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A
dmittedly, I am biased.

If you want to read an objective, impartial article, you will want to select something else in the Bench & Bar.

If you choose to read further, you should know I currently serve on the Board of Directors for Lawyers Mutual Insurance Company of Kentucky ("LMICK") as do all presidents, presidents elect and past presidents of the Kentucky Bar Association during their term of office. My father was one of the founders of LMICK and served as its president for 20 years before resigning. You should note that none of the LMICK board members or officers, other than staff, are paid for their service.

LMICK has financially supported the KBA annual convention, bought the wine for the KBA annual dinner, paid for booth space at our annual convention and at each of the Kentucky Law Updates held across the state. LMICK staff – Pete Gullett, Del O’Roark, Bob Breetz, and Jane Long – have spoken and written on malpractice, risk management, and law office management possibly more than any other lawyers in Kentucky. LMICK has also provided substantial financial and other support to the Kentucky Lawyer Assistance Program. I daresay that no other company has given as much financial and other support to the KBA and its programs as LMICK. As I said, I am biased.

This article is not intended as an advertisement for LMICK. It is also not intended to convince those lawyers who are not insured by LMICK to immediately drop their current malpractice carrier and switch to LMICK. LMICK does not and cannot insure every lawyer in Kentucky. That was never its goal.

Rather, LMICK is an example of an idea that originated in a KBA committee and because of hard work and financial support from lawyers across this state, LMICK has been responsible for literally saving millions of dollars in malpractice premiums, whether you are LMICK insured or not.

A little history may help you understand how LMICK has helped Kentucky lawyers. Back in the 1980s, legal malpractice premiums skyrocketed. Many commercial insurers stopped offering coverage in Kentucky. In 1986, the KBA Legal Malpractice Committee formed a sub-committee to study the feasibility of a domestic mutual insurance company to provide malpractice coverage for Kentucky lawyers. LMICK evolved from that study.

To attain the necessary start-up capital, LMICK offered subscriptions for surplus certificates to attorneys licensed to practice in Kentucky. The initial subscription period resulted in a little more than $3 million in capital being raised from Kentucky lawyers. LMICK is a mutual company, which means that each policy holder has an ownership interest in the company.

So, what has LMICK accomplished? Lawyers Mutual was established to:

• Assure availability of professional liability insurance
• Meet Kentucky lawyers’ responsibility to the public
• Foster competition in the insurance market place.

These goals have been met. LMICK does not always have the cheapest premiums. Sometimes, commercial carriers will, for whatever reason, offer coverage at premiums less than LMICK. It is beyond my knowledge to explain the intricacies of how insurance premiums are determined. Nonetheless, LMICK only insures Kentucky lawyers and its premiums are based on the loss experience of those Kentucky lawyers.

We also should not forget what has happened in recent years to the medical malpractice insurance market. For years, physicians in Kentucky had a mutual insurance company, Kentucky Medical Protective, similar in many ways to LMICK. Medical Protective offered medical malpractice coverage to only Kentucky physicians.

Unfortunately, a commercial carrier came into Kentucky offering premiums substantially less than those offered by Medical Protective. Doctors left their mutual company in droves chasing those cheaper premiums. Eventually, Medical Protective closed its doors and ceased operations.

That commercial carrier, after a few years of operation, went into receivership leaving Kentucky physicians searching for coverage. Physicians were left to the whims of the market. Because there was no Kentucky company basing its premiums on Kentucky losses as opposed to losses from other states, premiums for physicians in Kentucky skyrocketed.

Physicians ran to the legislature seeking tort reform arguing that malpractice insurance had become
unaffordable. In my opinion, had physicians stayed with and supported their Kentucky-based mutual insurance company, physicians would not have experienced the dramatic increase in the cost of malpractice coverage.

We should learn from this example. If we do not support our Kentucky-based mutual insurance company, even though other companies may offer cheaper premiums, lawyers could face a similar situation in the future. LMICK should also be supported for many other reasons. Many times, commercial carriers will drop coverage for lawyers who are perceived to be greater risks and therefore unprofitable. LMICK has always provided coverage for lawyers who practice in high-risk areas.

The most significant benefit of being LMICK insured is the company’s ability to manage claims. No matter how conscientious or careful, any lawyer can be subject to a malpractice claim. All LMICK claims are handled by Kentucky lawyers from the time a claim is reported until it is concluded. LMICK only writes coverage for Kentucky lawyers. No other legal malpractice carrier can come close to matching LMICK’s knowledge and experience in handling Kentucky claims.

What LMICK has accomplished is to provide stability to the legal malpractice market. Commercial carriers know that if premiums are raised, LMICK will be there to offer coverage based solely on Kentucky experience. That competition has benefited all Kentucky lawyers.

At the beginning of this article, I told you that I was biased. Maybe you should consider this as an advertisement. Nonetheless, LMICK is an example of an idea that originated in a KBA committee that has benefited all Kentucky lawyers. ☞

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**JOHN D. MEYERS NAMED KBA EXECUTIVE DIRECTOR**

Congratulations to John D. Meyers, our new KBA Executive Director. We all look forward to working with John. He assumes his position after serving as the KBA’s Continuing Legal Education Director. John will do an outstanding job and we wish him the best.

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**KLEO UPDATE**

We did it! Lawyers of Kentucky, through their generosity, have funded the KLEO Summer Institute. Thank you to all those lawyers who worked to organize fundraisers in Louisville and Lexington and to all those lawyers and law firms who generously contributed. Fifteen law students completed the summer boot camp and are now attending classes at Chase, the University of Louisville and the University of Kentucky Colleges of Law.

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**Kentucky Bar Association**

**2010 Outstanding Service Awards**

**Call for Nominations**

The Kentucky Bar Association is accepting nominations for 2010 Outstanding Judge and Lawyer, Donated Legal Services, and Bruce K. Davis Bar Service Awards. Nominations must be received by December 31, 2009. If you are aware of a Kentucky judge or lawyer who has provided exceptional service in these areas, please call (502) 564-3795 to request a nominating form or download it from our website at www.kybar.org by choosing “Inside KBA” and clicking on “Public Relations – Outstanding Service Awards.”

**Outstanding Judge Award**

**Outstanding Lawyer Award**

Awards may be given to any judge or lawyer who has distinguished himself or herself through a contribution of outstanding service to the legal profession. The selection process places special emphasis upon community, civic and/or charitable service, which brings honor to the profession.

**Donated Legal Services Award**

Nominees for the Donated Legal Services Award must be members in good standing with the KBA and currently involved in pro bono work. The selection process places special emphasis on the nature of the legal services contributed and the amount of time involved in the provision of free legal services.

**Bruce K. Davis Bar Service Award**

Many lawyers take time from their practices to provide personal, professional, and financial support to the KBA. This award expresses the appreciation and respect for such dedicated professional service. All members of the KBA are eligible in any given year except for current officers and members of the Board of Governors.
An estimated 1.3 million women are victims of physical assault by an intimate partner each year. One in every four women will experience domestic violence in her lifetime. This demonstrates the need for the Young Lawyers Section’s new service project, Voices Against Violence. Voices Against Violence is a call to action for young lawyers to learn about domestic violence and directly address the unmet legal needs of its victims.

The project encourages young lawyers to take part in legislative advocacy, handle pro bono cases involving domestic violence and provide support to existing domestic violence shelters and programs. In early 2010, the YLS will be hosting a fundraiser to benefit the Kentucky Domestic Violence Association’s Victim/Survivor fund and will be hosting a “Law Suit Day” to collect gently used professional clothing for domestic violence victims. The pro bono element of Voices Against Violence challenges young lawyers to provide domestic violence victims with representation in EPO/DVO hearings and dissolution of marriage proceedings along with review of leases, bank accounts and federal assistance forms.

To train young lawyers to effectively assist domestic violence victims in EPO and DVO hearings, the YLS will host free CLEs in Lexington, Covington and Bowling Green on October 12th. Although no there is no fee for the CLEs, all attendees are asked to bring a needed item for the local domestic violence center, like cleaning and paper products, formula, diapers and personal care items, or to donate money to the domestic violence center. We firmly believe that young lawyers educated about domestic violence and engaged in representing its victims will become strong advocates and work against this epidemic in other respects, as both lawyers and engaged citizens.

The YLS will host additional trainings in January and February in other communities where shelters are located. I encourage you to contact Lori Alvey at lalvey@kybar.org to register for one of the CLEs.

Please join the YLS in embracing this exciting, important, and needed service project. If you are interested in volunteering with this project, please contact me at Jennifer_H_Moore@kyed.uscourts.gov or Roula Allouch, Co-Chair of the YLS Public Service Committee and coordinator for this project, at rallouch@ortlaw.com.

ENDNOTES
3. Voices Against Violence was created by the leaders of the American Bar Association Young Lawyers Division and the YLS is pleased to have their support in its implementation of the program.
WHY PATENT LAW MATTERS

By Alexander P. Brackett

The term “intellectual property” is used to refer to several related areas of the law: patents, trademarks, copyrights, and trade secrets. Patent and copyright law have their basis in the Constitution at Article I, Section 8, where Congress is given the power to “promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” The polymath Thomas Jefferson was the nation’s first patent examiner. After several years of struggling to keep up with the applications submitted to him, he realized a more structured and robust examining corps was needed, and so the U.S. Patent and Trademark Office had its genesis. From this august beginning the patent office has grown into a vast and complex enterprise, employing some 6,000 patent examiners and 400 trademark examiners. The patent examiners alone processed more than 495,000 applications for patent in 2008.

The Patent Practitioner

As the patent office has evolved from a one-man show to a large bureaucracy, the regulations governing the application process and the court cases that determine the rules for interpreting and enforcing patents have grown into a complex minefield. The learning curve for a new patent attorney is steep. To decide who becomes a patent lawyer, the patent office administers the Patent Bar Examination. To take the Patent Bar the applicant must have, at minimum, a bachelor’s degree in a recognized technical subject, or the equivalent technical training. A law degree is not a prerequisite for becoming registered to practice before the patent office. Those who take the examination but are not licensed to practice law are deemed “registered patent agents” once they pass the exam, and the lawyers are registered patent attorneys. Either a patent attorney or patent agent may represent patent applicants before the patent office.

Patent attorneys are a small cadre. There are just under 29,000 patent attorneys nationwide and 9,200 agents. In Kentucky, the clique is even smaller. There are only 126 registered attorneys and agents combined. Registered patent attorneys often segregate themselves into two categories: patent prosecutors who prosecute patent applications in the patent office, and patent litigators who litigate patent claims. Some patent attorneys prosecute and litigate, but these are very different and very demanding callings, each by themselves.

For an invention to be patentable under U.S. Patent law it must be both novel and non-obvious as those terms are construed by the courts and applied by the patent office.

Some practitioners are engaged as in-house patent counsel for various technology companies and academic institutions, and many work in law firms. Some patent attorneys concentrate their practices in specific areas. For example, a practitioner with an undergraduate degree in biochemistry might only draft and prosecute patent applications for inventions pertaining to bio-chemical inventions, while an electrical engineer may focus on inventions only in the electronic arts. An independent litigator, on the other hand, may enforce or defend patents outside the litigator’s technical area of concentration, since experts are available to give opinions. In today’s complex technological environment, many patent practitioners must have advanced science degrees to enable them to interact with inventors and to understand the technological underpinnings of the invention. Many inventions encompass aspects of various technological areas. For example, inventions related to surface computing technologies may encompass both chemical and electrical arts. Because of this need for technical depth in a patent practice, many firms of sufficient size employ attorneys who practice in a range of technological disciplines.

The Patent Process – In Theory

The process of obtaining a patent is relatively simple, in the abstract. The inventor presents the patent attorney with a new invention, whether on paper or a prototype, and the patent attorney describes the invention in a patent application terminating in a set of claims that define the scope of the invention. The claims of the application are a little like a real-estate deed because they trace the metes and bounds of the invention. However, it is critical to understand that the rights conferred to a patent holder are negative rights: the patent holder has the right to prohibit others from making, using or selling their claimed invention. Stated another way, the patent does not give an inventor a right to make or use the invention, but rather a right to prevent others from doing so.

For an invention to be patentable under U.S. Patent law it must be both novel and non-obvious as those terms are construed by the courts and applied by the patent office. Novelty, as set forth in 35 U.S.C. § 102, is generally understood to mean that no single prior art reference (e.g., a patent or technical paper) teaches or discloses each element of the invention for which patent protection is sought. Non-obviousness, as set forth in 35 U.S.C. § 103, requires that two or more prior art references can not be combined to produce the invention.
However, what references may be properly combined by the examiner to reject the application on grounds of obviousness is the subject of complex, evolving case law. A great deal of the patent practitioner’s time is devoted to written argument over what is and what is not obvious.

Once an application is filed with the patent office, the initial job of the patent practitioner is to wait. And wait. And wait some more. Due to the volume of applications filed and the high turnover rate among examiners, the average duration of pendency of an application – the time the patent is pending – is more than three years from filing to issuance. When a patent examiner reviews or “examines” an application, the examiner issues an “office action” which is a written report allowing or rejecting the claims. The office action explains why the examiner believes the claims to be unpatentable in view of the prior art cited. The practitioner may collaborate with the inventor in a written attempt to change the opinion of the examiner. Discussions in person or by telephone over the differences between the prior art and the claimed invention are common between practitioners and examiners.

The practitioner is often required to amend or modify the claims to satisfy the examiner’s concerns that the invention is in fact patentable over the prior art. If the claims are allowed, the inventor pays an issue fee and the patent is immediately enforceable in the courts. The term of the patent is twenty years from its filing date.

A troll in the patent world is a patent owner that doesn’t actually produce a product from its patent. The term “troll” is a pejorative for what is also known as a Non-Practicing Entity.

Trolls trade in patents as if they were any other asset class – stocks, mutual funds, convertible debentures. Trolls sell licenses for patents they own. They also litigate aggressively against putative infringers. A substantial body of commentary holds the view that trolls have little economic utility.

Trolls in this view use the threat of an infringement suit to leverage hefty patent-license fees, and for prices out of proportion to the patent’s contribution to the infringing product. Trolls, it is said, increase the cost of product development and therefore inflate the price paid by the ultimate consumer.

It is argued that injunctive relief should not be a remedy available to trolls, who don’t make anything and therefore never lose sales to the infringer.

A troll named NTP brought an infringement claim against Research in Motion for its wildly popular wireless e-mail service. Under threat of a worldwide BlackBerry® shut-down, RIM settled for $612 million.

NTP has never made a product. NTP v RIM is Exhibit A in the trolls’ critics’ brief that trolls are all of what is wrong with the patent system.

There is, of course, another view of trolls. A troll in this reckoning, in selling patents and licenses, stimulates a market for intellectual property and thus improves the chances for patented technologies to find producers in a position to exploit them.

Loved or not, trolls are a fact of life in the contemporary patent world, and all are not regarded equally.

A subset of trolls is a patent aggregation firm. These companies provide a market for the independent inventor among technology giants such as IBM® and Microsoft® to which the inventor might not otherwise have access.

A notable aggregation firm is Intellectual Ventures. The firm was founded by Nathan Myhrvold after he retired as Microsoft’s chief technology officer.

The company owns a vast array of patents and pending patent applications, raises capital by selling licenses to the giants, and uses some of the proceeds to buy new patent assets.

Mr. Myhrvold calls his business model “invention capitalism.”

His firm has yet to file an infringement suit. But with a portfolio of more than 2,000 patents in semiconductor technologies alone, Intellectual Ventures packs enormous throw-weight in the interlocking worlds of intellectual property and technology capitalism.

Part of the push-and-shove between trolls and their adversaries is taking place in Washington. Under discussion are various reform proposals.

Of course, one side’s reform is to another an effort to constrain competition, an affront to free enterprise, and against the American way.

The economic stakes are enormous.

Patent reform is a great distance from the concern of most Americans, especially now when many are hard- pressed. Given the daunting long Congressional agenda, prospects for any patent legislation are uncertain.
If the inventor's goal is to obtain patent protection for an invention the inventor intends to manufacture and sell, then the inventor should be prepared to enforce the patent against infringers. If the goal is to license the patent to others, then the right to enforce that patent may be assigned as part of the license. In any event, the patent holder needs to understand the attendant cost and difficulty of litigating an infringement suit. According to a 2007 survey by the American Intellectual Property Law Association, the average cost of litigating a patent infringement suit with less than $1 million at stake is $461,000.

One technique companies use to avoid, or at least minimize the necessity for such suits, is to pursue a comprehensive patenting strategy whereby they obtain a number of patents within a product area or niche that provide claim coverage over the entire product area. The net result of a judicious strategy is a patent portfolio that provides comprehensive protection for the companies' products while giving potential infringers pause, since they necessarily must avoid a number of different patent claims representing a variety of inventions which may be incorporated into a single product. In fact, a great many large technology concerns use just this strategy to carve out areas of protection for their developing technologies. As one example, the IBM Corporation was awarded 4,186 patents in 2008. Samsung was next with 3,515 patents for the year.

Naturally, small companies, start-ups, and solo inventors often don't have the resources to undertake a "patent-it-all" strategy, and so they must select the inventions that they believe will offer the most value over the long run for patent protection. Twenty-twenty foresight is useful in this determination. For mere mortals, predicting how an invention will fare in the market and what it might be competing with is very difficult to know. The innate uncertainty of how an invention may be received by the market provoked a sage to tell one of the author's clients: “If you're not going to produce it, don't waste your money patenting it.”

Alexander P. Brackett, a graduate of Chase College of Law, is a member of Middleton Reutlinger's intellectual property practice, focusing on patent law, U.S. patent prosecution and international patent prosecution.

Mr. Brackett practices in Louisville where he prepares and prosecutes patent applications in the electrical/electromechanical, gas turbine engine, computer/software, medical device and mechanical arts industries. He has engineering experience in the areas of process automation and control systems, power distribution and electronics, and software programming in a wide variety of proprietary languages. Mr. Brackett is also a member of the American Intellectual Property Law Association, Louisville Bar Association (Past Intellectual Property Law Section Chair), and Ohio State Bar Association.
### CLEvents

Following is a list of TENTATIVE upcoming CLE programs. REMEMBER circumstances may arise which result in program changes or cancellations. **You must contact the listed program sponsor** if you have questions regarding specific CLE programs and/or registration. ETHICS credits are included in many of these programs. Some programs may not yet be accredited for CLE credits - please check with the program sponsor or the KBA CLE office for details.

