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Promote justice, professional excellence and respect for the law; improve public access to the judicial system; provide law-related services to the community; and serve our members.

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We are excited to welcome Brianna Coleman as our new LBA Sponsorship and Marketing Manager

Welcome to the team, Brianna!

Brianna earned her BBA in Marketing and Management, with a minor in International Business, from the University of Kentucky. She is a results-driven marketing and management professional with experience managing customer relationships, driving revenue growth and executing strategic marketing initiatives. Brianna has a strong ability to analyze data, identify opportunities and influence stakeholders to achieve business objectives.

Brianna has a background in strategic brand positioning and consumer insight, international market entry strategy and digital marketing campaigns. She will be overseeing our LBA Communications channels and helping us ramp up our advertising and sponsorship programs.



AI and the Practice of Law

Did you know that Kentucky lawyers have an ethical duty to “keep abreast of the use of AI in the practice of law”? I didn’t, until I started this article. But that is exactly what KBA Ethics Opinion E-457 says. Kentucky attorneys must educate themselves about AI and understand its benefits and risks as part of their duty of competence under SCR 3.130(1.1). AI is quickly becoming an essential part of that technological competence.

KBA E-457 was issued on March 15, 2024—a *very* long time in terms of AI development. In just two years, AI has gone from a novelty to something that can produce a reasonably convincing summary judgment motion in a few minutes. A few years ago, I tried a popular AI model and it was just ok. Today, it produces work on par with a bright and hardworking, if perhaps overly eager, first-year associate—and it does so in minutes rather than hours.

There is good reason for lawyers to embrace this technology. As noted in KBA E-457, AI can review and summarize thousands of pages of documents far faster than I can. It can identify patterns in large datasets, organize information, generate initial drafts and even help review and cite-check a final product. Used properly, AI can allow lawyers to spend less time on repetitive work and more time on the parts of practicing law that require judgment, strategy, creativity and human interaction. That should save money for clients and create new opportunities for lawyers.

But it’s not all roses. AI can cite a case that does not exist, attribute a quotation to the wrong case or confidently state something that is simply incorrect. In its effort to prepare the argument it thinks you want, AI will take significant liberties with the facts and the law. Basically, AI is what happens when you take a bright and hardworking junior associate and tell him it is okay to fabricate facts and law as long as they seem consistent with the truth and suit your argument.

E-457 emphasizes that lawyers using AI must verify its accuracy and remain responsible for their work product. The courts are willing to enforce that obligation. In May, the Kentucky Court of Appeals affirmed a family court order holding a divorce litigant in criminal contempt for using AI to falsify medical records. The Sixth Circuit recently held, in a published decision, that attorneys practicing in the Circuit have an ethical duty to confirm the accuracy of their citations.

Confidentiality presents another significant risk. Some AI tools may retain or use information entered into them, including confidential documents and privileged information. E-457 therefore advises lawyers to understand how an AI provider handles information before putting confidential client material into the system. The courts, again, have reached the same conclusion. Earlier this year, U.S. District Judge Jed Rakoff held that a criminal defendant’s legal communications with an AI program were not privileged. On July 31, 2026, the Supreme Court of Connecticut warned that *attorneys* risk breaching client confidences by sharing privileged or work product information with consumer AI programs.

But the bigger issue—and one many of us are beginning to see—is the explosion of words in legal practice. Our profession has always been a wordy one, but AI makes it remarkably easy to become an amateur Samuel Johnson. A brief that once took hours to draft, a lengthy cease-and-desist letter or hundreds of discovery requests can now be generated in minutes. The resulting work may look perfectly plausible to a client, a court or opposing counsel.

But someone still has to read it.

AI-generated mountains of legal prose create burdens for opposing counsel, clients and especially judges. If a lawyer uses AI to produce a 25-page brief, the lawyer still has an obligation to understand every argument, verify every authority and decide whether all 25 pages actually need to be there. More words do not necessarily mean better advocacy. Sometimes they just mean more work for everyone else.

KBA E-457 addresses this through the lawyer’s duties of competence, supervision and review. But this may not be enough. The Campbell Family Court, for example, has adopted a rule requiring disclosure of whether AI was used to draft a court submission. Failure to comply “will result in a show cause hearing,” and potentially, referral for bar sanctions.

The Campbell Family Court rule may well be adopted everywhere in short order. Some federal judges have begun entering standing orders requiring a certification on every filing of whether AI was used in that filing (see, for example, the April 2, 2026 Standing Order entered by U.S. District Judge Wendy W. Burger, M.D. Fla.). More are sure to follow. I would not be surprised if, within the next few years, we are all filing briefs and sending letters with a certification at the end stating the extent of AI use in creating the document.

Such disclosures are a step in the right direction. In fact, I’ll go first. To help save time on this article, I asked a consumer AI program to summarize KBA E-457 for me. I’m not sure it saved much time—I ended up reading the opinion anyway—but it did a pretty good job.



“

A brief that once took hours to draft, a lengthy cease-and-desist letter or hundreds of discovery requests can now be generated in minutes. The resulting work may look perfectly plausible to a client, a court or opposing counsel.

But someone still has to read it.

Samuel W. Wardle
LBA President



Felony Mediation: Perspectives from Jefferson County

Chief Circuit Judge Eric Haner

The use of felony mediation to resolve criminal cases in Jefferson County gained significant momentum over the past several years. On June 30, 2026, the program came to an end. Its conclusion provides an opportunity to consider the role that felony mediation played in the resolution of criminal cases in Jefferson County. Before turning to those perspectives, a brief overview of the program provides helpful context.

The Kentucky Supreme Court created the statewide felony mediation program pursuant to its authority to develop rules promoting the efficient operation of the court system, invoking KRS 454.011, the General Assembly’s declaration of public policy encouraging dispute resolution by referring parties to mediation before trial or hearing. Participation in the program required a referral by the presiding judge, either upon the request of one or both parties or on the court’s own initiative. If accepted, the Chief Justice entered an order assigning the case to a retired judge who had completed mediation training and was registered with the program.

To better understand the program’s impact, retired judges who served as mediators, attorneys from the Office of the Jefferson County Commonwealth’s Attorney, attorneys from the Louisville office of the Department of Public Advocacy and a member of the private criminal defense bar were asked to reflect on their experiences.

The responses revealed several common themes.

Retired District Judge Anne Haynie believed felony mediation was helpful in resolving cases because “a mediator can provide the perspective necessary for both parties to accurately evaluate their case” and “being heard enables both sides to be less critical and more understanding of the criminal justice system.” This sentiment was echoed by attorneys on both sides, who all said “yes” when asked if felony mediation was a successful program, with some describing the program as “incredibly” and “extremely” successful. Department of Public Advocacy attorney Rick Lawniczak said the felony mediation program became “an indispensable part of criminal practice for the defense and prosecution alike.”

Participants also identified the types of cases they thought were appropriate for mediation. Judge Haynie believed Class A and B felonies were best suited for mediation because “the broader the penalty range, the broader the options for settlement.” Mike Goodwin, a member of the private criminal defense bar, said he was “surprised by the number of serious cases that have been resolved through the felony mediation program,” and that “mediation can allow the parties to reach an agreement that may not have been possible without a mediator.”

The value of a neutral mediator emerged as another recurring theme. Retired Circuit and Court of Appeals Judge Denise Clayton found having a neutral mediator helpful because it allowed defendants and victims the benefit of “being heard” without “time constraints.” Stacy Greive of the Office of the Jefferson County Commonwealth’s Attorney valued having a neutral, experienced mediator who looked “objectively at a case and gave objective, neutral opinions to both the defense and the prosecution.” As a prosecutor, Greive “welcomed the objective observation [of the mediator] to assist [her] in doing the right and just thing” in a case. Department of Public Advocacy attorney Chris Schramm valued the judges’ input about the case and found it important to be “up front” with the mediators, and share “the facts, good and bad, to help them understand each party’s position.”

