

BAR*briefs*



Louisville Bar Association

December 2025

Season's Greetings

Wishing you a joyful holiday season
and a happy New Year
– LBA staff

The Traditions That Make Us Different, Yet Also the Same

We just finished celebrating Thanksgiving with turkey, sweet potato casserole, green beans, stuffing and more. We watched too much football and took naps in the middle of the day. Not bad for one Thursday!

Now we move on to December, which includes several holidays and special events. Originally the tenth month on the Roman calendar, it became the twelfth month after January and February were added.

December is Learn a Foreign Language Month. I didn't realize that it could be accomplished in 31 days! Still worth a try. It is Universal Human Rights Month, Spiritual Literacy Month and National Tie Month.

We also have several holidays such as Christmas, Kwanzaa and Hanukkah. Each of these includes special celebrations, shopping and gifting, unique meal planning and, in some cases, lots of baking!

In my November article, I mentioned that my family merged both Cuban and American holiday menus at Thanksgiving. That continued into December as we celebrated Noche Buena, or good night, on December 24th. A traditional Cuban Christmas Eve dinner included lechon asado (roast pork), congri (black beans and rice), yuca con mojo (yuca with garlic sauce) and caramel flan. As we got older and added more American dishes, my mother included stuffing and sweet potatoes (one of her favorites) to the menu along with pumpkin pie and brownies.

My mother also made Crema de Vie, which is Cuban eggnog. Included here is a recipe courtesy of www.mybigfatcubanfamily.com.

As children, we were given a small taste of this eggnog at meals and family get togethers. I can tell you that it is quite delicious and I still make it.

Also, in December we celebrate Kwanzaa and Hanukkah, which each bring their own respective traditions. Celebrated every year from December 26 through January 1, Kwanzaa is a week of festivities honoring African American culture and heritage. Educator and activist Maulana Karenga created Kwanzaa in 1966 to empower African Americans to rediscover and honor their African roots. Kwanzaa means "first fruits" in Swahili, a language spoken in Africa, and refers to the joy and unity many Africans have when celebrating the harvest season. Celebrants enjoy special foods all throughout Kwanzaa. Families use recipes that have been passed down over many, many years; often those foods have roots in African culture. Meals might include dishes like peanut soup or shrimp gumbo, topped off with tasty desserts like fried bananas, sweet potato pie and coconut sweets. A Karamu Ya Imani (Feast of Faith) is a feast typically held on

December 31, the sixth day of the Kwanzaa period. (Information about Kwanzaa was obtained from the National Geographic website.)

Hanukkah is a Jewish festival commemorating the recovery of Jerusalem and subsequent rededication of the Second Temple at the beginning of the Maccabean Revolt against the Seleucid Empire in the 2nd century BCE.

Hanukkah is observed for eight nights and days, which may occur at any time from November 28 to December 27. The festival is observed by lighting the candles of a candelabrum with nine branches, commonly called a menorah or hanukkah. Traditional foods include potato pancakes, known as latkes in Yiddish, jam-filled doughnuts and fritters. (Information obtained from Wikipedia.)

Recipe

CRÈMA DE VIE (CUBAN EGGNOG)

Makes about 5 cups

Ingredients

Instruction

- 1 can sweetened condensed milk
- 1 can evaporated milk
- 6 egg yolks
- 2 cups sugar
- 1 cup water
- 1 tsp. vanilla
- 1/2 cup white rum



Photo: Anna Shepilova, Shutterstock

1. Mix sugar and water together over very low heat, stirring constantly until the sugar dissolves – about 3 min. Keep temp low enough so the sugar doesn't caramelize but makes a thick sugary water.
2. Put egg yolks in a blender and mix with condensed milk.
3. Slowly add evaporated milk and mix completely.
4. Flavor with vanilla.
5. Pour mixture into the sugar-water and mix together.
6. Finally stir in rum (as a preservative).

This list is not inclusive of all faiths or traditions, but is intended to emphasize our differences and commonalities. We all celebrate something; we should share and celebrate with each other.

Our final holiday of the year is New Year's Eve, December 31st, when Cubans eat 12 grapes at midnight and throw water out the front and back doors. The grapes represent the 12 months of the year. The water is to wash away the

bad and bring in the new and good. We also dance as much as possible!

With all this celebrating to do, please don't forget to participate in the LBA's December events:

- Santa's Court Toy Drive is underway and ending soon! The LBA partners with the Salvation Army Angel Tree to make sure that as many children as possible experience a great holiday (see page 13).
- Nominations are open for the 2025 Justice William E. McAnulty Jr. Trailblazer Award. The award celebrates leaders who drive legal and social progress and is named for the first African American to serve on the Kentucky Supreme Court (see page 17).

I want to thank the LBA Executive Committee, the Board and the staff for all of their efforts and support during 2025. It has been my pleasure and privileged to serve as President this year.


Maria A. Fernandez
LBA President



“

This list is not inclusive of all faiths or traditions, but is intended to emphasize our differences and commonalities. We all celebrate something; we should share and celebrate with each other.

As we close another successful year here at the LBA, I would like to extend my personal gratitude to our outgoing LBA President Maria Fernandez. Maria is a tireless supporter of the LBA and a true friend to and advocate for our legal community. Since I've known her, she's had this year circled on her calendar – and while it may have gone differently than she originally envisioned, it has still been a rousing success. We are all so grateful for her resilience and leadership throughout this past year. If you see her, please give her a well-deserved thanks for her steadfast year of service to the LBA!
– Kristen Miller, LBA Executive Director

Articles of Impeachment Set Stage for Rare Debate

Chief Judge Ann Bailey Smith

According to a post on the National Constitution Center's website, "the impeachment of state-level supreme court judges is rare, noting that "The National Council of State Legislatures could only cite a handful of instances in a special website section on the subject of impeachment."

Articles of Impeachment have been filed against Justice Pamela Goodwine of the Kentucky Supreme Court. Justice Goodwine won election to the Supreme Court in November 2024 from the Fifth Appellate District which comprises Bourbon, Clark, Fayette, Franklin, Jessamine, Madison, Scott and Woodford Counties. She is one of only a handful of judges who has presided in district court, circuit court, the Court of Appeals and the Supreme Court. She practiced with Wyatt, Tarrant & Combs prior to beginning her judicial career. In February of this year, she was awarded the Justice William E. McNulty Jr. Award by Chief Justice Debra Lambert for Justice Goodwine's outstanding service and dedication to the Kentucky Court of Justice. In spite of her noteworthy credentials, she is facing possible impeachment. Here is the backdrop which led to this accusation.

Section 59 of the Kentucky Constitution prohibits the General Assembly from enacting legislation as to local or special acts concerning the management of public schools. Section 60 of the Kentucky Constitution provides that "The General Assembly shall not indirectly enact any

special or local act by the repeal in part of a general act, or by exempting from the operation of a general act any city, town, district or county..." Senate Bill 1 was enacted in 2022 which limited the obligations and duties of a school board in reference to its superintendent "in a county school district in a county with a consolidated local government adopted under KRS Chapter 67C." At the time of its enactment, Senate Bill 1 only applied to Jefferson County of the 120 counties in Kentucky. Senate Bill 1 places limits on the number of times the Jefferson County School Board can meet, gives the superintendent spending power, grants the superintendent rule-making ability which can only be disapproved by a supermajority of the school board, gives the superintendent authority over day-to-day operations of its strategic plan regarding Jefferson County schools and extends the superintendent's responsibility to any administrative duty not explicitly granted to the school board.

The Jefferson County School Board challenged this legislation in a lawsuit which was heard by Judge Charles Cunningham Jr. (22CI2816). After briefing and arguments, Judge Cunningham found Senate Bill 1 to be unconstitutional as it constituted impermissible local legislation affecting only Jefferson County. The Court of Appeals affirmed (2022-CA-0964) and the Kentucky Supreme Court granted discretionary review. Justice Shea Nickell wrote the majority opinion, joined by Justice Debra Lambert and Justice Robert Conley and Chief Justice Lurance Van Meter, reversing the Court of Appeals. *Russell Coleman v. Jefferson Co. Board of Education, et al.*, 2023-SC-0498-DG.

The majority concluded that, while this legislation currently only applies to Jefferson County and acknowledging that this will not change in the foreseeable future, this does not run afoul of Kentucky Constitution Section 59 because it is always possible that another city may someday qualify as a consolidated local government adopted under KRS 67C resulting in the statute being applicable to another county. The Court held that the appropriate test is found in *Calloway County's Sheriff's Department v. Woodall*, 607 S.W. 3d 557, 573 (Ky. 2020), which identified the inquiry as to whether the statute applies to a particular individual, object or locale. The Court noted that Senate Bill 1 does not specifically refer to Louisville or Jefferson County and does not limit this legislation to this particular locale.

Justice Angela Bisig authored the dissent, joined by Justice Michelle Keller and Justice Kelly Thompson, concluding that Senate Bill 1 "blatantly violates" the Kentucky Constitution. The dissent was critical of the *Woodall* opinion for not including in its analysis whether the legislation is based upon un-

reasonable or arbitrary classification, noting for example that the school board in the largest county in the state is limited under this legislation with meeting no more frequently than every four weeks unlike any other school board in the state which does not operate under this restriction.

