# BARbriefs

Louisville Bar Association

June 2025


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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



## In this issue



## Events



# LBA ROSTER DEADLINE APPROACHING

## JUNE 30, 2025

The deadline for the 2025-2026 Pictorial Roster is fast approaching, and we want to ensure your information is accurate for the fall distribution. Now is the perfect time to review and update your contact details!

Please take a moment to log in to our website, *www.loubar.org*, and verify your profile. If you haven't yet accessed our new platform, you can find helpful instructions on how to set up your profile at *https://www.loubar.org/wp-content/uploads/2024/11/New-Website-Sign-In-Infographic.pdf*.

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- Recognition in LBA print and online publications.

If you have any questions, please contact Marisa Motley, *mmotley@loubar.org.* ■

# The Art of Resolving Disputes Outside of the Courtroom

The theme of this month's *Bar Briefs* is litigation/ADR and mediation. Alternative dispute resolution is a term that refers to the methods employed to resolve litigation and/or disputes, including mediation and arbitration. The process employed allows individuals and/or companies or corporations, essentially litigants, to resolve disputes in what is usually a more cost effective and less adversarial manner.

Personally, my first contact with mediation was in the context of our family business, and it failed miserably because the mediator had no knowledge of the underlying issues or the concepts of law involved. I distinctly remember my father saying to him, "I don't have to stay, you are not helping." Sadly, he was not helping and seemed offended that we would even consider leaving. Our attorney at the time was a little shocked but not surprised since after two hours we were still arguing about who could stay in the room. The matter ended up getting resolved in a subsequent attempt at mediation with a different mediator who did have relevant knowledge as a former attorney who had practiced in that area.

Alternate dispute resolution and mediation in Louisville and the surrounding areas have been used in the context of family law for a long time. Most recently, though, it is obvious that all areas of law can benefit from the knowledge and expertise of an unbiased third party acting as mediator.

A good mediator will have the requisite communication skills and the ability to connect with the parties and their counsel. A good mediator will also see when emotions are charged and need to be tamped down. A good mediator also has the ability to analyze the situation, identify the issues and then assist the parties to move forward. It goes without saying that a good mediator must also be a good listener. Several words come to mind when I am thinking about mediators I have worked with: impartial, patient, trustworthy and willing to work hard to resolve the issue. While it is not national mediators' month, if you know a good one, engage them, recommend them to other lawyers and do not hesitate to reach out and ask questions. They may have been in a similar situation before and can provide some insight.

*Several words come to mind when I am thinking about mediators I have worked with: impartial, patient, trustworthy and willing to work hard to resolve the issue.*

As we touch upon the month of June, it is host to more than 15 different awareness celebrations. The one that likely will get the most attention across the country will be LGBTQ+ Pride Month, but there are several other notable ones which include Men's Health Month, Gun Violence Awareness Month and Immigrant Heritage Month, among others.

I also learned in the course of drafting this article that there are several awareness weeks, which include Pet Appreciation Week. So, if you have a dog, cat or other furry, feathered or scaly loved one, don't forget them. June is also home to National Insect Week (I do not know what to say about that) and Fish are Friends not Food Week.

We also celebrate National Say Something Nice Day (June 1), World Blood Donor Day (June 14), World Crocodile Day (June 17) and World Rainforest Day (June 22). While most of us may not specifically celebrate any of these days, weeks or months, one day that is celebrated in Louisville will be Juneteenth.

Juneteeth commemorates June 19, 1865, the day which marked an effective end of slavery in the United States. On that date, the Emancipation Proclamation was finally enforced in Texas. Texas was the last place in the United States where slavery was officially permitted after the end of the Civil War.

Finally, I would be remiss if I did not acknowledge Father's Day on June 15th. It was celebrated for the first time in Spokane, Washington on June 19, 1910. Inspired by Mother's Day and her own father, a woman named Sonora Smart Dodd is credited with the creation of Father's Day. President Calvin Coolidge urged governments to recognize Father's Day in 1924, and it finally became a holiday in the United States in 1972 when President Richard Nixon signed a proclamation.

What do dads want for Father's Day? Good question. Many dads are happy with just a card in recognition of the day. Others, I am sure, would prefer that children pick up the slack and maybe cut the grass, rake the leaves or just do any other household chore. For many dads, there may be a barbecue in the backyard to recognize Father's Day, or maybe dad gets taken to dinner at his favorite restaurant. Red roses are also sometimes used to commemorate Father's Day. While my father probably would have thought the flowers nice, he would have appreciated and probably preferred a steak dinner a lot more. Happy Father's Day to the dads out there.

María A. Fernandez
LBA President

# Not Just for Products Liability? The Evolving and Uneven Application of the Economic Loss Rule by Kentucky Courts

*Michelle C. Fox and Jacob Robbins*

Judicially created doctrines have long played an invaluable role in American law. Whether by addressing gaps in existing law, by articulating practical mechanisms for balancing competing interests or by adapting existing precedent to novel contexts, judicially created doctrines fulfill a host of purposes that ensure the continued vitality and adaptability of legal adjudication. Many of these doctrines have endured for hundreds of years; others, lacking historical imprimatur, are still being shaped by the courts. The economic loss rule is one such newer doctrine. Litigators—particularly those whose cases often encompass claims sounding in tort and in contract—would be wise to stay abreast of the evolving application of this principle by Kentucky courts.

> *Because of the economic loss rule, any plaintiff hoping to successfully prosecute both tort and contract claims should take special care to support their damages and plead their causes of action.*

The economic loss rule emerged in the context of products liability cases but has expanded to apply to various other areas, including construction contracting. See *D.W. Wilburn, Inc. v. K. Norman Berry Assocs., Architects, PLLC*, No. 2015-CA-001254-MR, 2016 WL 7405774, at *5 (Ky. Ct. App. Dec. 22, 2016). The Kentucky Supreme Court first adopted the economic loss doctrine in 2011 in *Giddings & Lewis, Inc. v. Indus. Risk Insurers*, 348 S.W.3d 729 (Ky. 2011), however, it did not immediately adopt this broader formulation. In *Giddings*, the insurers of machining equipment that catastrophically failed brought suit against the manufacturer of that equipment, asserting claims for breach of implied warranty, breach of contract, negligence, strict liability, negligent misrepresentation and fraud by omission. *Giddings*, at 734.

The trial court granted summary judgment to the manufacturer, agreeing that the implied warranty claim was barred by the statute of limitations, and that the economic loss rule barred the tort claims. *Id.* at 735. Taken together, these rulings effectively prevented the insurers from recovering any damages from the destruction of the equipment. The Court of Appeals largely upheld the trial court, and the Kentucky Supreme Court granted discretionary review. *Id.* Ultimately, the Kentucky Supreme Court upheld the trial court's rulings, holding that the "costs for repair or replacement of the product itself, lost profits and similar economic losses cannot be recovered pursuant to negligence or strict liability theories but are recoverable only under the parties' contract, including any express or implied warranties." *Id.* at 738.

