

BAR*briefs*

Louisville Bar Association

May 2024

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May is National Mental Health Awareness Month.
Be kind to yourself. You are doing great.



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Bench & Bar Social

What a success! Thank you to all the sponsors, members, media, friends and family who came out to the Grand Reopening of the new Bar Center and to the annual Bench & Bar Social. If you missed it, don't worry – the Bar Center is now fully open, so please stop by. We have a co-working space with wi-fi and a coffee bar, small and large conference rooms available to rent, a mother's room, Zoom room and more.

Be sure to check out the June issue of *Bar Briefs* for a photo spread of the events. We look forward to seeing all our members in the new space – it all belongs to you. Welcome home!

Showing Up — for Clients and Colleagues

Everybody keeps on listening in / Nobody's listening up

James Murphy, LCD Soundsystem

Every morning, I take my kids to school. Not long ago, I was running late in the morning. We got to school and my son (four) refused to get out of the car. I wanted him to get out of the car and get to school and firmly suggested he do so. He, on the other hand, refused based on an injustice caused by his brother and sanctioned by me: confusing whose bouncy ball was whose. I only wanted everyone to get to school and myself to work. My son (four) explained that I gave him the wrong ball and his brother took his. He wanted to be heard and have a wrong righted. He experienced an injustice about a prized reward earned for behaving himself at the dentist. I was hearing him; I wasn't listening to him.

How often do I do this professionally? I scream the refrain that defendant breached their duty of care. Meanwhile, defense counsel iterates my client failed to mitigate damages and has had low back issues for years. Then it is left to mediators or finders of fact to knock sense into us or force resolution.

Since Covid, and particularly in dealing with younger lawyers, I notice that communication is often limited to e-mail or Zoom. In my experience, these forms of communication are deficient. They lack tone, body movement, personality and the full attention of either party. Did my voice raise or sharpen as I said something or was it flat? Was either party smiling, winking or stone-faced? How long was my pause between statements. In law and particularly negotiations, there are legions said in between words. Pick up the phone and say things person to person. Everyone has screen confidence; avoid it. I can say or type with all the confidence in the world whatever I want. Yelling into a void isn't helpful. Speaking directly to a person face to face is a whole other ball game.

In his recent book, "The Anxious Generation," social psychologist and professor Johnathon Haidt posits that in the age of the smart phone we are always elsewhere. With constant notifications and alerts, we are not focused, even on those in front of us. How many of us sit in depositions and draft and file motions to compel or trial dates or e-mail attorneys in other cases? How well do those motions and e-mails turn out? How often do we text someone while speaking to and standing physically in front of someone else?

Around five years ago, a lawyer with only a year or so of practice told me to stop trying to intimidate him by calling him on the phone. I was dumbfounded. How else could we negotiate, schedule depositions and work out discovery disputes? He found it threatening and told me so. And he said I was "weird" for calling him unscheduled. All I could think was, "answer the freaking phone."

Even over-the-phone communication is better than e-mail. It is in real time and restricted to engaged and focused participants. It is not directed to third parties or ccd or screened audiences, read at a future time unknown. In phone or face-to-face communication, people can interpret tone and are much less likely to throw up an obstacle. They can also ask follow-up questions right then and there ensuring they more fully understand the speaker's meaning.

Humans are wired to get along when we're together. Our species' greatest strength is cooperation. Yuval Hari, author of "Sapiens," notes that when you put thousands of humans together in an arena, you end up with government and economic systems. When you throw thousands of monkeys in an arena, you get bedlam.

At a recent LBA event, Judges Haner, Smith and Bellows graciously gave their time to those who attended to explain how they see it from the bench. The event was amazing. The LBA facilitated a judicial forum for all members that resulted in a near private sit down with me, a few other participants and three judges to explore whether we were doing things right. It was an amazing opportunity, and for every litigator with five years of experience or less, it is a must-attend. (Plug for Bar engagement!) I can't remember which of them said it, but the consensus was clear: show up live to court.

I took the judges' advice and attended motion hour live. What knucklehead wouldn't follow the judges' preferences? While waiting for a motion for a trial date, I sat next to defense counsel. As we waited for the motion to be called, we exchanged pleasantries and a few jokes. Disarmed, we also comfortably discussed the case. In person and face-to-face! And we discussed a settlement range. We did not settle it on the spot, but the defense attorney and I agreed on a range he said he would push the adjuster to accept.

In addition to pushing the case towards resolution, we engendered trust in each other. We have never worked together. And yes, together is the correct word. One way or another, litigators and transactional attorneys are working together toward resolution.

At the end of the day, my 2¢: pick up the phone.



Bryan R. Armstrong
LBA President



“
**When you
throw thousands
of monkeys in
an arena, you
get bedlam.**

Deciphering the Details: Demystifying the Corporate Transparency Act

Maci B. Followell

On January 1, 2024, the Corporate Transparency Act (CTA) took effect, impacting millions of businesses across the country. Enacted in 2021 as part of a larger effort by Congress to enhance corporate transparency and anti-money laundering protections, the CTA seeks to deter illicit financial activities, such as tax fraud, money laundering and terrorism funding, by compiling a database of information regarding the individuals associated with entities operating or engaging in business within the U.S. market. This article provides a high-level overview of the CTA, including who and what must be reported, timelines for reporting and penalties for noncompliance.

Who Must Report?

The CTA casts a wide net and applies to any domestic or foreign entity that falls within the CTA's definition of a "reporting company." A "reporting company" is broadly defined to include any corporations, limited liability companies or other entities created by the filing of a document with a U.S. secretary of state or similar office, as well as any entities created under the laws of a foreign country and registered to do business in the U.S. by the filing of a document with a U.S. secretary of state or similar office.

However, an entity will not be deemed to be a "reporting company" if it falls within one of the CTA's 23 enumerated exemptions. Generally, these are very narrow exemptions that are aimed at highly regulated entities with preexisting disclosure obligations, such as publicly traded companies and certain tax-exempt entities, or entities that may be viewed as less likely to present the types of risks that the CTA seeks to protect against, such as governmental and inactive entities. Below is a list of the 23 exemptions that are available under the CTA and the regulations issued by the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN):

- Securities reporting issuers
- Governmental authorities
- Banks
- Credit unions
- Depository institution holding companies
- Money services businesses
- Securities brokers or dealers
- Securities exchanges or clearing agencies
- Other Securities Exchange Act of 1934 registered entities
- Registered investment companies and investment advisers
- Venture capital fund advisers
- Insurance companies
- State-licensed insurance producers
- Commodity Exchange Act registered entities
- Public accounting firms
- Public utilities

- Financial market utilities
- Pooled investment vehicles
- Tax-exempt entities
- Entities assisting a tax-exempt entity
- Large operating companies
- Inactive entities
- Subsidiaries of certain exempt entities

What Must Be Reported?

Under the CTA, domestic and foreign entities satisfying certain criteria must file a Beneficial Ownership Information (BOI) Report with the FinCEN, disclosing specific information regarding themselves and the individuals associated with their organization.

The level of detail required to be contained in a BOI Report varies based on when the reporting company came into existence. Reporting companies formed on or after January 1, 2024 must disclose information regarding each of their "beneficial owners" and "company applicants" — including the individual's full legal name, date of birth, current address (business address for company applicants and residential street address for beneficial owners), and a government-issued identifying number from a U.S. or foreign passport or driver's license, along with a copy of the issuing document. However, reporting companies formed prior to January 1, 2024 may omit information concerning company applicants from their initial report.

Every reporting company must also provide its full legal name, any trade or alternative business name, its business address, jurisdiction of formation (and, for foreign reporting companies, the U.S. jurisdiction in which they were first registered), and a taxpayer identification number.

Notably, however, individuals may obtain a FinCEN identifier — a unique identifying number assigned by FinCEN — by application, which reporting companies can in turn include in their report in lieu of providing detailed information for such individual. A FinCEN identifier may be particularly helpful for individuals who will routinely serve as company applicants, like lawyers or paralegals.

Who is a "Beneficial Owner?"

As discussed above, the CTA requires disclosure of certain information regarding the "beneficial owners" of a reporting company. Beneficial owners are natural persons who,

directly or indirectly, either (a) own or control at least 25% of the ownership interests in a reporting company or (b) exercise "substantial control" over a reporting company. The CTA defines "ownership" and "substantial control" broadly, and there is no limit to the amount of beneficial owners that a company may have.

Ownership

The CTA defines "ownership interests" to include equity interests in a reporting company, as well as interests in the capital and profits of a reporting company, convertible instruments and other rights and options to acquire equity or other such interests in a reporting company. Ownership may be direct or indirect and may be attributed to an individual through any contractual or other arrangement, understanding or relationship, including, without limitation, as trustee or beneficiary of a trust holding an ownership interest or as joint owner of an undivided interest in an ownership interest.

Substantial Control

Under the CTA, an individual may have "substantial control" by (a) serving as a senior officer of the reporting company, (b) having authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar governing body) of a reporting company, (c) directing, determining or having substantial influence over "important decisions" made by the reporting company — such as the issuance of equity, incurrence of significant debt or amendments to the reporting company's governing documents — or (d) having "any other form of substantial control" over the reporting company. For purposes of the CTA, an individual may be a "senior officer," regardless of title, if they exercise the authority of a president, chief financial officer, general counsel, chief executive officer or chief operating officer or any other officer who performs a similar function to those described above.

