Sanctuary city has become a common discussion point in today's national political debate. Regardless of the politics involved, get the background on this issue on page 6.
Presidents Report  Carey K. Steffen

In reflection upon the Board retreat this year, held on February 2, 2018, I must commend the Board for selecting such a diverse group of leaders. Our Board has an almost equal number of men and women, and a very eclectic scope of practice types, ranging from the traditional firm to solo practitioner to city attorney to Commonwealth’s attorney, and practice areas spanning the spectrum from family law to civil litigation to criminal defense to tax law.

There is another group of leaders within our bar that don’t always receive credit for their hard work and dedication, and I would like to recognize them here. These leaders are the chairs of our many sections. The NKBA has ten sections, and the Board is working on assigning a liaison to each for the purpose of staying connected, helping to spread the word about events, and providing assistance when needed. These sections include Bankruptcy Law, Business & Tax, Estate Planning/Probate, Family Law, Local Government, Real Estate, Injury/Disability/Workers Comp, Solo/Small Firm, Women Lawyers, and Young Lawyers. If you aren’t already a member of a section and there is one or more that is applicable to your practice or appeals to your interest, I encourage you to attend a meeting and reach out to the section chair if you have any new ideas.

The law itself is constantly evolving as is the legal industry, and this evolution directly affects how we practice law. This year will mark my 18th year of practicing law. I recall in my first year of practice that my afternoons centered around responding to the mail (yes, paper mail) that was received. I remember waiting on the mail to arrive, as that was a large source of daily billable hours. Back then, I knew exactly what time to expect the mail to land on my desk. It would then take another few days for my return correspondence to be delivered. This is quite different from now when you can literally wake up and check your e-mail before you even get out of bed. It is infrequent now that I ever open a piece of mail that hasn’t already been scanned and uploaded first by my firm’s mailroom. To be successful, we must stay open to change and continue to learn about the latest technology and business innovations.

Managing stress to optimize performance is something we hear about a lot lately. Once again, this looks much different to me now that it did 18 years ago. In 2000, I was pregnant with my first born, and much of my stress and time management skills were utilized in those early years to manage caring for small children, getting them to and from day care, and how to handle caring for them when they were struck with a fever the day of a big filing deadline. Now that my oldest is in college and the youngest in high school, I find myself with different challenges, like getting the four of us in one room together at the same time before 10 p.m. Back then, I knew exactly what time to expect the mail to land on my desk. It would then take another few days for my return correspondence to be delivered. This is quite different from now when you can literally wake up and check your e-mail before you even get out of bed. It is infrequent now that I ever open a piece of mail that hasn’t already been scanned and uploaded first by my firm’s mailroom. To be successful, we must stay open to change and continue to learn about the latest technology and business innovations.

As time changes, and generations change, there are new ways to cope with stress. There are many closed groups on social media where you can vent to your peers or ask for advice. I was recently invited by a co-worker to join a Facebook group called MothersEsquire (National). It is described as “a place for women attorneys with children—whether currently working or working full-time or having a family anywhere in between.” I can’t help but think I have already outgrown this group, although it would probably have been very helpful to me in those early challenging years of keeping all the balls in the air and making it work. Another not so new technology (but I will admit it is new to me) that I have found to be helpful are some of the podcasts that are geared to attorneys. Two of my favorites are Hustle & flow with Heather Hubbard, and The Lawyer Stress Solution Podcast which has recently been rebranded as Unf*ck Your Brain with Kara Lowentheil. Both women are attorneys turned life coaches who have exceptionally practical advice regarding the very real stresses unique to attorneys and how our brains are wired. As someone who despises wasted time, I have found that listening to these while in my car has proven to be an excellent use of downtime. It has also reinforced to me that there are many other attorneys out there struggling with the same stressors that I face daily.

Resolving a legal crisis quickly can mean the difference between winning and losing a malpractice claim. With 29 years of Kentucky experience, we specialize in providing smaller firms with the kind of fast personal service that prevents a bump in the road from taking you out of the race.

Go with a proven winner right here in Kentucky. Contact Lawyers Mutual for your free quote today at 502.568.6100 or LMICK.com.

By Kentucky Lawyers. For Kentucky Lawyers.
Looking at Valuation Discounts Through the Eyes of a Hypothetical Buyer
by Steve Brunner, CPA, CVA, MAFF

In Estate of Koons v. Commissioner of IRS, 686 Fed. App’x 779 (11th Cir. 2017), the Eleventh Circuit affirmed the U.S. Tax Court’s valuation of a revocable trust’s interest in a limited liability company (LLC). The primary issue in the case was the size of the discount for lack of marketability: The Tax Court rejected the 31.7% discount proffered by the estate’s valuation expert and accepted the IRS expert’s 7.5% discount.

The Eleventh Circuit agreed with the Tax Court. Although the estate’s expert backed up his computations with a detailed regression analysis, the court’s conclusion was based more on “big picture” considerations.

A liquid business
A businessman operated Central Investment Corp. (CIC), which owned a Pepsi bottling and distribution business, a vending machine business and some other operating businesses. In 2004, the businessman owned 46.9% of CIC’s voting stock and 50.5% of its nonvoting stock. His children and other family members owned the remaining stock.

In late 2004, after a dispute with Pepsi over exclusivity rights, CIC sold its bottling and vending machine businesses to Pepsi for around $352 million and received an additional $50 million settlement payment. The proceeds, settlement, and remaining operating businesses were placed in a new LLC. The LLC’s operating agreement limited annual discretionary distributions to 30% of the excess of “distributable cash” over income tax distributions.