Over the ensuing years, however, Kentucky courts have unevenly applied the economic loss rule to contexts beyond products liability. Citing the need to prevent tort claims and contract claims from collapsing into one another, courts have invoked the rule to dismiss tort claims that they determine are duplicative of contract claims, whether through analysis of the damages sought or of the duties under which the claims arise. For instance, a tortious claim for fraud

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may be dismissed where a court finds that "the damages plaintiffs seek are the same economic losses arising from the alleged breach of contract." *New London Tobacco Mkt., Inc. v. Ky. Fuel Corp.*, 44 F.4th 393, 414–15 (6th Cir. 2022) (quoting *Nami Res. Co. v. Asher Land & Min., Ltd.*, 554 S.W.3d 323, 335 (Ky. 2018)); see also *Ali v. Allstate Northbrook Indem., Co.*, 3:23-CV-108-RGJ, 2024 WL 1199023, at *5 (W.D. Ky. Mar. 20, 2024). Succinctly, "[t]he doctrine prohibits the law of contract and the law of tort from dissolving into each other." *Ali*, 2024 WL 1199023, at *5 (W.D. Ky. Mar. 20, 2024). Where a court determines that a fraud claim is "indistinguishable" from a contract claim, the plaintiff may not be permitted to pursue the fraud claim. *Id.* But, if "[a] breach of a duty aris[es] independently of any contract duties between the parties, however, [that breach] may support a tort action." *Nami Res. Co., L.L.C. v. Asher Land & Min., Ltd.*, 554 S.W.3d 323, 336 (Ky. 2018) (quoting *Superior Steel, Inc. v. Ascent at Roebling's Bridge, LLC*, 540 S.W.3d 770, 792 (Ky. 2017)).

The potential impact of a court's determination that a party's tort claims are barred by the economic loss doctrine cannot be overstated. Such a ruling may jeopardize, at minimum, a plaintiff's access to punitive damages and attorney's fees. No one wants to be in the position of the plaintiff in *New London Tobacco Mkt., Inc. v. Kentucky Fuel Corp.*, 44 F.4th 393, 414 (6th Cir. 2022), who won $17 million in punitive damages, only to see the ruling vacated through the court's application of the economic loss rule. Because of the economic loss rule, any plaintiff hoping to successfully prosecute both tort and contract claims should take special care to support their damages and plead their causes of action. The failure to do so can be, much as the machining equipment's failure was in *Giddings*, catastrophic.

*Michelle C. Fox is a managing associate in Frost Brown Todd's Product, Tort, and Insurance Litigation Practice Group. She focuses her practice in fire and explosion, dram shop, medical device and product liability litigation. Michelle is Chair of the LBA's Litigation Section.*

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# The Family Attorney's Guide to the Care and Feeding of Your Warning Order Attorney

*Thomas Mulhall*

If your grasp of Warning Order practice is somewhat tenuous, you may take solace in the fact that you are in good company. There is precious little case law to guide us, and if you practice throughout the Commonwealth, the requirements may vary greatly from county to county. While the basics are set out in Civil Rules 4.05, 4.06, 4.07 and 4.08, the establishment of mailing requirements, fees and even the appointments themselves are not uniform across the state.

So, what exactly is a Warning Order Attorney (WOA) and how can they best be used? The first thing to remember is that a WOA is not on any government payroll. They are private attorneys appointed from an approved list kept by the local Circuit Court Clerk. Second, they are not your employee, despite the fact that your client pays them. Their role is not to represent your client or, except in rare cases, to represent the respondent. Their role is to attempt to notify a respondent whose whereabouts are unknown or is avoiding service of process. The WOA must make diligent efforts to locate and inform the respondent of the pendency and nature of the action. Finally, under KRS 453.060 and CR 4.07, their fee is actually a *cost* of the case, rather than strictly a *fee*.

The worst-case scenario is to have your motions denied or even set aside due to improper service. To assist you in obtaining proper notice through the use of a WOA, here are some basic dos and don'ts.

***DO** make sure the request for a WOA is appropriate.* Per CR 4.05 and KRS 454.165, Warning Order notice is *constructive service only*, which means that no personal judgment can be obtained on a defendant who is served through a WOA. If you are seeking a monetary judgment, constructive service through a WOA will not be sufficient since it only confers quasi in rem jurisdiction. See *Dalton v. First National Bank of Grayson*, 712 S. W. 2d 954 (Ky. App. 1986). This is usually not a problem for the family attorney, since the marriage is the *res* or subject matter of the case, and the court has jurisdiction over the marriage so long as residency requirements are met. A decree and most orders, even orders addressing custody, may be obtained through the use of constructive service. Also, be aware that under CR 4.09, a WOA may only serve "an initiating document" such as a complaint or petition. This means using a WOA to serve motions is probably not appropriate.

***DO** a diligent search for information.* Making a "very feeble effort" to obtain information about the defendant is insufficient, and you need to "employ something more than casual efforts" to locate an absent respondent. See *W.G.H. v. Cabinet for Human Resources*, 708 S. W. 2d 109, (Ky. App. 1986). Simply stating that you are unaware of the respondent's whereabouts is not sufficient. A diligent search is required.

***DO** use the respondent's full name.* The WOA is also required to make diligent efforts to locate and notify the respondent, and having a full legal name makes this more possible. Searching for Jim Nelson is difficult. Searching for James Alexander Nelson is less so.

***DO** use a last known address.* Nothing is more frustrating to a WOA than to receive an affidavit without an address and a statement that the address is "unknown." Under CR 4.06, it appears mandatory that a last known address be given. The saving grace is that you are not required to provide their *current* address, which may truly be unknown. You are only required to provide their *last known* address. Family attorneys have an advantage over foreclosure attorneys in this respect. At some point, the parties in your case almost certainly lived together. If the respondent lived with the petitioner and then left for parts unknown without sharing their new address, then the last known address is the premises last shared by the two parties. More likely, they remained in communication after they separated to discuss children, bills, etc. Obviously, if the parties separated and the petitioner knows their new address, that new address should be used.

***DON'T** fail to give a street address.* CR 4.06 specifically uses the term "address." The foundation of Warning Order service is that notice

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is to be mailed, which implies an address where mail may actually be delivered. Note that CR 4.06 says address, and not residence. While an actual residence is strongly preferred, in some cases a post office box could suffice as a last known address since mail can be delivered there. Don't simply give a city or country. Chicago is not an address; Chicago is a city. Mexico is not an address; Mexico is a country. Likewise, "general delivery" is not an address and was specifically held to be insufficient in *W.G.H. v. Cabinet for Human Resources*. Incomplete designations like those are almost certain to be an issue. There are provisions under CR 4.05(e) and CR 4.06(1) for the exceptionally rare instance where a respondent's whereabouts are unknown and have always been unknown, but that is seldom the situation in family law.

***DON'T** fail to communicate with the WOA.* If the WOA contacts you with a question about the respondent or the address provided in the affidavit, you may and should promptly respond. The WOA is acting under time constraints. Help the WOA help you.

***DON'T** automatically ask for a military attorney.* Unless you have actual knowledge that the respondent is in the U.S. military service, only request the appointment of a WOA. If the WOA determines from their investigation that a military attorney is necessary, either they or you should then request that a military attorney be appointed. The military attorney will then be required to file an answer and defend, although their main defense is that the action be held in abeyance until the respondent returns from active service.

***DON'T** fail to make provisions to pay the WOA under CR 4.07 and Local Rule 1001.* Other than *In Forma Pauperis* parties, the WOA is entitled to a fee from the requesting party. See *Spees v. Kentucky Legal Aid*, 274 S. W. 3d 447 (2009). The second your pen touches the affidavit, you know the WOA is due a fee. We have all lost our fee when the parties reconciled, or our services are terminated, or the client simply fails to pay. You may be willing to assume the risk of not being paid, but don't force the WOA to take that risk. *Collect the WOA fee in advance and hold it in your escrow account until the report is filed.* Failing to timely pay the WOA could result in additional cost to your client. The WOA may be entitled to additional fees for having to file a motion to collect. It is also possible your case will be suspended until payment is made.

