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Answering the Call — an Attorney's Duty

At 7:00 on a recent Tuesday evening, I went to a fundraiser for my former high school. I was recently put on the board and flattered by the appointment. Admittedly, I'm trying to get a discount for my children to attend when they're old enough. And who knows where that next huge case will come from... With young boys at three and five, I don't socialize much, so I was thrilled to be around grown-ups, not watching Paw Patrol or eating sloppy joes. If you want to find me after hours, I'm probably trying to 'unchocolfy' furniture, with varying degrees of success. I was excited to discuss downtown developments and recount high school memories. Stress had been high, and this was how I could recharge. Evidenced by a soiled button down, I saw the food bar and devoured way too many caramel brownies as I enjoyed myself.

As I caught up with old acquaintances, enjoying myself, my phone rings. I hit ignore. It rings over and over again... Randy. All I think is "freaking Randy..." I am immediately annoyed. I just spoke to this contingent fee client for nearly two hours. He knows there will be no case developments for months. I represent him for a contested wreck of limited value. He knows depositions are not set until mid-winter. Nothing in his case is urgent. I step out to see what his perceived emergency is. He wants to know how to endorse a disability check to his ex-wife. All I can think is, "that's why I'm pulled out of an event I've been looking forward to?!" I tell him I'll call in an hour to discuss this. In the meantime, I'm stewing... I'm his lawyer, not his banker. I don't represent him for this, why is he bothering me about that?

Time to check myself. Randy is a good man. He was hurt in an out of county wreck that required him to be airlifted to Louisville. He is in his late forties and disabled. His income is limited to social security. He has a seventh-grade education and no experience with the legal system. He has no experience with finance or banking. He doesn't know how to navigate complex social systems, and he has a lawyer. And my cell number. Of course he calls me. I have answers. He hired me to help him. I'm his problem solver. And frankly, I like Randy. Of course, I helped him, albeit an hour later.

Our practices are busy. Most of us have busy family lives and multiple non-profit engagements. We're pulled in a thousand different directions. But we've got to remember one of the very first rules of professional conduct is prompt communicate with our clients. Last I looked, the number one bar complaint against lawyers are claims that they do not promptly communicating with clients.

Obviously, there are needy clients and then there are *really* needy clients. We have the duty nonetheless. Many of our clients are completely unfamiliar with the legal system. More importantly, their case is likely the most important thing going on in their lives or that has ever happened to them. It is probably the source of their largest stress. They probably have very real and desperate liberty, financial, business or family issues. They probably can't sleep or focus because of these issues. They wouldn't have hired us and agreed to pay us a bunch of money if they didn't need us. They are panicked. Something awful happened or is happening to them and they came to us to help. Of course, we always think about how much money we'll make on a case, but we need to earn it. We need to help, that's what lawyers do.

I have been an unwilling litigant myself. Years ago, I was sued in a legal malpractice case, wherein I merely served as local counsel in—ironically—a legal malpractice case. I freaked out when I got the complaint. I was unreasonably scared it would destroy my practice, reputation and financially ruin me. I was panicked. I couldn't sleep. Thank God for Mark Fenzel, Don Darby and Sam Wardle. I blew up a very patient Don Darby's phone. He talked me off the ledge. Fortunately this legal dream team got the matter resolved in a motion to dismiss without filing an Answer. Was it the spurious facts against me or the genius of these lawyers that got this dismissed? Who cares? In my opinion, they walk on water. Hopefully Randy will think the same of me... As long as I keep answering my phone.



“

Obviously, there are needy clients and then there are really needy clients. We have the duty nonetheless.

Bryan R. Armstrong
LBA President



OPINION: Victims Should Get to Meet with the Offender to Participate in Crime Resolution

Mike O'Connell and Joe White

Everyone agrees that individuals who cause harm to others should make amends for what they've done. Victims of crime deserve to feel justice has been served in their cases. Judges and prosecutors work very hard to ensure that justice is served in every case and we take that search for due process and a resolution very seriously.

For a long time, punitive sentences like probation and fines were the only tools judges and prosecutors had at our disposal to make offenders right their wrongs. However, sometimes these unfortunate acts serve as great opportunities for young people to learn from their mistakes and promote a positive behavior change.

Restorative justice provides a facilitated process to allow individuals harmed by wrongdoing to meet with the offender so they can negotiate their own resolution outside of the traditional justice system. It allows victims and offenders to participate fully in the resolution of the crime and work to find a solution that makes amends and transforms negative situations into learning experiences, benefiting both parties in the long run. The program is voluntary and begins with a facilitated meeting between the two parties. The person harmed can explain how the offense impacted them and what needs to be done to make up for previous mistakes.

Both parties work together to determine a course of action that allows persons who caused harm to not only fully understand

the gravity of their actions, but also make amends for what they have done. For instance, a young person who breaks into a convenience store and steals money from the cash register might pay the stolen money back to the store owner and work at the store for a certain number of hours to remedy his or her actions.

Persons harmed who we have worked with in the past as part of the Restorative Justice Program are glad they participated. By working with offenders to ensure they accept responsibility and work through the restorative process, they often tell us that they feel a sense of closure and healing.

One of these individuals was a woman named Robin. Going through the restorative process proved to be what both individuals needed to move forward.

"Sometimes, people just need someone to say, 'It's okay — I understand, and I forgive you,'" she said. "[Restorative justice] is a great process for people who need to communicate and resolve things in a fair way."

When asked what would have been the outcome if restorative justice was not an option, Robin said, "We both would have walked away with never knowing the possibilities."

Restorative Justice Saves Money

By engaging directly with the people they harmed, offenders better understand why their actions have real-life consequences.

According to data made available by the Administrative Office of the Courts, offenders who participate in Restorative Justice programs are more than 50% less likely to commit a future crime.

Additionally, this program saves communities significant tax dollars. According to Volunteers of America, every case resolved through restorative justice outside of the court system saves an average of \$48,000 per case. By utilizing restorative justice, we are not only making our communities safer, but we are also practicing sound fiscal decision-making.

As county attorneys, we recognize our duty to uphold law and order in our communities. While punitive measures have traditionally been our primary tool, restorative justice has emerged as a promising alternative, offering a path to healing and accountability for both victims and offenders.

As we continue to navigate the complexities of our justice system, it is important to keep what is best for our communities at the forefront. By using programs like restorative justice, our communities benefit and come out stronger.

