

The General Assembly Should Respect Judicial Independence and Attorney Self-Regulation

The Kentucky General Assembly is contemplating measures that could radically affect the practice of law in Kentucky, some of them troubling.

KBA Elimination

On February 13, HB 526 passed a Kentucky House vote, 70-21, on its third reading. This bill, titled "AN ACT relating to members of the Bar," aims to eliminate the Kentucky Bar Association, as that organization has existed since 1934. Under the bill, all responsibility for attorney discipline and licensure would go to the Supreme Court. Membership in the KBA would no longer be mandatory.

The consequences of such a change would not be good. The KBA uses member dues to fund a host of useful programs and services, including the Ethics Hotline, the Kentucky Lawyer Assistance Program, the Client's Security Fund and Decisis, a free legal platform used by 750 attorneys every month—most of them solo practitioners, for whom a Westlaw or Lexis-Nexis subscription would be cost-prohibitive. All of these programs, and many more, would disappear overnight if HB 526 became law. Meanwhile, KBA dues would skyrocket, as has been demonstrated in Tennessee and Ohio after those states abolished mandatory state bar membership.

So why does the General Assembly see a pressing need to demolish our longstanding and well-functioning system of attorney self-governance? The bill's sponsors made sure to justify it with lots of aspirational language about "freedom"—the "WHEREAS" clauses reference "inalienable rights," "freedoms of speech and association," etc. But let's be honest, gutting the KBA has nothing to do with freedom. Indeed, courts have unanimously rejected First Amendment legal challenges to mandatory state bar associations.

The fact is there's no need to tinker with the KBA. For nearly 100 years, the KBA has functioned very well as an institution of attorney self-regulation in this state. Its dues are affordable and its services are reliable. Further, the General Assembly's authority to dismantle the KBA is, to put it mildly, suspect. The regulatory framework for attorney self-governance comes from the Kentucky Supreme Court, and legislative interference weakens the separation of powers.

In short, there are many reasons to oppose this ill-conceived KBA "reform," and none to support it.

Justice Goodwine's Impeachment Petition

Last year, then-Chief Judge of the Jefferson Circuit Court Ann Bailey Smith penned an excellent summary, in these pages, of the troubling petition filed by Jefferson County GOP official Jack Richardson to impeach Justice Pamela Goodwine. In brief: After Justice Goodwine joined the Court, she cast a vote to rehear and strike down the General Assembly's 2022 law creating a unique governing framework for Jefferson County Public Schools. Richardson filed his petition to impeach her for this decision, citing a purported conflict of interest, namely, that Justice Goodwine was supported by a JCPS teachers' union in her election.

Under Kentucky law, any citizen can file an impeachment petition, and a House committee has to consider such petitions. But there is no good reason for the House to give this petition the slightest credibility. It is purely political. Richardson—like most current members of the General Assembly—did not like Justice Goodwine's tie-breaking rulings on the JCPS law. But it is one

thing to criticize a justice's decision on the merits, and quite another to characterize a single decision as impeachment-worthy. Our system provides a remedy for such things—it's called an election.

Impeachment, on the other hand, is reserved for criminal misconduct and deep ethical lapses. Under the Kentucky Constitution, impeachment is appropriate only for "misdemeanors in office." While this term is vague, the General Assembly has applied it only twice. In 1888, the General Assembly impeached Treasurer James "Honest Dick" Tate for stealing hundreds of thousands of dollars in public funds. And just a few years ago, the legislature impeached Commonwealth's Attorney Ronnie Goldy for promising leniency to a defendant in exchange for nude pictures.

To place Justice Goodwine in the company of "Honest Dick" and Ronnie Goldy is sickening, and its implications for judicial independence are alarming. If judges in Kentucky are going to face impeachment every time they issue a controversial order, our system of justice will not function as it should. Justice Goodwine is highly qualified for the position she holds, and she has not committed a "misdemeanor" or engaged in the kind of gross misconduct that warrants impeachment. She has issued an order that some people don't like. That is not an impeachable offense under the Kentucky Constitution, nor should it be.

Tort Reform

LBA members should also be familiar with SB 195. Introduced in mid-February, this bill represents the General Assembly's latest attempt to reform Kentucky's tort and civil litigation systems. As many LBA members will know, a number of past efforts at tort reform have failed in the courts, as judges found them to violate Kentucky's "jural rights" doctrine.

SB 195 aims to be a bit more modest than past, unconstitutional tort reform bills, but its impact would still be vast. Among other changes, the bill would modify Kentucky's comparative fault rules and bar damages for any claimant found to be more than 50 percent liable for an injury; require 60-day written notice to a prospective defendant of Consumer Protection Act claims; require presuit notice and an expert opinion before initiating a medical malpractice lawsuit; establish a 60-day pre-litigation notice requirement for personal injury lawsuits; and abolish third-party liability for insurance bad faith.

Unlike the KBA measure and Goodwine impeachment, there are reasonable grounds both to support and oppose SB 195. As my practice focuses primarily on insurance coverage and bad faith, I hear routinely from insurance clients about the challenges of litigation in Kentucky. But I also understand the counterpoints raised by plaintiffs' attorneys and consumer-rights advocates. If you have a strong opinion on tort reform, please let us know and we'll make a space for you to contribute an article in the next issue of *Bar Briefs*.



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