Like ownership, control may also be directly or indirectly attributed through any contract, arrangement, understanding, relationship or otherwise, including, without limitation, board representation or ownership or control of voting rights or power.

Who is a "Company Applicant?"

The CTA also requires reporting companies formed on or after January 1, 2024 to identify their "company applicants." Unlike the number of beneficial owners, which FinCEN notes are unlimited, a reporting company will never

have more than two company applicants: (1) the individual who directly files the document creating the reporting company or, in the case of a foreign reporting company, the document that first registers the reporting company in a U.S. jurisdiction; and (2) the individual who is primarily responsible for directing or controlling such filing, if more than one individual is involved.

When are Reports Due?

Existing reporting companies formed prior to January 1, 2024, must file an initial report by January 1, 2025. Entities formed on or after January 1, 2024, but prior to January 1, 2025 are required to report within 90 days after filing their formation documents, while entities formed on or after January 1, 2025 will be required to report within 30 days of filing. Any changes in required information previously submitted must be reported within 30 days after the occurrence of such change.

What are the Consequences for Failing to Report?

The CTA imposes both civil and criminal penalties for willfully providing false information or failing to provide complete or updated information. These penalties include up to \$10,000 in fines and up to 2 years imprisonment.

Is the CTA Unconstitutional?

Recently, in *National Small Business United, d/b/a the National Small Business Association, et al. v. Yellen, et al.*, the U.S. District Court for the Northern District of Alabama declared the Corporate Transparency Act unconstitutional. However, it's important to note that this ruling applies specifically to the parties involved in the case, and there is no nationwide injunction in place. Therefore, entities not part of the litigation should continue complying with the CTA while the case undergoes appeal.

Amidst this legal uncertainty, legal professionals play a pivotal role in guiding businesses through evolving regulatory landscapes. As businesses grapple with the intricacies of compliance, lawyers offer essential support by providing strategic advice and ensuring adherence to regulatory standards. In this dynamic environment, legal practitioners must stay informed and adaptable to effectively navigate the shifting terrain of corporate transparency regulations.

Maci B. Followell is an affordable housing attorney licensed in Kentucky with a national practice, representing investors and developers in the utilization of low-income housing tax credits to create affordable housing across the country. She is currently an associate attorney at Frost Brown Todd and Vice-Chair of the LBA's Corporate Law Section. ■



Not All Jurors – or Excuses – Are Created Equal

Chief Judge Ann Bailey Smith

“The one place where a man ought to get a square deal is in a courtroom, be he any color of the rainbow, but people have a way of carrying their resentments right into a jury box.”

From “To Kill a Mockingbird” by Harper Lee

One of the tasks that goes along with being chief judge of Circuit Court is reviewing juror excuses on a weekly basis. Jurors are summoned to serve for a two-week stint for trials in both District and Circuit Courts. They are also summoned to serve on the Grand Jury which lasts for a month. Occasionally, special panels are summoned for trials that are expected to last longer than two weeks, such as death penalty trials. I am writing this article the third week of March, and there are five circuit jury trials in progress this week. Each circuit jury panel begins with approximately forty jurors so 200 jurors, were needed in order to select these five juries. It's my understanding that 800 summonses go out every other week so that at least 200 jurors will actually report for duty. Not a particularly good return. Reviewing the juror excuses gives me a glimpse into why jurors don't appear for jury duty, some of their reasons being at least understandable but some being pretty outrageous.

I receive a file folder every Thursday from the jury pool administrator filled with written reasons as to why summoned jurors should be excused or postponed from their particular term of jury duty. And the excuses run the gamut. Some tug at my heartstrings while others raise my blood pressure. I would estimate that I review approximately 100 juror excuses each week.

The two most common reasons prospective jurors give to be excused from jury duty are poor health/age and financial issues. The health concerns range from “I can't sit that long” (I'm pretty sure trial judges call regular breaks which allow jurors to stretch and go to the restroom) to jurors who are undergoing radiation or chemotherapy in their battle against cancer. After three months of reviewing juror excuses, I will tell you that an inordinate number of Jefferson County citizens have digestive problems, but I will spare you the details that I am given to justify their request to be excused.

Many of the health reasons provided appear to be legitimate and some are even accompanied by doctor's notes (one prospective juror attached his x-ray to his juror form for me to review). But some raise red flags, such as the prospective juror who wrote that her poor health precluded her from sitting as a juror even though she wrote on her juror form that she worked full-time as a maid at

a hotel (much more strenuous work than sitting in a juror's chair).

Age is also a frequently-cited reason for seeking to be excused from jury service. It is not unusual to have people in their 80s or 90s called for jury duty. There is no maximum age for jury duty; however KRS 29A.080(2) provides:

A prospective juror is disqualified to serve on a jury if the juror: (h) Is seventy (70) years of age or older and has requested in a space provided in the juror qualification form that he or she be excused from service for the period summoned.

Not all jurors who are seventy years old or older ask to be excused; if a prospective juror requests to be excused based on this, then the chief judge cannot exercise discretion but must grant that request.

KRS 29A.170, which was enacted in 1976 and went into effect January 2, 1978, provides compensation for jurors in the amount of \$5.00 per day for jury service with an additional \$7.50 per day as reimbursement for expenses (gas, parking, lunch). And, as of the writing of this article, jurors continue to be paid \$12.50 per day some 46 years later. It would be laughable if it weren't such a sad commentary on the value the Commonwealth of Kentucky places on jury service and the fulfillment of a civic duty. Jurors are called to the courthouse to make very difficult decisions. And they are expected to make these decisions unanimously in criminal cases and with nine out of twelve agreeing in a Circuit Court civil trial.

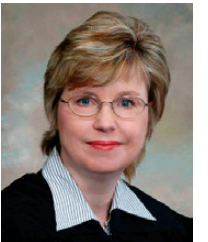
So, not unexpectedly, many prospective jurors ask to be excused from jury duty because they live paycheck to paycheck and cannot afford to miss two weeks or up to a month of work without pay. It is not uncommon for jurors to write that they would not be able to make their house payment or pay their rent because they have no savings to dip into in order to supplement their jury pay. The law requires that employers not deprive an employee of employment due to jury service. There is, however, no requirement that an employer pay the employee who is serving as a juror. I don't think anyone serving as chief judge relishes the thought of requiring citizens

to serve as jurors if such service is going to result in serious financial hardship. On the other hand, no one wants to excuse an entire segment of the population which would result in there not being representation on the jury by a fair cross-section of our community. There are currently bills in the legislature to increase juror pay which, depending on the amount, could relieve some of the financial stress placed on jurors and would help to ensure that prospective jurors from all socioeconomic backgrounds are able to fulfill their civic obligation.

The most concerning requests to be excused are from individuals who write that they are prejudiced against a certain segment of the population, as well as those who simply state that they cannot be fair. Sometimes there are explanations given and sometimes not. There have only been a handful who say that based on religious reasons they cannot sit in judgment of another. Then there are those who write that they are prejudiced against people of color, or against police officers, or against white people, or against the judicial system. One

juror wrote that he was prejudiced against all of the above, clearly just throwing in the kitchen sink to get out of jury duty. It's difficult to discern who truly holds these beliefs as opposed to those just making an outrageous statement in an attempt to force my hand to excuse them. There was even one prospective juror who wrote that he was prejudiced and couldn't be fair, but if that wasn't sufficient to be excused, then he would tell all of the other jurors about jury nullification so that no criminal defendant would get convicted. I suppose an even more troubling proposition is those jurors who don't ask to be excused and don't reveal their biases and prejudices during voir dire, yet hold these beliefs against members of our community while sitting as a juror in judgment. As Atticus Finch said after Tom Robinson's conviction by a jury, “...people have a way of carrying their resentments right into a jury box.”

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



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Pleading the Fifth in Federal Civil Litigation in Kentucky

The Key Distinctions that Exist Between the Application of State Versus Federal Substantive Law

Zachary M. VanVactor

As all lawyers (and non-lawyers, for that matter) likely are well aware, invoking the Fifth Amendment is commonplace in criminal matters. Though less so in the civil context, the Fifth Amendment's privilege against self-incrimination does still apply. And when it is raised by a witness in a civil proceeding, the consequences are markedly different depending on whether the action is governed by state or federal law. Federal practitioners should be aware of these key differences and their effects.

Aside from providing certain due process protections, requiring compensation for the taking of property for public use and prohibiting "double jeopardy," the Fifth Amendment to the United States Constitution is best known for its protection of individuals from being forced to incriminate themselves. One hundred years ago this year, the United States Supreme Court made clear that the Amendment "applies alike to civil and criminal proceedings, wherever the answer might tend to subject to criminal responsibility him who gives it." And as the Sixth Circuit and other courts have repeatedly reaffirmed, this protection afforded

by the Fifth Amendment is quite broad and may be "properly invoked so long as a person has reasonable cause to apprehend a real danger of incrimination"—*i.e.*, something more than "a mere imaginary, remote, or speculative possibility of prosecution."

So, what happens when a witness pleads the Fifth in a civil proceeding? The answer (not unlike most answers to legal questions) is "it depends." And in this instance, what that answer depends on is whether the matter is governed by state or federal law.