The benefits of felony mediation for victims and defendants were another consistent theme in the participants’ responses.

Judge Clayton noted the ability to get beyond legal arguments and focus on “the defendant’s actions” and the “individuals harmed.” Andrew Reinhardt of the Office of the Jefferson County Commonwealth’s Attorney noted the benefit of getting family members and victims together to explain the “intricacies” of a plea, and the benefits of “finality.” Greive said that mediation “gave victims and families of victims a seat at the table in the plea negotiation process,” which helped them gain “confidence in the criminal justice system.”

Several attorneys from the Department of Public Advocacy emphasized the importance of allowing defendants to participate directly in the process. Hannah Pfeiffer found helpful the ability for her clients “to participate in [their] own negotiation.” Linda Dixon also recognized the value in her client’s “ability to actively participate” and to hear “from someone who seemingly has no stake in the case.” Meghan Alderson said mediation allowed her “clients to tell their story and that can provide closure that I can’t give to them.” Sheila Seadler said mediation gave her the “peace of mind” that she had availed herself “of all of the available resources to ‘counsel’ [her] client.”

Every attorney interviewed supported reinstating the program. Department of Public Advocacy attorney Nikole Seay said she “would greatly support” mediation coming back because it helped “in ways that regular negotiations never could.” Department of Public Advocacy attorney Kadison Roberts said felony mediation was effective in getting cases resolved “quickly and fairly.” Several attorneys anticipated that, without the program, more cases would remain pending longer and proceed to trial. Goodwin said the legal community has lost “a valuable tool” in resolving cases, while Lawniczak characterized felony mediation as “vital to the practice of criminal law.”

From the court’s perspective, mediation often accomplished something that could not be measured by a docket sheet. Cases that appeared unlikely to resolve sometimes became resolvable after the parties had the opportunity to meet with an experienced neutral mediator. Even when mediation did not immediately result in an agreement, it often clarified the issues, narrowed the areas of disagreement and laid the groundwork for a later resolution.

Statistics from the Administrative Office of the Courts likewise reflect the significant use of felony mediation in Jefferson County. In 2024, 34 felony cases were mediated, resulting in 24 settlements. In 2025, the number of mediations more than doubled to 72, with 55 settlements. Through June 26, 2026, before the program concluded on June 30, an additional 67 felony cases were mediated, resulting in 42 settlements. So, for this entire period, 173 felony cases were mediated, with 121 resulting in settlement, an overall settlement rate of 70%.

The Kentucky Supreme Court identified several goals for the felony mediation program, including reducing docket congestion, promoting the earlier resolution of criminal cases, reducing caseloads for the Commonwealth and the Department of Public Advocacy, encouraging victim participation and restorative justice principles and reducing public expense through lower jail populations. Based on the statistics from the Administrative Office of the Courts and the observations shared by the retired judges, prosecutors and defense attorneys interviewed for this article, it appears that the felony mediation program achieved its stated goals in Jefferson County.

It will certainly be missed.

Judge Eric Haner presides in Division One of the Jefferson Circuit Court, and is the Chief Regional Judge. ■





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Partner, AI, Associate: The New Hierarchy in Legal Practice

Tess Hardesty

The legal field has drastically changed with the introduction of artificial intelligence, including *within* the associate role. For decades, traditional associate tasks like document review and deposition summaries formed the associate's early career training. Today, these tasks are at times being passed on to AI, and associates are being asked to use this ever-evolving technology, often with varying degrees of guidance. This shift creates a new dynamic where technology sits between partner and associate. Associates must now balance gaining necessary legal skills and developing client trust, while maintaining their ethical duty to keep abreast of the use of AI in their legal practice.

Legal Skills: Reimagining Mentorship

Traditional associates could expect countless deposition summaries, legal research projects, document review and legal drafting to hone their early career skills. However, these and other tasks that once defined an associate's early career are increasingly being at least partially automated by AI.

Partners at some firms commonly give young associates the task of summarizing depositions for the purpose of developing

an associate's skills, often allowing them to learn from a variety of attorneys on how to approach depositions (or how not to) and being able to integrate a deponent's deposition testimony into the larger picture, whether it strengthens or weakens the case or how the deponent will present to a jury. However, with the increasing use of AI, many court reporter companies are sending AI summaries of the depositions with deposition transcripts. These AI deposition summaries often effectively summarize the narrative but lack the capacity to evaluate the witness and see how the testimony will impact the nuance of a case.

As a first-year insurance defense associate at my prior firm, one of my first tasks was drafting a deposition summary in a medical malpractice case for an attorney who had practiced medical malpractice for more than 16 years. While the task seemed mundane at first, this deposition showed me how the partner structured deposition questions, developed rapport with the deponent and handled objections. Following my attempt at a summary, the partner sat down with me to discuss the tiny details and nuances of the testimony and how those impacted the case.

That conversation gave me a picture of more than 16 years of experience and knowledge passed down through one conversation opened by a deposition summary.

This loss of unintentional learning creates a gap in traditional legal mentorship. If AI handles routine legal tasks, associates risk missing out on the foundational exposure that built previous generations of lawyers. To bridge this gap, law firms must replace passive learning with intentional mentorship. Partners can no longer rely on administrative delegation as a proxy for teaching; instead, they should engage associates directly by redlining AI drafts, evaluating prompt outputs and integrating these into trial strategy. Firm leadership cannot depend solely on traditional associate tasks to develop associates; partners must take deliberate action in developing those core skill sets while guiding associates on how to effectively leverage AI as a tool.

Developing Client Trust: Privilege, Misinformation and Intake

One of the most dreaded things a modern lawyer can hear during a client meeting is "AI said..." While this frustration seems

like a minor transgression or annoyance on its face, a client consulting AI may have a lingering impact on their case. Attorneys now face an additional hurdle when building client trust: convincing clients to seek professional legal counsel before turning to AI.

In February 2026, two significant opinions were released regarding a party's use of AI. In *United States v. Heppner*, Judge Jed S. Rakoff (S.D.N.Y.) held that when a represented criminal defendant communicates with a publicly available AI platform regarding a pending investigation, those communications are not protected by attorney-client privilege or the work product doctrine. In contrast, in *Warner v. Gilbarco*, Magistrate Judge Anthony P. Patti (E.D. Mich.) held that defendants could not seek production of all documents and information concerning a pro se plaintiff's use of a third-party AI tool.

A key distinction between these two cases is the involvement of a licensed attorney. In *Heppner*, the defendant communicated with an AI about his case without the direction of his counsel, resulting in the communication not being privileged. In *Warner*, the pro se

(Continued on next page)

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litigant used AI specifically as a functional part of their drafting process and the resulting work product was protected from discovery. Additionally, the “role” of the AI itself was a major factor. In *Warner*, AI-assisted drafting was viewed as protected work product because the court determined that AI is a tool, which included the plaintiff’s internal analysis and mental impression. However, in *Heppner*, Judge Rakoff held that using AI was equivalent to disclosure to a third party and thus destroyed privilege, due to the platform’s privacy policy and third-party terms of service.

These cases demonstrate the possibilities of how a client’s AI usage might waive privilege. As a result, there may be major shifts in discovery as “AI usage” and chat histories become standard discovery requests. This leaves attorneys with the battle of attempting to develop trust with their clients, so the client does not accidentally waive privilege by consulting AI. Attorneys will also have to be prepared to explain to prospective clients why AI may not be correct on various legal topics, such as hallucinated case law or AI applying law from another jurisdiction which is not binding on the present case.

