

BAR*briefs*

Louisville Bar Association

April 2025

125

Bench & Bar Social

We were so glad to see everyone who joined us at the 2025 Bench & Bar Social. In celebration of the LBA's 125th anniversary, Elizabeth Jenkins, Olivia Schmidt and Kylie King posed in our 125 selfie frame while attending the Social. Come to the Bar Center anytime and have your photo taken in the frame; we'd love to post your smile on our social media!



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

Professional Excellence

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A Statement on the Rule of Law from the Louisville Bar Association

The Louisville Bar Association (LBA) has served attorneys, judges, law students, paralegals and other legal professionals across our community for more than 125 years. Our politically and socially diverse members share a commitment to “[p]romote justice, professional excellence and respect for the law,” and to “improve public access to the judicial system.” It is in this spirit that we want to reaffirm that the LBA stands in support of the United States Constitution and its creation of three co-equal branches of government: legislative, executive and judicial.

Under our system of separations of powers, the judicial branch is charged with interpreting the law and determining the constitutionality of legislation and executive actions and orders. Remarks questioning the legitimacy of the courts and the doctrine of judicial review suggesting that any party can ignore court rulings are dangerous, and they threaten the delicate balance of power that the Founders established to protect freedom and liberty for all, to guard against tyranny and to preserve the rule of law.

The LBA urges our leaders and fellow citizens to remember and respect the role of the judiciary as the impartial arbiter of the law in our country. In every court proceeding, there is always someone who disagrees with the outcome. Regardless of whether you are on the winning or losing side, the court's decision must be accepted and followed. No individual, public official or other branch of government can be permitted to ignore court rulings. If our judicial branch is discredited and ignored, the rule of law will unravel. The LBA calls on all citizens, particularly our elected leaders, to respect the law and avoid comments or acts that may be perceived as undermining the constitutional role of courts in our country.

We recognize that as a non-partisan organization representing our legal community, we have a responsibility to speak up about why these foundational tenets are so critical to our democracy, and we intend to do so. We will be working over the next weeks and months to provide educational resources to help us all better understand the role of our courts under the U.S. Constitution and the importance of an independent judiciary. We invite everyone to join us in these discussions and help us protect the system of checks and balances that makes our country so special. ■

Civility – in the Legal Community, and on the World Stage

April is an interesting month. We start off with April Fool's Day; in some instances, people will be the subject of pranks and jokes, while for others it is just another day. It is also the month for Passover, Easter and Earth Day, to mention a few in no particular order. We also cannot forget that it is Mint Julep Month and National Grilled Cheese Month.

In Louisville, though, as I learned when I moved here, it is the prelude to the Kentucky Derby. As we approach the first weekend in May, there are many events that focus on the biggest thing to happen in Louisville every year.

I have learned that there are more than seventy Derby events, including the Parade, the Mini-Marathon and Marathon, Steamboat Race, and of course, Thunder over Louisville. These events spotlight Louisville, its residents and the community.

We welcome visitors, both human and equine, from around the world. As such, Derby and its related events produce an economic benefit to the community in excess of \$400 million dollars. Hotels and restaurants are booked, hats and fascinators are in demand, and mint julep cups are a hot souvenir for many.

Why am I going on and on about the Derby? Because it gives us, as a community, the opportunity to showcase ourselves and our city; to be on our best behavior and welcome these many visitors to Louisville. Nothing makes a worse impression than a rude or unhelpful resident. Family members who recently visited several cities came back with both horror stories and surprises.

A visit to Disney World in Orlando produced mixed results; Disney employees were great but Orlando residents in restaurants and hotels seemed not to care if the food was good or the hotel was satisfactory. On the other hand, a discussion about a visit to Paris during the Olympics was infused with comments about how nice the hotel personnel were and how the service staff in restaurants were so accommodating. Who do we want to be?

As attorneys, we serve our clients according to their needs and their cases. We lose nothing and gain so much more with kindness, compassion and empathy. Our profession at times requires those traits. Dealing with a victim of a crime or an injury. Meeting with a family that has lost a mother, father, spouse or other loved one. Yet so many times we are faced with hostility, rudeness and a lack of civility.

We all can remember times when we had to be the one that conceded a point in order to gain something for our client in a negotiation. We have fought when necessary and said I am sorry where appropriate.

Civility is an interesting concept. It is defined as formal politeness and courtesy in behavior or speech in Webster's Dictionary. What is it in words and deeds? It is kindness, politeness, understanding and respect. It also includes the concept of taking care of yourself and your responsibility.

The Institute for Civility, a 501(c)3 organization dedicated to promoting civility in "government, workplaces, schools, and anywhere people gather to live, learn, work, and play," states:

Civility is about more than just politeness, although politeness is a necessary first step.

It is about disagreeing without disrespect, seeking common ground as a starting point for dialogue about differences, understanding biases and personal preconceptions, and teaching others to do the same.

Most of us already practice this day-to-day with clients, opposing counsel, co-workers and others we meet in our profession. However, as we leave our offices at the end of a long day, are we still practicing civility as we drive home, go to the grocery store or speak to our families?

Self-care is important and if we do not extend this concept to our daily lives, all day, we are cheating ourselves. Take time to smell the roses, exercise, meditate, listen to music, go to the Derby or eat a grilled cheese sandwich. Enjoy your family, friends and others as you go through life. It really is too short not to.



“

We lose nothing and gain so much more with kindness, compassion and empathy. Our profession at times requires those traits.

Maria
Maria A. Fernandez
LBA President

BREAKING BARRIERS, BUILDING COMMUNITY: LBA'S BLACK HISTORY MONTH CELEBRATION

The LBA's recent Black History Month event resonated with attendees, offering powerful conversations and meaningful connections. Organized by the Diversity & Inclusion Committee, a great crowd gathered to learn from the authenticity and wisdom shared by distinguished panelists Jason L. Brown (GE Appliances, a Haier Company), Hon. Brian C. Edwards (Jefferson Circuit Court, Div. 11) and Dwight L. Haygood Jr. (Sazerac Company), who graciously shared their candid stories and insights.

Aaron Wornor, a recent LBA Summer Law Institute alumnus, served as guest co-moderator alongside Diversity & Inclusion Chair Michelle L. Duncan. A particularly touching moment occurred when Katheryn McNulty presented Duncan with the 2024 Justice William E. McNulty Jr. Trailblazer Award – a fitting tribute that carries forward her father's legacy of breaking barriers and creating pathways for others.

This event underscored why representation, stories and community matter. The LBA extends gratitude to everyone who contributed to this celebration of Black excellence and achievement.



If you missed the WHAS11 coverage of this event, visit www.loubar.org.

All Evidence to the Contrary

Chief Judge Ann Bailey Smith

“Do you swear or affirm that you will impartially try the case between the parties and give a true verdict according to the evidence and the law, unless dismissed by the court?” This is the oath administered by the clerk of the court to all petit juries in Kentucky as required by Administrative Procedures II, Section 28. As lawyers and trial judges we are familiar with this oath and we expect jurors to take this oath seriously as they deliberate the case. But we are also aware of the concept of jury nullification whereby a juror ignores the law and/or the evidence and returns a verdict which appears to violate the oath. Some of the reasons for returning a verdict against the evidence may include civil disobedience, a political statement against a specific law or feelings of sympathy for the accused. It is difficult to say how frequently this occurs but if you're familiar with very many trials then you can probably think of one where jury nullification appears to have dictated the verdict.

Consider both the state and federal prosecutions of Luigi Mangione, the 26-year-old man who has been charged with killing United Healthcare's CEO, Brian Thompson, on December 4, 2024, outside the New York Hilton Midtown in New York City. Thompson had worked for United Healthcare since 2004 and had been its CEO since 2021. At the time of his death, United Healthcare was the largest health insurer in the United States. Under Thompson's leadership, the company's profits increased by \$4 billion. On December 4, Thompson was about to enter the hotel where he was to speak at an annual investors meeting when he was shot in the back by a masked assailant who left the scene on an e-bike into Central Park.

Luigi Mangione was arrested five days later at a McDonald's in Pennsylvania. In addition to the murder charges he is facing in state and federal courts, he also has charges from his arrest in Pennsylvania for firearm violations. At the time of Mangione's arrest, police recovered from his belongings a 262-word handwritten document which, in part,

criticized the American healthcare system. It has been reported that Mangione suffers from spondylolisthesis (a stress fracture in a vertebra which, due to weakening, has caused the vertebra to slip) and Lyme disease. Police have reported that Mangione was not insured by United Healthcare.