Mike O'Connell serves as Jefferson County Attorney. Joe White serves as Clay County Attorney.

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When the Unthinkable Becomes Real

Chief Judge Ann Bailey Smith

A Kentucky judge was shot to death.

A Kentucky sheriff was charged with his murder.

This took place in a Kentucky courthouse.

These three sentences have been on a loop in my mind since this happened a week ago (I'm writing this article on September 25th although you won't be reading this until the November issue of *Bar Briefs* is published). It is just unfathomable that such a thing could happen. A judge, a law enforcement officer, in the judge's chambers... How could this be?

By the time you read this article there may be answers to many of the questions surrounding this tragic incident, but at this moment there has been more rumor and speculation than fact, particularly as to what led to this shooting. I am not going to engage in or repeat any of the rumors that have been circulated, particularly on social media. But it was certainly disheartening to read comment after comment from individuals who had already made up their minds about exactly what prompted the shooting and who were more than willing to express their opinion as to whether the sheriff should even be prosecuted. But of course, he should be brought to trial. He's been arrested and charged with murder. He's in jail as of the time I'm writing this article. If he was acting in self-defense or in defense of others, if he has a mental health defense in mitigation or that would excuse his actions, then that should be presented to a jury of 12 citizens who will decide if he's guilty or not guilty. He has the right to be represented by counsel and the court has appointed a public defender to represent him. He can choose to testify or exercise his right to remain silent; he can develop his defense through cross-examination of the prosecution witnesses and he can call witnesses to testify on his own behalf. His trial will be public so that anyone can observe the strength or weakness of the prosecution and defense cases. This is called due process, the very foundation of our criminal justice system.

When I heard about the shooting of Judge Kevin Mullins, two other acts of violence soon came to my mind which were targeted against a judge and an attorney. In September of 2010, Judge Leigh Anne Stephens was on her lunch break from court at a local restaurant in Hazard, Kentucky, when she felt pain in her arm and back. She quickly realized that she had been stabbed by someone who came up behind her while she was dining. This individual had grabbed a steak knife and stabbed her five times. Another patron of the restaurant heard the judge's screams and tackled her attacker. Judge Stephens was treated at the hospital and released with her stab wounds being described as superficial. Her assailant was charged with attempted murder, but his case was eventually dismissed with a finding that he was incompetent to stand trial. Six years before the stabbing incident, he had been the subject of a domestic violence order issued by Judge Stephens; other than that, there was no known connection between him and Judge Stephens.

On June 27, 2014, criminal defense attorney Mark Stanziano (who was a law school classmate of mine) was shot to death in front of his law office in Somerset, Kentucky as he arrived for work that morning. His law office was just a block from the courthouse and the sheriff's office. A sheriff's detective witnessed the shooting but was too far away to intervene. He saw a man who lived across the street from Mark's law office open fire on Mark as he arrived for work, firing seven times from a distance of just 15 feet. He was struck six times and was pronounced dead a short time later. The shooter was immediately arrested and reportedly stated that he killed the attorney because he had asked for his help, but Mark had laughed at him. Stanziano's widow disputed this saying that her husband had repeatedly helped his assailant in the past realizing that he suffered from mental illness and had even offered to pay for mental health treatment for him. The shooter pleaded guilty but mentally ill and is serving a 20-year prison sentence.

The courthouse in Letcher County was closed for more than a week due to the shooting of

Judge Mullins. It is sadly ironic that the very building where people go, in a civilized society, to resolve their differences had to be shuttered because an individual, a law enforcement officer no less, took matters into his own hands, ending the life of Judge Mullins. And it's chilling to realize that one of the primary obligations of the sheriff's office is to ensure the safety of the judiciary and to keep the courthouse safe, and yet it's the sheriff of Letcher County who is charged with causing the death of Judge Mullins. Jerry Wagner, a retired sheriff who is currently the executive director of the Kentucky Sheriff's Association, made a statement following the shooting that, "We have 120 sheriffs that work on a daily basis with our judges. We work more closely with them than any other elected officials. No one saw this coming. I don't know how you prepare for this." I'm sure this is something that our Kentucky Supreme Court and the Administrative Office of the Courts is grappling with... The unthinkable.

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



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As the First State to Decriminalize Medical Errors, Kentucky Reinforces the Importance of Patient Safety in Healthcare

Virginia Leigh Schell

After passing unanimously in the Kentucky General Assembly, House Bill 159 was signed into law by Governor Beshear on March 26, 2024. HB 159 provides criminal immunity to health care providers for inadvertent medical errors. Coincidentally, it was signed into law the week following National Patient Safety Week.

HB 159 became law two years after a Nashville jury convicted RaDonna Vaught, a nurse at Vanderbilt University Medical Center, of reckless homicide and abuse of an impaired adult for the death of a 75-year-old patient. Ms. Vaught inadvertently administered the paralytic vecuronium instead of the sedative Versed to her patient, which prosecutors later claimed resulted in the death of the patient. Ms. Vaught did not intend to kill her patient; rather she made a series of mistakes in retrieving and administering the medication leading to the fatal error. Even though Ms. Vaught reported the medication error, she still faced criminal charges, which was unusual given that medical errors are not uncommon in

the health care setting and providers who make inadvertent errors typically do not face criminal charges.

Her guilty verdict shocked health care providers nationwide, many of whom were nurses who rallied behind her. Health care experts were concerned that the verdict would negatively impact patient safety by dissuading health care providers from self-reporting medical errors and would cause nurses to leave the profession in droves. At Ms. Vaught's sentencing, Judge Jennifer Smith noted that "[t]his was a terrible, terrible mistake" and sentenced Ms. Vaught to three years of probation instead of eight years in prison, the maximum sentence she was facing. Ms. Vaught also lost her nursing license permanently. The family of the patient settled its civil lawsuit with Vanderbilt shortly after the patient died.