Warning Order Attorneys have the same goal as the petitioner's attorney. They want good service on the respondent that will satisfy the judge or commissioner. The above suggestions should assist you in reaching that common goal.

*Tom Mulhall was a Warning Order Attorney in Jefferson County for 15 years and served on the Warning Order Attorney Training Committee under David L. Nicolson, Jefferson County Circuit Court Clerk.* ■

# A Summary Proceeding: Fighting Contradictions in Eviction Court

*Andrew Chandler*

Our homes are the foundation of our lives. It is where we take our shoes off, break bread with loved ones, sing to ourselves unashamedly, cry with a messiness not possible elsewhere, and hide from the world crashing around us outside, sometimes all in the same day. That reality remains true regardless of whether we rent or own the place where we dwell. It is our home. I, alongside approximately 40% of the population of Jefferson County, am a renter. It stands to reason that when a legal action is brought for the purpose of removing us from our homes—to dispossess us of that sacred place which serves as the staging ground for our lives—it ought to be a carefully deliberated one, replete with serious procedural guardrails.

However, upon spending a morning in the Jefferson District Court Forcible Detainer Division ("eviction court"), one struggles to locate the sense of justice that should be commanded by a proceeding against a person's right to remain in their home. On the same morning as this article's writing, there were 126 eviction cases scheduled for disposition in Jefferson District Court over the course of a three-hour period. That equates to less than 90 seconds per case. In 2024, 16,017 forcible detainer complaints were filed in Jefferson County, which amounts to nearly 64 eviction cases on an average business day. That figure accounts for 33% of all civil filings outside of family court.

The majority of eviction cases are decided at the first appearance. Did the tenant fail to pay rent? Yes or no. Have they fully caught up on their rental debt in the time it took for this case to arrive in court? Yes or no. Did the tenant engage in a material breach of their lease based on the word of the property manager? Yes or no. Do you want to fight it and end up with an eviction on your record, relegating you to the status of an "undesirable tenant" in an already cramped rental housing market? Or do you want to just accept a deal today to move out within seven days? Yes or no. It runs like a mill. A Choose Your Own Adventure book that often inevitably leads to dispossession, especially if the tenant is unrepresented, which is true in the unfortunate majority of cases.

Identifying this issue, the Louisville-Jefferson County Metro Government enacted a right to counsel ordinance in April 2021 to ensure free legal representation to low-income renters. I began working in the Housing Unit at the Legal Aid Society in September 2024 to serve alongside my colleagues in our effort to make that promise a reality for as many tenants as possible.

Still, today, most tenants remain unrepresented. All but a very few small-time landlords, who carry a minute fraction of the docket, come to court with an attorney carrying a thick stack of eviction cases, ready to have them stamped summarily one by one. The vast majority of these cases are decided without a hearing wherein testimony is taken from both sides and substantive issues are argued. The vast, *vast* majority of these cases are decided without a jury trial, even though tenants have the right to one. There has, to my knowledge, only been one jury trial fought by a tenant in the half-decade since the onset of the COVID-19 pandemic. I represented that tenant, and we won. *See* Divya Karthikeyan, "Dosker Manor resident took his eviction case to jury trial — and won", *Louisville Public Media* (Mar. 24, 2025).

In that case, the Louisville Metro Housing Authority had accused my client of disrupting the peaceful enjoyment of the property and behaving in a disorderly fashion when he repeatedly complained about maintenance issues to property management staff. Such issues included the loss of power to his unit for several days, which resulted in him having to throw out a refrigerator full of food. His landlord, the housing authority, wanted to evict him for that. My client, a 76-year-old living on a fixed income of Social Security disability benefits after a hard-earned retirement from his career as a carpenter, testified that before he managed to move into Dosker Manor, he was homeless. A jury of my client's peers—many of them being renters themselves, and having heard the entirety of the parties' testimony and arguments in the dead of winter knowing what consequences would befall him if he were evicted—decided that he had not committed a lease violation. Complaining about one's living conditions and expressing frustration toward management, they felt, was not a basis to evict. There was no cause to enter a forcible detainer judgment against him. No eviction, said the jury.

My client had walked to his eviction trial that day. I drove him home along with my colleague after the jury reached a favorable verdict that evening. Holding a copy of that verdict in his hand and a tear of relief in his eye, he told us: "I'm 76 years old, and I have never won anything in my life before, but this… this is going on my refrigerator." My client has a roof over his head, after working a lifetime as a carpenter who helped build other people's houses for a living, because a jury of his peers believed him and determined that he had a right to remain in his home.

The right to that kind of justice—i.e., the right to a trial by a jury of one's peers—is enshrined within the Constitution of the United States and the Constitution of Kentucky. Section 7 of the latter authority demands that such proceeding "shall be held sacred, and the right thereof remain inviolate." That right has been reaffirmed by statute in the Kentucky forcible detainer law governing eviction proceedings in our Commonwealth, which, upon enactment in 1978, guaranteed tenants the right to a jury trial. KRS 383.210. Moreover, if a tenant is indigent, they are entitled to proceed without having to pay any costs necessary for their defense, which includes jury fees. KRS 453.190; *see Whitcher v. Hous. Auth. of Henderson*, 672 S.W.3d 58 (Ky. Ct. App. 2023) (finding clear error where the lower court denied a tenant's fee waiver request despite that litigant meeting the objective statutory standard defining "poor persons").

However, nearly two decades after the General Assembly solidified tenants' right to a jury trial within landlord-tenant law in 1978, the Kentucky Court of Appeals pronounced: "Forcible detainer actions are meant to be simple, speedy and inexpensive." *Baker v. Ryan*, 967 S.W.2d 591, 593 (Ky. Ct. App. 1997). In short, such cases are "designed to be summary proceedings." *Id.* That case foreclosed the ability of eviction courts to order depositions and held that civil discovery rules are inconsistent with forcible detainer proceedings, meaning that a district court that orders discovery in an eviction case would be abusing its authority.

Still, we need not resign ourselves to allowing eviction proceedings to be fully bereft of justice. Testimony must be taken, evidence introduced and appropriately scrutinized, credibility weighed, legal arguments considered, and yes, a jury trial, that most sacred, democratic proceeding resting at the foundation of our legal system, shall be provided upon request by a tenant. And it is not mere procedure. My client's win at trial last winter was *substance*. It was a hopeful victory amid an ever-worsening housing crisis. The staff at the Legal Aid Society now routinely request jury trials, often over the objection of the landlord's counsel. Our courts schedule them appropriately. Such practice is plainly compatible with what the law provides, and moreover, it draws our legal system closer to meeting the level of seriousness that a person's right to housing demands.

*Andrew Chandler is an attorney at the Legal Aid Society in Louisville. He practices housing law, representing tenants in eviction court and other venues to ensure their rights to safe and stable housing. He is a proud dues-paying member of the UAW Local 2320 and the Louisville Tenants Union.* ■

Sixth Annual

LOUISVILLE BAR ASSOCIATION | IN-HOUSE COUNSEL AND LITIGATION SECTIONS

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# Convincing Your Client that Mediation is the Way to Go

*Dana Eberle*

As practitioners, *we* know that mediation is a powerful tool that can save our clients time, money and emotional stress—but convincing them to participate isn't always easy. Many clients, particularly those in contentious disputes, believe the courtroom is the only path to justice. The argument I hear most often from my clients is, "If we could agree, we wouldn't be in court to begin with." The second most common source of client resistance is a need to be heard by the judge – they have the "winning" case, so why not let the judge tell the other party that? As advocates for our clients, it's our job to educate them on their options and guide them toward solutions that protect their interests and support efficient resolution. We have to make them understand that mediation is power.