This case was decided by the Kentucky Supreme Court on December 19, 2024. Chief Justice Van Meter retired as of January 6, 2025, when his successor Justice Pamela Goodwine was sworn in as an associate justice. A petition for rehearing was filed by the school board and Justice Goodwine voted with those who authored and joined in the dissenting opinion to rehear the case. Oral arguments have been heard but a decision has not yet been issued.

Then Jack Richardson, an attorney from Louisville and former leader of the Republican party in Jefferson County, petitioned the House of Representatives of Kentucky to impeach Justice Goodwine pursuant to Section 68 of the Kentucky Constitution as she has "breached the public trust and engaged in a variety of inappropriate acts, any one of which constitutes an impeachable misdemeanor..." Mr. Richardson listed her impeachable misdemeanors as 1) failure to recuse from the school board case where "she had a blatant conflict of interest and an inescapable appearance of bias..." (citing KRS 26A.015 and Rule 2.11 of the Code of Judicial Conduct) because her candidacy for the Kentucky Supreme Court was supported by the teachers union and Governor Andy Beshear who had vetoed Senate Bill 1 but whose veto was overridden; 2) voting for rehearing in violation of Rules of Appellate Procedure because Mr. Richardson asserts that there was no legal justification for her to do so; 3) violating the due process rights of the litigants by not recusing herself; and 4) her failure to recuse and her vote for a rehearing has undermined faith in the judiciary and the justice system.

It is my understanding that there was no motion to recuse filed by a party to this action. Further, Mr. Richardson contends, according to an interview he had with Louisville Public Radio, that the Jefferson County School Board and the teachers union are different sides of the same coin in response to why Justice Goodwine would need to recuse where neither the teachers union nor the governor are parties to the case. If memory serves me right, the school board and the teachers supported different candidates for the recent appointment of superintendent. Also, according to the interview, Mr. Richardson stated that there are a slew of judges who are psychotic, totally detached from reality and this has to stop. On his Facebook page he advocates for handcuffing judges, fingerprinting them and locking them up

(Continued on next page)



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as impeachment is too slow of a process. I'm guessing he couldn't convince anyone to place Justice Goodwine in cuffs, so he has taken the impeachment route.

KRS 63.020 through KRS 63.075 addresses the mechanics of impeachment; the statutes do not include a definition of misdemeanor. KRS 63.035 (2) only provides that "[t]he articles of impeachment shall state with reasonable certainty the misdemeanor in office for which impeachment is sought; and if there be more than one (1) misdemeanor, each shall be stated separately and distinctly."

So, let's take a quick look at judges, both federal and state, who have been impeached. At the federal level, the United States Constitution gives Congress the authority to impeach and remove judges based on "treason, bribery or other high crimes and misdemeanors."

Former Chief Justice William Rehnquist believed that the most significant judicial impeachment in our history came in the case against Associate Supreme Court Justice Salmon Chase in 1804, the only Supreme Court justice ever impeached. Justice Chase was a staunch Federalist appointed by President George Washington. The Republican-dominated House of Representatives accused him in the Articles of Impeachment of high crimes and misdemeanors for denouncing Republican politics in charges to a grand jury and showing blatant partiality toward Federalist policies in two controversial jury trials (Supreme Court justices at that time also performed duties as circuit court judges).

At the time there were 25 Republicans in the Senate and nine Federalists, more than enough to convict Justice Chase with the necessary two-thirds vote if the Senators voted along party lines. After an 18-day trial, however, the Senate voted to acquit. In a 2004 article published in the University of Richmond Law Review titled "Judicial Independence," 38 U. Rich. L. Rev. 579 (2004), former Chief Justice Rehnquist wrote that the significance of the Chase acquittal "cannot be overstated—Chase's narrow escape from conviction in the Senate exemplified how close the development of an independent judiciary came to be stultified." *Id.* at 588.

Although the Republicans had expounded grandiose theories about impeachment being a method by which the judiciary could be brought into line with prevailing political views, the case against Chase was tried on a basis of specific allegations of judicial misconduct. Nearly every act charged against him had been performed in the discharge of his judicial office. His behavior during the *Callender* trial was a good deal worse than most historians seem to realize, and the refusal of six of the Republican Senators to vote to convict even on this count surely cannot have been intended to condone Chase's acts. Instead, it represented a judgment that impeachment should not be used to remove a judge for conduct in the exercise of his judicial duties. The political precedent set by Chase's

acquittal has governed that day to this: a judge's judicial acts may not serve as a basis for impeachment. *Id.* at 588-89.

Subsequent impeachments of federal judges that were based on their judicial acts have also met with acquittal, the Senate finding that the challenged acts did not amount to high crimes and misdemeanors. Notably, James H. Peck, who presided over the District Court of Missouri, was impeached in 1830 for abuse of power after he held a lawyer in contempt for publishing criticism of one of his decisions; the Senate acquitted him in 1831. Constitutional Law Reporter, www.constitutionallawreporter.com, Federal Judge James H. Peck Not Guilty of Abuse of Power. The Articles of Impeachment lodged against Charles Swayne of the U.S. District Court for the Northern District of Florida included similar charges of abuse of his contempt power and was also acquitted by the Senate in 1905. *Id.*, District Court Judge Charles Swayne Beats Impeachment. Finally, Harold Louderback of the U.S. District Court for the Northern District of California was impeached in 1933 for favoritism in appointing bankruptcy receivers and was acquitted by the Senate the same year. *Id.*, Federal Judge Harold Louderback Beat Impeachment Charges.

The eight federal judges the Senate has convicted of high crimes and misdemeanors were all based on extrajudicial conduct. Notable examples include Judge West Humphries, a Tennessee judge who joined the Confederacy at the outbreak of the Civil War and accepted a judgeship in the Confederate judicial system without resigning his federal judgeship. Library of Congress.gov, West H. Humphreys - Federal Impeachment - Research Guides at Library of Congress.

Judge Robert Archbald took the bench in 1910 on the Third Circuit Court of Appeals and the U.S. Commerce Court and was impeached and convicted in 1913 for soliciting and accepting wrongful gifts from litigants, www.constitutionallawreporter.com, The Life & Impeachment of Federal Judge Robert W Archbald.

Harry Claiborne, appointed to the District of Nevada, was found guilty of high crimes and misdemeanors after a jury found him guilty of tax evasion, becoming the first federal judge in history to be convicted of crimes while on the bench. U.S. Senate.gov, U.S. Senate: Impeachment Trial of Judge Harry E. Claiborne, 1986.

Finally, Thomas Porteous served on the bench for the Eastern District of Louisiana until 2010, when he was impeached and convicted for falsifying financial disclosure forms and soliciting cash and other gifts from lawyers who appeared before him. Library of Congress.gov, G. Thomas Porteous, Jr. - Federal Impeachment - Research Guides at Library of Congress.

According to a post on the National Constitution Center's website, "the impeachment of state-level supreme court judges is rare, noting that "The National Council of State Legislatures could only cite a handful of instances in a special website section on the subject of impeachment." State judges have

been impeached, but very rarely | Constitution Center. This article reported that "the most prominent impeachment of a state supreme court judge" was in Pennsylvania in 1994, where State Supreme Chief Judge Rolf Larsen was impeached and removed from office by two-thirds of the state Senate "for meeting privately with an attorney to decide the outcomes of cases." *Id.* In 1872, two New York Supreme Court Justices faced the possibility of impeachment because of their connections to the corrupt Tweed Ring, George G. Barnard and Albert Cardozo. Barnard fought the charges but was removed by the state assembly. *Id.* Cardozo resigned and is better known today as the father of Supreme Court Justice Benjamin Cardozo. *Id.*

The articles of impeachment filed by Jack Richardson against Justice Pam Goodwine will be considered by the General Assembly in the 2026 legislative session.

This is my last article for the *Bar Briefs* as my two-year term as Chief Judge of Jefferson Circuit Court ends on December 31st. I appreciate the opportunity that the Louisville Bar Association has given me to write articles for its publication. May you have joyful yet relaxing holidays to conclude 2025, and I hope the very best for each of you in 2026.

Chief Judge Ann Bailey Smith presides in Division 13 of Jefferson Circuit Court. ■



COURT NEWS

Public Notice for Reappointment of Incumbent U.S. Magistrate Judge Regina S. Edwards

The current term of office of United States Magistrate Judge Regina S. Edwards is due to expire on July 27, 2026. Comments from members of the bar and the public are invited and should be directed in accordance with the notice located at www.kywd.uscourts.gov. ■

New Chief Judge for Western District

Effective November 14, Judge David J. Hale assumed the position of Chief Judge of the United States District Court for the Western District of Kentucky, succeeding Judge Greg N. Stivers. Pursuant to 28 U.S. Code § 136, chief district judges serve a term of seven years. ■

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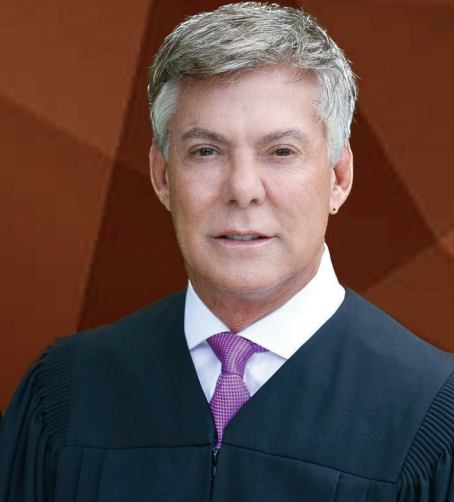
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Trustee's Breach Results in Damages for Trustee's Personal Benefit

John R. Cummins and Grayson S. Schroering

If a trustee self-deals with the trust's assets without reducing or directly spending those assets, can that trustee be held liable to the trust?