The Purpose of HB 159

Pursuant to HB 159(2), "a health care provider providing health services shall be immune from criminal liability for any harm of damages alleged to arise from an act or omission

relating to the provision of health services, except as provided in subsection (3) of this section." Health care provider is broadly defined and includes all health care providers from nurses and physicians to therapists and lab technicians who may come in contact with a patient. The General Assembly amended the bill to make it clear that criminal immunity only applies to those health care providers who are actual clinicians caring for patients, not hospital administrators such as CEOs. As set forth in HB 159(3), there is no criminal immunity for "gross negligence or wanton, willful, malicious, or intentional misconduct." As to what may constitute grossly negligent criminal conduct in the health care setting in Kentucky remains to be seen, but presumably it would require the necessary criminal intent to harm a patient. HB 159 does not limit civil liability for medical negligence, including gross negligence, which is now more often than not included as a claim in civil medical malpractice actions.

When HB 159 was introduced in the Kentucky

House of Representatives, Rep. Patrick Flannery stated that its purpose was to protect frontline health care providers from being criminally charged for inadvertent medical errors and to help the Commonwealth attract health care workers, particularly nurses. Rep. Flannery noted that "[i]t is important for health care workers to self-report any error or mistake that they make so the system, processes, and procedures can be amended to help prevent human errors in the future. With potential criminal charges over their heads, self-reporting could be stifled." He also noted that the bill was supported by the Kentucky Nurses Association and the Kentucky Medical Association.

According to the "Kentucky Nurse Workforce Projections: 2022-2035" report prepared by Global Data for the Kentucky Hospital Association, "Kentucky faces significant challenges with attracting people into a nursing career and retaining its current nurse workforce. The COVID-19 pandemic exacerbated these

(continued on next page)

HEALTH & WELLNESS CORNER

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challenges, with average patient acuity rising while nurses are being asked to care for more patients. A shortage of support personnel (particularly respiratory therapists, nurse aides, phlebotomists, and emergency medical technicians, but also other occupations) places additional pressures on nurses who find themselves performing the additional tasks often delegated to others.” Global Data concluded that Kentucky’s “current [nursing] shortfall is projected to persist” through 2035. *Id.*

Both the spike in nuclear verdicts in civil litigation following the COVID-19 pandemic and Kentucky’s recent appearance on the American Tort Reform Association’s “Judicial Hellhole Watch List” certainly hinder efforts to attract health care providers to the Commonwealth even further. With the threat of both civil and criminal liability looming, why would health care providers want to work in Kentucky? The General Assembly needed to take action to attract health care providers and protect the Commonwealth’s citizens.

Medical Errors and Creating a Culture of Patient Safety

A Johns Hopkins’ study in 2016 found that medical errors cause approximately 250,000 deaths yearly and are the third leading cause of death in the United States. Common medical errors noted by the World Health Organization (WHO) include medication errors, surgical errors, health care-associated infections, sepsis, diagnostic errors, falls,

pressure ulcers, venous thromboembolism, unsafe transfusion and injection practices, and patient misidentification errors such as wrong-site surgery. According to the WHO, “[h]alf of the avoidable harm in health care is related to medications.” *Id.* Medication errors like those made by RaDonnda Vaught are the most common errors in the health care setting.

The WHO defines patient safety as “the absence of preventable harm to a patient and reduction of risk of unnecessary harm associated with health care to an acceptable minimum.” *Id.* Patient safety “creates cultures, processes, procedures, behaviours, technologies and environments in health care that consistently and sustainably lower risks, reduce the occurrence of avoidable harm, make error less likely and reduce impact of harm when it does occur.” *Id.* The WHO recognizes that “there are multiple and interrelated factors that can lead to patient harm” and “[m]ost of the mistakes that lead to harm do not occur as a result of the practices of one or a group of health and care workers but are rather due to system or process failures that lead these health and care workers to make mistakes.” *Id.* That is exactly what Ms. Vaught’s defense argued at her trial—her mistake was the result of systemic errors at the hospital. According to the WHO, it is critical to shift from a blame approach to a system-based thinking approach to “[u]nderstand the underlying causes of errors in medical care.” *Id.* This approach attributes errors to “poorly designed system structures and processes” while taking human nature and fallibility into account as

well as the quick-changing environments of health care. *Id.*

Last year, CMS announced in its “First, Do No Harm” blog post for National Patient Safety Week that patient safety “[b]est practices include ensuring a culture of safety, improving teamwork and communications, and carefully analyzing errors to identify root causes. These best practices can be standardized across health care to build a more resilient and durable system of safety that extends from the C-suite and the Boardroom to every health care worker for the benefit of patients everywhere.” The WHO notes that “[a] safe health system is one that adopts all necessary measures to avoid and reduce harm through organized activities.” These organized activities include: “ensuring a leadership commitment to safety and creation of a culture whereby safety is prioritized; ensuring a safe working environment and the safety of procedures and clinical processes; building competencies of health and care workers and improving teamwork and communication; engaging patients and families in policy development, research and shared decision-making; and establishing systems for patient safety incident reporting for learning and continuous improvement.” *Id.*

To create a culture of patient safety, health care providers must be able to disclose errors free from blame or criminal charges. Blame and criminal charges create a culture of fear and punishment and do not promote patient safety. Such an approach discourages the principles behind patient safety initiatives, i.e., self-reporting, open communica-

tion, and actions to prevent future errors, and has the propensity to increase medical errors thereby decreasing patient safety. An unfortunate result of the fear approach is that it discourages not only self-reporting of medical errors but also discourages individuals from wanting to practice in the health care setting at all. A health care culture focused on fear and punishment will inevitably create a shortfall in staffing of all health care providers. No health care providers intend to hurt patients. Physicians take the Hippocratic Oath, and nurses take the Nightingale Pledge. Health care is, for the most part, delivered by humans who are fallible. Why would anyone want to provide health care services if they knew they could go to prison for an honest, inadvertent mistake? For these reasons, the Kentucky General Assembly was forward-thinking in its approach with HB 159. It recognized not only that the Commonwealth needs to be able to attract and retain health care providers, especially when facing a shortfall of qualified health care workers, but also that it needs to reinforce the importance of creating a culture of patient safety in health care settings to protect the citizens of the Commonwealth.

Leigh Schell is an Associate in Stoll Keenon Ogden’s Louisville office. Her primary focus is on the defense of professional negligence claims made against physicians, healthcare personnel, hospitals and nursing homes. Leigh is chair of the LBA’s Health Law Section. ■



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Advancing Housing as a Human Right in Kentucky

Brian M. Fields

Amidst headlines celebrating the University of Kentucky winning its first NCAA Tournament Championship in men's basketball and stories on the 1948 Presidential election in which Harry Truman eked out a narrow victory, Kentuckians may have understandably missed news about the work of the United States at the United Nations to adopt the Universal Declaration of Human Rights (UDHR). Ultimately adopted on December 10, 1948, the UDHR outlines a broad range of fundamental human rights to be universally protected. Existing as an aspirational document for all signatory nations, the UDHR seeks the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," and covers a broad range of rights, including guarantees of economic, social and cultural rights.

