

# BAR*briefs*

Louisville Bar Association

December 2020

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# LOUISVILLE BAR ASSOCIATION

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## 2021 LBA Secretary Election



Armstrong

Two candidates – Bruce A. Brightwell and Bryan R. Armstrong – have been duly nominated for LBA Secretary in 2021. An election is being conducted to determine which candidate will serve in the position.

Vote-eligible members should have received an e-mail with a link to an electronic ballot from Election Runner. Members eligible to vote include Resident Attorneys, Government/Public Service Attorneys, Counselors Emeritus and Judicial Members. If you did not receive the e-mail, please contact Scott Furkin at [sfurkin@loubar.org](mailto:sfurkin@loubar.org).

The voting period will run through December 10. ■



Brightwell

## Change is Inevitable

There are few certainties in life, but one of them is that change is inevitable, and I was reminded of this during a recent visit to Bernheim Forest with my family. When we started walking around Lake Nevin, I was struck by the change in temperature since our last visit as well as the contrast between the trees that had already lost their leaves, those that were still holding on, and the evergreens that never will.

During a stop to skip rocks across the lake, I was also struck by the dichotomy between being a child and an adult. As a child I often took comfort in the consistency of my upbringing and the belief that things would never change, but as an adult I realize that things will always change and one's success in life, love, and in profession is often dictated by his or her ability to adapt.

Much like the trees in Bernheim Forest, people often fall into several categories with respect to change: (1) those who embrace it; (2) those who may not embrace it, but can adapt to it; and (3) those who fear change and fight against it, consciously or otherwise. When confronted with the many changes and challenges presented over the last 12 months, there were moments of self-doubt and concern about what steps to take next. Fortunately, however, I benefited from many wonderful people in my life, all of whom have common characteristics—they are doers who embrace change. They may not always know the right answer but understand that leading is often best exemplified by those who act even when the outcome is unknown.

Or, as better articulated by our 44th President Barack Obama:

“The best way to not feel hopeless is to get up and do something. Don't wait for good things to happen to you. If you go out and make some good things happen, you will fill the world with hope, you will fill yourself with hope.”

This past year as president of the Louisville Bar Association has taught me many things, but my desire to be a doer allowed me to move from a person able to adapt to change to someone who actually embraces it. This new personal characteristic is likely to be one of the most tangible and lasting impacts of my experience as president.

For example, in January I wrote about how my primary goal as president was to help create opportunities for the LBA's membership to come together, forget about day-to-day work, and focus on building relationships with one another. This was based upon my unwavering belief that the practice of law is always better when we know and respect those with whom we work. Little did I know, however, how truly impossible accomplishing that goal would be given COVID-19's impending impact on our society and way of life.

That said, as the impact of COVID-19 came into focus, I was forced to embrace the changing environment. No longer was I concerned about developing social events that encouraged our membership to gather together, but rather I became focused on partnering with our amazing staff and our voluntary board of directors to develop strategies that ensured the financial stability of the LBA, kept people safe, and enabled us to continue providing membership benefits.



Scott Furkin

A second goal of my presidency was to develop a strategic plan for the LBA so the board of directors could partner with the staff to adapt to the changing landscape in which attorneys obtain their continuing legal education credits. Well, as with everything in 2020, our strategic planning initiative was directly impacted by COVID-19. We did not abandon our initiative entirely; rather, it just evolved. When LBA Executive Director Scott Furkin announced that he would like to step down from his role at the end of 2021 and fully retire beginning in early 2022, we evolved from strategic to transitional planning.

The news of Scott's impending retirement is not only a defining moment of change for the LBA, but it also perfectly encapsulates his tenure as executive director. He became executive director in May 2007 after a short-term transition from his predecessor and immediately brought a foundation of stability to the organization. This stability is why the LBA was positioned to navigate this last year in a financially strong position. One of the primary reasons for this—and one that will continue to pay dividends for years to come—was the establishment of the LBA's investment account, which occurred when Scott was himself LBA president in 2004. This account permitted the board to navigate the COVID-19 environment this year without furloughing staff.

By giving 15 months prior notice of his intent to retire, Scott gives the LBA a long runway to be strategic about the hiring of its next executive director, as evidenced by the establishment of a search committee that will be working with an outside search firm over the next several months to identify his successor. Furthermore, this extended time allows the LBA to not only adapt to the upcoming change in leadership, but to fully embrace it. I am excited for Scott and the LBA as it ventures into this new chapter and look forward to seeing the fruits of search committee's efforts. I look forward to seeing the new executive director excel by working with Scott during his final months of service and under Deena Ombres' upcoming presidency in 2021, a presidency that is filled with much promise.

As I close this final article as president, I am proud of the LBA's accomplishments over the last year and I hope I have made its membership proud as well. Change is all around us, and always will be, and I will lean on my experiences serving as president as well as the counsel I have gathered from the LBA's staff, its board of directors, and its members as I continue with my professional career. There is no doubt, life will continue to present new and interesting challenges, but I will face these challenges with the confidence in knowing that by working with the many talented people who make up our greater legal community, anything is possible. Thank you for a wonderful year—I hope I made you proud—and my best to you and your family in 2021 and beyond.

Sincerely,

Peter H. Wayne IV  
LBA President



“  
*This past year as president of the Louisville Bar Association has taught me many things, but my desire to be a doer allowed me to move from a person able to adapt to change to someone who actually embraces it.*”

# Uncertainty and the Law...

## Finding Strength to Move Forward in a Pandemic

### *Jury Trials Postponed until February*

*Chief Judge Angela McCormick Bisig*

We are all exhausted. We are worn out wearing masks. We are over not seeing friends, family and other members of the legal profession. We have grown fatigued trying to rework a previously vigorous in-person law practice to a remote argument via a cube on a screen or a voice on the phone. We are perhaps most weary with the uncertainty surrounding the COVID-19 illness and when we can expect to return to our "normal" way of life. In a way, it can feel some days as though we are all relegated to sitting home alone eating a cold bowl of soup.

Members of the legal community are in general a hearty lot. We can plow through most challenges thrown our way. We are used to being crisis managers and problem solvers. One of the key distinctions in this pandemic world is the unknown. If we were told that by January 2021...this pandemic shall pass...we would all batten down our hatches, roll up our sleeves, and prepare to return to court. I continue to be impressed in the ways that lawyers have continued to keep cases moving forward. We are ever optimistic and looked at a re-start of trials in September and October of this year as a slow return to normal.

However, in response to a surge in COVID-19 cases across the Commonwealth, the Kentucky Supreme Court recently issued orders which, among other safety measures, mandate that all trials be postponed until at least February 1, 2021. Like you, the judges are disappointed that we were unable to keep moving forward. Frustration, anxiety and fear are bound to the zeitgeist of this pandemic time. Yes, it's a cold bowl of split pea soup.

My attempt to lift our collective spirits is in the thought that we are in the middle of a challenge that spares no one. While we can argue and debate what good/poor leadership can do to ameliorate or worsen the situation, the fact that we are under attack by a virus that kills some among us is real. We are in the midst of a global pandemic. It touches all our lives. Like the old, wise guru on the mount might tell us, fighting with our current reality generally leads to suffering.

Here we are, bound together by the heavy reality of living during the only global pandemic of our lifetimes. When frustrated about not being able to take a case to trial, take solace in the fact that no one else is able to either. While the isolation impacts us all differently, none of us has escaped a changed life.

In the spirit of ending the feeling of isolation, I continue our virtual dinner party. This is the last installment of the "getting to know you" articles about my colleagues in circuit court. In this series, I have invited each judge to dine with bar association members at a virtual dinner table and share with us what they like most and least about their work on the bench. We are inviting Judge Ann Bailey Smith to join our legal dinner table. I began these columns with Division 1, and Judge Bailey Smith is the last, but not least, in Division 13.



#### **Judge Ann Bailey Smith — Division 13**

Judge Bailey Smith is my neighbor on the ninth floor of the judicial center. She may not know this, but I remember negotiating cases with her when we were both attorneys, and I was always very impressed with her legal ability. She was incredibly well prepared, persistent and hardworking. She has a very calm, kind, yet laser sharp delivery. She could be the poster child for the oft used phrase: "don't mistake my kindness for weakness." She practiced law as a passionate and staunch advocate for her clients.

Judge Bailey Smith comes to our morning circuit court coffee group. She and I often linger until the moment court begins to catch up on the day's news, legal issues or most often, our family life.

Judge Bailey Smith attended the University of Louisville for both her undergraduate and law degrees. After law school, she began her legal career with the firm of Goldberg Simpson in 1986. After a brief stint in civil practice, she worked as a prosecutor handling DUI trials in the Jefferson County Attorney's Office. She worked in the Louisville Metro Public Defender's office (with some short breaks) from 1987 until she was elected as a district court judge in 2008. As an attorney with the PD's Office, she served as lead counsel in more than 50 trials and served as chief trial attorney in both the Adult and Capital Trial Divisions.

She served in district court from November 2008 until December 2014 and was elected to circuit court in 2015. She served as chief judge of the district court in 2012. In circuit court, in addition to her court docket, Judge Bailey Smith runs a drug court docket. I've watched her beam with pride at her participants at a drug court graduation. She is an enthusiastic parent and enjoys spending time with her young grandchildren.

When asked about her favorite part of serving as a circuit judge, Judge Bailey Smith states that it is the opportunity to watch jury trials, particularly those with talented and well-prepared lawyers on both sides. She notes she spent as much time as she could watching trials as a young lawyer. She believes she learned significant lessons from every trial she observed. She says she still must pinch herself from time to time to believe she is now the presiding judge over trials.