This was the issue presented in the recent decision in *In Re Credit Trust Under the Will of William R. Cameron* rendered by the Superior Court of Pennsylvania. The Court upheld the decision below that the trustee could be held liable for the total benefits that the improper use of trust assets conferred upon the Trustee himself or another.

In *Cameron*, the trustee used a line of credit secured by the trust assets to finance businesses and related realty improvements owned by the trustee and his spouse; to pay college tuition for the trustee's son; to pay the income taxes of the trustee and his spouse; and to finance businesses owned by the trustee and his spouse and by the trustee's stepdaughter and her husband. To make matters worse, none of these parties were trust beneficiaries. In all, over \$250,000 was drawn on the line of credit for these purposes. However, the full amount borrowed was repaid, without using the trust's funds.

The lower court ruled that it could award a surcharge against a self-dealing trustee equal to the total amount of the benefits received by the trustee and his non-beneficiary family members. The question certified for appeal was whether a trustee who engaged in self-dealing with trust assets but caused no loss to the trust could

be held liable for the benefits received by the trustee and his non-beneficiary family members, or whether any surcharge against the trustee is limited only to the profit (i.e., net gain) received by the trustee.

Pennsylvania has adopted the Uniform Trust Code (UTC), as have 35 other states (including Kentucky, Ohio and Tennessee) and jurisdictions. Section 1001 of the UTC sets forth a broad range of remedies for a trustee's breach of trust, which a court can apply in each case as deemed appropriate in the Court's discretion. Included among the remedy options is to order the trustee to pay money, restore property or other means.

The court rejected all of the trustee's defenses. The trustee actually argued that he should not be liable for the benefits he bestowed on his family members as "third parties." Among other things, the trustee also argued that being liable for all the "benefits" that he and his non-beneficiary family members received as a result of his misconduct, rather than just the "profits," was too broad a penalty and too difficult to calculate. The court cited and followed Pennsylvania case law to the contrary.

Citing other Pennsylvania decisions, the court stated that the surcharge for a trustee's self-dealing should be imposed as a penalty for the trustee's misconduct. Most important, the remedy is not compensatory but rather is intended to uphold public policy by disincentiv-

izing trustees from engaging in self-dealing altogether. The opinion also cited Section 100 of the Restatement (Third) of Trusts for the proposition that a self-dealing trustee can be held liable for any benefit to the trustee personally as a result of the breach. On this basis, the Superior Court affirmed the lower court's decision holding that the trustee is liable for all benefits which he and his family received.

The decision in *Cameron* serves as a strict reminder that fiduciary integrity is non-negotiable. Trustees will be held fully accountable for self-dealing and other acts of misconduct, even if the misconduct results in no apparent financial loss or other harm to the trust or its beneficiaries. Moreover, this decision suggests that courts in all UTC jurisdictions have both a strong public policy interest and a broad array of legal remedies available to uphold fiduciary duties and to discourage any inclination by trustees to engage in fiduciary misconduct.

Partner John R. Cummins and Associate Grayson S. Schroering are members of Dentons' Trusts, Estates and Wealth Preservation group and are based in the firm's Louisville office. ■



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STAND WITH LEGAL AID SOCIETY: A LIFELINE OUR COMMUNITY CANNOT AFFORD TO LOSE

by Mike Abate, Chair, Justice for All Campaign

For more than a century, **Legal Aid Society** has stood shoulder to shoulder with Kentuckians in moments of profound crisis. Every day, Legal Aid Society lawyers help families facing eviction keep their homes, protect survivors of domestic violence, secure benefits for veterans, and give thousands of our neighbors a second chance to rebuild their lives.

This essential work often goes unnoticed. There are no headlines when a child remains safely housed, when a veteran finally receives their benefits, or when someone gets the fresh start they've worked so hard to earn. But for the thousands of Kentuckians who walk through Legal Aid Society's doors each year, that work means everything. It is the difference between stability and homelessness, between safety and danger, between opportunity and despair.

And now, that lifeline is at risk. Legal Aid Society is bracing for a **\$541,664 reduction in federal funding** – a cut that would directly affect the work of six dedicated staff members, legal help for **861 clients**, and support for **832 children** whose stability depends on their caregivers receiving legal assistance.

Let me be clear: these aren't just numbers. These are families in our courts, our neighborhoods, and our city. When Legal Aid Society loses funding, people lose protection. Evictions rise. Survivors face danger alone. And those trying to rebuild after incarceration, job loss, or family upheaval lose their footing.

Louisville's legal community has always stepped up when the need is greatest. I'm asking you to **STAND WITH LEGAL AID SOCIETY** again and make a gift to the 2025 Justice for All Campaign. Your support matters now more than ever.

Below this letter is a snapshot of Legal Aid Society's impact over the last year. Behind each number is a story of hope, safety, and justice made real.

If you're able, I invite you to **renew your gift or consider an increase** to help fill the funding gap. But just as importantly, I hope you'll stand with Legal Aid Society as an advocate – help us remind our colleagues and our community that **equal justice under law only works when everyone has access to it**.

Justice isn't inevitable. It's something we build together.

With gratitude,

MIKE ABATE

Partner, Kaplan Johnson Abate & Bird LLP
Chair, Justice for All Campaign



**Stand with Legal Aid Society,
because justice depends on all of us.**

LEARN MORE – [YOURLEGALAID.ORG/STANDWITH](https://yourlegalaidsociety.org/standwith)

Client Impact

- **4,473 Kentuckians** served last year facing civil legal crises.
- **1,052 households** helped with housing issues — including evictions, unsafe conditions, and homelessness prevention.
- **4,580 children** indirectly supported through legal advocacy for their caregivers.
- **861 clients** at risk of losing services if federal funding is cut.

Return on Investment

- For every **\$1 invested**, Legal Aid Society delivers approximately **\$7 in economic benefits** to the community.
- Legal Aid Society's **\$541,664 federal funding** cut would result in over **\$3.7 million in lost economic impact**.

Program Highlights

- **1,229 individuals** received representation through the Domestic Violence Advocacy Program.
- **\$1,638,259** in confirmed benefits **recovered or avoided** by our advocacy.
- **465 clients** removed legal barriers to employment and housing through criminal record expungement.
- **355 veterans** served so far this year through the Veterans Legal Assistance Program.

What's at Risk

- Loss of **6 staff positions**, each tied to specialized legal services.
- Reduction in **critical services for housing, benefits, family safety, and reentry** programs.
- Hundreds of Kentuckians left without representation in eviction court.

Data reported above is for the time period January 1, 2025 to October 31, 2025

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Navigating AI with Outside Counsel: Practical Tips for In-House Counsel

Duncan Crosby and John Lavanga

Your Outside Counsel Is Using AI: Are You Ready?

Artificial intelligence (AI) has moved from the margins to the mainstream of legal practice. Many attorneys, likely including your outside counsel, now routinely use AI for research, drafting, document review and analysis.

If your outside counsel uses AI well, it can enhance the quality and thoroughness of work product, increase efficiency and reduce your bills. If used poorly, though, AI tools create a risk of confidentiality breaches, inaccurate outputs (including hallucinated quotations and citations) and other issues that can result in potentially significant exposure or embarrassment for your client.

As in-house counsel, you sit in the control tower of your client's legal affairs. It is therefore critical that you serve your client well not just by being careful about how you and your client use AI internally; you must also ensure your outside law firms are doing what you want them to do to protect your client while also delivering efficiency and AI-enhanced work product.

This article provides tips to help you navigate the terrain of working with outside counsel concerning AI; incorporate AI provisions into your outside counsel guidelines and work constructively with outside counsel as they seek to operate within your guidelines. (This article provides general guidance only; it is not legal advice and forms no attorney-client relationship. You should consult your own legal counsel concerning these issues.)

TIP 1:

Use an AI Addendum to Quickly Add AI Guidelines

To expedite incorporating AI into your existing outside counsel guidelines, consider issuing an AI addendum rather than fully revising your guidelines to address AI (at least as a stopgap measure). As with all your guidelines, make compliance with the AI addendum a condition of engagement.

