

**CELEBRATE**

**BLACK**

**HISTORY**

**MONTH**

**FEBRUARY**



# LOUISVILLE BAR ASSOCIATION

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

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**Louisville BOURBON Aficionados**

Advanced registration required.  
Email David Mohr at dmohr@loubar.org.

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Whether you're an expert on Kentucky's native spirit or a rookie anxious to see what all the fuss is about, the LBA has you covered—the Louisville Bourbon Aficionados, that is.

Our first gathering will be at the Brough Brothers Distillery—the first African American owned distillery in Kentucky.

**Feb.26 • 3pm • 1460 Dixie Hwy, 40210 • \$20**

The Brough Brothers team will walk us through their history, show how their bourbon is distilled and talk about their mash bill and barrels. We'll wrap up with a tasting that will include Brough Brothers bourbon, a "bourbonade" cocktail and their new (and still unreleased) high-proof rum. All attendees will also get a free Brough Brothers t-shirt.



## MEMBERSHIP RENEWAL

Thank you to all who have renewed their membership for 2022! We appreciate the continued support of our members and look forward to great things this year. Initial renewals were mailed on December 1. Those who have not had a chance to renew yet should have received a second reminder via e-mail. If you have not received either form of communication, please contact our offices at (502) 583-5314 or mmotley@loubar.org. Renewal statements also serve as a proof for your roster listing. Be sure to flip the page and verify that all information is correct. If you need to make any changes, please note them on the form.

**Dues must be received no later than Monday, February 14.**

**New for 2022!** In order to receive a printed copy of the pictorial roster you must check the box to have a copy mailed to you for \$10.

**PHOTOS:** If you'd like to submit a new photo for the 2022-2023 Pictorial Roster, please e-mail a high-resolution .jpg as an attachment to [kkasey@loubar.org](mailto:kkasey@loubar.org). Those who submit new photos will receive an e-mail confirmation.



## In Celebration of our Strengths: Diversity and Solidarity

February is Black History Month and we have plans to celebrate the contributions Black attorneys have made to our legal community. We're planning mostly virtual events to accommodate the increasing risk posed by COVID-19, so keep an eye out for announcements in eBriefs to hear what's coming up. A few items in particular that I'd like to highlight:

- You may recall that last fall, we celebrated the 20th anniversary of the partnership between the Brandeis School of Law and the Central High School Law and Government Program. This program's goal is to produce civically engaged and active leaders, and to encourage Central students to pursue careers in the law. We heard from several Central graduates during the anniversary event, including Frederick W. Moore, III, who recently became a member of the LBA Board of Directors. But there are many other Central students who have achieved great success after graduating from the Law and Government program, so we wanted to share some of their stories with you this month. After you learn more about these outstanding young professionals, I'm sure you'll agree that the Central High School Law and Government Program is a key component of Louisville's legal community.
- Additionally, we're changing how we award the Justice William E. McAnulty Jr. Trailblazer Award. Named in memory of the first African American Kentucky Supreme Court Justice, the award honors those who have had a significant impact in improving racial and ethnic diversity in the legal profession. Instead of awarding it in February, we will now be announcing our recipient at our Annual Awards Luncheon in the late fall. We'll also be creating a new award, which will celebrate individuals who champion diversity of all kinds in the legal profession. New criteria for both awards are being written now, and for the first time, nominations for both honors will be open to the entire LBA membership.

I would be remiss if I didn't acknowledge that this year, we are celebrating Black History Month with a heavy heart, knowing we've recently lost several legendary members of our legal community.

In January, we lost former State Rep. Darryl Owens. Rep. Owens was a groundbreaker, serving as the first African American assistant prosecutor in Louisville Police Court and as Kentucky's first African American Assistant Attorney General. Rep. Owens also served our community as president of Louisville's NAACP branch and the Legal Aid Society, and on the University of Louisville's Board of Trustees. At the end of October, we also lost John Stewart, who worked closely with Rep. Owens for many years. Stewart was the second African American to serve as an Assistant Attorney General for the state of Kentucky and served as First Assistant Commonwealth Attorney for Jefferson County from 1988-1993. Jefferson Circuit Court Judge Brian Edwards worked with both Stewart and Rep. Owens, and he reflects on the impact they made on him both personally and professionally in this issue.

In November, we also lost Willie Clay Fleming. Fleming, who practiced law for more than 60 years, was one of the first two African Americans to graduate from the Brandeis School of Law. He was also instrumental in integrating Shelbyville, Kentucky's public schools. All these men, who overcame immeasurable obstacles to build long and honorable careers in the law and public service, will continue to be inspirations for lawyers for many years to come.

While we look forward to celebrating the accomplishments of Black attorneys every February, I assure you that a month of celebration isn't our end goal. We must celebrate our membership's diversity each day and recognize that it is one of our greatest assets. The LBA must also commit to changing how it conducts business. That means establishing new relationships with minority-owned local vendors and businesses. If you know of a business with diverse ownership or leadership that you would like to see us collaborate with in the future, please send their contact information to Execu-

tive Director Kristen Miller at [kmiller@loubar.org](mailto:kmiller@loubar.org) so we can formulate a list of potential new vendors and begin reaching out to them.

\*\*\*\*\*

Ever since I first heard about the devastating tornadoes that struck western Kentucky in December, a favorite song of mine by the Jerry Garcia Band has been stuck in my mind. Called "My Sisters and Brothers," the song's themes are about overcoming adversity, helping our neighbors and showing compassion and empathy:

I want to say to my sisters and my brothers  
Keep the faith,  
When the storm flies and the wind blows  
Go on at a steady pace,

Through this world of trouble  
We've got to love one another,  
Let's take our fellow man by the hand  
Try to help him to understand

On December 10 and 11, 2021, Kentucky suffered the worst natural disaster in its history. The tornadoes that touched down took almost 80 lives, caused massive physical damage, including destroying the historic Graves County Courthouse in Mayfield, and wreaked immeasurable chaos. In response, the Red Cross, FEMA, the American Bar Association, and various stakeholders throughout Kentucky's legal community, including the Kentucky Bar Association, the Louisville Bar Association, Kentucky Lawyers' Assistance Program, the Kentucky Justice Association, Kentucky Legal Aid and Lawyers Mutual Insurance Company of Kentucky, have joined forces in an effort to help people affected by the tornadoes. As of this writing, there are still more than 500 displaced Kentuckians living in shelters, and another approximately 300 people temporarily living in hotels. Furthermore, to date, FEMA has approved more than \$8,000,000 in housing assistance. Western Kentucky's recovery will be long and difficult.

There are numerous ways LBA members can help western Kentucky recover. Several charities and organizations, as well as Governor Beshear, have established disaster relief funds. Additionally, the need for attorneys to help tornado victims process insurance and FEMA claims continues to grow. Kentucky Legal Aid, which is based in western Kentucky, has established a free 24-hour legal hotline to connect low-income, elderly, and other vulnerable survivors with free legal services in qualifying counties. Attorneys wanting to volunteer can register at <https://www.klaid.org/LINK>.

All Kentuckians, not just those living in western Kentucky, will feel the tornadoes' effects for a long time. Kentucky's entire legal community, including the LBA and its members, have a responsibility to answer the challenge and help our neighbors to whatever extent they can. I urge each of you to lend a hand so we can help our fellow Kentuckians reach a full and speedy recovery.

In the meantime, please keep the faith and go at a steady pace, and we'll get through a world of trouble – together.



*We must celebrate our membership's diversity each day and recognize that it is one of our greatest assets.*

Seth A. Gladstein  
LBA President

# The Virtual Office and the Kentucky Rules of Professional Conduct

Chris Rambicure

The novel Coronavirus pandemic of 2020 seems to have accelerated a move toward partly or wholly virtual workplaces. And perhaps you, the overstressed small-firm/solo practitioner juggling personal and professional obligations have already considered or started to implement such a move yourself.

There are many advantages to such a move. To give but one example, the remote world allows talented individuals with personal obligations— young children, a sick parent, etc. —the ability to provide their services on a part-time basis, giving us part-time access to talented staff where we may not have the resources to hire full-time employees. These kinds of resources can make us all better attorneys, better family members and better friends.

At the same time, the move to an increasingly remote work world also has the potential to increase the risk that our clients' data can be compromised or that third-party vendors may have access to confidential data belonging to individuals with conflicting interests in a way that these problems did not exist in the days of brick-and-mortar. Thus, it is important for small-firm and solo practitioners considering a move to a fully or partially virtual office to consider the interplay between our Rules of Professional Conduct and the virtual office.

The American Bar Association recently approved the use of virtual offices in its Formal Opinion 498 dated March 10, 2021. According to the ABA, “[t]he ABA Model Rules of Professional Conduct [“ABAMR”] permit virtual practice, which is technologically enabled practice beyond the traditional brick-and-mortar law firm.” However, “[a]s lawyers increasingly use technology to practice virtually, they must remain cognizant of their ethical responsibilities.”