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#### 2009 KENTUCKY LAW UPDATE

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New Lawyers Training: Professionalism, Law Office & Client Funds Management
**Kentucky Bar Association**

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***The Bowling Green KLU date has been changed since the dates were first announced. Please check your calendars and mark the new dates.***

### CLEvents

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September 2009 Bench & Bar 9
The internet pushed us headlong into the information age. Now the playing field has changed yet again. We live in a “collaborative information” age. We do not simply view information, we interact with it. In fact we transform the information we are viewing. The most popular social media web sites – Wikipedia, YouTube, Facebook, Twitter – consist primarily of information and content that has been uploaded by users with only a marginal amount of oversight by the operator of the site. Typically, because the information is posted at the time it is uploaded, the host site by design has little if any ability to filter content prior to publication. Thus the site becomes a constantly changing landscape, limited only by the controls put in place by the host of the site and the imagination of its users.

Don Tapscott, the author of the introductory quote, is not overstating the facts. The impact of the collaborative approach extends far beyond social networking sites, to the interactions between businesses and their customers and interactions between businesses and their competitors.

The word WIKI itself, ubiquitous today, unknown a few years ago illustrates the point. Wiki was originally a Hawaiian word meaning fast. It was adopted as the name of a software program in 1994 that allowed easy editing of interlinked web pages. The word then became a noun denoting a website that used WIKI software. Now it has morphed again into a generic term for an interactive web site.

The most well known WIKI is Wikipedia, an online encyclopedia that has come to replace Britannica as the most used encyclopedia in the world. Wikipedia encourages its users to both write articles for inclusion on the site and to edit or expand existing articles. Wikipedia maintains policies and guidelines, and seeks a neutral point of view and a consensus as to the accuracy.

This concept of a collaborative website development is not limited to encyclopedias. YouTube contains millions of videos. These are uploaded by users. Amazon sells books, DVDs and CDs – but it allows its users to post comments and reviews that are in turn accessed by readers. It facilitates independent book dealers selling used copies of books that are in competition with Amazon. Newspapers on their websites allow and encourage user comments. These are just a few examples.

Integral to the collaborative theme is the easy sharing of files. The availability of cheap storage combined with broadband internet access at very high speeds and the relative ease of copying digital media, facilitates this on a grand scale. This began on college and university campuses in the late 1990’s. Students had access to both high digital transfer rates and computers with large hard drives. Mix in rock and roll music and a bevy of sites like Napster that purported to give “free” access to the world’s digital music library, and by some estimates 80% of university transfer capacity was used to download music.

File sharing facilitates a quantum leap in the availability of information of all types - audio, video, text and graphic. It unfortunately also blurs the traditional notions of intellectual property ownership. First the issue arises of who owns the information collaboratively created, the site owner or the users themselves. This issue can be solved by the site user with a well drafted user agreement. That only addresses the rights between the site owner and the user. What if the user did not own or have rights to the content he uploaded?

The issue then becomes what are the ownership rights to the underlying content and the rights of a licensee to use it in a collaborative site. Ownership rights in intellectual property are not absolute. Implicit in the concept of “fair use” is a requirement to determine what is in the public’s interest. It is too simplistic to say that only the copyright owner has the right to make a copy and the analysis ends there. If I buy a music compact disk (“CD”) or a movie on a digital video disk (“DVD”), I clearly have the right to watch or listen to it. By statute I may also have the right to make an archival copy to protect my copy. I would have the right to listen to it or watch it with my friends. Yet if my friends are virtual friends, and I use the medium of the internet to “share” my copy with them, the problems start.

Copyright law was designed to deal with the technology of Gutenberg, not Gates. With each new advance in technology – analog recording, motion pictures, and now digital file transfer via the internet – copyright law has evolved to address the issue of ownership and its boundaries.

As further evidence of the impact technology has had on intellectual property, search engines have been developed for the sole purpose of crawling through
the web to find evidence of the unauthorized use of images (www.tineye.com) as well as the unauthorized “borrowing” of text (www.copyscape.com). These search engines utilize novel algorithms to search for recognizable arrangements of pixels. How far away is a search engine that can recognize arrangements of sound? Not far off apparently. At least two Apple iPhone applications’ apparently allow users to hum a few bars or sing a line or two after which it retrieves information about the song and provide links to purchase the digital copy through iTunes.

Consequently, as technology improves and is adapted to help detect potential infringement, the creativity of would-be infringers keeps them one step ahead. The BitTorrent file sharing protocol breaks up a file into smaller sections, called blocks, and allows it to be distributed piecemeal and subsequently reassembled. A server, called a “tracker,” manages the file transfer process by directing network traffic and sharing the bandwidth burden among various end users. This complicates matters for the copyright owner in that a BitTorrent end user typically maintains only part of a file rather than the entire file, thus making detection and deterrence difficult.

We are now in the transition phase with a series of cases winding their way through the system -- cases that will ultimately decide how collaborative we can be. The sorting out of the application of the law will also determine how much control the intellectual property owners can retain.

### The Backdrop – Napster and the Legal Response of the Recording Industry

Beginning in June 1999 and continuing until July 2001, the first of the popular online file sharing sites “Napster” was created by, not surprisingly, a college student. Napster allowed users to copy and distribute the MP3 files amongst themselves, primarily music MP3s. The site was a peer-to-peer file sharing service. No MP3 files were centrally stored but Napster did maintain a central index of users and files. To copy a file, you had to find a user that had the file you wanted and make a copy from their storage. Many reasons were urged for allowing this model. CD’s had become too expensive. The content of a particular CD might consist of only one song a user really wanted. The traditional distribution system stifled new artists from entering the market. File sharing allowed sampling of music that might ultimately result in a sale. Napster argued that the Audio Home Recording Act implicitly legalized peer to peer file sharing. Of all these reasons, only the last had any real legal basis, the rest were merely excuses for digital theft.

The music recording industry through its trade group the Recording Industry Association of America (“RIAA”) denounced “file sharing” as “file theft” and began a series of lawsuits that ultimately resulted in Napster and its progeny being shut down.

Other services tried to work around the Napster case by eliminating the centralized indices. In a decision by the United States Supreme Court, MGM Studios v. Grokster, the court held that one who distributes a device with the object of promoting its use to infringe copyright is liable to the resulting acts of infringement of third parties using the device. Thus, the facilitation offered by the Napster and Grokster sites was viewed as the same type of copyright infringement as the actual file sharers. The Ninth Circuit had previously ruled in Grokster’s favor citing an early U.S. Supreme Court Case that had created a “safe harbor” for someone who produced a device that could be used for infringement.

The future of commercial websites that utilize user generated content (“UGC”) depends on how the courts ultimately interpret “right and ability to control” under the DMCA. Should the UGC industry lose this battle, the next issue facing them is the dispute over what constitutes “direct financial benefit.” The courts have, so far, not interpreted a paid subscription service to a website to be a direct financial ben-

### The Safe Harbor of the Digital Millennium Copyright Act

In 1998, reacting to both the internet and the digitalization of information, Congress amended the Copyright Act by passing the Digital Millennium Copyright Act (“DMCA”). The DMCA did the following:

- Made it a crime to circumvent anti-piracy measures built into most commercial software
- Outlawed the manufacture, sale, or distribution of code-cracking devices used to illegally copy software.

The DMCA did provide a safe harbor for online service providers who merely allow users to post material that infringes copyrights. To avail itself of this safe harbor, a service has to demonstrate that it meets the statutory definition of a “service provider” and that it does not have actual knowledge of the infringing material, that it is not aware of facts or circumstances that make the infringing activity apparent and that it acts expeditiously to remove infringing material when it is brought to the service provider’s attention.

The future of commercial websites that utilize user generated content (“UGC”) depends on how the courts ultimately interpret “right and ability to control” under the DMCA. Should the UGC industry lose this battle, the next issue facing them is the dispute over what constitutes “direct financial benefit.” The courts have, so far, not interpreted a paid subscription service to a website to be a direct financial ben-

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benefit that is derived from the user-generated content.14

It is worth noting that the DMCA safe harbor does not extend beyond qualifying online service providers (including websites). Thus user groups that carve out territory within a qualifying online service provider cannot depend on the DMCA safe harbor as a defense to infringement. This potentially has the most impact on blogs found on blog hosting websites like Blogger and Blogspot. These blogs are essentially user groups operating within the domain of the host website and thus should not be able to claim the benefit of the DMCA safe harbor.

The Current Major Cases

In the post-Napster DMCA world the question has shifted. Now the owner of a copyright that is being infringed must determine who is the best party to sue in order to enforce his rights. For all but the most well-financed industry groups such as the RIAA, it is a cost prohibitive exercise to go after all of the potentially millions of users of a site that has infringing material on it. It would be much easier to sue the site itself – Google, Microsoft and others. This brings into play issues of fair use and the safe harbors discussed above. That is the caselaw that is currently developing in the various courts.

Perfect 10, Inc. v. Amazon.com, Inc.15

This action was initiated by Perfect 10, Inc., the owner of copyrights in photographs of models, against Google, Inc., the dominant internet search engine and Amazon. The suit alleged direct, vicarious and contributory copyright infringement.

Google’s image search engine provides responses to queries entered by users. The response includes a thumbnail image, which is a reduced, lower resolution version of images stored on third-party computers. When a user clicks on a “thumbnail image” the user’s browser creates a rectangular area that contains two separate blocks of information. The top section contains information from the Google webpage. The bottom part of the display is a framed version of the third-party site. Perfect 10’s copyrighted images appear unlicensed on third-party websites. These sites are searchable using the Google engine.

Beginning in 2001, Perfect 10 informed Google that it viewed both the thumbnail images and the framed linking to the full sized images as infringing its copyrights. In 2004 Perfect 10 filed suit against Google. Suit against Amazon was filed in 2005. Amazon had by contractual agreement, linked to Google’s image search engine. The two cases were ultimately consolidated.

At the District Court level, Perfect 10 moved for preliminary injunctions against both defendants. The District Court granted a portion of the injunctive relief against Google and denied the injunctive relief against Amazon.com. Both Perfect 10 and Google appealed the District Court’s decision. The District Court stayed the effect of the

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The United States Court of Appeals for the Ninth Circuit affirmed in part, reversed in part and remanded the action for further proceedings. The effect of the Ninth Circuit’s opinion was to dissolve the District Court’s injunction. The Ninth Circuit held that Google’s use of thumbnail copies of Perfect 10’s constituted copyright infringement. The Court went on to hold that:

We conclude that Perfect 10 is unlikely to succeed in overcoming Google’s fair use defense, and therefore reverse the district court’s determination that Google’s thumbnail versions of Perfect 10’s images likely constituted a direct infringement.16

The Court determined that Google and Amazon could be secondarily liable for third party infringement if they knew of the infringing activities and had not taken reasonable steps in response. The Court remanded that portion of the action for a factual determination of secondary liability. The Court declined to consider whether the DMCA provided a “safe harbor” for the defendants since that had not been addressed at the trial court level. The case is now back before the trial court.

Viacom v. YouTube 17

This action was brought by media giant Viacom against Google’s subsidiary YouTube. Viacom claimed a billion dollars in damages. At issue are brief excerpts of Viacom properties which are posted on the YouTube site. The clips are posted by YouTube users. The suit was filed in March 2007. The parties are still wrangling over the form of the complaint so it is unlikely a decision will be rendered in the case for years to come. YouTube’s defense is the safe harbor provisions of the Digital Millennium Copyright Act. YouTube styles itself a service provider. The DMCA shifts the burden of monitoring infringement from service providers to content providers. The citation to the YouTube case deals only with a motion to amend the complaint to add a count for punitive damages. That motion was denied.

The threshold issue for application of the DMCA Safe Harbor is whether YouTube is in fact a service provider. This will turn on whether the conduct at issue is

- Transitory communications;
- System caching;
- Information storage; or
- Information location tools such as a search engine.

See 17 U.S.C. Sections 512(a)-(d). If this threshold is met, YouTube will have to show that it had no actual knowledge of the infringement, it moved expeditiously to disable access and that it received no financial benefit directly attributable to the infringing activity.

MPAA v. Real Networks 18

The Motion Picture Association of America filed suit against Real Networks to enjoin the sale of “RealDVD”. RealDVD would allow a user to copy and store DVD’s on a computer hard drive. The MPAA contends that RealDVD violates provisions of the DMCA. Also at issue is “FACET,” the next generation DVD player. FACET would have the ability to store 900 DVD’s.

Capitol Records v. Thomas 19

This is the first case brought by the music industry against an individual related to file sharing to reach a verdict. It has now reached two verdicts. The first verdict was in October of 2007 wherein the plaintiffs were awarded a judgment of statutory damages against the defendant in the amount of $9,250 per downloaded song for a total award of $220,000. Ms. Thomas, the single mother of two, had been sued for the downloading activity, possibly of her children, on the Napster-like site KAZAA. The trial court in an order nearly a year later, granted defendant’s motion for a new trial. The Judge granted the motion because of an erroneous jury instruction that stated that the plaintiffs did not have to show actual distribution.

At issue along with the jury instruction was whether the award was excessive. The Court did not rule on this, but took the extraordinary step of addressing it in a call for revision of the Copyright Act. The Court said:

The Court would be remiss if it did not take this opportunity to implore Congress to address liability and damages in peer-to-peer network cases such as the one currently before this Court. The Court begins its analysis by recognizing the unique nature of this case. The defendant is an individual, a consumer. She is not a business. She sought no profit from her acts. .... The
The Users Strike Back

While the recording industry has been aggressive in going after the sites like Napster and even individual users like Ms. Thomas, file sharers are beginning to react to what is perceived as an overly aggressive misuse of copyright law. Stephanie Lenz, a Pennsylvania mom, posted a 29 second video clip of her son dancing in the kitchen of their home on YOUTUBE. After the clip had been viewed 28 times, mostly by family and friends, Ms. Lenz was informed that it had been taken down at the request of Universal Music. The clip contained Prince’s “Let’s Go Crazy” in the background. Ms. Lenz reacted by filing a lawsuit against Universal alleging that a) her use was a fair use under the copyright act and that b) Universal’s actions constituted bad faith under the DMCA. Much to Universal’s chagrin the claim has survived summary judgment. YouTube in the interim has reposted the video and at the writing of this article the video has been viewed nearly a million times.

Ms. Lenz’s action is being underwritten by the Electronic Frontier Foundation, a non-profit group whose aim is to foster free speech, fair use and consumer’s rights, particularly on the internet.

Additionally, efforts appear to be underway to bring a class action lawsuit against the RIAA for its overzealous use of litigation and especially for the use of blanket complaints and discovery requests that only differ by heading. The RIAA routinely sends out batches of hundreds of “pre-litigation letters” at a time, sympathetically offering to let recipients settle copyright infringement claims “at a discounted rate” before those claims go to trial. Tanya Andersen, a single mother who received threats from the RIAA that they would “financially ruin” her if she did not agree to their settlement offer, not only fought back against the RIAA, had her case dismissed with prejudice and was awarded approximately $108,000 for her attorneys’ fees and costs, but also returned the favor with an action for malicious prosecution. The court has yet to rule on Ms. Andersen’s motion for class action status and has indicated that it will allow Ms. Andersen to develop her evidence of a perceived violation of RICO based upon the recording industry’s alleged failure to perform any reasonable due diligence prior to engaging in blanket threats and the filing of form complaints.

Conclusion

The genie is out of the bottle. The RIAA may have stopped sites such as Napster and significantly cut down on peer-to-peer file sharing, however, the public has shown a clear preference for obtaining music in the digital download format. ITunes and Rhapsody have supplanted the traditional record store. Thus the way music is delivered to the end user has transformed. A crystal ball would likely indicate that collaborative sites are here to stay as well. The rights of copyright owners will not be totally ignored.

Copyright law has responded to changing technologies as diverse as the photocopier, the videotape and the internet. While the internet and the digitalization of information on a mass scale provide new challenges, ultimately the law will respond with a balancing of the rights of copyright owners and the rights of the public to access and use information.

ENDNOTES
1. The authors wish to thank Jeffrey Frey and James Payne, Research Librarians for Stoll Keenon Ogden’s Lexington, Kentucky office for their thoughtful comments and suggestions on earlier drafts of this article.
5. 17 U.S.C. Section 107. The “fair use” analysis looks at the purpose and character of the use. A use that benefits the public interest like an educational use is more likely to be viewed as a “fair use.”
6. 17 U.S.C. Section 106. Clearly the right to reproduce a work and the right to create a derivative work are central to copyright ownership. The concept of fair use, 17 U.S.C. Section 107, makes it clear that these rights are not absolute.

7. Shazam and Midomi.


10. 17 U.S.C. Sections 1001-1010. The legislative history indicated that making digital copies for family members or for use in portable playing devices was not actionable. It took some leap of faith to view the Napster model as this type of copying.


15. 487 F. 3d 701 (9th Cir 2007).

16. Id. at 733.

17. Case No. C08-04 548 MHP.

18. United States District Court for the Northern District of CA. The case has been assigned to the Hon. Marilyn Patel, the same judge who decided the Napster case.

19. Case No. 06-1497 (June 19, 2009, D. of Minn.). This case was originally styled Virgin Records v. Thomas and many news reports still refer to it by that title.

20. Id. Memorandum of Law and Order dated Sept. 24, 2008 at page 41.

21. 572 F. Supp. 2d 1150 (N.D. Cal. 2008). In a subsequent unpublished opinion the District Court declined to certify the issue of fair use for an interlocutory appeal. 2008 WL 4790669 (Oct. 28, 2008 N.D. Cal.).


By Denise M. Everett

Toto, I’ve a feeling we’re not in Kentucky anymore.

Once in a while a situation arises where a suddenly unexpected realization that we are completely lacking in familiarity leaves us feeling so rationally detached that we immediately conjure up the plight of a bewildered Dorothy as she gazed upon the absurd wonders of Oz.

It is late 2006 and buoyed by back-to-back allowances of two business method patents, I have just enough confidence to respond to the potential client that yes, I have a burgeoning niche practice in the area of software patents and would be happy to meet with him and the members of his “Gamers” start-up company to discuss protection strategies for their video game technology.

The caller, who identifies himself as Dan, explains that they need patent advice and also have a couple of questions about copyright. The Gamers would like to meet at the company office, a café in Cambridge, Massachusetts that afternoon.