On the federal side of things, in its 1976 decision in *Baxter v. Palmigiano*, the U.S. Supreme Court established that federal courts may impose an adverse inference against parties to a civil action who refuse to testify based on the Fifth Amendment. Federal courts in Kentucky and elsewhere in the Sixth Circuit have since interpreted that ruling to allow, but not necessarily mandate, such adverse inferences, the key factor being the existence and availability of other evidence relating to the facts about which the party refuses to answer. So, at least under federal law, a party's

invocation of the Fifth Amendment can have significant consequences, particularly where the party refuses to testify about a key fact or element at issue.

Still, federal practitioners should be aware that this federal law approach may not apply simply because a case is pending in federal court. Rather, whether parties may face a potential adverse inference for their assertion of privilege and refusal to testify turns significantly on whether the federal court's jurisdiction is based on a federal question under 28 U.S.C. § 1331 or on diversity of citizenship under 28 U.S.C. § 1332. This is because, under the *Erie* doctrine, federal courts exercising diversity jurisdiction apply federal procedural law but must follow the substantive law of the forum state. To that end, Federal Rule of Evidence 501 provides that state law governs privilege issues in civil cases. (Of note, the Advisory Committee's notes to Rule 501 further confirm the rationale that federal common law should not supersede substantive state law on privilege.)

Kentucky law diverges significantly from

federal law on the consequences of invoking a privilege in civil litigation. In contrast to the federal common law rule outlined above (and the similar approach taken by a number of other jurisdictions), Kentucky has enacted an evidentiary rule expressly prohibiting the drawing of any inference against a party who has invoked his or her the Fifth Amendment privilege. Indeed, that rule, Kentucky Rule of Evidence 511, not only precludes the imposition of a negative inference, but goes so far as to prohibit any "comment by judge or counsel" about the claimed privilege, and even requires an instruction that no adverse inference may be drawn, if a party requests it. The rationale behind this rule seems to be that if a comment could be made or an adverse inference drawn by a party's exercise of a privilege, that party would be pressured not to invoke (or to waive) the privilege afforded it, thereby effectively negating the whole point of the privilege's existence. So, while it likely still would be fair game for counsel to point out that certain evidence or testimony is uncontroverted, even the

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eliciting of a claim of privilege in open court arguably would violate this rule, especially if counsel did so knowing that such privilege would be asserted in response to a particular line of questioning.

Consequently, in Kentucky federal courts, the answer to “what happens when a witness pleads the Fifth in a civil proceeding?” turns drastically on whether Kentucky or federal substantive law applies. In a civil action where subject matter jurisdiction is based on a federal question under § 1331, federal law would apply and may allow an adverse inference against a party who invokes the Fifth Amendment privilege and refuses to testify on that basis. However, in a civil case where subject matter jurisdiction is founded on diversity under § 1332, no such inference may be drawn or imposed, nor the privilege or its invocation commented upon. Thus, where federal law applies and an opposing party refuses to answer by pleading the Fifth, a potentially devastating mechanism exists for obtaining an adverse inference about the substance of that party’s testimony. On the other hand, in

federal civil actions applying Kentucky law, an equally powerful tool exists for preventing the drawing of negative inferences against a party who properly invokes its Fifth Amendment privilege against self-incrimination. Though this issue may not arise every day or in every case, when it does or has the potential to come up, federal practitioners would do well to inform themselves of the varying effects and consequences that may attend a party’s invocation of the Fifth Amendment in civil litigation.

Zack VanVactor is the co-chair of the LBA’s Federal Practice Section and a partner in Stites & Harbison’s Business Litigation Service Group. He practices a variety of trial court and appellate litigation in both state and federal court in Kentucky and Indiana. Prior to joining Stites & Harbison, he served for two years as a law clerk for Judge Thomas B. Russell in the U.S. District Court for the Western District of Kentucky. ■





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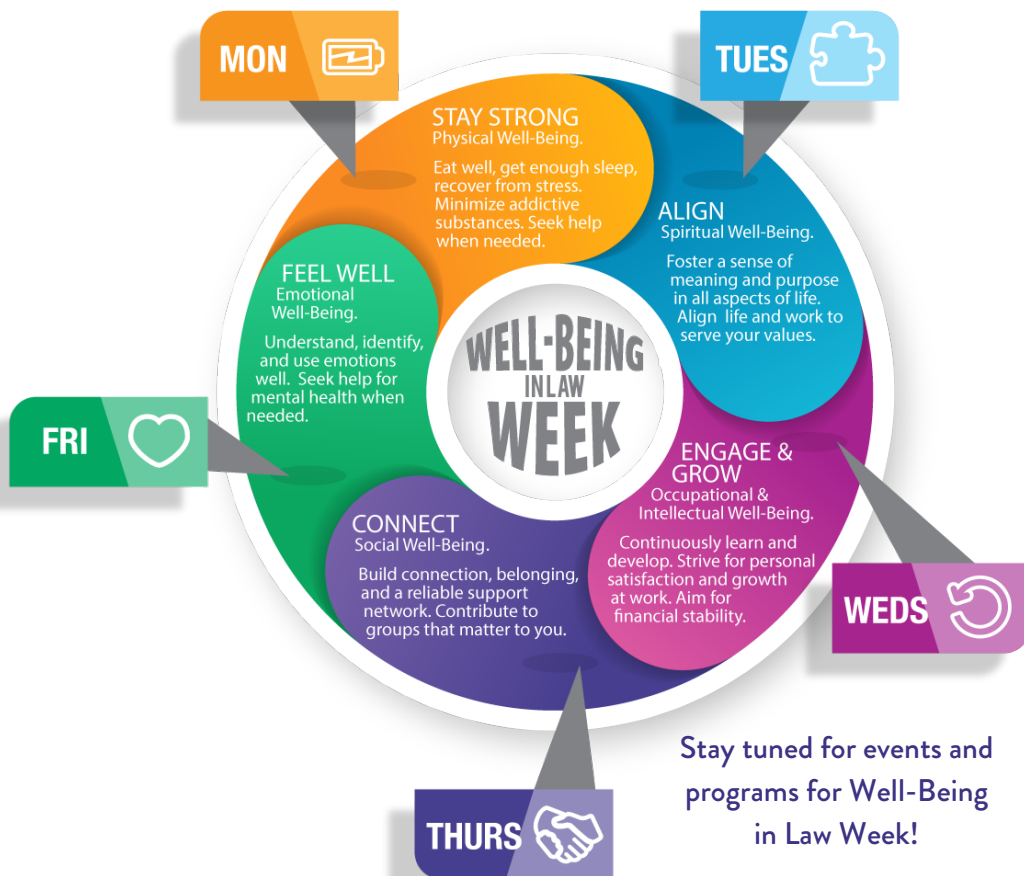
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Health & Wellness Corner



WELL-BEING
WEEK
IN LAW

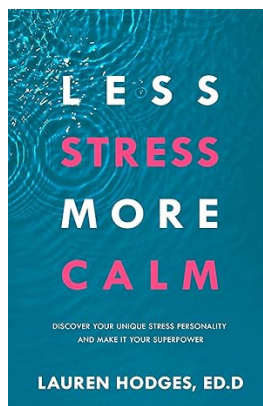
MAY 6-10, 2024



PODCAST RECOMMENDATION



BOOK RECOMMENDATION



Take the "Burnout
Self-Test"



MAY 2024 AWARENESS CALENDAR

- Mental Health Month
- Women's Health Month

KEY INSIGHTS:

LAWYER WELL-BEING

A considerable portion of lawyers are facing challenges. Among them, many grapple with mental health issues and alcohol dependency. Even those not diagnosed with specific disorders may not be in optimal health. Consequently, numerous lawyers find it difficult to perform at their peak for their clients, colleagues, communities, and families.

ALCOHOL

21-36% qualify as problem drinkers. Higher for men; under 30; private practice and solo practitioners.



DEPRESSION

28% report mild or higher depression symptoms. Highest for men and solo practitioners.



STRESS

23% report mild or higher stress symptoms. Highest for women and solo practitioners.



ANXIETY

19% report mild or higher anxiety symptoms. Highest for women and solo practitioners.



SUICIDE

Ranked #8 in a study of suicide by occupation. Rate is 1.33 times the national norm.



Information from lawyerwellbeing.net

Learning to Love Myself was the Most Important Lesson I Ever Learned as a Lawyer

Jennifer W. Kleier



I was eight years old the first time I remember bingeing. It was the early 90s, before the internet and smart phones. I had never heard of eating disorders and couldn't ask Google what I was doing or why. My body understood, though. It quickly learned that when I ate a large quantity of specific foods (high sugar/high carb) I felt better. I wasn't happy per se, but I felt less sad and empty. Time and again, I chased these feelings and quickly learned to hide what I was doing.

I learned to associate food with the highs of a binge and the lows that came after – the shame, judgment and guilt. I instinctively knew to protect my secret because others wouldn't understand and might even make me stop. The bingeing increased in frequency and, as I got older, became a normal part of my life. When I was fifteen, my dad moved out and the bingeing escalated to bingeing and purging. I didn't know how to deal with the big emotions I was experiencing and food was my shield, the only way I knew to protect myself. I was slowly dying inside, but did my best to pretend like I was normal. During these years I maintained good grades and played competitive junior tennis well enough to earn a college scholarship.