Since his arrest, Mangione has been described as a folk hero and he has garnered a number of supporters who are frustrated with the healthcare system, including the cost of healthcare as well as the denial of treatment by the insurance industry. Authorities have revealed that spent casings and an ejected cartridge recovered at the scene of the shooting contained the words “delay,” “deny” and “depose” which are similar to a known phrase in the insurance industry “delay, deny, defend” which translates to denying medical coverage to insureds. Supporters have gathered at Mangione's court appearances wearing Luigi apparel (of Mario Brothers fame); billboards reading “Free Luigi” have appeared in a number of cities; a look-alike contest was held in Florida; Mangione has been inundated with fan mail while incarcerated; and an online site has raised more than \$600,000 for Mangione's legal defense. As such, the stage is set for the possibility of at least one juror refusing to vote guilty, not based on the lack of persuasive evidence, but on hostility toward the profit-based healthcare system and for those who have suffered or even died from the denial of healthcare coverage for treatments.

The Kentucky Court of Appeals, in the case of *Johnson v. Commonwealth, Ky App.*, 659 S.W. 3d 832 (2021), recognized jury nullification as a “longstanding common law tradition, now constitutionalized,

Some of the reasons for returning a verdict against the evidence may include civil disobedience, a political statement against a specific law or feelings of sympathy for the accused.

that the jury always has the option of disbelieving the evidence offered to prove guilt and returning a ‘not guilty’ verdict,” citing *Medley v. Commonwealth*, 704 S.W. 2d 190, 191 (Ky. 1985). The court was quick to state, however, that it would be error to instruct a jury that it has a right to find a defendant not guilty even though the evidence establishes his guilt beyond a reasonable doubt. Likewise, a defense attorney cannot argue to a jury that it can disregard the evidence if it doesn't agree with the law or with the penalty range. Additionally, the Court of Appeals held that in responding to a jury question about nullification, a defendant does not have the right for the court to respond about the jury's nullification power. “Ultimately, whether a jury may be informed of their nullification power is a question for the legislators of the General Assembly or the Kentucky Supreme Court.” *Johnson* at 839.

The jury selection process should cull from the panel of prospective jurors those who cannot follow the law or who would refuse to convict in spite of evidence which rises to the level of proof beyond a reasonable doubt. Litigators know, however, that there are almost always those members of the jury panel who do not answer a single question during voir dire or answer with a monosyllabic response which provides little insight into the juror's beliefs. But, as stated by President John Adams in 1771, “It is not only his right but his Duty in that case to find the Verdict according to his own best Understanding, Judgment and Conscience, this in Direct opposition to the Direction of the Court.” It's difficult to square this statement of one of the Founding Fathers with the oath taken by a juror. It remains to be seen whether a juror or jurors will vote to acquit Mangione of murder because of feelings of anger and frustration against the American health insurance system.

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



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“Concerns” of a Co-Parent

Litigation Strategies to Handle Allegations of Child Abuse or Harm

Melina Hettiaratchi

Introduction

Family lawyers are well aware of the gravity and potential risks involved in raising “concerns” about a child’s well-being during an ongoing custody case. Each of us recognizes a single “concern” has a destabilizing effect on a family, whether expressed through hearsay at a motion hour or an expert opinion based on a brief evaluation. In recognition of Child Abuse Prevention Month in April, the LBA Family Law Section presents this article to emphasize practice pointers for handling allegations of abuse or neglect in custody cases.

“Concern” is often used as a euphemism for abuse, allowing a nuanced approach but potentially lacking clarity. In some cases, using the term is a handy way of saying that there may be ongoing issues of a serious nature; however, claiming “concerns” can also serve as a warning that there is little to no actual proof of abuse or harm. In any instance, practitioners and judges should be aware that allegations of some harm might result in the restriction of a parent’s time or custody rights or both. Child abuse allegations in family court proceedings are among the most challenging and emotionally charged cases that family law attorneys handle. Whether representing a client seeking to protect a child or defending against wrongful claims, attorneys must carefully manage evidence, navigate expert testimony and address biases in forensic reports and custody evaluations. This is perhaps even more important in high-conflict custody cases.

In Jefferson County Family Court, family law practitioners must balance the client’s interests against the expectations of a judge who may hear identical allegations on two different docket days. This necessitates different evidentiary and statutory standards. This article will provide a brief refresher on those standards, followed by best practices for working with experts, overcoming bias in evaluations and protecting or obtaining evidence in high-conflict custody disputes.

Standards in Family Court

Remember that different evidentiary standards and legal tests apply to decisions made under different statutes in Kentucky family law cases involving child custody and parenting time.

- **Dependency, Neglect or Abuse (DNA) Cases** – *Preponderance of the evidence* (more likely than not) that a child has been abused or neglected. “Abused or neglected” means a parent or caregiver has harmed or threatened a child’s health or welfare. KRS 600.020.
- **Termination of Parental Rights (TPR)** – *Clear and convincing evidence* (substantially more likely than not) that (1) a child has been abused or neglected by this parent, (2) termination of this parent’s rights is in the best interests of the child and (3) one or more of the enumerated grounds for termination exists. KRS 625.090. The court must find clear and convincing evidence, *not a preponderance*, that the child is abused or neglected.
- **Domestic Violence and Abuse (DV)** – *Preponderance of the evidence* that domestic violence or abuse has occurred and may again occur. KRS 403.740. In this context, domestic violence means physical injury, serious physical injury, stalking, sexual assault, strangulation, assault or the threat of those things between family members, including a child. KRS 403.720. Any adult can file for an emergency protective order and temporary custody of a child alleged to be a victim.
 - Through the DV process, an ex parte temporary custody order can be entered simply because a box was checked on the petition. The Court, however, may only award temporary custody using the criteria in KRS 403.270, 403.320, and 403.822 *following an evidentiary*

hearing, after which it finds by a *preponderance of the evidence* that DV has occurred and may occur again. KRS 403.740. Ostensibly, this can be ordered even if the Petitioner does not file on behalf of the child but pursuant to their own petition for a DVO.

- **Circuit Court Custody (CI)** – *Preponderance of the evidence* that joint custody and equally shared parenting time is in the *child’s best interests*. KRS 403.270(2)
 - If the court deviates from equal parenting time, it must create a schedule that maximizes time with each parent and is in the child’s best interest, considering evidence and the factors listed in KRS 403.270(2) as well as the “safety and well-being of the parties and of the children” in KRS 403.315.
 - Even if a parent or de facto custodian is not awarded custody and parenting time, they are still entitled to reasonable visitation rights unless the court finds that visitation would seriously endanger the child. KRS 403.320.
 - The Court can only modify visitation rights if it’s in the child’s *best interests* **and** the current visitation *seriously endangers* the child’s well-being.
 - Family lawyers or their clients sometimes misuse the DV process for protective orders or temporary sole custody. Similarly, CPS prevention plans can infringe on parental rights before a DNA petition. Jefferson Family Court judges are often reluctant to enter temporary orders with quick trial dates, leaving no protection for urgent CI cases that may not reach the level of harm in DNA or DV cases.

In child custody cases, especially those involving potential harm, lawyers must ensure judges apply correct legal standards and document their reasoning. Expert testimony and evidence are crucial in child abuse cases, and attorneys must be prepared to challenge or validate expert conclusions, particularly in high-conflict cases where manipulation may occur.

Best Practices for Introducing Expert Testimony and Reports

Expert Qualifications and Methodology
Before agreeing to or allowing the court to appoint an expert, verify their credentials and family court experience, especially their understanding of relevant legal standards. Address any discrepancies between their definition of “harm” and legal standards with the court before their testimony or reports.

To identify inconsistencies and bias, subpoena

redacted reports of similar cases, scrutinize the expert’s methodology and confirm whether the findings have been peer-reviewed. Additionally, request demographic data of the expert’s cases and schedule depositions early to obtain these documents. The American Bar Association has an informative article with best practice reminders for discovery and cross-examination when a child-abuse physician is involved (<https://www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/questions-lawyers-should-ask-child-abuse-pediatricians/>). These tips can be used to challenge an expert who is determining if a parent should have restricted custody or parenting time due to harming a child.

Complete this before the expert evaluates your client. Frequent appearances in family court do not exempt anyone from a thorough review by effective counsel.