Start educating the clients early and clearly. Clients often resist mediation because they don't understand what it is or how it works. During the intake or initial consultation, explain mediation as a possible path in their case. Set the expectation early that mediation is favored by the courts, and may even be ordered. Explain mediation as a voluntary, confidential process led by a neutral third party. Yes, even if the court orders them to mediate, it's still voluntary. Emphasize that they do not give up any rights – they can still proceed to trial if mediation does not result in a settlement. Use plain language and analogies to demystify the process. For example, I tell my clients that the mediator is literally looking at both parties' standing across a chasm and trying to figure out how to build the bridge between them. The solution is somewhere on that bridge.

Once your client understands what mediation is, it can help to focus on the benefits of control and empowerment. Help clients understand that in mediation, they – not a judge – control the outcome. Stress that they can help craft a solution tailored to their specific needs. I tell my clients that we can get very creative in mediation – coming up with solutions that the judge would never think of. Highlight that mediation avoids the risks of a courtroom "winner-loser" outcome. Explain that mediation is an opportunity to assess the strengths and weaknesses of their case: they can learn which arguments aren't as strong as they thought, and which arguments they should be focusing on. They'll also get a sneak peek at the "attack" the other side will be making against their case, and skillfully craft agreements that avoid those risks while taking advantage of the strong parts of their case. And because so many clients deeply value being heard by the judge, point out the opportunity to be heard directly – as well as the opportunity to bring up subjects and arguments that may not be admissible in court. Many lawyers don't recognize the value of letting their client vent in mediation (although it should be carefully restricted and focused).

Talk to your client about the emotional and financial considerations. Clients in emotional disputes (like family or employment cases) may be driven by a desire for vindication. They often do not understand that showing their emotions in court – especially with outbursts or disrespectful statements – will not be helpful to their case. Frame mediation as a less adversarial, more respectful process. This can be especially true with "shuttle" mediation (where the parties do not face each other). If your client's case is an emotional one, consider the benefits of not having them sit in the same room as their "enemy," where adrenaline controls the flow of mediation. Quantify the cost savings compared to litigation (court fees, attorney time, expert witnesses). Discuss how mediation may help preserve relationships (e.g., with co-parents or business partners).

Highlight the efficiency and speed of mediation. Explain the realistic timeline for litigation versus mediation. Mediation can often be scheduled and resolved in weeks, where court cases may take months or years to resolve. If urgency or closure is a concern for the client, mediation is often the fastest path to resolution. I often find it helpful to point out to clients that, if we're lucky, we'll get an hour, maybe two, to put our entire case before the court, whereas mediation can take all day if necessary, or even spill into a second mediation.

Reassure your clients about the fairness and safety of mediation. Clients may worry about being pressured or disadvantaged in mediation. Reassure them that you will be present to advocate for them and advise them. Emphasize that the mediator is neutral, and that any agreement must be voluntarily accepted. No one will force them to agree to something. It is *their* case, and as long as they fully understand the risks of going to court, if they decide to turn down any proposals and try their luck with the judge, their attorney will support them in that decision. Again, suggest shuttle mediation to protect emotional safety.

Use success stories and statistics with the this-will-never-work client. Provide real-world examples of successful outcomes in mediation. Tell the client how often you mediate, and how often it results in a settlement. I typically respond with, "Everyone thinks that. But in my experience, mediation is at least 90% successful. And even if it isn't in your case, you'll be better prepared for court." If local courts strongly encourage or mandate mediation, use that as an incentive.

When talking to your client about mediation, tailor your approach to the client's personality and needs. Some clients respond to logic and numbers, others to emotion or storytelling. Customize your pitch. For risk-averse clients, stress the certainty and control of mediation. For combative clients, frame it as a strategic step to strengthen their case. For overwhelmed clients, present it as a way to reduce stress and simplify the process. For these clients, I often underscore how laid-back the mediation process is: we're not in court, you don't have to dress up, you're the only one making decisions, and we'll order in lunch!

Once your client is convinced (or if it's been ordered and they have no choice), make sure you prepare your clients for the mediation process. One way to boost participation is to help clients feel confident. Walk them through exactly what to expect. In my practice, we are *never* in the same room with the opposing party. My clients are often relieved to hear this. Help them define their goals and acceptable outcomes. Ensure that they understand that mediation is all about compromise. Set the expectation that no one "wins" at mediation – that they will have to decide which issues are more important for them, and which issues can be ceded to gain ground on the more important ones.

Encouraging clients to engage in mediation requires empathy, education and strategic communication. Clients often take their cues from their lawyer's attitude. If you are visibly supportive of mediation, they are more likely to trust it as a legitimate option. Your tone can de-escalate the dispute and build openness. By presenting mediation as a powerful, client-driven tool – not "caving" or "giving in" – you can help them see it as a step toward resolution and empowerment. With the right framing and preparation, even the most skeptical clients can become open to mediation – and often, grateful for the opportunity.

*Dana M. Eberle is a partner solely practicing family law at Church Langdon Lopp & Banet LLC. She is a registered mediator and serves as a Guardian ad Litem. Dana is currently co-chair of the LBA ADR/Mediation Section with her partner Larry Church.* ■

## MESA ONE-HOUR

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

**Tuesday, June 3**

Lawyers serve a vital role in society – to help others resolve their disputes peacefully. And while lawyers do so through the use of 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 on 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 and nor does it serve our personal or professional interests.

Speaker: **Sean Carter**, MESA CLE

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

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

## LBA ONE-HOUR ETHICS

### 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 CLE 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!

This one-hour program provides essential ethics credits while offering fresh perspectives on:

- Professional Competence (Rule 1.1)
- Frivolous Claims (Rule 3.1)
- Diligence (Rule 1.3)
- Pro Bono Obligations (Rule 6.1)
- Professional Misconduct (Rule 8.4)

Speaker: **Stuart Teicher**, CLE Performer

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

**Cancellations:** Must be received by LBA at least 24 hours in advance for a refund (minus $10 processing fee). Substitutes allowed (except special events).

**Technology issues:** User error does not qualify for a refund for LIVE webinars. Recordings are NOT included with registration. Separate fees apply for accessing past recordings through the LBA On-Demand Catalog. Please note: Live and on-demand CLE programs have different KBA accreditation requirements.

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

## LBA PROBATE AND ESTATE LAW AND TAXATION LAW SECTIONS IN PARTNERSHIP WITH THE KENTUCKY SOCIETY OF CPAS

### 2025 Annual Estate Planning Conference

**Friday, June 6**

Join us for the 2025 Annual Estate Planning Conference, an informative and engaging learning experience created *by* and *for* attorneys and CPAs. This premier event is designed to keep you ahead of the curve in today's ever-evolving estate planning landscape.

Tailored specifically for professionals who advise clients on wealth management, tax strategy, estate administration and generational planning, this conference delivers timely updates and practical insights you can immediately apply. Learn from leading experts as they discuss legislative and regulatory changes, emerging trends and best practices in estate planning.

Whether you attend in person or virtually, you'll benefit from high-quality content, thought-provoking discussions and valuable networking opportunities with fellow professionals across Kentucky.

Don't miss this essential update — strengthen your expertise and better serve your clients.