My junior year of college, my coach intervened and told me to get help with my eating issues. She was worried I was going to kill myself and refused to sit by and do nothing. She made me an appointment with an on-campus therapist who then referred me to a doctor about starting medication. Though therapy and medication offered some minor relief, my eating issues continued. I was bingeing and purging daily, sometimes multiple times a day. I didn't know how to handle my feelings and believed that at my core I was worthless and unlovable. I attributed any success I had to luck while taking full blame for all my failures.

In my mind I failed because I was stupid, ugly, fat, lazy – the list goes on. Every setback and hurdle seemed like the end of the world and only proved my worthlessness. I was always on edge, in survival mode, reacting out of fear and disrespect for myself, my life. Sometimes my depression and anxiety would overwhelm me and I would stay in bed for days, unable to get up except to find food for bingeing and purging. I would isolate myself from friends and family, ashamed and too exhausted to put on a happy face.

Over the years, I shared some of what was happening. I saw therapists who focused solely on my past traumas and nutritionists who talked to me about the importance of eating a balanced meal. Still, my feelings of helplessness and hopelessness grew, and I convinced myself these constant ups and downs and the ever-present issues with food were always going to be part of my life. When I got pregnant with my second child, I again fell into a serious depression. After sharing with the nurse during a pregnancy check-up that I was having thoughts of running my car off a bridge, medical staff forced me to get a psych examination at the hospital emergency department.

I remember sitting in the examination room, waiting for the doctor to come in, and thinking of the irony as I had spent a year of my career at the public defender's office representing individuals held on mental inquest warrants (MIW's). They had gone through the same process that I was currently enduring. I sat on the bed, in my hospital gown and socks with the rubber pads on the feet, and just felt numb. Luckily, the kind and experienced doctor recommended a medication adjustment and finding a good therapist. Although this offered some relief, the depression, anxiety and self-medicating with food never stopped.

Finally, in February of 2021 my body rebelled. I developed a horrible, uncontrollable itching which, upon scratching, produced hives. I got them all over my body and could only find relief with rest induced by multiple Benadryl. I saw numerous doctors and got prescriptions to control the hives, but they made me so tired that I often struggled to perform basic daily functions. As a final indignity, I gained almost thirty pounds in a year which increased my issues with food.

Then two things happened which changed my life. I was diagnosed with ADHD and started working with a life coach by the name of Leah Brown Waterman. My incredible, loving and supportive husband encouraged me to seek out this support by reminding me that I deserved it. I started taking medication for ADHD and learned more about how my brain works. I learned that I am not stupid, I just think differently. Now I embrace the way my brain works as a strength.

I met weekly with Leah and she helped me recognize that I have value, deserve good things and am strong enough to endure hardships in life, even without using food as a coping mechanism. Over time, I learned to understand my thoughts and feelings better. While it now sounds obvious, I had been using food as a coping strategy since I was eight years old. The realization that my thoughts controlled my feelings and not vice versa was life-altering. This realization has helped me claim control over my life in a way I have never been able to before.

Changing my thoughts about my own worth was difficult, but a turning point came when my oldest daughter turned eight. I would look at her sweet face, the same age I had been when I started bingeing, and I couldn't stand the idea of anyone saying the horrible things to her that I had said to myself. Leah suggested I carry a picture of eight-year-old me and look at it whenever I have negative thoughts about myself and try to say the horrible words while looking at the picture. I went further and

PROFESSIONAL EXCELLENCE

carried a picture of myself at eight and my daughter at eight. When my thoughts turned negative, I looked at the pictures but I could never make myself say the words. Instead, I found compassion, empathy, grace and mostly love. Through this process I have learned to love myself. And, in turn, loving myself has allowed me to be more compassionate, empathetic and loving with others.

This is not a perfect process and I am nowhere near perfect in it. I work hard at it every day, some more than others. I mess up quite a bit – with myself and with others. When I do mess up I try hard to make amends to both myself and the others that I hurt. Without food as my shield, I often feel raw and exposed, like I am just now learning to adult at forty years old. But I look at those little girls' faces and know that they are worth it, no matter how hard it gets.

We are all deserving of love and respect. We are more than our jobs, more than this adversarial, often cut-throat profession. For the sake of ourselves, our clients and our profession, we have to find ways to be better to each other. Not to have unrealistic expectations of each other, but to find ways to communicate better, allow ourselves and others to show vulnerability without punishment, and to give each other grace. This is true not just among lawyers, but also between judges and lawyers. We should all remember that most of us are still carrying around that little kid inside of us, looking for acceptance and love.

I wrote this because I imagine there are other lawyers out there who could benefit from reading it. The idea of putting my personal experiences out there for others to read has made me sick to my stomach the past few days. I have had to fight my instincts to curl into a ball and self-medicate with food. I procrastinated and concocted reasons to avoid writing. But my husband reminded me that I am strong enough to deal with any negative response that might come from it and that if it helps one person it is worth it. So, I am trusting you to look on my story with kindness and ask that you show the same kindness to yourself. I know this is not an easy thing to ask because it took me decades to do it myself. But this is the work we do every day. We face hard problems and try to show compassion for those who need it. By accepting that sometimes I need compassion, too, I am in a better position to face and change the world.

A partner at Karem & Kleier Law, Jennifer has built an extensive practice in family law, criminal defense, estate planning and guardianship. She is actively involved in the LBA where she is the founding Chair of both the Gender Equity Committee and Health & Wellness Committee and currently serves on the Board as Secretary. The Health & Wellness Committee serves her biggest passion – promoting mental health and wellness for law students and lawyers. She believes transparency about our struggles is key to creating safe, supportive environments for others who are struggling to seek help and shares her struggles in the hopes of helping someone else. ■



The LBA Health & Wellness Committee invites you to contribute your personal narratives regarding mental health and/or well-being. Please send your submissions to Lisa Anspach at lanspach@loubar.org.

If you are facing challenges, support is within reach: LBA members and their families have access to an EAP and to KyLap.

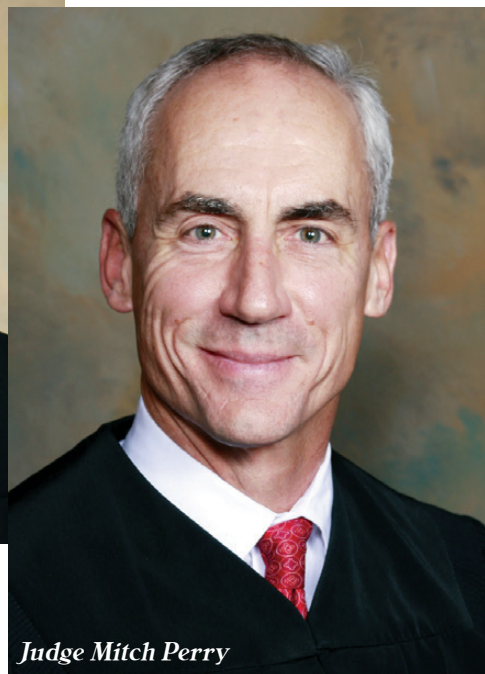
If you are experiencing a crisis or thoughts of suicide please call the 988 Suicide & Crisis Lifeline—dial 988 or visit <https://988lifeline.org/>.

— FROM THE — B E N C H

The Business Court from the Perspective of the Business Court Judges By Elisabeth (Libby) Gray



Judge Eric Haner



Judge Mitch Perry

Starting in January 2020, Kentucky enacted a Business Court Pilot Project in Jefferson Circuit Court, the first of its kind in Kentucky. Since that time, the Business Court has handled more than 300 cases (80 in 2020; 61 in 2021; 87 in 2022; and 81 in 2023). The Business Court docket provides specialized attention for complex commercial cases, improving court efficiency for the litigants and creating a more attractive forum for doing business.

The Business Court Rules are available on the Business Court website, along with Opinions and Orders from Business Court cases <https://www.kycourts.gov/Courts/Business-Court/Pages/default.aspx>. The Rules promote enhanced case management by the Court and transparency between the parties, including the use of Initial Disclosures and Expert Disclosures. The Rules also permit the Court's use of e-mail communication with the attorneys, and for the litigants to avoid motion hour through the use of agreed upon motions and orders.

Notably, before filing in Business Court, attorneys should ensure that their clients have a dispute that is eligible for Business Court. BCR 2.1 provides the specific types of disputes that are eligible for Business Court, and BCR 2.2 provides specific types of excluded disputes. Attorneys should carefully review these rules before filing a case in Business Court to ensure the eligibility of the dispute.

The inaugural judges assigned to Business Court were then Judges Charles Cunningham and Angela Bisig, who served from 2020-2022 until their respective departures from the Circuit Court bench. Beginning on January 1, 2023, Judges Mitch Perry and Eric Haner became the new Business Court judges (although Justice Bisig continues to lead the Business Court Pilot Project Committee). We checked in with Judges Perry and Haner to learn about their first year as Business Court judges, and their suggestions to maximize the efficiency of the Business Court docket.

Q. What have you liked best about the Business Court docket?

Judge Haner: The best part of the Business Court docket is the case management process which allows the Court to be involved in the dispute from the beginning.