Interviews of Children

Whether children in your cases are being interviewed as part of a forensic investigation or in regular therapeutic settings, these conversations are crucial pieces of evidence in abuse allegations. In DNA cases, there are strict protocols for such forensic interviews to be conducted. When there are simply “concerns,” those protocols for the parents, children and interviewer disappear. Regardless of the reason for the interview, practitioners should challenge whether it has been conducted using best practices like:

- The **National Institute of Child Health and Human Development (NICHD)** interview protocol.
- **Avoid leading questions** that could influence a child’s responses.
- Video recording of interviews to ensure transparency and prevent misinterpretation.

Attorneys should request a transcript and recording of any forensic interview and be prepared to challenge improper techniques. If an interview was suggestive, attorneys should seek the *exclusion of unreliable statements*.

If a child did not immediately disclose abuse, an attorney proving the allegations should bring in *trauma experts* to explain the psychological reasons behind delayed reporting. Attorneys defending are in the unattractive, but necessary, role of impeaching the child witness. Provide school records, video clips and text messages showing a loving parent-child relationship. Attorneys should investigate whether the accuser has a history of making unfounded claims, regardless of whether it is the child or another parent.

Medical Evaluations

The article shared by the American Bar Association handles this topic more thoroughly.

(Continued on next page)



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The main takeaways for ensuring medical evaluations are admissible and given due weight before the Court are as follows:

- Ensure the medical expert *considered all possible explanations* for injuries. Review whether the expert consulted with other medical professionals with more expertise or the child's treating specialist for potential explanations and documented why any were ruled out.
- Challenge reports that *lack clear evidence of abuse* or rely on assumptions rather than scientific conclusions.
- Use independent medical experts if the original report appears biased or incomplete.

Overcoming Bias in Reports and Evaluations

Bias in child abuse cases can arise from several sources, including confirmation bias, parental alienation claims and institutional bias. *Confirmation bias* occurs when an evaluator prematurely assumes abuse occurred without adequately considering other potential explanations for a child's behavior or injury. To combat this, attorneys should meticulously examine the evaluator's raw notes and methodology and rigorously cross-examine them on whether they genuinely explored alternative explanations. *Parental alienation claims*, while sometimes legitimate, can also lead to the dismissal of valid abuse allegations. Attorneys must be able to differentiate between

genuine abuse and manipulative parental alienation by carefully analyzing behavior patterns and seeking independent testimony.

Institutional bias can emerge when agencies like Child Protective Services are predisposed to particular findings or outcomes. Attorneys should be prepared to challenge unfair assessments and prevention plans, with specific attention to scrutinizing medical records and hospital policies for evidence of bias. Additionally, the lack of peer-reviewed methodologies in many agency assessments can be a point of contention that attorneys can leverage. By remaining vigilant and proactive in addressing these potential biases, attorneys can play a crucial role in ensuring that child abuse cases are adjudicated fairly and justly.

Protecting and Obtaining Evidence in High-Conflict Custody Cases

Documenting Interactions and Incidents
Experienced family law practitioners know strategies to preserve and obtain evidence. As a reminder or starting point for our newest members, here are some methods to prioritize. In high-conflict custody cases, clients should keep a *detailed journal* of all parenting interactions, child's behavioral changes and concerning incidents for trial. *Screenshots* of text messages, emails and social media interactions should include dates and names and be saved to a cloud service. Don't delete messages or message threads that could serve as evidence. Attorneys

should be prepared to obtain phone records and social media posts if necessary and consult with *IT experts* to recover deleted messages.

As technology and discovery methods evolve, consult with the LBA to request relevant CLE opportunities or connect with members of other sections that may have resources that can assist you in preparing evidence.

Working with Third-Party Witnesses
Third-party witnesses, such as teachers, daycare providers and family friends, can provide *objective corroboration* of abuse or misconduct allegations. Obtain witness statements, including full names, phone numbers and relationships to the family and child. Subpoena records from schools, pediatricians and therapists. Obtain police reports or CPS records when available; do this quickly to avoid delays. Attorneys should interview daycare workers or babysitters who observed the parent-child dynamic.

Family Court appoints GALs and FOCs to investigate and protect children's interests. Attorneys should ensure access to all evidence while protecting their client's interests and challenge them if they act outside their scope. A GAL or FOC who often represents children on the DNA or DV docket should be asked to identify the appropriate standards of proof and legal tests for the specific case and facts when corroborating or denying allegations of abuse or neglect. Parent attorneys should also prepare to challenge unfavorable reports through cross-examination and thoroughly reviewing

all materials used to prepare the report.

Conclusion

In Jefferson County Family Court, child abuse cases require attorneys to carefully navigate forensic evidence, expert testimony and potential biases in evaluations, especially in high-conflict custody cases. Ensuring that expert witnesses and the child's treating professionals adhere to best practices and challenging flawed expert opinions are crucial for effective advocacy and prioritizing the child's best interests. Family law attorneys must address biases and procedural errors that could impact custody decisions by presenting a well-supported, evidence-based case.

Melina Hettiaratchi is a lawyer with a strong background in special education and advocacy. She earned a degree in Early Childhood Education from Mercer University, specializing in education equity and special education instruction, before pursuing law at UC San Francisco College of the Law. Her legal career focuses on holistically supporting families by consulting on special education matters, facilitating connections to resources and advocating in court and schools when necessary. Now practicing in Louisville at Helmers+Associates, she leads in family law and community advocacy, earning recognition as a Super Lawyers Rising Star in 2024 and 2025 and the LBA's Robert and Frank E. Haddad Young Lawyer Award in 2023. ■



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Deciphering the Drama: Legal Challenges to the Corporate Transparency Act

Drew Teague

The Corporate Transparency Act (CTA) took effect on January 1, 2024, and has impacted millions of businesses across the country. Enacted in 2021 as part of a more significant 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. However, the CTA has had legal troubles since its implementation. This article will provide a high-level overview of the ongoing legal fights of the CTA and its current status as of the writing of this article.

The CTA Declared Unconstitutional

Before the CTA took effect, the National Small Business Association (NSBA) and one of its members, Isaac Winkles, filed a lawsuit in November of 2022, challenging the constitutionality of the CTA—the litigation as filed in the Northern District of Alabama. On March 1, 2024, Judge Liles C. Burke granted NSBA and Winkles summary judgment. The Court concluded that the CTA was unconstitutional because it exceeded Congress' enumerated powers. However, the Court's ruling only permanently enjoined the U.S. government from enforcing the CTA against the NSBA and Winkles. A nationwide injunction was not issued as part of Judge Burke's judgment.

In light of the judgment, the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) indicated that everyone beyond the plaintiffs should assume the CTA and FinCEN continue to apply to them. This meant that any entities formed after July 1, 2024, should have their beneficial ownership reported within 90 days of the entity's formation (subject to the 23 exemptions of the CTA) and all entities formed on or prior to December 31, 2023, should have their beneficial ownership reported by January 1, 2025.

Texas Top Cop Shop Lawsuit

Texas Top Cop Shop, Inc. et al. filed litigation against the U.S. government on May 28, 2024, in the Eastern District of Texas. The plaintiffs in this litigation alleged the CTA was unconstitutional because it exceeds Congress's authority over the states and violates the Tenth Amendment. The plaintiffs claim that the government has historically left matters relating to business entities to the states, and the CTA disrupts that balance by imposing federal standards. The plaintiffs alleged the CTA violated the First Amendment by improperly compelling speech and burdening association. By requiring disclosure of beneficial ownership information (BOI), the CTA infringes on the right of anonymous association, which is protected under the First Amendment.

On December 3, 2024, the Court issued a preliminary injunction in favor of the plaintiffs. This injunction enjoined the government from enforcing the CTA and the reporting rule nationwide. The Court's injunction also issued a stay on the January 1, 2025, reporting deadline. The order indicated that the CTA and the reporting rule are "likely unconstitutional," and thus, the preliminary injunction was warranted.

On December 23, 2024, the 5th Circuit Court of Appeals granted the government's motion to stay the injunction. The Court of Appeals' order temporarily stayed the injunction and obligated entities to report their beneficial ownership with FinCEN. After the appellate court stayed the injunction, FinCEN updated the reporting deadline to January 13, 2025.