**Time:** 8 a.m. – 5 p.m. — Program
**Place:** Hybrid (online or at KYCPA Office – Gratzer Education Center, 1735 Alliant Ave., Louisville, KY 40299)
**Price:** $324
**Credits:** 8.0 CLE Hours — *Pending*

## LBA DAY-LONG WITH NATIONAL SPEAKER, JOEL OSTER, COMEDIAN OF LAW

### Trials of the Centuries: Notorious Stories and Famous Figures

**Friday, June 6**

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, cultural-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:** 9:50 a.m. - 4:40 p.m. — Program
**Place:** Zoom
**Price:** $240 LBA Member | $216 Sustaining Member | $480 Non-member
**Credits:** 6.0 (including 2.0 Ethics) CLE Hours — *Pending*

## LBA ONE HOUR

### Truth or Tech: Navigating AI-Generated Evidence in the Courtroom

**Monday, June 9**

As technology advances, the manipulation of digital content has become more sophisticated and accessible than ever. It is now easier to generate or alter photos, videos, audio recordings and even handwriting, raising critical questions about the integrity of evidence presented in legal proceedings. With the rise of AI-generated content, we must consider how these advancements can potentially compromise the reliability of evidence in court.

This presentation addresses the need for legal professionals to understand and respond to the challenges posed by AI manipulation. We will explore whether our existing authentication rules are sufficient to withstand the complexities introduced by AI-generated evidence.

Speaker: **Brian Chase**, ArcherHall

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

## MESA ONE-HOUR

### Walking the Diversity Talk: Making Greater Strides Towards the Elimination of Bias

**Wednesday, June 11**

By now, you are likely familiar with the concept of implicit bias and how it impacts both individuals and organizations in decision-making. However, knowledge of the problem is just the first step. In order to truly "walk the (diversity) talk," we must take definitive strides in the direction of diversity, equity and inclusion.

In this engaging webinar, legal humorist Sean Carter will explore a wide range of actionable steps that individuals (and organizations) can take to reduce bias in their decision-making, allowing us all to move one step closer a more diverse, equitable and inclusive legal profession.

Speaker: **Sean Carter**, MESA CLE

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

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

## LBA AND ALA CLE + BUSINESS PARTNERS EXPO

### Boosting Productivity with Microsoft 365 + Business Partner Expo

**Thursday, June 12**

This educational event is jointly presented by the Louisville Bar Association and the Kentucky Chapter of the Association of Legal Administrators.

Join us for an interactive and practical session designed to transform how legal professionals leverage Microsoft 365 in their daily practice. Digital Collaboration and Productivity Consultant Jayna Newcomer will guide you through powerful yet often overlooked features in the Microsoft 365 Suite that can dramatically enhance your productivity. This hands-on seminar focuses on practical applications rather than theory, ensuring you leave with skills you can implement immediately.

What you'll learn:

- Outlook optimization: Master email management techniques, calendar scheduling and task prioritization to reclaim hours in your workweek
- Teams mastery: Discover advanced collaboration tools, meeting management strategies and document sharing workflows
- Cross-platform integration: Learn how the Microsoft 365 ecosystem works together to streamline your practice
- Automation opportunities: Identify repetitive tasks that can be automated to focus on higher-value work

This seminar is ideal for attorneys, paralegals, legal administrators and support staff looking to enhance their digital workflow and efficiency.

Speaker: **Jayna Newcomer**, Dean Dorton

*Business Partner Expo vendors will be announced soon!*

**Time:** 11:30 a.m. - 2 p.m. — Program
**Place:** Louisville Bar Center, 600 W. Main St., Ste. 110
**Price:** $67.50 LBA Member | $60.75 Sustaining Member | $15 Paralegal Member | $15 for qualifying YLS Member | $25 Solo/Small Practice Section Member, Government or Non-Profit Member | $135 Non-member
**Credits:** 1.5 CLE Hours — *Pending*

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**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.*

## LBA DAY-LONG WITH NATIONAL SPEAKER, JOEL OSTER, COMEDIAN OF LAW

### Trials of the Centuries: Hollywood Movies Edition

**Friday, June 13**

There is no better teacher than Hollywood. In this class, lawyers will uniquely learn the law – through the lens of Hollywood. We will start with the movie *Molly's Game,* which tells the story of a former mogul skier who runs an illegal gambling operation. During this session, we will learn the federal law on gaming and how it is currently being enforced. In *Amistad* we learn about the Supreme Court case *U.S. v. Schooner,* and the importance of this decision to current civil rights litigation. *On the Basis of Sex* is the story of how Ruth Bader Ginsburg sought to eradicate discrimination on the basis of sex. This story culminates with the decision of the U.S. Supreme Court in *Loving v. Virginia*, and opinion written by RBG herself. In *Truth*, we learn about how the law deals with potentially defamatory journalism practices. In *Mississippi Burning,* we learn how the civil rights laws were used to pursue justice when three civil rights workers were murdered in Mississippi and local officials wanted to look the other way. Finally, in *Judgement at Nuremberg,* we learn how the law can be used to seek justice when crimes against humanity occur.

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
**Price:** $240 LBA Member | $216 Sustaining Member | $480 Non-member
**Credits:** 6.0 (including 1.5 Ethics) CLE Hours — *Pending*

## LBA APPELLATE LAW SECTION ONE HOUR

### Quarterly Appellate Law Case Update – Q1 2025

**Tuesday, June 17**

Stay current with key developments from the Kentucky Court of Appeals and Supreme Court during the first quarter of 2025. Our speakers will cover notable civil and criminal decisions and offer practical guidance to strengthen your appellate practice. Don't miss this essential update for practitioners navigating Kentucky's appellate landscape.

Speakers: **Brandon A. Girdley**, Wyatt, Tarrant & Combs; **F. Todd Lewis**, Lewis Law; and **Raymond G. Smith**, Smith Investment Group

**Time:** 9 - 10 a.m. — Program
**Place:** Zoom
**Price:** $45 LBA Member | $40.50 Sustaining Member | $15 Paralegal Member | $15 for qualifying YLS Member | $25 Solo/Small Practice Section Member, Government or Non-Profit Member | $90 Non-member
**Credits:** 1.0 CLE Hour — *Pending*

## MESA ONE-HOUR ETHICS

### From Competence to Excellence: The Ethical Imperative for Excellent Client Service

**Tuesday, June 17**

The very first rule of the ethics canon calls for lawyers to provide competent representation to clients. Yet, mere competence isn't enough to satisfy our ethical obligations to our clients. We must instead strive for excellence. In this unique webinar, noted legal humorist Sean Carter will highlight the need for excellence in client service and demonstrate the consequences of mediocrity by recounting the sagas of past Ethy Award nominees – lawyers who earned CLE infamy for the failure to provide excellent client service.

Speaker: **Sean Carter**, MESA CLE

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

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

## MESA ONE-HOUR ETHICS

### Lies, Damn Lies and Legal Marketing: The Ethics of Legal Marketing

**Thursday, June 19**

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
**Price per hour:** $55 LBA Member | $50 Sustaining Member | $25 Paralegal Member | $125 Non-member
**Credits:** 1.0 CLE Ethics Hour — *Pending*

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

## LBA IN-HOUSE COUNSEL AND LITIGATION SECTION ONE HOUR

### Fifth Annual "What Clients Want from Outside Counsel – In Their Own Words"

**Friday, June 20**

The LBA In-House Counsel and Litigation Sections are proud to present "What Clients Want from Outside Counsel – In Their Own Words," where we will welcome a panel of accomplished in-house attorneys to discuss best practices for creating and maintaining successful relationships between in-house and outside counsel. During this CLE, you will hear directly from in-house attorneys across several industries that regularly engage outside counsel as they describe what they look for in outside counsel, best practices in fostering successful relationships and what harms a formerly successful relationship.