The UDHR and Housing as a Human Right

Discussion of global human rights can often feel far removed from the context of Kentucky. In contrast to human rights issues that may come to mind primarily in an overseas con-

text, housing is a human rights issue that is at the forefront of our own communities across the Commonwealth. As articulated in Article 25 of the UDHR, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, *housing* and medical care and necessary social services..." The UDHR rightly notes that housing, among other basic needs, is essential to an adequate standard of living for an individual and is commensurate with medical care, food and clothing as a necessity for health and well-being.

As a signatory nation, the United States has pledged itself to promote respect for human rights and freedoms in accordance with the articles laid out in the UDHR 75 years ago. More equitable access to housing has been among the advancement of those rights within our own community. Since adopting the UDHR, the United States and Kentucky have sought to advance us toward the aspirational goals in this Declaration.

The same year the UDHR was adopted, the Supreme Court held in *Shelley v. Kraemer* that restrictive covenants in real property deeds that prohibited property sale to non-

white individuals were violations of the Equal Protection Clause of the 14th Amendment. In 1972, the Kentucky General Assembly created the Kentucky Housing Corporation via the Mae Street Kidd Act to provide affordable housing opportunities for all Kentuckians. In 1974, Kentucky adopted its first iteration of the Uniform Residential Landlord Tenant Act (URLTA), creating rights and obligations under Kentucky rental laws, including landlord responsibilities for property upkeep and tenant protections such as the right to a habitable living environment. Notably, this initial iteration of the law only applied to Jefferson and Fayette Counties, and a subsequent iteration of the law has been adopted in four counties and 19 municipalities. In 2020, Louisville Metro Council passed the state's first ban on discrimination against renters based on their source of income, which the Kentucky General Assembly preempted in the 2024 legislative session. Despite the ongoing work to fulfill the aspirational goals laid out in the UDHR over the past 75 years, there are valid concerns about existing legal and social barriers to achieving safe and affordable housing for all Kentuckians.

Issues of Availability, Habitability and Lack of Housing

A recent study found that around 206,000 housing units were needed in Kentucky for all residents to have access to rent or own affordable homes — meaning they wouldn't need to spend more than 30% of their income on housing costs. Kentuckians making at or below 30% of their area's median income faced the heaviest shortage compared to other income levels, reflecting a disparity in access impacting the poorest in our communities. According to a housing needs assessment conducted by Louisville Metro Government in February 2024, Louisville residents at or below 30% of the federal poverty limit need an additional 36,000 units of affordable housing to meet the affordable housing demand. This housing scarcity has resulted in continued problems including eviction, foreclosures and an array of habitability concerns by tenants.

According to the Administrative Office of the Courts, 40,719 forcible detainer actions were filed in Jefferson District Court over the last two years, with many of these cases attributed to unpaid rent. The collateral consequences of

(continued on next page)



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eviction are multipronged: loss of subsidized housing benefits, emotional and psychological effects, difficulty finding new housing, increased risk of homelessness, impacts on families and children and broader economic impacts on neighborhoods.

Even when people have housing, there may be no requirement for habitability in many jurisdictions in Kentucky. Louisville Metro is one of the jurisdictions in Kentucky that has adopted the Uniform Residential Landlord Tenant Act (URLTA), designed to govern the rental agreements between landlords and tenants. It provides a framework for both parties' rights and responsibilities, aiming to create a fair and balanced relationship between landlord and tenant that provides for both parties' clear rights. (see KRS § 383.500 to § 383.715).

While KRS § 383.595(1)(b) states that a landlord must "make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition," this statute does not apply in the 116 counties or 19 municipalities that have not adopted URLTA, which jurisdictions must opt into under KRS § 383.500. Beyond the URLTA jurisdictions, no implied warranty of habitability exists for non-URLTA tenants. According to the Kentucky Supreme Court, "absent an expression to the contrary, such provisions do not create an implied warranty of habitability or create a cause of action in the tenants. The remedies for violations are found within the codes, ordinances or regulations themselves." *Miles v. Shauntee*, 664 S.W.2d 512, 518 (Ky. 1983). If protections via the housing codes of a tenant's jurisdiction don't exist or are insufficient, non-URLTA tenants often have little recourse for habitability issues absent an express agreement within the terms of their lease.

Lack of affordable housing and existing substandard housing conditions can further compound existing issues surrounding homelessness. The lack of affordable/sanitary housing intersects with a multitude of socioeconomic factors that can contribute to loss of housing, including (but not limited to) fleeing domestic violence, not being able to afford rent due to loss of job, disability, loss of subsidized housing benefits and addiction. During the 2024 legislative session the passage of House Bill 5, also known as the "Safer Kentucky Act," was touted as a mechanism to protect property owners and ensure public safety.

While the broader merits of this bill are beyond the scope of this article, it is of note that this legislation creates criminal penalties for camping, which is a violation that carries a fine on its first offense and becomes a class B misdemeanor that carries a \$250 fine and/or 90 days in jail on subsequent offenses. There are not legal exceptions for when individuals must camp because treatment or shelter beds are full, and it does not require police to offer those resources before arresting a person. In turn, unhoused and desperate individuals may end up finding a place to stay when trying to get some sleep for the night; unfortunately, this may turn out to be the local detention center.

The likely effect of the Safer Kentucky Act is that individuals lacking housing, who may

have no option but to publicly camp, face increased criminalization for existing without housing. Cascading criminal justice debt from each subsequent fine may place the ability to access housing further out of reach, rendering less and less financial resources available to pay rent. While addressing homelessness in Kentucky likely requires expansive and multifaceted action on various levels of government, the criminalization of individuals who already lack the resources to afford a safe and sanitary home will seemingly do little to address the core of the problem, instead entangling individuals in the criminal justice system and creating a cycle of debt that makes their right to access housing even further out of reach.