The businessman’s children conditioned their sale of CIC shares on receiving offers from the LLC to redeem their interests. These offers were made and accepted before the businessman’s death, but the sales weren’t finalized until approximately two months after his death in March 2005.

Redemptions “almost certain” to occur
When the businessman died, his revocable trust owned a 46.94% voting interest in the LLC. However, that interest increased to 70.42% once the redemption offers closed, giving the trust the power to lift the restriction on distributions.

In valuing the LLC, the estate’s expert applied a 31.7% discount for lack of marketability. That figure was derived from a regression analysis of 88 public companies designed to quantify the difference between the price of publicly traded stock and the price of restricted shares of the same stock. The expert opined that there was a significant risk that the redemption offers wouldn’t close and, even if they did, a majority interest holder wouldn’t be able to force a distribution of most of the LLC’s assets.

The IRS expert found several flaws in the estate expert’s regression analysis. More important, he concluded that the risk the redemption offers wouldn’t close was a small one and, once they closed, the trust would have the ability to force a distribution. He valued the trust’s interest based on its pro rata share of the LLC’s net assets, less a 7.5% discount for lack of marketability.

Both the Tax Court and the Eleventh Circuit agreed with the IRS expert. The redemptions were “almost certain” to occur and a hypothetical seller of the trust’s interest wouldn’t accept less than the amount it could receive in a distribution — in this case, approximately $140 million. The Tax Court valued the interest at $148 million, based on the valuation prepared by the IRS’s expert, because it was just slightly above that minimum.

Common sense wins out
Koons is noteworthy because it illustrates the need for evaluators to step back and consider the big picture: Does this valuation make sense from the perspective of hypothetical buyers and sellers? In this case, the valuation prepared by the IRS’s experts was appropriate because it was aligned with a hypothetical investor’s expectations.
Immigration and Customs Enforcement (ICE) detainer is because the city is arguably failing to comply with U.S. law. The primary reason that cities are named “sanctuary cities” is due to a result or simply in practice without any expressed procedure. The term “sanctuary city” does not have a legal definition—rather, it is a city that limits its cooperation with the federal government’s efforts to enforce immigration law. “Sanctuary cities” limit the particular city’s cooperation with the federal government in its custody for Immigration and Customs Enforcement (ICE) detainer requests. These requests are authorized by federal regulation 8 CFR 287.7. In subsection (a) of this regulation, ICE officers are allowed to issue a Form I-247, Immigration Detainer—Notice of Action to any law enforcement agency for an alien that the law enforcement agency has in its custody. “The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.”

8 CFR 287.7. The regulation goes on in subsection (d) to state that:

“Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.”

Some Courts have found the regulation permissive because subsection (a) of 8 CFR 287.7 states that it is a request. See Galarza v. Szlak, 745 F.3d 634 (3d Cir. 2014); Miranda-Olivares v. Clackamas County, 2014 U.S. Dist. LEXIS 50340 (Or. Dist. Ct. 2014); Buquer v. City of Indianapolis, 2011 U.S. Dist. LEXIS 68326 (SD Ind. June 24, 2011). Other courts, particularly in the Sixth Circuit, have found that the requirements of this regulation, including those outlined in subsection (d), are mandatory. See Rios-Quiroz v. Williamson Cnty., Tenn., 2012 U.S. Dist. LEXIS 128237 (MD Tenn. Sept. 10, 2012), Ramirez-Mendoza v. Maury Cnty., Tenn., 1:12-CV-00014, 2013 U.S. Dist. LEXIS 10533, 2013 WL 298124, at *8 (MD Tenn. Jan. 25, 2013) (relying on the Rios-Quiroz analysis to hold “the Defendant [County government] was not required to make an independent probable cause determination of Plaintiff’s immigration status”).

With this difference of interpretation, a national debate has arisen. Many organizations, including ICE and the Center for Immigration Studies, track the Form I-247 requests and whether a particular jurisdiction is complying with the requirements of 8 CFR 287.7. The Center for Immigration Studies keeps a regularly updated list and a map illustrating where “sanctuary cities” are located. This list and map can be found at: https://cis.org/Map-Sanctuary-Cities-Counties-States. As stated above, there is no legal definition of a “sanctuary city” but now, at least, you will have a further understanding of the legal basis for this debate.

We hope you have found this information helpful and informative.

Steven Franzen is a solo practitioner operating a general law practice in Newport, Kentucky where he focuses on civil litigation involving personal injury, negligence, and contractual disputes. Steven also represents the City of Highland Heights and currently serves as the Campbell County Attorney where he is the legal advisor to the Fiscal Court and prosecutes all misdemeanor and violation offenses.

Tom Edge operates a general law practice in Newport, Kentucky where he represents clients in a variety of legal fields including personal injury, contracts, business law, and property law. Tom also represents the City of Dayton and currently serves as an Assistant Campbell County Attorney.