Speakers: **TBA**

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

## LBA DAY-LONG WITH NATIONAL SPEAKER, JOEL OSTER, COMEDIAN OF LAW

### Trials of the Centuries: From Murder to Verdict

**Friday, June 20**

Murder trials capture Americans' attention like no other. It is the original reality TV. From the gruesome murder scene 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 committing these heinous acts. But does the process always work? Do the innocent get convicted? Do the guilty go free?

This CLE 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 CLE 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
**Price:** $240 LBA Member | $216 Sustaining Member | $480 Non-member
**Credits:** 6.0 (including 1.0 Ethics) CLE Hours — *Pending*

## HALF-DAY CONFERENCE

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

**Tuesday, June 24**

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*.

## MESA ONE-HOUR

### Enough is Enough: Avoiding Vexatious Lawyering

**Tuesday, June 24**

While lawyers are expected to provide their clients with zealous representation, we are not allowed to become outright zealots in pursuit of our client's objectives. Yet, time and again, this is precisely what happens as lawyers become fixated on winning at all costs. And as a result, they end up paying the ultimate price – the loss of their license to practice law.

In this sobering but surprisingly funny presentation, legal humorist Sean Carter will distinguish permissible zealous legal practices from unethical legal zealotry.

Speaker: **Sean Carter**, MESA CLE

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

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

## LBA DIVERSITY & INCLUSION COMMITTEE AND HUMAN RIGHTS LAW SECTION DAY-LONG

### 2025 Policy Updates on Rights, Reform and the Rule of Law: *A Full-Day CLE on Today's Most Pressing Constitutional and Civil Legal Developments*

**Wednesday, June 25**

Join us for a timely and comprehensive CLE program examining key developments shaping constitutional and civil rights law today. This full-day seminar will bring together experienced practitioners, scholars and policymakers to explore the state and federal legal and policy landscape.

Topics will include recent changes in immigration law; the increasing use of felony mediation as a resolution tool in the criminal justice system; and critical legal issues surrounding protest and speech in the public square. The day will also feature an in-depth discussion on state versus federal authority under the 10th Amendment, as well as an analysis of recent litigation and legal strategy involving Skrmetti.

Our keynote speaker, David Glasgow, will address the current challenges surrounding diversity, equity and inclusion initiatives, offering insight into how organizations and institutions can navigate an uncertain and rapidly changing environment.

Speakers: **Dan Canon**, Dan Canon Law; **Ethan Chase**, Reczek Chase Law; **David Glasgow**, Meltzer Center for Diversity, Inclusion and Belonging and NYU School of Law; **M. Grant Grissom**, Dinsmore; **Hon. Anne Haynie**, retired judge; **Hon. Hugh Haynie**, retired judge; **Nima Kulkarni**, Indus Law Firm; and **Maureen Sullivan**, Attorney at Law

**Time:** 9 a.m. – 5 p.m. — Program
**Place:** Zoom
**Price:** $280 LBA Member | $252 Sustaining Member | $15 Paralegal Member | $15 for qualifying YLS Member | $75 Solo/Small Practice Section Member, Government or Non-Profit Member | $560 Non-member
**Credits:** 7.0 CLE Hours — *Pending*

## MESA DAY-LONG

### Engage!: Hands-On AI Training for Modern Legal Practice

**Wednesday, June 25**

Join us for an extraordinary six-hour webinar journey where you'll not only learn about artificial intelligence's revolutionary impact on the legal profession but will also engage directly with the technologies reshaping our field. This hands-on workshop program is designed for forward-thinking legal professionals eager to command the tools of tomorrow, today.

Speaker: **Sean Carter**, MESA CLE

**Time:** 10 a.m. - 4 p.m. — Program
**Place:** Zoom
**Price per hour: $55 LBA Member | $50 Sustaining Member | $25 Paralegal Member | $125 Non-member**
**Credits:** 6.0 CLE Hours — *Pending*

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

## LBA DAY-LONG WITH NATIONAL SPEAKER, JOEL OSTER, COMEDIAN OF LAW

### A Comedic De-Briefing of the Law

**Friday, 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 white 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:** 9:50 a.m. - 4:40 p.m. — Program
**Place:** Zoom
**Price:** $240 LBA Member | $216 Sustaining Member | $480 Non-member
**Credits:** 6.0 (including 3.0 Ethics) CLE Hours — *Pending*

## MESA ONE-HOUR ETHICS

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

**Thursday, June 26**

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 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
**Price per hour: $55 LBA Member | $50 Sustaining Member | $25 Paralegal Member | $125 Non-member**
**Credits:** 1.0 CLE Ethics Hour — *Pending*

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

## MESA ONE-HOUR ETHICS

### The Truth, The Whole Truth and Nothing but the Truth: The Ethical Imperative for Honesty in Law Practice

**Friday, June 27**

Dr. Martin Luther King once said, "A fact is the absence of contradiction, but the truth is the presence of coherence." As lawyers, we are duty bound to be more than just factual. Lawyers must tell the truth to clients, judges and even opposing counsel and third parties. In this eye-opening webinar, legal humorist Sean Carter will deal frankly with the very human inclination for dishonesty and explain how to avoid the traps from which dishonesty most often springs. In doing so, he will draw upon current and past nominees from his annual Ethy Awards to show the consequences of dishonesty.

Speaker: **Sean Carter**, MESA CLE

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

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

## LBA DAY-LONG WITH NATIONAL SPEAKER, JOEL OSTER, COMEDIAN OF LAW

### Trials of the Centuries: Landmark Cases

**Monday, June 30**

This class will remind the lawyer of the true essence of being an attorney. We go back in time to review the most significant, precedent-setting, culturally 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:** 9:50 a.m. - 4:40 p.m. — Program
**Place:** Zoom
**Price:** $240 LBA Member | $216 Sustaining Member | $480 Non-member
**Credits:** 6.0 (including 2.0 ethics) CLE Hours — *Pending*

## MESA TWO-HOUR ETHICS

### Nice Lawyers Finish First

**Monday, June 30**

It's been said that nice guys finish last. And while that might be true in the rough and tumble arenas of politics, professional prize fighting and marriage, nothing could be further from the truth in the practice of law. Zealous representation doesn't require us to be zealots. In fact, the most effective representation requires just the opposite. Nice lawyers finish first ... And so do their clients!

Speaker: **Sean Carter**, MESA CLE

**Time:** Noon - 2 p.m. — Program
**Place:** Zoom
**Price per hour:** $55 LBA Member | $50 Sustaining Member | $25 Paralegal Member | $125 Non-member
**Credits:** 2.0 CLE Ethics Hour — *Pending*

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

## THE AMERICAN CONSTITUTION SOCIETY AND THE LBA'S APPELLATE LAW SECTION

### Annual Supreme Court Update

**Monday, June 30**

The seminar will address the key cases before the U.S. Supreme Court during the October Term 2025. 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 and more to be announced.