To mitigate these risks proactively, law firms should integrate practical AI safeguards directly into client intake:

- **Updated Intake Forms:** Question prospective clients early: “Have you inputted any facts, documents or questions regarding this legal matter into an AI chatbot?”
- **Privilege Counseling:** Have clear intake discussions explaining that entering confidential facts into public AI tools may destroy attorney-client privilege.
- **Constructive Consultation:** Instead of dismissing client-provided AI research outright, use those moments to explain specifically why the AI’s legal analysis fails under Kentucky law, reinforcing the lawyer’s strategic value.

Maintaining Ethical Duty: Professional Duty Meets Generative Tech

Many individuals who are part of Gen Z are against the use of generative AI due to its negative impacts. While older generations

tend to see the only cost of AI as energy, Gen Z has homed in on the impacts generative AI has had on the environment from massive data centers to water usage. Additional voiced concerns with the use of AI include erosion of critical thinking, data privacy, elimination of jobs and impact on marginalized communities.

This creates a unique tension for associates entering the profession: while many young lawyers harbor personal, environmental or ethical hesitations about AI, their ethical obligations leave little room for total avoidance. Balancing personal convictions with professional duties is becoming a defining feature of early career practice as bar associations begin treating AI literacy not as a novel skill, but as an ethical requirement.

The Kentucky Bar Association has specifically released an ethics opinion stating that attorneys have an ethical duty to keep abreast of the use of AI in the practice of law. The Kentucky Bar Association identifies several suggested benefits of AI for lawyers, including streamlining research, reviewing large volumes of documents, predicting case outcomes and reducing legal expenses to the client due to accelerated research and document preparation. KBA E-457.

Most notably, the Kentucky Bar Association states:

There are many AI resources now available to the lawyer, and there is much discussion about what AI resources are on the horizon, therefore as AI tools become more refined, and their use in the legal profession becomes more widespread, lawyers need to be aware that not using an available AI tool may constitute a failure to meet the lawyer’s duty of attaining and maintaining competence under Rule 1.1.

KBA E-457

This ethical duty connects directly to several fundamental Rules of the Kentucky Supreme Court:

- Supreme Court Rule 3.130(1.1) (Competence): Maintaining legal competence now requires attorneys to understand the benefits and risks associated with relevant legal technologies.
- Supreme Court Rule 3.130(1.6) (Confidentiality): Attorneys must ensure client data is protected from unauthorized

disclosure, ensuring client facts are not fed into public AI models that store or reuse data.

- Supreme Court Rule 3.130(5.3) (Responsibilities Regarding Nonlawyer Assistance): AI tools must be supervised much like non-lawyer personnel, meaning attorneys bear ultimate ethical responsibility for verifying all case citations and legal claims before filing.

Practical Takeaways for Kentucky Partners and Associates

As the legal profession continues to develop due to AI, both firm leadership and associates must take an active role in keeping pace with these developments.

For associates: View AI as a tool, not as a surrogate for legal work. While AI can assemble facts into narrative or draft summaries, an associate’s value lies in their ability to critically analyze the case, recognize the subtle nuance that changes a case, and offer the human empathy that clients seek. Associates should master prompt structure, rigorously verify every primary source and embrace their role as critical editor and strategist.

For partners: Evaluate delegation and mentorship within your firm. With the rise of AI’s ability to handle traditional associate tasks, partners face the hard balancing act between current business benefits and associate development. Partners must consider how to increase efficiencies by streamlining services when possible, but they also have a

duty to ensure the future of their firm and the legal field, by helping to develop an associate’s skills. Partners may need to work with associates to learn how to best take an active role in learning how to use AI as a tool, instead of utter reliance. Partners should implement firm-wide AI policies, rethink billable evaluation metrics and actively include associates in strategic case reviews.

Conclusion

AI will never truly replace the associate, but it has begun to redefine the role and will continue to do so. While it may seem like a fight between AI and associates, AI is a tool that can be used for the advancement of an associate’s career, if both associates and partners take the time to understand the influence AI is having on the modern associate. The modern associate must step into the role of editor, strategist and trusted attorney earlier in their career. By balancing technological competence under KBA E-457 and Supreme Court Rules with the irreplaceable human judgment of legal practice, associates can ensure that AI remains a tool rather than a substitute.

Tess Hardesty is an intellectual property and commercial litigation associate at Gray Ice Higdon. She earned her B.S. in Biology from Old Dominion University and her J.D. from West Virginia University College of Law. Tess currently serves as Vice-Chair of the Louisville Bar Association’s Young Lawyers Section. ■



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RED MASS

CATHEDRAL OF THE ASSUMPTION
433 South Fifth Street, Louisville
Wednesday, September 30, 2026 | 12:15 p.m.

Archbishop Shelton J. Fabre of Louisville will preside over the Mass.

Father Thomas J. Reitmeyer of Austin, who serves as the diocesan vicar general and a judge in the Diocese of Austin Tribunal will preach the homily.

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9:00 AM - 10:00 AM	Case Law Update for the Consumer Bankruptcy Practitioner	Hon. Chief Judge Charles R. Merrill, U.S. Bankruptcy Court (W.D. Ky.); Hon. Mary Elisabeth Naumann, U.S. Bankruptcy Court (W.D. Ky.)
10:05 AM - 11:05 AM	Western District Town Hall - Notes from the Bench	Hon. Chief Judge Charles R. Merrill, U.S. Bankruptcy Court (W.D. Ky.); Hon. Mary Elisabeth Naumann, U.S. Bankruptcy Court (W.D. Ky.)
11:15 AM - 12:15 PM	Chapter 11 Practice Panel: Insights from both Debtor's and Creditor's Counsel	Joseph H. Haddad, Seiller Waterman and William P. Harbison, Morgan Pottinger McGarvey
12:15 PM - 1:00 PM	Lunch, provided	
1:00 PM - 2:00 PM	EDKY vs. WDKY: Practical Tips for Navigating the Differences Between the Districts	Stephen Barnes, Walther, Gay & Mack PLC, Chapter 7 Trustee WDKY, Chapter 11 Sub V Trustee in both districts of KY; Nathan Lee, Clerk of Court EDKY Bankruptcy Court; Savannah Molyneaux, Chapter 13 Trustee, EDKY; Elizabeth Parks, Clerk of the Court, WDKY and Chuck Sydenstricker, Chapter 13 Trustee Staff Attorney, WDKY Bankruptcy Court
2:05 PM - 3:05 PM	Ponzi Schemes in Bankruptcy	Keith J. Larson, Morgan Pottinger McGarvey
3:30 PM	Social Hour - Location, TBD	Agenda subject to change without prior notice.

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Ponzi Schemes in Bankruptcy

J. Gabriel Dennery and Keith J. Larson

A Ponzi scheme is a basic grift. It “involves a business obtaining money from investors through the promise of a high rate of return on an investment.” *Aliera LT, LLC v. Health Reform Team, Inc. (In re Aliera Cos.)*, 665 B.R. 468, *489 n. 15 (Bankr. N.D. Ga. 2024). The business then obtains money from a second set of investors and uses those funds to pay the initial investors. So on and so forth. In many such schemes, this process continues until the business can no longer convince more investors to put money in, so it can’t deliver on the promise to the most recent class of investors, resulting in insolvency. These sham businesses often end up in bankruptcy.

