David L. Hoskins**, member of the Labor and Employment Department, received his J.D. from University of Cincinnati. **Edward M. King** is a member of the firm's Commercial Transactions and Real Estate Department and earned his J.D., *magna cum laude*, from Indiana University—Bloomington. **Thomas P. O'Brien, III**, member of the Intellectual Property Department, earned his J.D. from Washington and Lee University. **Bridget H. Papalia** is a member of the firm's Litigation Department and earned her J.D. from University of Kentucky. **Wade H. Jefferson, IV** is a member of the firm's Business/Corporate Department and earned his J.D., *magna cum laude*, from University of Kentucky. **Roger W. Madden**, member of the Personal Planning and Family Business Department, received his J.D. from Duke University and his LL.M. in Taxation from New

WHO, WHAT, WHEN & WHERE

York University. **D. Bryan Wickens** is a member of the firm's Litigation Department and earned his J.D., with distinction, from University of Nebraska.



Douglas A. Bozell



S. R. Hickey, III



David L. Hoskins



Edward M. King



Bridget H. Papalia



W. H. Jefferson, IV



Roger W. Madden



D. Bryan Wickens

Gaylee W. Gillim, general counsel for Magic Springs Development Co., LLC and its parent company, Themeparks, LLC, was re-elected President of IALDA (International Amusement & Leisure Defense Association). IALDA members are actively engaged in promoting and protecting the legal interests of the amusement and leisure industries. Gillim has been a member of IALDA's board of directors since 1995.

Sylvia L. Lovely, Executive Director/CEO of the Kentucky League of Cities and graduate of the University of Kentucky College of Law, was named chair of the Kentuckians for Better Transportation (KBT) at the KBT Annual Conference in January.



Sylvia L. Lovely

Paul L. Reynolds, general counsel for Fifth Third Bank, has been elected to the board of directors of the newly formed Ohio Bankers League. Reynolds is a graduate of the University of Kentucky College of Law.



Paul L. Reynolds

Stephen P. Imhoff, James B. Martin, Jr., Christie A. Moore and **Saeid Shafizadeh** were selected by the Volunteer Lawyer Program of the Legal Aid Society as Outstanding Volunteer Attorneys and were honored at the Louisville Bar Association's Annual Bench & Bar dinner.

Phyllis Florman was the recipient of the American Arbitration

Association's (AAA) 2002 Crystal Owl Award. The Crystal Owl Award is given for outstanding service to the AAA.

Woodward, Hobson & Fulton, LLP. announces **David T. Schaefer** has been elected as a sustaining member of the Product Liability Advisory Council, Inc (PLAC). PLAC is a non-profit corporation whose mission is the development of product liability law in courts across the country.

James G. Apple has been selected for inclusion in the 2003 edition of Who's Who in America. He is the founder, chairman of the board and president of the International Judicial Academy.



John Bondurant



John Lovett

Frost Brown Todd, LLC is pleased to announce 48 of the firm's attorneys have been recognized by their peers in the 2003-2004 edition of *The Best*



Deborah Tudor

Lawyers in America. KBA members include **John Bondurant, John Lovett** and **Deborah Tudor**.

Sword, Floyd & Moody was recognized by the Association of Fund Raising Professionals for its philanthropic contribution to the Richmond community. The firm was among the first businesses in Richmond to renovate and restore one of

In The News

Gerald J. Rapien, a partner in the litigation department of **Taft, Stettinius & Hollister LLP**, has been selected by his peers for inclusion in the 2003-2004 edition of *The Best Lawyers in America*.

the historic buildings on Main Street.

David S. Stallard, partner in **Wood, Herron & Evans**, was selected by his peers to be included in the 2003-2004 edition of *The Best Lawyers in America*. He is one of six partners in the firm so honored and is one of a select few who have been so recognized for ten years or more.

Relocations

James R. Schrand, Boone County Attorney, announces his new address: P.O. Box 83, 2475 Burlington Pike, Burlington, KY 41005, telephone, 334-3200, fax 334-3212

Jean Kelley Cunningham & Susan M. Meschler, Attorneys at Law, announce the relocation of their office to 71 Ray Road, Ste. 200, Taylorsville, KY 40071 (mailing address P.O.Box 476, Taylorsville, KY 40071).

Alan S. Rubin is pleased to announce the relocation of his law office to 231 S. Fifth St., Ste. 200, Louisville. Rubin continues to concentrate his practice in personal injury, workers compensation and criminal defense work.

At the KBA

On February 12, 2003, **Bruce K. Davis** celebrated 20 years as Executive Director of the Kentucky Bar Association. Bruce began his career with the Bar Association 23 years



Bruce K. Davis

ago when he joined the KBA staff as Assistant Director of CLE, where he served for 3 years before his promotion to Executive Director. Bruce earned his J.D. from University of Kentucky, after two years of service in the United States Army.

Algernon W. Tinsley is pleased to announce the relocation of his law practice to 231 South Fifth Street, 2nd Floor, Louisville. The telephone number, (502) 583-4783, remains unchanged.

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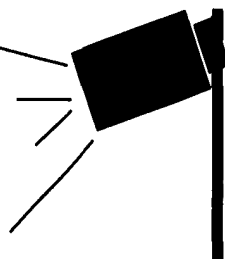


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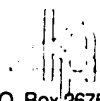
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