What she likes least about her job as a circuit judge is learning the details of the truly heartbreaking experiences that the parties have endured which result in their appearance in court. As examples she mentions criminal defendants with horrific childhood trauma that leads to a life of addiction, a family's sudden loss of a relative as the result of a criminal act, or a plaintiff's devastating and life-changing injury. She notes the difficulty sometimes of sitting stoically on the bench as the details of these experiences emerge. It is her personal hope that justice with mercy prevails.

*Chief Judge Angela McCormick Bisig presides in Division 10 of Jefferson Circuit Court. ■*



# Circuit Clerk Update

David L. Nicholson

What a very tumultuous and logistically challenging time 2020 has been for everyone. As the year comes to a close (finally!), I would like to take a moment to briefly touch base with the Bar on a few topics in the spirit of transparency and good communication.

First and foremost, I would like to extend my sincere appreciation to all attorneys for your flexibility, graciousness and patience interacting with the Office of the Circuit Clerk (OCCC) during this unprecedented public health crisis. As we all know, nearly everything has changed due the coronavirus, and court operations have been and are continuing to be significantly impacted as well.

To mitigate the spread of COVID-19, on June 4 we created and began utilizing secure drop boxes at the Louis D. Brandeis Hall of Justice and at the Jefferson County Judicial Center for attorneys and others to have the ability to drop off filings and other court-related documents without the need to come to the counters in each department. OCCC team members check these boxes every hour and process them accordingly. If you are not utilizing eFiling, these drop boxes remain an option for you.

In addition, as many of you are aware, from June 20 to October 11 we opened a Continuation of Operations Plan (COOP) location at the Bowman Field Driver's License Branch so that we could handle all court operations remotely for our 2nd, 3rd and weekend shifts. This allowed court operations to continue (that is, after-hours domestic violence intake; posting bonds; case creation for arraignment court; processing of involuntary hospitalization petitions; and hosting some remote arraignment courts as needed). We truly believe this COOP location provided a much-needed alternate location for the safety and security of all.

To make this COOP location a success, it took the assistance and cooperation of many justice partners, including the County Attorney's Office, the Administrative Office of the Courts, the Bar, the Sheriff's Office

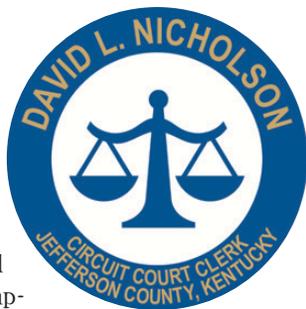
and others, and I extend my heartfelt appreciation for the efforts of all parties.

As you know from our annual attorney survey, I want my office to follow our mission, vision and values each and every day to provide the best customer service possible, operate with transparency, integrity and accountability, and to follow our constitutional and statutory oath to be the custodian of the court's records. While it certainly has not been an easy road, I am proud of the way that our team has responded, displaying an ability to be agile during this challenging period and their tireless dedication to service.

One of the things this pandemic has taught us is that our best-laid plans can change on a dime and that we all must continue to look for opportunities for growth and improvement. Additionally, one of the things that I have long supported is collaboration and cooperation among stakeholders, which have been especially important in order to navigate this pandemic. Lastly, and at the risk of sounding trite, another key lesson hammered home is that we truly are "all in this together" and that showing kindness and grace to each other is always the right thing to do.

In closing, let me add that I am grateful for the Louisville Bar Association for the opportunity to provide this brief update to you and I greatly appreciate its ongoing partnership.

Additionally, I would like to reiterate that it is an honor and privilege to serve as Circuit Court Clerk, and even during this pandemic, I have always had an open-door policy (call, text or visit), if you ever have any questions or concerns. Stay healthy and safe—and best wishes for a wonderful holiday season! ■



## Goodwin Wins Judicial Contest



Lori Goodwin, an attorney at the Legal Aid Society, won a seat in Jefferson Family Court (Division 3) in a special election in November. She bested two other candidates—Ellie Kerstetter and Daren Neel—vying to serve out the remaining two years of the term of Judge Deborah Deweese who retired at the end of 2019.

In January, Gov. Andy Beshear appointed Kerstetter to fill the vacancy until the special election could be held.

Judge Goodwin, who earned her J.D. from Marquette University Law School, will serve through 2022 at which time she is eligible to run for a full 8-year term. ■

## New Chief Judges in Family, District Courts



Judge Denise Brown has been elected by her colleagues to a two-year term as chief judge of Jefferson Family Court effective immediately. She succeeds Judge Tara Hagerty who served in the position since 2017.

First elected to the bench in 2014, Judge Brown, who earned her J.D. from the University of Louisville Brandeis School of Law, presides in Division 7.



Judge Annette Karem has been elected by her colleagues to a two-year term as chief judge of Jefferson District Court beginning January 1, 2021. She will succeed Judge Anne Haynie who has served in the position since 2017.

First elected to the bench in 2006, Judge Karem, who earned her J.D. from the University of Louisville Brandeis School of Law, presides in Division 1.

Chief judges are responsible for the general administration of court business, including implementation of local rules, random assignment of cases to judges and reassignment of cases from one judge to another as necessary. ■

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## Criminal Justice Commission Urges Police Reform Measures

The Louisville Metro Criminal Justice Commission (CJC) recently unveiled a package of legislative proposals—including several aimed at reforming police practices—for consideration by the 2021 Kentucky General Assembly.

Under the heading of “Reimagining Public Safety,” the CJC is urging lawmakers to ban no-knock search warrants, require police officers to wear body cameras when executing search warrants, prohibit police use of chokeholds and other potentially lethal tactics, impose a duty on police officers to intervene when another officer is using excessive force against a civilian and establish a statewide registry of police misconduct, among other reform measures. Also included was a call for increased funding for a new cadre of “first responders” from the social work and mental health fields to work alongside police officers to de-escalate potentially deadly encounters.

The CJC adopted proposals recommended by its legislative committee chaired by LBA Executive Director Scott Furkin. The committee is composed of representatives from both prosecutors’ and public defender’s offices, the private defense bar, court and corrections officials, and the general public. Of the committee’s 31 recommendations, 13 dealt with reforming police practices. (For a complete list of proposals, see below).

### Louisville Metro Criminal Justice Commission · Legislative Committee 2021 Legislative Session Recommendations

#### Reimagining Public Safety:

- Total ban on no-knock search warrants
- Required use of body cam when executing a search warrant
- Ban on chokeholds and other potentially lethal tactics
- Officer’s duty to intervene with another officer who uses excessive force against a civilian
- State registry of police misconduct
- Create a new independent unit to investigate officer involved shootings
- Timely investigation of law enforcement officer’s use of deadly force
- Require KSP, police departments, and correctional agencies to have a use of force policy and promote de-escalation
- Prohibit discharging firearm at or from a moving vehicle unless deadly force is being used against the officer or another person
- Authorization to create Civilian Review Panels with subpoena power
- Increase accountability and transparency in law enforcement, including allowing police departments and public officials to discuss pending internal disciplinary cases
- Fund a new cadre of “first responders” from the social work and mental health fields to work in concert with law enforcement officers
- Fund violence prevention and intervention efforts

#### Criminal Justice:

- Raise the felony theft threshold from \$500 to \$2,000
- Amend the trafficking statute to distinguish between addicts who share from sellers who profit
- Eliminate money bail for most pretrial detainees and implement presumption of release
- Increase the rate of compensation for jury service and reimbursement for expenses
- Increase penalties for threatening a judge or other elected or appointed government official
- Legislation allowing judges and elected or appointed government officials to keep their home address private (off the internet, sealed at County Clerk’s office, etc.)
- Increase reimbursement to local government for the actual cost of housing a state inmate
- Revise the search warrant application process
- Parole reform including Presumptive Parole, Geriatric Parole, Expanded Medical Parole and Required Hearings
- Establish a statutory right to physical presence for criminal defendants at all critical stages of a prosecution
- Improve effectiveness, consistency, and due process protections in Casey’s Law Cases

- Make it a crime to “blind” a law enforcement officer with a laser light device
- Make it a crime to “dox” a public employee’s personal residence, phone or other electronic presence

#### Juvenile Justice:

- Establish a minimum age of jurisdiction for the juvenile justice system
- Clarify expungement provisions for juveniles to include that qualifying offenses from a juvenile’s entire record be eligible for expungement
- Enable implementation of Civil Citation Program
- Address unanticipated consequences of requiring a child to attend school until age 18 years to include an exception for youth in special circumstances, including justice-involved youth, to pursue a GED and participate in alternate education programs
- Remove automatic transfer of a child from District to Circuit Court in certain cases and prohibit transfer of a child to Circuit Court in cases involving persons with an IQ under 70

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*In the midst of a global pandemic, the following firms joined Legal Aid Society's 2020 Leadership Cabinet, making a gift of at least \$250 per attorney at their firm. This support ensures that thousands of Kentuckians facing civil legal crises receive the help they need when they need it the most. On behalf of our staff, our board, and the thousands of clients we serve each year, thank you.*

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*This list is based on gifts and pledges made on or before November 11, 2020. If your firm is interested in joining the Leadership Cabinet, contact Julia Leist at [jleist@laslou.org](mailto:jleist@laslou.org).*

# Working from Home... What Injuries are Compensable?

Samantha Steelman

In this new and largely uncharted work climate, businesses are seeing an increasing number of their employees working from home. Some of these will be temporary, but many will likely transition into a new culture of permanent remote workers. As this new work environment evolves, it is important to be aware of potential for injury, what would be considered “at work” vs. “off work” and remain ever mindful of best practices for employees and employers in this age of remote employment.

