

BAR*briefs*

Louisville Bar Association

December 2024

HAPPY



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ASSOCIATION

HOLIDAYS



The Necessity of Diverse Networking

The other day I had lunch at the Goose with Brian Brownfield and Wilson Greene. Both are great friends and excellent plaintiff's personal injury lawyers. I also grew up with them. They know my awkward stages well. Over chicken fried steak and meatloaf, we discussed our triumphs, hinted at our failures and remembered friends recently deceased. We also discussed what we do in certain situations: kids, family and professional. These lunches can be a great way to feed my ego—that others like Brian and Wilson value my input.

These kinds of lunches are where 90% of my real continuing education occur. I tell them about my fights against protective orders, policy of refusing to agree to them, and constitutional basis for and case law regarding the same. They tell me about trial preparation, 30.02 witness depositions, how to best depose opposing experts and the best age to allow my kids to spend the night with their friends. I sincerely value their advice and friendship. I trust them; they trust me.

It's not just them, but I have a lot of lunches with a number of other plaintiff's lawyers. It is how I get better at my practice and keep the referral network of cases flowing. But those kinds of lunches can have adverse effects—unreasonable settlement demands and seeing the other side as, well, not evil...But the other... We rally the horses and circle the wagons. There's a lot of potential for confirmation bias.

Likewise, I frequently lunch with Bill Carol and other defense attorneys and learn their perspectives, expanding my informal CLE network. When I did defense work, the danger of bias was greater. Defense firms are larger than plaintiffs' and better resourced. I had partners pressuring me to get a case dismissed, often at unreasonable times. The associates, partners and I continuously discussed how baseless claims were. We discussed that not only among ourselves, but other large defense firms and their lawyers. Definite confirmation bias with the numbers and money behind us.

With that in mind, I am grateful for my civil defense background. I was trained with that mind set. I even went to law school with the goal of defending physicians in those "baseless" medical malpractice suits. My father, Lyman, was an OB/GYN and subject to such a suit, *Hyman Armstrong v. Gunderson*, 279 S.W.3d 90 (Ky 2008). It made it to the Kentucky Supreme Court. Weirdly enough, I cite my father's case in pleadings on occasion. As I practice plaintiff's personal injury cases, I am grateful for my rush to a defense mindset, because I immediately think of all the ways I can lose a case or see damages mitigated. I sincerely think it makes me a better lawyer and puts me in a better position to resolve cases.

Were I to only hang out with plaintiff's lawyers, my lens on my own cases would be skewed to the absurd. The British neuroscientist and professor of Cognitive and Computational Neuroscience at the University of Sussex, Anil Seth, discusses how the awareness of self and our consciousness is made up of our pre-existing narratives, which is essentially created by what we feed in our own minds and with whom we surround ourselves. Expansive and diverse viewpoint networking is key to having a better understanding of our fellows and the actual world around us.

Diverse networking is key. The Louisville Bar Association fosters such an environment. There, all areas of law come together. Agency lawyers, judges, family law, criminal, intellectual property and civil practitioners all converge. I love talking to those who work totally outside my practice area. It's how I learn more about the law and people that practice it. I learn about their, and their client's, pressure and motivating points. It's how I learn the perspective of others. At the Louisville Bar Association, I actively feed diverse practice viewpoints into my brain that's naturally full of implicit biases. It's a way get over that.

Surround yourself with the views of others. It will make you see things clearer and become receptive to new ideas, especially the radical idea that you might just be wrong.



“

*Expansive and diverse
viewpoint networking is
key to having a better
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fellows and the actual
world around us.*

Bryan R. Armstrong
LBA President

COURT NEWS

Motion Hour Notice

Last Motion Hour of 2024 / First Motion Hour of 2025

With the courts closed December 24, 25, 31, 2024 and January 1, 2025, the last Motion Hour of 2024 will be conducted on Monday, December 16, 2024, and the first Motion Hour of 2025 will be conducted on Monday, January 6, 2025. The filing deadline for the January 6, 2025 Motion Hour shall be **Thursday, December 26, 2024 at noon**. Any and all motions filed after the December 26, 2024 deadline will be scheduled for the January 13, 2025 Motion Hour.

Circuit Court updates and announcements can be found at: www.jeffersoncircuitcourt.com/announcements. ■

Supreme Court Announces New Head of AOC



A program management and technology consultant with more than 25 years of experience in government health care will serve as the next director of the Administrative Office of the Courts. Zach Ramsey, who is also a licensed Kentucky attorney, starts December 1 as the head of the administrative arm of the Kentucky court system.

Chief Justice of the Commonwealth Lurance B. VanMeter announced the new director during his final State of the Judiciary address. He will retire from the bench January 5, 2025 and Deputy Chief Justice Lambert will be sworn in as chief justice January 6. As the incoming chief justice, Justice Lambert selected the new director.

Ramsey was an associate partner and account leader for IBM Consulting. He managed teams and programs that deliver technology solutions and other services to health care programs at the state and local government levels. His selection as director comes at a time when the Judicial Branch is focused on implementing a new court case management system and the next evolution of electronic case filing. Ramsey was selected from more than 30 applicants after a national search of 30-plus days.

"I am excited about the opportunity to help lead the AOC as we continue to innovate and enhance services to the Kentucky Court of Justice and our unified court system," Ramsey said.

Ramsey received a Bachelor of Science degree from Purdue University and a juris doctor from the University of Kentucky College of Law (now the University of Kentucky J. David Rosenberg College of Law). ■



"Show us your space," is a column dedicated to showcasing our members' new and improved spaces. We encourage our members to show us their new digs. Are you opening a new office or in the process of doing some renovations? Drop us a note at kkasey@loubar.org and let us know if you'd like to be featured in a future issue of *Bar Briefs*.

JCPLL's New State-of-the-Art Moot Courtroom

At a special ceremony on October 30, the Jefferson County Public Law Library (JCPLL) unveiled a state-of-the-art moot courtroom. The \$175,000 project, completed in September 2024, represents a significant investment in the future of legal education and public access to law resources for the library, which opened in 1839 and is one of the oldest public law libraries in the nation.

The new courtroom is equipped with a cutting-edge JAVS courtroom video system—the same technology used in Jefferson County trial courts—bringing real-world legal tools to the library for the benefit of students, attorneys and others with an interest in the legal field. The courtroom is designed to support mock trials, legal training and public outreach programs, furthering JCPLL's mission of providing open access to legal information and resources.

"We are thrilled to provide this new space, which enhances access to the law for everyone," said Amy Hilliard, Director of the JCPLL. "Whether you're a practicing attorney, law student or simply a resident of Louisville, the moot courtroom will serve as an invaluable resource to our community."



OCCC Reopens Renovated District Criminal Division



After completing a major renovation project, the Office of the Circuit Court Clerk's District Criminal Division has returned and reopened on first floor of the Louis D. Brandeis Hall of Justice.

The renovation represents a significant investment in the District Criminal Division, which is the largest of the OCCC's 18 divisions. The upgraded office now boasts modern amenities, including new micro-PCs with dual monitors for each workstation, new cubicles and ergonomic swivel chairs, enhancing efficiency and productivity. Additionally, the overhaul includes new carpeting, paint and energy-efficient LED lighting throughout.

This division, located on the first floor, processes more than 46,000 cases annually, making it a critical component in the administration of justice in Jefferson County. To further illustrate the scope and size of this division, District Criminal handles the lion's share of Jefferson County's new cases, which totaled over 110,000 new court cases in 2023 when combining Circuit, Family and District courts.