TIP 2:

Define Permitted and Prohibited Uses and Tools

You will help yourself and your outside counsel by spelling out what is and is not acceptable concerning AI use. For example, you might consider:

- **Permitted:** Use of pre-approved AI tools for research, drafting, document review, deposition prep, analytics, summarization and translation, but only with human review and quality control.
- **Prohibited:** Using public, consumer-grade AI tools that train on user inputs or lack enterprise-grade confidentiality controls; uploading client-identifying data or privileged materials to such tools; or using AI to make autonomous legal judgments without attorney verification.

Practically, consider reminding outside counsel that both American Bar Association (ABA) Formal Opinion 512 (ABA 512) and Kentucky Bar Association (KBA) Ethics Opinion E-457 (KBA E-457) emphasize all attorneys' ongoing ethical obligations of competence and supervision. That means your outside lawyers cannot abdicate judgment to AI, and your guidelines should reflect that.

Regarding AI tools, consider implementing a tool registry; ask firms to list all AI tools used on your matters. This creates visibility and helps you and your client's IT personnel confirm that the tools your outside lawyers are using meet your security and confidentiality standards. Working with your outside counsel to develop a list of pre-approved AI tools for various uses will help you and them work efficiently to achieve your goals. But bear in mind that this is not a one-and-done effort;

because these tools frequently change, this is something to revisit regularly with your internal team and outside counsel.

TIP 3:

Protect Confidentiality

KBA E-457 is clear: An attorney using AI is "under a continuing duty to safeguard confidential client information." Therefore, consider requiring outside counsel to confirm that any AI tool handling client data:

- Prohibits model training on your data.
- Uses encryption in transit and at rest.
- Complies with your security standards.



There is no doubt that AI is here to stay. Thus, the question is not whether your outside counsel will use AI, but whether they will use it competently, ethically and in alignment with your client's interests.

On the first bullet point above, ABA Formal Opinion 512 notes that even AI tools that are siloed within a firm "may disclose information relating to the representation to persons in the firm (1) who either are prohibited from access to said information because of an ethical wall or (2) who could inadvertently use the information from one client to help another client, not understanding that the lawyer is revealing client confidences." (ABA Formal Opinion 512 at 6-7.)

This is tricky territory for technological novices. Work with your in-house IT personnel or qualified outside consultants to develop requirements for outside counsel that will reasonably protect your client's confidential information.

TIP 4:

Require Human Verification

ABA 512 underscores that lawyers remain responsible for accuracy and candor. Therefore, consider requiring:

- **Human-in-the-loop:** All AI-assisted outputs must be independently verified for factual accuracy, legal analysis and valid citations; no submission to tribunals or clients without attorney review.
- **Citation hygiene:** For legal research generated or assisted by AI, outside counsel must (1) confirm that all cases, statutes and secondary sources exist; (2) verify that the facts of the case, the legal holding and any quotes from the case are correct; and (3) attach a source verification log (e.g., Shepard's or KeyCite screenshots or database links).

TIP 5:

Address Fees and Billing

KBA E-457 explicitly contemplates fee adjustments and prohibits billing phantom hours for AI-driven efficiencies. Therefore, consider including language in your AI addendum requiring firms to align fees with actual effort or an agreed value when AI accelerates tasks. There must be no phantom hours for work accelerated by AI.

Also, allow pass-through of AI platform charges only with advance written consent and a clear explanation of what the charges are and why they are reasonable. Again, this is something you can arrange in advance by establishing which tools counsel may use and what the acceptable pass-through charges can be.

An item that should *not* appear on your bill is any time for your outside counsel's AI training, unless you have explicitly asked them to do something they would not otherwise do *and* you have agreed in advance to pay them for it. KBA E-457 is clear on this issue: "[A]ttorneys have a continuing ethical responsibility to maintain competence in their law practice, and reliance upon technology to do so is just another aspect of the competency requirement." Thus, there is no need to compensate outside counsel for what they have an obligation to do irrespective of your engagement with them.

Finally, although much of the excitement concerning AI in the legal field, particularly for in-house counsel, revolves around increased efficiency and therefore lower bills, keep in mind that one benefit of AI can and should be that you receive enhanced, improved work product. Thus, if your outside counsel is using AI and you receive neither bill savings nor better work product, you should ask outside counsel to explain how they plan to improve their use of AI to realize these benefits going forward.

TIP 6:

Audit and Spot-Check

It always pays to trust but verify; you should inspect what you expect. Regarding your outside counsel's use of AI and compliance with your guidelines, this could include conducting periodic reviews of AI-assisted work product and billing, ensuring counsel followed verification protocols and determining whether counsel's fees reflect efficiencies (or are otherwise commensurate with the quality and quantity of work product). This can help ensure accountability without micromanaging. Outside counsel's AI use should help you, not become an unmanageable demand on your time.

Working Collaboratively Is Key

As in-house counsel, you can shape how your outside lawyers adopt and use AI tools for your client's benefit. By establishing clear expectations, requiring transparency, protecting confidentiality, ensuring accuracy and fairly addressing costs, you can harness AI's benefits while managing its risks. And by embedding these clear expectations into your outside counsel guidelines and working collaboratively with your outside counsel on these AI issues while you maintain practical oversight, you can capture AI's benefits without compromising confidentiality, accuracy or trust.

There is no doubt that AI is here to stay. Thus, the question is not whether your outside counsel will use AI, but whether they will use it competently, ethically and in alignment with your client's interests. Through proactive engagement and clear guidelines, you can ensure the answer is yes.

Duncan Crosby is an attorney in the Louisville office of Stoll Keenon Ogden PLLC. Crosby is a member of the firm's Utility & Energy Practice Group. He is a graduate of Yale University and Harvard Law School.

John Lavanga is an associate attorney in Stoll Keenon Ogden PLLC's Louisville office and is a member of the firm's Utility & Energy Practice Group. ■



Crosby



Lavanga



ADR/Mediation: Dana M. Eberle • Larry R. Church • **AI/IP/Privacy Law:** Dalton Cline • Ameena Khan Per • **Appellate Law:** Brandon A. Girdley • Michelle C. Fox • **Bankruptcy Law:** Brian R. Pollock • J. Gabriel "Gabe" Dennerly • **Corporate Law:** Maci B. Followell • William Andrew "Drew" Teague • **Criminal Law:** William H. Brammell, Jr. • Coleman Cox, II • **Environmental Law:** Vacant • **Family Law:** Amy DeRenzo Hulbert • Melina Hettiaratchi • **Federal Practice:** Kayla M. Campbell • Matt Weyand • Jessica R.C. Malloy • **Health Law:** Virginia "Leigh" Schell • **Human Rights Law:** A. Holland (Holly) Houston • Ethan Chase • **In-House Counsel:** Michael P. Farley • Allyson K. Sturgeon • **Labor & Employment Law:** Marianna Melendez • Catie A. Wheatley • **Litigation:** Michelle C. Fox • Jacob C. Robbins • **Probate & Estate Law:** Monica B. Davidson • Kathryn Beck • **Public Interest Law:** Vacant • **Real Estate Law:** Abigail Fargen Riley • Ashley K. Russell • **Solo & Small Practice:** Vacant • **Taxation Law:** Helen V. Cooper • **Tort & Insurance Law Practice:** Ronald E. Johnson, Jr. • **Young Lawyers:** Al'Lisha J.D. Hanserd • Jackson Rice • Katherine Ison.

To Our 2025 CLE Program Speakers and Section Leadership:

Thank you for helping deliver more than 50 CLE programs, section meetings networking events and professional development opportunities to nearly 700 attendees this year. We could not have reached this level of engagement without your dedication, expertise and steady support.

To our speakers who shared their knowledge and insight, we are grateful. Your readiness to give your time has played a vital role in the strength of our CLE offerings. To our section leadership, your work to plan, promote and guide these programs has been invaluable. Your commitment to strengthening legal education in our community continues to make a meaningful impact.

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Interested in speaking at a CLE program or volunteer for section leadership position? Contact Lisa M. Murray at lmurray@loubar.org. We have made every effort to be comprehensive, but if anyone was inadvertently left out, it was purely unintentional and we sincerely apologize for any oversight.

TORT AND INSURANCE PRACTICE SECTION ONE-HOUR

Road Defect Cases: When it is More Than Just a Car Wreck

Tuesday, December 2

Many times, there is more than meets the eye to a motor vehicle collision case. While the other driver may be the sole cause of the collision, there are instances in which the collision itself is caused by other factors, such as product defects in the vehicle or defects in the road itself. These other factors can also be responsible for far greater injuries than would've occurred otherwise. In those instances, recognizing the fault of other parties can also increase the insurance coverage available to compensate the injured party. This presentation will focus on the different types of road defects that can cause or contribute to a motor vehicle accident, how to recognize them and how to prove them in your case.

Speaker: **Ronald E. Johnson Jr.**, Hendy Johnson Vaughn

Time: Noon - 1 p.m. — Program
Place: Zoom, a link will be emailed to you.
Price: \$45 LBA Member | \$40.50 Sustaining Member | \$15 Paralegal Member | \$15 for qualifying YLS Section Member
 \$25 Solo/Small Practice Section Member, Government or Non-Profit Member | \$90 Non-member
Credits: 1.0 CLE Hour — Pending

2025 Tort and Insurance Practice Section Leadership: Ronald E. Johnson Jr., Hendy Johnson Vaughn. Vice-chair position – vacant.