Kentucky generally follows the “going and coming” rule, which holds that an employee injured while traveling to or from work is not within the scope of employment. Thus, injuries that occur during the period of travel while the employee is off the clock would not be compensable. However, there are exceptions to that rule which include: the traveling employee, activities which involve service to the employer and the employer conveyance exception. Traveling employees are those whose work requires travel to perform the work activity. These include traveling salespeople, home health workers, etc. Those workers are considered in the course and scope of their employment at any time they are in continuous travel performing a service to the employer.

The second exception is that of an individual who is performing a service to the employer. A traveling employee is just a specially carved out subset of the “service to employer” exception which is more broadly interpreted. The service to the employer exception applies when travel is not necessarily a part of the employee’s work, but they are performing a task which benefits the employer. An example of this exception dealing with at home working may be a situation where the employee is going to drop off company mail and is involved in an accident.

The signature Kentucky case regarding this exception is *Receveur Construction Co. v. Rogers*, 958 SW 2d 18 (Ky. 1997). In *Rogers*, the employer provided a company truck and a gas card to the superintendent and benefited from his use of the truck which allowed him to start his days earlier and work later by avoiding a stop at the office. It is important to note, however, that injuries that occur while using a company vehicle are not always compensable (i.e. if running a purely personal errand) just as a company vehicle is not required to make an activity “work-related” as we see in the example in which the employee is performing a task that is a direct service to the employer.

The final exception to the going and coming rule is that of the employer conveyance. This exception involves use of a vehicle under the employer’s control, such as a transportation bus. In these cases, it is often the situation that even the slightest amount of “control” by the employer will tie the injury to employment. These cases largely overlap the “service to the employer” with the conveyance such as cases where an employer has directed the employee to ride with a co-worker to work.

The second part of our analysis is determining when the employee is in “the course and scope of employment.” The determination of when the employment “begins” is largely governed by the operating premises rule. This rule stands for the notion that once the employee reaches the employer’s physical premises, he comes within the protection of the statute, and thus an injury which occurred on the premises would be compensable.

However, this is not a clear-cut determination either. First, there are “gray areas” such as parking lots, general entryways, sidewalks, etc. which may or may not be under the employer’s control. The questions in these scenarios are: 1) Is the area for private or public use? 2) Does the employer own, maintain or control the area in question?

A preliminary investigation will usually easily determine whether the area is owned or maintained by the employer. If one or both of those is the case, it will likely be compensable. However, the level of control can sometimes make the determination a little less clear. A typical example of this is when the area is neither owned nor maintained by the employer, but the employer does have some bit of control over the property where the injury occurred. In the case of *Piereson v. Lexington Public Library*, 987 SW2d 316 (Ky. 1999), the court held that a parking garage that was neither owned nor maintained by the public library was within the operating premises because the library leased spaces, and it influenced the employee’s decision to park there by providing free parking.

Another such example of control can even be if the employer is able to have some influence over the property manager, cleaning service, etc. who maintains the otherwise public area.

When evaluating “at home” claims it is important to determine at what point the home or remote office becomes the employer’s operating premises. This involves analyzing the “personal comfort” doctrine. This doctrine subscribes to the notion that an employee can step away from work momentarily to address his/her own personal needs and still be within the course and scope of employment. This would include things like a bathroom or smoke break, hanging out in the break room while on the clock or ceasing outside employment while taking shelter during inclement weather. Injuries which occur during these brief breaks will almost always be found compensable.

At home or remote work scenarios will likely see a surge in and expansion of the personal comfort doctrine as we see more and more

employees taking fewer formal breaks and working non-traditional hours in this “less formal” work environment. The prevailing case which carves out an exception to the personal comfort doctrine is *US Bank v. Schrecker*, 455 DE3d 382 (Ky. 2014). In *Schrecker*, the employee worked in an office building on a busy four lane road. She was entitled to a 1-hour paid break and two paid breaks a day. The employees were permitted to leave during lunch and would often cross the street to fast food restaurants during their break.

On the day in question, the employee signed out for her paid afternoon break to get lunch and crossed the street where there was no crosswalk. She was struck and injured. The court turned to *Larson’s Workers’ Compensation Law* treatise (Larson’s) for guidance since there was no case law on point in Kentucky. Larson’s indicated that not only the retention of authority by the employer was a factor, but also the hazard encountered by the employee off premises. If there is a hazard which does not flow from the employment condition, the employer would not be liable.

Overall, the court found the activity to be short in duration and paid and possibly encouraged, which would seemingly make the activity applicable under the personal comfort doctrine. However, the court was ultimately persuaded by the fact that the employee voluntarily exposed herself to a hazard (i.e. jaywalking in heavy traffic), which involved a drastic deviation from normal activities or protection under the personal comfort doctrine.

Finally, when discussing remote injuries, it is important to integrate not only the deviation analysis in *Schrecker*, but that of the substantial deviation rule in general. The claim will not be compensable when the employee makes a substantial deviation from an otherwise work-related mission in order to conduct personal business without benefit to the employer. While all the activities leading up to and following the personal activity may be protected, the employee removes himself from work activity during the period of the deviation. If the incidents of the deviation are operative in causing the accident it will likely be deemed non-compensable. *Ratliff v. Epling*, 401 SW2d 43 (Ky. 1966).

When dealing with the remote working environment, the first question becomes “Is the home/remote workplace considered operating premises under the control of the employer?” If the employee is performing regular work activity, providing a benefit to

the employer and not performing a prohibited activity, the answer will likely be “yes.” The next question is, “If it is questionable as to whether the activity was in the course and scope of employment, was the employee serving a need of the employer and/or ministering to his own personal comfort?” This is where we are very likely to see an expansion of the personal comfort doctrine to the ever-increasing remote work scenarios.

Based on decisions like *Schrecker*, it is likely that the judges and courts will continue to apply the “standard deviation” principle in reverse. Instead of analyzing the other elements of “control” on the part of the employee, the courts may very well begin to find that so long as the activity was not illegal or prohibited by the employer, the claims will largely be compensable. Courts have declined to make a hard, fast rule that so long as the employee is clocked out and off the premises the claim is non-compensable.

With the remote work claims, it is likely that courts will give deference to the personal comfort doctrine in most cases. There is an obvious rise in employees working non-traditional hours which changes the dynamic of “work hours” and the employers’ control, while largely unmonitored, will still be considered in these situations due to the employee’s activities providing benefit to the employer.

Best practices for mitigating risks of injuries boil down to communication on the part of the employer and the employee. As physical interaction with our co-workers decreases, interpersonal communication should increase. If there are set policies as to specific work hours and anticipated work activity, those should be clearly established by the employer and followed by the employee as if the employee were specifically present in a workplace. Establishing rules of engagement and diligently working together as a team will promote a healthier at-home work environment and decrease miscommunication regarding workspace, work activities and perimeters of “work.”

Finally, activities that are purely for the health and welfare of the employee can still be considered work-related if they are providing a better work environment. Injuries which result from activities such as working out, especially if there is a group challenge or encouragement from the employer, can be work-related if they are ministering to personal comfort or providing a better work environment overall. Employers and employees should be aware of what activities are discouraged or prohibited in the workplace as well as what hazards in the home workplace are or are not incident to employment.

Samantha Steelman practices out of Reminger Co., LPAs Fort Mitchell office. Over the course of the past 20 years, she has practiced primarily in the areas of workers’ compensation and domestic relations. ■



# 2020 and Its Impact on Dragging Some Brands Into the 21st Century

Peter J. Rosene

With 2020 bringing racial equality and social justice to the forefront of the public eye, companies across the nation are suddenly running from a few of their brands containing racially stereotyped iconography, some of which have appeared in advertisements and on store shelves for over a century.

This hurried move away from these brands, many of which are trademarked with the Patent and Trademark Office, comes, ironically, just a few years after the Supreme Court's 2017 decision in *Matal v. Tam*, a case in which an Oregon-based rock band attempted to trademark their name, The Slants, which the PTO later rejected as a pejorative term disparaging those of Asian descent. Prior to *Tam*, the Lanham Act prohibited registration of marks that may "disparage . . . or bring [persons, institutions, beliefs, or national symbols] into contempt or disrepute," but the Supreme Court sided with the band finding this provision of the Act created an unconstitutional burden on free speech.

Coupled with the Court's 2019 decision in *Iancu v. Brunetti* striking down the Act's prohibition on "immoral" or "scandalous" matter, it seems the ceiling has been largely removed on what is worthy of trademark registration. Whether this includes anything up to hate speech, fighting words, or other forms of "unprotected speech" is yet unknown, but I'm sure there are those among us who would be happy to test these boundaries.

Given the racially charged social climate of 2020, it is unlikely we will see many companies taking the court up on this as a new branding opportunity. Yet racially insensitive names have long existed on the Federal Register. These trademarks include Quaker Oats' Aunt Jemima line of trademarks and the Washington professional football team's Redskins marks, both of which are still valid trademarks.

Granted, it may seem a little odd to pick battles over things like packages of rice and syrup bottles, but it is undeniable that symbols have power. These companies, and many others like them, have good reason to distance themselves from their outdated labels. For the average business, controversy is often undesirable since the priority of any for-profit business is to make money. Corporations want to appeal to the largest pool of consumers possible. Why make red or blue political statements or make products "for" black, brown or white consumers when the only color that *really* matters is green. And now more than ever consumers are making their opinions known with their pocketbooks and Twitter.

This is evident in recent years where many companies now make at least some token showing of support for equality. Like clockwork, corporate social media accounts roll out their perfunctory support of minority groups with an LGBTQ flag during Pride Month or the black, red, yellow, and green of Black History Month. 2020, however, requires something more. Whether due to long-time pressure or in preemption of future backlash, companies are finally shedding some of their most outdated—albeit highly successful—brands.