Conclusion

The issues involving access to housing in Kentucky are multipronged and lack a singular solution. While this article does not seek to advocate specific solutions or lobby for any specific changes, it must be highlighted that real, complex barriers to achieving human rights goals for housing exist across Kentucky. For the clients that I have represented as an attorney at Legal Aid Society, limitations on housing supply and habitability concerns jeopardize housing access for our clients, and the criminalization of the unhoused has made it less likely they will obtain housing again due to the collateral consequences of entering the justice system. While advocacy via direct client representation under existing laws is vital, advocacy must be necessarily paired with advances in tenant rights and improved housing supply. By embracing a more compassionate and proactive approach to relieve underlying problems in housing access, Kentucky can help work towards the ideals laid out in the UDHR 75 years ago while also building thriving communities where everyone has an opportunity to live safely in a home. Through the advocacy of the legal community, our profession can work to foster meaningful action that reflects our shared commitment to human rights and justice for all for another 75 years.

Legal Aid Society provides Kentuckians free civil legal assistance and representation across 15 counties. If you or someone you know seeks free civil legal assistance, you can apply by calling (502) 584-1254 or <https://yourlegalaidsociety.org/application>. Volunteer attorneys are also crucial to Legal Aid's ability to extend help to as many clients as possible. Our Volunteer Lawyer Programs, including our Volunteer Eviction Defense Program, offers attorneys several ways to donate their time and expertise, including direct client services, clinic staffing and mentorship opportunities in various areas of law. If you'd like to volunteer with Legal Aid Society, please visit <https://yourlegalaidsociety.org/volunteer>.

Brian Fields is a 2022 graduate of the University of Louisville Brandeis School of Law and a staff attorney at Legal Aid Society in the Economic Stability Unit, where his practice areas include SNAP Administrative advocacy, civil debt defense, consumer litigation and expungement law. He welcomes correspondence and can be reached at bfields@yourlegalaidsociety.org. ■



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Wednesday, Nov. 6
 7:30 AM Registration
 8:30 AM Conference
 The Louisville Marriott East



	TRACK ONE	TRACK ONE SPEAKERS	TRACK TWO	TRACK TWO SPEAKERS
07:30 AM - 08:30 AM	Registration			
08:00 AM - 08:30 AM	Continental Breakfast / General Meeting			
08:30 AM - 09:30 AM	2024 Industrial Real Estate Panel	Robert Walker, CCIM Tom Sims, CCIM Curt Hargrove John Bunch	Ethically Evolving: Considerations for the Use of Artificial Intelligence in Real Estate Transactions	Ben Coffman Sydney Tucker
09:40 AM - 10:40 AM	Multifamily Financing Updates	Brad Butler Kaitlyn George Ashley Gillenwater, MAI, AI-GRS Tyler Chesser, CCIM	Kentucky Land Use Law Update	Cliff Ashburner
10:50 AM - 11:50 AM	2024 Current Office Market Trends	Brent Dolen, CCIM Tony Fluhr, CCIM Michael Somervell, CCIM Doug Owen	Understanding and Navigating the Corporate Transparency Act	Allison Donovan William Cartwright Bethany Beal
12:00 PM - 01:15 PM	Lunch & Keynote Speaker			
01:30 PM - 02:30 PM	Panel Discussion: Commercial Leasing 2024			Tony Schnell Tandy Patrick Doug Owen Clay Hunt
02:40 PM - 03:40 PM	2024 Commercial Real Estate Tax Update			Andy Ackermann Stephen Lukinovich
03:50 PM - 04:50 PM	Impact of Rising Insurance Costs on Real Estate Deals	Wes Thomas Nathan Shanks Jason Bukowski	Structuring Your Real Estate Investment: Choice of Entity and the Business of Real Estate	Jake Smith Josh Stearns

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LBA REAL ESTATE LAW & KY CCIM ANNUAL CONFERENCE

14th Annual Kentucky Commercial Real Estate Conference hosted by Kentucky CCIM Chapter & Louisville Bar Association Real Estate Law Section

Wednesday, November 6

Join real estate professionals across Kentucky for an extraordinary day of lively panel discussions, informed conversation and comprehensive one-hour courses covering various commercial real estate and land use law topics. Agenda available on previous page and on the LBA website, www.loubar.org.

Time: 7:30 a.m. — Registration; 8:30 a.m. — 5 p.m. — Program
Place: Zoom — a link will be sent prior to the presentation
Price: \$169
Credits: 6.0 CLE Hours — *Approved*

LBA Real Estate Law Section Leadership Abigail Fargen Riley, Stoll Keenon Ogden and Ashley K. Russell, Stites & Harbison

LBA ADR/MEDIATION LAW SECTION ONE-HOUR

Mediation 2024 & Beyond

Thursday, November 21

The legal landscape is rapidly evolving. Are your mediation skills keeping pace? Discover how AI and emerging technologies are shaping the future of mediation. Engage in thought-provoking discussions on whether traditional mediation methods remain effective in 2024 and beyond. Don't miss this opportunity to stay ahead of the curve and elevate your mediation practice.

Speakers include: Church, Langdon, Lopp, Banet Law attorneys **Larry R. Church** and **Dana M. Eberle**

Time: Noon — 1 p.m. — Program
Place: Zoom — a link will be sent prior to the presentation
Price: \$40 LBA Members | \$36 Sustaining Members | \$15 Paralegal Members | \$15 for qualifying YLS Members | \$25 Solo/Small Practice Section Members, Government or Non-Profit Members | \$80 Non-members
Credits: 1.0 CLE Hour — *Pending*

LBA ADR/Mediation Law Section Leadership: Church, Langdon, Lopp, Banet Law attorneys Larry R. Church and Dana M. Eberle

MESA ONE-HOUR

The Search for Truth: Using AI in Legal Discovery

Thursday, November 21

Imagine cutting through mountains of documents at warp speed, pinpointing crucial evidence with precision and drafting targeted discovery requests in minutes. This one-hour webinar will guide you through the latest AI tools and techniques that can save you time, reduce costs and enhance your practice efficiency. Don't miss out on this opportunity to boldly go beyond traditional methods and discover a smarter, faster way to navigate the complexities of legal discovery.

Speaker **Sean Carter**, MESA CLE

Time: 1 - 2 p.m. — Program
Place: Zoom
Price per hour: \$55 LBA Members | \$50 Sustaining Members | \$25 Paralegal Members | \$125 Non-members
Credits: 1.0 CLE Hour

Please note this is a partnered CLE program. Register through MESA CLE, and attendees must follow MESA CLE's cancellation policy.