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its

Steven Franzen and Tom Edge

Sanctuary Cities by Steve Franzen and Tom Edge

Over the past year or so, the term “sanctuary city” has become a common discussion point in today’s national political debate. Despite its prevalence, in many instances, it does not appear the persons discussing the issue truly understand what it is about. Regardless of your political position on the issue, as attorneys, we should strive to be properly educated on the legal aspects of the argument. Accordingly, we present this simple article to provide background on this issue for future educated discourse. The term “sanctuary city” does not have a legal definition but in its most rudimentary state, it is a city that limits its
A somewhat shorter treatise is the one volume Kentucky Lawyer’s Handbook with Forms. Volume 2 of the Substantive Criminal Law treats every single offense. Thomson Reuters also publishes Baldwin’s Driving Under the Influence Law treatise (published by LexisNexis). This treatise is chock full of excellent pointers and explanations for anyone handling a DUl case. This treatise combines information on the substantive offense as well as how to deal with specific evidentiary issues that can arise, for example, how to deal with the various types of tests administered in order to prove that someone was driving under the influence.

While I have focused on Kentucky specific resources, sometimes you will need to find information that goes beyond what is available in a Kentucky specific resource. In those circumstances, I recommend you turn to an old friend that you might not have looked at since your law school days. Wayne R. LaFave’s three volume set on Substantive Criminal Law remains the granddaddy of treatises on criminal law. You probably used LaFave’s hornbook while in law school; the three volume treatise is an expanded version of the hornbook.

As always, the NKU Chase Law Library welcomes NKBA members to come and use our resources. We have all of the resources mentioned in this column.
Please plan to attend the KBA Convention, June 13-15 in Lexington. President Garmer and his committee have put together an outstanding lineup of entertaining and informative speakers. The Feature and Spotlight speakers are always crowd pleasers, and the CLE is top-notch. Reconnecting with classmates at law school receptions and generally having a good time in Lexington, on top of everything else, is well worth the trip. If you have not visited Lexington recently, you should. Horses, art, breweries, distilleries, new restaurants, and UK; the trip. If you have not visited Lexington recently, you should.

In January, our Board of Governors meeting covered a lot of ground. Upcoming events include a legislative outreach effort to educate the legislature on the atrocious funding of our third branch of government. The judiciary is co-equal with the legislative and executive branches, but it sure is not treated that way. A high percentage of AOC employees are paid at or below the poverty line, judges have not had a pay increase in something like eight years, and the judicial system needs to stay current with technology without the budget to do so. It is a bad situation impacting all facets of justice, and we will make every effort to educate the legislative body on the facts.

We are beginning a Bar Leadership Institute (BLI) this year. The idea is to introduce lawyers to the idea of bar service, and other leadership roles, in the Commonwealth. The inaugural BLI will be held at CastlePost, in Versailles, on April 13. The deadline for applying was February 16. It will be a superior one day leadership opportunity for lawyers interested in service.

Several Kentucky lawyers, including me, participated in the National Conference of Bar Presidents (NCBP), Southern Conference of Bar Presidents (SCBP), and ABA Mid-Year Meeting in Vancouver, Canada, from February 1 – 4. The opportunity to meet other bar leaders from around the country, and to hear their stories and issues and relate ours, is invaluable. We are ahead of the curve in many areas and are incredibly well managed, but we face real challenges. Others are always impressed that over 2000 of us participate in the annual convention, a testament to Kentucky lawyers and how we feel about our profession.

I hope to see everyone at the Convention in Lexington. I’ll happily discuss any bar related questions then, or you can contact me at ssmith@graydon.law or 859-578-3070. Your Bar Governors, Gary Sergent (gs Sergent@oharataylor.com) and Todd McMurry (tmc murry@hennenlaw.com), are also available for any inquiry or comment.
Ensuring access to justice for Kentucky’s 794,060 people living in poverty is always a struggle, but for Kentucky’s Civil Legal Aid Programs, the past year has been particularly challenging. It began about 12 months ago when President Trump released his proposed 2018 budget completely eliminating funding for the Legal Services Corporation (LSC). LSC provides funding at the federal level for 133 legal aid agencies across the nation, including all four of Kentucky’s Legal Aid Programs. Last month, Governor Bevin did the same. Access to Justice civil legal aid funding was eliminated from his proposed budget. Together LSC funding and Kentucky’s state appropriation make up over 50% of Legal Aid’s current budget. The fight continues as President Trump’s proposed 2019 budget again calls for the elimination of LSC.

Albeit challenging, this year has also been reaffirming. We have received an outpouring of support from more than 160 law school deans, corporate general counsel from 185 fortune 500 companies including American Express, Google Inc., and Walt Disney; we have also received support from individuals such as baseball great Hank Aaron, billionaire David Rubenstein, author John Grisham, and University of Michigan head coach Jim Harbaugh. Organizations including the Conference of Chief Justices, the Conference of State Court Administrators, and the American Bar Association have also offered their support. Support at the local level has also been overwhelming with support from the Kentucky Bar Association and all of Kentucky’s Supreme Court Justices.

A special thank you to Chief Justice Minton and the entire Court, who appeared before a house budget committee pledging support for Legal Aid.

Supreme Court Justice and Chairperson of the Access to Justice Commission, Justice Michelle Keller, said: “Even in times of economic hardship, Kentucky has a proud history of financially supporting civil legal aid. The state has long recognized that ensuring access to the courts for Kentuckians is an important cornerstone of democracy in our Commonwealth.”