Judge Perry: The quality of the lawyering has been top-notch.

Q. Do you think too many cases are being filed in Business Court? Are there any cases that you believe should not be filed in Business Court even though they technically may fit within the Rule?

Judge Haner: There are probably more cases eligible for the business court that are not being filed there. If you have a business case you believe will require more court intervention, then Business Court could be a good option rather than the regular civil docket.

Judge Perry: Generally about the right number of cases are being filed or being reassigned to the Business Court (in Division Three, about 50 active cases). However, I believe that standard non-compete cases should be heard on the regular civil docket instead of the Business Court docket.

Q. Have you found the Initial Case Management Conference to be helpful?

Judge Perry: Yes, it helps to focus everyone involved on the end goal of litigation: how do we resolve this dispute?

Judge Haner: Absolutely, it helps the Court understand from the outset the nature of the dispute, and have more input on how the case should track.

Q. The Rules allow the Court to require a party representative to attend the Case Management Conference in person. Do you require a party representative to attend in person in your Court?

Judge Haner: No, it is not required, and Division One offers

video zoom participation so that parties can be present without unnecessary travel or expense. I do think anytime a party participates in court proceedings, it can promote faster resolution of disputes.

Judge Perry: Party representatives are always welcome but infrequently required.

Q. Do you allow counsel to attend Case Management Conferences by zoom or telephone?

Judge Perry: There is no substitute for in-person court proceedings. Often times, counsel have a chance to chat, both about the case and other matters with the Court and each other, that they would not otherwise have with remote proceedings.

Judge Haner: In-person attendance is required, unless a party requests accommodation by the court.

Q. Do you use BCR 5.7 to communicate with counsel via e-mail?

Judge Haner: Yes, mainly for scheduling. It is helpful to notify the Court that a motion will be submitted on the record after an agreed briefing schedule, or to notify the Court that an issue is now ready for a decision.

Judge Perry: Yes, for scheduling purposes.

Q. Have you handled motions on the papers without a hearing or oral argument per BCR 5.3?

Judge Perry: I have not, but would do so if requested or necessary.

Judge Haner: Yes, but it is beneficial if the parties will communicate with the Court when a motion can be ruled upon without oral argument.

Q. Has it been helpful to have unopposed motions for enlargement of deadlines done through a proposed order per BCR 5.5 so that motion hour is not

necessary?

Judge Haner: Absolutely, as long as the Court is made aware that it is "agreed" or "unopposed."

Judge Perry: Yes, very much so, it is always best and helpful when the lawyers can agree amongst themselves.

Q. When is your Business Court Motion Hour?

Judge Perry: Every Monday at 10 a.m. (following regular motion hour).

Judge Haner: Every Monday at 9 a.m. (following regular motion hour).

Q. What is your favorite aspect of the Business Court Docket?

Judge Haner: The case management aspect.

Judge Perry: The lawyers are always very well prepared, on-time, and bring their "A" game.

Q. What is one thing you wish practitioners knew about the Business Court Docket?

Judge Perry: It is always important to keep the big picture in mind rather than expending too much time and energy on tangential issues. This is an expedited docket with the goal of resolving disputes quickly. Let's get to the main underlying issue ASAP.

Judge Haner: One, that it is available, and two, that there are specific rules which the Court expects the parties to follow.

Elisabeth (Libby) Gray is a Principal Partner at Gray Ice Higdon. Gray assists clients in prosecuting and defending unfair competition lawsuits, including misappropriation of trade secrets and breaches of restrictive covenant agreements, such as non-competes and non-solicitation agreements. Gray also has an active commercial litigation. She recently served as the Chair of the LBA Litigation Section. ■



LBA HEALTH & WELLNESS COMMITTEE ONE-HOUR ETHICS

Bruises on the Soul: Moral Injury and the Legal Profession

Wednesday, May 8

Moral injury is defined as the injury suffered when we must violate our deeply held moral beliefs in furtherance of our jobs or projects. This has been studied at length related to the military and, throughout the pandemic, related to healthcare workers. This presentation deals with the ethical rules that require us to violate our own deeply held ethical beliefs to adequately discharge our duties to clients, tribunals and others.

Speaker: **Robyn Smith**, Law Office of Robyn Smith

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 Ethics Hour — *Pending*

2024 LBA Health & Wellness Committee Leadership Jennifer W. Kleier, Karem & Kleier

MESA ONE-HOUR ETHICS

You're a Lawyer, Not a Fighter: The Ethical Imperative to Remain Peaceful at All Times

Wednesday, May 8

Lawyers serve a vital role in society—to help others resolve their disputes peacefully. And while lawyers do so using the adversarial process, we must not ever lose sight of the fact that we are not “fighting” for our clients. We are striving to help them reach a peaceful solution to their problem.

Sadly, quite often, lawyers get so hung up in the confrontational manner of depositions, cross-examinations, contract negotiations and the like, that we develop a “fighting” mentality. This mentality does not serve the best interests of our clients, nor does it serve our personal or professional interests.

Speaker: **Sean Carter**, MESA CLE

Time: 1 – 2 p.m. — Program
Place: Zoom – a link will be sent prior to the seminar
Price per hour: \$55 LBA Members | \$50 Sustaining Members | \$25 Paralegal Members | \$125 Non-members
Credits: 1.0 CLE Ethics Hour — *Pending*

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

LBA ONE-HOUR

Kentucky Expungement Law: An Overview

Thursday, May 16

Expungement is the legal process where an arrest, charge or conviction is completely removed from an individual's record. Kentucky does not have automatic expungement of criminal convictions. An individual must file with the court of charge/conviction to obtain an expungement. In Kentucky, most misdemeanors and class D felonies are expungable. This program will provide an overview of current Kentucky law and the process for filing and representing an individual seeking expungement.

Speaker: **Miranda J. Hellman**, Staff Attorney, Department of Public Advocacy, The Kentucky Innocence Project

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 — *Pending*

LBA DAY-LONG

True Crimes: From Murder to Verdict

Friday, May 17 and Friday, June 21

Murder trials capture Americans' attention like no other. They are the original reality TV. From gruesome murder scenes to the search for who is responsible, society is consumed with the process. For lawyers, it is a crowning achievement of the profession. It provides an orderly way to process and hold responsible people who commit these heinous acts. But does the process always work? Do the innocent get convicted? Do the guilty go free?

This seminar examines five true crimes, from the grisly details of the murder scene to the decision to indict, to the trial, and finally, to the verdict. And in the process, this session puts the legal system on trial.

For more information and a detailed agenda visit www.loubar.org.

Speaker: **Joel Oster**, Comedian of Law

Time: 9:50 a.m. – 4:40 p.m. — Program
Place: Zoom – a link will be sent prior to the seminar
Price: \$240 LBA Members | \$216 Sustaining Members | \$480 Non-members
Credits: 6.0 CLE Hours — *Pending*

MESA ONE-HOUR ETHICS

Lies, Damn Lies & Legal Marketing: The Ethics of Legal Marketing

Tuesday, May 21

What is effective advertising in other fields is rarely acceptable in the field of law. In this entertaining ethics course, Sean Carter examines in detail the ethical rules concerning marketing and their practical implications. The program also covers common advertising strategies employed by attorneys and the pitfalls many attorneys will encounter.

Speaker: **Sean Carter**, MESA CLE

Time: 1 – 2 p.m. — Program
Place: Zoom – a link will be sent prior to the seminar
Price per hour: \$55 LBA Members | \$50 Sustaining Members | \$25 Paralegal Members | \$125 Non-members
Credits: 1.0 CLE Ethics Hour — *Pending*

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

LBA + LMA ONE-HOUR

Be LinkedIn or Be Left Out, Lawyers: The Why and How of Making Your Presence Known

Thursday, May 23

As lawyers, you need to understand that the best, most efficient business development tool is right in front of you. You can leverage your LinkedIn presence to build your reputation and relationships with those who are important to you, but you need a plan for professional use. This presentation will further your understanding of the importance of LinkedIn as a tool for growing your book of business and give you a road map for getting started, as well as highlighting best practices and ethical considerations in light of advertising and solicitation rules.

Speaker: **Nancy Myrland**, Myrland Marketing & Social Media

Time: Noon – 1 p.m. — Program
Place: Hybrid (Bar Center + 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 (including 0.5 Ethics) CLE Hour — *Pending*

Thank you to McBrayer Law Firm for sponsoring this CLE program!

(CLE continued on next page)

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LBA AI/IP/PRIVACY LAW SECTION ONE-HOUR

Kentucky Has a Consumer Data Privacy Law. What Should My Organization Do?

Tuesday, May 28

Comprehensive Consumer Data Privacy laws are effective in Kentucky and Indiana on January 1, 2026. This program will equip both outside counsel and in-house attorneys with an overview of these laws and provide a proposed timeline for key deliverables to ensure compliance when they become effective. State comprehensive consumer privacy laws impose a number of novel obligations on businesses, including required content in the organization’s privacy notice, required prohibitions and obligations with parties processing data on behalf of the business, consumer rights requests, data processing limitations, and special assessments that have to be conducted when processing either certain categories of personal data or when the personal data is being processed for special purposes.