However, the stay was short-lived. The merits panel, on December 26, 2024, vacated the December 23, 2024 stay. FinCEN indicated that filing at the time was voluntary. The government appealed to the U.S. Supreme Court (SCOTUS) on January 1, 2025. In its petition, the government sought an emergency stay of the injunction. The government argued that the injunction disrupts efforts to combat financial crimes and protect national security, among other things. Justice Samuel Alito gave the plaintiffs until January 10, 2025, to respond to the government's motion.

On January 23, 2025, SCOTUS issued an order granting the government's motion for an emergency stay of the district court's injunction. The stay will remain in place while the case is appealed on the merits. However, other litigation has resulted in separate injunctions, to which SCOTUS's Texas Top Cop Shop ruling does not apply.

On February 6, 2025, the government filed its brief with the 5th Circuit. This appeal continues on the merits and will likely be appealed to SCOTUS regardless of the 5th Circuit's ruling.

A Second Injunction Halts CTA Reporting Requirements Despite SCOTUS Top Cop Ruling

Samantha Smith and Robert Means filed a separate lawsuit in the Eastern District of Texas on September 12, 2024. Their lawsuit claimed the CTA requirements infringed upon the plaintiff's rights to privacy due to the disclosure of sensitive personal information and exceeded the government's authority under the constitution. On January 7, 2025, the Court issued a separate nationwide injunction on the enforcement of the CTA reporting regulations and enjoined enforcement of the CTA against the plaintiffs only. In its ruling, the Court indicated uncertainty with the Top Cop injunction, as there were differences in the arguments presented in the two cases, and

the parties were unique, so it analyzed the plaintiffs' motion for an injunction. The Court indicated that the CTA was "unprecedented in its breadth and expands federal power beyond constitutional limits."

The government appealed the injunction on February 5, 2025, seeking the 5th Circuit to stay enforcement of the injunction pending appeal. The same day, the government filed a motion, pending appeal, to stay the temporary injunction granted by the trial court. On February 18, 2025, the appellate court stayed its temporary injunction, meaning the government can enforce the CTA throughout the appeals.

In light of the court's stay, FinCEN issued guidance on February 19 extending the reporting deadline until March 21, 2025, for all companies. However, it noted that it may further modify the existing deadlines. In the guidance, FinCEN also indicated that it intends to revise the reporting requirements to reduce the burden on small businesses, which are lower-risk.

Shortly after making this statement, FinCEN said it would not enforce the March 21, 2025, reporting deadline and instead would issue further guidance on March 21, 2025.

Additional Legislation

The U.S. House of Representatives passed the Protect Small Businesses from Excess Paperwork Act of 2025 (H.R. 736) on February 10, 2025. This law would extend the reporting deadline for entities formed before 2024 to no later than January 1, 2026. Sen. Tim Scott (R-SC) introduced the bill in the Senate on February 12, 2025. The bill had 10 cosponsors and was referred to the Banking, Housing, and Urban Affairs Committee.

Future of the CTA Uncertain

With the appeals process ongoing in both the Top Cop and Smith cases, the future of the CTA remains uncertain. SCOTUS is likely

to take up these cases and potentially others and ultimately determine the fate of the CTA. However, as is typical with ongoing appeals, it will take time, even on an expedited basis, for the Courts of Appeal to have briefings, oral arguments and issue a ruling and for the process to repeat at SCOTUS.

While the Top Cop and Smith lawsuits are being appealed, other litigation will likely be initiated around the country, potentially further disrupting the reporting requirements/deadlines of the CTA. In addition to the potential injunctions from courts, legislation in the 119th Congress could further alter reporting deadlines should the SCOTUS uphold the CTA as constitutional. All those required to report BOI for entities should stay updated on changes to the reporting deadlines on FinCEN's website.

Lastly, on March 2, 2025, the Treasury Department indicated that it would suspend enforcement of the CTA against U.S. citizens and domestic reporting companies. In the statement, it indicated the Treasury Department would not enforce any penalties or fines associated with BOI reporting under existing deadlines but would also no longer enforce penalties or fines against U.S. citizens or domestic reporting companies or the beneficial owners after the forthcoming rule changes.

The Treasury Department has also indicated that it intends to implement further rules to narrow the scope of the rule to foreign reporting companies only.

Drew is a real estate attorney licensed in Kentucky with a national practice, representing lenders in commercial real estate financing. He is currently an Associate at Frost Brown Todd LLP and Vice-Chair of the LBA's Corporate Law Section. ■



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A JOINT CLE PROGRAM BY THE LOUISVILLE BAR ASSOCIATION AND KENTUCKY JUSTICE ASSOCIATION. SPONSORED BY THE FORGE COMPANIES

Lien Resolution, Government Benefits and How to Make the Settlement Process Easier

Tuesday, April 15

Join us for this comprehensive two-hour seminar designed to enhance your mediation advocacy skills and maximize recovery for your clients. Learn essential strategies for navigating lien resolution and settlement planning from industry experts.

Subrogation and Lien Resolution 101

Presented by Clayton Merschbrock, Zip Liens. Master the fundamentals of lien resolution in personal injury cases and prepare effectively for negotiations. This session provides practical strategies for resolving various types of liens—including ERISA, FEHBA, Medicare, Medicaid, TriCare, VA and hospital liens—while offering valuable insight into governing legal frameworks. Learn to navigate the lien resolution process efficiently, provide better client support and maximize recovery.

The Crossroads of Estate, Ethics and Settlement Planning

Presented by Peter Wayne, The Forge Companies. Implementing effective settlement planning strategies ensures not only case resolution but also your client’s long-term financial stability. This session covers settlement planning, government benefits, trust planning and administration, the ethics of trust administration and practical tips for lien resolution that will streamline litigation resolution and final distribution of settlement proceeds.

Register today to secure your spot for this valuable professional development opportunity!

Speakers: Clayton T. Merschbrock, Zip Liens and Peter H. Wayne, IV, The Forge Companies

Time:	11 a.m. - 2 p.m. — Program
Place:	LBA Bar Center
Price:	\$90 LBA Members \$81 Sustaining Members \$15 Paralegal Members \$15 for qualifying YLS Members \$25 Solo/Small Practice Section Members, Government or Non-Profit Members \$180 Non-members
Credits:	2.0 (Including 1.0 Ethics) CLE Hours — Pending

MESA ONE-HOUR

From Tribbles to Trials: Tackling Litigation Using AI

Wednesday, April 23

This engaging and practical workshop will guide you through real-world applications of AI, from streamlining discovery processes to crafting persuasive arguments and enhancing case strategy. Using the iconic humor and insights you’ve come to expect, this session will demonstrate how to save time, increase efficiency and achieve better outcomes for your clients—all while tackling the tribbles of modern legal practice.

Whether you’re a seasoned litigator or just beginning to explore the potential of AI, this session will provide the tools and inspiration to boldly litigate where no lawyer has gone before!

Speaker: Sean Carter, MESA CLE

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

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

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.

All credit card payments are subject to a 3% processing fee.

DAY-LONG CONFERENCE

Future-Proof Practice: Marketing and Technology Essentials for Legal Professionals

Wednesday, April 16

Technology is evolving faster than the law —attorneys who hesitate to adapt risk falling behind. Without a strong personal brand, potential clients may overlook you. Without a thought leadership strategy, your expertise remains invisible. Without leveraging AI and productivity tools, inefficiencies can drain billable hours. This conference equips you with essential MarTech strategies to enhance your reputation, attract clients and streamline your practice. Stay ahead of the competition, safeguard your professional standing and future-proof your career by embracing the technology and marketing strategies shaping the modern legal landscape. Don’t get left behind—attend and stay ahead.

More information is available at www.loubar.org.

LBA REAL ESTATE LAW SECTION TWO-HOUR

Hot Topics of Commercial Real Estate

Wednesday, April 23

Join us for an essential continuing legal education program featuring Jennifer Gaytan of Fidelity National Financial as she explores critical and emerging issues facing commercial real estate practitioners.

This comprehensive seminar will address four key areas of concern:

- **Vacant Land Fraud:** Understand the latest schemes, prevention strategies and legal remedies in this increasingly problematic area.
- **Tax Credit Transactions:** Navigate the complexities of structuring, documenting and closing deals involving various tax credit programs.
- **FIRPTA (Foreign Investment in Real Property Tax Act):** Master the withholding requirements, exemptions and compliance strategies for foreign investors.
- **Mortgage Modifications and Workouts:** Develop effective approaches to loan restructuring and resolving distressed assets in today’s market.