Despite all of these challenges, Kentucky’s civil legal aid programs still reach over 55,000 people annually. We serve Kentuckians of all backgrounds and ages, including those who face the toughest civil legal challenges: children, veterans, seniors, persons with disabilities, and victims of domestic violence. 43% of Legal Aid of the Bluegrass clients are the working poor who need help when unexpected expenses lead to obstacles that can only be resolved through the justice system. 27% of clients are domestic or interpersonal violence victims seeking safety from an abuser or needing help resolving another civil legal issue. Without funding, we would be unable to provide services to people who desperately need it.

Achieving these results is not possible without the support of our local bench and private bar here in NKY. Thank you to all who have supported Legal Aid this past year with your pro bono service and financial support. A special thanks to those members of the Northern Kentucky Bar who continue to raise their voices about the importance of our work. Legal Aid of the Bluegrass was always fortunate to have great support from local legal giants like Bill Robinson, who passed away this year. Bill’s support will be missed but we expect to have continued support from members of the local bar who join in our belief that justice is for all, not just for those who can afford it. The fight continues and we hope to see you there.
For the second year in a row, the #MATCH program is off to a successful start. In September, eleven NKBA members were matched by the #MATCH Committee with an equal number of veteran attorneys who have volunteered to share their knowledge and insight. The matches were based upon shared interests and the mentees’ stated goals, which they provided in their initial applications.

In January, both the mentors and the mentees participated in an orientation session sponsored by Knoebel & Vice, PLLC. The orientation was held at Sullivan University and was intended to introduce the goals of the #MATCH program and provide all participants with suggestions on how to design and implement a successful relationship, including a written plan of tasks and/or events to be completed, and the scheduling of regular contacts between the mentees and their mentors.

The official kickoff event was an evening sponsored by Dressman, Benzinger & Lavelle PSC, where the Honorable Anthony Frohlich was the featured speaker. Members of the local judiciary were invited to attend. The evening served as an opportunity for the mentees to introduce themselves to other mentees, members of the #MATCH Committee, and of course, numerous members of the judiciary who were gracious enough to attend and are too numerous to list. The food and liquid refreshments were complemented by Judge Frohlich’s reflections on the roles various mentors played in his career, and included several stories to which many of the mentors could relate and to which the mentees could aspire.

In addition to carrying out their stated goals, upcoming events for the mentees include workshops entitled “Getting Along to Get Ahead” and “Career Development & Balance.”

The initial efforts of the mentors and mentees are encouraging, and the response has been promising. With the support of the entire NKBA membership, the #MATCH Committee is already beginning plans for the next group of mentees, with the hope of expanding the number of participants and improving what has already proven to be a successful model. For more information about how you can participate in the #MATCH program, either as a mentee or mentor, please contact Julie Jones at the NKBA or committee members, Emily Walters (ewalters@lucasdietzlaw.com) and Bill Knoebel (bknoebel@klawf.com).

For the second year in a row, the #MATCH program is off to a successful start. In September, eleven NKBA members were matched by the #MATCH Committee with an equal number of veteran attorneys who have volunteered to share their knowledge and insight. The matches were based upon shared interests and the mentees’ stated goals, which they provided in their initial applications.

In January, both the mentors and the mentees participated in an orientation session sponsored by Knoebel & Vice, PLLC. The orientation was held at Sullivan University and was intended to introduce the goals of the #MATCH program and provide all participants with suggestions on how to design and implement a successful relationship, including a written plan of tasks and/or events to be completed, and the scheduling of regular contacts between the mentees and their mentors.

The official kickoff event was an evening sponsored by Dressman, Benzinger & Lavelle PSC, where the Honorable Anthony Frohlich was the featured speaker. Members of the local judiciary were invited to attend. The evening served as an opportunity for the mentees to introduce themselves to other mentees, members of the #MATCH Committee, and of course, numerous members of the judiciary who were gracious enough to attend and are too numerous to list. The food and liquid refreshments were complemented by Judge Frohlich’s reflections on the roles various mentors played in his career, and included several stories to which many of the mentors could relate and to which the mentees could aspire.

In addition to carrying out their stated goals, upcoming events for the mentees include workshops entitled “Getting Along to Get Ahead” and “Career Development & Balance.”

The initial efforts of the mentors and mentees are encouraging, and the response has been promising. With the support of the entire NKBA membership, the #MATCH Committee is already beginning plans for the next group of mentees, with the hope of expanding the number of participants and improving what has already proven to be a successful model. For more information about how you can participate in the #MATCH program, either as a mentee or mentor, please contact Julie Jones at the NKBA or committee members, Emily Walters (ewalters@lucasdietzlaw.com) and Bill Knoebel (bknoebel@klawf.com).

For the second year in a row, the #MATCH program is off to a successful start. In September, eleven NKBA members were matched by the #MATCH Committee with an equal number of veteran attorneys who have volunteered to share their knowledge and insight. The matches were based upon shared interests and the mentees’ stated goals, which they provided in their initial applications.

In January, both the mentors and the mentees participated in an orientation session sponsored by Knoebel & Vice, PLLC. The orientation was held at Sullivan University and was intended to introduce the goals of the #MATCH program and provide all participants with suggestions on how to design and implement a successful relationship, including a written plan of tasks and/or events to be completed, and the scheduling of regular contacts between the mentees and their mentors.

The official kickoff event was an evening sponsored by Dressman, Benzinger & Lavelle PSC, where the Honorable Anthony Frohlich was the featured speaker. Members of the local judiciary were invited to attend. The evening served as an opportunity for the mentees to introduce themselves to other mentees, members of the #MATCH Committee, and of course, numerous members of the judiciary who were gracious enough to attend and are too numerous to list. The food and liquid refreshments were complemented by Judge Frohlich’s reflections on the roles various mentors played in his career, and included several stories to which many of the mentors could relate and to which the mentees could aspire.