One of the longest running pushes for a branding change in recent memory is the aforementioned Washington Redskins, the football team of our nation's capital. Between 1990 and 2006, two different Native American groups petitioned the PTO to cancel the Redskins mark under the

“  
**Whatever these companies' motivations are in changing their brands . . . these changes say something more intrinsic about the changing values of our nation and how we choose to represent ourselves—something more than a choice to simply make more money.**  
”

anti-disparagement provision of the Lanham Act, discussed above. Remember, this is before *Tam* in 2017, so this would have been valid grounds for cancellation at the time. In fact, both groups were successful in cancelling the registration both at the Trademark Trial and Appeal Board in 2014 and later in the United States District Court. This was later reversed and vacated by the Fourth Circuit following the *Tam* decision in 2017.

The three-year suspension of their trademark, however, made little practical difference because management still refused to change the team's name. It was only after pressure from corporate sponsors like FedEx and retailers like Amazon and Nike that the owners finally announced they would drop the Redskins name in July of 2020. No doubt, this was likely a decision made, at least in part, because Nike and Amazon did not want their customers to associate them with a denigrating name.

No substitute name has yet been permanently selected for the football team, and although it is the right decision, it is one many would argue came decades late. At least to the sponsors and retailers, the optics were bad enough that it was not worth selling the team's merchandise at the risk of enraging potential customers. But the Washington Redskins was not the only brand to find itself plucked from public use.

Some of the most frequent uses of racial stereotypes in branding seem to appear in major food brands. For example, another high-profile brand change in 2020 came from Quaker Oats' popular Aunt Jemima line of products, including syrup and pancake mix, after a spate of criticisms following the death of George Floyd and the Black Lives Matter movement. The brand's image, a smiling Black woman, is a traditional minstrel character known as "mammy," a stereotype for Black women working for white families in the south. Minstrelsy was a form of entertainment beginning in the 19th century, frequently utilizing the (now recognized as) highly offensive practice of blackface.

Almost immediately after Quaker Oats' announced the change of its Aunt Jemima brand, several other food brands utilizing similar imagery quickly followed suit. Mars Food announced it would change the name

of its Uncle Ben's Rice, one of the most popular rice brands in America, to Ben's Original. In addition to changing the name of the brand, Mars Food will remove its representation of a smiling, grey-haired Black man—the titular Uncle Ben—from its packaging. The character's likeness is said to derive from the head waiter of an upscale Chicago restaurant. Uncle Ben's is just another example of a company utilizing imagery of minorities in roles of servitude to market food products.

Other similar brands changing their image in the wake of the Black Lives Matter movement in 2020 include ConAgra Brand's Mrs. Butterworth maple syrup, the packaging of which takes the shape of a woman in a traditional dress and apron. Many critical of the brand perceived this to be yet another traditional depiction of the mammy. B&G Foods, Inc. is also reevaluating its Cream of Wheat subsidiary, whose packaging depicts a Black chef the company has named "Rastus," a pejorative term for black men.

All that can be said about these brands, brands that existed after the abolition of slavery, after the civil rights movement, after the passing of the Civil Rights Act and Voting Rights Act, it's about time.

Symbols have meaning. Symbols can provoke fear just as much as they can instill pride or show a group it is welcome or unwelcome. Whatever these companies' motivations are in changing their brands, I must hope these changes say something more intrinsic about the changing values of our nation and how we choose to represent ourselves—something more than a choice to simply make more money.

There are those who have and will continue to argue this is just another piece of a "cancel culture" feedback loop—an extension of the fallacy of "you're being intolerant of my right to be intolerant!" but equality and social justice does not simply end with passing laws. Whether it is the choice to remove symbols glorifying the Confederacy from our state flags, our parks and our municipal buildings or just taking your cream of wheat without any baggage, Americans are slowly, ever so slowly, coming to terms with the rich, complicated and sometimes grim aspects of our history.

Peter J. Rosene received his J.D. from the University of Kentucky College of Law in 2017, after which he served as staff attorney for Judge Ernesto Scorsone in Fayette Circuit Court. He now practices as an intellectual property attorney at McBrayer PLLC. ■



## Farewell, Lauren!



Lauren Butz, who served as the LBA's Communications Coordinator the last four years, accepted a new position with Capture Higher Ed in mid-November. During her time at the LBA, Lauren developed content for *Bar Briefs*, e-mailed the weekly eBriefs, updated our website and managed our social media presence, among other duties. She snapped the photo of her cat, Lady Olenka, that graces the cover of this year's pictorial roster. We wish her well in her new job.

# December ETHICS Webinars

## Lights, Camera, Lawsuits: The Law of Photography

12-9-2020 | 1:00 pm  
1.0 CLE Ethics Hour

In this eye-opening webinar, intellectual property lawyer and photo model Ruth Carter demonstrates the numerous potential legal pitfalls related to taking and using photographs, whether in business or on social media and how both professional and amateur photographers can preserve and assert their rights in the photos they shoot.

Speaker: Ruth Carter

## From Competence to Excellence: The Ethical Imperative for Excellent Client Service

12-15-2020 | 1:00 pm  
1.0 CLE Ethics Hour

The very first rule of the ethics canon calls for lawyers to provide competent representation to clients. Yet, mere competence isn't enough to satisfy our ethical obligations to our clients. We must instead strive for excellence. In this unique webinar, noted legal humorist Sean Carter will highlight the need for excellence in client service and demonstrate the consequences of mediocrity by recounting the sagas of past Ethy Award nominees—lawyers who earned CLE infamy for the failure to provide excellent client service.

Speaker: Sean Carter

## Privacy Reloaded: It Just Got Real

12-16-2020 | 1:00 pm  
1.0 CLE Ethics Hour

On January 1, 2020, the California Consumer Privacy Act (CCPA) went into effect. This landmark law has a broad scope and will have an impact on how even companies based outside of California handle consumer privacy going forward, and likely inspire other state or federal laws on this issue. And as it is likely to inspire similar state and federal statutes, lawyers advising affected business clients should have a basic understanding of its provisions.

Speaker: Ruth Carter



LBA Member	\$55.00
LBA Sustaining Member	\$50.00
LBA Paralegal Member	\$25.00
Non-member	\$110.00

*Due to the partnership with Mesa CLE, the LBA will NOT be accepting registrations for these webinars. Please visit the LBA website's CLE calendar, [www.loubar.org](http://www.loubar.org), for the link to register and the cancellation policy.*

**CLEs approved by KBA & Indiana Supreme Court**

## Thank You

Special Acknowledgments to the following individuals whose participation and assistance with the 2020 CLE programs have been invaluable. Most presentations are made on a voluntary basis. To all the individuals who volunteer in this capacity, special gratitude is owed. Individuals contributing to this program are contributing to the professional development of all members of the Louisville Bar Association and the legal community.

Michael P. Abate • Judge Glenn Acree • Christy Ames • Milton Bartley • Chris Beck • Roy W. Berwick • Bruce A. Brightwell • Bonnie M. Brown • Sean Carter • Thomas D. Clines • Andy Cobb • Tracey E. Davis • Mitchel T. Denham • Angela L. Edwards • Grace M. Giesel • Sylvia Harvey • Calesia S. Hensen • James W. Herr • Rick Horowitz • Jeb Jarrell • Jim Jesse • Carlos Hernandez Ocampo • Chris Osborne • Peter L. Ostermiller • Neil Riley • Diana L. Skaggs • Rich Smith • Patricia R. Taylor

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## CONGRATULATIONS TO THIS YEAR'S

# Honorees

Although we could not hold our Awards Luncheon this year, we nevertheless recognize the outstanding work and achievements of these LBA members. For video tributes to select honorees, please visit [www.loubar.org](http://www.loubar.org).

### JUDGES OF THE YEAR

*Hon. Angela McCormick Bisig, Hon. Tara W. Hagerty and Hon. Anne L. Haynie*



The outbreak of COVID-19 presented unprecedented challenges for **Hon. Angela McCormick Bisig**, **Hon. Tara W. Hagerty** and **Hon. Anne L. Haynie**, chief judges of Jefferson Circuit, Family and District Courts. Confronting the realities of holding court during a pandemic, they led their respective benches in quickly pivoting to remote proceedings conducted telephonically or by videoconference. They oversaw compliance with Kentucky Supreme Court orders severely restricting courthouse access, suspending most in-person hearings and trials, and mandating strict safety protocols—including reduced staffing, required use of facial coverings and hand sanitizers, and social distancing throughout the judicial complex. In addition to discharging their individual duties as jurists, they provided exemplary leadership to keep the wheels of justice turning amidst an ongoing public health emergency.

### JUSTICE MARTIN E. JOHNSTONE SPECIAL RECOGNITION AWARD

*Michael R. Mazzoli*



As chair of the Kentucky Association of Criminal Defense Lawyers' Amicus Curiae Committee, **Michael R. Mazzoli** oversees the organization's efforts to improve the administration of criminal justice. Working quietly behind the scenes on a pro bono basis, he immerses himself in issues, researches the law and produces appellate briefs that are well-written and persuasive. It is not surprising that trial judges named as respondents to writs challenging the legality of their official acts often turn to him for counsel. During a career that spans nearly three decades, he has

distinguished himself as an effective advocate in both state and federal courts, successfully arguing cases before the Kentucky Court of Appeals, Kentucky Supreme Court and U.S. Court of Appeals.

### JUDGE BENJAMIN F. SHOBE CIVILITY & PROFESSIONALISM AWARD

*Hon. Denise G. Clayton*



Like this award's namesake, **Hon. Denise G. Clayton** has been a model of civility and professionalism throughout her more than 40-year legal career. The only Black woman in her law school graduating class, she went on to become the first Black woman to serve as a Kentucky circuit court judge and later the first Black woman to serve on the Kentucky Court of Appeals where she is now chief judge. A Master of the Louis D. Brandeis American Inn of Court, she chairs the Chief Justice's Commission on Racial Fairness which works to eliminate racial bias in criminal sentencing, bail processes and

jury selection in Jefferson County trial courts. Both on and off the bench, she displays courtesy, sincerity and humility towards all.