Additional Notice from the OCCC

The Office of the Circuit Court Clerk's Probate Division is moving from the third floor of the Louis D. Brandeis Hall of Justice Room 3001 to its new permanent location on the second floor of the Hall of Justice Room 2063. During this transition, the Probate Division is still open for business during regular hours. This move is part of the OCCC's ongoing plan to provide enhanced services and operations.

Photos courtesy of Steve Rush.

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How an Attorney Connected the Hello Girls to Overdue Justice

Chief Judge Ann Bailey Smith

It is estimated that approximately 25,000 American women assisted in the war effort in Europe during World War I. Many of these women served as nurses, but some drove ambulances, did clerical work, served as entertainers, worked in the canteens; but the women that I want to focus on are the ones who served as telephone operators in France.

The telephone was a useful, necessary tool for World War I military operations. It allowed communication over a large battlefield and with allied units throughout France. The French telephone system, however, was in ruins after three years of war, so it was virtually useless to the American military. As a result, the United States Army, alongside employees of the Bell Telephone Company, constructed its own telephone system in France. Initially, the Army was reluctant for women to travel to France to serve as telephone operators and believed that men could handle this job; the Army soon came to the realization that it was wrong. In the United States, 99% of the telephone switchboard operators were women.

American soldiers stationed in France did not want to be assigned as a telephone operator; those who were turned out to not be proficient at connecting calls and most did not speak French, which was necessary to communicate with the French military. So, the Army relented and General John Pershing sent an official request to Washington, D.C., on November 8, 1917 for women telephone operators who were fluent in both English and French. Advertisements were published and thousands of women applied, eager to assist in the war effort. Out of these thousands, 223 women were chosen and the first group arrived in France in March 1918. The improvement in telephone communication was seen immediately. With French telephone operators who struggled with the English language, a single call took 40-60 seconds to connect. The American women operators were trained to handle 300 calls per hour.

Before the American telephone operators shipped out for France, they swore an oath to the Constitution, received some basic training, were fitted for their uniforms and assembled

their kits which included iodine, sewing tools, gloves and bloomers. The Army required that they wear uniforms, but the women had to pay for them, unlike the men who served. The cost was approximately \$300, which was an astronomical amount in 1918. Since most women could not possibly pay this, the cost of the uniform was deducted in increments from their paychecks.

The initial group of women who arrived in Paris had already been put to the test when, during their train trip across Paris, they had to repeatedly stop to avoid German air raids. And their first night in Paris ended with them sleeping on cots in the basement of the hotel where they were staying due to bombings nearby. During the summer of 1918 the telephone operators found themselves not only connecting calls but also translating sensitive information regarding the location of troops, the location of supplies and even logistics between commanders. In other words, their contributions were invaluable to the war effort. They were known as the "Hello Girls." They remained in France until the war ended in November 1918.

While you may find this information interesting (I certainly did), you may also be wondering what, if any, relevance this has to us in the legal community. The Hello Girls were told that they were part of the American Expeditionary Forces (AEF) and, as such, would be able to receive military benefits, including a pension. However, at the end of their service, they were informed that they were contract employees and thus not eligible for military benefits. The Hello Girls had never signed a contract with the United States or with the Army yet they were denied over and over again those benefits to which they believed they were entitled for their service to their country. Then, finally, in 1978 one of the Hello Girls with the assistance of an attorney, Mark Hough, convinced Congress to recognize the

Initially, the Army was reluctant for women to travel to France to serve as telephone operators and believed that men could handle this job; the Army soon came to the realization that it was wrong.

service of the Hello Girls, almost 50 years after their return from France. It took 53 attempts in 49 years for the Hello Girls to attain veteran status. Mr. Hough persuasively argued that the Army had treated these women as members of the military while they served in Europe and the Army required the Hello Girls to wear military uniforms and insignia which it would have been illegal for them to do in this context if they weren't, in fact, service members. The few surviving members of the Hello Girls received their official army discharges in 1979.

* * *

Now, in local news, from October 20-23, the Circuit Judges attended their judicial college in Bowling Green, Kentucky. We enjoyed our time away from the courthouse and spending time with each other. There were a number of informative sessions presented by circuit judges throughout the state and our own

Judge Annie O'Connell gave a presentation on issuing search warrants; I appreciate her willingness to share her expertise with judges around Kentucky.

I had the opportunity on October 30 to attend the ribbon-cutting ceremony for the Jefferson County Public Law Library's Moot Court Courtroom which is equipped with the JAVS system found in our trial courts. The law library is located at 514 W. Liberty Street (where the Commonwealth Attorney's Office is located) on the second floor. This moot courtroom is available for attorneys to use to practice for trials or oral arguments and is a real asset to our legal community. The librarian and her staff are very welcoming and look forward to attorneys stopping by to see the newest improvement to the law library.

Also, Judge Tracy Davis who presides in Circuit 5 was honored at the November 1, 2024 Women Lawyers Association of Jefferson County annual luncheon. Congratulations, Judge Davis.

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



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December 2024 5

Voting “Yes” on Researching Kentucky Constitutional Amendments

Kurt X. Metzmeier

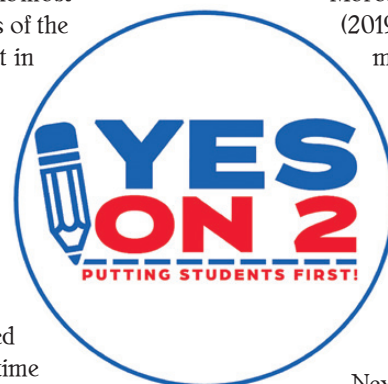
By the time that this article goes to print, the yard signs for the dueling campaigns to vote no or yes on Amendments 1 and 2 will be put away and replaced with holiday lights and inflatable Santas. (Savvy voters might store those signs for future campaigns to amend Kentucky’s constitution, as amendments have been the subject of hot political issues in recent years, proposing everything from a ban on abortions to this year’s charter schools amendment.)

With such changes to the state constitution coming so frequently, it is not improbable that a lawyer might find themselves assisting the courts in interpreting these new fundamental laws on behalf of their clients. A 2020 amendment that created a victims Bill of Rights within the constitution has already been the subject of litigation. And lawyers encountering an issue related to a new constitutional amendment might think, how do I research that? Unlike most issues related to the Kentucky constitution, there are no debates and records of the delegates to the 1890-91 convention to examine to find the delegates’ intent in drafting the provision you are researching.

Amending the Kentucky Constitution

Section 256 lays out the mechanism for amending the constitution (without calling for a whole new constitutional convention). The process to amend the Kentucky constitution is somewhat like its federal counterpart. Whereas the founders of the U.S. Constitution required two-thirds of both houses of Congress to send an amendment to the legislatures of the states, three-fifths of voting members of each chamber of the Kentucky General Assembly are needed to put an amendment to the state constitution on the ballot. (This is the first time when, as a legal scholar, I have had to put my 3rd grade instruction in fractions to good use: two-thirds (or 10/15ths) is greater than three-fifths (9/15ths). Yay math!)

And while that fractional difference makes the first step of amending the federal constitution



slightly more difficult, the hardest part of the federal process is ratification: getting the required three-fourths of the 50 state legislatures to support anything is challenging. Conversely, only a simple majority of Kentuckians voting affirmatively in a regular election enshrines a proposed amendment into the state constitution.

There are some restrictions on the power of the legislature to place amendments on the ballot. First, the amendment can only be voted on in a year when the U.S. House of Representatives is elected, i.e., even-year general elections. Second, there must be 90 days between the final approval of an amendment and the election. Third, the legislature can only propose four amendments at a time. (Usually, they limit themselves to two.) Section 257 requires that the text of the amendment be published 90 days before the election. Moreover, the Kentucky Supreme Court in *Westerfield v. Ward*, 599 SW 3d 738 (2019) ruled that the voters must vote on the entire language of a proposed amendment, not a brief summary.