Although patents are my area of concentration and I know enough about copyright to competently wing “a couple of questions,” Massachusetts might pose a logistics problem. But the Gamers assure me that they can provide video feed directly to my computer screen through a web portal, as well as audio in both directions, so we agree to “meet” later that day. I key-word search a few relevant databases for pending software applications, quickly scan the prosecution histories to get a feel for the difficult issues that may arise, and confidently enter the Gamers’ portal.

The Gamers, most of whom are pony-tailed and all of whom appear restless, are gathered around a table cluttered with laptops and coffee mugs. Dan starts the meeting by introducing me as The Patent Attorney, and then turns toward the camera and begins; “We want to know how the proposed changes to the GPL are going to affect our ability to patent our products. We used some GPL stuff in our source code, but we thought we could rely on patents to generate the capital we need.” An obviously agitated Gamer-2 chimes in; “GPL version two was pure copyleft, so nobody could make any money off creative input, no matter how much it improved the original or changed the executables. We want our company to own our software, but nearly all base gamer ware is infected with copylefted code. We are cool about open source, but we understand if we get a patent then we can provide access but keep the executables proprietary. Even with the free BSD code or quasi proprietary code, once you mix it or link it with GPL it is all copyleft.”

Dorothy: The wind began to switch.

Dan rustles a sheaf of papers. “Re-assembly would be a nightmare. We need GPL code to run our products. The proposed changes to the GPL…it isn’t only copyleft, it is a gratis patent license!”

Dorothy: The house, to pitch...

Dan continues, “According to the proposed terms we would be forced to grant a free license to our patented products if GPL code can be used to run them. That is what this looks like to me…is that legal? Can they do that? Can they use the GPL license to force us to license the patent for nothing?” The room collectively quiets in anticipation of my undoubtedly astute response.

Dorothy: And suddenly the hinges started to unhitch...

As I gaze in wonder upon café Oz, I feel as much like the brainless scarecrow as I do the bewildered Dorothy. I have no idea what is being asked, much less any idea of a competent answer. I had never heard the term “copyleft.” What sort of licenses are GPL and BSD and what is “free” source code? They must be mistaken about a copyright license that equates to a compulsory patent license, or is there such a thing? I make a quick exit pleading accurately and ingeniously that I am having difficulty making out the audio and will need to reschedule.

Dorothy: How can you talk if you haven’t got a brain?

Scarecrow: I don’t know....but some people without brains do an awful lot of talking...don’t they?

Before the nuances of copyleft can be intelligently discussed, a basic understanding of the differences between the general patent and copyright property paradigms is helpful. Patent and copyright protect different subject matter but may also act in concert to protect different aspects of the same work. Patents protect useful, novel and nonobvious articles of manufacture and processes. In exchange for full disclosure of the inventive technology, society grants the inventor a monopoly that expires 20 years from the filing date of the application which issues as the patent. Obtaining a patent involves a relatively difficult and costly opt-in process. The term is short, but the scope of protection is strong.

Copyright, on the other hand, is an opt-out property right that attaches to industrial and fine arts.
An author of a creative work fixed in a tangible medium assumes copyright ownership automatically unless affirmatively renounced. Copyright term is long, extending the author’s life plus 70 years, but the scope of protection is weak, protecting the author’s specific expression and not the idea, theme or concept being expressed. A copyright owner, however, is the only one authorized to create a derivative (modified) work from the original. Registration is a cheap and easy process, and significant among the benefits of registration is access to statutory damages.

Software is an example of a technology with aspects protectable under both paradigms. Source code is the human-readable script comprising programming statements and is protected as a textual work by copyright. However, once compiled into the executable object code and run on a computer processor, it is potentially protectable by patent.

The advent of fixing creative work in digital media is exacting a tremendous toll on public sentiment toward copyright, making distribution of the work nearly synonymous with copying. In the context of e-books, for example, the once benign act of sharing a favorite book with a friend is now vilified as a form of copyright infringement with potential to destroy the commercial market for the work. Electronic sharing easily morphs into exponential copying by unwitting teenagers, preschoolers and academicians alike. The science of source code underpinned the digital revolution and development of the technologies coincided. It should not be surprising that asserting and maintaining a proprietary stake in text intended for computers under an ineffective enforcement scheme designed to discourage nonpermissive copying by printing presses and forgers, is being discarded in favor reliance on a paradigm that creates wealth on some basis other than control over distribution and copying.
software” licenses the author of the derivative work is thereafter free to make it proprietary or incorporate it into proprietary products, keep it private, or give it to the public. An example of a “free source” license is the BSD license. In contrast, under a copyleft license the derivative work must be distributed according to the same terms under which the original work was distributed. An example of this is the General Public License (GPL). A copyleft license is sometimes derisively referred to as a viral license due to its ability to transmit this reciprocity requirement to all source code that is derived from, incorporates, or is output-linked to a copyleft-protected work.

The relevance of all these revelations to my practice, however, appeared to end when the Gamers opted out of the patent scheme, in part over revelations to them of patenting costs. Over the next few months I casually mentioned copyleft to several colleagues, and although some had heard of issues surrounding “open source,” not a single attorney had heard of “copyleft” or was aware of the terms of the GPL. Kentucky, it appeared, was insufficiently served by the traditional property paradigms and had little in common with the Gamers of café Oz—or so it seemed.

Professor Marvel: Better get under cover. There’s a storm blowin’ up a whopper.

Over the next year I had the unfortunate task of advising several Kentucky clients that rights they thought they had did not, in fact, exist. In some cases enormous resources were wasted in reliance on those rights and in others the client’s unwitting gaffe may have exposed them to liability. For illustrative purposes, sufficiently obscured fact patterns are set forth below.

Client-1 is a professional graphics designer working as an independent contractor. Client-1 noticed that a publication for which she had worked previously was re-publishing her layouts in issues subsequent to termination of their business relationship. She wanted to know if this violated her copyright and called for a consultation. I casually commented on the unusual pose of the subject in one of the pictures in a layout at issue. Client-1 responded, yes, that particular artist had several similarly styled pictures available as stock art and was one of her favorites. Client-1 explained that she did not use her own pictures since she was not an illustrator, but paid a monthly subscription fee for access to an Internet company with a database of hundreds of stock photos. Curiosity piqued, I accessed the stock photo website and inspected the licensing terms. The terms were “Copyleft, Attribution, Non-commercial, special license available upon request.” Result: Client-1’s commercial use and non-attribution may have terminated her license to use the picture, even in an aggregate work. She had no standing to sue for infringement. Further, there may be exposure to liability for publishing the picture in violation of the license terms.

Client-2 is a local band seeking to register the copyright for a new CD. We had been through this process before, so they dutifully provided me names of all the performers on the CD, the lyricists, the authors of the music, and work-for-hire contracts or other relevant assignments. The data for one track, however, was missing. Client-2 explained that it was a non-copyrighted song they took off an MP3 copyleft website. Inspection of the website revealed that the band was accurate in the description of the advertisement which read “Copyleft MP3, non-copyrighted music.” However, a copyleft license is a copyright license. The site had no legal page or license terms. Client-2 is exposed to substantial legal uncertainty by the ambiguous use of terms and will have to excise the track from the CD unless we can locate the author and confirm that copyright was affirmatively renounced.

Further, questions about enforceability of the open source license are no longer addressable solely in the abstract. Throughout 2007 and 2008, on behalf of the developers of an open source software product known as BusyBox, the Software Freedom Law Center filed suit against several tech companies including Verizon Communications, alleging violation of the open access and reciprocity terms of the GPL. Verizon settled in 2008 with payment of undisclosed financial consideration to the plaintiffs, and agreements to appoint an open source compliance officer, to publish the source code, and to take reasonable efforts to notify all previous purchasers of the product of code availability. In June 2008, possibly precipitating Verizon’s willingness to settle, the U.S. Court of Appeals for the Federal Circuit handed the open source community a stunning and unexpected victory in Jacobson v. Katzer. Finding that “[t]he lack
of money changing hands in open source licensing should not be presumed to mean there is no economic consideration” and holding that a copyright holder could dedicate use to the public yet still enforce license terms controlling future distribution and modification, the Court established nationwide legal authority when it vacated a district court denial of injunctive relief under the Copyright Act on the basis that “terms of the copyleft Artists License were so broad that they failed to create liability under copyright law.

Other arts similarly impacted by effects of digital media looked to open source as a property rights model and the “creative commons” emerged in the mid-eighties as an analogous framework for visual arts and music. Unfortunately, accommodation by the intellectual property legal framework is following rather than leading these developments. The first copyleft and open source licenses were drafted by laypersons and were intended to persuade as much as to bind. Hence, the language is preachy, imprecise and critical terms are undefined. It was nearly 20 years after release of the original GPL, drafted in 1989 by non-lawyer Stallman, before release of GPL version 3 wherein lawyers took a primary drafting role. There are no statutes and very few cases to provide black letter law or any degree of legal certainty over definitions of terms such as copyleft, open source and creative commons. The result is an unprecedented lack of standardization among the vernacular of both the legal counselor and the creative counseled.

Kentucky is no longer peering through a portal into café Oz; rather, Kentucky has been swept up by the same storm and deposited at the same table. Until the point is reached where the legal framework fully supports the new conceptual paradigms of open source and creative commons, we may not be able to prevent Dorothy-like bewilderment. However, when equipped with knowledge of the uncertainties and awareness of the raised bar for due diligence on the issue of ownership of intellectual property, as lawyers we can minimize the blindsided losses in property rights and accusations of unwitting infringement that comprise the potential fallout.

Scarecrow: The sum of the square roots of any two sides of an isosceles triangle is equal to the square root of the remaining side. Oh joy! Rapture! I got a brain!

ENDNOTES
1. GNU General Public License (GPL), open source, copyleft license for software; full text available at www.gnu.org/copyleft/gpl.html.
2. Copyleft licenses permit modification of the original work, but require distribution of modified works on the same basis as the original license, and prohibit commercialization of modified works. For the software industry-standard terms of copyleft, see, e.g., http://www.linfo.org/copyleft.html.
4. Berkeley Software Development family of “free software” open source licenses owned by the Regents of the University of California; requires access to code, attribution, disclaims warranties, but not considered copyleft because permits commercialization of modified works. See generally www.opensource.org/licenses/bsd-license.php.
5. See GPLv.3 Paragraph 11 (stipulating in part “Each contributor grants you a non-exclusive, worldwide, royalty-free patent license under the contributor’s essential patent claims, to make, use, sell, offer for sale, import and otherwise run, modify and propagate the contents of its contributor version), full text of GPLv.3 available at www.gnu.org/copyleft/gpl.html.

6. 35 U.S.C. §101, see also In re Bilski, 545 F.3d 943 (Fed. Cir. 2008) (holding that a process is patent-eligible if it is tied to a particular machine or apparatus or transforms an article).

11. See 17 U.S.C. §504(c) “Statutory Damages”; see also 17 U.S.C. §412 “Registration as a Prerequisite to Certain Remedies for Infringement.”
16. First documented use is generally accepted as the May 1976 issue of Dr. Dobbs Journal included Li-Chen Wang’s Palo Alto Tiny BASIC for the Intel 8080 microprocessor, which included the notice “@COPYLEFT ALL WRONGS RESERVED.”
17. Generally free of all property claims; see U.S. Copyright Office definition at http://www.copyright.gov/help/faq/faq-definitions.html.
18. See note 3, supra; see also, http://perens.com/OSD.html for “open source definition.”
20. For a list of licenses considered by the Free Software Foundation to fall under the Free Software License umbrella, see http://www.fsf.org/licensing/licenses/, updated as of March 24, 2009, last viewed on April 23, 2009. Generally “free software” terms include open source tenets plus requirements of attribution, no warranty, and permits commercialization of derivative works; definition available at http://www.fsf.org/licensing/essays/free-sw.html, last updated January 8, 2009.
21. See note 4, supra.
22. See note 1, supra.
23. See Golden, Bernard “Succeeding with Open Source” Addison-Wesley pp 44 (2005); see also text of remarks by Craig Mundie, Microsoft Senior Vice President, full speech transcript available at http://www.microsoft.com/ presspass/exec/craig/05-03sharesourcesource.mspx; criticizing the viral nature of the GPL as a poor business model.
24. For a description of the SFLC and the legal team that represented the plaintiffs, see www.softwarefreedom.org/about/team.
28. See http://creativecommons.org/; generally includes open source model of copyright but licenses tailored for specific relevance to photography, music, works of visual art, multi-media works and other forms of copyrightable works.
29. See http://gplv3.fsf.org/doclic-dd1-guide.html for a description of the drafting process that resulted in publication of the official GPLv.3 on June 29, 2007. A first draft calling for public comment was released on September 26, 2006.
A stranger or someone you know?

The year was 1987 and Lawyers Mutual Insurance of Kentucky, a company formed by Kentucky lawyers; exclusively serving Kentucky lawyers, opened its doors in Louisville, KY. Now 20 years later, we’re still here, while other legal malpractice insurance companies have come and gone.

Over the years the legal climate in the Commonwealth has changed, but LMICK remains on a constant course, stronger than ever. Our job is clear: to provide affordable legal malpractice insurance to Kentucky lawyers in a consistent and professional manner. A Kentucky lawyer knows the climate of your community.
Whether the invention disclosed and claimed in a patent in litigation is exotic or more mundane, the case may turn – or may even be decided – not on the bread-and-butter patent issues of novelty, usefulness, non-obviousness and infringement, but on one of a number of behavioral issues.

Behavioral issues that may arise in patent cases include willful infringement; the delay defenses of laches and estoppel; the defense of inequitable conduct; and the defenses of license, waiver and misuse. Beyond these issues, which are unique in their application in patent litigation, the defense of judicial estoppel may arise as a patent owner weaves its way through administrative and judicial proceedings. This article will focus on the delay defenses and judicial estoppel as illustrative of how the behavioral defenses may be very powerful tools in the hands of counsel in the interest of simplifying and prevailing in patent litigation.

Benefits of Potential Early Resolution of Behavioral Issues

Patent litigation is an enormously resource-intensive undertaking for all parties and the court. The usual patent case is choreographed so that, following extensive discovery and the parties’ work with their experts, the court construes the disputed patent claim terms, and the parties then complete discovery in light of the ruling on claim construction. Thereafter, the parties typically file and serve any dispositive motions. Trial may be bifurcated or even trifurcated to separate the issue of willful infringement or the damages determination or both.

Counsel for accused infringers should always be aware that, after limited discovery, some of the behavioral defenses may be suitable for early resolution under the more liberal federal summary judgment standard. Especially in cases involving multiple patents or multiple accused infringers, a complicated case may be simplified, pared or even concluded through early discovery and summary resolution of one or more behavioral defenses.

The usual patent case is choreographed so that, following extensive discovery and the parties’ work with their experts, the court construes the disputed patent claim terms, and the parties then complete discovery in light of the ruling on claim construction.

An example of front-loading the case management schedule for early resolution of behavioral defenses can be found on PACER in Lautzenhiser Technologies, LLC v. Sunrise Medical HHG, Inc., et al., United States District Court, Southern District of Indiana, No. 4:07-cv-0084-DFH-WGH, at Dkt. 120 and 123.

The Delay Defenses

The period of delay begins when the patent owner has represented, through words or action, that it will not enforce the patent against a potential infringer and when that person has reasonably relied upon the representation to his economic or evidentiary prejudice. When estoppel is established, the patent owner is barred from all relief for past or future infringement.

Each of the delay defenses may usually be established by a preponderance of the evidence, except in cases where the delaying conduct is alleged to include fraud or intentional misconduct. In those cases a standard of clear and convincing evidence applies. Since each of the delay defenses is fact intensive, the chances of summary judgment and an early resolution of the issue will depend upon the ability of the accused infringer to present an undisputed material record establishing the fact elements of the defense.
There is no statutory or case law definition of what constitutes an unreasonable period of delay because that determination turns on the facts of each case. But a delay of six years or more is presumed to be both unreasonable and prejudicial.

By the same token, a delay of less than six years may have been unreasonable depending upon the circumstances of a particular case. Laches may apply if the accused infringer can demonstrate both the unreasonableness of the delay and the fact of material prejudice.

The presumption of laches based upon a six-year delay shifts to the patent owner the burden of going forward with evidence, but not the burden of persuasion. Thus, the presumption goes away when the patent owner introduces evidence that would create an issue of material fact as to any element of the laches defense.

Valid excuses for delay include litigation against other accused infringers of the same patent and active settlement or licensing negotiations between the patent owner and the accused infringer. On the other hand, certain proffered excuses, including ill health, lack of resources and a de minimis impact on the market by the accused infringer are less likely to succeed because they are not as directly related to the core facts of a patent infringement case.

The second laches element — economic or evidentiary prejudice to the accused infringer — is also highly fact specific from case to case. Counsel’s ability to construct the argument around the facts is critical. Evidentiary prejudice can include the loss of documents or testimony as a result of the passage of time. Economic prejudice typically includes investments made in expanding or adding to a product line or in building, updating or expanding facilities for the manufacture of the allegedly infringing product.

Assuming that a patent owner does not overcome the presumption after a six-year delay or that the accused infringer is able to show both an unreasonable delay and prejudice, the last hurdle for an accused infringer may be any allegations of egregious misconduct on its behalf, such as deliberate and explicit plagiarism of a patented product. In balancing the equities, a court will consider whether such conduct forfeits the accused infringer’s equitable delay defense.

Estoppel

Estoppel and laches are closely related but have different elements. Estoppel focuses not upon unreasonable delay, but upon misleading statements or actions by the patent owner upon which the accused infringer reasonably relies in believing he will not be sued. The classic circumstance occurs when the patent owner contacts the accused infringer about the accused infringer’s activities with regard to the patent but then takes no action and either breaks off communication or communicates only about other benign matters for an unreasonable period of delay before filing a lawsuit. Where the accused infringer can demonstrate reliance in its continued business activities upon the indication that the patent owner had decided not to proceed and can show economic or evidentiary prejudice, estoppel will apply and the patent owner will be unable to obtain any damages or injunctive relief.

The reliance element of estoppel also makes that defense significantly different from laches. Patent owners may wish to suggest that an accused infringer asserting estoppel relied not upon the patent owner’s misleading statements but upon the accused infringer’s own belief that the patent was invalid or not infringed. Cases are not in accord on the viability of such a position by a patent owner. It is clear, however, that so long as the accused infringer does not assert as a part of his delay defense the opinion or advice of counsel, the court will look only to non-privileged information. The fact that an accused infringer declines to waive the attorney-client privilege may not be relied upon by the patent owner in opposition to an estoppel defense.