CONGRATULATIONS  
TO THIS YEAR'S

# Honorees



## DANIEL M. ALVAREZ CHAMPION FOR JUSTICE AWARD

*Lonita K. Baker*



Louisville native and former prosecutor **Lonita K. Baker** has forged a reputation as an outspoken voice against racial injustice. In 2017, National Black Lawyers named her among its Top 40 Under 40 advocates in recognition of her legal and community involvement. She is past president of the Charles W. Anderson Jr. Bar Association (formerly Louisville Black Lawyers Association) and currently serves on the board of the National Bar Association. An attorney at Aguiar Injury Lawyers, she has led calls for police reforms in the wake of the deaths of Breonna Taylor, George Floyd and others.

## PAUL G. TOBIN PRO BONO SERVICE AWARD

*Lea D. Hardwick*



As director of public service/pro bono programming for the LBA over the last three years, **Lea D. Hardwick** was responsible for recruiting attorney volunteers to carry out projects and donate legal services to those who could not afford to pay for counsel. However, as an attorney, she often ended up doing the work herself. For instance, when there was a shortage of volunteers at the free bi-monthly pro se divorce clinics she oversaw, she jumped in to help unrepresented litigants dissolve bad marriages. Similarly, if no other attorney was available to help a detained undocumented immigrant prepare for a bond hearing, she took on the task and thereby increased the detainee's likelihood of winning release and, in turn, of avoiding deportation. Her passion for assisting the less fortunate continues now that she has returned to working full time at the Legal Aid Society.

## ROBERT AND FRANK E. HADDAD JR. YOUNG LAWYER AWARD

*Michael B. Harrell*



After being admitted to the bar in 2015, **Michael B. Harrell** began his legal career as an attorney in the Louisville Metro Public Defender's Office where he has labored in the adult trial division for the past five years. In addition to representing indigent criminal defendants charged with everything from misdemeanor traffic offenses to Class A felonies, he now supervises a team of nine attorneys. In his advocacy, he has demonstrated the skill, work ethic and devotion to client interests personified by this award's namesakes, two late brothers who were lions of the criminal defense bar.

## COMMITTEE OF THE YEAR

*Jennifer W. Kleier*



Formed in 2017, the **Gender Equity Committee**, chaired by **Jennifer W. Kleier**, has worked tirelessly on issues related to pay equity, parental leave and sexual harassment in the legal profession. This year, for example, the committee promulgated a proposed amendment to the Kentucky Rules of Professional Conduct that would make discrimination in the practice of law an ethical violation and bring Kentucky into line with 35 other states that have already adopted such a rule. The proposed amendment is currently working its way through the KBA Rules Committee on its way to consideration by the Kentucky Supreme Court.

## SECTION OF THE YEAR

*Samuel W. Wardle*



The lifeblood of the LBA, sections are where professional colleagues meet to socialize, discuss the latest legal developments, share practice tips and participate together in public service activities. Because COVID-19 foreclosed in-person gatherings this year, the Litigation Section, chaired by **Samuel W. Wardle**, had to find new ways of connecting the trial bar. It did so by hosting a series of informational webinars that helped practitioners stay abreast of the many changes in local court procedures and policies brought about by the pandemic. These webinars, offered without cost to both LBA members and non-members alike, proved invaluable as everyone adjusted to a "new normal" in the conduct of court business.

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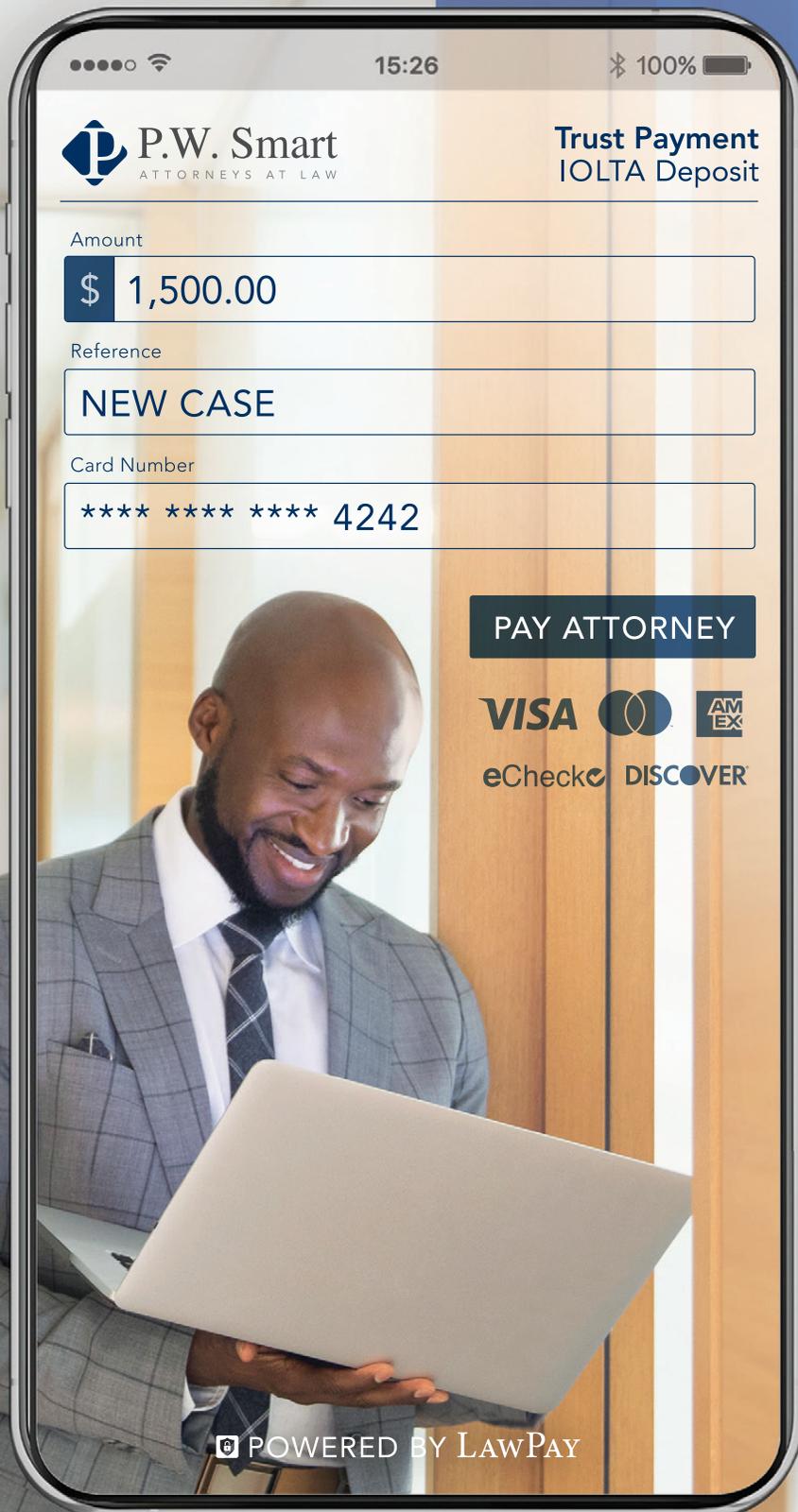
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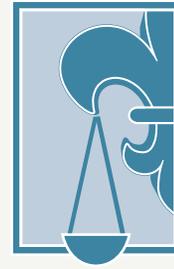
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# Dear 2020:

Adiós, Au revoir, Arrivederci, Goodbye!



We made it to the end of 2020! In a year filled with so much uncertainty, the LBA membership and the legal community came together and carried on despite many unknowns and obstacles. Here's a quick recap of a few of the many things we accomplished.

While our last in-person event was held on Friday, March 13 at the Silver Dollar, we were able to convene virtually for Louisville Unplugged with Louisville Public Media and for Thirsty Thurby where we learned how to make the signature Derby drinks—the Oaks Lily and Mint Julep. We also had four bands compete for the Cowbell Trophy during Lawlapalooza, the annual battle of legal bands benefitting the Judge Ellen B. Ewing Foundation. We even offered a free online meditation series with 20-minute group sessions three times a week throughout the summer to help reduce the stress and anxiety of practicing law during a global pandemic.

Our Continuing Legal Education department launched livestreaming with our Annual Spring Ethics program and hosted over 65 CLE webinars with over 750 attendees. This added up to over 100 hours of CLE credit including 49.5 ethics hours. Over 10 free webinars were hosted on topics ranging from court operations, the impact of COVID-19 on the practice of law and a celebration of the 19th Amendment.

The Communications department moved *Bar Briefs* online to be sure that members received our signature publication in a timely and safe manner. Thanks to Judge Angela McCormick Bisig for helping us become more acquainted with the circuit court judges through her series “Legal Family Dinner Table.” Members also shared their views on practicing law in a pandemic.