Although they do not squarely address the issue of virtual law practice like ABA Formal Opinion 498, the Kentucky Bar Association Ethics Opinions E-406, E-417, and E-437 provide similar guidance and also suggest that conflict of interest considerations apply to aspects of virtual law practices. In Opinion E-406, the KBA was asked to address the issue of shared legal secretaries; in Opinion E-417, the KBA was asked to address the issue of office space shared between lawyers and non-lawyers; and in Opinion E-437, the KBA was asked to address the use of cloud computing.

First, when hiring virtual staff, remember “the buck stops here.” KRPC 5.1 and 5.3 emphasize your supervisory responsibility

for attorneys and nonlawyers that work at your direction. Thus, it is on you—the attorney supervising remote staff—to ensure that you have taken reasonable and perhaps even special precautions—discussed in more detail below—to ensure that your remote workers are both familiar and compliant with their obligations.

Secondly, all the opinions addressing shared and remote resources emphasize the importance of safeguarding confidential client information. “When a lawyer selects a provider of any support service, the duty of competence, the duty to protect a client’s property, and the duty of confidentiality require the lawyer to investigate the qualifications, competence, and diligence of the provider.” KBA E-437, p. 4. This risk can be heightened in the virtual world, where you are not only likely to be sharing confidential information with vendors you have never personally met, but where inadequately secure hardware and software can be compromised by anonymous criminals.

Third, a practitioner utilizing virtual employees, contractors or vendors who handle confidential client information will need to screen those third parties against conflicts of interest. In KBA Opinion E-406, the KBA Ethics Committee stated that “[b]oth firms [sharing a secretary] would have to take special precautions to prevent access to and the sharing of confidential information about clients who have conflicting interest.”

It is easy to see how a shared secretary, paralegal or contract attorney might run across confidential data belonging to adverse parties. But consider even the export of billing software to a new web-based program, the transition of data from a physical server to a new cloud-based platform or the use of a third-party bookkeeper to review and categorize transactions in your Operating and Trust Accounts. In each of these situations, the vendor will have varying levels of access to confidential client information.

Even the use of cloud-based document management platforms means that the data of multiple law firms might be located on the same physical, albeit partitioned, devices. Further, the KBA E-406 “special precautions” standard and the KBA E-437 “reasonableness” standard suggest that heightened precautions may be necessary in certain circumstances. Bottom line, the ultimate responsibility rests with you, the practitioner, to satisfy yourself that you have taken adequate steps to safeguard your clients’ information under

the circumstances, and the failure to do so can result in catastrophic consequences.

Next, although the ABA does not evaluate the application of Model Rule 5.5 and the unauthorized practice of law in the context of a virtual office, the ABA does remind practitioners that those rules might apply to the use of virtual help or the establishment of a virtual office.

And, finally, both the ABA and the KBA remind practitioners of the applicability of Rule 1.4, which requires attorneys to, among other things, “reasonably consult with the client about the means by which the client’s objectives are to be accomplished.”

It will be interesting to see the best practices and guidance that emerge in the coming years. Questions to ask seem likely to include:

1. Do I need to update my engagement letters to disclose the use or potential use of virtual staff?
2. Do I need to enter into a confidentiality agreement with any of my vendors, and, if so, does that confidentiality agreement need to include representations, warranties and covenants addressing the possibility that my vendors might wind up touching data belonging to clients with conflicting interests?
3. Am I delegating work that requires my vendor to have a Kentucky law license, and if so, does the vendor possess a Kentucky law license?
4. What steps do I need to take to ensure that the transmission and storage of confidential client information is secure? Do I need to familiarize myself with ISO or similar standards?
5. Is there a meaningful difference between the reasonableness standard governing cloud computing discussed in KBA E-437 and the special precautions standard governing shared staff in KBA E-406?

And, if there is a heightened level of care in some situations, what triggers it: the kind of work being performed, the kind of information being transmitted or the potential for data belonging to conflicting parties to be shared? If the last, the possibility exists that there is no meaningful difference between the terms “reasonableness” and “special scrutiny” because even physical cloud-based servers and the vendors that populate them can hold data belonging to adverse clients, even if the attorneys using those servers only ever see the partition containing the data belonging to their own clients.

Virtual staff and virtual offices have the potential to be a major value-add for our clients by giving small-firm and solo practitioners cost-effective access to the kinds of resources that have in the past been available only to practitioners in larger firms. However, as with any new technology or resource, the risks must be evaluated and addressed with care. If you decide to navigate the virtual workplace world, educate yourself and be willing to educate your vendors as well. They don’t know what we know, and vice versa, and effective communication is likely to be the key to ensuring that we discharge our professional obligations in the virtual workspace.

Chris Rambicure is a partner in the Louisville office of Miller Edwards Rambicure and the vice-chair of the LBA’s Solo & Small Practice Section. His practice focuses primarily on business litigation and commercial transactions. ■



We're Back!!!!

Bench & Bar Social

MARCH 31

5:30 – 8:00P

LOCATION TBD



# Honoring Two Honorable Judges of Circuit Court

*Chief Judge Mitch Perry*

Greetings! I am Chief Circuit Judge Mitch Perry. Since January 1, 2007, I have had the honor of presiding in Division Three of the Jefferson Circuit Court.

I plan to use this space to write about issues that impact the courts or little-known court programs. I also plan to engage with lawyers who do unique things around the city and state, as well as some of my colleagues who are leaving after this term. If anyone reading this article has a specific topic or issue of interest, let the good folks at the LBA know. If I can write about it, I will.

In this initial column, I want to highlight two colleagues: Judge Angela McCormick Bisig and Judge Judy McDonald-Burkman.

Do you remember where you were when the world stopped in March 2020? On Thursday, March 12, 2020, I was in Lexington at the girls' high school state basketball tournament. As we walked into Rupp Arena that day, we were told the state tournament had been cancelled due to COVID.

Judge Bisig certainly recalls that four days later, on March 16, 2020, Chief Justice John Minton issued the first of several administrative orders outlining for all Kentucky courts plans to deal with the developing pandemic. The courts never officially closed, but court operations were interrupted and new methods and protocols were quickly implemented. We remain partially interrupted to this day.

At that time, Judge Angela Bisig had been the Chief Judge for less than three months. She immediately tackled the difficult process of guiding the term through the "how to's" of keeping the courts open, in the middle of the once-in-a-generation health pandemic. We met often to discuss the specifics. We created new websites, new telephonic procedures and even learned to Zoom! Judge Bisig rallied all term members, coordinated with the Supreme Court, the Circuit Clerk's office and every other justice partner. Through it all, Judge Bisig was calm, resourceful and determined that access to justice did not suffer.

Just a few months later, court operations were disrupted again during the civil unrest that fol-

lowed the death of Breonna Taylor. Despite a boarded-up courthouse, barriers on every street around the judicial complex and increased security, Judge Bisig worked with the appropriate authorities to maintain operations.

So, in less than six months, our courts, with Judge Bisig's leadership, had survived unprecedented interruptions to judicial processes, developed remote court systems, implemented Supreme Court health directives and ensured that justice moved forward. Once again, she brought her calm and professional approach to the issues before her.

On behalf of the term, well done, Judge Bisig!

I conclude with a salute to our colleague and friend, Judge Judy McDonald-Burkman. As is her nature, she tried to go quietly by retiring effective December 31, 2021 after 22 years on the circuit bench.

Judge McDonald-Burkman became a Circuit Judge in August of 1998. She was appointed to fill the vacant seat of the Honorable Ken Corey. She then won election in November of that year. Significantly, her second child was born just ten days before the election.

Judge McDonald-Burkman is a proud University of Louisville fan and a former student athlete. She graduated from law school and started practicing in 1987. Prior to her appointment, she had practiced for more than a decade with the law firm Mosley Clare and Towns.

I did not know Judge McDonald-Burkman very well when I took the bench, but she has become a great friend and colleague over the years. Due to her unique sense of humor and passion for the job, she was often the defacto barometer of the term with difficult issues. Doing the job well mattered to Judge McDonald-Burkman—and it showed.

Godspeed, Judge McDonald-Burkman. You will be missed.

*Chief Judge Mitch Perry presides in Division 3 of Jefferson Circuit Court.* ■



*So, in less than six months, our courts, with Judge Bisig's leadership, had survived unprecedented interruptions to judicial processes, developed remote court systems, implemented Supreme Court health directives and ensured that justice moved forward.*

## Office Space in Historic Building



Law office space available in historic building. 1009 S. 4th Street. Amenities include scanner, copier, internet, fax, receptionist, 3 conf. rooms, access for research, and free parking. Please contact Al Welsh or Lucy Strobo (502) 584-8583.

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# Pronouncing the Law

Kurt X. Metzmeier

Words are the work product of lawyers, delivered as frequently by spoken word as in written documents. Moreover, as legal work involves humans in their daily lives, these words include the names of places, people and things, as well as technical terms unfamiliar outside of specialized fields like medicine and science.

Properly pronouncing these words is as important as understanding them. Lawyers are charged with giving clients proper respect and assuring their human dignity but there is no greater affront to that dignity than repeatedly mispronouncing a person's name. Moreover, the mispronunciation of technical terms while examining a witness at trial can make an advocate look unprofessional and convince the jury that they are out of their element. And it goes without saying that it's a probably a bad idea to continue to mispronounce the name of a judge after one has been corrected.