AI/IP/PRIVACY LAW SECTION ONE-HOUR

The Intellectual Property Docket: 2025 Year in Review

Wednesday, December 3

This CLE program offers a comprehensive overview of the most significant developments in intellectual property law throughout 2025. Attendees will explore key rulings from federal courts, analyze emerging trends in intellectual property litigation and assess the results of these decisions on intellectual property practice. This session will provide practical insights into how recent decisions are shaping enforcement strategies, licensing practices and the broader intellectual property landscape. Whether you're navigating infringement disputes or advising on portfolio management, this year-in-review will equip you with the knowledge you need.

Speakers: **Bruce Paul** and **Mari-Elise Paul**, McBrayer PLLC

Time: Noon - 1 p.m. — Program
Place: Zoom, a link will be emailed to you.
Price: \$45 LBA Member | \$40.50 Sustaining Member | \$15 Paralegal Member | \$15 for qualifying YLS Section Member
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Credits: 1.0 CLE Hour — Pending

2025 AI/IP/Privacy Law Section Leadership: Dalton Cline, Dentons Bingham Greenebaum and Ameena Khan Per, McBrayer PLLC

CLE continued on next page

APPELLATE LAW SECTION ONE-HOUR

Quarterly Appellate Law Update

Wednesday, December 3

Stay current with key developments from the Kentucky Court of Appeals and Supreme Court during the second and third quarters of 2025. Our speakers will cover notable civil and criminal decisions and offer practical guidance to strengthen your appellate practice. Don't miss this essential update.

Speakers include: **Brandon A. Girdley**, Wyatt, Tarrant & Combs; **F. Todd Lewis**, Lewis Law; and **Raymond G. Smith**, Smith Investment Group

Time: 2 - 3 p.m. — Program
Place: Zoom, a link will be emailed to you
Price: \$45 LBA Member | \$40.50 Sustaining Member | \$15 Paralegal Member | \$15 for qualifying YLS Section Member
 \$25 Solo/Small Practice Section Member, Government or Non-Profit Member | \$90 Non-member
Credits: 1.0 CLE Hour — Pending

2025 Appellate Law Section Leadership: Brandon A. Girdley, Wyatt, Tarrant & Combs and Michelle C. Fox, Frost Brown Todd

TAXATION LAW SECTION ONE-HOUR

A Beginner's Guide to the Shifting Tax Landscape

Thursday, December 4

This presentation is designed to provide non-tax lawyers with key legislative developments from the One Big Beautiful Bill Act (OBBBA) and an overview of changes at the IRS in an easy-to-understand format that will provide participants with sufficient information to identify opportunities and assess risk.

Speaker: **Helen V. Cooper**, Dentons

Time: 3 - 4 p.m. — Program
Place: Zoom, a link will be emailed to you
Price: \$45 LBA Member | \$40.50 Sustaining Member | \$15 Paralegal Member | \$15 for qualifying YLS Member | \$25 Solo/Small Practice Section Member, Government or Non-Profit Member | \$90 Non-member
Credits: 1.0 CLE Hour — Pending

2025 Taxation Law Section Leadership: Helen V. Cooper, Dentons. Vice-chair position – vacant.



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HEALTH & WELLNESS COMMITTEE



DECEMBER 2025 AWARENESS CALENDAR

- Seasonal Affective Disorder Awareness Month
- National Grief Awareness Week (first week)
- 12-1 World AIDS Day
- 12-3 International Day of Persons with Disabilities
- 12-10 Human Rights Day

QUICK HOLIDAY WELLNESS REMINDERS

- Give yourself the gift of imperfection. You're not required to do everything.
- Routine doesn't vanish just because it's December. Be sure to sleep, move and hydrate.
- Holiday = community: use this time to connect, volunteer and share gratitude.
- Your mind and body respond to expectations. Set realistic ones, honor your needs.
- The season is best when purpose and presence outweigh perfection.

LBA PROBATE AND ESTATE LAW SECTION IN PARTNERSHIP WITH THE UoF L BRANDEIS SCHOOL OF LAW

2025 Annual Estate Planning Institute

Friday, December 5

Designed for estate professionals, the Estate Planning Institute provides top-notch instruction on current issues in the field, catering to a diverse audience. Our relevant topics ensure a comprehensive learning experience for all, helping you stay ahead in the evolving landscape of estate planning.

Topics will include Judicial Perspectives in Estate Law (TBA), a Kentucky Case Law Update presented by Scott Weinberg, and Efficient Charitable Giving Strategies in Light of Recent Tax Changes with R. Jonathan Raymon.

Laurie Beth Baird, CFP®, CPA, JD, will discuss Five Reasons Not to Use Your Estate Tax Exemption, followed by Katherine Langan presenting on Revocable Trusts.

Speakers include: Laurie Beth Baird, Cerity Partners; Katherine P. Langan, Stoll Keenon Ogden; R. Jonathan Raymon, Baird Trust; and Scott A. Weinberg, Wyatt, Tarrant & Combs

Time: 9 a.m. - 1 p.m. — Program
Place: Hybrid – in-person at the Bar Center or virtual via Zoom
Price: \$135 LBA Member | \$121.50 Sustaining Member | \$25 Paralegal Member | \$25 for qualifying YLS Member | \$90 Solo/Small Practice Section Member | \$67.50 Government or Non-Profit Member | \$270 Non-member
Credits: 3.0 CLE Hours — Pending

2025 LBA Probate & Estate Law Section Leadership: Monica B. Davidson, Baird Trust and Kathryn Beck, Stoll Keenon Ogden

FEDERAL PRACTICE SECTION ONE-HOUR

Third Annual Year in Review

Wednesday, December 10

This CLE will provide federal court practitioners with an update on recent cases issued by the U.S. Supreme Court and the Sixth Circuit that impact their practice. The panelists, led by Judge Benjamin Beaton, will cover key developments in federal criminal and civil law, including high-profile decisions on a range of constitutional and statutory questions. The seminar will also focus on cases likely to impact matters on practitioners' dockets.

The seminar will be followed by a reception and networking event in the ceremonial law library, hosted by the U.S. District Court.

Speakers TBA

Time: 2 - 3 p.m. — Program; Reception to follow
Place: Hybrid – in-person at the Gene Snyder Federal Building or via Zoom
Price: \$45 LBA Member | \$40.50 Sustaining Member | \$15 Paralegal Member | \$15 for qualifying YLS Section Member | \$25 Solo/Small Practice Section Member, Government or Non-Profit Member | \$90 Non-member
Credits: 1.0 CLE Hour — Pending

2025 Federal Practice Section Leadership: Kayla Campbell, Wicker / Brammell, Jessica R. C. Malloy, U.S. Attorney's Office and Matt Weyand, AUSA, WDKY



Judge Hugh Smith Haynie (ret.)

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Running a law practice comes with unique challenges, and this series is designed to help you meet them. Join us each month for a one-hour CLE program focused on practical strategies, tools and insights tailored to solo and small firm attorneys. Learn how to manage, market and grow your practice while staying ahead of emerging trends.



Incorporating AI in Daily Law Practice Operations

Friday, December 12

This CLE will introduce lawyers to practical strategies for using AI tools in their everyday practice. Regardless of practice area, attorneys often encounter medical records, technical reports or large amounts of data that can be difficult and time-consuming to interpret. This session demonstrates how AI can simplify complex medical or technical information, learn underlying fields of inquiry quickly and assist in drafting disclosures, reports and aspects of pleadings. The program emphasizes ethical and effective use of AI, with attention paid to the importance of anonymity/confidentiality, HIPAA and disclosures to clients.

Speaker: Abigale Rhodes Green, Grossman Green

Time: Noon – 1 p.m. — Program
Place: Zoom
Price: \$45 LBA Member | \$40.50 Sustaining Member | \$15 Paralegal Member | \$15 for qualifying YLS Section Member | \$25 Solo/Small Practice Section Member, Government or Non-Profit Member | \$90 Non-member
Credits: 1.0 CLE Hour — Pending

2025 Solo and Small Practice Section Leadership is vacant. Contact Lisa M. Murray, lmurray@loubar.org, for more details on 2026 Leadership.



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Congratulations to our 2025 Award Winners

JUSTICE MARTIN E. JOHNSTONE SPECIAL RECOGNITION AWARD

Michael J. O'Connell

Jefferson County Attorney's Office



A member of the bar for 50 years – 30 of those working in public service – Mike served as a judge in both District and Circuit Court prior to being appointed County Attorney in 2008. He was officially elected to that role in 2010, and was then reelected for four more terms, making him the longest-serving County

Attorney in Jefferson County history.

Some of Mike's accomplishments include bringing Louisville into the national opioid litigation, making it one of the first major cities to do so and resulting in millions of dollars being returned to our city and state; improving the prosecution of domestic violence cases through dedication of additional resources, like the expansion of the 24-hour Domestic Violence Intake Center; and arguing on behalf of the city for the removal of the Confederate monument near the University of Louisville almost a decade ago.