Judicial Estoppel

Judicial estoppel arises when a litigant takes a factual or legal posi-
tion clearly inconsistent with a position it successfully maintained in an earlier judicial or administrative proceeding. An issue that often arises in the application of judicial estoppel is whether the first proceeding was before an appropriate entity to support the subsequent application of judicial estoppel. Judicial estoppel may be particularly suited to a motion for summary judgment because the records of the two proceedings often provide an undisputed record of material facts.

**Remcor Products Company v. SerVend International, Inc.**

**An Example of Behavioral Defenses at Work**

This unreported patent infringement action in the Southern District of Indiana in the mid-1990's presents an interesting application of both laches and judicial estoppel. First, the court denied a motion for partial summary judgment by the accused infringer based upon judicial estoppel but preserved the defense for trial. Then, the court granted the accused infringer's motion for partial summary judgment on laches grounds, thus severely limiting the value of the damages claim asserted by the patent owner. The case settled before trial.

Beginning in 1984, SerVend manufactured and sold two generations of ice/beverage dispensers. Based on testing of the products in 1985 and 1990, shortly after such introduction, Remcor management believed or suspected that each infringed its patent. Yet Remcor took no action.

In late spring 1991, Remcor agreed to a plan of acquisition whereby its stock would be acquired by a much larger company. In the ensuing **Hart-Scott-Rodino** proceeding, Remcor’s president and its counsel told Federal Trade Commission lawyers that the technology for ice/beverage dispensers was readily available to the market, ice/beverage dispensers were commodity products which compete in the market in which there are many competitors, and all of Remcor’s competitors had designed around the Remcor patent.

At that time, SerVend was Remcor’s largest competitor in the sale of ice/beverage dispensers. In fact, Remcor had identified SerVend to the FTC as a manufacturer of ice/beverage dispensers in competition with Remcor and had even used a successful bid by SerVend for a large-volume 1991 sale as an example to the FTC of the price competition in the marketplace. Based upon all this information, the FTC terminated its investigation. The acquisition was consummated later in 1991.

In 1993, Remcor sued SerVend, its largest competitor, for patent infringement. Remcor alleged that all combination ice/beverage dispensers manufactured by SerVend since 1984 infringed the patent. This was in direct contradiction to the position it had taken with the FTC to secure clearance of the 1991 acquisition.

On SerVend’s motion for summary judgment based on judicial estoppel, the court held for the first time that a **Hart-Scott-Rodino** inquiry by the FTC could serve as a first administrative proceeding for purposes of the analysis. In an unreported opinion, the court nevertheless denied summary judgment while preserving the judicial estoppel defense to be heard at trial.

SerVend also moved for partial summary judgment on laches grounds to bar damages for the period of time leading up to the commencement of the lawsuit in 1993. In an unreported decision, the court granted that motion. The court first decided that both SerVend and an affiliate formed in 1989 could take advantage of the

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full nine-year time of the delay by Remcor in bringing suit. Second, the court disposed of an argument by Remcor that the period of delay could not be tacked from SerVend’s original model to its second generation dispenser. The court held that the alleged infringing conduct was the same or virtually the same with respect to both products, and that laches was presumed.

The court then moved to the element of economic prejudice. Remcor could not dispute that SerVend’s sales of dispensers increased many fold during the laches period nor was it able to challenge that SerVend had spent millions of dollars in research, development, marketing and sales of its two generations of machines during the period of delay. Instead, Remcor challenged whether the economic prejudice to SerVend was caused by Remcor’s delay. The court concluded that Remcor had not created a genuine issue of material fact to undermine the presumption that SerVend incurred economic harm as a result of Remcor’s delay in filing.

Finally, Remcor sought to defeat the laches defense by raising unclean hands assertions based upon allegations of willful infringement and unethical business practices. The court examined the record and determined that Remcor had failed to present clear and convincing evidence in support of its allegation that SerVend willfully infringed the patent.

Remcor based its assertion of unethical business practices on the fact that in the late 1980’s, SerVend had established a so-called “CIA” file on Remcor in which SerVend’s marketing personnel collected public information on Remcor’s research and development, future business plans, and pricing. Yet Remcor acknowledged in depositions that it also sought to maintain an awareness of its competitor’s activities. The court concluded that Remcor’s theory of corporate espionage based upon the naming of the “CIA” file was insufficient to demonstrate that SerVend had engaged in unethical business activities which would preclude the application of laches.

The court did not cite in its opinion the deposition testimony of the SerVend marketing employee who initiated the “CIA” filing system. In response to questions from Remcor’s counsel, he explained that “CIA” was a play on the acronym of the famous U.S. spy agency, but in fact at SerVend stood for Competitive Intelligence Analysis. When counsel for Remcor, in frustration, asked the SerVend marketing employee if he knew what CIA really stood for, one of counsel for SerVend, channeling Colonel Flagg of M*A*S*H, responded, “If we tell you, counsel, we’ll have to kill you.”

Principally in your client’s best legal interest, but also perhaps in hopes of a moment of levity in otherwise very serious and tedious litigation, be sure to include in your initial investigation of all patent infringement matters a thorough review of the potential for behavioral issues that may either advantage or disadvantage your client. 🙄

ENDNOTES
3. Aukerman, 960 F.2d at 1028.
4. See, e.g., Hall v. Aqua Queen Manufacturing, Inc., 93 F.3d 1548, 1554, [Fed. Cir. 1996] (holding that poverty and inability to find contingency fee counsel will not excuse an otherwise unreasonable delay).
5. International Rectifier Corp. v. IXYS Corp., 361 F.3d 1363, 1376 [Fed. Cir. 2004].

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John S. Reed practices law in Louisville with Reed Weitkamp Schell & Vice PLLC. His business litigation practice includes representing both patent owners and accused infringers in patent litigation disputes. Mr. Reed is a 1974 graduate of the University of Virginia School of Law and a former president of the Louisville Bar Association.
**INTELLECTUAL PROPERTY**

Register This Warning, Copyright Holders:

Get Claims on File or Lose Infringement Actions on Summary Judgment

By Jeremy J. Beck

A recent unreported decision in the Eastern District of Kentucky makes clear - and should serve as a warning - that a copyright owner’s claim of infringement will be dismissed absent proper registration.¹


In Willigan, the plaintiff provided “consulting services to the insurance and transit industries, assisting in the evaluation of high value equipment loss claims.”² One of its employees, a vice president of the company, relocated to the East coast but continued to work as a claims consultant for the plaintiff. However, while continuing to work for the plaintiff, this vice president simultaneously and surreptitiously started up his own, competing enterprise.³ After the vice president resigned, the plaintiff discovered this betrayal and immediately filed claims for civil conspiracy, breach of contract, copyright violations, and tortious interference with business transactions, which gave [it] a competitive edge in the marketplace.⁴ The plaintiff further alleged that the defendant intentionally and willfully infringed its copyrighted materials and was thus “subject to statutory damages in the amount of $150,000 for each “work” infringed.”⁵

In the Eastern District case, the plaintiff admitted at oral argument that its materials had never been registered, but attempted to argue to the Court that registration was a “technical requirement that does not affect the existence of the cause of action[].”⁶ In response, the defendant stated the lack of a valid registration was “a jurisdictional bar” to maintaining a claim of infringement.⁷

The Court agreed with the defendant, finding the plaintiff’s “concession that it has neither applied for nor received copyright registrations for any of the materials that it claims were infringed dooms its federal copyright claim.”⁸ Citing the Sixth Circuit case of Murray Hill Publications, Inc. v. ABC Commun., Inc., 264 F.3d 622 (6th Cir. 2001), the Court noted “the Sixth Circuit has stated that registration is a prerequisite to filing any copyright infringement suit.”⁹

Failure to satisfy a condition to litigation does not imply, however, that the plaintiff loses outright. A suit that is premature because a condition to litigation remains unsatisfied must be dismissed without prejudice. If the condition can be satisfied while time remains in the statute of limitations, then a new suit may be filed and resolved on the merits. … [Where] [p]otentially infringing use of … materials is ongoing …, and each new copy is a fresh wrong, with its own [statutory] three-year period of limitations[,] … the distinction between dismissal with and without prejudice may be vital to [a claimant’s] entitlements.¹⁰

**Conclusion**

General information about copyright and copyright registration is available online at the Copyright Office’s website.²¹ The current basic fee to register a copyright using the Copyright Office’s new online eCO system is $35.00.²² In addition, when a copyright holder has numerous items in need of registration, there are various methods of limiting the potential expense involved. Given (a)
the Copyright Act’s bright line governing the right to bring a suit for infringement; (b) the courts’ unwavering enforcement of that bright line; and (c) the relative ease with which one may satisfy the predicate of that line, it would be prudent for copyright holders to make it a general practice to obtain valid registrations for their work. In this regard, even given the potential of a safe harbor, the recent judgment in the Eastern District should register as a warning that failing to so act could lead to a similar unfavorable result if litigating a claim of copyright infringement.

ENDNOTES

2. Id. at *1.
3. Id.
4. Id. at *2.
5. Id. at *9 (quotations omitted).
6. Id. (quotations in original).
7. See 17 U.S.C. § 504(c).
8. Id. at § 412.
9. Id. at § 411(a) (emphasis added).
11. Id.
12. Id.
15. See e.g. Starr v. DaimlerChrysler Corp., 2007 WL 3144852, *1 (5th Cir. Oct. 24, 2007) (unreported) (motion to dismiss complaint of copyright infringement upheld where plaintiff “failed to allege that she had even applied for copyright registration.”); Balzer & Associates, Inc. v. Union Bank and Trust Co., 2009 WL 1675707, **2-3 (E.D. Va. June 15, 2009) (slip op.) (“Because Plaintiff has neither alleged nor shown that it registered the copyright at issue here, and in fact argues that registration is not required at all to bring suit for injunctive relief, the Court does not have jurisdiction to hear Plaintiff’s claim for copyright infringement[].”).
18. Id.
19. Id. at 126-27 (emphasis added) (citations omitted).
Proposed Amended Regulation of the Attorneys' Advertising Commission, pursuant to SCR 3.130-7.03(5)(a)

As approved by the KBA Board of Governors July 23, 2009

Publisher’s Note:

Supreme Court Rule SCR 3.130 contains the Kentucky Rules of Professional Conduct (KRPC) which include rules on lawyer advertising. Rule 7.03 establishes an Attorneys' Advertising Commission (Commission) which has general responsibilities for implementing the lawyer advertising rules. In discharging its responsibilities, the Commission is given the authority to issue and promulgate regulations subject to prior approval by the Board of Governors. When proposed regulations are issued, members of the Kentucky Bar Association are entitled at least sixty (60) days advance notice and an opportunity to comment. The Commission has promulgated the following amendment to the enumerated regulations. The Board of Governors approved this amended regulation on July 23, 2009, subject to review and consideration of comments from the membership. Members wishing to comment on this proposed regulation must do so in writing. Written comments must be sent no later than December 1, 2009, to the Attorneys' Advertising Commission, c/o KBA Executive Director, 514 West Main Street, Frankfort, KY 40601-1812.

AAC REGULATION NO. 13:
DEFINITION OF AN ADVERTISEMENT

SCR 3.130-7.01 states, “Rule 7 shall apply to advertisements of legal services directed to residents of the Commonwealth of Kentucky or which originate in the Commonwealth of Kentucky.”

SCR 3.130-7.02(1) defines the word “advertise” or “advertisement,” as “to furnish any information or communication concerning a lawyer’s name or other identifying information.” SCR 3.130-7.02(2) states: “‘legal services’ means the practice of law as defined in SCR 3.020.”

SCR 3.020 provides: “The practice of law is any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services. . . .”

The definition of “advertise” or “advertisement” does not include a communication if the communication meets the following criteria:

a) It is a lawyer-to-lawyer contact communicated solely to other lawyers or law firms, and

b) It is in the nature of providing information concerning fields of practice, or availability to be employed by clients as co-counsel, or to receive referrals not prohibited by the Rules of Professional Conduct, and

c) It is not a solicitation prohibited by SCR 3.130-7.09(1) to a potential client, even if the potential client is a lawyer, nor is it a communication that requires compliance with SCR 3.130-7.09(3).
Introduction

In 1990 when the Supreme Court promulgated the Kentucky Rules of Professional Conduct (KRPC) modeled on the ABA Model Rules the Bar experienced what can only be described as ethics culture shock. While the basic ethics principles changed little, the entirely new organization that included black letter rules with explanatory comments put the Bar on a severe learning curve. Few Kentucky lawyers at that time had studied the Model Rules in law school and many struggled to adjust to the new system. Twenty years later with the first comprehensive revision of the KRPCs much has changed. I estimate that now the majority of Kentucky lawyers studied the Model Rules in law school and those that did not have had ample time to learn the new system. While the 2009 version of the KRPCs added new rules, extensively modified several key rules, and fine-tuned many others, catching up this time should be much simpler for all.

To ease the task the purpose of this article is to provide a guide to those changes considered most significant and in need of prompt attention. The article begins with an overview of new rules followed by a snapshot review of rules with the most significant changes. It is intended to be practical and, therefore, does not go into the legislative history of a change or offer detailed analysis of each change. The point is to assist you in selecting the rules on which you need to focus. There is no substitute for reading the Rules.

Space precludes covering all changes. Thus, to be sure that you have visibility on their scope, the appendix to this article consists of two matrices that align the Model Rules with the 1990 KRPCs and an estimate of the degree of change made to each KRPC in the 2009 revision. These matrices, one covering advertising rules and the other covering all other rules, will help you in deciding where to put your emphasis in reviewing the 2009 Rules.2

What’s New

The 2009 Rules include a first ever Preamble and Scope section plus five new rules. What follows is a brief synopsis of these additions with emphasis on the new reporting lawyer misconduct rule.

Preamble and Scope

The KBA Ethics 2000 Committee report gave this succinct description:

- **Preamble: A Lawyer’s Responsibilities** is an overview of the responsibilities the Rules impose on lawyers. It is composed of judicial policy, aspirational goals, and instruction.

- **Scope** transitions to more particular guidance on the application of the Rules. It covers how the Rules should be interpreted, that the Rules are for disciplinary purposes and not for use in civil actions against lawyers, and makes clear that the Rules are subordinate to substantive law.

Begin your review of the 2009 changes by reading the Preamble and Scope. It might better be called a Supreme Court policy statement for Kentucky lawyers and sets the tone for the legal profession in Kentucky.

**SCR 3.130 (1.17) Sale of Law Practice**

The 1990 Rules did not allow the sale of a law practice beyond the sale of the tangible assets of the practice. This prohibition was inequitable for sole practitioners. Law firms were allowed to compensate departing and retiring lawyers in a manner that effectively “buys” their interest in the practice. The new Rule 1.17 removes this inequity and provides an orderly procedure for sole practitioners and firms to transition out of the practice of law or adjust the focus of their practice in a manner that fairly compensates them for their equity in building a practice or area of practice.

The Rule permits the sale of a practice if the seller ceases to engage in: (1) the private practice of law; or (2) the field(s) of practice sold; or (3) the practice of law in the geographic area in which the practice has been conducted. It includes detailed guidance for buyer and seller, permissible fee arrangements, and transfer of client files.

**SCR 3.130 (1.18) Duties to Prospective Client**

It was well established before Rule 1.18 was approved that Kentucky lawyers owed fiduciary duties concerning confidentiality and conflicts of interest in preliminary discussions with persons seeking legal representation (*Lovell v. Winchester*, 941 S.W.2d 466 (Ky., 1997)). Rule 1.18 and its comments codify these duties. They provide guidance on who is and is not a prospective client and permissible resolution of conflicts of interest resulting from a preliminary discussion with a prospective client. Significant features of the Rule are:

- No matter how brief the consultation, any information learned by a lawyer can only be revealed as Rule 1.9, Duties to Former Client, allows.
- A conflict of interest is created when the lawyer receives...
information that could be “significantly harmful” to the prospective client.

• Comment 5 to the Rule permits, with the prospective client’s informed consent, conditioning consultation with the understanding that information revealed to the lawyer will not preclude the lawyer from representing a different client in the matter.

• Waiver of a conflict of interest is permissible with the written informed consent of the affected client and the former prospective client.

• Prospective client conflicts of interest are imputed to other members of a firm, but screening is permissible to overcome the disqualification.

**SCR 3.130 (2.4) Lawyer Serving as Third-Party Neutral**

This new Rule stems from the increasing number of lawyers that serve as neutrals in dispute resolutions. It provides that: “A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them.” The intent is to clarify the lawyer-neutral’s role so that the dispute resolution parties have no misunderstanding as to the lawyer’s function.

**SCR 3.130 (6.5) Nonprofit and Court-Annexed Limited Legal Services Programs**

This new Rule is designed to solve the problem that the strict application of the conflict of interest rules causes for lawyers volunteering to provide short-term limited legal services in programs such as legal advice hotlines, advice only clinics, or pro se counseling. In providing these services a client-lawyer relationship is established with no expectation that the lawyer’s representation of the client will continue beyond the limited consultation. The intent is to make legal assistance more readily available to persons of limited means.

**SCR 3.130 (8.3) Reporting Professional Misconduct**

Rule 8.3 is the most dramatic addition to the KRPCs. As a new rule its application is yet to be interpreted by the Kentucky courts or the KBA disciplinary authorities. What follows is my effort to frame the issues and offer an analytical approach in addressing them. Do not hesitate to call the KBA Ethics Hotline for help when dealing with a reporting misconduct question.

Paragraph (a) of the Rule establishes the operative terms for reporting misconduct. A helpful way of analyzing it is to break it down into its component parts:

• A lawyer who *knows* that *another lawyer* has committed a violation of the Rules of Professional Conduct that raises

• a substantial question

• as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects,

• shall inform the Association’s Bar Counsel.

**What does ‘knows’ mean?**

- Rule 1.0 Terminology (f): Knowingly,” “known,” or “knows” denotes *actual knowledge* of the fact in question. A person’s knowledge may be inferred from circumstances. *(emphasis added)*

- The ABA Annotated Model Rules of Professional Conduct (6th ed.) at page 571 provides several examples of standards for determining actual knowledge. One of the best is “… a reasonable lawyer under the circumstances would have formed a firm opinion that the conduct in question had more likely than not occurred.”

**Do you have to self-report?**

- The Rule requires reporting of “another lawyer” not yourself.

**What is a substantial question?**

- Rule 1.0 Terminology (1): “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

- Comment (2), Rule 8.3: The term “substantial” refers to the seriousness of the offense and not to the quantum of the evidence of which the lawyer is aware.