In doing so, a Ponzi scheme can open a Pandora’s Box of bankruptcy litigation. Bankruptcy trustees in particular may seek to avoid (aka recover) pre-petition transfers in Ponzi scheme chapter 7 bankruptcy cases. A trustee can usually proceed under two distinct theories of recovery: (1) actual fraud, and (2) constructive fraud. 11 U.S.C. § 548; see, e.g., *Kirkland v. Rund (In re EPD Inv. Co., LLC)*, 114 F.4th 1148, 1157 (9th Cir. 2024). Actual fraud claims address the debtor’s fraudulent intent, whereas constructive fraud focuses on the lack of reasonably equivalent value exchanged. *Id.*

Actual Fraud

To establish intent for actual fraud, trustees routinely rely on the judicially created and “long-standing Ponzi-scheme presumption, which recognizes that a debtor’s actual intent to hinder, delay, or defraud its creditors may be inferred by

“*Ponzi scheme bankruptcies have required courts to develop specific doctrines to protect victims while also prohibiting trustees from overreaching against good faith investors.*”

the mere existence of a Ponzi scheme.” *Kirkland*, 114 F.4th at 1152. Some courts have found that if the trustee proves that the debtor operated a Ponzi scheme, the trustee is entitled to a presumption that the transfers were made with actual fraudulent intent. For example, where a bankruptcy court previously determined that debtors operated a Ponzi scheme, commission payments made to an outside broker recruiting new investors were held avoidable as actual fraudulent transfers under 11 U.S.C. § 548(a)(1)(A), regardless of whether the broker knew she was participating

in a fraudulent scheme. *In re Woodbridge Grp. of Cos., LLC*, Nos. 17-12560 (JKS), 19-51069 (JKS), 2025 LX 465326, at *43 (Bankr. D. Del. Oct. 20, 2025).

If there is no Ponzi scheme presumption, the trustee may attempt to establish fraudulent intent through alternative means. This can be done by alleging the traditional “badges of fraud,” which include: (1) lack or inadequacy of consideration; (2) close relationships between the parties; (3) retention of possession, benefit or use of the property; (4) the financial condition of the debtor before and after the transaction; (5) a cumulative pattern of transactions following financial difficulties or threat of suits; and (6) the general chronology of the events. See, e.g., *Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, Nos. 08-01789 (CGM), 12-01576 (CGM), 2024 Bankr. LEXIS 1299, at *29 (Bankr. S.D.N.Y. June 4, 2024); *Terry v. Frost Bank (In re Chris Pettit & Assocs., P.C.)*, Nos. 22-50591-CAG, 22-50592-CAG, 24-05034-CAG, 2024 LX 73637, at *4 (Bankr. W.D. Tex. Dec. 16, 2024). The trustee, however, must plead these badges with sufficient particularity to satisfy the heightened pleading standard of Federal Rule of Civil Procedure 9(b). *Id.*

Constructive Fraud

Under 11 U.S.C. § 548(a)(1)(B), a trustee may attempt to avoid a pre-petition transfer as constructively fraudulent if the debtor received “less than a reasonably equivalent value in exchange” and was insolvent at the time of the transfer

(Continued on next page)

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or became insolvent as a result of the transfer. Courts may differentiate between the return of an investor's principal investment and the payment of "fictitious profits" that do not "represent a return on legitimate investment activity[.]" *Moyer v. Rogers (In re Wedgewood Props., LLC)*, 661 B.R. 578, 603 (Bankr. W.D. Mich. 2024). Innocent, good faith investors are generally deemed to hold colorable restitution claims for the return of their original investments. Accordingly, pre-petition payments up to the amount of the initial investment are viewed as being made for "reasonably equivalent value." *Id.* at 614. Constructive fraud recovery is therefore limited to the amounts received by an investor in excess of their initial investment (fictitious profits).

The in pari delicto Defense to Common Law Claims

In addition to the above statutory claims, some trustees have attempted to assert common law claims against victims of Ponzi schemes. In response, defendants have asserted the affirmative defense of "in pari delicto" to such common law claims, which "precludes a plaintiff who participated in the same wrongdoing as the defendant from recovering damages from that wrongdoing." *Grayson Consulting, Inc. v. Wachovia Sec., Inc. (In re Derivium Capital LLC)*, 716 F.3d 355, 367 (4th Cir. 2013) (citing *In re Bogdan*, 414 F.3d at 514 (describing in pari delicto as "an affirmative defense that bars a wrongdoer from recovering against his alleged coconspirators")). Obviously the trustee is not the "wrongdoer" but the trustee steps in the shoes of the debtor to assert common law claims. *Sender v. Buchanan (In re Hedged-Investments Assocs.)*, 84 F.3d 1281, 1285 (10th Cir. 1996) (11 U.S.C. § 541 "establishes the estate's rights as no stronger than they were when actually held by the debtor . . . Congress intended the trustee to stand in the shoes of the debtor and 'take no greater rights than the debtor himself had.'" (citations omitted). That is, the trustee cannot recover damages if the debtor bears equal or greater fault in the alleged tortious conduct as the alleged tortfeasor. In short, because the debtor was the vehicle to commit the Ponzi scheme, the debtor's misconduct is imputed to the trustee.

Conclusion

Ponzi scheme bankruptcies have required courts to develop specific doctrines to protect victims while also prohibiting trustees from overreaching against good faith investors. Section 548 permits a trustee to avoid transfers made with actual fraudulent intent—often established through the Ponzi scheme presumption—and to recover fictitious profits exceeding an investor's principal contribution as constructively fraudulent transfers. Yet the trustee's recovery powers are not unlimited: good-faith investors may retain payments representing a return of principal, and the in pari delicto doctrine may bar common law claims derived from the debtor's own misconduct. The viability and extent of recovery therefore depend on the nature of the claim, the value exchanged and the defenses available to the recipient.

J. Gabriel Dennery is an attorney working of counsel at Dennery, PLLC, where he represents primarily individuals and some small businesses in bankruptcy-related matters. Gabriel earned his J.D., cum laude, from the University of Kentucky, where he received a CALI Award in Law and Economics and competed in the Duberstein Bankruptcy Moot Court Competition. He is admitted to practice in the state and federal courts of Kentucky as well as the Federal District Court for the Southern District of Indiana.



Keith Larson is the managing partner at Morgan Pottinger McGarvey. He represents secured and unsecured creditors, equity interest holders, bankruptcy trustees and acquirers of troubled businesses in a wide variety of bankruptcy and workout matters. Keith has briefed and argued cases in the U.S. Courts of Appeals for the Sixth, Seventh and Eighth Circuit as well as in state appellate courts, including issues of first impression. ■



DIVERSITY AND INCLUSION CORNER

September is anchored by Hispanic Heritage Month, one of the most significant cultural observances of the fall. It is also a month that asks the legal profession to look honestly at language access, literacy barriers and who gets left behind when the law assumes everyone can navigate it equally.

SEPTEMBER 15 - OCTOBER 15

Hispanic Heritage Month

Hispanic Heritage Month is observed from September 15 to October 15, beginning mid-month because the independence anniversaries of many Latin American countries fall on or around September 15. The observance celebrates the culture, history and contributions of Hispanic and Latino Americans to the United States. For the legal profession, it is an opportunity to examine representation at every level of the bar, from law school enrollment to firm leadership to the bench. It is also a prompt to ask whether your practice is genuinely accessible to Louisville's growing Hispanic and Latino community, not just in theory, but in the languages you speak, the materials you produce and the relationships you build.

PUTTING IT INTO PRACTICE

Four concrete actions to bring September's awareness focuses into your day-to-day practice.

- 1 Know your community's demographics**
Do you know what percentage of Louisville's population is Hispanic or Latino? Start there before claiming your practice serves the community. Jefferson County's Hispanic population has grown significantly over the past decade. The clients are there. The question is whether your firm is ready to meet them.
- 2 Audit your Spanish-language access**
Are your intake forms, client letters and website accessible to Spanish-speaking clients? If nothing is available in Spanish, that is a barrier worth addressing this month. Interpreter access and translated materials are not extras. They are fundamentals of equitable representation.
- 3 Recognize Hispanic Heritage Month with substance**
A social post is a starting point, not a finish line. Consider a member spotlight, a practice area highlight or a team conversation about Hispanic and Latino representation in the Louisville legal community. Acknowledgment without action is just visibility.
- 4 Connect D&I and mental health this month**
National Suicide Prevention Month and Hispanic Heritage Month share September. Mental health disparities along racial and ethnic lines are a D&I issue as much as a wellness one. Read what the H&W Committee has to say this month and consider how your firm can address both together.