Mike also built a thriving private practice and dedicates significant volunteer efforts to a number of worthy organizations in our community, from the LBA's Board of Directors to the KBA's Board of Governors, the board of Restorative Justice Louisville, the Advisory Board for the Little Sisters of the Poor at St. Joseph's Home for the Aged and the Louisville Metro Human Relations Commission.

DANIEL M. ALVAREZ CHAMPION FOR JUSTICE AWARD

R. Kenyon Meyer and Philip Longmeyer

Dinsmore & Shohl, LLP



Kenyon and Philip were nominated for their exceptional efforts in representing an indigent defendant who had spent five years in custody on a federal murder

charge – a charge for a murder he consistently argued he did not commit.

Facing a life sentence for their client – and knowing that less than 1% of federal criminal defendants who go to trial are acquitted – Kenyon and Philip worked nights and weekends, reviewing volumes of evidence that included 25 hours of recordings and more than 140,000 pages of documents. Their relentless attention to detail and refusal to give up resulted in the discovery of a critical piece of exonerating evidence, just days before trial.

The nomination for Kenyon and Philip read, "This case was not just a legal challenge; it was a human one. In a time when public trust in institutions is fragile, this case is a reminder of what's possible when skilled attorneys commit themselves fully to justice. It's a story of perseverance, integrity and the power of a team that refused to let the odds define the outcome."

JUDGE BENJAMIN F. SHOBE CIVILITY AND PROFESSIONALISM AWARD

Hon. Ann Bailey Smith

Jefferson Circuit Court, Div. 13



Judge Smith currently serves as the Chief Judge of Jefferson Circuit Court and previously served as Chief Judge of Jefferson District Court. In its nomination for Chief Judge Smith, the Inn of Court wrote, "Her leadership of both courts has been marked by reverence for the rule of law and the protection

of the rights of all parties involved in legal proceedings. She has gained an outstanding reputation for her preparation and knowledge of substantive and procedural law, her judicial demeanor and temperament, her court management and work ethic, her judicial integrity, and her high personal and professional standards, especially the conduct of court affairs with dignity, decorum, fairness and compassion."

Chief Judge Smith has been named "Trial Judge of the Year" by the Kentucky Justice Association, and she has received the "Fair Administration of Justice Award" from the Kentucky Association of Criminal Defense Lawyers. She has also received the prestigious Gideon Award and was selected as the Outstanding Alumna of the Brandeis School of Law. She has also served as Chair of Citizens for Better Judges, Master of the Brandeis American Inn of Court and a member of the Kentucky Supreme Court Civil Rules Committee.

PAUL G. TOBIN PRO BONO SERVICE AWARD

LBA Pro Se Divorce Clinic Volunteers

W. Bronson Howell, *Howell & Kidd*; Jonathan D. Miller, *Jonathan D. Miller, P.S.C.*
Neva-Marie Polley Scott, *Polley Scott Consulting LLC*; Martha Schecter



These volunteer attorneys have helped more than 50 clients who could not otherwise afford an attorney with the complex process of filing pro se divorce paperwork. They gather each month on Friday mornings and start about the task of meeting with clients who are often in extremely difficult personal circumstances. Their nomination cited a particularly gratifying case: "In December 2024, the clinic began working with an elderly client who had been separated from her spouse for decades and was seeking help with a long-awaited divorce. After several visits, she reached a breaking point, realizing that completing the legal process would reveal her current whereabouts and her very modest assets to the man she had left so long ago. She broke down in tears, feeling the courts had failed her by requiring this disclosure. But her volunteer attorney encouraged her to keep the faith and complete the final steps she needed to be free of the marriage. She later emailed this message: 'I was granted my divorce yesterday!!!! I couldn't have done it without you guys. I really appreciate EVERYTHING that you did for me, please pass that along to the lawyers that helped me.'"

JUDGE OF THE YEAR AWARD

Hon. Alan C. Stout (Ret.), U.S. Bankruptcy Court



Prior to joining the bench, Judge Stout practiced bankruptcy law for three decades and served as a Chapter 7 bankruptcy trustee for 25 years. He took office in 2011 and just retired on October 25, 2025.

The person who nominated Judge Stout wrote, "Judge Stout has played a vital role in revitalizing the LBA's Bankruptcy Law Section. With his encouragement and support, the section has come back stronger than ever,

hosting two successful day-long conferences, several CLE programs and networking events that have brought bankruptcy practitioners together. His guidance has helped create a community of collaboration and professional growth that will continue long after his retirement.

Judge Stout's service goes beyond his work on the bench. He has always taken time to promote education and strengthen the reputation of the legal profession. His consistent example of integrity, scholarship and professionalism has had a lasting impact on everyone who has had the privilege of working with him."

JUDGE RICHARD A. REVELL FAMILY LAW AWARD

Amy DeRenzo Hulbert, DeRenzo Law Office



The member who nominated Amy for this honor wrote, "For nearly two decades, Amy Derenzo Hulbert has dedicated her career to serving families in Jefferson County. Beginning as a public defender, Amy was appointed by Judge Sherlock and Judge Webb to represent parents in family court. She now maintains a private practice focused on family law, and is regarded throughout the community as one of the best family law practitioners in the region. But Amy's dedication to the law and families doesn't stop in the courtroom—throughout her career, she has been heavily involved in the community, serving as an LBA Board member and section chair of multiple sections, chairperson of the KJA's Domestic Relations Section, and secretary of the Board for Women in Networking. She has volunteered for JCPS, the Legal Society, the YMCA, the Franciscan Society, St. Margaret Mary parish, and the Kentucky Derby Festival."

Amy has also served as both the Chair and Vice-Chair of our Family Law Section, and she recently served a term as a member of the LBA Board of Directors.

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

Andrew C. Chandler, Legal Aid Society



Andrew is a staff attorney in the Housing Unit for the Legal Aid Society. Described as a zealous client advocate, he has won many bench and jury trials for clients facing eviction and paved the way for tenants of subsidized housing to freely organize without landlord retaliation. During his prior work with Legal Aid's Government Benefits Unit, his efforts in support of homeless SNAP recipients resulted in access to more than \$2 million in food stamp benefits for Legal Aid clients.

One nomination extolled Andrew's professional ethos, stating, "Andrew has always approached his work (and still does) with a sincere compassion for our low income neighbors. He was always professional in his treatment of our clients, our coworkers, state workers, opposing counsel and the judiciary." A second nomination stated that "there is no individual more deserving of this award... He is the most talented young lawyer I've met. His bold advocacy on SNAP and tenant's rights has helped people in Louisville and across all of Kentucky avoid hunger and have access to safe, habitable housing."

We loved seeing everyone! Thanks for joining us.



New Lawyers Induction

We were honored at the luncheon to announce the first ever graduating class of the LBA New Lawyers Academy.

When we launched this Academy, our goals were to create a space where new attorneys could learn, connect and grow together as they begin their careers; to bridge the gap between law school and law practice; and to help new lawyers gain the confidence, insight and professional support they need to thrive in this next chapter.

What this group has built over the past several months has far exceeded those expectations! They made this first year something special. Their energy, engagement and willingness to step up and participate have set the tone for what the New Lawyer Academy will stand for in the years ahead. They are the future of our profession, and we are proud to have them as part of the LBA.

Introducing the 2025 graduates of the New Lawyer Academy:

- Haley A. Abbott, Phillips Parker Orberon & Arnett
- Anna Deye, Gray Ice Higdon
- Rachel Gumbel, Stites & Harbison
- Katy Harvey, McBrayer
- Jackson B. Hurst-Sanders, Stites & Harbison
- Mary Katherine Ison, Gray Ice Higdon
- Paige Reardon, Pitt & Emison
- Madison Wurth, Goldberg Simpson

The New Lawyer Academy will return in the summer of 2026.

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Litigation Trends and Best Practices for Mitigating Website Legal Risk

Dalton Cline and Ameena Khan Per

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In addition to plaintiffs' litigation, the first eight months of 2025 saw regulators enforcing a patchwork of state data protection and privacy laws, with enforcement actions penalties ranging from \$85,000 to \$1.2 million in addition to specific injunctive relief.

Introduction

In today's marketplace, your website is an integral part of your organization's business processes—it enables online transactions, hosts thought leadership materials demonstrating your expertise and visually communicates your brand. However, the personal data you collect through your website is also a significant source of legal risk.

In recent years, website operators across industries have been blindsided by a surge of thousands of lawsuits claiming that common digital practices—like offering chatbots, tracking website analytics, using embedded video, utilizing session replay tools or even deploying common automatic information collection technologies like cookies and pixels—violate state and federal law. More than one thousand suits have been filed in California alone in the past two years, and plaintiffs in these cases allege potentially millions of dollars' worth of damages. It appears that no business is safe from these suits; from consumer retail to industrial manufacturing, from entertainment to energy, businesses in every industry must be prepared to respond to these lawsuits.

In addition to plaintiffs' litigation, the first eight months of 2025 saw regulators enforcing a patchwork of state data protection and privacy laws, with enforcement actions penalties ranging from \$85,000 to \$1.2 million in addition to specific injunctive relief. Reviewing litigation trends and best practices to avoid liability is critical for all organizations.