**How do you determine that a substantial question of a lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects has a rational connection to the practice law?**

- Comment (2) to Rule 8.4, Misconduct, provides this guidance on fitness to practice Law:

  Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving “moral turpitude.” That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. *Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category.* A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. *(emphasis added)*

**When do you report?**

- The Rule uses the imperative term “shall” in requiring that the Association’s Bar Counsel be notified of the misconduct. Reporting is not discretionary. The Rule does
not, however, provide a timeline for reporting. One standard is “… within a reasonable time under the circumstances.” Factors to consider are protecting a client’s interest and the severity of the misconduct. 5

Do you have to get client consent to report if the report includes client confidential information?

• Rule 8.3(c) provides in part that “A lawyer is not required to report information that is protected by Rule 1.6 or by other law.” Other jurisdictions have uniformly held that the duty to report misconduct is subordinate to the Rule 1.6 duty of confidentiality. Client consent to report confidential information is necessary.6

Major Changes

This section begins with a list of additions to Rule 1.0, Terminology. Two of these define a “writing or written” and “confirmed in writing.” The text of these definitions is quoted below followed by a list of the Rules to which they apply. Other major Rule changes are covered in bullet format to provide the gist of the most important changes to facilitate your review.

SCR 3.130 (1.0) Terminology

Significant changes are numbering Terminology as Rule 1.0 and the addition of Comments for Terminology. New definitions are:

• Paragraph (b): “Confirmed in writing”
• Paragraph (e): “Informed consent”
• Paragraph (k): “Screened”
• Paragraph (m): “Tribunal”
• Paragraph (n): “Writing” or “written”

A number of Rules require that the informed consent of a client be confirmed in writing and in some cases that the client sign the writing. Definitions for writing and confirmed in writing are:

(n) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

(b) “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of an informed consent. If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

Rules that require “confirmed in writing” are:

• 1.5(c): Division of fees between lawyers not in the same firm.
• 1.7(b): Conflicts of interest waivers.
• 1.9(a) and (b): Former client conflicts waivers.
• 1.10(c): Firm conflicts waivers (cross-reference to Rule 1.7).
• 1.11 (a): Conflict waivers for lawyers formerly in government service.
• 1.11(d): Conflict waivers for government lawyers formerly in private practice.
• 1.12 (a): Conflict waivers for lawyer who has acted as a judge, arbitrator, or mediator in a matter.
• 1.17, Comment (11): Waivers for conflicts created by sale of a law practice (cross-reference to Rule 1.7).
• 1.18(d): Waivers of conflicts created by receiving information from a prospective client.
• 3.7, Comment (6): Waivers of conflicts for lawyer or firm acting both as advocate and witness.
• 6.5, Comment (3): Conflict waivers for known conflicts created by short-term representations in legal services programs (cross-reference to Rules 1.7, 1.9, and 1.10).

Rules that require that a client sign a writing are:

• 1.5(c): Contingent fee agreements.
• 1.5(f): Non-refundable retainer agreements.
• 1.8(a)(3): Business transactions between client and lawyer.
• 1.8(g): Aggregate settlements.

Rules that require that a client be advised in writing of the desirability of obtaining the advice of independent counsel are:

• 1.8(a)(2): Business transactions.
• 1.8(h): Settling claim with an unrepresented client or former client.7

SCR 3.130 (1.5) Fees

• 1.5(c): A contingent fee agreement shall be in a writing signed by the client ….
• 1.5(e) A division of a fee between lawyers who are not in the same firm may be made only if: … (2) the client agrees to the arrangement and the agreement is confirmed in writing ….
• 1.5(f): A fee may be designated as a non-refundable retainer. A non-refundable retainer fee agreement shall be in a writing signed by the client evidencing the client’s informed consent, and shall state the dollar amount of the retainer, its application to the scope of the representation and the time frame in which the agreement will exist.

• 1.5 Comment (11): A lawyer may designate a fee arrangement as a non-refundable retainer and upon receipt deposit such funds in the lawyer’s operating account. The amount of a non-refundable retainer fee must be reasonable in amount and comply with Rule 1.5.
**SCR 3.130 (1.6) Confidentiality of Information**

The most important changes to Rule 1.6 are in paragraph (b) that allows permissive disclosure of confidential information in certain circumstances.

- Paragraph (b)(1) significantly expands the discretion to reveal information when a lawyer learns that there is a serious risk of injury to a client or other person. The clearest way to see the significance of the changes is to view how the 1990 Rule (b)(1) was edited:
  
  1.6 (b): A lawyer may reveal such information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

  (1) To prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent reasonably certain death or substantial bodily harm;

- This editing:
  - Removed the requirement of client criminality for the exception to apply;
  - Deleted the word “imminent” avoiding the question of how close in time the risk must be and whether imminent applies only to death or to both death and substantial bodily harm; and
  - "Reasonably certain” replaced “likely” as a more precise standard for permitting disclosure.

- Paragraph (b)(2) is a new exception: “to secure legal advice about the lawyer’s compliance with these Rules.”

**SCR 3.130(1.8) Conflict Of Interest: Current Clients: Specific Rules**

- Rule 1.8(j): A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them before the client-lawyer relationship commenced.

- Client-Lawyer Sexual Relationships are covered in 1.8 Comments (17), (18), and (19).

**SCR 3.130(1.13) Organization as Client**

Changes to Rule 1.13 provide more specific guidance on a lawyer’s obligation to take action when encountering prospective or active illegal activity while representing an organization. The Rule is complex and requires close reading. Essential features are:

- Lawyers for an organizational client are required to report certain violations of law to higher organizational authority unless reasonably believed not to be necessary in the best interest of the organization (paragraph (b)).

- Lawyers are permitted as an exception to Rule 1.6 to reveal client information to prevent reasonably certain substantial injury to the organization where the organization’s highest authority insists upon or fails to timely address a clear violation of law (paragraph (c)).

- Lawyer are required to proceed as reasonably believed necessary to assure that the organization’s highest authority is informed of the lawyer’s withdrawal or discharge in circumstances addressed in the Rule (paragraph (e)).

**SCR 3.130(1.16) Declining or Terminating Representation**

New comments to Rule 1.16 provide guidance on the sensitive issue of returning client files:

- 1.16 Comment (9): Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. A lawyer may return the client’s file, papers, and property after termination if the client requests the file. The lawyer may retain a copy of the file. A lawyer may charge a reasonable copying charge, but may not condition return of a client’s files, papers, and property upon payment of the copying charge, unless the lawyer has previously provided a copy, either during the representation or after cessation of the representation. A lawyer must make one copy of the file and materials available to the client even without payment if the client’s interests will be substantially prejudiced without the documents.

- 1.16 Comment (10): The lawyer may not condition return of the client’s file, papers, and property upon payment of a fee. KRS 376.460 gives a lawyer the right to have payment of fees secured by a judgment the client recovers as a result of the lawyer’s efforts. However, a lawyer may withhold uncompensated work product from the client’s returned files (e.g., draft of pleadings, agreements and the like), unless the client’s interests will be substantially prejudiced without the uncompensated work product. Documents or other relevant evidence, the original or its equivalent that may be required for trial preparation or as evidence for trial or in other legal proceedings, must be surrendered in their original form. See Rule 1.15 for guidance on resolving disputed claims for client funds.

**SCR 3.130(3.3) Candor Toward the Tribunal**

Rule 3.3(a)(2) is a new paragraph that requires revealing to the tribunal adverse legal authority:

- 3.3(a): A lawyer shall not knowingly:
  
  (2) fail to disclose to the tribunal published legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel ….

- 3.3 Comment (4): Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph
(a)(2), an advocate has a duty to disclose directly adverse published authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

**SCR 3.130(3.4) Fairness to Opposing Party and Counsel**

Rule 3.4(g) is a new paragraph that delineates when it is permissible to request a person other than a client to refrain from voluntarily giving relevant information to another party.

- **3.4**: A lawyer shall not:
  - (g) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
    1. the person is a relative or agent who supervises, directs or regularly consults with the client concerning the matter or has authority to obligate the client with respect to the matter;
    2. the lawyer reasonably believes that the person’s interests will not be adversely affected by refraining from giving such information.

- **3.4 Comment (4)**: Paragraph (g) permits a lawyer to request relatives or employees of a client to refrain from giving information to another party. Such persons may identify their interests with those of the client. Caveat Rules 1.13(f), 4.2, and 4.3. The lawyer must reasonably believe that the person’s interests will not be adversely affected by compliance with the request. The Rule does not require that the lawyer know or ascertain the person’s interest, but any such knowledge, communication, or other information available to the lawyer may suggest that such a belief is not reasonable. See Rule 1.0 (a), (f), (h), (i), and (j). A request that a person refrain from giving information to prosecutors or law enforcement and regulatory officials will almost never be proper, because that person could violate the law or otherwise be adversely affected by a lack of cooperation with such persons, and such a request might involve the lawyer’s violations of other provisions of these Rules and other law. A request in a civil matter may or may not be proper under the Rule, depending upon the person’s interests in the matter, if any, and upon what a lawyer would reasonably believe in the circumstances.

**SCR 3.130(3.6) Trial publicity**

Rule 3.6 was substantially changed to come into compliance with current constitutional law on trial publicity. The Rule is reorganized and six new comments added. Mark Rule 3.6 for a careful reading.

**SCR 3.130(4.1) Truthfulness in Statements to Others**

Paragraph (b) is a major change to Rule 4.1. It provides:

- **4.1**: In the course of representing a client a lawyer:
  - (b) if a false statement of material fact or law has been made, shall take reasonable remedial measures to avoid assisting a fraudulent or criminal act by a client including, if necessary, disclosure of a material fact, unless prohibited by Rule 1.6.

- **4.1 Comment (3)** amplifies this requirement. Note that the Comment includes the “noisy withdrawal” remedial action option.

Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client’s crime or fraud takes the form of a lie or misrepresentation. Ordinarily a lawyer can avoid assisting in a client’s crime or fraud by withdrawing from the representation. Nonetheless, sometimes a lawyer is required to take more overt measures such as giving notice of the fact of withdrawal, disaffirming an opinion, document, affirmation or the like, to prevent the lawyer’s services’ being used to further the client’s crime or fraud. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted in the client’s crime or fraud. If the lawyer can avoid assisting a client’s crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6. [See also, Rules 1.6(b), 1.13 (c) and 8.4(c).]

**SCR 3.130(4.3) Dealing with Unrepresented Person**

Rule 4.3 now includes a categorical prohibition against rendering legal advice to an unrepresented person and allows the lawyer only to suggest that the unrepresented person may want to secure counsel.

- **4.3**: In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to a disinterested person. The lawyer may suggest that the unrepresented person secure counsel.

**SCR 3.130(4.4) Respect for Rights of Third Persons**


- **4.4 (b)**: A lawyer who receives a document relating to the representation of the lawyer’s client and knows or reasonably should know that the document was inadvertently sent shall:
  1. refrain from reading the document,
(2) promptly notify the sender, and
(3) abide by the instructions of the sender regarding
its disposition.

**SCR 3.130(5.5) Unauthorized Practice of Law; Multijurisdictional Practice of Law**

Rule 5.5 is one of two rules that are substantially revised to address the rapid growth of multijurisdictional practice. The revision of Rule 5.5 includes four new paragraphs and 19 new comments. Mark this Rule for careful reading.

**SCR 3.130 (8.5) Disciplinary Authority; Choice of Law**

Rule 8.5 is the second rule substantially revised to address the rapid growth of multijurisdictional practice. For all practical purposes it is a new rule for Kentucky. The 1990 Rule was adopted before multijurisdictional practice became a major issue for all states. The 2009 Rule reflects the considered evaluation of modern issues of disciplinary authority and choice of law. It is the same or similar to choice of law rule in a majority of other states. Rule 8.5 is another Rule to mark for careful reading.

**Summing Up**

The 1990 Rules were a major step in the development of ethics rules for Kentucky lawyers. It brought us in line with the ABA Model Rules system and many other states. The 1990 Rules, however, omitted some major Model Rules and weakened Rule 1.4, Communication, by changing the imperative ‘shall’ to ‘should’ making it ambiguous and difficult to enforce. The 2009 Rules correct those omissions and reinstate ‘shall’ in Rule 1.4. Not returning phone calls is now riskier than ever. In addition, the 2009 Rules include much improved comments and cross-references within the comments to related rules. We now have a functional system of professional conduct rules that places Kentucky in the mainstream of current national standards for lawyers. No doubt there will be changes to the 2009 Rules over time, but henceforth the changes will be evolutionary not revolutionary.

**ENDNOTES**

1. SCR 3.130.
2. Sarah V. Coker, KBA Deputy Bar Counsel, prepared the advertising rules matrix. The matrix covering all other rules is an update of a matrix prepared as part of the KBA Ethics 2000 Committee report.
3. SCR 3.530(7).
4. In deciding whether misconduct should be reported do not become entangled with KRCP 3.4(f) that provides “A lawyer shall not: present, participate in presenting, or threaten to present criminal or disciplinary charges solely to obtain an advantage in any civil or criminal matter.”
7. This list is a modified version of a list prepared by Professor William H. Fortune, College of Law, University of Kentucky, for a presentation at the 2009 KBA Convention.

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### The Ethics 2000 Committee Quick Reference Guide to the 2009 Kentucky Rules of Professional Conduct

*Does not include Rule 7 on Advertising*

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ABA Model Rules 7.1-7.5 and KYRPC 7.01-7.50 cover lawyer advertising. The Ethics 2000 Committee did not review these rules.

### Key

- **No KyRPC Change**: Identical to current KyRPC or very minor editing only.
- **New KyRPC**: No 1990 KyRPC covers this subject.
- **Deleted KyRPC**: Rule removed in its entirety.
- **Minor Change**: Some embellishment or clarification, usually in the Comments.
- **Revised KyRPC**: Rule retains its basic intent, may include some expansion of scope, may add new conduct to be regulated, may have extensive addition to Comments to embellish and clarify application of a Rule, and may be reorganized.
- **Major Change**: Rule includes new provisions that involve significant principles of professional responsibility and/or basis for disciplinary action.

*September 2009 Bench & Bar 35*
Judges often report that the vast majority of cases are decided on the facts, not the law. The statement of facts is, therefore, a crucial section of a brief or memorandum. In a statement of facts, an advocate should state facts, not argue them. This distinction can be difficult to maintain, however. To state facts means to write them objectively, but appealingly, including all legally significant facts. To argue facts means to characterize them and make reasonable inferences from them. Once a judge catches you in an overstatement, misstatement, or omission of relevant fact, everything else in your brief or memorandum is suspect.

That does not mean, however, that your statement of facts should read like a police report with “just the facts, ma’am.” Many techniques are available to help you craft a persuasive statement that serves your client’s needs without crossing the line into argument, but the following are my four favorites: perspective, word choice, depth of treatment, and placement within sentences and paragraphs.

Perspective
In reading a novel, the reader assumes that the first character whose perspective is identified is the protagonist of the piece, the good guy. So, even if you introduce all the parties in the first paragraph, always introduce your client first. Humanize the client, if possible, so your reader identifies with the client’s position or, at least, sympathizes with the client’s dilemma or situation.

John Smith, manager of a large department at a local accounting firm, was stopped at a red light, anxious to get home to his family; he glanced up, saw that the light had changed, and touched the gas pedal. He did not see the car that was still in the intersection until the two collided. OR Fred Brown took a second job delivering pizzas when he learned that his wife was pregnant with their first child; he was rushing to deliver his last pizza of the evening when his subcompact was hit broadside by a pickup truck driven by John Smith.

Word Choice
Several different techniques fall within the category of word choice. The easiest to achieve is simply emphasizing favorable facts through the use of concrete subjects and verbs, preferably in relatively short sentences:

Mary’s car was damaged beyond repair. NOT The vehicle driven by Mary experienced such heavy damage that it was later determined to be irreparable.

Select words with appropriate connotations for your client. For example, think of all the words or phrases you could use to describe the accused in the following scenario: Mark Wilson is the eighteen-year-old man charged with the assault and murder of a classmate at Central High School. You could refer to this person as Mr. Wilson, Mark, Mark Wilson, the young man, the student, the classmate, the defendant, the suspect, the accused, the man charged with the assault, the man charged with the murder, etc. Which of these conjures the proper image in the reader’s mind depends on which side you represent, and you must be aware of the power of the proper word.

Avoid tossing in pejoratives to describe the opposing party and superlatives to describe your client. These will often be adjectives and adverbs, so check your use of these parts of speech carefully when you edit. Decide for yourself which of the following is really more persuasive.

The ruthless killer then maliciously pumped five more bullets into the helpless victim already bleeding profusely on the floor. OR As the victim lay bleeding on the floor, the defendant shot him five more times.

Use the active voice to emphasize favorable facts; use the passive voice to de-emphasize unfavorable ones. Sometime in your past, you may have been told not to use passive voice, but passive voice is quite useful when you want to hide the actor or when the object acted on is more important than the actor, as it was at the start of this sentence. In the example below, the prosecution version uses active voice and greater detail (described in the next technique); the defense version totally removes the actor from the admission that the assault and rape took place.

After returning to the home, the pizza delivery man grabbed Ms. Baker, threw her to the floor, flung his body on top of hers, and raped her. OR Ms. Baker was assaulted and raped shortly after a pizza was delivered to her home.

In short, think about every word you write – is it the right one?
Use detail to emphasize favorable facts; detail will make a fact more memorable to the reader. Summarize or generalize when you do not want unfavorable facts to be memorable. For example, if a nineteen-year-old girl was apprehended by police with one marijuana cigarette in her coat pocket and $3000 in cash in her wallet, the two versions could be worded like this:

When apprehended with a quantity of marijuana in her coat pocket, the suspect also had $3000 in her wallet. OR The young woman, who had a large sum of money in her wallet, was apprehended with one marijuana cigarette in her coat pocket.

Except in that first sentence where you are trying to humanize the client, do not provide detail about irrelevant facts, even if they are favorable, because you are wasting your reader’s time and memory capacity.

Both paragraphs and sentences have positions of emphasis at the beginning and the end. Place your favorable facts in those positions of emphasis, when possible. Unfavorable facts, then, should be buried in the middle of a paragraph or placed in a dependent phrase or clause in the middle of a sentence. As noted above, shorter sentences are better for favorable facts, because they are easy to read and understand. Similarly, short paragraphs are good for your favorable facts; they will stand out and the reader can grasp the point of the paragraph quickly and easily.