Whether you’re a seasoned real estate attorney or new to commercial practice, this program will provide practical tools you can implement immediately. Earn CLE credit while enhancing your expertise in these hot-button issues shaping commercial real estate law today. Don’t miss this opportunity to strengthen your practice and better serve your clients.

Speaker: Jennifer Gaytan, Fidelity National Financial

Lunch will be provided by Fidelity National Financial for those attending in person.

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

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

MEETING ANNOUNCEMENTS

Association of Legal Administrators

The monthly chapter meeting of the Kentucky Association of Legal Administrators will be held in person and via Zoom on Thursday, April 10, beginning at noon at the office of Frost Brown Todd in Louisville (400 W. Market St., Ste. 3200) and Lexington (250 W. Main St., Ste. 2800). Please RSVP by registering online at www.ky-ala.org.

Any questions, please contact Deana Lively, dlively@dbllaw.com. ■

LBA Committee Meetings

CLE Committee
Wednesday, April 9 at 10 a.m., via Zoom

Diversity & Inclusion Committee
Wednesday, April 9 at 4 p.m., via Zoom

Health & Wellness Committee
Thursday, April 17 at noon, via Zoom

To register for any of the above LBA committee meetings, contact Lisa Anspach, lanspach@loubar.org. ■

MESA ONE-HOUR

I Think, Therefore I Am ... Biased: How Implicit Biases Manifest in the Legal Profession

Tuesday, April 29

The human brain is wired to recognize patterns and make generalizations, even those based on faulty or incomplete information. Contrary to popular opinion, lawyers are human and therefore, we are just as susceptible to forming biases and acting upon them. And it does not require that we harbor ill will or animus towards other people. In fact, most often, our biases are not even our own but rather those that have been taught to us.

In this eye-opening presentation, the presenter will use videos to show lawyers just how easy it is to form these biases, how they manifest themselves in the way we treat clients, colleagues and opposing parties, and most importantly, how we can reduce the effect of these biases by recognizing them.

Speaker: Sean Carter, MESA CLE

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

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

MESA ONE-HOUR ETHICS

Ethical Jeopardy: A CLE Game Show

Wednesday, April 30

In Ethical Jeopardy, you will compete against lawyers from across the country in answering legal ethics-related questions, such as the one below:

Which of the following is NOT grounds to disclose client information?

- To prevent death or harm to another person
- To defend oneself against civil, criminal or disciplinary charges
- To impress prospective clients
- To prevent fraud

Through the polling feature on our platform, lawyers will be allowed to make their selections. At the end of the program, each participant will receive their score, along with their “player ranking.” Oh yeah, and you just might learn something in the process.

Speaker: Sean Carter, MESA CLE

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

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

MESA ONE-HOUR ETHICS

Who Wants to be Disbarred?: A CLE Game Show

Wednesday, April 30

In this seminar, you will compete against lawyers from across the country in answering legal ethics-related questions, such as: Which of the following is NOT grounds to disclose client information?

- Being related to the client
- Going to the same high school as the judge
- Being close friends with opposing counsel
- Lending money to the client

Through the polling feature on our platform, lawyers will be allowed to make their selections. At the end of the program, each participant will receive their score, along with their “player ranking.” Oh yeah, and you just might learn something in the process.

Speaker: Sean Carter, MESA CLE

Time: 2:15 p.m. - 3:15 p.m. — Program
Place: Zoom
Price per hour: \$55 LBA Members | \$50 Sustaining Members | \$25 Paralegal Members | \$125 Non-members
Credits: 1.0 CLE Ethics Hour — Pending

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

MESA ONE-HOUR ETHICS

Discipline or No Discipline (Episode 401): A CLE Game Show

Wednesday, April 30

In this interactive game modeled after the popular TV game show, you will be presented with 30 briefcases. Each briefcase contains the details of an actual disciplinary case that was filed against a U.S. lawyer. When you select a case, you will hear the facts of the case and then, as counsel for the respondent, you will be offered a “deal” (e.g., a reprimand, 1-year suspension, etc.). You will then be asked to accept the proposed discipline or to reject it, in hopes that the actual sanction imposed was less severe than the proposed sanction. If you choose correctly (accepting a good deal or rejecting a bad deal), you will be awarded the points contained in that briefcase. At the end of the hour, you will see how your score compares to other lawyers across the country.

Speaker: Sean Carter, MESA CLE

Time: 3:30 p.m. - 4:30 p.m. — Program
Place: Zoom
Price per hour: \$55 LBA Members | \$50 Sustaining Members | \$25 Paralegal Members | \$125 Non-members
Credits: 1.0 CLE Ethics Hour — Pending

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

LBA REAL ESTATE LAW SECTION ONE-HOUR

1031 Exchanges: Just the Basics

Wednesday, May 14

People pay federal and state taxes when they gain money from the sale of investment property. However, in an even trade, or even if the investor trades up in value, there is no income to pay taxes. This logic is the basis for Code Section 1031 of the IRS Tax Code. The IRS restricts the forms of trading to “like-kind” property and further defines the conditions under which a tax-deferred exchange occurs. This course will discuss the rules of Section 1031 of the IRS Tax Code and how to defer capital gains taxes by trading one investment for another.

Speaker: Miranda Byrd, First American Exchange Company

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

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

LBA ONE-HOUR ETHICS CLE WITH NATIONAL SPEAKER STUART TEICHER

Ted Lasso and Attorney Ethics: Lessons in Life, Law and Leadership

Thursday, May 29

Believe in the power of ethical practice! What can a football coach from Kansas teach attorneys about professional ethics? As it turns out, quite a lot! Join us for this unique and engaging program featuring the renowned Stuart Teicher, the CLE Performer, as he draws surprising parallels between the hit show, “Ted Lasso” and the Rules of Professional Conduct. Through iconic moments from season one, discover how Ted’s optimism, integrity and leadership style offer valuable insights for legal practitioners. You’ll explore how Ted’s approach to communication mirrors ethical obligations, how Danny Rojas’ enthusiasm relates to professional competence and how Coach Beard’s loyalty demonstrates proper supervisory responsibilities.

This isn’t just another ethics program — it’s an entertaining and memorable journey that will transform how you view your professional responsibilities. Whether you’re a Ted Lasso superfan or new to the show, you’ll walk away with practical ethical guidance wrapped in humor and heart.

Speaker: Stuart Teicher, CLE Performer

Time: Noon – 1 p.m. — Program
Place: Zoom
Price: \$45 LBA Members | \$40 Sustaining Members | \$15 Paralegal Members | \$15 for qualifying YLS Members | \$25 Solo/Small Practice Section Members, Government or Non-Profit Members | \$90 Non-members
Credits: 1.0 CLE Ethics Hour — Pending

LBA DAY-LONG CLE WITH NATIONAL SPEAKER JOEL OSTER

Trials of the Centuries: From Murder to Verdict

Friday, May 30

Murder trials capture Americans’ attention like no other. It is 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 people responsible who commit these heinous acts. But does the process always work? Do the innocent get convicted? Do the guilty go free?

This program 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. In the process, this CLE puts the legal system on trial.

Speaker: Joel Oster, Comedian of Law

Time: 9:45 a.m. - 4:45 p.m. — Program
Place: Zoom
Price: \$270 LBA Members | \$540 Non-members
Credits: 6.0 (Including 1.0 Ethics) CLE Hours — Pending

LBA ONE-HOUR ETHICS CLE WITH NATIONAL SPEAKER STUART TEICHER

Taylor Swift is a Genius: Even About Legal Ethics

Thursday, June 5

Join renowned CLE presenter Stuart Teicher, Esq., for an engaging exploration of legal ethics through the lens of Taylor Swift's savvy legal maneuvers. This unique program connects professional responsibility rules to real-world examples from Swift's career, from copyright battles to business decisions. You'll discover how her strategic choices illuminate key ethical principles, including competence, frivolous claims, diligence, pro bono obligations and professional conduct. Whether you're a "Swiftie" or not, this innovative program will help you master crucial ethics rules while keeping you entertained. Don't miss this opportunity to turn legal ethics education into a chart-topping experience!