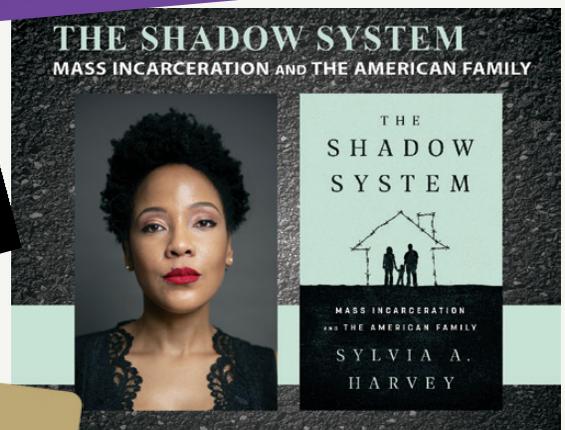
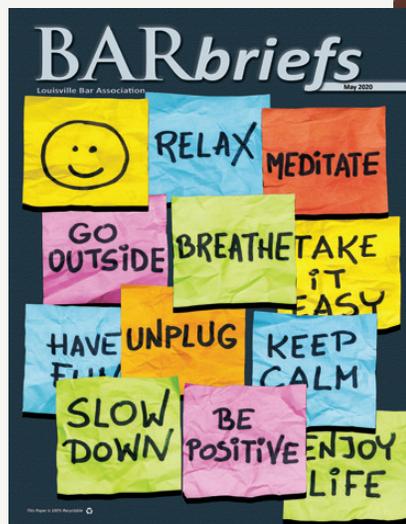
With the sponsorship from Kentuckiana Court Reporters, Action Coach Bluegrass, Lawyers Mutual of Kentucky, and Stride Forward - Diversity & Inclusion at SKO we hosted a free webinar with Sylvia Harvey, author of *The Shadow System*. She discussed the disproportionate imprisonment of people of color and its devastating effects on families.

Members of the legal community also took action where they saw need. Empathy in Action, headed by attorneys Vanessa Cantley and Brian Good, conducted a monthly food bank and attorney Richard Head launched a Facebook fundraiser to help the family of David McAtee. Signs in support of Black Lives Matter were distributed to members without charge thanks to private donations.

Many of the outreach programs sponsored by the Public Service Committee were put on hold due to in-person restrictions but committee members still helped organize the annual Back2School program and raised \$5000 for students at Jefferson County Public Schools and the West End School. Together with The Charles W. Anderson, Jr. Bar Association (formerly the Louisville Black Lawyers Association) they launched the “Know Your Rights” series, which has so far discussed voting rights and criminal rights. Be on the look out for more informative discussions in 2021!

Lastly, we added a few new member benefits that included discounts at Whiskey Row Hotels (Hotel Distil, Moxy and Aloft), Paylocity, Unified Technologies, Encore Wealth Management and Action Coach. For those who participate in our group health insurance plan, we are also happy to announce that premium rates are on hold for 2021.

The staff is grateful to work with such a great community and we are hopeful for what 2021 holds. We miss seeing you in person but know in time we will all be together again. In the meantime, remember that while the Bar Center is closed to the public, we are still working to make the LBA a useful resource for our members. If you need to reach any staff member, please visit [www.loubar.org](http://www.loubar.org) for contact information.



# Working from Home is Here to Stay: How to Set Your Firm Up for Success

Heinan Landa

As we've learned, living in a global pandemic means doing our best to navigate a laundry list of uncertainties: how and when should we "reopen" our offices? How do we best keep dispersed attorneys and staff productive and engaged? How do we minimize our risk of breaching client-attorney confidentiality in the wake of heightened cyber threats?

Underpinning all of these questions, however, is one fact that is quite certain indeed: **this pandemic will have significant, long-term effects on our work arrangements.** As long as the virus remains active, we'll need to continue to ask tough questions, weigh our options and adapt.

Many companies have already announced plans to close offices and make many positions permanently virtual, and big names in Silicon Valley, like Google and Facebook, are allowing their employees to stay home until 2021 and beyond. Though most law firms won't choose to fully close down their offices, most will find it prudent to take a hybrid approach: having a small portion of the firm in the office at any given time, having the rest of the staff working from home, and rotating folks in and out on a prescheduled basis. **And this will likely carry on for the next 2-3 years.**

In other words, rather than either hunkering down at home or settling back into the office, our workforce will be highly mobile for the

foreseeable future. This puts a new strain on your technology systems that—if not handled thoughtfully—could cost your firm in undue security vulnerability, lost billable time, lost revenue and a damaged reputation.

## How WFM Can Benefit Your Bottom Line

While many firms shifted to working from home out of necessity, offering flexible work arrangements has some compelling benefits to offer; as past studies have shown, allowing employees to work from home regularly can help to:

- **Increase productivity.** Workers and managers alike have been shown to be on average more productive when WFH is offered, and employees recovered 11 workdays a year by avoiding commutes.
- **Attract top talent.** Millennial and Gen-Z workers have been shown to actively seek out positions that offer a WFH option. And when geographic limitations are lifted, you can hire top talent regardless of physical location.
- **Increase retention.** Companies that offered WFH saw a 50 percent decrease in turnover, and 67 percent of respondents in a recent law firm survey said they'd like to stay at least partially remote post-COVID.
- **Save money (and a lot of it).** Businesses have saved a whopping \$44 billion a year, primarily from money saved on rent and lower turnover.

The catch, of course, is that your ability to succeed in a remote work setup depends on how effectively you leverage technology to allow for seamless flexibility between home and the office. For law firms especially, it also means ensuring that no level of security or data protection is lost between in-office and remote work.

## Signs Your Current Setup Needs an Update

So, how do you know if your current technology environment offers sufficient flexibility and security? Here are a few indications that your current set up may need to change:

- Attorneys and staff aren't as productive at home as they are in the office.
- Certain tasks (like billing) require complex and frustrating workarounds.
- Some people in the firm are working—and accessing sensitive data—from their personal computers.
- Your firm has felt disconnected while working remotely.
- Your clients have complained about a dip in responsiveness or service.

Put simply, if you've been "making it work" for the past several months, this will not be sustainable for the long haul. The ideal setup is one in which your team's home and office technology environments are exactly the same.

## The Two Best WFM Tech Options

Your ultimate goal in creating a WFH setup is to create equivalent workspaces; you need to be able to be as productive and engaged at home as you are at the office and vice versa.

When it comes to choosing infrastructure, I've found in my 30 years of helping law firms with their remote work needs that there are two options that do this best.

### Option 1 – Laptops and Cloud Data

In this solution, staff and attorneys work on one laptop that they take back and forth between home and the office. The laptop will be loaded with all your necessary applications—e-mail, document management, time and billing, collaboration tools, and so on—but your data is stored in the cloud (i.e., not on your local machine or a physical server in your office). This solution is effective because you can work no matter where you are on the same machine: your laptop.

### Option 2 – Virtual Desktops (also known as Desktop-as-a-Service or VDI)

With virtual desktops, you work from the same, familiar Windows desktop experience whether you're on your firm laptop, iPad, or home computer. You log in to your secure "desktop" over the web and access all your applications, files, and e-mails from exactly where you left them the day before. And since all your computing is actually done in your provider's datacenter versus on your local machine, you'll see fast and reliable performance even if you're working from old or low-powered devices.

### Which Option is Best for Law Firms?

Since the start of the pandemic, cyberattacks have quadrupled, phishing scams have exploded by 667 percent, and 45 percent of home networks were found to already have

malware present. As law firms have ethical, contractual, and regulatory obligations to ensure client data is protected at all times, attorneys must be empowered to maintain security regardless of their physical location.

Another key priority for law firms is to minimize the risk of downtime, which translates directly to lost billable hours and lost revenue. As with security, maintaining uptime becomes more complex but no less critical now that attorneys and staff are mobile.

When it comes to achieving these goals, virtual desktops get higher marks in both categories:

- **Advanced security.** Virtual desktops are easier to secure because all the data is stored on one provider's network, so all the security can be centralized and include tracking and logging that is more difficult in a distributed environment. Laptops are more susceptible to the security situation at their location, meaning if a home network is compromised (or has a consumer-grade firewall) your data is much more exposed.
- **Maximizing billable hours.** When you're working from a laptop, your productivity is necessarily tied to the performance of that one machine; one spilled cup of coffee could lead to several days of lost billable time while you get set up on a replacement. Virtual desktops, on the other hand, are hardware agnostic. One spilled cup of coffee simply means you hop over to another machine, tablet, or smartphone, and you're back up and running at full capacity.

## Final Thoughts

If your firm has been making do by connecting to physical servers that are running in your office, know that you'll be in for a major migration project no matter which option you pursue. It will take a virtual desktop provider at least three months to build your environment inside their cloud. With laptops, migrating your data to the cloud—which potentially means migrating to an entirely new DMS or other file sharing solution—and training your staff and attorneys on the new way of working will also take several months even if you've already purchased the laptops.

As the pandemic continues, so too will the need for work environments that offer attorneys advanced security, seamless mobility and reliable performance. If your firm intends to thrive through and beyond this crisis, you must take the initiative and reshape your technology to actively work to your firm's advantage—and you must start soon.

Because, like the virus, these trends will not simply disappear.

Heinan Landa is the Founder and CEO of Optimal Networks, Inc., a globally ranked IT services firm, the creator of Law Firm Anywhere, a virtual desktop solution that helps attorneys work seamlessly and securely from anywhere, and author of *The Modern Law Firm: How to Thrive in an Era of Rapid Technological Change.* ■



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# Tribute to My Father: K. Gregory Haynes

Rev. Katherine Haynes Murphy

My dad died today.

My dad, Greg Haynes—Kenneth Gregory Haynes—died today.

When someone in my church dies, it's my job to let the community know, and that task is sacred to me. To find some words that do more than share information—words that say this person who died was someone, was this someone, one who never lived on this earth before and never will again, this beautifully particular human died today. And their life was a strange irreplaceable gift—what an incredible and holy thing that we were part of it, that we got to bear witness, to see up close, this person made in the image of God. Along with everything else we feel, we have to feel the weight of that glory. And, weirdly, blessedly, it's not hard to find those words. Usually they come easy—because of the Holy Spirit and because a huge part of loving someone is noticing them.

And I want to find those words this time, but they're so elusive. Because the person who died today was my person, my dad. And I've spent a lifetime loving him and noticing him. And also not noticing him—because he was a given and an absolute in my life—like air, like my legs, an extension of me. I have so many words and also how can I ever have enough? How can any be good enough? How can I really see him?