Thus, researching the pronunciation of terms that you will be encountering during litigation or oral argument should be considered part of the legal research process. And like other things involving legal research, there are resources and tools out there to help you make the best effort at proper pronunciation. Moreover, there are good practices one use to properly write down the pronunciation of names and words that one hears for the first time so that they can be properly said later.

## Recording Pronunciation

Perhaps it's best to start with methods by which the pronunciations of words are written down. There are three types of notations that researchers will encounter in pronunciation guides. First, there is the standard collegiate dictionary method that you have probably encountered. This method breaks a word into syllables, uses curved and straight marks to indicate whether vowels are short or long, and marks the accented syllable with an accent symbol. A famous example is in the title of the debut album of a popular Southern rock band, (Pronounced Lĕh'-nĕrd Skin'-nĕrd).

A variation used in newspapers respells word pronunciations in standard ways like using "ay" for a long "a" and "oh" for long "o," as well as either bolding or using all caps for accented syllables. For example, the *New York Times* recently advised its readers to pronounce "omicron" as "AH-muh-kraan." Both systems must deal with the chewed up unaccented vowels found so commonly in English words. Dictionaries use a syllable that looks like an upside-down "e" (ə) called the *schwa*; newspapers tend to represent the *schwa* as "uh," as the *Times* did with the middle syllable of *omicron*.

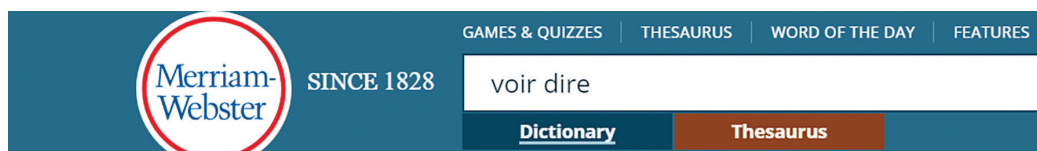
Finally, modern linguists and large unabridged dictionaries use the International Pronunciation Alphabet (IPA) which uses a large number of symbols to represent all vowel and consonantal sounds of the thousands of languages and dialects in the world. While this system used to be only found in academia, the fact that Wikipedia uses it exclusively for non-English names has mainstreamed it somewhat.

Whatever system is easiest for you, I'd urge you to use it to notate any names or technical terms you hear as soon as you hear them—especially the names of your clients. If you are pressed for time when you hear a name, at least mark where it is accented because mis-accenting a name is the most jarring mistake you can make. And please log these pronunciations in the case file.

## Pronouncing Words Like a Pro

There are excellent online dictionaries for pronouncing words. My go-to is the *Merriam-Webster's Dictionary* (<https://www.merriam-webster.com/dictionary/>) because it has recorded files that read you the proper pronunciation when you click the speaker icon. In addition to all the words in its unabridged dictionary, it includes dozens of medical and scientific terms like *esophagi* and *roentgenium*, as well as a few legal terms like *voir dire*, *estoppel*, and *amicus curiae*. When legal terms aren't in the main dictionary, the search engine will automatically access the Merriam Webster legal dictionary which has pronunciations for hard-to-pronounce terms like *respondeat superior* (but without the audio recordings).

Another tool that provides audio pronunciations is toPhonetics (<https://tophonetics.com/>). The site is designed to convert English words to IPA but it also provides its own audio pronunciations.



## voir dire noun

Save Word

\ 'v\är-'dir \ , 'w\är-\

### Definition of voir dire

: a preliminary examination to determine the competency of a witness or juror

Sometimes an older word might send you to the books. I would go first to *Webster's New International Dictionary Unabridged* (either the second edition which includes proper names from literature and uses standard dictionary notation or the third edition which uses IPA) or the *Random House Unabridged Dictionary*, or, if the term is British, the *Oxford English Dictionary*. My law library has a large collection of dictionaries as does the downtown branch of the Louisville Free Public Library.

For legal terms, recent copies of the *Black's Law Dictionary* (after Bryan Garner revamped the work with the 7th edition in 1999) are excellent, especial for Latin maxims and terms.

## Say My Name (Right)

On the December 23, 2021, edition of NPR's All Things Considered, Alisha Chang interviewed several people with frequently mispronounced names. In the piece, "The Importance of Pronouncing Names Correctly," guests described the genuine pain in having one's name butchered. "Actually, until very recently, there was just a lot of shame associated with it, and it was more blame for myself. Like, I wish my parents hadn't named me this and this is so embarrassing," Ruchika Tulshyan said.

Tulshyan, who writes on workplace diversity, also noted that it was "completely fine" to seek assistance. I would highly recommend that you read (and heed) her piece on the Harvard Business Review page, If You Don't Know How to Say Someone's Name, Just Ask (<https://hbr.org/2020/01/if-you-dont-know-how-to-say-someones-name-just-ask>). Tulshyan cautions against remarking that the name is "interesting" or "exotic." Comments like this are offensive as they tend to otherize the person. Ask them, write it down so you can remember

it, and then swiftly move on.

Of course, often you encounter names of people in documents you can't ask personally—including long dead parties in old case names—but there are tools to assist you. However just because you find out how to pronounce a name for *most* people with a certain surname, a *particular* person may pronounce it in a way that's unique to them. (As Indiana lawyers may recall, for every Charles BO-ney there is always one Charles Bo-NAY). Nonetheless, a smoothly used common pronunciation is better than an awkward try on the fly.

The internet can help you. The Voice of America (VOA) has a guide to hundreds of names used in global news stories (<https://pronounce.voanews.com/>). Universities have developed guides for Chinese names (<https://silc.asu.edu/content/how-pronounce-common-chinese-names>) and YouTube has videos on how to pronounce Hispanic, Arabic, and Turkish names—among others.

For more traditional names (as one finds in old cases) I'd direct library users to the two editions of the *Webster's Biographical Dictionary* (1943 and 1972) and the *Merriam-Webster's Biographical Dictionary* (1997). Use them all if you can as they purposely altered the name list for their eras.

## Getting "Wrong" Placenames Right

Early Kentucky, like America itself, was a big country that needed a lot of names as it developed. When the early colonizers weren't badly transliterating Native American placenames (like Kentucky), they were borrowing then mispronouncing placenames from Europe. So, if you find a placename in Kentucky that came from

the Old World, you can be pretty certain we have turned it into something unrecognizable to any living resident of the Schengen Area. But you are in luck—Wikipedia is a surprisingly nimble source of regional pronunciations. For example, it correctly notates Versailles, Kentucky, as ver-SAYLZ rather than ver-SIGH, and, more impressively, correctly notes that Athens, Kentucky, is pronounced as AY-thins. If that doesn't work most libraries will have a copy of *Webster's New Geographical Dictionary*.

## Be Professional, Be Kind

The proper pronunciation of words, names and places can define identity, both regional and personal. Experienced lawyers will notice if you pronounce the "Michie" in Michie's Kentucky Revised Statutes" with a hard "k" sound or early Kentucky statute compiler William Littell with the last syllable accented. And the way a lawyer voices "voir dire" or "venire" might mark them as a local or interloper from another state.

But when a person's name is involved, it is only decent to go out of your way to pronounce it properly. As the United States and the legal profession become more diverse it is obligatory for lawyers to learn to properly articulate the names of clients and colleagues with names they are unfamiliar with. Not caring is unkind and unprofessional. It just takes a little effort to do this right.

Kurt X. Metzmeier is the associate director of the law library and professor of legal bibliography at the University of Louisville Brandeis School of Law. He is the author of *Writing the Legal Record: Law Reporters in Nineteenth-Century Kentucky, a group biography of Kentucky's earliest law reporters, who were leading members of antebellum Kentucky's legal and political worlds.* ■



## Judge McDonald-Burkman Retires



Judge Judith McDonald-Burkman, who presided in Jefferson Circuit Court for more than 23 years, retired effective January 1, 2022. Initially appointed to Division 11 in 1998, she moved to Division 9 following a court reorganization in 2005. She was subsequently elected and re-elected without opposition in 2006 and 2014, respectively.

Prior to her elevation to the bench, Judge McDonald-Burkman was a civil litigator. She received the LBA's Judge Richard A. Revell Family Law Practitioner Award in 1996.