For many businesses, it can be difficult to know where to start. In this program, Kyle Miller and Dalton Cline will provide a timeline that businesses can use over the next year and a half to prepare for compliance with these novel requirements. The timeline will assist businesses in identifying the key deliverables and breaking them apart into digestible pieces that will aid project management as the business develops new policies, procedures and capabilities to comply with these laws.

Speakers: Kyle Miller and Dalton Cline, Dentons Bingham Greenebaum

Time: 2 – 3 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 — Pending

2024 LBA AI/IP/Privacy Law Section Leadership: Dalton Cline, Dentons Bingham Greenebaum

MESA ONE-HOUR ETHICS

Don’t Be an Outlaw: The Ethical Imperative to Follow the Law

Wednesday, May 29

Lawyers must not only have a fundamental understanding of the law, but also, a fundamental commitment to abiding by it. And while the necessity to avoid committing major felonies is obvious to everyone, some lawyers forget about the necessity to follow the “little laws” as well. In this eye-opening webinar, legal humorist Sean Carter will recount the tales of past Ethy Award nominees (those who were recognized as the best of the worst ethics violations). These lawyers learned, albeit too late, that if you do even a minor crime, you will do the disciplinary time.

Speaker: Sean Carter, MESA CLE

Time: 1 – 2 p.m. — Program
Place: Zoom – a link will be sent prior to the seminar
Price per hour: \$55 LBA Members | \$50 Sustaining Members | \$25 Paralegal Members | \$125 Non-members
Credits: 1.0 CLE Ethics Hour — Pending

Please note this is a partnered CLE program. Register through MESA CLE. Attendees must follow MESA CLE’s cancellation policy.

MESA ONE-HOUR ETHICS

Technical Fouls: Even Minor Ethics Violations Can Have Major Consequences

Friday, May 31

When it comes to ethics violations, there is no such thing as a minor or “technical” foul. All ethics violations are serious matters, evidencing a breach of the trust that has been placed in the lawyer. As a result, lawyers must avoid falling into the mindset that a particular violation is “no big deal.”

To make this case, noted legal humorist Sean Carter will chronicle several recent ethics cases in which lawyers were surprised to discover that even minor ethics violations can have major consequences.

Speaker: Sean Carter, MESA CLE

Time: 1 – 2 p.m. — Program
Place: Zoom – a link will be sent prior to the seminar
Price per hour: \$55 LBA Members | \$50 Sustaining Members | \$25 Paralegal Members | \$125 Non-members
Credits: 1.0 CLE Ethics Hour — Pending

Please note this is a partnered CLE program. Register through MESA CLE. Attendees must follow MESA CLE’s cancellation policy.

LBA DAY-LONG

Trials of the Centuries: Notorious Stories and Famous Figures

Friday, June 7

This class will remind the lawyer about the true essence of being an attorney. We go back in time to review the most significant, precedent-setting, culture-impacting cases over the last several millennia. We look at the trial strategies, the issues involved, the outcomes and how those cases can make you a better lawyer today.

For more information and a detailed agenda visit www.loubar.org.

Speaker: Joel Oster, Comedian of Law

Time: 8:50 a.m. – 3:40 p.m. — Program
Place: Zoom – a link will be sent prior to the seminar
Price: \$240 LBA Members | \$216 Sustaining Members | \$480 Non-members
Credits: 7.0 (including 1.5 Ethics) CLE Hours — Pending

ANNUAL LBA PROBATE & ESTATE PLANNING SECTION + KY CPA SOCIETY

6th Annual Estate Planning Conference

Wednesday, June 12

Join us for a day of insights and expertise at the annual LBA Probate & Estate Planning Section and Ky CPA Society’s 6th Annual Estate Planning Conference. Discover the latest trends, strategies and best practices in estate planning from industry leaders. Watch the LBA website and/or your inbox for more details!

Speakers: TBA

Time: 8 a.m. – 5 p.m. — Program
Place: Hybrid (at the Ky CPA Society and via Zoom)
Credits: Pending

2024 LBA Probate & Estate Law Section Leadership: Matthew H. Burnett, Dinsmore & Shohl and Monica B. Davidson, Stock Yards Bank & Trust

LBA PROBATE & ESTATE LAW SECTION + UNIVERSITY OF LOUISVILLE BRANDEIS SCHOOL OF LAW

Annual Estate Planning Institute

Tuesday, June 18

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

More information to be announced.

2024 LBA Probate & Estate Law Section Leadership: Matthew H. Burnett, Dinsmore & Shohl and Monica B. Davidson, Stock Yards Bank & Trust

LBA TWO-HOUR

Johnny Depp v. Amber Heard – Tips for Representing Crazy Clients

Tuesday, June 18

Johnny Depp’s defamation lawsuit against Amber Heard was probably the biggest celebrity trial since OJ Simpson. This trial highlights the importance of litigating in the court of public opinion as well as the court of law. In addition, the battle inside the courtroom provided great insights in making your client seem real to the jury. Along the way, we will learn great ways to handle hearsay evidence and ways to object to your own question. Finally, will this case be a harbinger of things to come with defamation lawsuits?

For more information and a detailed agenda visit www.loubar.org.

Speaker: Joel Oster, Comedian of Law

Time: 11 a.m. – 1 p.m. — Program
Place: Zoom – a link will be sent prior to the seminar
Price: \$80 LBA Members | \$72 Sustaining Members | \$160 Non-members
Credits: 2.0 (including 1.0 Ethics) CLE Hours — Pending

LBA LABOR & EMPLOYMENT LAW SECTION + UoFL BRANDEIS SCHOOL OF LAW

The Carl A. Warns, Jr. & Edwin R. Render Labor & Employment Law Institute

Thursday, June 20 and Friday, June 21

The Institute provides high-quality continuing legal education to local and regional labor or employment law attorneys, human resource professionals, union representatives and other workplace experts. The Institute creates a dialogue between academics, government officials and practitioners. It is an inclusive forum where employees, union and management-side representatives all feel welcome and benefit from the education provided. We are excited to announce guest speaker Mark Gaston Pearce, Workers’ Rights Institute/Georgetown Law.

More information to be announced.

Labor & Employment Law Section Leadership: Rudy J. Ellis III, Dinsmore & Shohl and Marianna Melendez, Jefferson County Public Schools

LBA DAY-LONG

Trials of the Centuries: Landmark Cases

Monday, June 24

This class will remind the lawyer about the true essence of being an attorney. We go back in time and review the most significant, precedent-setting, culture-impacting cases over the last several millennia. We look at the trial strategies, the issues involved, the outcomes and how those cases can make you a better lawyer today.

For more information and a detailed agenda visit www.loubar.org.

Speaker: Joel Oster, Comedian of Law

Time:	8:50 a.m. – 3:40 p.m. — Program	Place:	Zoom – a link will be sent prior to the seminar
Price:	\$240 LBA Members \$480 Non-members	Credits:	6.0 (including 2.0 Ethics) CLE Hours — <i>Approved</i>

LBA YOUNG LAWYERS SECTION ONE-HOUR

Subrogation 101: The Need to Know About Health Care Provider’s Liens

Monday, June 24

Subrogation 101 will take a deep dive into the history of subrogation and how it changed health care payment recovery. We will discuss the process of subrogation from “Notice of Lien” to “Release of Lien,” and all the things that can take place in between. We will discuss the many health care plan types, and how Kentucky law affects subrogation liens.

Speaker: Al’Lisha J. D. Hanserd, Conduent

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 — <i>Pending</i>

2024 Young Lawyers Section Leadership: Al’Lisha J. D. Hanserd, Conduent; Jenny Beth Willis, Duncan Galloway Greenwald; and Jackson Rice, Commonwealth’s Attorney Office

LBA AI/IP/PRIVACY LAW SECTION ONE-HOUR

AI and IP: The Fundamentals of Intellectual Property Law and How Generative Artificial Intelligence is Shaking Them

Tuesday, June 25

The proliferation of artificial intelligence (AI) applications leveraging, and the explosion of use cases for, deep-learning models that can generate high-quality text, images and other content (generative AI) is sending shockwaves through the IP world. Chatbots like Open-AI’s ChatGPT or Google’s Gemini and image generation tools such as Stability AI’s Stable Diffusion and the self-titled program from Midjourney are creating novel problems in IP as plaintiffs, defendants and the courts struggle to freshly apply old categories of copyright, trademark and patent law to these new technologies. This program will provide a brief overview of copyright and patent law, and then explore recent litigation moving through US courts.

Speakers: Dalton Cline, Dentons and Gary (Nick) Stewart, Stites & Harbison

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 — <i>Pending</i>

2024 LBA AI/IP/Privacy Law Section Leadership: Dalton Cline, Dentons and Gary (Nick) Stewart, Stites & Harbison

LBA DAY-LONG

Killing It in Court: Litigation Tips from A Courtroom Comedian

Tuesday, June 25

John Cleese of Monty Python fame said, “He who laughs most learns best.” This applies equally to CLE and to persuading others in court. Learn practical tips that will make you more effective, efficient and persuasive in court. We will hit the best deposition practices, ethical pitfalls in litigation, cross-examining like Vinny Gambini and how to avoid the dreaded bench slap.

For more information and a detailed agenda visit www.loubar.org.