When I was little my favorite thing in the world was going with him to his work on Saturday mornings, riding the elevator up to the 26th floor, hearing him introduce me to his friends, watching cartoons from under the huge shiny tables in the conference rooms, drawing on the little note pads with his name printed on the top of them, roaming through the halls and peering into all the dark offices, marveling at the fridge in the office kitchen stocked with every kind of soda in the world, looking down from all the windows in his office (two whole walls of them!) seeing how small the cars, the people, the streets were from here, then looking over and seeing pictures of me on his desk—counting to make sure my sisters didn't have more—reading his name on the brass plate by his door, his name so much like my name. I was his daughter; he was my dad. He was so special, so I was special.

But even better sometimes on Saturdays he'd take me, just me, to hunt for salamanders in Big Rock Park and he'd tell me how he used to do the same thing when he was a boy. Every Saturday night he'd pick up Happy Meals for my sisters and me from McDonald's and I'd ride with him and we'd listen to Garrison Keillor breathe and talk about Lake Wobegon, so I will always, always love *A Prairie Home Companion*.

My dad was fiercely intelligent and savagely funny, and he delighted in not suffering fools gladly. Everyone always wanted to sit next to him. Everyone always wanted to talk to him. Often it was mutual. When it wasn't, there were good stories.

Things my dad liked—an incomplete list in no particular order: Gin, poetry (the sublime—Dickinson, Sanders, Whitman—and the ridiculous—Sam McGee), PBS Newshour, all sports—especially baseball—especially the LA Dodgers because they used to be the Brooklyn Dodgers, Wendell Berry, especially *Jaybar Crow*, NPR, sarcasm, reading, going to the grocery store, taking walks, doing anything with my mom.

Things my dad didn't like—an incomplete list in no particular order: waiting, being late, waiting on his daughters getting ready, being wrong, flying in airplanes, Adam Sandler

movies, laziness, injustice, people who didn't pay attention at red lights (“that's as green as it gets, dumb-butt”), the Christmas tree, glittery wrapping paper, Easter grass, reality television, racism, waiting on my mom getting ready, people who laugh out loud while they read, people who talk to him while he reads.

My dad has a beautiful speaking voice—a radio voice and the family joke is he should host his own NPR show. The intro would be: Welcome. You are listening to the Greg Haynes Radio Hour, I'm your host, Greg Haynes. Now everyone be quiet and read.

It wasn't really a joke.

Things my dad loved, in reverse order of importance: Being a lawyer. His daughters. My mom—always my mom.

Their pet name for one another was 'dude' and I grew up hearing them call one another that with such matter-of-fact tenderness that I thought it was another way of saying dear or sweetheart or honey. My dad won a lot of prestigious awards in his life, but I know he was never prouder of anything than he was of being my mother's husband.

My dad taught me that what matters in life is beauty and justice and good humor. As I grew older, we didn't always see the world the same way—but I never stopped wanting us to.

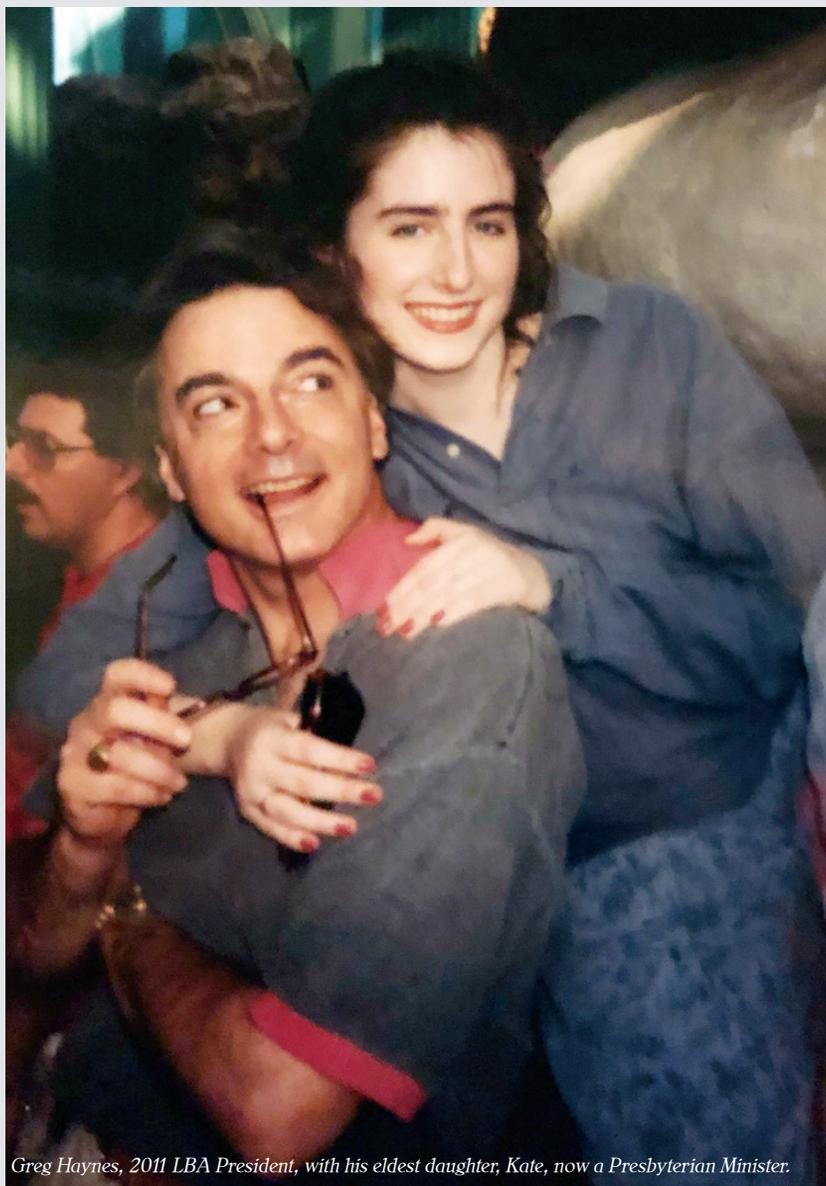
My dad said he had enough mandatory chapel sessions during college to last him for a lifetime, but he liked to come to church if I was preaching. The last time he came to the Grove he pulled me aside afterwards and said, “you would have been an incredible trial lawyer” and I don't think anything anybody ever says will mean more to me than those words.

My dad died early this morning, November 1, which is All Saints Day. He would have appreciated that and (ironically) deemed it entirely appropriate.

People use the word saint sparingly. We reserve it for an elite few we deem extraordinary, exceptional, perfect. My dad would be the first to wryly remark that he was no saint. But to me he was always exceptional, always extraordinary, always perfectly the father I loved. I will always be so proud to be his daughter. I love my life—and I thank my father for that.

God uses the word saint differently than we do. The apostle Paul calls all the people in his church's saints. He begins all his letters “Dear Saints”—even when he was writing the Corinthians, and those people were probably lots of fun at parties but were also seriously messed up. Paul looks on his particular people with God's eyes and sees a crowd of saints. All of them—and all the parts of each of them—the good, the bad, the beautiful, the ugly, the sincere and the sarcastic: saints all. Each one extraordinarily, exceptionally, perfectly loved by God. This is the standard. Each extraordinary exceptional life rendered saint by God's perfect love.

My dad died early on All Saints Day. To me, to God, it is entirely appropriate. I am stunned. I am grateful. I am (apparently not) speechless. In life and in death, I am always his daughter. Along with everything else I feel, I feel the weight of that. My cup runneth over. ■



Greg Haynes, 2011 LBA President, with his eldest daughter, Kate, now a Presbyterian Minister.



## The LBF Gratefully Recognizes its Foundation Partners for 2020

In 2020, the Louisville Bar Foundation awarded more than \$150,000 in grants to local non-profits for law-related projects. The LBF is grateful for the generous support from all the attorneys who made this possible and recognizes its 2020 Foundation Partners—those law firms and corporate law departments (with 5 or more attorneys) where 100 percent of members made a financial gift to the Foundation to support its grantmaking activities. The combined support from the attorneys represented by these Foundation Partners totals more than \$30,000. The generosity of the Foundation Partners and other individual LBA member attorneys makes it possible for the LBF to support and improve legal services for the poor, law-related public education and our judicial system.

The LBF thanks those generous Foundation Partners listed below. For more information about how you can become a Foundation Partner, please contact Jeffrey A. Been at (502) 292-6734 or [jbeen@loubar.org](mailto:jbeen@loubar.org).

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The holiday season is here! When you make your holiday shopping list, don't forget about the Louisville Bar Association's "Santa's Court Toy Drive" to benefit the Salvation Army's Angel Tree Program. The legal community has a long history of joining together each year to collect toys and monetary donations for the children participating in the Angel Tree program. The Salvation Army is always very grateful for our support.

**How to Participate:**  
To sign up your firm, office or section, please contact Marisa Motley at [mmotley@loubar.org](mailto:mmotley@loubar.org) or (502) 583-5314.

**Monetary Donations:**  
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**Toy Donations:**  
The deadline for collecting toys is Wednesday, December 9.

\*\*New this year! The LBA has set up an **Amazon wish list** with suggested items for those who'd like to participate without having to go to a store.

For those collecting toys, you may drop donations at the Bar Center: 600 W. Main St., Ste. 110 or arrange a pickup on Friday, December 11 (contact Marisa Motley, [mmotley@loubar.org](mailto:mmotley@loubar.org), to arrange a pickup).