Speaker: **Stuart Teicher**, CLE Performer

Time: Noon – 1 p.m. — Program

Place: Zoom

Price: \$45 LBA Members | \$40 Sustaining Members |
\$15 Paralegal Members | \$15 for qualifying YLS Members |
\$25 Solo/Small Practice Section Members, Government or
Non-Profit Members | \$90 Non-members

Credits: 1.0 CLE Ethics Hour — *Pending*

**LBA PROBATE & ESTATE
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Annual Estate Planning Conference

Friday, June 6

The Estate Planning Conference is an informative and engaging learning experience that will enhance your knowledge of estate planning. Designed for and by CPAs and attorneys, the program is designed to keep you updated with the latest information you need to serve your clients.

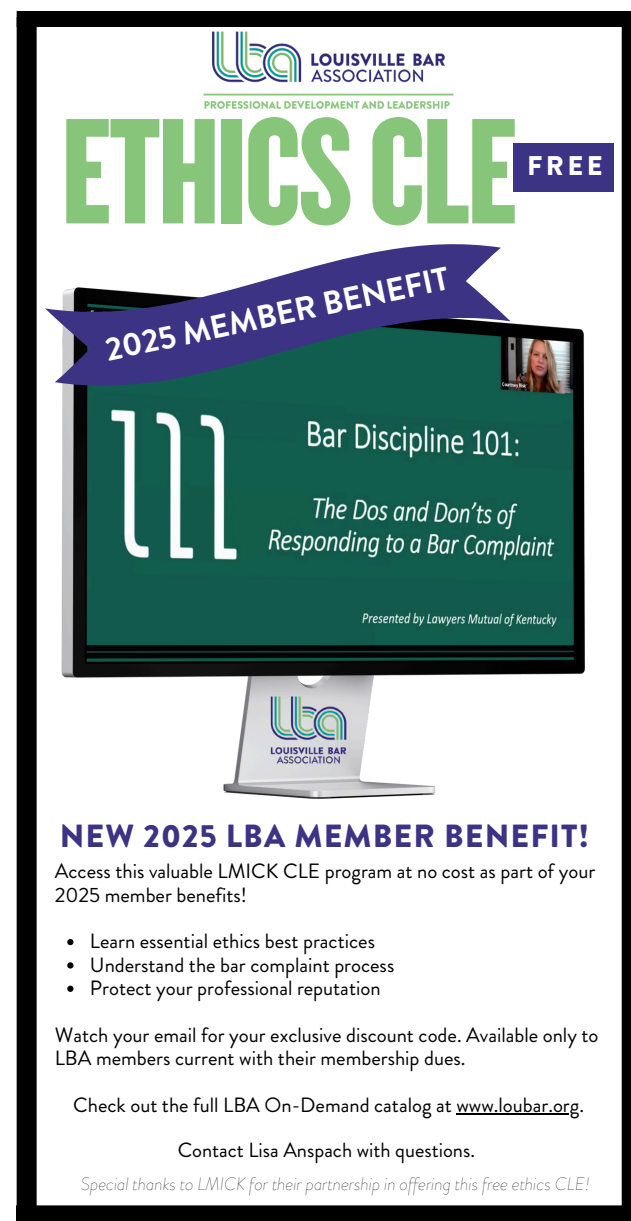
More information is available at www.loubar.org.

FAMILY LAW DAY-LONG CONFERENCE

SAVE THE DATE!

Thursday, September 18

More information is to be announced soon!



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U.S. Supreme Court Justice Sonia Sotomayor awarded highest honor from UofL Brandeis School of Law

“If you start from the proposition that most people have good in them, it’s easier to find common ground.” – U.S. Supreme Court Justice Sonia Sotomayor

The University of Louisville Louis D. Brandeis School of Law presented the Brandeis Medal to U.S. Supreme Court Justice Sonia Sotomayor on Feb. 5, during a reception at Louisville’s Marriott Hotel Downtown.

The Brandeis Medal, awarded annually since 1983, honors a recipient chosen for their devotion to economic, social or political justice and for advancing the cause of public service in the legal profession. Sotomayor, an alum of Princeton University and Yale Law School, is the seventh Supreme Court justice honored with the medal, following Harry Blackmun, Stephen Breyer, Ruth Bader Ginsburg, Elena Kagan, Sandra Day O’Connor and John Paul Stevens.

“We selected Justice Sotomayor to receive the Brandeis Medal because she brings tremendous dignity, respect and compassion to the bench. She is a fierce defender of liberty,” said Dean of Louis D. Brandeis School of Law Melanie B. Jacobs. “Every student who is in this room who was at the law school today and got to interact with Justice Sotomayor is nodding and thinking of the way in which she touched them.

The “people’s justice”

Appointed by Barack Obama in August 2009, Sotomayor became the first Hispanic and third woman to serve on the high court. Aptly, Sotomayor was introduced at the Brandeis event by Enid Trucios-Haynes, the first Hispanic law professor at UofL, and like Sotomayor, a native New Yorker from the Bronx. Trucios-Haynes said Sotomayor has served as a personal mentor and role model for the marginalized, underserved and disadvantaged in her 15 years on the bench, writing impassioned rulings and dissents on issues of race, gender and ethnic identity.

Sometimes dubbed “the people’s justice,” Sotomayor is known for decisions such as legalizing same-sex marriage and upholding the Affordable Care Act, as well as her concern for the rights of criminal defendants and criminal justice reform.

In providing greetings from the Commonwealth of Kentucky, Gov. Andy Beshear said the Supreme Court holds “a sacred duty to rule without bias or favor to any person or party.” The justices of the Supreme Court are “the very foundation of a functional system of government, one that’s designed to serve the people and not just the powerful.”

UofL President Kim Schatzel welcomed Sotomayor who then participated in a question-and-answer session with Jacobs.

The justice spoke candidly about her upbringing in an impoverished, high-crime housing project in New York City. She also discussed the positive influence of her grandmother and how life experiences had informed her philosophies on law and life.

“I felt loved, I never felt poor,” she said. “It was a hard life, but it was a life filled with joy. Poor people are not bad people, they’re just poor, but many people don’t understand the difference. They think poverty is your own fault.”

The law is not black and white

Sotomayor described the delicate balance of interpreting the law, noting how she has encountered defendants who made bad choices, yet were willing to change their behavior. Other times, she met defendants unwilling to see their wrongs.

“Our judgment as a society must understand this difference,” she said. “That’s what my childhood taught me. The law is not black and white, it’s gray, and in that gray area is where judges and lawyers work.”

When asked how she has been successful in considering both sides of an issue, the justice responded, “We have to have balance in facing our problems, and the only way to have that balance is to be open to both sides of the conversation.

“Justice (Clarence) Thomas and I, for example, are well-known for frequently being on the opposite side of issues, but no one is more loyal to the people he works with and loves.

“The fundamental difference between us is that he believes every person is capable of lifting themselves up by the bootstraps, while I understand from my life experiences that some people need help getting their boots up so they can reach their bootstraps,” Sotomayor said. “If you start from the proposition that most people have good in them, it’s easier to find common ground.”

On another topic, Jacobs asked Sotomayor what is needed to restore eroded trust in the judiciary.

“The court would garner better support if it acted more slowly in undoing precedent,” said Sotomayor. “If we as a court go too far ahead of people, our legitimacy is going to be questioned, and I think the immunity case is one of those situations. I don’t think Americans have accepted that anyone should be above the law in America -- even the president.”

Inspiring the next generation

While in Louisville, Sotomayor met with law students, a rare opportunity for the aspiring at-

torneys. She also visited students in the Central High School Law and Government Magnet Program, a UofL Signature Partnership program in which high schoolers are taught by Brandeis School of Law students to encourage minority participation in the legal profession.

Third-year law student Andi Dahmer explained how special it was to hear Sotomayor’s lived experiences come to life, and asked the justice this question: In a period of such uncertainty both domestically and abroad, what is one thing that brings you hope for the future with regard to the rule of law?

“In response, without missing a beat, she looked at us and said ‘you,’ meaning the youth, the students in the room,” Dahmer said. “I thought it was a very profound answer, and I was so honored that she said students of our generation give her such hope.”

Dahmer also said she was awestruck by the friendly presence of Justice Sotomayor.

Carcyle Barrett, also a third-year law student, felt a deep connection with Sotomayor’s journey in terms of challenges and aspirations. Both Barrett and Sotomayor hail from working class families in New York with migrant or immigrant parents.

“She had to navigate spaces where her potential was doubted by people, but in her persistence, she didn’t let anyone stop her,” said Barrett. “It resonates for me that her presence and diverse representation on the Supreme Court is needed to help shape the law.”