To make facts memorable, use repetition or parallelism. The first set of sentences below is an example of repetition. The second example, of parallelism, is more condensed, but probably less memorable, too.

Since the accident, Fred can no longer walk. He can no longer play golf or tennis. He can no longer work at either of his jobs. He can no longer support his wife and unborn child. OR Since the accident, Fred cannot walk, play golf or tennis, work at either job, or support his wife and unborn child.

I saved my favorite technique for last: You can change the effect of a fact by pairing it with, or separating it from, another fact. This technique, juxtaposition, allows you to hint at, without expressly stating, an inference you want the reader to make. Juxtaposition works with both positive and negative facts. Going back to the example of the young woman with the marijuana and the cash, assume also that the young woman was wearing a borrowed coat and that when unfamiliar plain-clothed police officers approached her on the street, she ran from them and they gave chase. With these additional facts, both sides have favorable and unfavorable facts to include, and both sides can juxtapose facts with good results.

After fleeing from and being apprehended by plain-clothed officers, the suspect was found to be carrying both marijuana and $3000 in cash. The marijuana was in the pocket of the coat the suspect was wearing, which was borrowed, and the cash was in the suspect’s wallet. OR Carrying a large sum of money in her wallet, the young woman fled when approached by strangers in plain clothes. When the strangers, who were police officers, chased and apprehended her, they found one marijuana cigarette in the pocket of the borrowed coat she was wearing.

The prosecution wants to put the facts about drugs and money in close proximity to raise in the reader’s mind a question about whether the drugs were for personal use or sale; it also wants to separate the fact that the coat was borrowed from the fact that the marijuana was found in the coat pocket. Lacking a distant spot to put that fact in such a short statement, however, I chose to bury it in a subordinate phrase in mid-sentence. The defense puts the facts about money and running together, to imply a reason for her to flee, and puts the facts about where the marijuana was found and the fact that the coat was borrowed as close together as possible, to imply that the marijuana was not even hers. Both statements contain all of the necessary facts, but they tell two different stories.

That is the final piece of advice I want to convey – tell your client’s story. When in doubt, err on the side of being honest and informative. Do not risk your credibility by arguing, overstating, or mischaracterizing your case in the fact section, but try a few of these techniques next time you are working on a persuasive document to see if you can make your client’s story not just informative, but compelling.
NOTICE OF PROPOSED REVISION TO THE JOINT LOCAL RULES
OF THE FEDERAL DISTRICT COURTS IN KENTUCKY

NOTICE is hereby given that the Joint Local Rules Commission has forwarded to the Judges of the United States District Courts for the Eastern and Western Districts of Kentucky a few new and a number of proposed revisions to the Joint Local Rules of Civil Practice and Joint Local Rules of Criminal Practice for the federal courts in Kentucky. Most of the recommended changes or additions are to bring the local rules into compliance with the time computation changes in the federal rules scheduled to take effect on December 1, 2009. A few of the proposed changes are to clarify the local rules and simplify them to reflect actual practice in the courts. The Judges of the United States District Courts in Kentucky will be considering the following proposed Joint General Order for adoption after publication of this Notice in the Kentucky Bench & Bar. On or before November 1, 2009, the bar and public are invited to submit comments and/or suggestions, in writing, with respect to the proposed revisions of the Joint Local Rules to either of the United States District Court Clerk’s Offices or to Douglas L. McSwain, Chair of the Joint Local Rules Commission, at the law firm of Sturgill, Turner, Barker & Moloney, PLLC, 333 West Vine Street, Suite 1400, Lexington, KY 40507.

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN AND WESTERN DISTRICTS OF KENTUCKY

JOINT GENERAL ORDER NO. ______ - E.D. Ky.
JOINT GENERAL ORDER NO. ______ - W.D. Ky.

* * * * *

Pursuant to LR 83.14 of the Joint Local Rules of the Eastern and Western Districts of Kentucky, and pursuant to the authority granted by Rule 83, F.R.Civ.P., and upon recommendation of the Joint Local Rules Commission, the Judges of the Eastern and Western Districts hereby ORDER that the following amendments and additions be made to the Joint Local Rules:

1. To comply with the time computation revisions of the federal rules to take effect December 1, 2009, and to make other non-substantive or clarifying language changes, the local rules below are revised as follows (revisions noted in bold italics):

**LR 4.2 Service of Summons by United States Marshal**

(a) **Generally.** If service of a summons by the United States Marshal is permitted, a party must present the following to the U.S. Marshall at least fourteen (14) days before the compliance date specified in the summons:

1. A properly completed summons; and

(b) **Service upon a Party in Custody.** If the party to be served is in state or federal custody, properly completed process must be presented to the U.S. Marshal at least thirty (30) days before the compliance date specified in the summons.

**LR 4.3 Preparation of Process**

(b) **Time for Completion.** The Clerk must accept for filing any pleading or document tendered even if it is not accompanied by the appropriate forms. If the pleading is not accompanied by the appropriate forms, the attorney or filing party must comply with this rule within seven (7) days of filing the pleading. If counsel or the party fails to comply with this order within seven (7) days of filing of the pleading, the Court will issue an order requiring the party to show cause why the pleading should not be stricken.

**LR 5.5 Service of Documents by Electronic Means**

Documents **must** be served through the court’s transmission facilities by electronic means to the extent and in the manner authorized by General Order 05-03 of the Court. Transmission of the Notice of Electronic Filing (NEF), **with a hyperlink to the electronically filed document**, constitutes service of the filed document upon each party in the case who is registered as an electronic case filing user with the Clerk. Any other party or parties **must** be served documents according to these Local Rules and the Federal Rules of Civil Procedure.
LR 5.6  Time of Filing and Service

Documents filed by electronic means under LR 5.4 shall be deemed filed on the date and time stated on the Notice of Electronic Filing which is transmitted, with a hyperlink to the electronically filed document, to the filing party.

Documents served by electronic means under LR 5.5 shall be deemed served on the date and time stated on the Notice of Electronic Filing which is transmitted, with a hyperlink to the electronically filed document, to the party served.

LR 7.1  Motions

(b) Motions for an Extension of Time. Subject to any deadlines established by the Court, parties may extend time limits by agreed order. Absent an agreement, the party seeking the extension must file a motion setting forth the reasons the extension is sought and tender a proposed order. A memorandum opposing the motion must be filed within seven (7) days of service of the motion.

(c) Time for Filing Memoranda in Response and Reply. A party opposing a motion must file a response memorandum within twenty-one (21) days of service of the motion. Failure to timely respond to a motion may be grounds for granting the motion. A party may file a reply memorandum within fourteen (14) days of service to the response. When you request an extension of time to file a memorandum, please do so by agreed order or state whether other parties consent.

LR 45.1  Service of Subpoenas by United States Marshal

If service of a subpoena by the United States Marshal is permitted, a party must present the following to the U.S. Marshal Service at least fourteen (14) days before the compliance date specified in the subpoena:

1. a properly completed subpoena;
2. a properly completed U.S. Marshal Form 285; and
3. attendance fees and mileage to be tendered to the person to whom the subpoena is directed.

LR 54.4  Time for Filing Motion for Attorneys Fees and Nontaxable Expense

In accordance with Joint General Order [number], a motion for attorney's fees and related nontaxable litigation expenses, pursuant to Fed.R.Civ.P. 54(d)(2), must be filed no later than thirty (30) days after entry of judgment. If a motion for attorney's fees or nontaxable expenses is not filed within thirty (30) days, such fees and costs shall be waived. The Court may, on motion filed within the time provided for filing a motion for attorney's fees and nontaxable expenses, extend the time for filing such a motion.

LR 83.8  Writs of Habeas Corpus Ad Testificandum

If a person in state or federal custody is needed for testimony or for trial in a civil case, the party desiring the person’s attendance must move for a writ of habeas corpus ad testificandum at least thirty (30) days before the date the person is needed in court to appear or testify unless exigent circumstances otherwise exist.

LR 86.1  Effective Date

These rules are effective December 1, 2009. Except for jury plans, speedy trial plans and criminal justice plans for each district, these rules supersede all previous local rules and court orders.

LCrR 12.1  Motions

(b) Motions for an Extension of Time. Extension of time in criminal actions will be granted only if the party seeking the extension files a motion and affidavit demonstrating good cause. Extensions of time by agreement of the parties are not valid in criminal cases. A memorandum opposing a motion for an extension of time must be filed within seven (7) days of service of the motion.
(d) **Time for Filing Memoranda in Response and Reply.** A party opposing a motion must file a response memorandum within *fourteen (14) days* of service of the motion. Failure to timely respond to a motion may be grounds for granting the motion. A party may file a reply memorandum within *fourteen (14) days* of service of the response.

**LCrR 49.4 Service of Documents by Electronic Means**

Documents *must* be served through the court’s transmission facilities by electronic means to the extent and in the manner authorized by General Order 05-03 of the Court. Transmission of the Notice of Electronic Filing (NEF), *with a hyperlink to the electronically filed document*, constitutes service of the filed document upon each party in the case who is registered as an electronic case filing user with the Clerk. Any other party or parties *must* be served documents according to these Local Rules and the Federal Rules of Civil Procedure.

**LCrR 49.5 Time of Filing and Service**

*Documents filed by electronic means under LCrR 49.3 shall be deemed filed on the date and time stated on the Notice of Electronic Filing which is transmitted, with a hyperlink to the electronically filed document, to the filing party.*

*Documents served by electronic means under LCrR 49.4 shall be deemed served on the date and time stated on the Notice of Electronic Filing which is transmitted, with a hyperlink to the electronically filed document, to the party served.*

**LCrR 59.1 Effective Date**

These rules are effective *December 1, 2009*. Except for jury plans, speedy trial plans and criminal justice plans for each district, these rules supersede all previous local rules and court orders.

* * * * *

2. To comply with the time computation revisions of the federal rules to take effect December 1, 2009, the following are new local rules:

**LR 6.1 “Last Day” Defined**

For purposes of Federal Rule of Civil Procedure 6(a)(4), unless a different time is set by a statute or court order, the “last day” ends for electronic filing at midnight, **EASTERN TIME**.

**LCrR 45.1 “Last Day” Defined**

For purposes of Federal Rule of Criminal Procedure 45(a)(3), unless a different time is set by a statute or court order, the “last day” ends for electronic filing at midnight, **EASTERN TIME**.

* * * * *

3. To clarify the service date for electronic notices of entry of Court judgments/orders, the following is a new local rule:

**LR 77.1 Service Date for Electronic Notice of the Entry of Court Judgments and Orders**

Where the Notice of Electronic Filing transmitted to a party contains a complete court order and states that there is no document attached, notice of entry of the order shall be deemed served on the date and time stated on the Notice of Electronic Filing that is transmitted to the party served.

In all other cases, court judgments and orders shall be deemed served on the date and time stated on the Notice of Electronic Filing that is transmitted, with a hyperlink to the judgment or order, to the party served.

* * * * *
4. To revise the local rule governing social security practice to reflect more accurately actual practice, the following is a revision to **LR 83.11**. All of Subsection (c)(2) is deleted and changes in the wording and re-numbering are proposed such that revised LR83.11 shall read as follows (revisions noted in bold italics):

**LR 83.11 Social Security Cases**

* * * no changes to current Subsections (a) and (b) * * *

(c) **Judicial Review.** At the discretion of the judge to whom the case is assigned, judicial review may occur on written motion or oral argument. *Unless otherwise ordered, motion practice will occur as follows:*

(1) Plaintiff must file a brief statement of specific errors upon which plaintiff relies for reversal within thirty (30) days of the filing of the answer and administrative transcript.

(2) The Commissioner may file a brief statement responding to the Plaintiff’s statement of specific errors within fifteen (15) days of the filing of the Plaintiff’s statement.

(3) The case must be assigned for oral argument within forty-five (45) days of plaintiff’s filing in (A). At oral argument, each side has fifteen (15) minutes to present its position. The presiding judicial officer may allow additional time for good cause shown. Counsel must cite authority to support their arguments and provide references to the administrative record to support their arguments and provide references to the administrative records to support their statements of fact.

(4) The matter will be submitted for decision upon completion of oral arguments.

* * * *

The changes reflected in this Joint General Order shall be incorporated into the Courts’ Joint Local Rules published on the Courts’ respective websites. Copies of this Order shall be made available to the various publishing companies that publish the Joint Local Rules of the Eastern and Western Districts of Kentucky and to the public upon request. The changes noted in this Order shall take effect upon entry of this Order.

**IT IS SO ORDERED:**

Hon. Jennifer B. Coffman, Chief Judge
Hon. Thomas B. Russell, Chief Judge
U.S. District Court
U.S. District Court
Eastern District of Kentucky
Western District of Kentucky
Hon. Karen K. Caldwell, Judge
Hon. John G. Heyburn, II, Judge
Hon. Danny C. Reeves, Judge
Hon. Charles R. Simpson, III, Judge
Hon. David L. Bunning, Judge
Hon. Joseph H. McKinley, Jr., Judge
Hon. Gregory F. Van Tatenhove, Judge

Hon. Amul R. Thapar, Judge

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NKU Chase Hosts First Business Boot Camp

The NKU Chase Transactional Law Practice Center (TLPC) hosted its first Business Boot Camp (BBC) the week of August 17, 2009. The BBC brought together top business people to teach Chase students how to analyze a business transaction (in this case, a stock-purchase deal) from the business point of view. The ability to see a problem from a client’s perspective is a skill most law students never have a chance to develop during law school. If they ever get such an opportunity, it is often piecemeal while practicing law. This program gives Chase students a significant advantage because they have worked through a transaction and have dealt with the typical business issues that arise in such deals.

In developing the program, the TLPC teamed with Chase Alumnus Ken Kinder, member at Cors & Bassett, to design the program. Mr. Kinder provided the basic fact scenario for the BBC and helped line up experienced local business people to work with the students on various business aspects of the problem.

The program began on Monday morning at the offices of Cors & Bassett, where the stage was set for the week-long program. The program brought together top accountants, insurance professionals, bankers, human resource professionals, business owners, and attorneys at various businesses around the Northern Kentucky and Cincinnati area to discuss with Chase students the business issues that arise in a stock-purchase transaction. The students worked in groups to tackle such issues as determining the value of the acquired company, financing the acquisition, obtaining insurance to fund the buy-sell agreement, and addressing the human resource problems that arise as a result of the change of ownership. The students discovered that details that might appear to be non-issues from the legal standpoint can become significant issues and even deal-killers when viewed from the business perspective. Such was the case with regard to financing. The three fictitious “buyers” sought financing from local banks but needed to evaluate which was the better option when the seller offered to finance the transaction.

The climax of the program occurred on Saturday when each group of students presented its recommendations for action to the “buyers” in the transaction and received feedback from a group of experienced business owners who served in the role of the “buyers.” Each group identified the numerous business issues and proposed innovative solutions to handle each issue. Following the presentations, the students, the “buyers,” and the BBC faculty enjoyed lunch and discussed the experience.

“This is a unique opportunity to learn in law school the skills that would take us many years of practice to acquire,” stated Jonathan Collins, a third-year student at NKU Chase and president of the Transactional Law Practice Student Group, who participated in this innovative program. The BBC was sponsored by the TLPC as part of its student-focused, specialized program to help students develop the basic transactional practice skills and acquire the knowledge of allied fields such as accounting and finance they will need to become successful transactional lawyers.

University of Kentucky College of Law

Intellectual Property and the University of Kentucky College of Law

Economic and technological developments have greatly increased the importance of intellectual property law. IP law is dynamic with an almost constant stream of important judicial and legislative developments. The College of Law has responded with an enhanced curriculum and a growing faculty which during the spring 2010 semester will include Visiting Professor Janice M. Mueller. Professor Mueller is a member of the faculty at the University of Pittsburgh School of Law and the author of a leading patent law treatise and many other publications.

The College’s curriculum covers all the major branches of federal and state IP law including patents, copyrights, trademarks, and trade secrecy. I will briefly review these branches, and then describe the College’s curriculum.

The federal Patent Act is grounded in the Constitution’s “IP Clause” (Article I, §8, cl.8). Inventors may apply to the Patent and Trademark Office for a utility patent. To qualify, the invention must be useful, novel, and nonobvious. It is possible to obtain a design patent provided that the design is new, original, and ornamental. Patent reform legislation currently is pending in Congress.

Copyright law also is grounded in the IP Clause. The federal Copyright Act protects works of authorship including books, music, and computer programs. The requirements for copyright protection are not as rigorous as patent law’s. The work must not be copied from another work, show some
minimal level of creativity, and be affixed in a tangible medium of expression (e.g., written on a piece of paper). Copyright provides exclusive rights to make copies, prepare derivative works (e.g., a movie screen play based on a novel), distribute copies, and others. Federal copyright registration is optional but often advantageous.

Trademark law blends federal law grounded in the Commerce Clause and state law. It protects words, symbols or devices that designate origin or convey information concerning the quality or characteristics of products or services. Marks are protected against unauthorized use that is likely to confuse consumers and on other grounds. One may obtain common law rights merely by using a mark. Registration providing additional rights is possible under federal and state statutes.

Trades secrecy law is substantially state statute or case law. It protects technological information, know-how, business plans, and other information that is valuable because it is not known to competitors. For example, trade secrecy law may provide a remedy if an employee breaches a duty of confidence.

So how does the College cover all this? Its IP Survey covers all of the major branches. This course attracts students curious about IP law as well as those focused on IP transactional work or IP litigation. It also attracts students with the science or engineering credentials required for admission to the patent bar. In addition, the College’s curriculum currently includes Patent Law, Copyright Law, Intellectual Property Drafting, Internet Law, and Advanced Patent Law Seminar.

“has become as familiar as the start of Beethoven’s Fifth.” I regard George Gershwin’s 1924 breakthrough classic as the most distinctively American musical composition in our country’s vast repertoire. In its vigor and its versatility, *Rhapsody in Blue* is also a fitting metaphor for legal education. Here at the University of Louisville, we conduct our Law School as a *Rhapsody in Red and Black*.

Musicians define a rhapsody as “a one-movement work that is episodic yet integrated, free-flowing in structure, featuring a range of highly contrasted moods, color and tonality.” The composition of Gershwin’s *Rhapsody* certainly captures this musical form’s “air of spontaneous inspiration” and “sense of improvisation.” Inspired by the “steely rhythms” and the “rattle-ty bang” of a railroad train, Gershwin imagined at once “the complete construction of the *Rhapsody*, from beginning to end,” as “a sort of musical kaleidoscope of America, of our vast melting pot, of our unduplicated national pep, of our blues, our metropolitan madness.”