**With so many families affected by COVID-19, our help is needed more than ever this year. Please join us either once again, or for the first time. This holiday donation will put smiles on the faces of very deserving children.**

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## Louisville Association of Paralegals

Check out upcoming educational programs and special events on the Louisville Association of Paralegals website at [www.loupara.org](http://www.loupara.org). The LAP offers joint membership with the Louisville Bar Association for voting members and joint LAP/LBA members may attend most LBA CLE programs at the discounted rate of \$15. To learn more about the benefits of LAP membership, visit [www.loupara.org](http://www.loupara.org). ■

## Help Wanted

*Through the LBA Placement Service*

### Associate Attorney:

The LBA is currently working with a law firm located on the east side of Louisville that is seeking to add a new Attorney to their growing practice. Their practice consists of a variety of defense work for public entities, and they frequently defend public service employees such as Police Officers, etc. They are seeking a candidate with at least two years of experience in civil defense work and licensed to practice in Kentucky. No new grads, unless they have years of related experience prior, as their ideal candidate will have 2-10+ years of experience as a practicing Attorney. No book of business needed, as there is plenty of work to keep the candidate busy. Salary is based on experience, plus incentive pay and full benefits, which includes payment of all license fees, CLE's, organizational dues and liability insurance. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

### Associate Attorney:

A growing, well-established, east-end law firm is currently seeking to add new Attorneys to their Creditors Rights practice area. The Attorneys will focus on Collections, Foreclosure, and Bankruptcy issues. Candidates must have at least 5-7 years of experience, be licensed in Kentucky, and have excellent references. Competitive compensation package offered for the right candidates, plus full benefits. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

### Associate Attorney:

The LBA is working with a well-established Litigation law firm located in downtown Louisville that is seeking a talented litigator with at least 2+ years of litigation experience. KY and IN licensed preferred. Must have strong writing skills, and experience in the courtroom, taking depositions and drafting legal documents. The candidate should also be very familiar with the discovery process and communicate well with all involved in the cases. The firm is offering a very competitive salary. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

### Estate Planning Attorney:

The LBA is currently working to help fill the following position. Please let me know ASAP if you would like to have your resume submitted for consideration or not? A well established and respected, medium to large size firm, located in downtown Louisville is currently seeking to hire a seasoned Attorney for their Estate Planning group. Candidate must have at least 5 years of experience with Estate Planning matters and be licensed to practice in the state of Kentucky. Candidate must be in good standings and have excellent references. The firm offers a competitive salary package to right candidate. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

## Services

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# MEMBERS *on the move*



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Stone Legal Group is pleased to announce **Nathan Mitchell** has joined the firm as an associate attorney. His primary focus will be probate and estate planning. Mitchell obtained his J.D. from the University of Louisville Brandeis School of Law. He is a member of the Kentucky Bar Association and the Louisville Bar Association. Additionally, he actively serves as a Captain in the United States Army Reserve.

The McBrayer firm has added **Sean E. Mumaw** to its roster and announces the creation of its Estate Planning Team. Mumaw comes to McBrayer with over 20 years of experience in estate planning, estate and trust administration, fiduciary representation, tax planning, business succession planning, and much more. He also worked with the area's largest trust company for a time and has extensive experience with high net worth clients. Mumaw is a graduate of the University of Louisville Brandeis School of Law.

The Legal Aid Society has recognized **T. Morgan Ward** with its Outstanding Volunteer Award for 2020. Ward is a partner in Stites & Harbison's Business Litigation Service Group. His practice focuses on commercial litigation,

real estate litigation, trust and estates disputes, regulatory litigation, constitutional law, insurance coverage litigation, trial practice, arbitration, mediation and appellate practice. Ward is a member of the Board of Directors for the Legal Aid Society.

Legal Aid Society honors **Sadiqa Reynolds**, President and CEO of Louisville Urban League and longtime advocate for equal justice, with the sixth annual Brown-Forman Spirit of Justice Award. The Brown-Forman Spirit of Justice Award is given annually to a member of the community who demonstrates deep dedication to upholding the principles of equal justice. Though the award ceremony traditionally takes place at Legal Aid Society's annual Brush Bottle & Barrel of the Bluegrass fundraiser, this year's event was canceled due to the COVID-19 pandemic. Instead, the award was presented during an appearance on WAVE3's WAVE Country with Dawne Gee as part of Legal Aid Society's Pro Bono Week Celebration.

Wyatt, Tarrant & Combs is pleased to announce that partner **Jefferey Yussman** has been named president of the Special Needs Alliance (SNA). The invitation-only national

nonprofit association of attorneys serves individuals with disabilities and their families. Yussman concentrates his law practice in the areas of estate planning and administration, business succession planning and charitable planning. He is also the chair of the firm's special needs planning practice, which he runs under the trade name, Yussman Special Needs Law. Yussman has devoted many years serving his community in various leadership roles.

**Marjorie A. Farris** will become Stites & Harbison's new chair effective January 2021. Farris will be the first woman to lead the firm since its founding in 1832. Farris is currently Stites & Harbison's co-chair of the Class Action and Multi-District Litigation Group and a member of the Torts & Insurance Practice Service Group. She is the long-standing author of the Kentucky section of the ABA's *Survey of State Class Action Law* included in *Newberg on Class Actions*. Her practice encompasses a wide variety of substantive matters, including products liability, insurance bad faith, ERISA, and complex business disputes. Farris earned her J.D., *cum laude*, from the University of Louisville Brandeis School of Law, where she was Law Review's Notes Editor.

Stites & Harbison welcomes **John Weber** to the firm's Real Estate & Banking Service Group. His practice focuses on commercial real estate and business transactions, advising developers, investors and lenders in the acquisition, construction, development and sale of multifamily, office, retail, industrial and other commercial properties nationwide. Weber earned his J.D., *cum laude*, from the University of Louisville Brandeis School of Law. Outside of the firm, Weber has served on the KBA's Young Lawyers' Section Executive Committee, the LBA's Board of Directors and the ABA's House of Delegates.

Stites & Harbison welcomes **Abigail E. Clark** to the firm's Intellectual Property & Technology Service Group. Her practice focuses on biotechnology/life sciences, copyrights, patent prosecution and protection, trademarks and intellectual property litigation. Before joining Stites & Harbison, Clark was a law clerk for the Federal District Court in the Western District of Kentucky. Clark earned her J.D., *magna cum laude* and Order of the Coif, from the University of Kentucky Rosenberg College of Law. During law school, she was an Articles Editor for the *Kentucky Law Journal*.

## THE LOUISVILLE BAR FOUNDATION

The Louisville Bar Foundation recognizes and welcomes the following individuals as Fellows of the Foundation.



intellectual property, technology, advertising, online privacy and licensing.

**Amy B. Berge** is a director at Middleton Reutlinger where she serves as an advisor and litigator, providing strategic counseling and business advice to companies regarding



**Rebecca M. Moore** is a partner at Frost Brown Todd where she leads the firm's Financial Transaction Practice Group. Her practice focuses on finance and real estate transactions.



es, legal and security functions and serves on the board of the Republic Bank Foundation.

**John T. Rippe** serves as Republic Bank & Trust Company's Chief Risk Officer where he is responsible for the audit, compliance, community reinvestment, human resources,



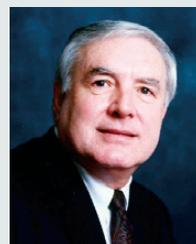
**Jeffrey A. Savarise** serves as Senior Counsel with the Fisher and Phillips law firm where he practices in the area of labor and employment law for employers.

## In Memoriam



**K. Gregory Haynes**, age 75, died on November 1. Early in his career, he worked in Washington, D.C. for the U.S. Department of Justice and on the legal team defending President Nixon during Watergate. Upon returning to Louisville, he joined Wyatt Grafton & Sloss (now Wyatt Tarrant & Combs) where he was a highly-respected business litigator for more than four decades. Over the years, he served in many leadership positions including president of both the Louisville Bar Association and the Brandeis American Inn of Court as well as chair of Citizens for Better Judges. In 2019 he received the LBA's Judge Benjamin F. Shobe Civility & Professionalism Award. He was a graduate of the University of Kentucky Rosenberg College of Law.

He is survived by his wife, Sallie, three children and six grandchildren. Memorial gifts can be made to the Legal Aid Society (416 W. Muhammad Ali Blvd., Suite 300, Louisville, KY 40202).



**Foster L. Haunz**, age 82, died on October 20. After graduating from Notre Dame Law School, he returned to Louisville where he earned a reputation as a leading expert in trust and municipal law. During a distinguished career lasting more than five decades, he served as attorney for small cities throughout Kentucky including St. Matthews, Windy Hills, Indian Hills and many others. A longtime LBA member, he was known for his intelligence and wit. Although of German heritage, he was a "Fighting Irishman"

through and through and his Catholic faith was reflected in his kindness and humility. He was an LBA Counselor Emeritus at the time of his death.

He is survived by his wife, Patricia, three children and five grandchildren. Memorial gifts can be made to Mass of the Air (1200 S. Shelby Street, Louisville, KY 40203) or the Kentucky Humane Society (241 Steedly Drive, Louisville, KY 40213). ■

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



## Member Benefit Spotlight

# Hey! Did You Know?

LBA members receive a discount on both individual and group programs at **ActionCoach Bluegrass**! ActionCoach Bluegrass offers law practice coaching designed for solo attorneys and small practice partners seeking profitable growth, team harmony, and overall improved performance. The Law Practice Coaching blends their standard business coaching approach with the unique traits of a law firm and addresses the challenges of being an owner/practicing attorney as well.

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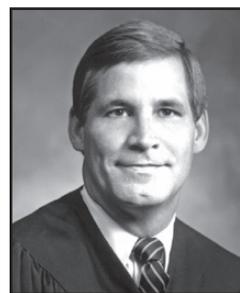
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