Further, Barrett said she was encouraged by the justice’s comments that success isn’t just about talent.

“She told us it’s about resilience, authenticity and staying true to your values,” Barrett said. “I think Justice Sotomayor’s ability to remain grounded and connected to her roots while holding on to her position is a reminder that you can succeed without compromising who you are.” ■



*Presentation of the 2025 UofL Brandeis Medal to U.S. Supreme Court Justice Sonia Sotomayor.
Photo courtesy of University of Louisville.*



Bench & Bar Social

A big thank you to everyone who attended this year's Bench & Bar Social! It was a fantastic evening of networking, reconnecting and celebrating our vibrant legal community.

We also appreciate those who participated in the LBF Raffle—your support is crucial to funding grantmaking efforts and advancing justice. Thanks to you, the event was a tremendous success!

We're grateful for this incredible community and look forward to seeing you at our next gathering!



Raffle Prize Winners

Congratulations to the winners of this year's raffle prizes

Bruce Brightwell
was the winner of the
2025 Grand Prize:
"The Charm and Cuisine of
Savannah Awaits!"

Janet Jakubowicz
was the winner of the 2nd
Prize: "A Barrellful of Brew
and Stash of Cash!"

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Negligence in Road Construction and Maintenance

Ron Johnson

In the world of tort law, litigation involving injuries sustained in a motor vehicle collision might be the most common. The usual scenario involves at least two vehicles, and fault largely being decided by which is listed as "Unit 1" in the accident report completed by law enforcement. However, there is a third factor in many motor vehicle accidents that is often ignored by attorneys whether they are on the defense or plaintiff side of the case. That is the condition of the roadway itself. This is especially true in single vehicle accidents.

A shockingly high percentage of motor vehicle accidents occur, at least in part, because of the dangerous conditions of the roadway. These can take the form of negligently designed or maintained traffic control zones, defectively constructed roads or improperly placed or maintained traffic control devices. Practitioners would be well advised to thoroughly investigate if any of these factors played a role causing or contributing to the motor vehicle accident they are litigating.

Negligence in Traffic Control Zone

A traffic control zone is a designated area of a highway where temporary traffic control devices are used to guide drivers and ensure safety. These zones are used for construction, maintenance or other work activities. These can also be referred to as temporary traffic control zones because they only exist for the duration of the work being performed on the road or adjacent area.

The Manual on Uniform Traffic Control Devices (MUTCD) is the national standard for all traffic control devices used on public roads in the United States. It is issued by the Federal Highway Administration (FHWA) and is regularly updated to reflect the latest best practices and technologies in traffic control. If a motor vehicle accident occurs within a temporary traffic control zone, the MUTCD is the best source to consult to determine if the zone was properly configured and whether it played a role in the accident.

There are five parts of any traffic control zone. Those are:

1. The advanced warning area: This is the first section of the traffic control zone and is located before the transition area. It is used to alert drivers of the upcoming work zone and to give

them time to adjust their speed and position.

2. The transition area: This is the section of the traffic control zone that separates the advanced warning area from the work area. It is used to guide drivers into the proper lane and to direct them around any obstacles or hazards that may be present in the work area.
3. The buffer area: This is the section of the traffic control zone that separates the work area from the adjacent traffic lanes. It protects workers and creates a physical barrier between the work area and moving traffic. The buffer area may include devices such as barriers, cones and drums.
4. The work area: This is the section of the traffic control zone where the actual work is taking place. It is essential to keep this area clear of any unnecessary personnel or vehicles to ensure the safety of workers and drivers. Traffic control devices, such as traffic signs and signals, may guide drivers through the work area and alert them to any hazards.
5. The termination area: This is the final section of the traffic control zone and is located after the work area. It is used to alert drivers that they are leaving the work zone and to guide them back into the regular traffic flow.

If anyone of these components is designed, arranged or maintained in a way that violates the standards set forth in the MUTCD then the contractor responsible for the traffic control zone may be responsible, in part or in whole, for the motor vehicle collision in your case.

As an example, in a case handled by our firm, the advanced warning area and the work area were responsible for a collision resulting in a death. The work area required a lane closure on a two-lane road. This meant that traffic going in opposite directions had to alternate use the remaining lane. This was achieved using a portable traffic signal set on a timer to give northbound traffic a red light to stop while southbound traffic used the single available lane, and then the reverse after a set amount of time. The MUTCD set forth clear standards governing how

(Continued on next page)

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such a work area should be constructed and changed as traffic volumes changed throughout the day.

The problem arose when rush hour traffic drastically increased the volume of southbound traffic, and no one changed the timing of the portable traffic signal to accommodate that change in volume. The result was that the southbound traffic began to back up for more than a mile, which put the end of the queue well past the first advanced warning sign. This meant that southbound traffic in a 55-mph zone was likely to suddenly and unexpectedly encounter stopped traffic. This should never happen in a traffic control zone.

In this case, this happened just over a slight hillcrest in the road, and a pick-up truck fatally struck a man on his motorcycle stopped at the end of the queue. The contractor responsible for the traffic control zone failed to follow the MUTCD guidelines. The negligence in the maintenance of the traffic control zone was the substantial factor in causing the collision and served as a powerful defense of the driver of the pick-up truck, which was listed as “Unit 1” in the accident report.

Defectively Constructed Roads

When roadways in Kentucky are built or resurfaced, the MUTCD is still a source of guidelines and standards, but the Project Proposal from the Kentucky Transportation Cabinet (KYTC) and KYTC *Standard Specifications for Road and Bridge Construction* are the two sources that will most directly govern how the roadway is to be constructed or repaved. In a case where the condition of the roadway itself seems to have played a role in causing the motor vehicle collision, practitioners should obtain a copy of the Project Proposal for that job from the KYTC via an open records request.

The most common, and often most dangerous, defect in a road is a vertical face at the road edge that exceeds three inches. Usually, these are found on two-lane roads without a paved or gravel shoulder. When one of these roads is resurfaced with asphalt it increases the height of the road edge. This is especially true if the contractor does not first mill the existing asphalt, a process of scraping the existing layer of asphalt off before laying down new asphalt. While milling is required in areas where there are curbs, gutters or manhole covers, it is often omitted in long stretches of rural roads without those features.

When a road is resurfaced without milling, it is crucial that the contractor create a safety wedge where the edge of the road meets the unimproved shoulder. A safety wedge is nothing more than a 45-degree sloped wedge of asphalt that eliminates a vertical face at the road edge. The presence of the wedge creates what is known in the industry as a “forgiving road edge,” meaning that if a vehicle drops a tire off the road, the wedge allows it to easily move back onto the roadway. A vertical road edge of three inches or more does not allow this and is often the cause of serious motor vehicle accidents.

When investigating a case where the road edge caused a vehicle to lose control and crash, the practitioner should look first at the Project Proposal from the KYTC to determine if a safety wedge was required. In almost every instance of a road with an unimproved shoulder it will be a requirement. If the contractor failed to construct a safety wedge when paving or resurfacing a road, it is negligence unless specifically authorized by the KYTC engineer.

In a case handled by our firm, we proved that the death of a woman driving her children to school was not the fault of the truck that impacted her vehicle, but the defectively constructed road edge that caused the driver of the truck to lose control and cross the center line striking her vehicle head-on. The contractor responsible for resurfacing the road failed to construct a safety wedge and failed to obtain permission from the KYTC to omit it. The result was a vertical road edge that was over eight inches in height. A Boone County jury returned a significant verdict against the road contractor and refused to apportion any fault to driver of the truck that crossed the center line.

Traffic Control Device Negligence

Traffic control devices, such as stop signs, stop lights and yield signs, are crucial to roadway safety. Failing to use or maintain these devices as required by the MUTCD can result in extreme danger to the traveling public. The MUTCD has an entire section dedicated to setting forth the circumstances under which certain types of traffic control devices must be used on the roadway.

As stated in the MUTCD, “the purpose of traffic control devices, as well as the principles for their use, is to promote highway safety and efficiency by providing for the orderly

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movement of all road users on streets, highways, bikeways, and private roads open to public travel throughout the nation.”