**Time:** 11 a.m. - 1 p.m. — Program
**Place:** Zoom
**Price:** $90 LBA Member | $81 Sustaining Member | $15 Paralegal Member | $15 for qualifying YLS Member | $25 Solo/Small Practice Section Member | $45 Government or Non-Profit Member | $180 Non-member
**Credits:** 2.0 CLE Hours — *Pending*

## MEETING ANNOUNCEMENTS

### LBA Committee Meetings

**CLE Committee:** Wednesday, June 11 at 10 a.m. via Zoom
**Diversity & Inclusion Committee:** Wednesday, June 11 at 4 p.m. via Zoom
**Health & Wellness Committee:** Thursday, June 12 at noon via Zoom

If you are interested in joining any of these committees, please contact Lisa Anspach, *lanspach@loubar.org*. ■


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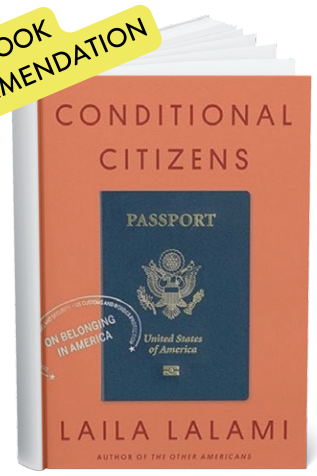
MAKING GAY HISTORY

BOOK RECOMMENDATION




JUNE 2025 AWARENESS CALENDAR

Men's Health Month
National Immigrant Heritage Month
PTSD Awareness Month
Pride Month

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# Navigating the Ethical Pitfalls of Lawyer Listservs

***Vince Aprile***

Criminal defense attorneys in many jurisdictions have found listservs created by national organizations and those created at a state level to be of assistance in representing their clients. A listserv may facilitate a lawyer's research and offer an opportunity to brainstorm his or her case with a multitude of lawyers. Although a listserv seems to be a valuable litigation tool, a criminal defense counsel's use of a listserv may be fraught with ethical pitfalls. In May 2024, the American Bar Association issued Formal Opinion 511, "Confidentiality Obligations of Lawyers Posting to Listservs," to provide ethical guidance to lawyers who ask questions on a listserv about their cases. ABA Comm. on Ethics & Pro. Resp., Formal Op. 511 (2024).

As the ethics opinion explains, "[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted" by a specific exception. Model Rules of Pro. Conduct r. 1.6(a), *Confidentiality of Information* (Am. Bar Ass'n 2024). Additionally, "[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." *Id.*, r. 1.6(c).

Comment 3 to Rule 1.6 explains that ethical confidentiality covers all information relating to the representation whatever its source and is not restricted to communications protected by the attorney-client privilege. Ethically, confidentiality also applies to even publicly available information.

Formal Opinion 511 also emphasizes that "[b]ecause Rule 1.6 restricts communications that 'could reasonably lead to the discovery of' information relating to the representation, lawyers are generally restricted from disclosing such information even if the information is anonymized, hypothetical, or in abstracted form, if it is reasonably likely that someone learning the information might then or later ascertain the client's identity or the situation involved." ABA Formal Op. 511, *supra*, at 2. Even efforts to disguise or camouflage the case in the listserv inquiry may be fatally deficient as the name of the attorney asking the question could telegraph the identity of the case. The nature of the inquiry or the identity of the court involved could trigger one or more of those reading the listserv inquiry to determine the case in question. This is especially possible when the criminal defense listserv is local, regional, or state-wide or the case in question has received national media attention.

Often a lawyer using a listserv believes that all those who will receive the inquiry are also criminal defense attorneys who can be trusted with information about the inquirer's case. This is a mistake. One of those recipients could be, at present or in the future, your client's co-defendant, whom neither the client nor the defense attorney would want to have this information. Similarly, a defense attorney reading the listserv inquiry could switch from the defense to the prosecution in the near future and be free to use the information in the inquiry against the client. Additionally, when ethically confidential information is disclosed to third parties on the listserv, those recipients are under no ethical confidentiality requirement precluding them from revealing that information gleaned from the context of the listserv question. This is true whether the information disclosed in the listserv was inadvertent or intentional.

Although not directly discussed in ABA Formal Opinion 511, intentional or inadvertent disclosure of client information via a listserv could result in that information losing the protection of the attorney-client privilege, if covered, as its confidential nature is compromised by disclosure to third persons on the listserv. The attorney-client "privilege exists to protect not only the giving of professional advice to those who can act on it but also the giving of information to the lawyer to enable him to give sound and informed advice." *Upjohn Co. v. United States*, 449 U.S. 383, 390 (1981).

Criminal defense lawyers are not impliedly authorized by their clients to disclose ethically confidential information on a listserv in order to carry out the representation. With the client's informed consent, a defense lawyer could ethically disclose confidential information as part of a listserv question. But the danger of a general client waiver to authorize disclosing ethically confidential information to be used in making inquiries on a listserv would hardly be consistent with informed consent. "'Informed consent' denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct." Model Rules of Pro. Conduct r. 1.0(e), *Terminology*.

Despite these ethical problems with using defense listservs as explained in ABA Formal Opinion 511, few criminal defense listservs provide ethical guidelines to their users to aid them in avoiding ethical pitfalls. Defense listservs could and should provide user guidelines.

A possible set of listserv guidelines could include the following:

- The ethical duty of confidentiality applies to all information relating to the representation of a client, whether privileged or not, regardless of its source and even though otherwise accessible from other sources, including public ones, unless limited in scope by a jurisdiction's ethical rules.
- Absent the client's informed consent to the disclosure of confidential information, a lawyer using a listserv must not offer any information about the client's case *if there is a reasonable likelihood* the post will allow a reader to recognize or deduce the client's identity or the situation involved.
- Merely anonymizing or hypothesizing a situation in a post will often be insufficient to camouflage the client or the litigation. The post must be stripped of details that could disclose ethically confidential information or that could lead to the discovery of such information.
- Such revealing information could be, in certain situations, the court in question, the geographical location of the posting attorney, even the litigation question asked, to name but a few.
- A general client waiver allowing the disclosure of ethically confidential information on listservs would be insufficient as such informed consent must follow the attorney advising the client of both the benefits and disadvantages of the particular disclosure on the listserv, which would seem to require not only the nature of listservs in general, but also the specifics of the listserv to be used. The client's informed consent to disclosure should be limited to the specific post the lawyer wishes to make and its contents.

To camouflage the question posed, consider revisions such as changing the gender of the client or other key players, the jurisdiction to another with comparable law, the law-enforcement agency involved or the crime(s) at issue, but whatever modifications are made must ensure there is no reasonable likelihood that a reader will be able to extrapolate the client's identity or the litigation involved. If potential readers of the post know the questioner's clientele or the nature of that practice, it may be extremely difficult to conceal either the client or the proceeding.

The client's informed consent to disclosure is unneeded when the lawyer's post is scrubbed of any information that reveals or leads to the revelation of any of the client's ethically confidential information.

None of the above is meant to denigrate the value of listservs, whether for criminal defense attorneys or other specialized practitioners, as a researching, brainstorming and strategizing tool. But the use of listservs must be regulated by the ethical rules to protect the client's right to confidentiality in dealing with counsel.