The vacancy resulting from Judge McDonald-Burkman's retirement will be filled by gubernatorial appointment from nominees selected by the Judicial Nominating Commission. ■

## Judge Stout Appointed to Bankruptcy Appellate Panel



The Sixth Circuit Court of Appeals has appointed Judge Alan C. Stout to a three-year term on the Sixth Circuit Bankruptcy Appellate Panel (BAP). Judge Stout currently serves as the Chief Judge for the U.S. Bankruptcy Court for the Western District of Kentucky. Judge Stout succeeds Judge Tracy Wise (EDKY), whose term expired. The BAP is comprised of six bankruptcy judges and hears bankruptcy appeals from the states of Michigan, Ohio, Tennessee and Kentucky. ■

### Kentucky Administrative Office of the Courts

#### Jefferson Trial Courts – 2022 Holiday Schedule

Regularly scheduled court will not be in session on the following dates

Martin Luther King Jr. Day Monday, January 17	Veterans Day Friday, November 11
Spring Holiday (1/2 day) Friday, April 15	Thanksgiving Thursday, November 24 Friday, November 25
Memorial Day Monday, May 30	Christmas Friday, December 23 Monday, December 26
Independence Day Monday, July 4	New Year's Day Friday, December 30, 2022 Monday, January 2, 2023
Labor Day Monday, September 5	

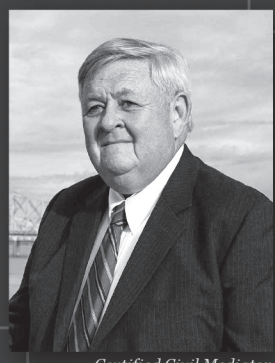
#### Conference Schedule

Circuit Judges' Spring Judicial College (Lexington, KY) March 13-15, 2022	Prosecutors' Conference (Lexington, KY) August 24-26, 2022
Public Defenders' Conference (Louisville, KY) June 13-14/15, 2022	District Judges' Judicial College (Covington, KY) September 18-21, 2022
KBA Convention (Owensboro, KY) June 15-17, 2022	

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 Lawyers Mutual  
of Kentucky

Dear Colleagues,

On December 15th of 2021, your Legal Aid Society celebrated a historic milestone at the Brandeis School of law—our 100th birthday. Mayor Greg Fischer was in attendance to acknowledge our centennial and to proclaim that from here on out, December 15th shall be known as “Legal Aid Day” in Louisville. Historian, former Metro Councilman and local historian, Tom Owen, was also on hand to provide insight into the historical conditions of our founding in 1921. This momentous occasion was a wonderful introduction to the community I now call home.



Allow me to introduce myself. My name is Jefferson Coulter. I moved to Louisville a day before Thanksgiving and shortly afterwards began working for your Legal Aid Society. In December, I shadowed Legal Aid Society’s outgoing Executive Director, Neva Scott. On January 3, 2022, I officially stepped into the role as Executive Director. Since my arrival, I’ve experienced an outpouring of warmth and support from the legal community in our entire fifteen-county service area. For this I thank you. From Breckinridge County to Washington County—and everywhere in between—our board members, supporters and community partners have been overwhelming in their hospitality.

I grew up outside of Charleston, West Virginia and my people come from Pike County, Kentucky and southern West Virginia coal country. I’ve lived primarily in the state of Washington for the last few decades, where I attended law school at Gonzaga University (1996-1999). For the last eight years I’ve served in leadership at the Northwest Justice Project, Washington’s statewide legal aid program. I also taught Poverty Law at Gonzaga University in Spokane, Washington. For several years, I have been looking for the chance to move closer to family, but the right opportunity for dedicated legal aiders are few and far between—until Neva decided to step down and the Board of Directors decided to take a chance on me. I could not be more excited about the opportunity to lead Legal Aid Society—one of the most effective legal aid programs in the country—into its second century.

A centenary pandemic has brought unprecedented challenges, hybrid work, hybrid courts and unexpected opportunities. Despite the hills and valleys of the last year, your Legal Aid Society assisted more than **8,300 households** in our fifteen-county service. That’s 1,300 more Kentucky families served than in 2020. How were we able to help so many Kentuckians in need? Thanks to you—our friends, volunteers and supporters.

However, the need far outpaces current resources. There is more work to be done to ensure access to justice for all of our neighbors. This year, as part of our Centennial Anniversary, we’ve launched our Root to Rise Campaign. While we serve 15 counties, we do it all from our office in the Scoop Theater Building in downtown Louisville. The Root to Rise Campaign acknowledges that for justice to rise, we must root ourselves in the communities we serve. The goal of our campaign is to raise sufficient new resources to expand our physical presence, opening an office at the Goodwill Opportunity Campus in the Parkland Neighborhood in West Louisville and expand into a number of satellite office spaces outside of Jefferson County to increase our presence in the remaining 14 counties we serve.

As part of our Root to Rise Campaign, we know we must also shore up our infrastructure. That is why we are actively partnering with our sister legal aid programs to establish funding for a new statewide case management and timekeeping system. Our current system is dated, clumsy and unsupported. A lesson of the pandemic—technology is critical to exceptional service. A new case management system will provide better and more efficient case handling, timekeeping, outcome tracking and inter-program referrals to serve even more people living in poverty in all 120 counties in Kentucky.

Our Root to Rise Campaign is ambitious, but will be possible because of you, our friends and supporters. Over the coming year, we will share more about the opportunities for you and your firms to engage in this meaningful work (and share more about celebratory events along the way). To learn about our Root to Rise Campaign, visit [www.yourlegalaid.org/centennial](http://www.yourlegalaid.org/centennial).

We also know that even with our intake hotline, expanded office presence and fantastic volunteers we still don’t reach everyone who is eligible for our services. We are always looking for unreached communities of eligible clients, deepening our roots so we can rise into the future meeting the emerging needs of the community we call home. If you are interested in having Legal Aid Society table a community event, provide an educational presentation to your organization, or even hold a legal “self-help” clinic, please let us know by submitting a request on our at <https://yourlegalaid.org/outreach-requests>. Or if you have any ideas on how we can better connect with the communities we serve, let me know. Contact me directly at [jcoulter@laslou.org](mailto:jcoulter@laslou.org).

On behalf of your Legal Aid Society, thank you for standing with us and standing by our clients.

Kind regards,

Jefferson Coulter  
Executive Director

# LEADERSHIP CABINET

Thank you to the 2021 Leadership Cabinet. By making a contribution of at least \$250 per attorney, the following firms make it possible for Legal Aid Society to provide free civil legal help to ordinary Kentuckians and balance the scales of justice.

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- Andrew Horne, Attorney at Law
- Becker Law Office (a subsidiary of Bubalo Law PLC)
- Borders & Borders, PLC
- Burke Neal PLLC
- Coyler Law Firm
- Craig Henry PLC
- David Deep Law Office
- Dentons Bingham Greenebaum
- Dinsmore & Shohl LLP
- Dolt, Thompson, Shepherd & Conway, PSC
- Duncan Galloway Greenwald PLLC
- Elder Law Solutions, PLLC
- F. Larkin Fore, Attorney at Law
- Fisher Phillips
- Frost Brown Todd LLC
- Shelly A. Kamei, Attorney at Law
- Kaplan Johnson Abate & Bird LLP
- Law Office of Rubin & Hays
- Morgan Pottinger McGarvey
- Napier Gault Schupbach & Stevens
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- Stites & Harbison
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- Stone Law Office
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# Reflecting on the 20th Anniversary of the Partnership between the Central High School Law and Government Magnet Program and the Louis D. Brandeis School of Law

Laura Rothstein

Last fall, the Louisville Bar Association hosted a 20th anniversary celebration for the partnership between the Central High School (CHS) Law and Government Magnet program and the Louis D. Brandeis School of Law. This partnership builds on a collaboration between the LBA and CHS that began in 1992 with the first Summer Internships, coordinated and facilitated by the LBA. I was also honored to be named the recipient of the 2021 Trailblazer Award during our October event; I have received other honors, but none that has meant more to me than this one.

During our hybrid event, we were lucky to be joined by a panel of three post-2001 CHS graduates who had gone on to law school and who shared with us the stories of their personal journeys. We've reintroduced those panelists and others who have gone on to great professional success in their years since leaving CHS in these pages.

To begin, however, we should consider the CHS partnership's success through four different metrics:

- **Statistics** — including new data about law school attendance among CHS program graduates;
- **Stories** — such as narratives about the CHS graduates and how the partnership made a difference for them;
- **Support** — through the many programs and individuals who have made a difference in the program over the years; and
- **Sustainability** — as we look forward to next steps to build on the success of this unique and remarkable program.

## Statistics – Updated Data

We know of 35 individuals from Central High School who have become lawyers or who are currently in law school, beginning with Alberta Jones in 1948. Sadly, we recently lost the second CHS graduate who became an attorney, former State Representative Darryl Owens, a

member of the class of 1955 and a recipient of the 2012 Trailblazer Award.

In the more than five decades between 1948 and 2001, there were a total of 19 graduates who went on to become attorneys. Since the partnership began in 2001, there are 16 law graduates or CHS graduates currently on track to graduate from law school, approximately a fourfold increase in law school enrollment—and we are aware of at least two other CHS graduates planning to apply to law school for fall 2022.

We also know that since LBA member Joe Gutmann became involved with the CHS program, all program graduates have been admitted to college and/or the military, and many were among the top ten students in their graduating classes. We continue to seek out research grants that will allow us to track other data, such as college completion and graduate and professional school enrollment.

## Stories – Beyond the Data

At the October event, three Central graduates—Frederick Moore, Mashayla Hays and Lazaro Donis-Munoz—told the audience about how the CHS program impacted them, what their college experiences were like and what they are doing now. Their stories, and the stories of those who have gone on to other professions (teaching, social work, business, art and social justice programs), are important in measuring the success of the CHS program. Joe and I have stayed in touch with many of these students over the years. And their praise is universal for Joe, the teacher who inspired and challenged them.