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TORTS & INSURANCE LAW SECTION ONE-HOUR

Saving the Lawyer: Subjective Solutions for Mental Health, Professional Integrity and Personal Resilience

Thursday, November 7

Legal professionals face unique pressures, from relentless deadlines to ethical dilemmas, inter alia, often at the expense of mental well-being and relational flourishing. In this one-hour webinar, Cameron Fathauer tackles these challenges by offering a fresh, subjective perspective on fostering both mental health and ethical practice. Drawing on personal experiences and themes from his new book, *Saving the Subject: How I Found You When I Almost Lost Me*, Cameron introduces practical strategies for navigating the emotional complexities of law through humility, self-awareness and community support. Attendees will discover how subjective solutions can not only enhance their ethical integrity but also build resilience to better withstand the pressures of their profession.

This CLE session aims to inspire a balanced approach to legal practice—where mental well-being and ethical excellence go hand in hand.

Speaker **Cameron M. Fathauer**, Schad Law

Time: Noon — 1 p.m. — Program
Place: Zoom
Price: \$40 LBA Members | \$36 Sustaining Members | \$15 Paralegal Members | \$15 for qualifying YLS Members | \$25 Solo/Small Practice Section Members, Government or Non-Profit Members | \$80 Non-members
Credits: 1.0 CLE Ethics Hour

LBA Tort & Insurance Law Section Leadership: Brian R. Dettman, Dettman Law and Ronald E. Johnson Jr., Hendy Johnson Vaughn

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New Faculty at UofL Bring Expertise in IP Law, Health Law and Dispute Resolution/Mediation

Brandeis School of Law at the University of Louisville has added three new accomplished faculty members this fall with expertise in intellectual property law, health law and dispute resolution/mediation.



**Lorelei
RITCHIE**

Lorelei Ritchie has been named the Charles A. Grosscurth Chair in Intellectual Property Law, bringing almost 30 years of experience in teaching, scholarship and practice to the role.

She teaches first-year Contracts and upper-level Intellectual Property courses.

Professor Ritchie has taught at law schools around the country, including the University of Florida, Southern Illinois University, Florida State University and UCLA. She also previously served as a judge with the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office and practiced law in California and New York. Her research focuses on the social utility of intellectual property ownership and enforcement with an emphasis on public entities in the marketplace and on the creation and enforcement of intellectual property rights. Her scholarly articles have appeared in the American University Law Review, Federal Circuit Bar Journal, Indiana Law Journal, Oregon Law Review and Trademark Reporter, among others.

Professor Ritchie is a past recipient of the Los Angeles Intellectual Property Law Association's Distinguished Public Service Award; a U.S. Department of Commerce Special Act Award; and the Bayh-Dole Fellowship in Public Policy from AUTM, an organization focused on technology transfer. She has chaired or co-chaired committees for the American Bar Association, the American Intellectual Property Law Association and the State Bar of California.

She earned her J.D. at Columbia School of Law where she was a journal editor. She earned her bachelor's degree at Stanford University where she received a Certificate of Recognition of Achievement in International Studies and earned honors for her senior thesis. Fluent in Spanish, she undertook a year's study at the Universidad de Salamanca in Spain.



**Julie
CAMPBELL**

Julie Campbell is an assistant professor of law who is an accomplished academic, medical ethicist and certified health care compliance specialist. Her area of expertise is health law and

she teaches Introduction to Health Law; Law, Ethics and the Practice of Medicine and Contracts.

Professor Campbell has taught at DePaul University College of Law, Loyola University Chicago School of Law and Robert Morris University. While at DePaul, she was a faculty fellow with the Mary and Michael Jaharis Health Law Institute and co-executive director for the institute during her final year. Professor Campbell is one of the select few attorneys to complete a fellowship in clinical medical ethics with the MacLean Center for Clinical Medical Ethics at University of Chicago School of Medicine. She was also the 2019-2020 health law fellow for the American Medical Association. Prior to transitioning to academia, Professor Campbell practiced general litigation with Poulos Black, P.C., of Evanston, Illinois, and complex commercial litigation at Kane, Laduzinsky & Mendoza, Ltd., of Chicago.

Professor Campbell has published scholarly articles in the Georgia Law Review, the University of Houston Journal of Health Law and Policy, and Health Matrix: The Journal of Law-Medicine. Professor Campbell is a past recipient of the Imperato Award for Scholarship at DePaul University College of Law and the Delta Alpha Pi Honor Society Gratias Award for service to students with disabilities at Loyola University Chicago.

Professor Campbell earned her J.D. from Chicago-Kent College of Law and LL.M. from Loyola University Chicago School of Law. She earned bachelor of arts and bachelor of science degrees from Miami University.



**Mnotho
NGCOBO**

Mnotho Ngcobo is an assistant professor of law with expertise in dispute resolution, mediation and health law.

He has past experience in teaching and practice, including serving as the founder/director of his own firm. He teaches Alternative Dispute Resolution and Comparative International Law.

He has taught property law, torts, bioethics and public health law and international law at law schools in Africa and Asia, including North-West University in South Africa and O.P. Jindal Global University in India. His practice experience has been with his firm, M.T. Ngcobo Attorneys, and Abdool Gaffoor Parasram, both of South Africa. Additionally, he held a fellowship with the American Bar Association Section on Dispute Resolution and the Ivan Rugema Fellowship at the University of Missouri-Columbia.

During his ABA fellowship, Professor Ngcobo conducted research, data collection and analysis of the impact of technology in dispute resolution. At the University of Missouri, his work focused on arbitration and mediation. His past and upcoming publications look at alternatives to the high cost of litigation in dispute resolution, the role of judges as mediators, effective management of emotions in conflict resolution and artificial intelligence and blockchain technology in online dispute resolution.

Professor Ngcobo is currently at work on his thesis, "Legal and Ethical Implications of Artificial Intelligence in Clinical Decision-Making," for his Ph.D. from the University of South Africa in 2025. He earned master of laws degrees at the University of Missouri-Columbia and the University of the Western Cape, South Africa, and his bachelor of laws degree at the University of South Africa.