In addition to carrying out their stated goals, upcoming events for the mentees include workshops entitled “Getting Along to Get Ahead” and “Career Development & Balance.”

The initial efforts of the mentors and mentees are encouraging, and the response has been promising. With the support of the entire NKBA membership, the #MATCH Committee is already beginning plans for the next group of mentees, with the hope of expanding the number of participants and improving what has already proven to be a successful model. For more information about how you can participate in the #MATCH program, either as a mentee or mentor, please contact Julie Jones at the NKBA or committee members, Emily Walters (ewalters@lucasdietzlaw.com) and Bill Knoebel (bknoebel@klawf.com).

For the second year in a row, the #MATCH program is off to a successful start. In September, eleven NKBA members were matched by the #MATCH Committee with an equal number of veteran attorneys who have volunteered to share their knowledge and insight. The matches were based upon shared interests and the mentees’ stated goals, which they provided in their initial applications.

In January, both the mentors and the mentees participated in an orientation session sponsored by Knoebel & Vice, PLLC. The orientation was held at Sullivan University and was intended to introduce the goals of the #MATCH program and provide all participants with suggestions on how to design and implement a successful relationship, including a written plan of tasks and/or events to be completed, and the scheduling of regular contacts between the mentees and their mentors.

The official kickoff event was an evening sponsored by Dressman, Benzinger & Lavelle PSC, where the Honorable Anthony Frohlich was the featured speaker. Members of the local judiciary were invited to attend. The evening served as an opportunity for the mentees to introduce themselves to other mentees, members of the #MATCH Committee, and of course, numerous members of the judiciary who were gracious enough to attend and are too numerous to list. The food and liquid refreshments were complemented by Judge Frohlich’s reflections on the roles various mentors played in his career, and included several stories to which many of the mentors could relate and to which the mentees could aspire.

In addition to carrying out their stated goals, upcoming events for the mentees include workshops entitled “Getting Along to Get Ahead” and “Career Development & Balance.”

The initial efforts of the mentors and mentees are encouraging, and the response has been promising. With the support of the entire NKBA membership, the #MATCH Committee is already beginning plans for the next group of mentees, with the hope of expanding the number of participants and improving what has already proven to be a successful model. For more information about how you can participate in the #MATCH program, either as a mentee or mentor, please contact Julie Jones at the NKBA or committee members, Emily Walters (ewalters@lucasdietzlaw.com) and Bill Knoebel (bknoebel@klawf.com).

For the second year in a row, the #MATCH program is off to a successful start. In September, eleven NKBA members were matched by the #MATCH Committee with an equal number of veteran attorneys who have volunteered to share their knowledge and insight. The matches were based upon shared interests and the mentees’ stated goals, which they provided in their initial applications.

In January, both the mentors and the mentees participated in an orientation session sponsored by Knoebel & Vice, PLLC. The orientation was held at Sullivan University and was intended to introduce the goals of the #MATCH program and provide all participants with suggestions on how to design and implement a successful relationship, including a written plan of tasks and/or events to be completed, and the scheduling of regular contacts between the mentees and their mentors.

The official kickoff event was an evening sponsored by Dressman, Benzinger & Lavelle PSC, where the Honorable Anthony Frohlich was the featured speaker. Members of the local judiciary were invited to attend. The evening served as an opportunity for the mentees to introduce themselves to other mentees, members of the #MATCH Committee, and of course, numerous members of the judiciary who were gracious enough to attend and are too numerous to list. The food and liquid refreshments were complemented by Judge Frohlich’s reflections on the roles various mentors played in his career, and included several stories to which many of the mentors could relate and to which the mentees could aspire.

In addition to carrying out their stated goals, upcoming events for the mentees include workshops entitled “Getting Along to Get Ahead” and “Career Development & Balance.”

The initial efforts of the mentors and mentees are encouraging, and the response has been promising. With the support of the entire NKBA membership, the #MATCH Committee is already beginning plans for the next group of mentees, with the hope of expanding the number of participants and improving what has already proven to be a successful model. For more information about how you can participate in the #MATCH program, either as a mentee or mentor, please contact Julie Jones at the NKBA or committee members, Emily Walters (ewalters@lucasdietzlaw.com) and Bill Knoebel (bknoebel@klawf.com).

For the second year in a row, the #MATCH program is off to a successful start. In September, eleven NKBA members were matched by the #MATCH Committee with an equal number of veteran attorneys who have volunteered to share their knowledge and insight. The matches were based upon shared interests and the mentees’ stated goals, which they provided in their initial applications.

In January, both the mentors and the mentees participated in an orientation session sponsored by Knoebel & Vice, PLLC. The orientation was held at Sullivan University and was intended to introduce the goals of the #MATCH program and provide all participants with suggestions on how to design and implement a successful relationship, including a written plan of tasks and/or events to be completed, and the scheduling of regular contacts between the mentees and their mentors.

The official kickoff event was an evening sponsored by Dressman, Benzinger & Lavelle PSC, where the Honorable Anthony Frohlich was the featured speaker. Members of the local judiciary were invited to attend. The evening served as an opportunity for the mentees to introduce themselves to other mentees, members of the #MATCH Committee, and of course, numerous members of the judiciary who were gracious enough to attend and are too numerous to list. The food and liquid refreshments were complemented by Judge Frohlich’s reflections on the roles various mentors played in his career, and included several stories to which many of the mentors could relate and to which the mentees could aspire.