The MUTCD also contains standards so that traffic control devices are uniform across the country in shape, color and message so that the traveling public quickly recognizes the instruction given. As stated in the MUTCD, “uniformity of devices simplifies the task of the road user because it aids in recognition and understanding, thereby reducing perception/reaction time.” When installing traffic control devices, it is crucial that they comport with the requirement for design set forth in the MUTCD. Failure to do is negligent and could cause catastrophic consequences.

Equally important is the maintenance of traffic control devices. The MUTCD requires that physical maintenance of traffic control devices should be performed to retain the legibility and visibility of the device, and to retain the functioning of the device. It is not uncommon for vehicles to knock down a stop or yield sign. If it is not quickly replaced, the intersection without such a sign becomes very dangerous.

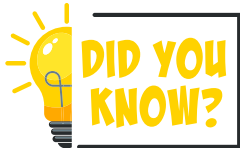
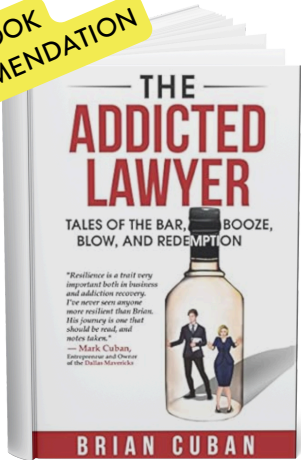
A common issue for maintenance of traffic control devices is determining who is responsible for its maintenance. In a case handled by our firm, a stop sign was missing at an intersection for at least four months. The absence of the sign was a substantial factor in a motor vehicle collision at the intersection that caused the death of one driver and severe injuries to a passenger. The issue was who was responsible for noticing that the sign was down and replacing it. Because the intersection was between a county-maintained road and state-maintained road, the county took the position that it was the state’s responsibility. However, the KYTC *Maintenance Guidance Manual* sets forth in such a situation that maintenance of the traffic control device is the responsibility of the owner of the road it controls, even if the sign is placed within the right of way of the state road.

Motor vehicle injury cases are often not as simple as they seem. Make sure to look at all factors involved in the accident, as there may be problems with the road or road signage that caused or contributed to the collision. When trying to determine if the roadway was properly designed and constructed look to the *Manual on Uniform Traffic Control Devices*, the KYTC *Standard Specifications on Road and Bridge Design*, the KYTC *Maintenance Guidance Manual* and the KYTC Project Proposal. Those sources will determine the standard of care for the road contractor and whichever entity was responsible for maintaining road signs.

Ron Johnson is a civil trial lawyer based in Louisville, Kentucky. He is licensed to practice law in Kentucky and Ohio. He concentrates his practice in personal injury, mass torts, class actions and multi-district litigation. Johnson is chair of the LBA’s Tort and Insurance Law Practice Section. ■



HEALTH & WELLNESS CORNER



Approximately 20-21% of practicing attorneys qualify as problem drinkers, which is significantly higher than the general population rate of about 6-8%.

Younger attorneys in their first 10 years of practice show the highest rates of problematic drinking at around 28-29%, suggesting early career pressures may contribute to alcohol misuse.



125

Celebrating 125 Years of the LBA's Commitment to the Future of our Profession

The Louisville Bar Association is excited to launch its 2025 Summer Internship Program, continuing our 20+ year partnership with Central High School's Law and Government magnet program. This program offers invaluable opportunities for talented students to gain real-world experience in local law firms, community organizations and the public sector.

Why Hire or Sponsor an Intern?

- Boost Productivity: Free up support staff for other critical projects.
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- Provide Real-World Experience: Give aspiring attorneys hands-on exposure to the legal field.
- Demonstrate Commitment to Diversity: Contribute to a more inclusive legal community.

The Summer Internship Program connects you with motivated and diverse Central High School students. These students possess strong academic records, leadership skills and excellent communication abilities.

Program Highlights

- Students receive pre-internship training on resume building, interview techniques and professional decorum.
- The 8-week program runs from early June to early August.
- We request a minimum hourly wage of \$10.
- Sponsorship opportunities are available for students placed in vital community and public sector offices like the Jefferson County Attorney's Office and DPA Louisville Trial Office.

As part of our 125th anniversary celebration, we aim to place 10 Central High School interns in 2025. The support of the legal community is crucial to achieving this goal.

How to Participate

- To hire or sponsor an intern, please contact Marisa Motley at mmotley@loubar.org.
- For questions about the program, you can also contact Sarah McKenna at sarah.mckenna@dinsmore.com or Diane Laughlin at dalughlin@bdblawky.com.

Your participation will directly impact the lives of aspiring lawyers and strengthen our legal community. Thank you for your commitment to investing in the future of law.



MEET MASHAYLA HAYS

Mashayla, a former student of the Central High School Law and Government Program, has succeeded Joe Gutmann as Law and Government Magnet Director, who retired after more than 20 years of dedicated service.

Before you began working with the Law and Government program at Central High School, what was your previous area of legal practice?

I was a reproductive justice attorney, working on both the state and federal policy issues that impacted access to abortion, birth control, sex ed and maternal health.

Since joining the program, what key goals have you established for its development and success?

Since this was my first year, I wanted to spend time just getting familiar with being a teacher and dealing with my career change. I've spent the first year really getting to know my students and learning how Central has changed since I graduated. One of the things I was able to do this year was secure a custom blazer for all my students, and I'm really proud of that. I hope next year to implement some new initiatives that allow my students to network with more folks across various legal backgrounds and careers and provide them opportunities to put what they learn into practice.

What makes teaching students at Central High School particularly unique or rewarding?

For me, it's all about witnessing my students growth both inside and outside the classroom. My students are amazing and bring me so much joy, and the occasional headache — but it's all worth it when they come to class ready to give their debate or present their opening arguments.

What advice do you give your students who are interested in the law?

I would tell them to stay the course! No matter how far away it may seem, every day spent in high school is preparing you for the future. And that although there may be times that you are open to new methods and ways of reaching a particular goal, never give up on the goal! All your hard work will be worth it in the end.

How would you describe the impact of the Summer Intern Program on the students who participate?

I actually secured my first job through the summer internship program at the Commonwealth Attorney's Office. At the time I was very passionate about becoming a prosecutor, and being able to work at the Commonwealth that summer really inspired me. I met so many amazing people who I still keep in touch with today and made me feel a real sense of belonging in the legal community.

Do you mind sharing a fun fact about yourself or a favorite quote?

I have the cutest yorkie in the world! His name is Onyx and he's the best dog a girl could ask for.

I also competed in the Ms. Black Kentucky Pageant in 2022 and was the runner up and won best talent and the community service award.

Favorite song, TV show, podcast or book.

I love sci-fi fantasy books, especially when it's a series.

What is your go to spot in Louisville and why?

I love Louvino brunch! They have an amazing atmosphere and I'm addicted to their loaded baked potato tots!



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As a Litigation Associate at Stoll Keenon Ogden, you will have the opportunity to work in a complex and ever-changing business sector. In this role, Associates support other attorneys and Members of the firm in delivering high-level legal assistance in an effort to protect and pursue our clients' interests. The ideal Associate will have a strong background and interest in complex business and tort litigation and enjoy collaborating and contributing to the attorney team serving clients with intricate legal issues. Some travel may be required, including the possibility of overnight stays. Candidates must have a minimum of two to four years practicing law in Business or Tort Litigation; consistently demonstrate personal qualities of honesty, character, leadership, integrity, maturity and firm loyalty; have exceptional organizational skills and ability to multitask; exceptional writing and legal drafting skills; and more. For further details, visit the LBA Job Board, <https://www.loubar.org/placement-services>.

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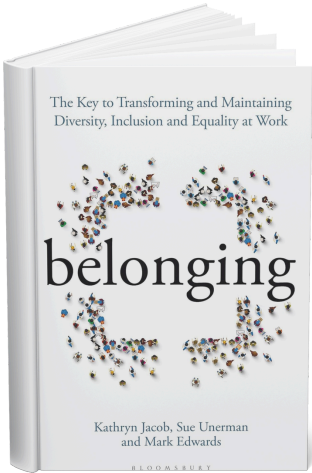
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Please visit <https://www.lsc.gov/grants/basic-field-grant> for filing dates, applicant eligibility, submission requirements, and updates regarding the LSC grants process. Please email inquiries pertaining to the LSC grants process to LSCGrants@lsc.gov. ■

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— Ola Joseph



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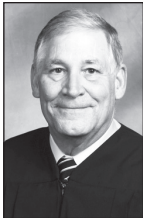
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