Speaker: Joel Oster, Comedian of Law

Time:	8:50 a.m. – 3:40 p.m. — Program	Place:	Zoom – a link will be sent prior to the seminar
Price:	\$240 LBA Members \$480 Non-members	Credits:	6.0 (including 2.0 Ethics) CLE Hours — <i>Approved</i>

LBA & LOUIS D. BRANDEIS INN OF COURT

14th Annual Lively M. Wilson Memorial Lecture Series on Ethics, Professionalism and Civility

Wednesday, June 26

This annual program focuses on civility and professionalism in the legal profession. More details to come!

Time:	11 a.m. – 1 p.m. — Program
Place:	Zoom – a link will be sent prior to the seminar
Price:	\$80 LBA Members \$72 Sustaining Members \$15 Paralegal Members \$15 for qualifying YLS Members \$25 Solo/Small Practice Section Members, Government or Non-Profit Members \$160 Non-members
Credits:	2.0 CLE Hours — <i>Pending</i>

LBA DAY-LONG

A Comedic De-Briefing of the Law: A Comedic Review of the Supreme Court, Legal Ethics and Headline Cases

Thursday, June 27

This class is a comprehensive de-briefing of the law. Starting with ethics, we review the crazy predicaments some ethically challenged attorneys have found themselves in. You will have to decide based on the severity of the facts and the relevant model rule, whether you would take a deal for that violation. While Hollywood might not be setting the finest examples when it comes to actual morals and ethics, they do a good job of exhibiting legal ethics.

We will explore the Model Rules through the eyes of Hollywood. From Hollywood, it’s not a long journey to our legal rock stars – the Nine! The Supreme Court, aka, the Real League of Justice, has been busy exerting their superhero legal powers. We will review a recent landmark Supreme Court case. For example, Masterpiece Cakeshop and stale wedding cake: discrimination or a valid excuse to skip your cousin’s wedding?

Finally, we will take a countdown of the Top 10 wacky cases. You might be surprised by what you will learn about legal strategy from these headline cases.

For more information and a detailed agenda visit www.loubar.org.

Speaker: Joel Oster, Comedian of Law

Time:	8:50 a.m. – 3:40 p.m. — Program
Place:	Zoom – a link will be sent prior to the seminar
Price:	\$240 LBA Members \$216 Sustaining Members \$480 Non-member
Credits:	6.0 (including 2.0 Ethics) CLE Hours — <i>Approved</i>

THE AMERICAN CONSTITUTION SOCIETY & THE LBA APPELLATE LAW SECTION

Annual Supreme Court Update

Friday, June 28

The seminar will address the key cases before the U.S. Supreme Court during October Term 2023. The court will recap key opinions from the previous year, discuss any new or continuing trends at the Court and preview the upcoming Term.

Speakers: Michael P. Abate, Kaplan Johnson Abate & Bird; Pamela S. Karlan, Stanford Law School; and more to be announced.

Time:	11 a.m. – 1 p.m. — Program
Place:	Zoom – a link will be sent prior to the seminar
Price:	\$80 LBA Members \$72 Sustaining Members \$15 Paralegal Members \$15 for qualifying YLS Members \$25 Solo/Small Practice Section Members, Government or Non-Profit Members \$160 Non-members
Credits:	2.0 CLE Hours — <i>Pending</i>

JOIN THE PACT!

You are officially invited to participate in Legal Aid Society's Pro bono ACT Committee for the Volunteer Eviction Defense Program.

We are a group of compassionate lawyers who not only actively participate in volunteer pro bono work, but who encourage others in the legal community to volunteer.

our mission

We will work to significantly increase the percentage of licensed attorneys who do pro bono work in Legal Aid Society's service area, including Breckenridge, Bullitt, Grayson, Hardin, Henry, Jefferson, Larue, Marion, Meade, Nelson, Oldham, Shelby, Spencer, Trimble and Washington counties.

our values

- We agree that pro bono work is essential.
- We believe all attorneys are capable of participating in some capacity, even if it is one case or clinic opportunity per year.
- We understand that legal services are denied to those living in poverty.
- We agree that any decision to participate in "pro bono practice" lightens the burdens of others and makes access to justice a reality for all.
- We believe that pro bono not only benefits those who receive representation but it also benefits the attorney that chooses to give back with perspective, compassion and empathy.

The PACT is seeking volunteers for committee roles. Committee members will meet with lunch served. In 2024, meetings will be held the first Thursday of June and September.

To learn more, visit YourLegalAid.org/jointhepact

Clients can never receive their full measure of justice, they need help. Pro bono attorneys can help these litigants get a chance at justice. I do pro bono because people deserve to be heard. Everyone deserves a chance to receive justice. Pro se, unrepresented.



JEFF METZMEIER
*University of Louisville
Brandeis School of Law Clinic*



As attorneys we have committed to serve our community. The underserved parts of our community have great need.

BOB EHRLER
LG&E and KU Energy

I do pro bono work because I am in a position to help others. I can volunteer a small amount of time and make a big difference in someone's life.



MICHELLE WYRICK
Wyatt, Tarrant & Combs



I do pro bono work because just a little effort can go a long way in improving someone's life. The rewards are all great and you can be part of a great story.

MITZI WYRICK
Wyatt, Tarrant & Combs

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Jefferson County Public Law Library Changes with the Times

Mark Webster

The Jefferson County Public Law Library is a non-profit organization supported by private donations and court filing fees allocated under KRS 172.180 and KRS 453.060. The library has been in existence in some form in Louisville since 1839. In 2016, attorneys in Louisville established the Friends of the Jefferson County Public Law Library to raise funds and provide support.

Over the years the nature of the services the library provides has changed. In the past, the library served the traditional need for researching the law in books and reporters. Today's needs are different. Though the library still provides legal texts and treatises, it also offers access to research through Westlaw and Lexis subscriptions and services such as electronic document delivery.

Even the space in the library has changed. Instead of shelves of books and rows of table and chairs crowding the library, there are now open spaces meant for guest speakers and organization meetings. Construction of an on-site courtroom is set to begin soon. It will be made available for trial prep, courtroom technology training and mock trials.

The community outreach of the law library has also changed. Since 2017, every year around the first of May, the library has sponsored an open-air Law Day event at Jefferson Square, across the street from the Old Jail at 514 W. Liberty, where JCPLL is located. This year's event took place on April 29. Several speakers addressed this year's topic: Voices of Democracy.

In addition, since 2018 the law library has operated the Fresh Start Expungement Program which has helped citizens expunge misdemeanors and Class D Felonies at no cost to the applicants, as the library pays for the KSP expungement certification, attorney fees and any related court costs. This permits citizens to qualify for jobs, housing and other benefits as well as to work as volunteers for schools, athletic

teams and other nonprofits.

In January 2024, the library began operating a Legal Help Center every Tuesday from 10 a.m. to 2 p.m. Volunteer attorneys help pro se litigants fill out legal forms, identify what

courts to go to and discover what legal issues their cases involve and whether they are in need of an attorney. Patrons can also use an online service on the

Kentucky Courts' website which contains a self-help portal with online interviews. These interviews populate the forms needed for some of the most common situations faced by self-represented litigants. These situations mostly include probate matters, uncontested divorce with no children, small claims and expungement.

Fayette county was the first county to run a Legal Help Center. Jefferson County is now the second county to provide the service. The program is spearheaded by the Kentucky Access to Justice Commission whose board is chaired by Supreme Court Justice Michelle Keller. She recommended a clinic to help unrepresented litigants get some direction and understanding about their cases so court clerks and judges can more efficiently resolve their issues.

The law library can benefit from donations, sponsorships and attorney volunteers and Friends group members to help keep these important programs going. If you are interested in donating time or money to your local county law library, call the director, Amy Hilliard, at (502) 574-5943.

– Mark Webster
President, Board of Directors
Friends of the Jefferson
County Public Law
Library

Mark Webster is retired
from practicing law in Ken-
tucky and Indiana. ■



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LBA Committee Meetings

LBA Diversity & Inclusion Committee Meeting
Wednesday, May 8 | 4 p.m. | Zoom

LBA CLE Committee Meeting
Tuesday, May 14 | 1 p.m. | Zoom

LBA Real Estate Law Section Meeting
Wednesday, May 15 | Noon | Bar Center, 600 W. Main St.
Lunch provided by Applegate Fifer Pulliam
Reservations are required for lunch count.