In addition to carrying out their stated goals, upcoming events for the mentees include workshops entitled “Getting Along to Get Ahead” and “Career Development & Balance.”

The initial efforts of the mentors and mentees are encouraging, and the response has been promising. With the support of the entire NKBA membership, the #MATCH Committee is already beginning plans for the next group of mentees, with thehope of expanding the number of participants and improving what has already proven to be a successful model. For more information about how you can participate in the #MATCH program, either as a mentee or mentor, please contact Julie Jones at the NKBA or committee members, Emily Walters (ewalters@lucasdietzlaw.com) and Bill Knoebel (bknoebel@klawf.com).
Bonezzi Switzer Polito & Hugg Co., LPA is pleased to announce and congratulate shareholders Patricia Trombetta and Thomas Glassman who have been named 2018 Super Lawyers in Ohio and Kentucky. Tom and Pat have a diverse general liability practice specializing in Liability Insurance in both Ohio and Kentucky out of their Cincinnati office.

David M. Dirr has been named a partner at DBL Law. He is a member of the healthcare and civil litigation practice groups and represents clients in a wide array of healthcare-related issues including Medicare and Medicaid reimbursement, anti-kickback law, the Stark Law, certificate of need, and HIPAA. He also assists clients in a diverse range of litigation issues outside of the healthcare field.

David obtained his B.A. in History from Miami University and graduated summa cum laude from The Ohio State University Moritz College of Law. He serves as Chair of the Managed Care Contracting Affinity Group of the American Health Lawyers Association. David volunteers as a faculty member at the Life Learning Center in Covington, Kentucky and is active with the Cincinnati Inn of Court.

David represents clients in Ohio, Kentucky, and Indiana and has practiced in numerous state and federal courts, including the United States Sixth Circuit Court of Appeals.

Hemmer DeFrank Wessels PLLC welcomes attorney Jason W. Chastang as an associate. Chastang practices in the firm’s Litigation Group focusing on complex commercial litigation. Chastang earned his J.D. from Northern Kentucky University, Chase College of Law in 2013 and his Bachelor of Arts (Political Science) degree from Xavier University in 2010. Before joining the firm, Chastang served on active duty as a U.S. Army Officer specializing in military intelligence and financial management. Chastang currently resides in Bridgetown with his wife, Tiffany, and two children, Tanner and Aurora. Chastang remains an active member of the community.

Kyle Winslow, an attorney at Hemmer DeFrank Wessels PLLC was appointed by Gov. Matt Bevin to the Consumers’ Advisory Council. The Consumers’ Advisory Council acts as an advisory to consumers on consumer affairs in Kentucky. They also prepare and publish an annual report on the state of consumer affairs within the Commonwealth. Winslow also serves as a board member of the Northern Kentucky Bar Association. At Hemmer DeFrank Wessels, Winslow focuses his practice on commercial litigation in state and federal courts in Kentucky, Ohio, and Indiana.

Angela L. Edwards will join Lawyers Mutual Insurance Company of Kentucky on February 5th. She will assume the position of Chief Executive Officer on July 1, 2018.

Asa P. “Pete” Gullett, Lawyers Mutual’s current Executive Vice President and Chief Executive Officer, will step down from his position on July 1st. He will continue to work at Lawyers Mutual as assistant claims counsel, offer CLE presentations, and be a resource on legal malpractice matters for Kentucky lawyers.

Prior to joining to Lawyers Mutual, Ms. Edwards was a partner in the Litigation Department of Dinsmore & Shohl, LLP. She practiced in the areas of ERISA litigation, commercial litigation, and accountant and attorney malpractice defense litigation. Ms. Edwards received a juris doctorate degree from the University of Kentucky College of Law and her bachelor’s degree in Finance from Transylvania University. She currently serves as the Vice President of the University of Kentucky College Of Law. She is on the Board of Regents for Transylvania University, and the Board of Trustees for the University of Kentucky. She has served as a commissioner of the Executive Branch of the Ethics Commission and President of the Louisville Bar Association.

Frost Brown Todd proudly supports the Northern Kentucky Bar Association and their commitment to their members.

The Lawrence Firm, PSC is proud to announce that attorney, Lindsay Lawrence was recently elected to the Board of Governors for the American Association for Justice. Ms. Lawrence has also been selected as the Co-Chair of the Tomorrow’s Leaders Board for the Cincinnati Cystic Fibrosis Foundation. Also, Ms. Lawrence was named for a second consecutive year as a 2018 Super Lawyer Rising Star in the area of Personal Injury Litigation. Ms. Lawrence is licensed in Ohio and Kentucky and focuses her practice on representing individuals and their families in the areas of personal injury and medical malpractice.

The Lawrence Firm, PSC
1266 N. Panorama Drive, Suite 800
Louisville, Kentucky 40203
502.266.1200
www.thelawfirm.com
Lindsay Lawrence
Louisville, Kentucky
2017 Kentucky Bar Association Young Lawyer of the Year
2017 Kentucky Bar Association Member of the Year
2018 Kentucky Super Lawyer Rising Star
2018 Kentucky Women’s Bar Association Female Lawyer of the Year

Vivitec is a full-service technology and business solutions firm that helps law firms grow by providing cybersecurity protection and policies to confidential client information, managing the firm’s technology and infrastructure and efficiently without interruption. Call us to schedule yours today.

