Is it ethical to advise your client to delete their Facebook page during litigation? Learn more about the discovery rules as applied to social media and how you can best counsel your client on page 6.
Presidents Report  Carey K. Steffen

I would like to begin by extending a huge thank you to all members who came out to support the NKBA Foundation at the Mercedes Event on August 9, 2018. Unfortunately, I was out of town and not able to attend, but everyone I spoke with regarding the event had nothing but good things to say. The NKBA looks forward to a productive relationship with Mercedes moving forward. It is great to see that so many of you came out to support the NKBA Foundation.

At last count, a total of $2,600.00 was raised at the event. I write this article as “Back to School” is in full swing in Northern Kentucky, which includes my house. As a mom, part of my back-to-school routine is reviewing the school calendars and transferring all of the important dates to my calendars. I encourage each of you to note the following dates on your calendars.

I am looking forward to attending the Northern Kentucky Volunteer Lawyer Annual Pro Bono Recognition Event on October 4th at Lisse Steakhouse. As the President of the NKBA, I have a seat on the NKYVL Board. At the end of last month’s meeting, we took a tour of their new Justice Bus (which is a Mercedes by the way) and were quite impressed.

I remind everyone to save the date for the Evening in Toyland Holiday Gala & Silent Auction. The Gala will take place on December 7th at Summit Hills Country Club. At this event, we will honor the 2018 Distinguished Lawyer of the Year and the Volunteer Lawyer of the Year. In the spirit of the upcoming holiday season and to help with providing for those less fortunate, the NKBA has joined forces with the Steinford Toy Foundation and will be requesting all attendees to bring a toy to donate to the cause. Last year, the Steinford Toy Foundation provided toys to nearly 4,000 children throughout Northern Kentucky, almost 800 more than the year prior. That increase certainly stretched their resources, and they are extremely grateful for our partnership since they are expecting about the same number again this year.

Back to school means new beginnings. The NKBA is reaching out to its senior members to promote their membership in the NKBA. Please remember we are always there as an ambassador to you. You’ve all heard the old saying “you get out of something what you put into it.” Well that is definitely true with your bar association. I urge each of you to encourage younger attorneys to join the NKBA. They are the future of our regional bar association. 

continued from previous page

The NKBA is very fortunate to have great representation at the state level. NKBA member Steve Smith will start his term as KBA President in July 2019, and NKBA members Todd McMurtry and Gary Sergent are currently serving terms on the KBA Board of Governors. The KBA Convention will be held in Northern Kentucky in June 2020, so mark your calendars now!

I look forward to seeing each of you at these upcoming events! 

2019 NKBA MEMBERSHIP & LAWYER REFERRAL SERVICE

Renewal applications are in the mail
DEADLINE: DECEMBER 31, 2018

Misplaced your application?
Contact director@nkybar.com

Honest-to-goodness protection.

Kentucky has been home to some pretty famous lawyers. Of course, things have changed a lot over the years, and today’s legal professionals need reliable protection. With 29 years of Kentucky experience, we specialize in providing smaller firms with malpractice insurance and expert counsel they can trust.

Get legal insurance you can hang your hat on. Contact Lawyers Mutual for your free quote today at 502.568.6100 or LMICK.com.

By Kentucky Lawyers. For Kentucky Lawyers.

Lawyers Mutual

www.lmick.com

Waterfront Plaza | 323 W. Main St., Suite 600 | Louisville, KY 40202 | 502.568.6100 | 800.800.6101 | LMICK.com

continued on next page
nagging, took the test anyway. Instead of following this Uninterested, he did not study but, in order to assuage her actually convinced him to take the LSAT to apply to law school. It was not always his dream. My grandmother (his mother) course for him. He seems born to argue in court. However, he went straight to law school. It seems like such a natural hard-working--and not just by his parents! He won numerous intellectual abilities. He was praised as smart, dedicated, and evident even when he was young.