Please RSVP to Lisa Anspach, lanspach@loubar.org. ■

Association of Legal Administrators

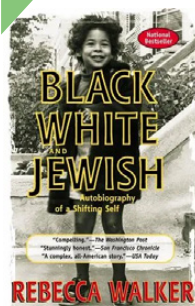
The monthly chapter meeting of the Kentucky Association of Legal Administrators will be held in person on Thursday, May 9th beginning at 11:45 am at the office of Frost Brown Todd in Louisville (400 W. Market St., Ste. 3200); and Lexington (250 W. Main St., Ste. 2800). Guests are welcome to join us for lunch. RSVP to Mary M. Hackworth, mmhackworth@kopkalaw.com. ■

Legal Marketing Association of Kentucky

The Legal Marketing Association of Kentucky, in conjunction with the Louisville Bar Association, presents a can't-miss seminar for attorneys looking to up their digital client development game. Nancy Myrland, a nationally-recognized expert in legal marketing, will make the case that LinkedIn isn't just a tool for attorneys – it's a necessity. A great and efficient business development tool is likely bookmarked in your browser, but the highest and best use of it requires a plan and an understanding of your goals and your ethical constraints. Myrland's presentation will further your understanding of the importance of LinkedIn as a tool for growing your book of business and give you a road map for getting started, as well as highlighting best practices and ethical considerations in light of advertising and solicitation rules. The program will take place on Thursday, May 23rd from noon to 1 p.m. at the LBA and you can attend virtually as well. See details on this CLE on page 11. ■

Diversity
& Inclusion
Committee
Corner

BOOK RECOMMENDATION



Black, White & Jewish:
Autobiography of a Shifting Self by
Rebecca Walker

"[Walker] offers painful childhood memories of straddling two vastly different cultures—black bohemia and Jewish suburbia—to fashion a cautionary tale about the power of race in shaping identity...[a] highly readable debut."—*Entertainment Weekly*

ARTICLE RECOMMENDATIONS

- Asian American / Pacific Islander Communities and Mental Health
- Racial Trauma



VIDEO RECOMMENDATION

Asian American Pacific Heritage Month Mashup | Talks at Google

Would you like to submit a resource to share? Email Lisa at lanspach@loubar.org.

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Help Wanted

Through the LBA Placement Service

Real Estate/Closing Attorney:

The LBA's Placement Service is working with a comprehensive title agency located on the east side of Louisville that is seeking to hire a real estate/closing attorney to join their team. At least one year of prior real estate law experience is preferred. Must have active bar license in Kentucky and be in good standing. Candidate will conduct in-office and out-of-office closings, and draft real estate transaction documents including deeds, subordinations, power of attorney, mortgage satisfactions and affidavits. This is a full-time position with pay based on candidate/experience, plus full benefits and PTO. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Medical Defense Attorney:

The LBA is working with a growing medical defense law office located on the east side of Louisville that is seeking to add an attorney to their practice. They would like a two+ year lawyer with experience in medical malpractice, long term care or injury law. The ability to work with medical records or learn how to work with medical records is a must. Excellent writing and communication skills are required. Prior litigation/court experience (of any kind) is required. Court appearances (some requiring travel to all parts of the state) are necessary. If there are no candidates fitting this role, they are willing to train the right person. The practice is highly litigious with a lot of motion practice, brief writing and arguments. The non-experienced candidate needs to have a strong background in those areas (or just a strong backbone) and be willing to learn the medical side. The job is full-time. Salary is competitive for the size of the firm and based on experience. 1800/hrs billable goal. Excellent benefits package, plus discretionary bonuses twice a year. Send resumes in MS Word format to the LBA Placement Service Director, David Mohr, dmohr@loubar.org.

Defense Attorney:

The LBA's Placement Service is currently working with a medium-size law office in downtown Louisville that is seeking to hire both a seasoned attorney that can handle cases with minimal supervision, as well as a newer attorney. 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. The newer attorney can be a recent graduate to two+ years of any experience. 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.

Office Space

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MEMBERS on the move



Barnes



Butler



Denbow



C. Stopher



E. Stopher

Stites & Harbison is pleased to announce that attorneys **Edward H. Stopher** and **Charles H. Stopher** have joined the firm's Louisville office. They are members of the Torts & Insurance Practice Service Group and secondary members of the Business Litigation Service Group. Edward Stopher is Of Counsel with Stites & Harbison. His practice focuses on civil litigation with an emphasis on corporate, insurance, product liability and legal malpractice litigation. Serving as lead counsel in numerous high profile jury trials, he has tried more than 100 civil cases to verdict in Florida, Georgia, Kentucky and Virginia. His practice includes extensive experience in defending insurance carriers in bad faith claims. Charles Stopher is a Member (Partner) of Stites & Harbison. His civil litigation practice focuses on personal injury, products liability, insurance bad faith, employment, professional liability and breach of contract litigation.

What have you been up to lately?

Did you know that Members on the Move announcements are a member perk and FREE of charge?! Let us know what you've been up to! Send announcements to Kim Kasey, kkasey@loubar.org.

Stites & Harbison is pleased to announce that attorneys **Thad M. Barnes** and **Michael Denbow** have been appointed to co-chairs the firm's Business Litigation Service Group. Each attorney will continue their diverse legal practices in business litigation. Both are Members (Partners) of Stites & Harbison in the Louisville office. Barnes is currently chair of the Pretrial Practice & eDiscovery Group and the Lateral Recruiting Committee. He handles litigation across the nation and his practice is focused on complex commercial litigation, intellectual property and health care litigation. Denbow is currently the chair of the White Collar Practice Group. His practice focuses on white collar criminal defense and other government and regulatory matters. He handles matters in federal and state courts throughout the Southeast and represents clients when dealing with such government entities as the Department of Justice, the FBI, the SEC and the CFPB, among others. Denbow also routinely represents professional athletes and entertainers in contract negotiations, business advice and litigation matters.

The American Board of Criminal Lawyers (ABCL) recently elected Stites & Harbison attorney **Brian Butler** as a Fellow, serving as one of only five Fellows in Kentucky. ABCL is an invitation-only legal honorary society for outstanding criminal trial lawyers in the U.S., Canada and Europe. Butler is a Member (Partner) based in Stites & Harbison's Louisville office and belongs to 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. He has tried more than 100 jury trials and is intimately familiar with complex federal investigations including those involving corporations and their employees. Butler routinely serves as a legal analyst for Louisville television stations and the *Louisville Courier-Journal*. Butler received his J.D. from the University of Notre Dame Law School in 1995. ■

ABA Delegate Needed

The LBA is seeking a member to serve as our delegate to the American Bar Association's House of Delegates. This governing, policy-making body is responsible for electing the ABA's officers and Board of Governors. The chosen delegate will serve a two-year term (2024-2026) and will also serve as a member of the LBA's Board of Directors.

If you are a current member of the ABA, have served in some capacity as a volunteer with the ABA and/or have an active interest in ABA matters and would like serve as the LBA's ABA Delegate, please send a letter of interest to Kristen Miller at kmiller@loubar.org no later than May 24th. ■

Pro Bono Assistance Opportunities in the U.S. District Court, Western District of Kentucky

In July 2018, the United States District Court for the Western District of Kentucky adopted a pro bono program designed to address the court's growing need to provide counsel for indigent litigants in certain civil cases. The court is currently seeking additional members of its bar to volunteer to participate in this program.

Those admitted to the court's pro bono panel will join a roster of volunteer attorneys from which the court will make civil case appointments. Appointed counsel will be asked to represent indigent parties in civil litigation after the court has preliminarily evaluated the case and made a determination to seek counsel for the unrepresented indigent party.

Counsel may seek reimbursement of allowable expenses up to \$1,000. More importantly, they will be providing a valuable service to their client, the court and their community.

Members of the bar are invited to volunteer by submitting a Pro Bono Attorney Application which is available on the court's website at <https://www.kywd.uscourts.gov/pro-bono-assistance-opportunities-western-district-kentucky>. For questions about the Pro Bono Program, please contact Clerk of Court James Vilt by e-mail at james_vilt@kywd.uscourts.gov or at (502) 625-3508. ■



Judge David P. Bowles (Ret.)



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Dodd & Dodd Attorneys, PLLC

Rachel K. Mulloy
LG&E and KU Energy, LLC

Max H. Schwartz
Attorney at Law

Nader George Shunnarah
Shunnarah Law

Julia Ellen Stephens
DBL Law

LAW STUDENTS

Hanna Pfeiffer
Temple University Beasley School of Law

Allison Warnersmith
NKU Chase College of Law



Brandeis Law School Faculty Member Named to American Bar Foundation's Access to Justice Scholars Program

Cassie Chambers Armstrong, assistant professor at the University of Louisville's Brandeis School of Law, has been named to the American Bar Foundation's Access to Justice Scholars Program.

The ABF, founded in 1952 by the American Bar Association, is a research institute committed to the principle that a deep understanding of the law is vital to a more just, equitable world. In partnership with The JPB Foundation, the ABF supports a diverse group of empirical scholars interested in researching access to civil justice through the ABF/JPB Foundation Access to Justice Scholars Program.

Directed by ABF Faculty Fellow and MacArthur "Genius Grant" winner Rebecca Sandefur, the program brings together cohorts of faculty scholars to support their research, mentor their progress and build intellectual relationships needed to grow the access-to-justice field.

Beginning May 1, Chambers Armstrong will join Access to Justice Scholars from across the United States for an 18-month fellowship of in-person and virtual meetings that explore civil justice. Scholars in the program also receive funds toward course reductions, summer support and research expenses.

"The Access to Justice Scholars Program is a premiere program for legal scholars to engage in innovative empirical research and initiatives that bridge the divide between access to civil justice scholarship and practice in the United States and around the world," said Brandeis School of Law Dean Melanie Jacobs. "Professor Chambers Armstrong is already establishing herself as an important scholar in the field of domestic violence and her research about the rural-versus-urban access to justice in obtaining protective orders will provide meaningful insights not only for her own research, but for other researchers, too.

"The ABF/JPB Foundation Access to Justice Fellowship will enable Professor Chambers Armstrong to deepen her research efforts and broaden her scholarly impact." ■

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