## Support – Those Who Made It All Possible

In addition to the Central students themselves and the more than 250 law students who have participated through the years as teachers, there are many whose contributions made the program the success that it is today. Now, our challenge is to build on that success.

## Sustainability – In The Passing Lane....

When I was growing up, my father was my advanced math teacher for three years in a rural Kansas high school in the 1960s. He was also a coach—his favorite sports to coach were track and cross country, and he especially liked teaching young athletes how to pass the baton in relays. You had to hand it off in the passing lane. If you didn't do it within that lane, you were disqualified. It required focus and practice.

Similarly, being part of the extraordinary Central High School partnership requires us to plan who will take up the baton of facilitating the program at the law school and to ensure that the baton handoff occurs “in the passing lane,” and I assure you that process is underway. I don't just want to sustain the successes with the programs we have in place already; it is important to ensure their financial sustainability going forward and to ensure that sufficient administrative support staff and faculty time are dedicated to the program.

It has long been a goal for all of us involved with the program to find ways to stay connected with our CHS graduates. Several program alumni have discussed participating in a mentorship program for current CHS students, which, with the needed support, would build on the program's success. Another possibility is to revive the Harlan Scholars program with a focus on connecting with any Central graduate who attends UofL. Over the years, I have worked with our Office of Community Engagement and other departments to help them develop pipeline programs between other Central magnets and the university, and this would build on that.

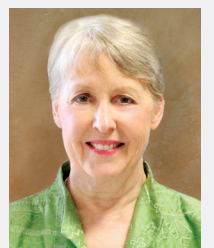
## Final Thoughts

In the fall of 1971—during what was also a turbulent time—I began my first year of law school at Georgetown University Law Center. As a college student at the University of Kan-

sas during the 60s, I had decided that law was a means of advocating for social justice, particularly racial justice. As a law student, I had the opportunity to teach a class at Woodrow Wilson High School during the first year that Street Law existed (1972), not knowing that I would be part of the Street Law program 50 years later.

In the December 2019 *Bar Briefs*, Scott Furkin's column, “We're A Wonderful Bar,” used Frank Capra's “It's a Wonderful Life” as a metaphor to demonstrate all the ways that the LBA has made a difference. That movie was part of the inspiration for Mitch Albom's book, *Five People You Meet in Heaven*, which tells the story of how we impact people's lives in ways we often do not know, and how those impacted in turn affect the lives of others. There are so many individuals and organizations who have made an impact on the Central High School students in ways we often fail to appreciate. So many members of the legal community, the university community and the Louisville community have been some of the “five people you meet” for Central High School students and have been part of their success. And those Central students in turn, inspire us and become some of our “five people.” I am confident that the ongoing collaborations between Central High School, the Brandeis School of Law and the Louisville Bar Association will continue to show success.

Laura Rothstein is Distinguished University Scholar and Professor of Law at the University of Louisville Louis D. Brandeis School of Law. She was dean when the partnership began in 2001 with the Central High School Law and Government Magnet Program and has continued to coordinate the program with Professor Cedric Merlin Powell, who was Associate Dean in 2001 and part of the beginning of the partnership. ■



Meet some of the CHS Law and Government Program's distinguished graduates and learn more about their professional accomplishments.

## BREIA MADDOX, Class of 2015



*“In talking to former classmates, I have learned that what sets us apart is not determination to attend law school, but access.”*

Breia graduated from UofL with a Bachelor of Science degree in 2019 and a master's degree in 2020, both in Sport Administration. She is currently a first

year student at Washington University School of Law. While at Central, she participated in the McAnulty Essay Contest and says the program's internships helped her to navigate professionally.

## MASHAYLA HAYS, Class of 2011



Mashayla graduated with a degree in Pan-African Studies from the University of Louisville, then earned a law degree from the Brandeis School of Law. She is currently pursuing a master's degree in Public Policy and Administration from Northwestern University. During law school, she received the LBA's Trailblazer Student Scholarship Award, was a Kentucky Legal Education Opportunity (KLEO) Scholar and was awarded the Samuel L. Greenebaum Public Service Award, given to the graduate with the most public service hours. After graduation, she worked as a Legal Fellow with the ACLU of Kentucky and an If/When/How Reproductive Justice Fellow for the Women's Law Project and New Voices for Reproductive Justice.

received the LBA's Trailblazer Student Scholarship Award, was a Kentucky Legal Education Opportunity (KLEO) Scholar and was awarded the Samuel L. Greenebaum Public Service Award, given to the graduate with the most public service hours. After graduation, she worked as a Legal Fellow with the ACLU of Kentucky and an If/When/How Reproductive Justice Fellow for the Women's Law Project and New Voices for Reproductive Justice.

## FREDERICK MOORE III, Class of 2005

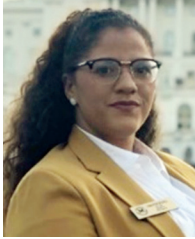


*“The program at Central helped to nourish my dream of becoming a trial lawyer. It provided resources, opportunities and encouragement from which I continue to benefit almost 20 years later.”*

Fred graduated from Georgetown University where he majored in both Government and Philosophy and

was captain and vice-president of the mock trial team. He then graduated from the University of Kentucky Rosenberg College of Law in 2012 and accepted a position as a Trial Attorney in the Louisville-Metro Public Defender's Office. Frederick is now at Grossman Green in Louisville, representing those who have been injured as a result of medical negligence, nursing home neglect and abuse, product liability and truck wrecks.

### CHRISTIEN RUSSELL, Class of 2010



*"Mr. Gutmann was the factor. I couldn't have asked for a better teacher, mentor and now friend. He is the most well-respected, humble, honest, charismatic, caring and passionate attorney and teacher that I have ever met. He ensured that barriers were*

*eliminated for all of his students to succeed and gave us space to imagine."*

Christien graduated from the University of Kentucky with a degree in Community and Leadership Development; Auburn University with a master's in Public Administration focusing on rural sociology; and Mississippi State University with a Ph.D. in Agricultural Sciences with a focus in Diversity, Equity and Inclusion (DEI). She now works with Thrivent, a Fortune 500 financial institute, as the Diversity and Inclusion Talent Culture and University Relationship Lead. She also holds the position of Senior DEI Researcher and Strategy Consultant for a marketing research firm. During her time at Central, Christien participated in the Summer Law Institute, Teen Court, mock trial, and internships, served as a volunteer with the ACLU and assisted in planning the Youth Rights Institute.

### LAZARO DONIS-MUNOZ, Class of 2015



Lazaro graduated from the University of Louisville in 2019 with a degree in Political Science and is currently a 3L at the University of Chicago. During his time at UofL, he served as the Student Government Association Academic Vice President and was a recipient of the Outstanding Undergraduate Senior Student Award. He worked as a Summer Associate at Dinsmore & Shohl in 2020, and plans to work at Katten Muchin Rosenman LLP following his graduation from law school.

### CHASTITY WHITE, Class of 2010

*"I wanted to be an attorney, because I thought I'd be able to help keep Black people out of the justice system. I then began to think about all of the history and reasons why Black people became a part of the system."*

Chastity received a degree in Political Science from Fisk University in 2014, then went on to earn a degree in Urban Planning from the University of Louisville in 2017, which drove her interest in how our country's political, economic and social systems have affected the Black community. She now serves as the Housing Project Manager for Russell: A Place of Promise where she helps Black families navigate the pathway to sustainable homeownership or business development.

### KIM ALBRITTON, Class of 2009

*"It was the best decision I ever made. Mr. Gutmann is a gem and the partnership they have with UofL's law school has transformed many lives, mine included."*

Kim received a degree in Music Business with a minor in Marketing from Middle Tennessee State University. After college, she started her own management company, Prospective Media Management, where she managed musical artists and songwriters, organized international tours and local concerts in Nashville. She also has a master's degree in Global Entertainment and Music Business from Berklee College of Music's Graduate School in Valencia, Spain. During her time at Central, Kim participated in moot court, the McAnulty Essay Contest, the Summer Law Institute and Teen Court. She is now working toward her application to law school, with a focus on Entertainment Law.

### MIKELLA FIELDS, Class of 2012



*"Central was a surreal experience because it gave minority students opportunities that aren't very obtainable for Black and Brown students. While at Central, Mr. Gutmann often brought in Alumni who spoke about their experiences at Central and the legal profession*

*and it was extremely inspiring to see the possibilities of our future."*

Mikella knew since she was 12 years old that she wanted to be an attorney — which led her to the Law and Government program at Central, where she participated in the LBA's Summer Law Institute and mock trial. She later attended Kentucky State University, graduating with a degree in Criminal Justice. After college, she worked at Frost Brown Todd as a Records Center Assistant before enrolling in the Brandeis School of Law at UofL. She is now working as a Corporate Attorney at Heaven Hill Brands.

### JAMITRA FULLEORD, Class of 2014



*"I originally applied to and attended CHS to participate in the veterinarian magnet. However, my time in the Law and Government magnet during my freshman year made me realize that I could utilize a law degree to help marginalized individuals who are*

*often overlooked in the legal system."*

Jamitra graduated from UofL in 2018 with a degree in Pan-African Studies and later received her J.D. from Washington University School of Law in 2021. She is now an Equal Justice Works Fellow at ArchCity Defenders, a holistic legal advocacy organization in St. Louis. During her time at Central, Jamitra participated on the mock trial team and in the McAnulty Essay Contest, saying "it was my first experience researching and analyzing the law to answer a question presented in the essay prompts."