Researching Amendments

To research a recently amended section of the state constitution, first carefully examine an annotated version of the section in the Kentucky Revised Statutes. Any case annotations you find can be useful, even if they are not directly on point, because the first appellate court to interpret an amendment is going to spend a little time discussing its history and context. Also look for annotations to law review and bar journal articles; they might even be written by persons involved in drafting or implementing the amendment.

Next, research the documentary history of the amendment in the same way that one would trace the legislative history of statutes. Assuming that the amendment you are researching was passed in the 21st century, you should be able to learn a lot from the Kentucky

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General Assembly website, <https://legislature.ky.gov>. To start, you will need to determine the year when the amendment was proposed. The history note in the Kentucky Revised Statutes will have this. Go to the legislative website and choose the Bills tab. This is the landing page for the Legislative Record; choose the year and session where the amendment was proposed. The Legislative Record page has many headers, but I'd direct you to the Bill and Amendment Index Headings under Miscellaneous in the last column. The heading, "Constitution, Ky," will have all the amendments.

For example, if you are researching this year's Amendment 2, you will be directed to the bill summary page for House Bill 2, with the title, all versions of the bill, sponsors and a useful Legislative History table, which will include when it was sent to committee, the dates when it was heard in committee, committee substitutes, votes, etc. Those committee dates are important because if your amendment was proposed after 2010 you can see video coverage of committee and floor debates on the KET website at <https://ket.org/legislature>. At the KET Legislature page, choose Archived Legislative Coverage, use the drop-down menu to find 2024 regular session, and scroll back in time to the March 14, 2024 hearing of the Elections, Constitutional Amendments & Intergovernmental Affairs Committee to hear discussion of the text that would become Amendment 2.

After an amendment passes out of the legislature, it is placed on the ballot and faces the verdict of the voters. The Secretary of State's office is the custodian of the official election results and has records on the voting on all constitutional amendments, broken down by county, going back to 1955 at <http://elect.ky.gov> under the results tab.


Older Amendments

Amendments in the pre-internet era can be researched using the hardbound Kentucky Acts and the House and Senate Journals available at the University of Louisville Law Library. Books?! Ugh! Detailed instructions on this process can be found in the constitution and legislative history chapters of my *Kentucky Legal Research Manual, 4th* (Lexington KY: UK/CLE, 2016). Another excellent resource is Robert M. Ireland's *Kentucky State Constitution: A Reference Guide* (1999) which has a "section-by-section analysis of the current constitution of the State of Kentucky" that should provide some context and history for any part of the state constitution in effect at the end of last century.

And, if you are already at the library, ask a librarian for assistance!

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





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Louisville Businesses Must Prepare for New Data Privacy Obligations Effective January 2026

Dalton Cline

On April 4, 2024, Gov. Andy Beshear signed the Kentucky Consumer Data Protection Act (KCDPA, codified at KRS §§ 367.3611 to 367.3629) into law, making Kentucky the 15th state to pass comprehensive consumer data privacy legislation. Indiana passed a nearly identical Consumer Data Protection Act (ICDPA, codified at Ind. Code § 24-15-1-1 to 24-15-11-2) last year, which, like the KCDPA, goes into effect Jan. 1, 2026. Although data privacy laws have been proliferating around the country since the passage of the California Consumer Privacy Act in 2018, the growing patchwork is now directly applicable to non-exempt for-profit organizations doing business in Kentucky and Indiana that process the personal data of consumers. Covered businesses in Louisville now have a little more than a year to comply with the requirements imposed by these laws.

Both laws apply to any non-exempt “person that conducts business” in the state or that produces products or services “targeted to residents” of the state, and either 1) processes

the data of over 100,000 “consumers” or 2) processes the data of 25,000 “consumers” and derives 50% of its revenue from the “sale” of data. Kentucky and Indiana join the minority of jurisdictions in defining “sale” as “the exchange of personal data for monetary consideration by a controller to a third party.”

As with the seventeen other comprehensive state consumer privacy laws, the KCDPA and ICDPA offer numerous entity and data exemptions. Governmental entities, financial institutions, Health Insurance Portability and Accountability Act (HIPAA) covered entities, nonprofits, higher education institutions, small telephone utilities and insurance fraud organizations are among the exempt entities. In addition, certain data, such as data regulated under another major federal privacy law like the Health Insurance Portability and Accountability Act (HIPAA), Fair Credit Reporting Act (FCRA), Family Educational Rights and Privacy Act (FERPA), Gramm-Leach-Bliley Act (GLBA), Driver’s Privacy Protection Act, and Farm Credit Act; or

employee data, public utility data, and, under the KCDPA, data collected and used “for purposes of federal policy under the Combat Methamphetamine Epidemic Act of 2005” are exempt.

Large businesses in Kentucky and Indiana may already be subject to the comprehensive consumer data privacy laws of other states, and thus already have in place many of the processes and policies necessary to be compliant with these new laws. For businesses that do not fall under an entity exemption or do not already comply with other state data privacy laws, here is what you need to know.

Key Business Responsibilities

Under the new laws, covered businesses will have five key responsibilities: 1) effectuate consumer rights requests, 2) provide a privacy notice with required content, 3) adopt personal data processing principles, 4) execute contracts with third-party processors providing services to the business that have required language, and 5) conduct a data protection impact assessment prior to certain processing activities.

The Indiana or Kentucky Attorney General, as applicable, has exclusive authority to enforce their respective state’s law. A covered business must be given notice of alleged violation and provided a 30-day cure period. Uncured violations may lead to damages of up to \$7,500 per violation.

Consumer Rights

The KCDPA and ICDPA grant rights to “consumers,” i.e., natural persons acting in a personal, individual or household capacity. The law doesn’t give rights to persons acting in an employment or commercial capacity. Additionally, recall that certain types of data are exempt from coverage, like data regulated under another federal privacy law such as HIPAA.

Where applicable, consumers must be given the following rights: Right of Access, Right of Correction, Right of Deletion, Right of Data Portability, Right to Opt-Out, and the Right to Appeal the denial of a consumer rights request. A covered business must also have the consumer’s “opt-in” to process “sensitive” personal data.

Those data elements constituting “sensitive” personal data are statutorily defined in KRS § 367.3611(28) and Ind. Code § 24-15-2-28. Although there are slight differences in the definition, “sensitive” personal data includes indicating or revealing racial or ethnic origin, religious beliefs, mental or physical health diagnosis, sexual orientation or citizenship or immigration status, biometric identifiers, data collected from an individual the business knows is under the age of 16 and “precise” geolocation.

A covered business must respond within 45 days of receipt of a data subject request. This response can either be a substantive response to the request or a notice that the business has received the request and will respond in an additional 45 days and give an explanation for the delay.

Privacy Notice

Covered businesses must post a privacy notice that includes:

- The purposes for processing personal data.
- How consumers may exercise their consumer rights, specifically including the right to appeal.
- The categories of personal data the business shares with “third parties.”
- The categories of “third parties” with whom the business shares personal data.
- A clear and conspicuous disclosure of whether the business sells personal data to third parties or processes personal data for “targeted advertising.”

The KCDPA and ICDPA define “third parties” as a “natural or legal person ... other than the consumer, controller, processor, or an affiliate of the processor or the controller.” Therefore, a covered business is not required to disclose the categories of third-party service providers who qualify as a “processor,” although they are free to do so voluntarily.

Adoption of ‘Processing Principles’

The new laws require covered businesses to:

- Limit data collection to what is adequate, relevant and reasonably necessary to the disclosed processing purpose.
- Limit data processing to what is reasonably necessary and relevant to the disclosed processing purpose.
- Establish, implement and maintain reasonable and administrative, technical and physical data security practices to protect the confidentiality, integrity and accessibility of personal data appropriate to the volume and nature of that data.
- Not deny a good or service or charge a difference price or rate if a consumer exercises one of their rights.