The D&I Committee works year-round to bring meaningful programming and honest conversation to the LBA and the Louisville legal community. New members from any practice area and experience level are welcome. The only requirement is a genuine commitment to the work. If this month's focuses sparked something for you, we'd love to hear from you.

Contact Lisa M. Murray at lmurray@loubar.org to learn more.

LBA Diversity & Inclusion Committee co-chaired by

Michelle L. Duncan, Dinsmore & Shohl, LLP and John E. Selent, Dinsmore & Shohl, LLP

This monthly feature is prepared by the LBA Diversity & Inclusion Committee. Questions, submissions or ideas for future columns are welcome. Contact Lisa at lmurray@loubar.org.

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LBA FEDERAL PRACTICE SECTION

U.S. Sentencing Commission Training

Thursday, September 24

The program will cover case law updates, guideline amendments, firearms offenses and sex offense sentencing issues. Speakers include Angela Miller, Senior Attorney and Peter Madsen, Senior Education and Sentencing Practice Specialist, both with the U.S. Sentencing Commission's Office of Education and Sentencing Practice.

More details forthcoming, check www.loubar.org for updates.

LBA LABOR AND EMPLOYMENT LAW SECTION CO-HOSTED WITH THE UOFL BRANDEIS SCHOOL OF LAW

2026 Annual Carl A. Warns, Jr. & Edwin R. Render Labor and Employment Law Institute, co-sponsored with the UofL Brandeis School of Law

Thursday, September 24

This annual program is a cornerstone event for the labor and employment law community, bringing together attorneys, judges, academics, government officials, human resources professionals, union representatives and in-house counsel for a full day of thoughtful, practice-focused programming.

The Institute is designed as an inclusive forum where multiple perspectives are welcomed and explored. Attendees can expect meaningful discussion on current legal developments, emerging workplace issues and practical challenges facing today's practitioners and organizations. The program encourages engagement across the legal, business and academic communities, creating space for candid conversation and shared insight.

Whether you represent management, employees or serve in an advisory or academic role, this program offers valuable takeaways you can put to use immediately in your practice or organization.

Keynote Address Speaker: Hon. Jane B. Stranch, U.S. Court of Appeals for the Sixth Circuit

Judge Stranch serves on the U.S. Court of Appeals for the Sixth Circuit. Before joining the bench, she was managing partner of Branstetter, Stranch & Jennings, PLLC, where she focused on labor and employment law and ERISA litigation. She has taught labor law at Belmont University and frequently speaks on legal and civic issues.

More information, including session topics, will be available in the coming weeks.

Thank you to 2026 sponsors: Bricker Graydon Wyatt and Teamsters Local 89.

Conference sponsorship opportunities are available. Contact Lisa M. Murray at lmurray@loubar.org for more information.

Time: 9 a.m. – 6 p.m. — Program
Place: LBA Bar Center (600 W. Main St., Ste. 110)
Price: \$315 LBA Members
 \$283.50 Sustaining Members
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 \$100 Young Lawyers Section Members
 \$157.50 Solo/Small Practice Section Members and Government/Non-Profit Sector Members
 \$25 Law Student Members
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Credits: 7.0 CLE Hours — Pending

LBA BANKRUPTCY LAW SECTION

2026 Annual Bankruptcy Law Conference

Friday, October 2

The Louisville Bar Association's Annual Bankruptcy Law Conference returns this fall, bringing together judges, trustees and practicing attorneys for a full day of discussion on the state of bankruptcy law in Kentucky. Sessions will explore recent developments in case law, insights from the bench and practical guidance for attorneys navigating both the Eastern and Western Districts of Kentucky.

The conference remains one of the few opportunities each year for the region's bankruptcy bar to gather in one place, offering attorneys a chance to stay current on legal developments while connecting with colleagues across the practice area.

Visit page 9 or www.loubar.org for details.

Register today to save your seat. Conference sponsorships are available. Contact Lisa M. Murray at lmurray@loubar.org for more information.

Time: 9 a.m. – 5 p.m. — Program; social hour to follow
Place: Bar Center, 600 W. Main St., Ste. 110
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Credits: CLE Hours — Pending

LBA REAL ESTATE LAW SECTION CO-HOSTED WITH THE KENTUCKY CHAPTER OF CCIM

2026 Annual Kentucky Commercial Real Estate Conference

Tuesday, December 1

Marisol Miller of Amazon Global Realty is coming to Louisville, and she is headlining lunch.

The Kentucky Commercial Real Estate Conference is a full day built around one idea: put attorneys, brokers, lenders and developers in the same room and let real conversations happen. Sessions stay grounded in what is *actually* moving in the market, from how deals are getting structured to where transactions are stalling and what that means for your clients right now. Miller brings a perspective few rooms ever get access to, and she is yours over lunch.

This is not a seminar. It is the full deal team, once a year, in one place. Come ready to listen, ask questions and leave with contacts you will actually use.

Visit www.loubar.org for details.

Questions about sponsorship? Contact Lisa M. Murray at lmurray@loubar.org.

Time: 8 a.m. – 5 p.m. — Program
Place: Louisville Marriott East (1903 Embassy Square Blvd., Louisville, KY 40299)
Credits: CLE Hours — Pending

Cancellations: Must be received by LBA at least 24 hours in advance for a refund (minus \$10 processing fee). Substitutes allowed (except special events). Technology issues: User error does not qualify for a refund for LIVE webinars. Recordings are NOT included with registration. Separate fees apply for accessing past recordings through the LBA On-Demand Catalog. Please note: Live and on-demand CLE programs have different KBA accreditation requirements.



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LET'S CONNECT

Questions? Our admissions team is here to help you explore Brandeis Law and guide you through the admissions process.

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WHAT'S NEW AT BRANDEIS LAW

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Mary Byron Center in Intimate Partner Violence Established

Brandeis Law established the Mary Byron Center and Endowed Chair in Intimate Partner Violence, creating a national hub for education, research, and interdisciplinary collaboration to help prevent intimate partner violence.

Top 25 Lawyering Skills Program

Brandeis Law's Lawyering Skills Program was ranked No. 22 in the nation for legal research and writing by U.S. News & World Report, recognizing its excellence in preparing students to think, write, and advocate like lawyers.



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Law Schools in the Bluegrass



Chase College of Law Opens a New Courtroom

The new Chase College Foundation Courtroom at Northern Kentucky University Salmon P. Chase College of Law has a story to tell. It is the story of how a 72-year-old foundation and more than 125 alumni and friends of the college funded a state-of-the-art facility that will prepare students to step into the courtrooms of their futures.

While planning and fundraising for the courtroom began more than four years ago, the culmination of the project occurred less than a year ago, late in 2025, with a ceremonial opening of the courtroom on the first floor of Nunn Hall, on the NKU campus in Highland Heights.

Speaking at the ribbon-cutting ceremony for benefactors and alumni, Chase Dean Judith Daar acknowledged that “I want to give thanks to our naming gift that came from the Chase College Foundation. They believed in us early on, and they gave us a gift that allowed us to name the courtroom in their honor. Over the past four years, we’ve been so buoyed by 125-plus supporters of this project, from alumni and from supporters all around the region.”

That support resulted in a courtroom enclosed by rich oak-tone wall panels, with a judicial bench that spans 20 feet, a moveable podium in front of it, contemporary-design counsel tables and chairs, and seven rows of gallery seating.

The bench can accommodate a single trial judge (actual or mock), a three-judge appellate panel or a seven-member session of the Supreme Court of Kentucky. A witness stand is at the front, and the facing jury box accommodates 12. On the walls are video screens that link to monitors before judges and to laptops at counsel tables. Behind it all are judicial chambers and a jury deliberation room.

It is an arrangement designed for both real and mock proceedings. A panel of the Kentucky Court of Appeals has convened there. Student trial teams and advocacy classes regularly present arguments and evidence in front of mock judges. And a Chase-sponsored regional mock trial competition and a symposium have gathered there.