Dad grew up surrounded by music. My grandfather was a music minister at numerous churches and had my father start accompanying him on the piano at concerts when Dad was only twelve years old. When Dad was sixteen, he started working as a music minister himself. He played the French horn and piano and also sang. The whole family would go to churches to perform. Dad's talent and passion for music was evident even when he was young.

However, his musical abilities were closely rivaled by his intellectual abilities. He was praised as smart, dedicated, and hard-working--and not just by his parents! He won numerous academic awards. He attended Northern Kentucky University and majored in communications, earning his degree with honors.

Most people who know my father now would assume that he got, the more I understood about my dad's career, and the more I learned that he was a hard-working, dedicated, and undeniably inspirational figure.

As I was growing up, I didn’t fully understand my dad’s job. I knew he had an office, he worked a lot, and he seemed very irritated when my grandma and I talked about what an amazing judge Judge Judy was. However, the older I got, the more I understood about my dad’s career, and the more I realized that he was a hard-working, dedicated, and undeniably inspirational figure.

After a semester, he realized that this was not the career for him. Much to his chagrin and his parents’ delight, he decided to enter law school.

Luckily, Dad was made for the law. He excelled in law school. He started working part-time while he was in law school as a law clerk with Taliaferro, Smith, Wolnitzek, Schaefer and Rowekamp. He also worked part-time jobs teaching communications courses at NKU, working as a sales clerk at stores, and working on the weekends as a part-time music minister. Even though he was working at least 60 hours each week in addition to his course load, he still graduated from law school with honors. After law school, he continued working at Taliaferro, Smith, Wolnitzek, Schaefer and Rowekamp while studying for the bar.

Dad’s life has always been filled with stress. My older brother decided to make his timely arrival the week before Dad took the bar examination. Needless to say, studying with a newborn was an interesting experience. He successfully completed the bar examination, however, and continued working at his firm until 1988 (the firm became Smith, Wolnitzek, Schachter & Rowekamp in 1986). In 1987, the Kentucky Supreme Court, then led by Chief Justice Robert F. Stephens, issued an opinion following Dad’s oral argument before the Court. In Crime Fighters Patrol v. Hiles, 740 S.W.2d 936 (Ky. 1987), Dad, and attorney Tom Smith, represented White Castle Systems, Inc. Hiles was a customer in the establishment when he was attacked and beaten by an assailant. White Castle also filed for indemnity against the assailant, Robert Cook. Hiles had agreed to release and indemnify Cook against any further liability for the incident and attempted to reserve all claims against White Castle or other parties. However, through the language of the agreement, Hiles contractually obligated himself to pay any liability Cook incurred as a result of the incident, from any other source, including a claim from White Castle. The Court held that “as between White Castle …, whose negligence, if any, consisted of failing to prevent the assault, and Cook, who perpetrated the assault, applying equitable principles the parties are not in pari delicto.” 1 The Court found White Castle entitled to complete indemnity from Cook.

Dad moved to Mechhley, Robbins and Kelly in 1988, which became Robbins, Kelly, Patterson and Tucker in 1990. Despite his successes and wonderful colleagues he’d met along the way, Dad yearned to work for himself. So he decided to make the scary, yet ultimately rewarding, decision to open his own firm. In 1994, he and his law partner, Ed Monohan Sr., opened Monohan & Blankenship in Florence, Kentucky. Since then, his success has continued and grown in ways he never could have imagined. He practices in a variety of legal fields: personal injury, family law, criminal defense, workers’ compensation, employment litigation, and many more.