A more appropriate anthem for Kentucky’s leading metropolitan research university could scarcely be imagined.

As new students arrive at the Law School, they bring with them the richness of their experiences. In turn, the faculty, staff, and administration of the Law School promise our students an experience that will transform them for good. Over the course of a thousand days, our students will find innumerable moments of inspiration. From a moment of Socratic scrutiny in the classroom to the intensity of law review or moot court work, from the pathbreaking Samuel Greenebaum Public Service Program to the new University of Louisville Law Clinic, our students will weave together the crucial elements of their introduction to the law and to the legal profession. With their professors and with each other, with partners on campus and in our community, our students will forge bonds that will last a lifetime.

The kaleidoscopic ambition of Gershwin’s *Rhapsody* reflects the breathtaking scope of the careers that begin with the study of law at the University of Louisville. Our graduates span the country and all walks of life within the legal profession, in business, and in public service. Whether they do so with Fulbright Scholarships or one-woman boats, our graduates cross oceans. Judges, trial lawyers, counselors, venture capitalists, community bankers. Musicians, authors, mothers, and fathers. Their success, in its diversity and its depth, has one thing in common. It all starts here.

The word *rhapsody* traces its orgins to the Greek words *raptein* and *ode*. *Ode* is perhaps the more familiar of these words, serving as the root of many musical terms, from *melody* to *nicking* *Rhapsody*. The truly distinctive root is *raptein*, which most narrowly denotes sewing or stitching. *Raptein* strongly connotes the act of bringing together, as best typified by this word’s most prominent use in the Septuagint. A time to rend, a time to mend, said The Preacher. *Kairos tou Schizein Kai Kairos Tou Raptein*. To our students, we extend the warmest words of welcome to the study of law. May you make of your life in the legal profession a glorious rhapsody in red and black.

ENDNOTES


3. Id.


Kentucky Bar Foundation (KBF) recognizes members of its “Partners For Justice Society” and “Fellows Program”

The Kentucky Bar Foundation honored members of both its “Partners For Justice Society” and “Fellows Program” at the organization’s Awards Luncheon held June 11 during the Kentucky Bar Association’s Annual Convention in Covington.

More than 50 attorneys, individuals and law firms were recognized for their contributions in four categories of giving to the “Partners For Justice Society”: the Chief Justice Fred Vinson Circle ($50,000 or more); the Senator Henry Clay Circle ($25,000); the Justice John Marshall Harlan Circle ($10,000); and the Vice President Alben William Barkley Circle ($5,000). Special recognition was also given to the Baird & Baird, PSC, law firm of Pikeville for becoming the second member of the “Chief Justice Fred Vinson Circle” at the $50,000 level.

Additionally, the Bar Foundation awarded plaques to its new Life Fellows in recognition of their financial contributions in support of the Bar Foundation’s Endowment Fund. The Life Fellows membership is now approximately 800 attorneys. KBF members in good standing may become a Life Fellow through a one-time, lump-sum contribution of $1,250, or members may also become a Fellow through a contribution of $1,500 paid under a pledge of $300 for a period of five years.

The many generous contributions received has enabled the Bar Foundation during 2009 to award 13 grants and to fund a $5,000 scholarship for each of the Commonwealth’s three law schools. A $25,000 grant was awarded to each of the four regional legal services programs – Appalachian Research and Defense Fund, Kentucky Legal Aid, Legal Aid of the Bluegrass and the Legal Aid Society, Inc.

KBF Executive Director Todd Horstmeyer said this year’s grant awards mark the first time the Bar Foundation has supported the four legal services programs through grants of this magnitude. The rationale behind this, Horstmeyer said, is that interest earnings on IOLTA accounts are down substantially due to the very low rates paid by the banks during the current economic downturn. In recent years, IOLTA has generated well over a million dollars annually toward programs that provide legal services to indigent citizens across the Commonwealth who would otherwise not be able to access legal assistance. This year’s IOLTA grants totaled only $400,000.

“I am very pleased that members of the Bar Foundation board were willing to approve such a significant grant to supplement legal services at a time when both state funding and the amount of revenue generated for the programs through IOLTA have decreased significantly,” Horstmeyer said. “The remaining KBF grants awarded this year were aimed at more traditional recipients, including a variety of quality law-related educational programs and scholarships, as well as assistance to help publish the KBA’s book, Kentucky Lawyers Speak: Oral History From Those Who Lived It.”

Kentucky Bar Foundation
2009 Grants
“Furthering the Administration of Justice”

<table>
<thead>
<tr>
<th>Program Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Appalachian Research &amp; Defense Fund of KY, Inc.</td>
<td>$25,000</td>
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<tr>
<td>Appalachian Research &amp; Defense Fund of KY, Inc.</td>
<td>$25,000</td>
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<tr>
<td>Legal Aid of the Bluegrass</td>
<td>$25,000</td>
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<tr>
<td>Legal Aid Society, Inc.</td>
<td>$25,000</td>
</tr>
<tr>
<td>Credit Abuse Resistance Education (CARE) Programs</td>
<td>$25,000</td>
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<tr>
<td>(Program for high school seniors about the pitfalls of credit abuse and the need to develop financial literacy.)</td>
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<tr>
<td>KBA Oral History Project</td>
<td>$10,000</td>
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<tr>
<td>KBA Rule of Law Symposium</td>
<td>$10,000</td>
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<tr>
<td>NKU Chase Street Law Program</td>
<td>$8,000</td>
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<tr>
<td>KBA Young Lawyers Section U@18 Program</td>
<td>$3,500</td>
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<tr>
<td>KBA Outstanding Judge Award</td>
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<tr>
<td>Judge Patricia M. Samme, Covington</td>
<td>$1,000</td>
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<tr>
<td>- Northern Kentucky Bar Association Pro Bono Panel</td>
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<tr>
<td>Judge J. Gregory Wehrman, Covington</td>
<td>$1,000</td>
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<tr>
<td>- Legal Aid of the Bluegrass</td>
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<tr>
<td>KBA Outstanding Lawyer Award</td>
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<tr>
<td>Cathy M. Jackson, Erlanger</td>
<td>$1,000</td>
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<tr>
<td>- Children’s Law Center, Inc.</td>
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<tr>
<td>Arnold R. Simpson, Covington</td>
<td>$1,000</td>
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<tr>
<td>- Children’s Law Center, Inc.</td>
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<tr>
<td>KBF Scholarships:</td>
<td></td>
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<tr>
<td>- Louis D. Brandeis School of Law</td>
<td>$5,000</td>
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<tr>
<td>- Salmon P. Chase College of Law</td>
<td>$5,000</td>
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<tr>
<td>- University of Kentucky College of Law</td>
<td>$5,000</td>
</tr>
<tr>
<td>TOTAL AWARDS - $175,500</td>
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</tbody>
</table>
When Kentuckians establish new businesses, they generally consult lawyers for guidance with issues such as licensing, registration, business liability, and compliance with rules and regulations. Among these matters is the need to comply with Kentucky Occupational Safety and Health law1 and to buy workers’ compensation insurance. The National Safety Council states that for every dollar spent on safety, companies report a three dollar return. Correspondingly, job turnover is reduced 48% and productivity is increased by 25% (Department of Labor and Industries, Dollars and Sense, publications 90-10a-2007 and 90-13a-2008, Olympia, WA) when a functional, applicable worker safety program is in a company’s portfolio.

A consortium of organizations, businesses, unions, and governmental agencies (Kentucky Working to Save Lives) identified small business owners’ lack of awareness regarding the need for worker safety programs as a critical state priority. In response, the University of Kentucky and the Kentucky Department for Public Health Occupational Safety and Health Surveillance program have developed materials for web-based or live presentation.

The presentation is available for use by all interested parties and a web-based version is also available. In addition to new business clients, lawyers may also want to use this presentation to raise awareness and encourage the adoption of a worker safety program among existing small business owners. More information may be obtained from the Kentucky Occupational Injury and Illness Surveillance program toll-free at (800)-204-3223. The development of this presentation was funded by the National Institute for Occupational Safety and Health (NIOSH). This publication was supported by Cooperative Agreement number 2U60OH008483-04 from CDC-NIOSH. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of NIOSH.

ENDNOTE
The Kentucky Volunteer Lawyer Program and the local pro bono programs across the state are pleased to announce their participation in the National Pro Bono Celebration this October. Initiated by the ABA Standing Committee on Pro Bono and Public Service, our state programs join in the first coordinated national effort to showcase the great difference that pro bono lawyers make to the nation, our system of justice, our communities and, most of all, to the clients they serve. This gives us the opportunity to recognize our pro bono volunteers, recognize the ever-growing need to urge others to volunteer their legal services, and recognize community partners for the work they do for the poor.

Hundreds of lawyers in Kentucky donate more than 50 hours each year in free legal services to those of limited means who could not otherwise afford legal assistance. Without that help, the concept of “justice for all” would be a hollow shell. We celebrate and honor those selfless volunteers.

But even with this generous pro bono help, and the devoted work of our public interest law professionals, over 80 percent of the civil legal needs of Kentucky’s poor remain unmet. During these harsh economic times, this number will grow. The Kentucky civil legal aid programs are already seeing a rise in requests for legal services from those previously with modest means, now slipping below thresholds defining poverty. We urge all lawyers across the state to respond to this ever-growing need to help our state’s most vulnerable citizens.

The ideals of fairness, justice and equality, without regard to income, are not just for the legal profession but, rather, for everyone who believes in these basic principles upon which our nation was founded. Many organizations and individuals in our communities provide a multitude of other services to help the poor. The legal profession wants to recognize their joint efforts to better and empower the lives of others.

Please join us to “Celebrate Pro Bono” and support your local pro bono program by attending an event close to you. At this time, plans are being made for the events listed.

Our celebration offers a time to reflect on the core values of our profession. Pro bono brings hope to the powerless and gives a voice against injustice. While we have done much, there is still so much yet to be done.

Celebrate Pro Bono Events

| Louisville Pro Bono Consortium: Louisville Bar Association and Legal Aid Society Volunteer Lawyer Program |
| October 6 | Call-A-Lawyer to be aired on WAVE-3 TV (10:00-11:00 a.m.) |
| October 15 | “State of Affairs” Talk Radio WFPL 89.3 FM (1:00-2:00 p.m.) |
| October 25 | Latino Legal Clinic |
| October 30 | Ethics CLE |
| Presenter: Randy Ratliff, KYLAP |
| October 25-31 | Mayoral Proclamation as Celebrate Pro Bono Week |

| Kentucky Legal Aid: Lawyers Care Volunteer Attorney Program |
| October 1 | Pro Bono Appreciation Luncheon (Owensboro) |
| October 29 | Pro Bono Appreciation Luncheon (Paducah) |
| November 4 | Pro Bono Appreciation Luncheon (Bowling Green) |

| Legal Aid of the Bluegrass |
| Fayette County Pro Bono Program (LawCare) and the Fayette County Bar Association |
| October 27 | Pro Bono Appreciation Luncheon |
| Speaker: Supreme Court Justice Mary Noble |
| October 28 | Basic Divorce CLE |
| October 29 | Will Clinic in partnership with the Legal HelpLine for Older Kentuckians |
| October 30 | Ethics CLE |
| Presenter: Professor William Fortune |

| Legal Aid of the Bluegrass Pro Bono Project/Ashland |
| October 27 | Pro Bono Appreciation Dinner |
| Honorary Host: Deputy Chief Justice Will T. Scott |
| Speaker: Wm. T. (Bill) Robinson III |

| Volunteer Lawyers of Appalachian Kentucky (VLAK) |
| October 20 | Pro Bono Appreciation Luncheon |
| Jenny Wiley State Resort Park, Prestonsburg (Scheduled during your lunch break at the KLU) |
| Honorary Hosts: Court of Appeals Chief Judge Sara W. Combs & Court of Appeals Judge Janet L. Stumbo |
| October 25 | Supreme Court Justice Bill Cunningham & 27 will be featured guest on KET’s program, “One to One with Bill Goodman” |

Jacqueline S. Duncan, Director • Kentucky Volunteer Lawyer Program
533 West Second Street, Suite 101 • Lexington, Kentucky 40508
Phone (859) 255-9913 ext. 12 • Fax (859) 231-5356

CLICK www.kyvlp.org
“Let us never negotiate out of fear.
But let us never fear to negotiate.”

John F. Kennedy

The Mediation Center at Fowler

The lawyers of Kentucky, through the Clients’ Security Fund created by the Supreme Court of Kentucky, have awarded $90,353.15 to 21 individuals following their request for reimbursement for funds misappropriated by lawyers in six Kentucky cities.

The claims include:

One filed for $2,700 against former lawyer Maxwell Lee Hammond of Grayson, Ky. This sum is in addition to $30,743.60 previously awarded to 28 individuals in Grayson and the surrounding areas who requested reimbursement for sums that were also misappropriated by Hammond. Acting on a recommendation from the Kentucky Bar Association’s (KBA) Board of Governors, the Supreme Court of Kentucky disbarred Hammond on Feb. 21, 2008;

Six filed for $19,557.74 against former Hopkinsville attorney Richard Kip Cameron. Acting on a recommendation from the KBA’s Board of Governors, the Supreme Court of Kentucky disbarred Cameron on Sept. 18, 2008;

One filed for $600 against former Lexington attorney Kirk Stephens Bierbauer. Acting on a recommendation from the KBA’s Board of Governors, the Supreme Court of Kentucky disbarred Bierbauer on March 19, 2009;

Three filed for $21,900 against former Lexington attorney Michael A. Vescio. Acting on a recommendation from the KBA’s Board of Governors, the Supreme Court of Kentucky disbarred Vescio on April 20, 2006;

Six filed for $39,650.04 against the late Louisville attorney Theodore H. Amshoff, Jr.;

Two filed for $4,665.37 against former Providence attorney Steve P. Robey. Acting on a recommendation from the KBA’s Board of Governors, the Supreme Court of Kentucky disbarred Robey on Oct. 23, 2008;

Two filed for $1,280 against Salyersville attorney Vickie Lynn Howard. Acting on a recommendation from the KBA’s Board of Governors, the Supreme Court of Kentucky suspended Howard on March 19, 2009.

The Clients’ Security Fund was created and is funded by the Bar dues of all Kentucky attorneys to help victims of theft. It does not cover claims of malpractice or other problems with attorneys. The fund is administered by the KBA in Frankfort. The function of the fund is “to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of lawyers arising out of a lawyer-client relationship between the lawyer and the claimant.”

From fiscal year 2005-06 through 2008-09, the fund has paid $436,457.86 to victims. For more information on the fund, please visit www.kybar.org or call (502) 564-3795.
SUMMARY OF MINUTES
KBA BOARD OF GOVERNORS
MEETING
JUNE 9, 2009

The Board of Governors met on Tuesday, June 9, 2009. Officers and Bar Governors in attendance were President B. Bonar, President-Elect C. English, Jr., Vice President B. Davis, Immediate Past President J. Dyche, Young Lawyers Section Chair S. Laufenberg, Bar Governors 1st District – D. Myers, J. Freed; 2nd District – J. Harris, Jr., R. Sullivan; 3rd District – R. Hay, G. Wilson; 4th District – D. Ballantine, D. Farnsley; 5th District – A. Britton, F. Fugazzi, Jr; 6th District – T. Rouse; and 7th District – B. Rowe, W. Wilhoit. Bar Governor absent was: D. Kramer.

In Executive Session, the Board considered twelve (12) default discipline cases, involving two lawyers, and one (1) restoration case. Steve Langford of Louisville, Roger Rolfs of Florence, and Dr. Robert Strode of Frankfort, non-lawyer members serving on the Board pursuant to SCR 3.375, participated in the deliberations.

New Young Lawyer Section Chair Jennifer H. Moore of Lexington, taking office on July 1, 2009, was also in attendance.

In Regular Session, the Board of Governors conducted the following business:

• Heard status reports from Audit Committee and Rules Committee.
• Young Lawyers Section Chair Scott D. Laufenberg reported that the Young Lawyers Section has activated a disaster legal services plan, at the request of ABA Young Lawyers Division, to recent Eastern Kentucky victims of flooding, tornados, severe storms, and mudslides. A toll-free hotline number will be provided to victims and an email to the KBA membership is being sent from the YLS through the KBA asking for volunteer assistance. The volunteer lawyers will be assisting with incoming calls and questions for relief regarding contracts/contractors, insurance policies, and real estate title issues, and the YLS will be partnering with Appraled to handle inquiries regarding government assistance questions. The program will probably run two to three months or longer depending on FEMA’s direction to close it down. FEMA will handle the cost of the hotline.
• Mr. Laufenberg distributed copies of and reviewed the YLS 2008-09 Annual Report. Mr. Laufenberg reported that the YLS is establishing a relationship with National Bar Association Chapters in Louisville and Lexington in an effort to partner projects. Mr. Laufenberg invited the Board members to attend the YLS luncheon scheduled on Thursday where Angela Edwards of Louisville would be presented with the Outstanding Young Lawyer Award and the 1st Nathaniel Harper Award will be presented to Central High School Magnet Career Academy of Louisville for their work in inspiring high school students to take interest in and consider careers in law.
• President-Elect and Executive Director Search Committee Chair Charles E. English, Jr. reported that the Search Committee narrowed the applicants down to six finalists and interviews would be conducted on July 10-11.
• Edward C. Monahan, Public Advocate, was present and distributed copies of and reviewed the Annual Litigation Report for the Fiscal Year 2008. During his report he expressed appreciation for the Board’s support of Public Defenders across the state and for the most recent support of the KBA of the Resolution on caseload funding.
• Approved the Conflict of Interest and Employee Protection (Whistleblower) Policies.
• Interim Executive Director John D. Meyers reported that the Court approved one-time grants from the KBA Donated Legal Services Fund to the Access to Justice Foundation and the Kentucky Volunteer Lawyers Program in the amounts of $66,600 and $15,000.
• President Bonar reported that 1,400 had pre-registered for the Annual Convention and we were expecting additional on-site registrations. She expressed her appreciation to the Board for its support in attending the convention.
• Approved the following names for submission to the Governor as nominees for appointment to the Public Advocacy Commission: Margaret E. Keane of Louisville, W. Robert Lotz of Covington, and Michael D. Bowling of Middlesboro.
• President Bonar reported that the Task Force on Building Blocks in Leadership Diversity held its first meeting on May 29th and a Gender Committee and a Minority Committee had been established. Bar Governor Gail Wilson had agreed to be the co-chair for the Gender Committee. U of L Dean Jim Chen and Joshua E. Santana are co-chairs of the Minority Committee.