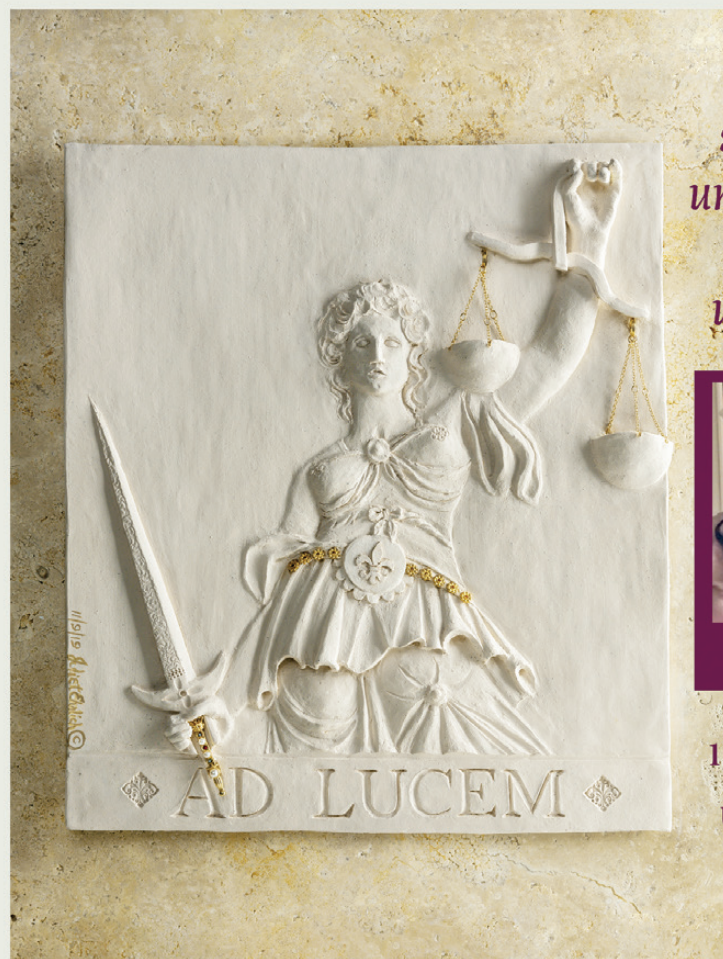
Data Protection Impact Assessment

A data protection impact assessment must be conducted before processing “sensitive” data, or prior to processing personal data where the purpose is for targeted advertising, is a “sale,” or presents a reasonably foreseeable risk of harm. This assessment must:

- Identify benefits that may flow from the processing to the business, consumer, other stakeholders and public.
- Identify potential risks to the rights of the

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- consumer.
- Identify safeguards that can be employed by the controller to reduce the risk (such as de-identified data).
 - Characterize the context of the processing, such as the relationship between the controller and the consumer.
 - Weigh the benefit against the mitigated risk and consumer expectations.

Contracts with Third Parties

The new privacy laws require a covered business to execute contracts containing statutorily required language with processors and third parties receiving “de-identified” data.

A contract between a covered business that is a “controller” and their “processor” must:

- Require every person processing personal data to be subject to a duty of confidentiality,
- Require the processor to return or delete all personal data at the end of the contract, unless retention is required by law,
- Require the processor to make available all information necessary to demonstrate the processor’s compliance with its obligations,
- Either allow and cooperate with the controller’s assessments, or the assessment of a qualified and independent assessor, to demonstrate adequate physical, administrative and technological controls,
- Require the processor to execute a written contract with any subcontractor engaged to process the controller’s data that passes down all the above obligations.

A covered business disclosing de-identified data must contractually obligate any recipients of the de-identified data to comply with the KDCPA or IDCPA.

Next Steps

First, determine whether your business meets the jurisdictional threshold under either the KDCPA or ICDPA to be a covered business.

Second, bring together institutional stakeholders that understand the organizational makeup of your business and can help identify where the personal data of consumers is being processed. Although the marketing department may be an easily identifiable risk area, what about the use of historic data by the IT department in test environments? Is there a consumer-facing sales department? Does your business operations center run the customer loyalty program, or receive feedback messages through an email inbox or webform from customers? Learning about each department’s collection and use of data will help your organization as it moves toward compliance with the KCDPA and IDCPA.

Third, to the extent your business hasn’t already, adopt the required processing principles in your business operations, start amending contracts with third-party service providers, adopt a consumer rights request and data protection impact assessment process and update your online privacy notice.

Conclusion

Because the journey to compliance can be long, covered businesses should begin preparing for the impact of these new laws on their collection, storage and dissemination of consumer data now. Partnering with experienced third parties, whether they be technology vendors or outside counsel, can ensure that the road to compliance with the KCDPA and ICDPA is not just a box ticking exercise, but an investment that protects and increases the value of the personal data the organization holds.

Dalton Cline is an associate at Dentons Bingham Greenebaum in the Data Privacy and Cybersecurity Group. As a Certified Information Privacy Professional (CIPP/US, CIPM, CIPT), Dalton advises clients on a wide range of state and federal privacy and security laws. He graduated from the University of Louisville Brandeis School of Law in 2022 and worked as a privacy analyst for the University of Illinois Urbana Champaign prior to joining Dentons. ■



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In 2024, the Louisville Bar Foundation will award more than \$175,000 in grants to local non-profits for law-related projects. The LBF is grateful for the generous support from all the attorneys who made this possible and recognizes its 2024 Foundation Partners — those law firms and corporate law departments (with five or more attorneys) where 100% of members made a financial gift to the Foundation to support its grantmaking activities. The combined support from the attorneys represented by these Foundation Partners totals more than \$30,000. The generosity of the Foundation Partners and other individual LBA member attorneys makes it possible for the LBF to support and improve legal services for the poor, law-related public education and our judicial system.

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HOSTED BY:
 LOUISVILLE BAR ASSOCIATION
 YOUNG LAWYERS SECTION



Friday, December 13 | 5:30 PM - 7:30 PM | Location: The Café

YLD + YLS + Law Student Members: FREE | LBA Members \$15 | Non Members \$25 | Reservations requested.



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LBA AI/IP/PRIVACY LAW
SECTION ONE-HOUR

Protecting Your Rights While Fighting
Trolls: Copyright & Trademark
Infringement in the Digital Age

Wednesday, December 4

Copyright and trademark infringement is a rampant problem in the online environment. The ease of technological tools, combined with everyone's desire to make a mark and some money for free, has created an environment for people to steal legally protected works — even if they don't intend to do that. That reality has fueled a legal business model where alleged trademark and copyright owners send cease and desist letters demanding thousands of dollars in "licensing fees" to avoid infringement lawsuits. This program talks about both sides of this reality, helping IP owners to protect their IP assets online while also talking about best practices if you or a client receives one of those infringement demands.

Speakers: McBrayer PLLC attorneys **Bruce B. Paul** and **Mari-Elise Paul**

Time: Noon – 1 p.m. – Program
Place: Zoom – a link will be sent prior to the seminar
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

LBA AI/IP/Privacy Law Section Leadership: Gary "Nick"
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LBA TWO-HOUR CLE

34th Annual Skaggs Slyn Revell
Domestic Relations Update

Friday, March 7

Speakers will address decisions the Kentucky Supreme Court and Court of Appeals handed down during the 2024 calendar year. A panel discussion will follow the presentations, as time permits.