### BRIONA POSEY, Class of 2008

*"The Law and Government program prepared me for life outside of Central and equipped me with the tools necessary to receive full academic scholarships for both my undergraduate and graduate programs."*

Briona graduated from Murray State University, and then earned a master's degree in Human Resource Management from Ohio State University. After graduate school, she worked as an HR professional first for Royal Dutch Shell and now for Texas Instruments. She credits the internships she participated in as a student in the Law and Government program with fostering her interest in HR. "It was during my internships that I became increasingly aware of employment law and different avenues one could take."



## Are you ready to take The Challenge?

This month, the LBA's Diversity and Inclusion Committee is inviting all LBA members to participate in the American Bar Association's 21-Day Racial Equity Habit-Building Challenge.

Each day, participants will be asked to complete short assignments with a goal of helping participants become, "more aware, compassionate, constructive, engaged people in the quest for racial equity." Assignments include readings, videos and podcasts exploring issues from implicit bias to maternal mortality in the Black community to economic inequity. At the conclusion of the Challenge, we'll host a virtual panel discussion with a group of participants to talk about what they learned from the process and how those learnings may have changed their perspectives.

Not sure if you'll be able to complete all the assignments? That's OK—just complete as many as you can. And if you're ready to commit to the Challenge and share your thoughts on what you learned during our virtual forum, please e-mail LBA Executive Director Kristen Miller at [sgreer@loubar.org](mailto:sgreer@loubar.org).

To learn more about the Challenge, visit the Diversity and Inclusion Center on the ABA website at [www.americanbar.org/groups/diversity](http://www.americanbar.org/groups/diversity). And join us as we begin the Challenge on Tuesday, February 1st.

## Help the LBA Support Local Black-Owned Businesses

The number of Black-owned businesses with employees grew by more than 30% between 2002 and 2017; still, recent data indicates that just more than 4% of our country's business owners are Black. Less than 1% of small businesses in Black communities have a profit margin of 20% or more, and only 5% have enough cash on hand to withstand a shutdown of two weeks—in fact, almost 450,000 Black-owned businesses were shuttered during the COVID-19 pandemic. From accessing capital to finding investors, Black entrepreneurs still face disproportionate challenges as they work to build their businesses.

That's one reason the LBA wants to help support local Black-owned businesses and share that information with our membership so you can support them, as well. We're seeking to expand the list of organizations we work with, and during Black History Month, we'd like to feature some of these businesses on social media and in eBriefs.

Know of a Black-owned business you'd like to share with the LBA membership? Send their name and a brief description of what they do to [sgreer@loubar.org](mailto:sgreer@loubar.org) or tag them on our Facebook or Instagram accounts. If you nominate a business, you'll be entered to win a prize featuring products and services provided by the businesses we feature.



# Court Enforced Collections are Widening the Poverty Gap

Melissa Weinstein

Despite the uncertainty we have all experienced during the COVID-19 pandemic, one burden that has remained consistent for many people is insurmountable consumer debt. While the U.S. government froze student-loan interest, eviction proceedings and foreclosures, there was no relief for individuals with auto loans, medical debt or credit card bills they could not afford to pay. Early on, the pandemic prompted compassion for the personal struggles and economic hardships of others. Eventually, however, our collective concern for those hit hardest by the pandemic has been diminished after fatigue, frustration and burnout.

Although many factors contribute to poverty in the U.S., few are more obvious than the impact of consumer debt. Debt has an immediate and long-term effect on one's economic stability. A person who is forced to expend what little income they receive to pay down older debts, in general, will be unable to afford all of their needs in the present. Payments are missed, bills are sent to collections, and legal action is taken. If the debtor loses in court—and most do—the judgment entered against them at the contractual rate with interest results in a collection amount

that far surpass the amount of the principal debt. At that time, voluntary payment is not an option; wages are garnished and bank account funds are seized. This leads to more credit borrowing and debt, which in turn fuels the cycle of poverty. As attorneys we should

consider how our legal system contributes to and exacerbates this problem, and how we should safeguard against it.

### How did we get here?

Debt collection lawsuits are filling the civil dockets. According to a May 2020 Pew Research Center report (*How Debt Collectors Are Transforming the Business of State Courts*), debt collection suits have grown to dominate state court civil dockets. A nationwide survey estimated the number of debt collection suits more than doubled, from fewer than 1.7 million to about 4 million, rising from

an estimated 1 in 9 civil cases to 1 in 4 over a 10-year period.

Since last year, when I wrote about this topic in this publication (“I am Afraid of the Future Because I Know I Can’t Afford It,” February 2021), the Kentucky Administrative Office

“If we can quantify the harm, more people pay attention. However, I suggest we also consider the human indignities that cannot be quantified.”

of the Courts has begun collecting more comprehensive data about the type of civil cases filed. In 2021, debt collections claims outnumbered most other cases on our civil dockets. Over half of the civil lawsuits filed last year in Kentucky were consumer debt collection claims. According to data provided by the AOC Division of Statistics and Research, 86,023 civil lawsuits were filed in Kentucky state court in 2021 (this excludes small claims, probate, disability, foreclosure, administrative appeals or forcible detainer actions). Nearly 46,000 of those lawsuits were identified as consumer debt collection cases.

The same Pew Research Center Report found that more than 70% of debt collection lawsuits have ended with default judgments for the plaintiff. It is difficult to know the number for Kentucky since cases filed before 2021 were not identified specifically as debt collection cases. Looking at only the debt collection cases filed and disposed of in 2021, at least 62% of them ended in default judgments (the AOC has provided this information with the disclaimer that only a single case disposition code may be selected for a single case, but more than one outcome may apply simultaneously). In Jefferson County, at least 64.5% of those cases ended in default judgments. About 57% of the debt collection cases filed statewide in 2021 are still pending.

The data is still limited but state agencies and advocacy groups are moving to change that. Numbers are important because they highlight the significance of a problem. If we can quantify the harm, more people pay attention. However, I suggest we also consider the human indignities that cannot be quantified.

### The inexorable truth sets in.

In a motion for a default judgment, the creditor can request the court to order the consumer pay all accrued pre-judgment and post-judgment interest, court fees and attorney fees. Kentucky's statutory pre-judgment interest rate is 8% and post-judgment interest rate is 6%, but the statute allows the contractual interest rate to be used instead.

The creditor has multiple remedies it can use to execute the judgment, including wage garnishment, a levy on the consumer's bank accounts and placing a lien on the debtor's property. Wage garnishment is an effective

means of collection because the creditor can seize the money directly from the debtor's employer without ever giving the debtor access to the funds. Unlike some states, Kentucky has no additional wage garnishment protections beyond those provided by federal law. That means that \$217.50 per week (thirty times the federal minimum hourly wage) is exempt from garnishment. Any amount over that is subject to garnishment, so long as it does not exceed 25% of the debtor's disposable earnings.

The seizure of money from a bank account can be even more devastating because it is mainly unrestricted, potentially leaving someone with an empty account. There are certain exemptions to protect Social Security and government benefits but they are very limited in Kentucky. Bank account garnishment can also circumvent wage garnishment caps, because once a paycheck is deposited into a bank account, it is no longer subject to the limits set by federal law, and all the money can be legally garnished. This often causes a debtor to forgo having a bank account all together, which can be a whole other hurdle to achieving financial security.

A 2015 study conducted by ProPublica found that collection lawsuits, judgments and wage garnishments are more common in communities of color (*The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*). The study looked at three major U.S. cities over five years—St. Louis, Chicago and Newark. The analysis showed that even accounting for income, the rate of judgments was twice as high in mostly black neighborhoods as it was in mostly white ones. Researchers discovered that these findings suggest more than just racial bias by lenders or collectors. There was another explanation: generations of discrimination left black families with grossly fewer resources to draw on when they come under financial pressure. This study reflects what we are seeing in Louisville. Unfortunately, this topic has not been given the attention it deserves. This ProPublica study was one of a kind, and it does not appear to have been reexamined in recent years. Princeton University recently started a debt collection data tracking project to create public-facing data tool on debt collection lawsuits that will highlight disparate racial impacts.

### Why care about people who do not pay their bills?

We tend to judge people's financial decisions very harshly, especially the poor. The reality is that most Americans carry some kind of debt. If stripped of the safety net provided by savings, equity and family, anyone could slip into the downward debt spiral. Most of debt that goes into collection is not from luxury purchases. Over 79% of the debt collection cases in Kentucky last year were filed in District Court, which means the claims were for \$5,000 or less. A consumer debt collection

(Continued on next page)

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lawsuit typically refers to an action brought by original creditors or debt buyers claiming unpaid medical, credit card, auto and other types of consumer debt exclusive of housing (e.g., mortgage or rent).