*Vince Aprile, JD, LLM, began his legal career as a Captain in the Army Judge Advocate General's Corps, where he did trial and appellate work (1969-1973). He then was a public defender with the Kentucky Department of Public Advocacy, where he served as the agency's inaugural director of the appellate division and general counsel (1973-2003). He has argued four cases in the U.S. Supreme Court, winning two. Vince has taught lawyers in CLE presentations and advocacy programs in more than 35 states, Canada, Puerto Rico and Russia (Moscow and St. Petersburg). His column, Criminal Justice Matters, has been published as a regular feature of the ABA's Criminal Justice magazine for over 30 years (1992 to present). Since 2003, Vince has practiced law with Lynch, Cox, Gilman & Goodman, PSC.*

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## Sunday, August 24th

The Louisville Bar Association is 125 Years Strong in 2025! We've already begun marking this incredible milestone, and now as the weather warms up, get ready for a signature celebration! Save the date for Sunday, August 24th for a special event the whole family can enjoy.

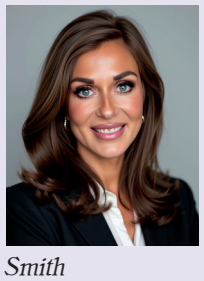
LOUISVILLE BAR ASSOCIATION
125TH ANNIVERSARY

Our anniversary committee is hard at work crafting an unforgettable experience. Keep an eye on next month's Bar Briefs and our social media for the big reveal of all the exciting details!

# MEMBERS *on the move*


*DeVuono*


*Schrage*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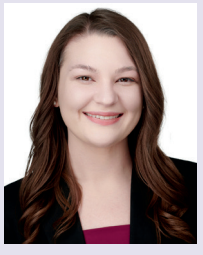
*Wurth*

Morgan Pottinger McGarvey is pleased to announce that **McKenna Schrage** has joined the firm as a junior associate. Schrage will support several of the firm's practice areas, including banking and finance, employment and commercial real estate law.

Goldberg Simpson is excited to announce that **Maidson N. Wurth** has joined the firm as an Associate Attorney. Her practice focuses primarily on insurance defense. Wurth received her J.D. from the University of Louisville Brandeis School of Law.

Moore Law Group, PLLC is pleased to announce that **Emily A. DeVuono** and **Ashton Rose Smith** were both recently named partner. DeVuono concentrates her practice in representing people who have been injured as a result of medical negligence; nursing home neglect and abuse; and automobile and truck wrecks. DeVuono graduated, *magna cum laude,* from the University of Louisville Brandeis School of Law in 2015 and has practiced law with Moore Law Group for 10 years. Smith has a passion for helping people who have been injured by the wrongful conduct of others. She focuses much of her practice on mass tort litigation involving harmful pesticides, pharmaceutical drugs and defective medical devices. Smith graduated from the University of Louisville Brandeis School of Law and has been practicing law since 2015, the last seven years with Moore Law Group. ■

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**Send announcements to Kim Kasey, kkasey@loubar.org.**

## Help Wanted

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Kopka Pinkus Dolin is seeking a civil attorney with 5+ years of experience in a litigation setting with an emphasis in insurance defense. The firm is a highly respected litigation practice with multiple locations throughout five states. There is an immediate opening in its Louisville and Lexington, KY offices for a civil attorney who has:

- Prior experience handling a file from beginning to end.
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- Ability to frequently and directly communicate with clients.
- Excellent verbal and written skills.
- Ability to accurately report time.

*Portable business is a plus.

The culture is one of high flexibility. The firm offers benefits including health, vision, dental and pet insurance, 401k with employer match, employer paid disability, parental leave, employee assistance program and paid holidays. Learn more at www.kopkalaw.com. If their core values resonate, this firm may be ideal for you. Please send your resume to firmadmins@kopkalaw.com.

**General Support Staff:**
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**Part-time Staff Attorney:**
National legal services benefit plan seeks a part-time staff attorney (20-25 hours/week) for our Louisville, KY law office. Emphasis in domestic relations case-handling. Non-litigation attorney position providing advice, preparing documents and meeting with clients. Excellent verbal, written, analytical, problem solving and computer skills are desired. Applicants must have the ability to maintain a high degree of client satisfaction. Hybrid work arrangement—working in office approximately 1 day per week or as needed. Details can be found on the LBA Job Board, https://www.loubar.org/placement-services. Cover letter, resume, writing sample and references required. Please email to HR@uawlsp.com. Applicant must be licensed to practice law in Kentucky.

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CONTACT KIM KASEY, KKASEY@LOUBAR.ORG

DIVERSITY & INCLUSION COMMITTEE CORNER

> Equality means more than passing laws. The struggle is really won in the hearts and minds of the community, where it really counts.
> — Barbara Gittings, LGBTQ+ rights activist

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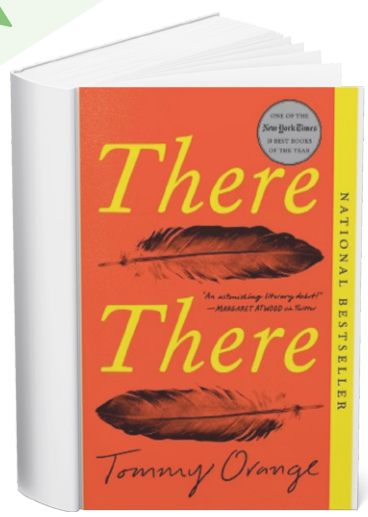
PODCAST RECOMMENDATION




BOOK RECOMMENDATION

**JUNE 2025 AWARENESS CALENDAR**

- Pride Month
- June 19: Freedom Day/Juneteenth
- June 21: National Indigenous People's Day

Have a recommendation? Submit to lanspach@loubar.org.

# Welcome

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

## ATTORNEYS

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*Henderson County Attorney's Office*

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*Sagebird Consulting*

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*Goldberg Simpson LLC*

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**Rebecca Reynolds**
*Haynie & Reynolds Mediation LLC*

**Carli Wilson**
*The Glenview Trust Company*

## LAW STUDENTS

**Ethan Hartsfield**
*Brandeis School of Law*


Keynote speaker: David Glasgow of NYU School of Law's Meltzer Center for Diversity, Inclusion and Belonging

## 2025 POLICY UPDATES ON RIGHTS, REFORM AND THE RULE OF LAW

Join us for a dynamic and timely full-day CLE exploring key legal and policy developments shaping the future of civil rights, human rights and constitutional protections. This virtual program brings together leading legal minds, practitioners and thought leaders to examine the intersection of law, policy and justice in 2025.

From affirmative action and Title IX to immigration, protest rights and the tension between state and federal law, this seminar offers vital insights for attorneys navigating today's rapidly evolving legal landscape. Don't miss the keynote address by David Glasgow of NYU School of Law's Meltzer Center for Diversity, Inclusion and Belonging, who will speak on the current challenges and opportunities in advancing diversity, equity and inclusion within the law.

**Featured Topics & Speakers Include:**

- Title IX – Laura E. Landenwich, Adams Landenwich Lay, PLLC
- Immigration Law Updates – Nima Kulkarni, Indus Law Firm
- Felony Mediation – Hon. Anne Haynie, retired and Hon. Hugh Smith Haynie, retired
- Keynote: DEI in Today's Legal Landscape – David Glasgow, Meltzer Center for Diversity, Inclusion, and Belonging and NYU School of Law
- Protest & Free Speech Rights – Maureen Sullivan, Attorney at Law
- Gender Identity and the Roberts Court: Understanding Skrmetti – Ethan Chase, Reczek Chase Law and M. Grant Grissom, Attorney at Law
- The 10th Amendment: State vs. Federal Power – Daniel J. Canon, Dan Canon Law

WEDNESDAY, JUNE 25 | STARTS AT 9.00 AM | VIA ZOOM | 7.0 CLE HOURS

For more information and to register: www.loubar.org