Litigation Trends

High-dollar litigation can be broken down into three chief categories: (1) state wiretap claims; (2) video privacy protection act violations; and (3) e-commerce transactions.

Wiretap

State wiretap claims are far and away the most common claim brought by plaintiffs against website owners. These suits claim that defendant organizations either (1) engaged in a “wiretap” (or assisted a third-party in wiretapping) by capturing the “content” of customer communications with the defendant's website, or (2) utilized technologies that qualify as a “pen register” and/or “trap and trace device” that captured non-content routing or addressing information about plaintiff's interaction with the defendant's website.

Wiretapping claims are commonly brought under state wiretapping statutes like the California Invasion of Privacy Act, Cal. Pen. Code §631(a) (CIPA), and the Pennsylvania Wiretapping and Electronic Surveillance Control Act, 18 Pa. Stat. and Cons. Stat. Ann. § 5701 et seq. (WESCA), but may also be brought under various provisions of the federal Electronic Communications Privacy Act.

Violations under these laws can carry astronomical damages, which plaintiffs may use to pressure settlement. For example, violations of WESCA can lead to \$1,000 in damages per class member (18 Pa. Stat. and Cons. Stat. § 5725(a)(1)), while violations of CIPA can be worth up to \$5,000 per class member (Cal. Pen. Code § 637.2(a)(1)).

Video Privacy Protection Act

The Video Privacy Protection Act (Pub. L. No. 100-618, 102 Stat 3195 (1988), codified at 18 U.S.C. § 2710) (VPPA), prohibits a “video tape service provider” from (1) knowingly disclosing to any person (2) “personally identifiable information” concerning any “consumer” of such provider (3) unless an exception applies (such as

(Continued on next page)

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a disclosure to the consumer, or with their express written consent).

Although originally passed in response to Supreme Court nominee Robert Bork’s video tape rental history being disclosed to a reporter, the VPPA has been brought into 21st century by plaintiffs alleging that defendants who facilitate the online delivery of digital video content qualify as “video tape service providers.” There are numerous circuit splits on nearly every element of a VPPA: What kind of businesses qualify as “video tape service providers”? Is information collected by automatic information collection technologies “personally identifiable information”? What does the relationship between a plaintiff and defendant need to be for the plaintiff to be a “consumer”?

Notably, the VPPA provides a private right of action for violations and minimum statutory damages of \$2,500 per violation.

e-Commerce Transactions

Multiple state laws prohibit the collection of non-essential personal data as a condition for accepting payment cards (see, e.g., the Song-Beverly Credit Card Act (Cal. Civ. Code § 1747.08), Massachusetts Consumer Privacy in Commercial Transactions Act (Mass. Gen. Laws ch. 93, § 105), Del. Code. Tit. 11, § 914(b)(1)(b), Md. Code, Com. Law § 13-317(a), N.J. Stat. 56:11-17, 6 R.I. Gen. Laws § 6-13-16(a), Kan. Stat. § 50-669a). Plaintiffs in California are entitled to statutory damages of at least \$1,000.

Best Practices to Avoid Liability
Identify automatic information collection technologies used by your website.

Plaintiffs in wiretap cases allege that defendant’s automatic information collection technologies, like cookies and pixels, are “pen registers” or “trap and trace” devices because they capture the “dialing, routing, addressing, or signaling information” of a plaintiff’s interactions with the defendant’s website. For example, these technologies capture the HTTP header information of the GET and POST requests made between the plaintiff’s browser and the defendant’s website server. These cases disproportionately, although not exclusively, focus on the use of the Meta Pixel and TikTok Pixel.

Many organizations may not even be aware that their website uses these automatic information collection technologies. This is common when the development and maintenance of the website has been outsourced to a third party. Organizations who choose to use automatic information collection technologies like non-essential cookies, pixels and session replay software should evaluate their use cases and determine if the value of such use is commensurate with the potential litigation risk.

Ensure metadata concerning viewed videos does not include the video title.

Although the VPPA does contain a “consent” defense, the requirement is too difficult to meet to be practical in most cases. The VPPA requires that the consent be written and obtained “in a form distinct and separate from any form setting forth

other legal or financial obligations of the consumer” (18 U.S.C. § 2710(b)(2)(B)(i)), meaning that organizations may rely on express or implied consent to a privacy notice.

Instead, organizations should seek to fall outside one or more statutory definitions. For example, an effective risk mitigation technique to avoid liability under the VPPA is to review the metadata that is being transferred and ensure that the website does not transmit the title of the video to any third party. The VPPA defines “personally identifiable information” as “information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider” (18 U.S.C.A. § 2710(a)(3)). By removing video title, from metadata collected by third-party integrations, such as analytics tools, advertising pixels, content delivery networks and customer data platforms, the information would not be considered “personally identifiable information.”

Distinguish between essential and incidental personal data collected in e-commerce transactions.

Litigation related to e-commerce transactions, particularly under the Song-Beverly Credit Card Act, focuses on non-essential personal data collected during check-out that plaintiffs allege was a “condition” of the transaction.

While collection of a consumer’s payment card information, billing address and shipping address may be required to complete the transaction, information collected that is incidental to the transaction, such as phone number, should be clearly indicated as optional.

Review user interface elements to ensure enforceability of Terms of Use.

Website Terms of Use are often used to lower the risk of costly litigation through mandatory arbitration, class action waiver, choice of venue, choice of law and limitation of liability clauses. However, many organizations have been surprised to find that these carefully considered provisions were not binding on plaintiffs. A defendant seeking to enforce the provisions of a website’s Terms of Use must demonstrate the formation of a valid contract. Therefore, state law principles of contract regarding contract formation govern, which include, in relevant part, consent to the terms of the contract.

Many organizations use “advisements,” which are short statements alerting users to the existence of a Privacy Notice and Terms of Use, to put users on notice to the existence of these terms and argue that the user consented to the terms. However, courts have closely scrutinized these advisements and articulated ever-higher standards for enforceability. The following are best practices identified from case law:

- **Uncluttered layout.** Present only essential elements—core fields and the advisement—and remove nonessential content.
- **Advisement visible in context.** Ensure the advisement appears on the same

screen as the action button without scrolling.

- **Equivalent prominence.** Match the advisement’s font, color and size to surrounding text of comparable importance.
- **Reasonable conspicuousness.** Place the advisement in a position that interrupts the natural flow—ideally immediately above the action button.
- **Distinct hyperlinks.** Make links to Terms of Use and Privacy Notice clearly distinguishable—use all caps, underlines, bold and a contrasting color.
- **Textual concordance.** Align action button text with the advisement language (e.g., “Continue” where the notice says “By clicking ‘Continue’ you agree...”; “I agree” where “I agree” is referenced).
- **Explicit arbitration reference.** State that agreement includes acceptance of mandatory arbitration.
- **Explicit jury waiver.** State that agreement includes a waiver of the right to a jury trial.
- **Affirmative assent.** Require *active acknowledgment* (e.g., clickwrap or checkbox). Clickwrap is more defensible than passive browsewrap.

Conclusion

Website data collection practices now carry outsized litigation and enforcement risk, which will likely only increase as time goes on. Engaging a qualified attorney who understands current litigation trends to evaluate your website, advise on legal risk and provide court-tested best practices is a great way to not only reduce your legal exposure, but also safeguard your brand, budget and customer trust.

Dalton Cline is a member of the Dentons Global Data Privacy and Cybersecurity Group based in Louisville. As a Certified Information Privacy Professional (CIPP/US, CIPM, CIPT), he routinely advises businesses of all sizes in a variety of industries and sectors regarding compliance with domestic and international data privacy and cybersecurity laws and regulations, litigation risk and best practices. Prior to joining Dentons, Dalton was a privacy analyst at a large public university.

Ameena Khan Per is an Associate of McBrayer PLLC, practicing in the firm’s Louisville office. Her practice primarily focuses on data privacy and security, intellectual property and trademarks. Her primary expertise is in data privacy and cybersecurity law, where she advises clients on a variety of privacy matters, including compliance with privacy and data security laws and drafting privacy policies. Ameena has hands-on experience with technology-related issues, which brings a unique and vital perspective in successfully negotiating agreements involving personal data and developing creative governance solutions that blend well with existing business practices. ■



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For more information, contact:
Lisa M. Murray at lmurray@loubar.org

IN MEMORIAM



William R. "Pat" Patterson, Jr., 88, of Louisville passed away peacefully on Saturday, November 1, with his children by his side.

Pat graduated from Vanderbilt University in 1959 and went on to obtain his law degree from the University of Kentucky Law School in 1962 (after serving in the US Army, Fort Knox, KY, as a 1st Lieutenant in the Judge Advocate General Corp). He began his legal career in 1963 as a partner in the firm Denney, Landrum, White & Patterson of Lexington. In 1985, he moved to Louisville and opened a branch office of his Lexington firm (then known as Landrum, Shouse & Patterson), but he left the firm in 1988 as his practice shifted more toward the plaintiff's side of the civil practice arena.