Over the last year, I saw a healthy share of each of these types of cases in my practice, but the most significant uptick was in auto loan deficiency collection lawsuits. In a city like Louisville, without an extensive public transportation system, most people rely on cars to get to work, take their children to school, get to appointments, etc. The type of auto loan cases that typically wind up in collection lawsuits originate with subprime lenders who price cars significantly higher than the fair market value. The subprime loans also carry exorbitant interest rates. A person financing an overvalued car with a subprime loan is unable to qualify for a market rate loan. With no bargaining power and the urgent need for a car, they have little choice but to accept the lender's terms.

Inevitably the car will have a myriad of hidden mechanical issues which begin to surface after the consumer has sunk too much money into the car and/or the payments become overwhelming. Consumers often default within a year on these loans and almost the entire original balance they borrowed is still owed. The car is repossessed and the lender is rarely at a loss. Inevitably the consumer does not want to, nor can they afford to, continue to pay for a car they no longer own. The entire remaining balance is sent to collections. Unlike most other debt, even after the debt is written off the contractual interest rate continues to accrue. Usually within a short time the debt is either assigned to another creditor, who sues to collect the debt, or the original creditor brings the lawsuit itself.

The impact of a judgment from a high interest debt may have on a person's economic stability cannot be understated. Not only does the debtor typically owe more than the original debt; they could find themselves owing attorney fees, collection costs and pre- and post-judgment interest at the contractual rate. That high interest rate is not the cost of credit any longer. The debtor is paying interest to finance the judgment now. Once a judgment is executed it can literally last forever. In Kentucky, the statute of limitations on a court-issued judgment is fifteen years, but it can be renewed indefinitely by any effort to enforce it. Often filing Chapter 7 bankruptcy is the only reprieve from this nightmare.

#### **Debt collection in perpetual motion.**

Last year I wrote about my former client "Rachel" to illustrate the intrinsic relationship between these types of cases and the cycle of poverty on a human level. Rachel had a \$6,500 default judgment entered against her in 2004 for auto loan debt, with the contractual post-judgment interest rate of 27%. She had paid almost \$11,000 through wage garnishments over 15 years, but still had an outstanding balance of over \$10,000. Rachel's story was not an outlier. In the past year I have seen countless cases with very similar facts. Take, a recent former client, "Cathy." Cathy had purchased a car in 2010, and financed \$8,400 at an interest rate of 34.50% APR. After defaulting on the loan, Cathy was sued for the remaining loan balance of \$4,500, plus attorney fees and 34.5% in

post-judgment interest. The only unique part of Cathy's story is that she was actually talked into entering in an agreed judgment for the full amount sought in the complaint.

After Cathy contracted COVID last year and became gravely ill, she started to put her affairs in order and discovered the judgment lien was still on her home. She contacted our office for assistance having the lien removed. Cathy had paid almost \$12,000 in wage garnishments over a 5-year period. She assumed the judgment had been paid off because the garnishments stopped. After speaking to the creditor's attorney, I learned that she still owed about \$10,500. Apparently, the garnishments stopped when her former employer switched payroll administrators. We are able to settle the matter for \$500, which Cathy had to borrow from her children.

These cases demonstrate two points: 1) legal representation on both sides of is essential for an equitable outcome; and 2), these judgments are outright punitive, and our system allows them to profligate.

#### **Debt claim defendants rarely have legal representation.**

The earlier mentioned Pew Research Center report found that based on available national data from 2010 to 2019, less than 10 percent of defendants in these cases had counsel, compared with nearly all plaintiffs. I have no doubt that an informal survey of judges, creditor attorneys, legal aid attorneys and court officials would confirm that number is the same or in Kentucky. Until recently, the concern over lack of representation in the civil legal system had been largely confined to legal aid organizations and various policy advocates. This issue has gained some traction outside just public interest circles; the Louisville Metro Council voted to establish and fund a one-year right-to-counsel program. However, that program only extends to eviction cases and cannot be utilized in civil consumer debt collections claims.

I am certain that the outcome in Rachel's and Cathy's cases would have been different if they had attorneys representing them during the lawsuit. Consumers with legal representation in a debt claim will have more favorable outcomes. The main reason consumers are rarely represented in debt lawsuits is the prohibitive cost of a lawyer. Fear, shame and intimidation are common feelings anyone would have if they are being sued, and also likely cause someone to want to avoid dealing with the lawsuit after being served. Prior to the pandemic, when we had in-person debt-collection defense clinics at our office, clients would explain that they had not responded to a summons because they cannot afford to take off work, find childcare or secure transportation just to go to court to explain to a judge and the creditor that they could not afford to pay the debt.

#### **This system is not making anyone whole.**

One thing is clear: The people who fail to respond to lawsuits have no idea of the impact it will have on them in the future. Why would they? It seems like a fair and just system would protect a person from having to pay a portion of their wages towards an old small-dollar consumer debt for the rest of their working days. These collection lawsuits are civil cases, brought by a business against an individual seeking compensatory damages.

They are essentially just breach of contract cases. The purpose of awarding damages should be to compensate the injured party. At best the injured party should be awarded an amount to place them in the same position as if the contract had not been breached. Pre- and post-judgment interest is designed to compensate plaintiffs for the lost time value of money owed to them. A judgment that is collectable at the interest rate of a subprime auto lender is at odds with the fundamental nature of the civil justice system, which should be to make the injured party whole—not enable a windfall. A judgment that allows the plaintiff to generate egregious profits is not compensatory. It is punitive.

People who work in public interest law understand that there is no one issue that needs more attention than the rest. Notwithstanding same, the work of representing consumer debtors in debt collection cases is almost entirely unfunded by outside sources. There is very little volunteer interest in these cases. I hope that that by focusing attention on this issue here, eventually there will be the same momentum to assist and help reform this problem as well.

Melissa Weinstein is a staff attorney at Legal Aid Society in the Economic Stability Unit. She represents individuals in consumer debt collection claims, student loan collection litigation and administrative discharge, bankruptcy, and criminal record expungement. Weinstein is vice-chair of the LBA's Public Interest Section. ■



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The helpline will be staffed by Kentucky Legal Aid (KLA) and qualified callers may receive assistance from KLA staff or be connected with a volunteer attorney.

The service is a partnership between the ABA Young Lawyers Division, FEMA, KY Legal Aid, Legal Aid Society, KBA, KY Access to Justice Commission and the Kentucky Bar Foundation.

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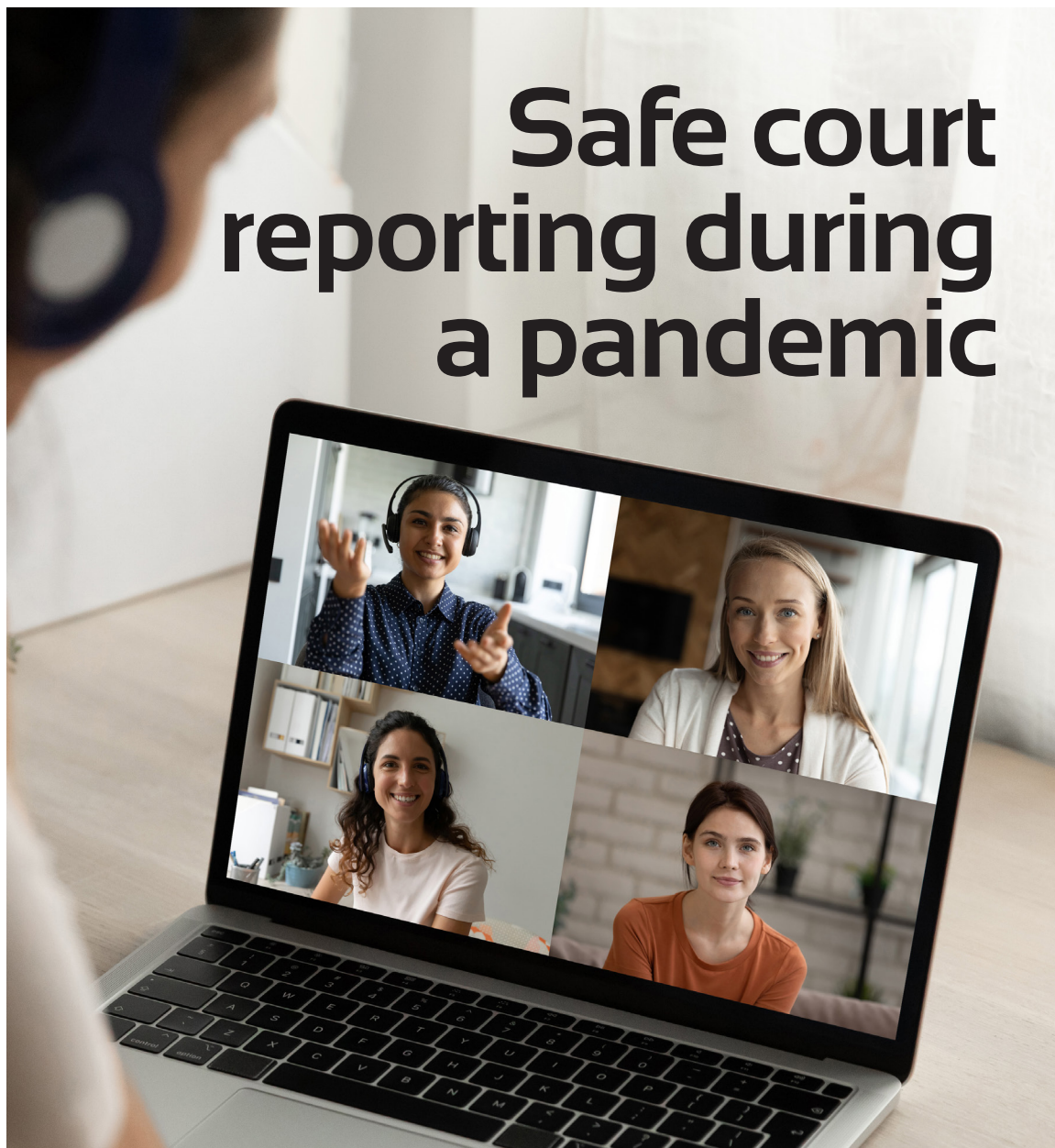
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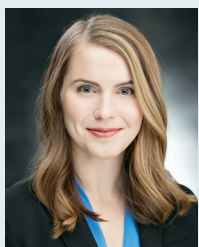
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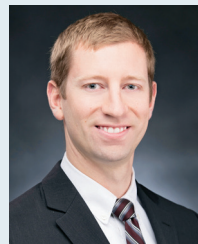
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Stites & Harbison announced that **Jeff Moad** and **Mari-Elisa Paul** have been promoted to Members (Partners) within the law firm. Moad, with the Business Litigation Service Group, practices complex business and commercial litigation, class action litigation, consumer finance litigation and professional liability defense. He counsels clients in a wide range of industries, including investment consultants, gaming and entertainment firms, financial institutions, manufacturers, loan servicers, law firms, food and beverage companies, pharmaceutical firms, insurers, telecommunications companies and many others. He has represented clients in litigation, investigations and negotiations opposite multiple state Attorneys General, corporations, classes and individuals. Paul, with the Intellectual Property & Technology Service Group, practices litigating intellectual property infringement and trade secret misappropriation matters; prosecuting trademark and copyright registration applications; litigating trademark opposition and cancellation proceedings and negotiating and drafting licenses, assignments and other agreements that involve intellectual property or technology rights. She also practices in the Privacy and Data Security area and advises clients on a variety of privacy matters, including compliance with privacy and data security laws and drafting privacy policies.