While the courtroom has both the visual and functional imprint of Chase, it is also a fusion of features that might be considered as comprising the perfect courtroom.

“When we visited working courtrooms across the region, we asked the presiding judges about the technology they utilized,” Dean Daar says. “We learned that sound projection and evidence display were among the most important features of any technology package. We also gave attention to sight lines for the jury, judges, attorneys and gallery audience. We designed the Chase courtroom so that all arguments, presentations, videos and other communications could be heard and viewed by anyone in the room.”

Among alumni who spoke at the ribbon-cutting ceremony – Supreme Court of Kentucky Deputy Chief Justice Robert Conley, Supreme Court Justice Michelle Keller and Warren County, Kentucky, County Attorney Amy Hale Chandler, the courtroom was a springboard from their Chase years toward the future.

- Deputy Chief Justice Conley: “When I walked in here, I was, ‘Wow, what planet am I on?’ It doesn’t look anything like the school I graduated from in 1984. ... This courtroom is first-class. It’s going to be invaluable to the students, in teaching them trial-practice for a changing profession. The technology is just mind-blowing.”
- Justice Keller: “This courtroom looks a lot different than the one I did my first oral argument in [as a student], but I feel just as excited today as I did then.”
- Ms. Chandler: “Driving in, I felt like when I first came to Chase, all of the excitement surrounding me. ... I remembered my trial advocacy class. I remember [the courtroom] did not look like this. But I learned how to present the case, which has helped me so much in my career. ... A space like this is absolutely invaluable to students. They can refine their skills long before the stakes are high. And the students can begin to see themselves as true and real advocates.”

For Chase College of Law, the Chase College Foundation, alumni and college friends, along with being a new space, the courtroom is an ongoing story of opportunity for students.



(Top photo) The Chase College Foundation Courtroom is a state-of-the-art facility for student advocacy training and trial teams, as well as actual proceedings. (Bottom photo) During an opening ceremony for the Chase College Foundation Courtroom, Chase Dean Judith Daar addresses attendees, while alumni speakers are seated at counsel tables, from left, Supreme Court of Kentucky Deputy Chief Justice Robert Conley, Supreme Court Justice Michelle Keller, Warren County, Kentucky, County Attorney Amy Hale Chandler and Chase College Foundation Trustee James Frooman.

The Aughts

Break out the side bangs, skinny jeans, flip phones and questionable Y2K fashion—it's time to travel back to the 2000s!

Join us for Lawlapalooza, an epic battle of the legal bands fundraiser, where bands will throw down with the biggest hits of the Aughts (2000-2010). Think pop-punk, emo, rock, hip-hop and all the songs you *definitely* still know every word to.

Proceeds benefit the Judge Ellen B. Ewing Foundation.

Friday, October 16
Z Bar / 7 p.m.



Non-stop hits like:

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The Strokes

White Stripes

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Beyoncé

The Killers

Usher

Linkin Park

Avril Lavigne

Foo Fighters

Britney Spears

Kelly Clarkson

Fall Out Boy

Nelly

Lawlapalooza

Y2K Called. It Says You Still Know All the Words.



Defense Counsel’s Efforts to Insulate Themselves From Liability and Conflicts of Interest

Vince Aprile

“

Criminal defense counsel should avoid trying to insulate themselves from legal liability by securing from their clients agreements prohibiting legal malpractice suits for the representation provided as there is a very strong possibility that such an agreement will constitute a disqualifying conflict of interest for the lawyer.

Many criminal defense attorneys, whether practicing in state or federal court, worry about being found to have rendered ineffective assistance of counsel (IAC) and/or to have committed legal malpractice. Prosecutors in the past disliked that convicted criminal defendants often raised on collateral proceedings claims of IAC even when the accused had plead guilty. To preclude that avenue of relief, federal and state prosecutors began inserting boilerplate language into guilty plea agreements requiring the waiver the right to assert claims of IAC on appeals or in other post-conviction proceedings.

In a similar vein, some criminal defense attorneys, primarily retained, sought to require their clients to enter into an agreement not to sue counsel for legal malpractice well before the results of the representation were known. The dangers of that particular practice was well known years ago whether in criminal or civil practice.

There is virtually a universal ethical prohibition against such an agreement not to sue unless certain conditions are met. “A lawyer shall not ... make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless the client is independently represented in making the agreement.” Rule 1.8(h)(1), *Current Clients: Specific Rules*, ABA Model Rules of Professional Conduct,

© 2025. This is an ethical restriction on lawyers whether providing representation in civil or criminal cases.

Basically, under ethical codes, a lawyer seeking to have the client agree not to sue her for malpractice must ensure that the client has an independent attorney to advise her about the dangers and advantages, if any, of agreeing to forego suing counsel in advance of seeing the work and its results. Some jurisdictions’ ethics codes will not allow such agreements even with the advice of independent counsel unless such agreements are permitted by law. In addition to informing the client that he cannot sign the agreement without having an independent counsel to represent him concerning the agreement, it is either implicit in or spelled out in ethical codes that the client must be afforded adequate time to hire independent counsel with ample opportunity to review the agreement.

“[I]n view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity

(Continued on next page)



LOUISVILLE BAR ASSOCIATION
HEALTH & WELLNESS COMMITTEE

Health & Wellness Committee Corner

September 2026

CO-CHAIRS
Jennifer Kleier
Liz Mosler

ALL MONTH

National Suicide Prevention Month

September is National Suicide Prevention Month. For the legal profession, this carries particular weight: lawyers experience depression and suicidal ideation at rates significantly higher than the general population. Suicide Prevention Week is September 6–12, with World Suicide Prevention Day on September 10. These are more than observances—they are opportunities to check in, speak up and know where to turn for help. The H&W Committee encourages every member to make suicide prevention an active commitment this month.

National Self-Care Awareness Month

September marks the start of the fall push for most lawyers—new matters, returning deadlines and the compressed energy of Q4. The timing of Self-Care Awareness Month is not accidental. Self-care is not an indulgence. It is what makes sustained performance possible. This month, the H&W Committee encourages members to treat recovery the same way they treat billable hours: intentionally, consistently and without apology. One habit built in September is worth more than a wellness retreat you never take.

This month, try this:

1

Mark Suicide Prevention Week (Sept 6-12) on your firm calendar. Share the 988 Suicide and Crisis Lifeline with your team. It takes two minutes and could matter more than you know.

2

Build one recovery habit into September before the fall rush hits full speed. A standing lunch break, a consistent bedtime or a weekly no-email window all count.

3

Start planning for the AFSP Out of the Darkness Walk on November 7. The H&W Committee is participating. Watch for registration details and consider joining us.

GET INVOLVED

JOIN THE HEALTH & WELLNESS COMMITTEE!

Active LBA members who want to help promote wellness across the legal profession are welcome.

Contact Lisa M. Murray at lmurray@loubar.org to learn more.

UPCOMING LBA HEALTH & WELLNESS COMMITTEE HOSTED EVENTS:

4TH ANNUAL PICKLEBALL PALOOZA

Sunday, September 20 · Pickle & Pong
More details - see page 12

AFSP OUT OF THE DARKNESS WALK

Saturday, November 7 · Waterfront Park
Watch for details from the H&W Committee

MAHJONG OPEN PLAY

Date TBA · Watch for details from the H&W Committee

to find and consult independent counsel.” Rule 1.8, ABA Model Rules, *supra*, Comment [18].

In a criminal case, an agreement not to sue counsel for malpractice, even when entered into in compliance with the ethical guidelines, would constitute a disqualifying conflict of interest. “A concurrent conflict of interest exists if ... there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or *by a personal interest of the lawyer.*” Rule 1.7(a)(2), *Conflict of Interest: Current Clients*, ABA Model Rules, *supra*.