Speakers: Lynch, Cox, Gilman & Goodman attorneys **Emily T. Cecconi**, **Nathan R. Hardyman** and Elizabeth M. Howell

Time: 11 a.m. – 1 p.m. – Program
Place: Hybrid – Bar Center or Zoom
Price: \$90 LBA Members | \$81 Sustaining Members |
\$15 Paralegal Members or qualifying YLS Members |
\$25 Solo/Small Practice Section Members | \$45 Government or
Non-Profit Members | \$180 Non-members
Credits: 2.0 CLE Hours

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.

LBA Meetings

LBA Diversity and Inclusion Committee Meeting
Wednesday, December 11 | 4 p.m. | Zoom ■

Women Lawyers Association

The WLA Winter Social will be held on December 12 from 4 to 6 p.m. at Work the Metal, 1201 Story Ave. Come for raffle prizes, light appetizers, mocktails and cocktails (cash bar) and end-of-year socializing with other WLA members! The Work the Metal shop will be open until 5 p.m., so come early if you'd like to look for any holiday gifts. We hope to see you there! This event is FREE, but we encourage you to register here so we can plan accordingly: <https://wlajeffco.com/wlaevents/>.

The WLA January Member Meeting will be held on Thursday, January 12, 2025 at noon. The meeting will include a discussion of "The New WLA." We will be meeting to discuss WLA's revamped mission statement and our work to empower and advance all women by providing meaningful access to legal systems, inclusion in important community efforts and accessible pathways to success and intersectional equity in the legal profession. We will introduce members to our new committees, which we're introducing for calendar year 2025, and discuss the ways members can get involved in our programming and activities. We'd love to have your input! Location and lunch details to follow and will be posted on our website: <https://wlajeffco.com/wlaevents/>. ■

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December 2024 11



Friend's Compassion —Even in Death— Inspired My Own 'David's Will'

By Tom Williams

Sometimes in life we are fortunate to meet someone who dedicates everything to a higher calling. For me, this person was David Breaux. While he had few financial resources, David was, by every measure that counts, a rich man.

A Stanford graduate, David committed his life to compassion and to inspiring others to compassion. He lived in Davis, California, and spent his days listening to people and encouraging them as an “unpaid street therapist,” as he called himself.

The citizens of Davis had another name for him: They called him “the Compassion Guy.” David became such a fixture in Davis that he commissioned and worked with the community to construct a bench dedicated to his mission; that location became widely known as Compassion Corner.

I hosted David several years ago, when he made a monthlong stay in Louisville, Kentucky, on what he called his “compassion tour.” While in town, David spoke on compassion and spent time on the streets of Louisville listening and talking about compassion with those he met. After



Stopping the vicious cycle of revenge is not only a way to leave the world a better place but also a beautiful legacy to say, even posthumously, the violence stops here.

the completion of his compassion tour, David returned home to Davis and spent many more years working his compassion mission there.

David's life, dedicated to peace and nonviolence, ended violently April 27, 2023, when he was stabbed to death. The tragic loss of his life was grieved near and far. I later learned that prior to his death, David told his sister, Maria, “If I'm ever harmed and unable to speak for myself, forgive the perpetrator and help others forgive that person.” David wanted us to honor his life by responding to his death with forgiveness.

David's example in life and in death prompted questions for me: What would I want if I was murdered? Would my family know my wishes? Why not put my intentions in writing?

Inspired by David and in honor of David's memory, I wrote a death penalty will that I call my “David's Will” in honor of my friend. While such a will could take many forms and vary in content based upon individual beliefs, here's what I wrote so my family will have no doubt what my wishes are:

“It is my wish that this statement be read to my family and friends in the event that I am wrongfully killed or murdered.

As the victim of a crime, I also request that my statement be read at any court hearing concerning the sentencing of anyone involved in my death.

While it is the individual decisions of my family members and friends whether to forgive those who harmed me, I don't want anyone to needlessly hold anger or resentment on my behalf. While I am gone from my body, I know that I am still present with those that I love and with those who loved me. Nothing dies. Life is a deep mystery. In the fullness of time, we will all be together again.

Some people may want to do something in response to my wrongful death. If you are one of those people, it is my wish that you invest in restorative justice programs either with your time or your treasure. I have stipulated that a percentage of my estate be donated to restorative justice work, as well.

Finally, to the one who caused this harm, I hope you do something with the rest of your life to help others. In helping others, you will help yourself. I have learned that goodness is its own reward. I want nothing but the best for you.

Signed this 24th day of October 2023.”

As I have reflected on what it means to create a “David's Will,” several benefits have become apparent. One is to help avoid family division. Whether people are for or against the death penalty, I have learned through my work with restorative justice that many family members of murder victims become divided over what constitutes justice for the offender. Making my intentions clear concerning my position on the death penalty could help avoid conflict for my grieving family, some of whom may be in favor of the death penalty while others may not.

Another benefit of a “David's Will” is that it expresses the desire to end the cycle of violence. I remember David telling me that compassion is contagious in the same way violence is contagious. Retribution killing has been part of our world since the dawn of time.

But what if a murder victim expresses their wish that there be no revenge killing? It might decrease the call for vengeance and increase the possibility that no revenge would happen. Stopping the vicious cycle of revenge is not only a way to leave the world a better place but also a beautiful legacy to say, even posthumously, the violence stops here.

David's fate could be the fate of any of us. Earlier in April 2023, before David's murder, another friend of mine was killed in the mass shooting at the Old National Bank in Louisville. In his honor, his wife established a foundation that advocates for the reduction of gun violence. In explaining her choice to establish this foundation, she said she wanted to “be a good steward of her pain.”

Creating my “David's Will” is my attempt to be a good steward of the pain that I've experienced with the loss of David's life. I hope you, too, will consider writing your own version of a “David's Will.”

Tom Williams is a member of Stoll Keenon Ogden. An advocate for restorative justice, Williams was featured on the *Passionist Earth & Spirit Center's* podcast in an episode entitled “Big Love: Attorney Tom Williams on Contemplative Practice, Compassionate Justice and the Lawyer as a Healer.” Williams and his wife, Sarah, live in Louisville and have three children — Lilly, Lincoln and Nelson.

This article originally appeared in the *ABA Journal*, <https://www.abajournal.com/voice/article/davids-will-inspires-call-for-compassion-forgiveness>, and is reprinted here with permission. ■



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To our 2024 CLE program speakers and Section leadership,

With more than 60 CLE programs and more than 700 attendees this year, we couldn't have done it without your dedication, expertise and passion. To our amazing speakers who shared your knowledge and insights - thank you. Your willingness to volunteer your time has been instrumental in making our CLE program a tremendous success.

And to our esteemed Section leadership - your tireless efforts in organizing, promoting and supporting these learning opportunities have been invaluable. Your commitment to advancing legal education in our community is truly inspiring.

We are deeply grateful for your contributions. The LBA would not be what it is without you. Thank you all for your unwavering support. We look forward to an even more enriching and informative year ahead!



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We have made every effort to be comprehensive, but if anyone was inadvertently left out, it was purely unintentional and we sincerely apologize for any oversight.

Congratulations to the 2024 LBA Award Recipients

JUDGE OF THE YEAR

Judge Susan Schultz Gibson



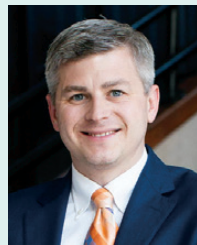
The Judge of the Year Award is presented to a member of the judiciary who has exemplified judicial integrity and professionalism; has contributed to the community by volunteering in civic organizations; and has established a reputation for integrity, scholarship and professionalism. The 2024 LBA Judge of the Year Award goes to Circuit Court Judge Susan Schultz Gibson.