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MEETING ANNOUNCEMENTS

LBA Meetings

LBA Diversity and Inclusion Committee Meeting
Wednesday, November 13 | 4 p.m. | Zoom ■

Women Lawyers Association

The WLA will hold its Annual Meeting on Friday, November 1, from 11:30 a.m. to 1 p.m. at Vincenzo's. Our panelists will explore innovative strategies for nurturing the next generation of lawyers. Plus, the meeting will include the WLA Awards Presentation.

Save the date for the WLA holiday social hour on Thursday, December 12 from 4 to 6 pm; details will follow on the WLA website, <https://wlajeffco.com>. ■

Kentucky Legal Marketing Association

The Kentucky Legal Marketing Association invites all LBA members to attend our monthly educational program virtually or in person. The discussion will focus on earned vs. paid media, positioning attorneys as subject matter experts and the value of an active social media presence. Panelists include Lisa Benson (president and publisher, *Louisville Business First*) and Mark Green (vice president/editorial director, *The Lane Report*), moderated by Kristen Howard, Senior Media Relations Manager for Dinsmore & Shohl.

This month's presentation, Media Panel: How to Attract (the Good Kind of) Attention, will take place on November 13 from noon to 1 p.m. at Dinsmore & Shohl's Lexington office located at 100 W. Main St., Ste. 900, Lexington, KY 40507. Again, this presentation is also offered virtually. If you are interested in attending, please reach out to Brian Powers at bpowers@mcbayerlaw.com to register. The cost to attend the program is \$25. ■

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Congrats! Kristen Miller

LBA Executive Director

A huge shoutout to our incredible executive director, Kristen Miller, for being recognized as one of Louisville Business First's Most Admired CEOs! Her dedication, leadership and passion for the legal community make us so proud every day. Congratulations, Kristen!

-From the LBA staff and Board of Directors

Louisville Business First's annual Most Admired CEOs program honors outstanding chief executives and the Louisville Bar Association is proud to have our leader on the list!



The 18th annual Lawlapalooza, held on October 18 at Vernon Lanes, celebrated the 90's! University of Louisville Brandeis School of Law students, professors and local attorneys partied like it was 1999!

Those in attendance danced and sang to the iconic tunes from the 90's until late into the night, all the while raising funds for the Judge Ellen B. Ewing Foundation. Plead the Riff, a band featuring Steven Durm, Scott Sweeney, Steven Yelton and Brock Yates (with surprise guests Mark Martinez and Marc Murphy), secured the coveted cowbell trophy by raising the most funds.

This year's event raised more than \$3,400, with the top competitors being Plead the Riff in 1st place with \$1,051, Gen Ex Partay in 2nd place with \$1,003 and Ipsy Dixit in 3rd place with \$424.

Thank you to Kentuckiana Court Reporters for donating a gift basket that was won by Kurt Metzmeier, for making the largest donation of the evening!

We were excited to welcome our new band, Plead the Riff, comprised of law school faculty and of course thanks again to our student band What's Left Over, for closing us out with a bang!

Ipsy Dixit

Plead the Riff

Gen Ex Partay

Save the date for the next Lawlapalooza in 2025, which is tentatively scheduled for Friday, October 17th!



Member Appreciation & Awards Luncheon

Wednesday, November 13 • 11a-1p
Kentucky Science Center

Please join the LBA as we thank and recognize members from the Louisville legal community.

2024 Award Recipients

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Lawyer Award



Lashae Richie

Section
of the
Year



Criminal Law Section
Gillian Urbaniak, Chair

Pricing and registration available online at www.loubar.org. **LBA Members must be logged into the website to receive member pricing.** You may also contact Marisa Motley at mmotley@loubar.org or (502) 583-5314.

*New this year, there will be a vendor fair
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Help Wanted

Through the LBA Placement Service

Civil Litigation Associate:

The Louisville Bar Association's Placement Service is actively seeking a mid-level associate with three+ years of experience to join our client's professional liability practice group in Louisville. Qualified candidates should have litigation experience commensurate with time in practice, strong writing and analytical skills, excellent academic credentials, be able to engage in discovery and conduct witness interviews and have a desire to appear in court. Experience with litigation in federal courts and experience with complex, high-profile, high-dollar litigation is particularly helpful. A license to practice in Kentucky is required. Competitive starting salary and a comprehensive benefits package, along with opportunity for advancement offered. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Family Law Litigation Associate:

The LBA's Placement Service is currently working with a boutique law office with a great atmosphere, located off Westport Road in Louisville. The firm is seeking an experienced attorney with family law experience. Stronger consideration given to those who also have real estate, probate or trust experience, as this firm has a varied practice. Candidate must have at least five+ years of practicing in such matters in Kentucky. Must be in good standing and have excellent references. Compensation is commensurate with experience, plus benefits including 100% paid health and dental insurance, retirement plan with a 3% match and PTO. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Real Estate / Foreclosure Attorney:

The LBA's Placement Service is currently working with a multi-state law office that is seeking to add an attorney to its Louisville office. The firm specializes in real estate matters representing mortgage lenders. Primary duties will include real estate transactions and foreclosure litigation throughout the state of Kentucky. Travel to various counties for Sheriff Sales and hearings is required. Real estate or foreclosure experience a plus, but other experience considered. Must be licensed in Kentucky, be in good standing and have excellent references. Competitive salary commensurate with experience and benefits offered. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Insurance Defense Attorney:

The LBA's Placement Service is working with a medium-size, downtown law office that is looking to hire an attorney with four+ years of experience in insurance defense or personal injury litigation. Must be licensed to practice in Kentucky and in good standing. The firm has a good benefit package including health, dental and vision, 401k, paid parking and other perks. Salary is based on experience and there is a performance bonus built in, as well. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Indiana and Kentucky Defense Attorney:

The LBA's Placement Service is currently working with a medium-size law office in downtown Louisville that is seeking to hire a seasoned attorney, licensed in Kentucky and Indiana, who can handle cases with minimal supervision. The firm primarily has a civil defense practice consisting of insurance defense-type cases. The seasoned attorney candidate must have at least four+ years of experience with civil litigation in Kentucky and Indiana. Excellent salary based on experience, plus bonus opportunities. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

MEMBERS *on the move*



Butler



Jackson



Miller



Paul

Stites & Harbison attorney **Brian Butler** has been inducted as a Fellow of the American College of Trial Lawyers (ACTL). ACTL is an invitation-only fellowship and is composed of preeminent members of the Trial Bar from the United States and Canada. Butler is a Member (Partner) of the firm and is a member of the Torts & Insurance Practice Group and the Business Litigation Service Group. His practice focuses on a wide variety of litigation matters, including but not limited to white collar criminal defense, criminal defense, product liability and general tort defense. Butler routinely serves as a legal analyst for Louisville television stations and the *Louisville Courier Journal*. He received his J.D. from the University of Notre Dame Law School.