859.414.6115
www.vivitecsolutions.com

NKBA 34th ANNUAL GOLF OUTING
August 6, 2017
Traditions Golf Club, Hebron, KY
1:00 p.m. shotgun start
Cost: $100
(includes golf, cart, drinks on course & dinner)

Save the Date

Register at nkbar.com
or director@nkbar.com
A Refresher on Non-Competition Agreements: What is Enforceable in Kentucky?
by Lee Metzger

Recently, I have had a number of clients—both employers and employees—come to me for advice on non-competition agreements and ask whether their particular agreements are enforceable. While some of those agreements were airtight and well-drafted, a number of others were drafted by a non-lawyer (or, perhaps, a bad lawyer) and failed to take into account the minimum legal requirements for an enforceable non-competition agreement. The purpose of this article is to provide a general overview of the minimum legal requirements for an enforceable non-competition agreement in Kentucky. This should be a handy reference to help you protect your clients who are employers, or to find a loophole for your clients who are employees.

The general rule in this Commonwealth is that non-competition agreements are valid and enforceable. At the same time, the general rule in this Commonwealth is that non-competition agreements are valid and enforceable. Their validity and enforceability depend on the circumstances of the particular case.

If a non-competition agreement is valid and reasonable, courts will enjoin the employee from violating the agreement. But if it is unlimited or unreasonable as to territory, or both time and territory, a court is empowered to reform or amend the restriction.

A non-competition agreement will be enforceable when unlimited as to time, but

The time restriction will also need to be reasonable. Generally, the shorter the period, the more likely it will be considered reasonable. Typically, non-competition agreements in Kentucky are limited to a reasonable geographic territory. If the restriction is unreasonable as to time or territory, a court will likely modify the agreement.

Which raises the question: What makes a restriction reasonable? An agreement in restraint of trade is reasonable if, on consideration of (1) the subject, (2) nature of the business, (3) situation of the parties, and (4) circumstances of the particular case, the restriction affords fair protection to the interests of the employer, and is not so large as to interfere with the public interests or impose undue hardship on the employee. In other words, there is no bright-line rule. What is reasonable is fact-dependent and will vary from case to case.

But even if a non-competition agreement is reasonable, it may nevertheless be unenforceable if it lacks consideration, which typically hinges upon when the agreement was signed. Non-competition agreements fall into one of two general categories: those agreements that were entered into at the time employment commenced, and those that were entered into sometime later.

When the employee executes the noncompetition agreement at the same time he accepts employment, the latter becomes consideration for the covenant. But if the employee signs the non-competition agreement sometime after the employment begins, consideration may be absent. These are known as “afterthought agreements.” If the non-competition agreement is signed sometime after employment begins, continued employment, standing alone, is generally not sufficient consideration.

But, Kentucky courts have recognized that there are other things that can constitute consideration to support the noncompetition provisions of an afterthought agreement. For example, if after signing the agreement, the employee acquires specialized knowledge, training, and expertise from the employer that he or she would not otherwise have acquired, these benefits may constitute sufficient consideration. Similarly, giving the employee a promotion or raise after the employee signs a noncompetition agreement can constitute adequate consideration. Even threatening the employee with termination for refusal to sign the agreement may be enough.

The next time you draft a non-competition agreement for an employer, keep these principles in mind. At a minimum, you will need to include reasonable restrictions both as to time and territory. Have a conversation with your client to fully understand its business and who its competitors are, as this will help you discern what might constitute a reasonable geographic restriction. If the employer only does business in Northern Kentucky, a 150-mile restriction is probably unreasonable. But if the employer has locations throughout the United States, a restriction that spans the country might well be reasonable. Use your best judgment and common sense.

Encourage your clients who are employers to have employees sign non-competition agreements as soon as employment begins, as sufficient consideration for the agreement will be presumed. You should explicitly state the consideration that supports any “afterthought agreements” you may draft. And whenever drafting a non-competition agreement of any sort, you should always include a clause in which both parties acknowledge that the non-competition restrictions are reasonable based upon the subject, the nature of the business, the situation of the parties, and the circumstances of the particular case. You should also include a clause in which the parties agree that the restriction is such only as to afford fair protection to the interests of the employer, and is not so large as to impose undue hardship on the employee. It will be difficult for an employee to contest reasonableness if she agreed in writing that the restrictions were reasonable.

On the flip side, if you represent an employee after a non-competition agreement has been signed, make sure your client understands that he cannot work in an area forbidden by the agreement within the specified time period. Even if the terms are unreasonable—a say, a 300-mile restriction preventing a former bartender from working in the alcohol or food service industries for a period of ten years, when the former employer had just one bar in Northern Kentucky—a court is going to reform the agreement to still include some form of reasonable restriction, perhaps something like 15 miles and one year. So your client needs to understand that his employment options are going to be limited, even if the initial terms of the agreement are unreasonable.