Judge Gibson has served the citizens of Jefferson County, first as a successful trial attorney and now as a long-tenured judge. The member who nominated Judge Gibson noted that, thanks to her temperament and work ethic, she is the epitome of professionalism, writing that, "She shows up to work every day on time and ready to work. She has proven time and time again that she is full of integrity and is an anchor to the current bench."

SECTION OF THE YEAR

Criminal Law Section

Gillian Urbaniak and William Brammell



Our 2024 Section of the Year award goes to a group that exemplifies excellence through action – the Criminal Law Section.

Under the outstanding leadership of Gillian Urbaniak and William Brammell, this section has consistently exceeded expectations, meeting every benchmark while maintaining an unwavering focus on member service. The Criminal Law Section has keenly anticipated and addressed the evolving needs of criminal law practitioners through their carefully curated CLE programming. This section has established itself as a leader in both professional development and community engagement.

ROBERT & FRANK HADDAD YOUNG LAWYER AWARD

Lashae Richie



Nominees for the Robert & Frank Haddad Young Lawyer Award must have been practicing as a trial lawyer for less than five years and must have garnered the respect and admiration of the judiciary and of their colleagues. This year's recipient of the Robert & Frank Haddad Young Lawyer Award is Lashae Richie.

Lashae serves as an Assistant County Attorney in the Civil Division of the Jefferson County Attorney's Office. She was previously an Assistant Commonwealth Attorney where she represented the Commonwealth litigating Class D felonies up to felony murder cases.

Those who nominated Lashae for this award wrote that she is always seeking to grow in her professional career, constantly completing extra training and looking for ways to learn best practice techniques. She is also compassionate toward those she serves, ensuring that justice is given. Calling her "a rising star in the legal profession," they noted that Lashae is committed to scholarship, leadership, civil engagement and public service.

JUDGE BENJAMIN F. SHOBE CIVILITY & PROFESSIONALISM AWARD

Presented with the Brandeis Inn of Court

J. Michael Brown (posthumously)



Individuals receiving this award have consistently demonstrated adherence to the highest standards of civility, honesty and courtesy in their dealings with clients, opposing parties and counsel, the courts and the general public, and have shown sustained excellence through leadership in the profession.

The recipient of this year's Judge Benjamin F. Shobe Civility & Professionalism Award is the late J. Michael Brown.

J. Michael served our country, state and community for more than four decades, first as an officer with the 82nd Airborne Division and the 101st Division in the U.S. Army. After graduating from law school at the University of Louisville, J. Michael worked as a prosecutor, a judge, a partner in several prestigious law firms and key leadership roles in state government. Most recently, he developed and directed the Pre-Law & Constitutional Studies at Simmons College.

J. Michael is a past president of the Louisville Bar Association (1990) and Master of the Louis D. Brandeis Inn of Court.

The Inn of Court wrote in its nomination of J. Michael Brown that, "While he was first in many endeavors during his distinguished career, first and foremost he was a true professional and a dedicated public servant who was devoted to the greater good. He left a lasting mark on our profession, on the Commonwealth of Kentucky and on the lives of all those he touched during his time. J. Michael earned and richly deserves the recognition that the Judge Shobe Award is intended to acknowledge, value and perpetuate. In honoring him, we do honor to the award and what it stands for."

Congratulations to the 2024 LBA

Award Recipients

PAUL G. TOBIN PRO BONO
SERVICE AWARD

Elizabeth Irish



This award recognizes the work of LBA members who have unselfishly given time to improve the quality of society through their legal work. Worthy nominees will be LBA members who helped deliver legal services to the disadvantaged through a pro bono program or cause. This year's recipient of the Paul G. Tobin Pro Bono Service Award is Elizabeth Irish.

Elizabeth is an attorney in the Legal Clinic Program at the Legal Aid Society. In her role, she hosts divorce clinics for pro se litigants to help them reclaim their independence and life-planning document clinics to help individuals and their families navigate their futures.

Elizabeth's nomination said she was, "driven to help low-income individuals in our community. Elizabeth takes a genuine interest in providing access to justice to individuals in our community who may otherwise be unable get legal help. Elizabeth is always there for her colleagues to answer any questions or to lend a helping hand. Few people are able to embody such incredible commitment to underserved populations like Elizabeth."

JUSTICE MARTIN E. JOHNSTONE SPECIAL
RECOGNITION AWARD

Jeremiah Byrne



The Justice Martin E. Johnstone Special Recognition Award is the highest recognition bestowed upon an LBA member for outstanding participation and partnership within the legal community. Recipients of this award have made a significant impact on the Louisville community through professional or volunteer efforts and exemplifies what it means to be a lawyer, and this year's recipient certainly fits that bill.

The 2024 recipient of the Justice Martin E. Johnstone Special Recognition Award is Jeremiah Byrne.

Jeremiah is currently the practice group leader of the Products, Torts, and Insurance Practice Group at Frost Brown Todd. He also serves on the Board of Directors for the Legal Aid Society of Louisville.

His nominator wrote, "Jeremiah would be an exceptional candidate for this award because he represents the best qualities of attorneys. He is intelligent, motivated, courteous, kind, professional, a strong advocate, candid to courts and opposing counsel, and he is a progressive and inspiring leader for the attorneys that he manages." The nomination also noted that he goes out of his way to secure opportunities for other attorneys, including young, diverse and underrepresented attorneys.

Thank you for joining us!

The LBA's annual awards luncheon was held at the Kentucky Science Center on November 13. Members and guests gathered to recognize outstanding contributions made by our colleagues to the Louisville legal community and beyond.



Thank you to our 2024 vendors!



Generative Artificial Intelligence and Deepfakes Prompt a Need for Expanded Right of Publicity Protection in Kentucky

Bruce Paul and Mari-Elise Paul

“Senator Jack Chinn is a prominent figure in the Blue Grass of Kentucky, famous for its beautiful women and . . . fine blooded horses” was the introductory language of an early 1900s advertisement for Doan’s Kidney Pills, which was the subject of Kentucky’s first trial over the misappropriation of likeness—known today as a right of publicity action. *Foster-Milburn Co. v. Chinn*, 120 S.W. 364, 365 (1909). Senator Chinn sued the company because he never endorsed Doan’s kidney pills or agreed to the advertisement. *Id.* A jury awarded Senator Chinn \$2,500 for the misappropriation of his likeness, and the Kentucky Court of Appeals affirmed, holding “a person is entitled to the right of privacy as to his picture, and that the publication of the picture of a person without his consent, as a part of an advertisement for the purpose of exploiting the publisher’s business, is a violation of the right of privacy. . . [and] a fraud on the public to publish indorsements of public men in publications of this character which are not genuine.” *Id.* at 365-66.

Kentucky continues to recognize common law right of publicity claims and has enacted a statute in 1984 expanding the right of publicity. Unfortunately, current societal norms and developing technology are placing those rights in jeopardy. Generative artificial intelligence tools now enable people to misrepresent and misappropriate the names, images and likenesses of others for commercial, political and even vengeful reasons. Traditional First Amendment and fair use interests protect uses of an individual’s name, image and likeness without consent, but without reasonable limits, reputational damage and harm can occur to individuals and society. Now is the time for Kentucky to follow the lead of other states by enacting legislation that bolsters Kentuckians’ name, image and likeness rights while clarifying their legitimate limits.

Kentucky’s Right of Publicity Regime

Aside from a subset of claims for false endorsement or false affiliation that can be brought under the Lanham Act, the federal government has left publicity rights to the states. The result is little uniformity from state to state and questions in the internet era about what states’ laws can or should apply to individuals’ publicity rights. In Kentucky, those publicity rights exist as both common law and statutory causes of action with certain limits.