The Leadership Louisville Center has selected Stites & Harbison attorney **Jennifer Henry Jackson** to participate in the Ignite Louisville Class of Spring 2025. The six-month class teaches the key components of leadership to young professionals between the ages of 25 and 45 years old. Jackson is a member of the firm's Torts & Insurance Practice Service Group, White Collar Criminal Defense Practice Group and the Health Care Service Group. She handles a wide variety

of litigation matters, including product liability, toxic and mass torts, medical malpractice, professional liability, premises liability and actions alleging serious personal injury or death. Jackson routinely defends clients in state and federal criminal cases. Her experience includes representing health care providers in complex fraud investigations involving the Department of Justice, Federal Bureau of Investigation and Drug Enforcement Agency, as well as state investigative agencies.

Jonathan Miller has been named a co-recipient of the 2024 Solidarity Award by La Casita Center. This award honors individuals who have demonstrated exceptional dedication to La Casita Center's mission. Miller was recognized for his volunteer work at the Circle of Solidarity Fundraiser in October. He is a graduate of the University of Louisville Brandeis School of Law.

McBrayer is proud to announce that Member **Mari-Elise Paul** has been selected to lead the firm's Intellectual Property practice. Paul takes the helm of a practice that has seen extensive, innovative growth in recent years, and operates at the highest level within the Commonwealth. Paul has

long been a respected IP figure on both the national and international stage and now has brought her experience and expertise to McBrayer.

The law firms of Steptoe & Johnson and Stites & Harbison are pleased to announce that they have achieved Mansfield Certification from Diversity Lab for 2023-24. The Mansfield Rule Certification measures the structural changes and steps law firms have taken over the past year to increase diversity and broaden the paths to leadership – through lateral hiring, client pitch teams, promotions, appointments and more – to ensure those opportunities are open and transparent to all qualified lawyers. The current certification process evaluates and measures whether law firms and legal departments are including historically underrepresented groups such as women lawyers, racially and ethnically diverse lawyers, LG-BTQ+ lawyers and lawyers with disabilities for leadership roles and career advancement opportunities. Data shows that firms that remain committed and accountable to the Mansfield Certification process year-over-year are making substantial progress in creating inclusive talent practices and diversifying their leadership ranks. ■



SANTA'S COURT TOY DRIVE

Ho-Ho-Hold On! The LBA's Santa's Court Toy Drive is Back!

Calling all legal elves! It's time for the LBA's annual Santa's Court Toy Drive, benefiting the Salvation Army's Angel Tree Program. For 30 years, the Louisville legal community has rallied to collect toys and donations for children in need. These gifts help fill the gaps on wish lists, bringing holiday magic to deserving kids.

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MONETARY DONATIONS:

- Donate online at www.loubar.org.
- Make checks payable to "Louisville Bar Center" and mailed to 600 W. Main St., Ste. 110, Louisville, KY 40202 (postmarked by **December 11th**).

TOY DONATIONS:

- Shop from the comfort of your home! Visit our LBA Amazon Wish List: (click here or visit www.loubar.org). Online orders must be delivered to the Bar Center by **December 12th**.
- Drop off toys at the Bar Center by **December 11th**.
- Need a pick-up? Arrange for one of our elves to come pick up your donations on **December 12th or 13th** (before 10 AM).

CELEBRATE OUR 30 YEAR PARTNERSHIP WITH THE SALVATION ARMY!

This year, we aim for 30 participating teams and \$16,000 in combined donations! Whether you're a long-time supporter or a first timer, your contribution will bring smiles to children and families in need. Let's spread holiday cheer together!

Join in the fun. Sign up your firm, office section participation by contacting Marisa Motley at mmotley@loubar.org or (502) 583-5314.

amazon
Wishlist

KICKOFF EVENT at Davis Jewelers!

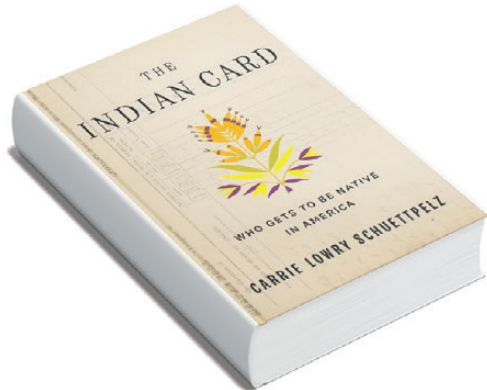
Join us on Wed., 11/20 from 5:30-7:30p at Davis Jewelers, 9901 Forest Green Blvd., to kick off Santa's Court Toy Drive. Drop off your toy donation and do some holiday shopping!

DAVIS
JEWELERS

DIVERSITY & INCLUSION COMMITTEE

BOOK RECOMMENDATION

“The Indian Card:
Who Gets to Be Native in America”



By Carrie Lowry Schuettpehl

ARTICLE RECOMMENDATION



“Every day is the right time to honor Native culture, strength and fortitude. Every day is an opportunity to tell the world: We are here. We are still here. And there is much cause for celebration.” – First Nations Development Institute



The Louisville Bar Association would like to welcome our new and returning members!

ATTORNEYS

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Bahe Cook Cantley Nefzger

Carolne Berger
Bolus Law Office

Haylee Deutsch
Thompson Miller Simpson

John E. Hamlet
O'Bryan Law Offices

Cameron Lyons
Jefferson County Attorney's Office

John Spalding
Alex R. White PLLC

LAW STUDENT

Kinsley Livingston
UofL Brandeis School of Law

LEGAL SUPPORT ASSOCIATE

Stephanie Clements
CATIC (Connecticut Attorneys Title Insurance)

KNOW SOMEONE INTERESTED IN JOINING?

Contact our Chief Outreach Officer, Marisa Motley, at mmotley@loubar.org for information!

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