If you have the good fortune of representing an employee before a non-competition agreement is signed, don’t let your client simply sign whatever is put in front of him or her. This should go without saying, but you need to actually negotiate the terms of the agreement. If the agreement says that the employee is restricted from working for a “competing business,” define what “competing business” means. Or try to get the time limitation reduced. For the employee, one year is always better than two; and six months is always better than one year. And see if there is any wiggle room in the proposed geographic restriction. For example, many times employers in Kentucky will include a geographic restriction of a certain number of miles, but they are really only focused on competing businesses in Kentucky. You may be able to get a concession from the employer that the non-competition agreement does not apply in Ohio or Indiana, which would give your Northern Kentucky client more options to pursue other nearby employment opportunities later on.

In short, a non-competition agreement will be enforceable in Kentucky if it is supported by valid consideration, and is reasonable as to time and territory. You should rely on these basic requirements when drafting and negotiating the best agreements possible for your clients.
Leadership in the Making
by Aaron Sutherland, YLS Chair

We are barely into the New Year, but the feedback we have received on our adjusted meeting schedule has been positive. We continue to see new faces join our ranks and take on leadership roles and responsibilities. For those of us who have been engaged with the Young Lawyers Section for some time, hearing new voices substantively discuss our agenda shows that our group is growing and evolving. As it does, we look forward this year to fulfilling our goals – professional, philanthropic and social. In all respects, the development of our group portends a fun and exciting year for the YLS.

The YLS has had a busy start to 2018. Our section provided volunteers at the Winter Special Olympics at Perfect North Slopes in January and had a special February meeting in conjunction with the Chase College of Law Young Alumni at Braxton Brewery.

On March 8th, the YLS hosted its annual Judicial Reception in Covington. The event provides young lawyers and new admittees to the Kentucky bar an opportunity to meet and get to know members of the local judiciary. The event was planned by Committee Chair Kara Harp with the help of Julie Jones. On behalf of all of the young attorneys, thank you to the judges who took time out of their schedules to attend the event!

The spring and summer is a busy time for the Young Lawyers Section. There are numerous social and philanthropic events planned. As a reminder, YLS monthly meetings have been moved to the second Thursday of each month. Announcements for meetings and events are sent out to YLS members via email. If you would like to be added to our listserv, please contact Julie Jones at juliejones@nkybar.com.

Do You Recognize These NKBA members?

A  B  C  D  E  F

Find the answers on page 23
Young Lawyers Judicial Reception

The NKBA Young Lawyers Section held its annual Young Lawyers Judicial Reception on Thursday, March 8, 2018 at The Madison Event Center in Covington. The event’s goal is to acquaint YLS members and newly admitted Kentucky attorneys with the local judiciary in a relaxed setting. This year’s event boasted record attendance from YLS members, new admittees, future admittees awaiting bar results, and NKBA Board Members. Fourteen judges were also in attendance, including Justice Keller of the Kentucky Supreme Court, Chief Judge Jay Kramer and Judge Allison Jones from the Kentucky Court of Appeals. The event took place on International Women’s Day. Judge Kramer recognized the many women who make up the Northern Kentucky judiciary.

The YLS would like to thank Platinum Sponsors: Adams, Stepner, Woltermann & Dusing and Monohan & Blankenship; and Gold Sponsors: Taliaferro, Carran & Cowherd, Russell & Ireland Law Group, and Lange, Quill, Powers for their generous support of this event. The YLS also thanks the local judiciary for their continuous support of this event and young lawyers in our community.

Pictured Top: Justice Michelle M. Keller discusses the importance of being involved with your local bar association. Pictured Bottom: A great group of YLS members networking

Thank You to Our Judicial Reception Sponsors

PLATINUM SPONSORS
Adams, Stepner, Woltermann & Dusing, PLLC
Monohan & Blankenship Attorneys at Law

GOLD SPONSORS
Lange Quill & Powers, PLC
Russell & Ireland Law Group, LLC
Taliaferro, Carran & Cowherd, PLLC

Thank you to YLS Event Chair, Kara Harp, for organizing this successful event

Advertise With Us

Lex Loci & premier level advertising opportunities available.
Contact Julie Jones at juliejones@nkybar.com or (859) 781-130 for details.

NOW OFFERING 15% DISCOUNT FOR ONE YEAR OF INSERTIONS

Thank You to Our Judicial Reception Sponsors

PLATINUM SPONSORS
Adams, Stepner, Woltermann & Dusing, PLLC
Monohan & Blankenship Attorneys at Law

GOLD SPONSORS
Lange Quill & Powers, PLC
Russell & Ireland Law Group, LLC
Taliaferro, Carran & Cowherd, PLLC

Old Photos Answers:
A) Portia Schaefer
B) E. Andre Busald
C) Thomas C. Smith
D) Judge Patricia M. Summe
E) Phillip Taliaferro III
F) James Dressman III

Thank you to YLS Event Chair, Kara Harp, for organizing this successful event

Wood Herron & Evans is a leading boutique intellectual property law firm composed of dedicated attorneys and support staff with a legacy of superior intellectual property legal services. We focus on building strong personal relationships while delivering a high return on value. Integrity and in-depth legal expertise, coupled with technical and business experience, are the hallmarks of our service.

2700 Carew Tower #441 Vine Street | Cincinnati, Ohio 45202
Phone: 513.241.4324 | Fax: 513.241.4234

This is an advertisement. Kentucky law does not certify specialization of legal services.
Congratulations to NKBA member, John H. Klette Jr., who celebrated his 76th year as a member of the Kentucky Bar Association on February 11, 2018.

Kenton County Circuit Court Judge Patricia Summe swears in the Northern Kentucky Bar Association Officers & Board of Directors at their annual retreat.