In 1981, the Kentucky Supreme Court adopted the Restatement (Second) of Torts § 652A (1976), which provides recovery for the “appropriation of the other’s name or likeness.” *McCall v. Courier-Journal and Louisville Times Co.*, 623 S.W.2d 882, 887 (Ky. 1981). Under § 652A, a person or entity cannot appropriate a plaintiff’s name or likeness without

the plaintiff’s permission for the person’s or entity’s “own purposes or benefit.” Restatement (Second) of Torts § 652C cmt. b. A right of publicity claim is present even where the tortfeasor’s use “is not a commercial one” and “the benefit sought to be obtained is not a pecuniary one.” *Id.*

In 1984, the Kentucky General Assembly codified publicity rights, recognizing that a person has priority rights in his name and likeness which are entitled to protection from commercial exploitation. KRS § 391.170. The statute also established a 50-year post-mortem right, albeit only for public figures. *Id.* The most notable case involved then-country music star John Michael Montgomery. *Montgomery v. Montgomery*, 60 S.W.3d 524 (Ky. 2001). John Michael prevailed against his father’s widow, who claimed he violated § 391.170 by using his deceased father’s name and likeness in a 1990s music video. *Id.* At issue was whether John Michael’s father was sufficiently famous to benefit from § 391.170, which the Court of Appeals defined as “significant commercial value.” *Id.* at 530-31. The dissent opined that John Michael’s father’s commercial value was not sufficiently developed at the trial court level, and the case should have been returned to make that decision. *Id.* at 531-33.

The majority in *Montgomery* skipped over the question of John Michael’s father’s fame and focused instead on John Michael’s creative and First Amendment rights to use his father’s name in his music, which would be exempt from a right of publicity claim. *Id.* at 528-30. Favorably citing the rap duo Outkast’s victory in a Michigan federal court against Rosa Parks, who filed a similar right of publicity action related to the ‘90s song *Rosa Parks*, the Kentucky Supreme Court held John Michael’s First Amendment rights in his music trumped his stepmother’s § 391.170 rights in his father’s name and likeness. *Id.* (citing *Parks v. LaFace Records*, 76 F.Supp.2d 775 (E.D. Mich. 1999)). The dissent did not reject the majority’s respect for First Amendment protections but, rather, cited a California Court of Appeals case involving the Three Stooges, which found that First Amendment rights would only trump right of publicity rights where the expressive work transformed the original. *Id.* at 534-36 (citing *Comedy III Prods., Inc. v. Saderup*, 21 P.3d 797, 806 (2001)).

Right of Publicity and First Amendment in the Current Era

The development and use of artificial intelligence has further challenged individuals’ publicity rights. State and federal legislators are exploring legislation in response to right of publicity abuses involving generative artificial intelligence and deepfakes. Deepfakes are audio or visual content generated or ma-

nipulated using artificial intelligence (AI) that misrepresents someone. Generative AI tools can create life-like content that may humiliate, abuse or otherwise falsely depict individuals, causing harm to the victims of the deepfakes.

The term “deepfake” first appeared in 2017 after a Reddit user with that moniker used AI to create and post pornographic videos on the site. The videos superimposed celebrity faces onto the bodies of others. More recent deepfake scandals include the posting of deepfake pornographic images of Taylor Swift on X in January 2024. Ultimately the images were removed, but other celebrities have not experienced the same result. Another newsworthy example involved a deepfake robocall using a digital manipulation or imitation of President Biden’s voice. Designed to suppress voter turnout in New Hampshire’s 2024 primary, the AI-generated robocall stated: “Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday.” The political operative who orchestrated the robocalls is facing a \$6,000,000 fine by the Federal Communications Commission (FCC) and criminal charges. The FCC also issued a \$1,000,000 fine to the company that distributed the robocalls—the first of its kind. The Federal Trade Commission is also issuing rules that target the use of AI tools to target or impersonate individuals.

State Responses to Deepfakes

State governments are starting to respond to the use of AI tools and deepfakes as well. Tennessee enacted the Ensuring Likeness, Voice, and Image Security (“ELVIS”) Act in March 2024. Expanding on its already comprehensive right of publicity statute, the ELVIS Act added a prohibition on uses of voice to its already existing list of name, photograph and likeness. The ELVIS Act also created secondary liability for a person or company that “publishes, performs, distributes, transmits, or otherwise makes available” the voice or likeness. The Act also arguably narrows defenses to First Amendment-protected speech.

More recently, California enacted several laws intended to protect individuals from the misuse of digital content—both criminally and civilly. On the criminal side, SB 926 makes targeting AI-generated sexually explicit deepfake content a crime. SB 981 targets sexually explicit digital identity theft. SB 981 requires social media platforms to establish a mechanism for users to report sexually explicit deepfakes of themselves and mandates a response from social media platform. On the civil side, California now has laws targeting AI-generated digital replicas of a performer’s voice or likeness (AB 2602) and digital replicas of deceased performers without consent of estates (AB 1836).

Finally, California has enacted laws establishing a reporting mechanism of deepfakes in the electoral process to online platforms and requiring those platforms to remove or label deceptive and digitally altered or created content during election cycles (AB 2655). A sixth law, AB 2839, which also limits the use of election material containing deceptive AI-generated or manipulated content for purposes of electoral politics, was enacted in September 2024 and shortly thereafter enjoined on October 2, 2024, over concerns that it violated the First Amendment. In the ruling, the court observed that “this fear [of deepfakes] does not give legislators unbridled license to bulldoze over the longstanding tradition of critique, parody, and satire protected by the First Amendment.”

Kentucky’s legislature has considered similar legislation with mostly discouraging results. SB317, a bipartisan bill that passed out of the Senate with only two “nay” votes is comparable to the ELVIS Act in that it protects name, image, likeness and voice and explicitly calls out deepfakes and the technological tools that create them. SB317 provides statutory damages but also provides significant counterbalances that account for First Amendment and other traditionally recognized fair use defenses. HB45 addresses many privacy issues, including the use of deepfakes in political campaigns, but it has not meaningfully advanced to enactment.

Despite those setbacks, Kentucky enacted HB207 on March 28, 2024, which added computer-generated images of a minor to child pornography provisions. The time is now for Kentucky to build on HB207 and bolster right of publicity laws to guard against new technologies that can misrepresent and misappropriate likenesses in a few keystrokes. HB317 appears to strike a fair balance between rights of publicity and traditional First Amendment and fair use values. We could even call the legislation the Chinn Act. The senator himself might even approve.

Bruce Paul and Mari-Elise Paul are partners at McBrayer PLLC as well as partners in life. Both Bruce and Mari-Elise are members of McBrayer’s Intellectual Property Practice Group. Mari-Elise is the service group leader, specializing in trademark and copyright prosecution and transactions, while Bruce specializes in litigation. Mari-Elise and Bruce also contribute to McBrayer’s Intellectual Property podcast *Protected Thoughts*. ■



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Civil Litigation Associate:

The LBA's Placement Service is currently working with a large, regional law firm that is actively seeking a mid-level associate with three+ years of experience to join their professional liability practice group in Louisville, KY. Qualified candidates should have litigation experience commensurate with time in practice, strong writing and analytical skills and excellent academic credentials. They should also be able to engage in discovery, 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. They offer a competitive starting salary and a comprehensive benefits package, along with opportunity for advancement. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Family Law Attorney:

The LBA's Placement Service is currently working with a boutique law office with a great atmosphere located off Westport Road in Louisville. They are seeking an experienced attorney with a focus on family law. Stronger consideration given to those who also have real estate, probate or trust experience, as this firm has a varied practice. Candidates must have at least five+ years of practicing in such matters in Kentucky, must be in good standing and have excellent references. Compensation is compensatory with experience, plus benefits including 100% paid health, 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.