Parenthetically, criminal defense attorneys in many venues are already protected from disappointed clients’ malpractice suits by the exoneration doctrine. A number of jurisdictions in this country have adopted as a prerequisite to establishing a complaint for legal malpractice arising out of a criminal case that the plaintiff must prove that he or she was exonerated of the charges in the underlying criminal action.

What the Kentucky Supreme Court explained about IAC waivers in guilty plea agreements and conflicts of interest is equally applicable to a criminal defense attorney requiring a client to sign an agreement not to sue for malpractice:

When defense counsel is forced, through the introduction of an IAC waiver in a plea agreement, to advise a client on the attorney’s own conduct, a personal interest certainly exists. An IAC claim is time consuming for an attorney, may tarnish the attorney’s professional reputation, may subject the attorney to discipline by the bar or courts, and may even have serious financial consequences for the attorney’s practice.

US Ex Rel. US Attorneys v. Kentucky Bar Ass’n, 439 S.W.3d 136, 152 (Ky. 2014).

All of these factors apply to a criminal defense attorney obtaining an agreement from his client not to sue him for legal malpractice except that it requires the lawyer to advise the client on counsel’s performance before it has even occurred. The conflict of interest is virtually the same. “[A] conflict exists when there is a ‘substantial risk’ of negatively impacting the client’s representation. This is true whether or not the ‘feared eventuality ever materializes.’” *US EX REL. US ATTORNEYS*, *supra*, 154.

It is well recognized today that a criminal defense lawyer may not advise a client with regard to a plea agreement that waives the client’s right to pursue a claim of ineffective assistance of counsel as part of the waiver of the right to collaterally attack a conviction covered by the plea agreement. This issue has “been the subject of decisions by a number of state ethics committees, bar associations or similar authorities. The majority of these ethics decisions have stated that it is a violation of applicable ethics rules for an attorney to advise a criminal defendant about the propriety of entering into a plea agreement which waives the defendant’s right to seek post-conviction relief on the basis of an IAC claim.” Nebraska Ethics Advisory Opinion for Lawyers, Opinion No. 14-03.

On October 14, 2014, Department of Justice Policy stated that federal prosecutors should “no longer seek in plea agreements to have a defendant waive claims of ineffective assistance of counsel, whether those claims are made on collateral attack, or, when permitted by circuit law, made on direct appeal.” That policy also held that where such waivers had already been entered, federal prosecutors should “decline to enforce the waiver when defense counsel rendered ineffective assistance resulting in prejudice or when the defendant’s ineffective assistance claim raises a serious debatable issue that a court should resolve.”

What had been a prevalent practice in guilty plea agreements in federal courts and to a lesser extent in state courts is now almost universally condemned as unethical. Criminal defense attorneys were ethically prohibited from

counseling a criminal defendant to waive a future IAC claim in a guilty plea agreement because it would be a conflict of interest for counsel to do so.

“The primary duties that defense counsel owe to their clients, to the administration of justice, and as officers of the court, are to serve as their clients’ counselor and advocate with courage and devotion; to ensure that constitutional and other legal rights of their clients are protected; and to render effective, high-quality legal representation with integrity.” Standard 4-1.2(b), *Functions and Duties of Defense Counsel*, ABA Criminal Justice Standards for the Defense Function, Fourth Edition (2017).

The conflict of interest arising out of a criminal defense attorney obtaining an agreement from a client not to sue counsel for legal malpractice is obvious. The attorney’s interest is in avoiding a malpractice lawsuit and that conflicts with the client’s interest to have a potential remedy for his lawyer’s deficient legal representation. Such an agreement barring a client from suing counsel is at least a subconscious disincentive to provide the best possible representation as the threat of professional accountability is significantly reduced.

As the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 692 (1984), explained:

One type of actual ineffectiveness claim warrants a similar, though more limited, presumption of prejudice. In *Cuyler v. Sullivan*, 446 U.S., at 345-350, the Court held that prejudice is presumed when counsel is burdened by an actual conflict of interest. In those circumstances, counsel breaches the duty of loyalty, perhaps the most basic of counsel’s duties. Moreover, it is difficult to measure the precise effect on the defense of representation corrupted by conflicting interests. Given the obligation of counsel to avoid conflicts of interest and the ability of trial courts to make early inquiry in certain situations likely to give rise to conflicts, see, e.g., Fed. Rule Crim. Proc. 44(c), it is reasonable for the criminal justice system to maintain a fairly rigid rule of presumed prejudice for conflicts of interest.

Criminal defense counsel should avoid trying to insulate themselves from legal liability by securing agreements from their clients prohibiting legal malpractice suits for the representation provided as there is a very strong possibility that such an agreement will constitute a disqualifying conflict of interest for the lawyer. Criminal defendants have the right to expect their lawyers will represent them knowing if the representation is deficient it can be reviewed by either an IAC claim in post-conviction proceedings or in malpractice litigation.

Defense Counsel’s Efforts to Insulate Themselves From Liability and Conflicts of Interest, J. Vincent Aprile II, © Published in *Criminal Justice*, Vol. 41, No. 01, by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means stored in an electronic database or retrieval system without the express consent of the American Bar Association or the copyright holder.

Vince Aprile, JD, LLM, began his legal career as a Captain in the Army Judge Advocate General’s Corps, where he did trial and appellate work (1969-1973). He then was a public defender with the Kentucky Department of Public Advocacy, where he served as the agency’s inaugural director of the appellate division and general counsel (1973-2003). He has argued four cases in the U.S. Supreme Court, winning two. Vince has taught lawyers in CLE presentations and advocacy programs in more than 35 states, Canada, Puerto Rico and Russia (Moscow and St. Petersburg). His column, *Criminal Justice Matters*, has been published as a regular feature of the ABA’s *Criminal Justice* magazine for 34 years (1992 to present). Since 2003, Vince has practiced law with Lynch, Cox, Gilman & Goodman, PSC. ■



Student-Firm Networking Event

The Louisville Bar Association, in partnership with the UofL Brandeis School of Law, invites you to join us for a special networking event designed to connect current law students with local smaller and mid-sized firms that typically don’t participate in on-campus interviews.

Firms:

This is a unique opportunity to introduce your firm to the law students who will soon join our local legal community as new attorneys. Contact: kmiller@loubar.org.

Students:

Meet local attorneys and leaders from small and midsize firms, explore career opportunities and build connections that could lead to future clerkships, internships or other opportunities. This is your chance to discover career paths beyond the traditional large-firm route! Contact: donna.lee@louisville.edu.

October 7
5:30 - 7:30 PM
Louisville Bar Center
600 W. Main St. #110



Announcing the 2026 LBA New Lawyer Academy Class

The Louisville Bar Association is pleased to announce the 2026 class of the New Lawyer Academy, a six-month, cohort-based program for LBA members in their first through third year of practice. The Academy builds on the foundation law school provides, adding the practical and personal skills that shape a successful and sustainable legal career. By bridging the gap between law school and legal practice, the Academy sets new attorneys on the path to long-term career success.

2026 New Lawyer Academy Participants

Brianna N. Berry, DBL Law
Abigail E. Board, Gordon Rees Scully Mansukhani
Carla G. Bravo-Gagel, Dentons Bingham Greenbaum, LLP
Sarah Bryan, Office of Mike O'Connell, Jefferson County Attorney
Tess L. Hardesty, Gray Ice Higdon
Rahma I. Ismail, Office of Mike O'Connell, Jefferson County Attorney
Celina R. Jennings, Dentons Bingham Greenbaum, LLP
Lucy L. McAfee, Dentons Bingham Greenbaum, LLP
Nancy K. Ngo, Administrative Office of the Courts
Ashley L. Peter, Office of Mike O'Connell, Jefferson County Attorney
Jameasha B. Pierce, Gordon Rees Scully Mansukhani
Michael P. Spenlau, Office of Mike O'Connell, Jefferson County Attorney

The LBA congratulates each of these attorneys on their acceptance into the program. We also thank the firms and offices that support their attorneys' participation, an investment that pays off not only for these individuals but for the profession as a whole.