Pat retired from active practice in December 2007 to become a full-time mediator with the Retired Judges Mediation & Arbitration Service. Pat's 45-year litigation experience throughout state and federal courts involved more than 100 jury trials to verdict and numerous other non-jury matters to resolution. He was elected to Fellowship in the American College of Trial Lawyers in 1983 and was listed in Martindale-Hubbell's Bar Register of Preeminent Lawyers and The Best Lawyers in America.

Pat was a member of the Louisville and Kentucky Bar Associations; Charter Life Fellow, Kentucky Bar Foundation; past member, Board of Trustees for the Kentucky IOLTA Fund; Original Board Member of the Kentucky Bar Association continuing legal education commission; past director for the Louisville Bar Foundation; past member, American Board of Trial Advocates; Past Master of the Louis D. Brandeis American Inns of Court; Past member of the Kentucky Supreme Court and Court of Appeals Judicial Nomination Commission from 1980-1990; a certified civil trial advocate for the National Board of Trial Advocacy, and Founding Member of St. Ives Journal Club.

Aside from his law career, Pat was a member of the United States Parachute Association, holding a USPA advanced license, Class C. From August 1977 to July 1986, he made more than 605 recorded free-fall parachute jumps. He also holds a pilot's license, single-engine, instrument-rated and a motorcycle license, having traveled extensively throughout the United States. ■



Joseph White of Louisville passed away November 2. Joe loved his family and friends, his sweet dogs, his UofL teams, horse racing, country music, life on the water and most of all being Irish.

Joe received his B.A. in Liberal Arts from University of Louisville, and his J.D. from the University of Louisville Brandeis School of Law. He was admitted to practice law in Kentucky, United States District Court for the Western District of Kentucky, United States Court of Appeals for the Sixth and Seventh Circuit and Supreme Court of the United States.

Professional memberships and affiliations include the Kentucky Bar Association, Louisville Bar Association, Kentucky Justice Association (formally the Kentucky Academy of Trial Attorneys) and the American Trial Lawyers Association. Honors and recognitions include The Best Lawyers in America, Kentucky Super Lawyers, Top 100 Trial Lawyers in Kentucky, American Trial Lawyers Association, *Louisville Magazine's* Best Lawyers in Kentucky and a Life Fellow, Kentucky Bar Association.

Professional activities include Board of Governors, Kentucky Justice Association (formally the Kentucky Academy of Trial Attorneys); president, Kentucky Academy of Trial Attorneys (now Kentucky Justice Association); Board of Directors, Louisville Bar Association; Louis D. Brandeis American Inn of Court (Master); American Board of Trial Advocates; chair, Kentucky Bar Association Lawyer Assistance Commission; Board of Governors, Kentucky Bar Association; UofL School of Law Class Director for the Chairman; Citizens for Better Judges, Attorney Steering Committee; chairman, Kentucky Academy of Trial Attorneys CLE Committee. ■

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Vince Aprile, who practices law with Lynch, Cox, Gilman and Goodman, P.S.C., in Louisville, was recently re-appointed as a co-chair of the National Association of Criminal Defense Lawyers' (NACDL) Ethics Advisory Committee. Aprile has been in this position since his appointment in 2010. The Ethics Advisory Committee gives NACDL members advice and counsel, alerting them to pitfalls, conflicts of interest and potential violations of the rules of ethics and their Sixth Amendment duties. Aprile is a past member of the Board of Directors of NACDL (1983-85).

O'Bryan, Brown & Toner, PLLC is pleased to welcome attorneys **Alexander Drury** and **Phillip Burruss** to its Louisville office. Drury focuses his practice on matters of insurance defense litigation with an emphasis on medical malpractice cases. He earned his law degree from the University of Kentucky J. David Rosenberg College of Law, where he graduated *magna cum laude*. While in law school, Drury served as an articles editor for the Kentucky Law Journal and as an officer for the Federalist Society and Christian Legal Society. Burruss focuses his practice on matters involving insurance defense litigation and medical malpractice law. He earned his law degree from the University of Kentucky J. David Rosenberg College of Law. While in law school, Burruss served as staff editor of the Kentucky Journal of Equine, Agriculture, & Natural Resources Law and as an ethics committee member of the Moot Court Board.

Stites & Harbison, PLLC announces the addition **Collin M. Aycock** and **Jordan Butler** to its Louisville office. Aycock is a member of the Intellectual Property & Technology Service Group. He earned his J.D. from the University of Louisville Louis D. Brandeis School of Law, *summa cum laude*, in 2025. In law school, Aycock was a research assistant for Professor Lars Smith and president of the Technology Law Society. He served as the senior articles editor for the University of Louisville Law Review, Volume 63, and published a note entitled "A World Post-Warhol: What Is Fair use in Computer Code?" Prior to joining Stites & Harbison, he was a summer associate for the firm in 2023 and 2024. He also was a legal extern for the University of Louisville Office of Research and Innovation, 2024-25, and a law clerk for Caldwell Tanks, Inc., spring of 2024. He is admitted to practice in Kentucky. Butler is a member of the Torts & Insurance Practice Service Group. She earned her J.D. from the University of Louisville Louis D. Brandeis School of Law, *magna cum laude*, in 2025. While in law school, she was vice president of the Black Law Students Association and a peer mentor for the First-Generation Peer Mentor Connection. Prior to joining Stites & Harbison, Butler was a student attorney for the University of Louisville Law Eviction Defense Clinic, spring of 2025, and a student mediator for the University of Louisville Law Mediation Clinic, 2024-25. She also was a legal intern for Beam Suntory, Inc., in 2023 and a summer associate for Stites & Harbison in 2023 and 2024. She is admitted to practice in Kentucky. ■



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MEETING ANNOUNCEMENTS

LBA Committee Meetings

Diversity and Inclusion Committee Meeting

Wednesday, December 10 | 4 p.m. via Zoom

Health and Wellness Committee Meeting

Thursday, December 18 | Noon via Zoom

For more information or to join a committee, contact

Lisa M. Murray at lmurray@loubar.org. ■

Women Lawyers Association

The Women Lawyers Association is hosting a Winter Social event on Thursday, December 11, from 6:30 to 8:30 pm, at Maddox & Rose (900 E. Main St., Ste. 104). We invite members and friends to join us for candle-making, light snacks and festive mocktails/cocktails as we cheers to 2025.

Signup at <https://www.wlajeffco.com/events/winter-social-25> and check out our new and improved website while you're there! ■

Association of Legal Administrators

The monthly chapter meeting of the Kentucky Association of Legal Administrators will be held in person on Thursday, December 11, beginning at 11:30 am at UofL Cardinal Club (401 Champions Way, Simpsonville, KY 40067).

Please RSVP by registering online at www.ky-ala.org. Any questions, please contact the Kentucky ALA Board at board@ky-ala.org. ■

DECEMBER 2025 AWARENESS CALENDAR

- 12-2: International Day for the Abolition of Slavery
- 12-3: International Day of Persons with Disabilities
- 12-8: Pansexual Pride Day; Bodhi Day; Immaculate Conception
- 12-10: International Human Rights Day
- 12-12: Feast of Our Lady of Guadalupe
- 12-14: Winter Solstice
- 12-18-26: Hanukkah
- 12-25: Christmas
- 12-26: Kwanzaa
- 12-31: Omisoka; New Year's Eve

December DEI Awareness Quick Reminders

- Use inclusive holiday language. "Happy Holidays" or "Season's Greetings" welcome all traditions and acknowledge multiple celebrations.
- Plan accessible gatherings. Choose venues and materials that accommodate all abilities (ramps, captions, scent-free zones).
- Be mindful of scheduling. Avoid mandatory events on major religious/cultural dates.
- Celebrate through service. Encourage pro bono or volunteer projects supporting diverse communities during the holiday season.
- Reflect and reset. Review your firm's DEI goals from 2025 and set one tangible inclusion goal for 2026.
- Lead with gratitude. Thank mentors, colleagues and community partners who advanced inclusion this year.



DIVERSITY & INCLUSION COMMITTEE

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New Year's Day	Thursday, January 1, 2026
Martin Luther King, Jr. Day	Monday, January 19, 2026
Spring Holiday (1/2 Day)	Friday, April 3, 2026
Memorial Day	Monday, May 25, 2026
Juneteenth National Independence Day	Friday, June 19, 2026
Independence Day	Friday, July 3, 2026
Labor Day	Monday, September 7, 2026
Veterans Day	Wednesday, November 11, 2026
Thanksgiving	Thursday, November 26, 2026
Thanksgiving	Friday, November 27, 2026
Christmas	Thursday, December 24, 2026
Christmas	Friday, December 25, 2026
New Year's Eve	Thursday, December 31, 2026
New Year's Day	Friday, January 1, 2027

Conference Schedule

KY DPA Conference (TBD)	(Tentative June 8 - 10, 2026)
KBA Convention (Covington, KY)	June 11 - 12, 2026
Prosecutors' Conference (Lexington, KY)	August 19 - 21, 2026
District Judges' Judicial College (TBD)	September 13 - 16, 2026
Circuit Judges' Fall Judicial College (Lexington, KY)	October 18 - 21, 2026

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