Schiller Barnes Maloney (SBM) announced the following attorneys joined the firm in 2021: **Hannah Feist**, **Adrianna Long**, **Patrick Muldoon** and **Mark E. Roth**. Feist practices in the areas of automotive litigation, premises liability, bad faith claims and coverage opinions. She studied law at the University of Georgia School of Law. Prior to joining SBM, she worked as an Assistant Public Defender for three years representing indigent clients in Jefferson County District and Circuit Court. Long joined SBM in June 2021. Her practice area focuses on automobile and trucking negligence, bad faith and insurance coverage issues, governmental and tort liability litigation. Long graduated from the University of Louisville Brandeis School of Law. Following law school, she worked as an Assistant County Attorney for the Jefferson County Attorney's Office and later worked as a civil defense attorney. Muldoon joined the firm in September 2021. Before joining the firm, Muldoon was a staff attorney for Judge Thomas D. Wingate in Franklin Circuit Court. His practice areas include municipal litigation, automotive litigation, premises liability, products liability, professional negligence, and wrongful death and catastrophic injury. Muldoon graduated from the University of Kentucky College of Law in 2019. Roth joined SBM in September 2021 and focuses his practice on insurance defense and civil litigation. He graduated from the University of Kentucky School of Law in 2016. Before joining the firm, Roth worked at a Louisville-based litigation firm where he practiced all throughout Kentucky. ■

## Remembering Two Giants of the Louisville Legal Community

Judge Brian Edwards

Our profession recently lost two of our finest ambassadors—John W. Stewart and Darryl T. Owens. For myself and many others, these two gentlemen provided a blueprint for how to fiercely advocate while also being dignified and courteous.

I became acquainted with John Stewart early in my career and quickly learned of his outstanding reputation as one of our Commonwealth's finest trial lawyers. After his graduation from the University of Kentucky College of Law, John began his career as the second African American to serve as an Assistant Attorney General before returning to Louisville to serve as an Assistant Commonwealth's Attorney. He soon rose to the position of First Assistant Commonwealth Attorney under the Honorable Ernest Jasmin before ultimately going into private practice alongside Darryl T. Owens.



Darryl T. Owens (left) with John W. Stewart

Upon leaving the Public Defender's Office, I was given the opportunity to practice alongside these two men at their offices located on 13th and Broadway. Darryl's first floor office was small and modestly decorated belying the multitude of accomplishments that he had achieved during his career. Following his graduation from Howard University School of Law, Darryl began his legal and public service careers becoming Kentucky's first Assistant Attorney General. He went on to serve as a Juvenile Court Judge, Jefferson County Commissioner and State Representative, while maintaining an active law practice.

There were many lessons about practicing law that I learned from these two gentlemen. From John, I learned about the importance of always being prepared. Whether it was a speeding ticket in District Court or a Capital Murder case in Federal Court, John would not step into the courtroom without his briefcase, a fully briefed trial notebook, and case law and authorities to support his position. My last visit with John was when he came into town to speak to my trial practice class about the importance of diligent preparation and about how to assemble a trial notebook. John also looked the part of the dynamic trial attorney that he was, immaculately dressed from his freshly shined shoes to the crisp pocket square peeking out of his lapel pocket. Judges, adversaries, jurors and his clients respected and loved John.

From Darryl, I learned that the wisest person in the room was rarely the loudest. Whether it was through estate planning for his clients or brainstorming ways to navigate the political landscape of Kentucky, Darryl was a master strategist who despite having a sharp sense of humor, had no time for foolishness and who would not allow himself to be distracted from his goals. Darryl's steadfast commitment to his constituents and to preparing the next generation of public servants is the reason that in 2012, the Louisville Bar Association bestowed him with its Trailblazer Award.

Both men committed their professional lives to the law and taught me about the importance of public service. During my time working alongside them, they also taught me life lessons about the importance of making time for family and to appreciate the significance of serving as a role model for future black lawyers.

John and Darryl made an indelible impact on me and on many others. I'll conclude this tribute with remarks from attorney Ramon McGee who also had the privilege of working alongside these two men.

*When I walked into their offices, those many years ago, they were "Mr. Owens" and "Mr. Stewart." By the time I left, they were "Darryl" and "John."*

*Darryl was the head coach; watching silently until you finished doing whatever you were doing and then offering both support and critique. John was the hands-on coach on the field; offering advice with every step you took and always ensuring you knew the direction in which you were traveling.*

*You always knew you were safe with Darryl and John beside you; a feeling they gave to clients, colleagues, family and friends.*

*To say that Darryl and John had integrity would be a platitude. They said what they thought, and they meant what they said.*

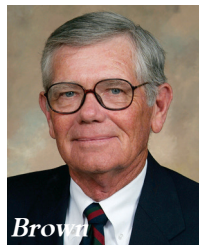
*For both Darryl and John, we could discuss their litany of accomplishments and accolades. I remember them for two very simple statements they made to me. With Darryl, it was his usual response to a question. He would look at me and say, "Well, what do you think?" With John, it was a caution and a warning: "Not every rabbit is worth the chase." They were both offering the same philosophy: Think, consider and decide.*

*I think of Darryl and John often and consider them to be two of the finest people I have ever had the honor privilege of knowing.*

*They are loved, they are respected, and they are greatly missed. Rest easy, Mr. Owens and Mr. Stewart; Darryl and John.*

Judge Brian Edwards presides in Jefferson Circuit Court, Division 11. ■

## In Memoriam



Brown

**Thomas A. Brown Sr.**, age 84, died on December 21, 2021. A graduate of the University of Louisville Brandeis School of Law, he served in the U.S. Army before launching a legal career that spanned more than 40 years. A partner at Greenebaum Doll & McDonald (now Dentons Bingham Greenebaum), he was a longtime head of the tax department and ultimately the Member in Charge of the firm's Louisville office.

Brown is survived by his wife, Brenda, and six children as well as 18 grandchildren and a great-grandchild. A memorial mass will be held at 12 p.m. on February 12, 2022, at St. James Catholic Church, 1826 Edenside Avenue. Memorial gifts can be made to Down Syndrome of Louisville.



Fleming

**Willie C. Fleming**, age 94, died on November 19, 2021. He was one of the first two African American graduates of the University of Louisville Brandeis School of Law and enjoyed a long and distinguished legal career that spanned more than 60 years. A civil rights leader and community activist, in the 1950s and '60s he was instrumental in the integration of public schools and swimming pools in Shelbyville, Kentucky where he lived.

He was predeceased by his wife, Jacqueline, but survived by five children, eight grandchildren and 12 great-grandchildren. ■

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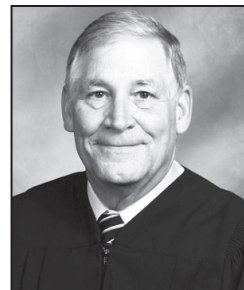
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