SESSION ONE RECAP: AUGUST 12

The cohort's first session was led by Colene Elridge of Be More Consulting and centered on the interpersonal dimensions of legal practice, including self-awareness, teamwork and communication. Rather than a lecture-style format, participants engaged in applied exercises throughout the day, examining the difference between self-perception and how they are perceived by others, identifying behavioral patterns that emerge under stress and exploring the range of communication styles present within a team.

The session's focus was not on softening participants' approach to the profession, but on sharpening their intentionality with themselves, their colleagues and the clients they serve.



Attorneys interested in proposing a topic or serving as a speaker for a future session may contact Lisa M. Murray, Director of Professional Development and Leadership, at lmurray@loubar.org.



2026 PRESENTING SPONSOR

The LBA thanks LMICK for sponsoring the New Lawyer Academy. Their continued support helps make this program possible for Louisville's newest attorneys.

IN MEMORIAM



Craig Siegenthaler died May 18, 2026, at the age of 61. He is survived by his wife, Jennifer and his two daughters, Mallory and Carolyn. Craig graduated from the University of Virginia in 1987 and the University of Georgia School of Law in 1990. He practiced law for 36 years, most recently at Fisher & Phillips. Craig was very active in the Louisville community for the past 30 years dedicating many years on Session at Highland Presbyterian Church, heading up personnel and teaching Sunday School. For over a decade, Craig was on the Board of the USTA-KY with a special interest and commitment to Raise a Racquet Foundation. He served on Whitehall House and Gardens Board as well as coached HYR soccer while his daughters played in elementary school.

Read his full obituary here:
<https://www.courier-journal.com/obituaries/psbn1483385>. ■



Asa "Pete" Gullett III, 80, died August 9, 2026. Pete, a Hazard, KY native, graduated from Centre College in 1968 and obtained his J.D. from the University of Kentucky in 1971. He returned to Hazard and was in private practice until 2000. He was very active in the Hazard community, serving on the Hazard School Board from 1985 to 2000. He was a member of the Kentucky Bar Association. From 1983 to 1989, he served on the Board of Governors, the governing body for the Kentucky Bar. He also participated in various other Bar activities. In 2000, he became operations manager for Lawyers Mutual Insurance Company of Kentucky (LMICK), where he was still Of Counsel at the time of his passing. Pete loved practicing law and never wanted to retire. He was an avid reader, enjoyed old-time music, especially bluegrass and playing cards, especially bridge. He was a great fan of the Cincinnati Reds and UK basketball since he was a little boy. He was Presbyterian by faith. Pete had a very fine legal mind and was a highly intelligent individual. He, as well as his legal expertise and advice, will be sorely missed.

Read his full obituary here:
<https://www.webbfuneralhome.com/obituary/asa-pieratt-gullett-iii>. ■

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Help Wanted

Associate Attorney:

A Cleveland, OH-based law firm specializing in real estate foreclosure law is seeking a new full-time associate attorney to work remotely from within the Louisville, KY area. The successful candidate will be licensed in Kentucky and Indiana. A minimum of 3 yrs. as a practicing attorney with Mortgage foreclosure experience is preferred but not necessary. Registration in all four federal districts is a bonus. Starting salary commensurate with experience, with benefits and time off after 90 days.

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MEETING ANNOUNCEMENTS

LBA Committee Meetings

- Diversity & Inclusion Committee: Wed., September 9 | 4 p.m. via Zoom
- Health & Wellness Committee: Thurs., September 17 | Noon via Zoom

If you are interested in joining any of these committees, please contact Lisa Murray, lmurray@loubar.org. ■

LBA AWARD SEASON

The LBA is seeking nominations for its highest honors—the annual LBA Awards. Each year, we recognize our members who personify the best of our legal community with their work and professionalism. Do you know someone who deserves recognition?

Visit www.loubar.org/lba-annual-awards/ for a description of each award and to nominate someone today!

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FOR JUSTICE AWARD

JUDGE BENJAMIN F. SHOBE CIVILITY &
PROFESSIONALISM AWARD

JUDGE OF THE YEAR AWARD

JUDGE RICHARD A. REVELL
FAMILY LAW AWARD

PAUL G. TOBIN PRO BONO
SERVICE AWARD

NOMINATIONS ARE DUE BY OCTOBER 8TH: WWW.LOUBAR.ORG/LBA-ANNUAL-AWARDS/



CALL FOR MENTORS

THE BRANDEIS SCHOOL OF LAW'S FIRST-GENERATION PATHWAYS PROGRAM

The University of Louisville's Brandeis School of Law in partnership with the College of Education and Human Development is seeking 20 dedicated attorney mentors to support a high-impact initiative aimed at first-generation future law students.

Funded by a grant from AccessLex, this program provides a "leg up" to first-generation law students at UofL as they navigate the complexities of law school applications and the legal profession.

WHO SHOULD VOLUNTEER?

We are looking for practicing attorneys in the Louisville area who:

- Are passionate about supporting first-generation college/law students
- Can commit to a two-year mentorship cycle (Oct 2026 – May 2028)
- Are members of local bar associations (KBA, LBA, WLA, NBA, etc.).
- First-generation attorneys are especially encouraged to apply!

EXPRESS YOUR INTEREST
BY FILLING THE FORM
LOCATED HERE:



APPLICATIONS ARE DUE
BY SEPTEMBER 16.

7 Tips on How to Stop Constant Worrying in Your Life

Stan Popovich

Do you find yourself worrying about everything that is going on around you?

It can be very tiring and depressing to constantly worry about your family, your job, your health and everything else that is happening. Having things out of your control is very scary.

As a result, here are seven tips on how to overcome the cycle of worry and fear in your life.

1. Focus on the facts of your situation; not your thoughts: When people are stressed out, they rely on their fearful and depressing thoughts. Your fearful thoughts are exaggerated and are not based on reality. When you are anxious, focus on the facts of your current situation and not on what you think.

2. You can't predict the future: Remember that no one can predict the future with one hundred percent certainty. Even if the thing that you are afraid of does happen, there are circumstances and factors that you can't predict which can be used to your advantage.

For example, you miss the deadline for a project you have been working on. Everything you feared is coming true. Suddenly, your boss tells you that the deadline is extended and that he forgot to tell you the day before. This unknown factor changes everything.

3. Take a break: Take a deep breath and try to find something to do to get your mind off of your anxieties and stresses. Take a walk, listen to some music, read the newspaper, watch TV, play on the computer or do an activity that will give you a fresh perspective on things.

This will distract you from your current worries.

4. Take it one day at a time: Instead of worrying about how you will get through the rest of the week or month, focus on today. Each day can provide us with different opportunities to learn new things and that includes learning how to deal with your problems.

5. Learn how to manage your thoughts: Challenge your negative thinking with positive statements and realistic thinking. When encountering thoughts that make you fearful, challenge those thoughts by asking yourself questions that will maintain objectivity and common sense.

6. Things change over time: Regardless of your circumstances, your current situation will not stay the same. Everything changes over time. Knowing that your situation will improve will help give you the confidence that things will get better.

7. Get some help: Sometimes it helps to be able to talk to someone about your stressful situations. Talking to a trusted friend, counselor or clergyman can give you additional advice and insights on how to deal with the fear of the unknown. Remember that there is nothing wrong in asking for assistance.

Stan Popovich is the author of "A Layman's Guide to Managing Fear" which covers 200+ techniques that can drastically improve your mental health. For more information, please visit <http://www.managingfear.com>. ■



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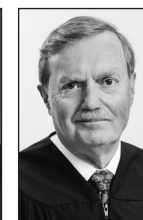
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