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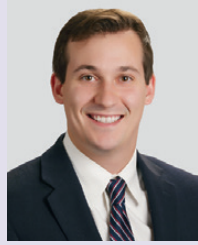
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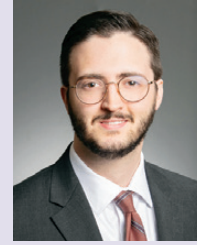
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O'Bryan, Brown & Toner is pleased to welcome **Kenneth Decker** and **Stephen Hillenmeyer** to its Louisville office. Decker focuses his practice on matters of insurance defense litigation with an emphasis on medical malpractice cases. He received his J.D., *cum laude*, from the University of Kentucky J. David Rosenberg College of Law. While in law school, Decker served as an Articles Editor of the *Kentucky Law Journal* and was a member of the Moot Court Board. Hillenmeyer focuses his practice on matters involving insurance defense litigation. He received his J.D., *magna cum laude*, from the University of Louisville Brandeis School of Law. While in law school, he served on the Student Bar Association and was a published member of the *Journal of Animal and Environmental Law*.

Louisville attorney **Rachel Dalton Dearmond**, of the law firm O'Bryan, Brown & Toner, has been selected as an Associate Fellow of the Litigation Counsel of America. Dearmond is a litigator focusing on insurance defense. She received her J.D., *magna cum laude*, from the University of Louisville Brandeis School of Law. Dearmond is a Partner in the firm and has substantial experience defending

professional liability, with a dedicated focus in medical and nursing defense, and motor vehicle liability claims through trial, formal mediation and settlement negotiations in both Kentucky and Indiana. The Litigation Counsel of America is a trial lawyer honorary society composed of less than one-half of one percent of American lawyers.

Kentucky ElderLaw welcomes newly licensed attorney **Morgan LaRosa** to their team. LaRosa, who was a law clerk with the firm, will focus on estate planning, asset preservation and long-term care planning. LaRosa graduated *cum laude* from the University of Louisville Brandeis School of Law, where she received the CALI Award for Upper Level Writing and Research. During law school, LaRosa served as the secretary for the Business Law Society and Christian Legal Society and worked at the Trager-Brandeis Elder Law Clinic. She will work in the firm's Louisville and Bowling Green offices.

Stites & Harbison announces the addition of four attorneys to the Louisville office: **Rachel Gumbel**, **Jackson B. Hurst-Sanders**, **James E. Myers** and **April M. J. Sain**. Gumbel is a member of the firm's Business Litigation Service Group. She earned her J.D. from the University of Louisville Brandeis

School of Law, *summa cum laude*, in 2024. Hurst-Sanders is a member of the Business Litigation Service Group. He earned his J.D. from the University of Kentucky J. David Rosenberg College of Law, *summa cum laude* and Order of the Coif, in 2023. Myers is a member of the Business & Finance Service Group. He earned his J.D. from Vanderbilt University Law School in 2024 and completed the Law & Business Program. Sain is a member of the Business Litigation Service Group. She earned her J.D. from the University of Louisville Brandeis School of Law, *magna cum laude*, in 2021.

Fultz Maddox Dickens is pleased to announce that **Robert E. Ranney** has joined the firm as a commercial and healthcare litigation attorney. Prior to joining the firm, Ranney clerked for two federal judges, Hon. Charles R. Simpson, III and Hon. Edward B. Atkins. Ranney is experienced in complex administrative and constitutional law litigation, both at the trial and appellate levels. He is licensed to practice law in Kentucky, where he represents plaintiffs and defendants in a variety of business, healthcare and contract disputes. Ranney received his J.D., *summa cum laude*, from the University of Louisville Brandeis School of Law. ■

SANTA'S COURT TOY DRIVE

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- 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).

Contact Marisa Motley at mmotley@loubar.org or (502) 583-5314.

In Memoriam

Dr. George Riley Nichols II, 77, a forensic pathologist and Kentucky's first Chief Medical Examiner, died on November 20.



In 1968, he graduated with honors and a BA in history from the University of Louisville. He then entered the University of Louisville Medical School where he chose pathology as his specialty. While getting additional training as a deputy coroner for Hamilton County in Cincinnati, Nichols took part in some Kentucky investigations.

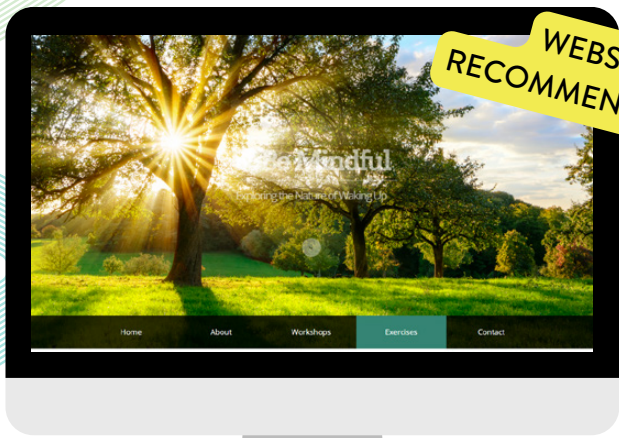
On July 1, 1977, Nichols was appointed as Kentucky's first Chief Medical Examiner. His job was to bring professional standards and procedures to a state where death examinations were performed by elected coroners who were often funeral directors with little or no medical training. Nichols led a successful effort to require coroners to receive annual training by certified medical examiners. He also worked to expand the state's medical examiner program. By the time he retired in 1997 the state had facilities in four cities and nine medical examiners who performed more than 2,000 autopsies a year.

During his 20 years in the office, Nichols said he personally performed an estimated 10,000 autopsies. He also testified in some of Kentucky's most notable criminal cases. After leaving the medical examiner's office, Nichols started a medical legal consulting firm where he worked for 28 years. During his career, he testified in state and federal courts in 25 states.

Nichols held faculty appointments at the UofL School of Medicine from 1972-2006, last as Clinical Professor. Nichols was an accomplished cook who passed along his knowledge to his three sons. He disdained golf, preferring to find joy in boating, skiing, scuba diving, gardening, taking his dog to farmer's markets, spending a day at the races or sipping a fine bourbon, neat.

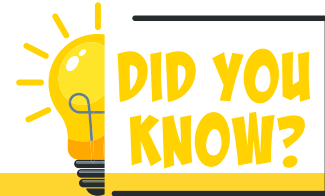
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Photo courtesy of the Commonwealth Medical Legal Services, Inc. ■



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63% of lawyers reported feeling overwhelmed and 49% experienced increased anxiety during the holiday months.

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New Year's Day Wednesday, January 1, 2025

Martin Luther King, Jr. Day Monday, January 20, 2025

Spring Holiday (1/2 Day) Friday, April 18, 2025

Memorial Day Monday, May 26, 2025

Juneteenth National Independence Day Thursday, June 19, 2025

Independence Day Friday July 4, 2025

Labor Day Monday, September 1, 2025

Veterans Day Tuesday, November 11, 2025

Thanksgiving Thursday, November 27, 2025

Thanksgiving Friday, November 28, 2025

Christmas Wednesday, December 24, 2025

Christmas Thursday, December 25, 2025

New Year's Eve Wednesday, December 31, 2025

New Year's Day Thursday, January 1, 2026

CONFERENCE SCHEDULE

KY DPA Conference (Lexington, KY) June 2-4, 2025

KBA Convention (TBD) June 5-6, 2025

Prosecutors' Conference (Lexington, KY) August 20-22, 2025

District Judges' Judicial College (TBD) September 21-24, 2025

Circuit Judges' Fall Judicial College (Covington, KY) October 19-22, 2025

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