To KBA Members

Do you have a matter to discuss with the KBA’s Board of Governors? Board meetings are scheduled on

November 20-21, 2009
January 15-16, 2010

To schedule a time on the Board’s agenda at one of these meetings, please contact John Meyers or Melissa Blackwell at (502) 564-3795
ANNOUNCEMENT FROM THE ATTORNEYS’ ADVERTISING COMMISSION

Effective July 15, 2009, the fee for advertisements has increased to $75.00 per advertisement. There is also a $100.00 fee for late submissions. Please remember to enclose the proper fee when submitting advertisements to the Commission.

Also effective July 15, 2009, all advertisements must contain the phrase “THIS IS AN ADVERTISEMENT.” Please consult Supreme Court Rule 3.130-7.25 for further information.

Additional changes to the advertising rules have been made and can be found in the Court’s amending order dated April 16, 2009, effective July 15, 2009.

The KBA Young Lawyers Section Received National Award from ABA Young Lawyers Division for U@18 Project

Each year, the American Bar Association Young Lawyers Division recognizes the outstanding work of state and local young lawyer organizations affiliated with the ABA Young Lawyers Division through its Awards of Achievement Program. These affiliates submit their best projects for evaluation and recognition by a jury of their peers. The program is designed to encourage project development by recognizing the time, effort, and skills expended by young lawyer organizations in implementing public service and bar service projects in their communities.

During the 2008-2009 bar year, the KBA Young Lawyers Section’s U@18 public service project was presented in 30 different schools across the Commonwealth to approximately 3,725 students. On August 1, 2009, the ABA Young Lawyers Division announced the winners of the 2008-2009 Awards of Achievement. During the ABA Young Lawyers Division Assembly in Chicago, Illinois, the KBA Young Lawyers Section’s U@18 project received the Second Place Award in the Single Project/Service to the Public category for similar sized state bar organizations.

Save the Dates!

June 16-18, 2010

KBA Annual Convention
Lexington Convention Center

In Memoriam

Stewart E. Bland  Louisville
Stewart B. Elliott  Owensboro
Marshall V. Gaither  Pewee Valley
Douglas Rolland Wright  Cynthiana

Rebekkah Rechter, KBA YLS Secretary/Treasurer and U@18 Program Coordinator, pictured above displaying ABA Young Lawyers Division Award of Achievement.
WHO, WHAT, WHEN & WHERE
ON THE MOVE

The Nicholasville law firm of Moynahan, Irvin, Mooney & Stansbury, PSC is pleased to announce that Elizabeth E. Darby has joined the firm as an associate. She received her undergraduate degree from Brigham Young University in 2002 and earned her J.D., magna cum laude, Order of the Coif, from the J. Reuben Clark Law School in 2007. Prior to joining the firm, Darby served as a law clerk for the Honorable Jennifer B. Coffman.

Mark Neyland has joined the Indianapolis law firm of Ice Miller LLP as senior counsel in the collegiate sports practice. Neyland’s responsibilities at Ice Miller will be to provide counsel to client institutions on NCAA infractions and compliance matters; including assistance with internal investigations and investigations conducted by the NCAA enforcement staff. In addition, he will work with the firm’s clients to conduct compliance reviews and to assist in student-athlete eligibility matters. Neyland previously served as an assistant director of enforcement at the National Collegiate Athletic Association (NCAA). Prior to joining the NCAA, he coordinated fraud investigations and prosecutions as an assistant inspector general for the state of Tennessee and served as a public defender with Fayette County Legal Aid, Inc. in Lexington, Kentucky. Neyland is a graduate of Vanderbilt University Law School.

Lynsie Gaddis has joined Dinsmore & Shohl LLP as an associate. Gaddis will practice in the firm’s Louisville office. She focuses her practice in the areas of trial practice, tort and insurance defense, including coverage and bad faith, commercial litigation, and employment law. Prior to joining the firm, she practiced

Frost Brown Todd welcomes Nicholas (Nick) R. Glancy to its Lexington office. Glancy is a member at Frost Brown Todd working in the firm’s business combinations practice group. He has experience with commercial real estate, commercial lending, and mergers and acquisitions, particularly in the energy industry. Since 2005, he served first as general counsel, and then as CEO, of Rhino Energy, a Lexington-based coal company with operations in four states. In addition to Rhino, Glancy has represented other coal businesses and was a partner in the law firm of Sawyer & Glancy from 1997 to 2005.

Brendan J. Shevlin is pleased to announce the opening of his new firm in Lexington, Shevlin Law Office, PSC. Shevlin will continue to focus on foreclosure, creditors’ rights, lender liability, and creditor-side bankruptcy issues, as well as handle collections and civil litigation for small businesses, as he has for more than eight years. He can be reached at (859) 312-0725.

The Louisville law firm of Gwin Steinmetz & Baird PLLC is pleased to announce that Denis C. Wiggins has joined the firm as an associate. Wiggins obtained his J.D. from the Brandeis School of Law. He will concentrate his practice in the areas of civil litigation defense, premises liability, product liability, professional liability defense and insurance coverage disputes.

Reminger Co., LPA announces the July 1 opening of its full-service office in Louisville. With 40 years of combined legal experience, managing partner Donald L. Miller, II and Reminger partner Paul A. Dzenitis will oversee the firm’s practice areas and litigation experience will service Reminger clients throughout Kentucky, including: Vincent P. Antaki, Joseph Borchelt, Mark R. Bush, Shea W. Conley, John Dunn, Brian D. Goldwasser, Robert W. Hojnoski, Carrie Masters, Shelby M. McMillan, Danny M. Newman Jr., and Rick L. Weil.

Ferreri & Fogle, PLLC is proud to announce that Denise Smith Motta joined the firm on July 1. Motta will practice from the firm’s various offices, which are located in Louisville, Lexington, Erlanger, Bowling Green, and Huntington, West Virginia. After over ten years of practicing at a regional Ohio law firm, she primarily will practice in the firm’s civil litigation practice group. Motta is admitted to practice law in Ohio and Kentucky and has experience defending complex civil litigation claims, specifically in the product liability/pharmaceutical arena. She received her bachelor’s degree from the University

50 Bench & Bar September 2009
of Louisville in 1993 and graduated, *magna cum laude*, from Salmon P. Chase College of Law in 1996.

Rebecca A. Krefft

Stoll Keenon Ogden PLLC is pleased to announce that Rebecca Ann Krefft is now an associate with the firm. Krefft focuses her practice in patent law and has served as a patent agent. A graduate of Vanderbilt University with a B.E. in mechanical engineering, Krefft earned her J.D., *cum laude*, from Duke University School of Law in 2007. Prior to attending law school, she was a mechanical contact engineer and a project manager with ExxonMobil. While she attended law school, Krefft was a summer associate with ExxonMobil, drafting patent claims and researching various patent law issues.

The Lexington firm of Webb, Hoskins, Glover & Thompson, PSC is pleased to announce that Daniel H. Miller has joined the firm in its suburban office located at 2393 Alumni Drive in Suite 101. Miller received his undergraduate degree in 1982 from the University of Kentucky and earned his J.D. from the University of Louisville School of Law in 1988. He will continue to concentrate his practice in real property matters. He can now be reached at (859) 296-9229.

The Lexington law firm of Grasch & Gudalis, PSC is pleased to announce that Timothy E. Davis has become associated with the firm. Davis gradu-
Laurie K. Gillard
Lexington-based legal team of Steptoe & Johnson opened on June 1. In addition, the office in Lexington that Johnson’s Steptoe & Johnson firm. Phillips earned his law degree at the University of Pittsburgh and practices in Kentucky, West Virginia, and Pennsylvania focusing on the natural resources industry and mine safety issues. Johnson is a graduate of the University of Louisville School of Law and has been practicing law in Kentucky for more than thirty years. He brings experience in tax-exempt and industrial development bond financing, mergers and acquisitions, and commercial/corporate litigation. He is a former law clerk with the U.S. Tax Court and tax attorney with Ashland Oil, Inc. Bowling earned his J.D. from Chase College of Law and has practiced since 1985. He served as the State Representative for the 87th Legislative District between 1991 and 1998 and was actively involved in legislation which included provisions for legal services to aid the less fortunate. He focuses his practice on a broad spectrum of government relations services. Lycan received his B.A. from Centre College in 1992 and earned J.D. from the University of Kentucky in 1995. He maintains a diverse civil litigation and corporate law practice, including complex commercial and tort litigation, and also provides government relations services. Steptoe & Johnson’s Lexington office is located at 1010 Monarch Street, Suite 250. The firm’s attorneys may be reached by phone at (859) 255-7080.

L. Chad Elder and Brian R. Good are pleased to announce the opening of their law firm, Elder & Good, PLLC, located at 159 St. Matthews Avenue, Suite 1, in Louisville. They will continue to focus their practice on defending physicians, attorneys, nurses, dentists, pharmacists and other licensed professionals before their respective state boards or licensing agencies in Kentucky and Ohio.

IN THE NEWS

Chief Justice of Kentucky John D. Minton has appointed Laurie K. Dudgeon as director of the Kentucky Administrative Office of the Courts. Dudgeon will be responsible for the daily operations of the AOC, the agency that provides operational support for 3,800 court system employees, including the elected justices, judges and circuit court clerks. She was named deputy director of the AOC in July 2007 and has served in the capacity of director since former Director Jason M. Nemes left the post April 3 to join the law firm of Dinsmore & Shohl. Chief Justice Minton said Ms. Dudgeon was chosen from several highly qualified candidates during a national search conducted by the National Center for State Courts. Dudgeon graduated with a bachelor’s degree in history from the University of Kentucky in 1991 and earned a J.D. from the University of Kentucky College of Law in 1994.

Members of the Kentucky Bar Association recently elected Stites & Harbison attorney Douglass Farnsley to a second two-year term on its Board of Governors. Farnsley’s term began on July 1. He is a member of the Louisville office of Stites & Harbison.

Mindy Barfield, a partner in the Lexington office of Dinsmore & Shohl, was recently appointed to the Kentucky State University Board of Regents by Governor Steve Beshear. She will serve on the Board for a five-year term ending June 30, 2015. The Kentucky State University Board of Regents is the governing body of Kentucky State University and consists of eight governor-appointed members.
WHO, WHAT, WHEN & WHERE

David Treacy, an attorney in the Lexington office of Dinsmore & Shohl, has been selected for the 2009-10 Class of Leadership Lexington. The 10-month program enables participants to meet local and state leaders, gain an increased understanding of community dynamics and public issues, and build working relationships with fellow class members. Participants were selected on the basis of demonstrated leadership ability as well as evidence of community interest and commitment.

Barbara Goodwin Brand, an alumna of Western Kentucky University (1976) and the University of Louisville (1981), and a United States Air Force Colonel, was named Chief Judge of the United States Air Force Court of Criminal Appeals.

Kirk Tolle, the Mason County Circuit Court Clerk, has been elected by his fellow circuit court clerks to serve as president of the Kentucky Association of Circuit Court Clerks (KACCC). Tolle was elected to the office during the 2009 Circuit Court Clerks Summer College held June 9-12 in Lexington. His term as president is for one year.

Joel B. Turner, the equine law practice group leader and partner of Frost Brown Todd, has been elected to serve as president of the American College of Equine Attorneys, Inc. Turner will lead the organization in its efforts to develop and promote continuing legal education opportunities relating to the equine industry, to encourage ethical practices among equine counsel and to serve as a legal resource for parties promoting equine related legislative initiatives across the United States.

Frost Brown Todd is proud to announce that Bart L. Greenwald was recently appointed to a leadership position with the American Bar Association’s Section of Litigation, being named co-chair of the Section’s Commercial and Business Litigation Committee. The Committee is responsible for providing educational tools for attorneys across the country on business litigation matters.

Rania Basha, a senior associate at Wyatt, Tarrant & Combs, LLP who is based in the Louisville office, has been invited to participate in NeXt!, the Fund for the Arts’ Leadership Development Program. The program requires a two year commitment, attendance at monthly educational sessions,

Graydon Head attorney Allyson True Cook was presented with the 2009 Wilbert L. Ziegler Award for her volunteer leadership and service to the board of directors for the Northern Kentucky Mental Health-Mental Retardation Regional Board, Inc., also known as NorthKey Community Care. NorthKey provides mental health, substance abuse and intellectual disability services to residents in Boone, Campbell, Carroll, Gallatin, Grant, Kenton, Owen and Pendleton Counties. Cook presently serves as vice chairman of the Board of Directors for NorthKey.

A. Holland (Holly) Houston is serving as interim co-chair for G.L.O.W. (Greater Louisville Outstanding Women) and as counsel for Blessings in a Backpack, Inc. Houston launched her independent contract lawyer-on-call business, Houston L.O.C.A.L. this spring and continues to practice family, criminal and business law in Louisville.

Stites & Harbison attorneys Stephen Allen, Jamie Cox, Jennifer Drust, and Lauran Sturm have recently earned their LEED Accredited Professional (AP) certification from the U.S. Green Building Council (USGBC). The USGBC is a non-profit organization whose goal is to make green buildings available to everyone within a generation. Allen, Drust, and Sturm are members of the firm’s environmental, natural resources and energy service group, and Cox is a member of the real estate and banking service group. Allen and Drust are based in Stites & Harbison’s Lexington office. Cox and Sturm are based in the firm’s Louisville office.

Timely, clearly communicated results about neuropsychological function and impairment and how it affects a case. Experienced with cases involving criminal conduct, medical malpractice, disability, personal injury, and competency. Very positive reviews from teaching at the University level.

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participation in budget and allocation hearings, as well as networking and fundraising activities.

Alan J. Hartman

was recently appointed to the Dean’s Advisory Board for Northern Kentucky University’s College of Informatics. The mission of the Board is to guide the College in creating and sustaining programs to allow Northern Kentucky University (NKU) to become a leader in the field of informatics. Hartman, an alumnus of NKU’s Chase College of Law, is the partner-in-charge of the downtown Cincinnati office of Dressman Benzinger LaVelle (DBL) and head of DBL’s computer and information technology law practice group.

Patrick R. Hughes

a partner at Dressman Benzinger LaVelle (DBL) who practices in Crestview Hills, was recently appointed by Governor Steve Beshear to chair the Gateway Community and Technical College Nominating Commission. The Commission is comprised of five members who are charged with providing nominee recommendations to the Governor for appointment to the Gateway Community and Technical College Board of Directors. Hughes shall serve for a term expiring April 15, 2013.

Steven H. Lyverse, general counsel to Hillerich & Bradsby Co. in Louisville, has completed the International Bar Association’s International Practice Diploma Programme through the College of Law of England & Wales. Lyverse will be awarded an IBA Fellowship in International Law at the IBA’s annual conference this fall in Madrid.

GO GREEN WITH THE KBA

Please do your part to help the Kentucky Bar Association – and your own law practice – go green! Sign up today to have your CLE records sent to your email address on record with the Kentucky Bar Association.

This action will help eliminate excess paper in your office, create a convenient electronic record for your computer files, and help the KBA save countless trees and thousands of dollars currently allocated to mailing this paper file each year. According to KBA officials, substantial savings would be achieved if even one-third of our members made the move to electronic notification.

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If you would like to change your e-mail address on record, please fill out the online address change form by clicking the box marked “Request for Address Change.”

Thanks in advance for making this step forward with us!

Teresa A. Daniel

J.D., Ph.D., has written a book titled Stop Bullying at Work: Strategies and Tools for HR & Legal Professionals. Highlighting her recent research delineating the key differences between a bully and a “tough boss,” the book provides practitioner-oriented solutions designed to help both HR and legal professionals take proactive steps to deal with the problem within their organizations. Published by the Society for Human Resource Management (SHRM), it is available via SHRM Books, Amazon.com, and other major bookstores nationwide.

Giles T. Hertz

a 1989 graduate of the Salmon P. Chase College of Law and a former partner at Monohan, Hertz & Blankenship in Florence, has accepted a full-time teaching position at the University of Tampa. Hertz has been practicing law on a part-time basis and has been a full-time, tenure-track faculty member in the College of Business at Northern Kentucky University (NKU) since 2001. During his tenure at NKU, Hertz has received several awards including the NKU Alumni Association’s 2008 “Strongest Influence Award” and most recently, the “Sandy Easton Outstanding Faculty Member in the College of Business Award.”

Daniel P. Randolph

managing partner of Ritter & Randolph, LLC, was elected to serve a second three-year term on the Cincinnati Symphony Orchestra (CSO) Board of Directors. He also serves as chairman of the CSO Planned Giving Committee. Randolph received his J.D. from the Salmon P. Chase College of Law and is licensed to practice in Ohio and Kentucky.

RELOCATIONS

Mott V. Plummer

pleased to announce the relocation of his law office in Newport to Mott V. Plummer, Attorney at Law, 53 Villagrande Boulevard, at Ft. Thomas, (859) 491-0313. Plummer is a general practitioner of law in the state of Kentucky.

Mapother & Mapother

shareholders Thomas L. Canary, Jr. and Mervin W. Warren, Jr. are happy to announce the consolidation of the firm’s two Louisville offices into the historic Glassworks Office Building. The consolidation was effective June 19, 2009. The address for the new location in Louisville is 815 West Market Street, Suite 500.
ATTENTION PARALEGALS
Kentucky Paralegal Association
has established a free job bank for paralegals seeking employment in the state of Kentucky. For more information, contact Chandra Martin at (502) 581-8046 or by e-mail at CMar\tin@whf-law.com
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Employment

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• Go to the Kentucky Bar Association website http://www.kybar.org
• Click on the “Login” button on the far left of the menu bar
• Enter your KBA Attorney Number in the first field (Username)
• Enter your Password in the second field
  (Your password will either be your date of birth in the form 01/01/19xx or the password you have assigned yourself.)
• Click on the “Log In” button
  After you have logged in, you will notice that the button to the far left on the menu bar now says “Logout” and your name will be on the menu bar to the right
• Casemaker® is the first item on the “Resources” menu
  You will be asked to read and agree to the End User License Agreement
  From this screen, you will also have access to the Casemaker® user manual

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2010

KBA
Annual Convention

June 16-18, 2010

Lexington, Kentucky