Despite the struggles of being self-employed and running his own law firm, Dad has always been one that thrives in the face of adversity and stressful experiences. He is always willing to take on the challenges and struggles of other people. This may be why he’s such a skilled and talented counselor and advocate. He feels for people as though their struggles were his own. He wants to make the world a better place, as idealistic as it may be. I’ve always looked to him as an example of how we can each contribute a small portion of kindness to the world and hope that it makes some kind of a difference. Dad has reached out and assisted so many people. In 1997, he assisted a father in gaining custody of his two children. Years later, one of the man’s sons was awarded a football scholarship and drafted by the Tampa Bay Buccaneers. His legal career is replete with such examples: stories of people whose lives he’s made a little easier.

One of my favorite Christmas traditions is one that I share with my dad. Every year, no matter what, we sit down and watch the movie It’s a Wonderful Life. It’s one of our absolute favorites. And every year, I watch with tear-filled eyes as George Bailey struggles to find his place and meaning in the world. I’ve always felt that Dad evidences one of the shining lessons from that film: “No man is a failure who has friends.” Everywhere Dad goes, there’s someone who knows him and someone who wants to speak with him. His clients almost universally thank him for helping at least one small experience in their lives. Every church he’s attended or served at is filled with members who fondly recall Dad’s positive impact on them. He has truly strived to use his time to make the hardships of life a little easier to bear for other people.

I am blessed to have a family full of wonderful examples, supportive role models, and caring traditions. Just one of those blessings is having a dad like Jeff Blankenship. Not only is he a wonderful attorney and an amazing mentor to learn from, but he is also a rare human, one who cares for his fellow man and strives to be the very best that he can be.
Social Media: What is Discoverable and Advising Clients
by Sarah B. Cameron Esq.

**What social media is discoverable? Simple—everything relevant.**

In this day and age, only the lucky few have escaped the temptation of a Facebook account. According to a Pew Research Center survey conducted in January 2018, 68% of adult Americans use Facebook. The next closest widely used social media platform is Instagram at 35%.

Given this widespread use, various questions have developed over the past few years about social media discovery. So what is discoverable? The New York Court of Appeals in February 2018 opinion in Forman v. Henkin provides a concise, thorough analysis explaining how basic discovery rules should be applied to social media platforms. This case provides guidance to courts in jurisdictions such as Ohio where there is very little case law on the issue.

**Discovery Rules Applied to Social Media**

In Forman v. Henkin, Plaintiff claimed she suffered a severe brain injury after she fell off Defendant’s horse. Plaintiff alleged that she could no longer enjoy life or communicate as she once could. For example, she produced an email she had written with grammar mistakes and misspellings to demonstrate her difficulty with simple correspondence. During her deposition, Plaintiff testified that, prior to the accident, she posted many photographs on her Facebook displaying “her active lifestyle.” She also testified that she deactivated her Facebook account six months after the incident. Defendant therefore sought an unlimited authorization to access the contents of Plaintiff’s Facebook. When Plaintiff refused, Defendant filed a motion to compel. Defendant alleged that because of Plaintiff’s testimony, it was likely that her Facebook account contained evidence material to her claims that the accident impacted her ability to read, write, and participate in activities.

Plaintiff opposed the motion, claiming that her Facebook account was private and that there was only one photograph designated as “public.” The trial court ultimately granted Defendant’s motion and issued an order allowing limited access to the account. In Forman, the Court of Appeals summarized the trial court order as follows:

“The trial court granted the motion to compel to the limited extent of directing plaintiff to produce all photographs of herself privately posted on Facebook prior to the accident that she intends to introduce at trial, all photographs of herself privately posted on Facebook after the accident that do not depict nudity or romantic encounters, and an authorization for Facebook records showing each time plaintiff posted a private message after the accident and the number of characters or words in the messages. Supreme Court did not order disclosure of the content of any of plaintiff’s written Facebook posts, whether authored before or after the accident.”

Plaintiff appealed the order to the New York Appellate Division, which modified the order to require Plaintiff only to disclose pre- and post-accident photographs she posted on Facebook that she intended to introduce at trial. The Defendant then appealed to the New York Court of Appeals.

The Court of Appeals reversed the decision of the Appellate Division and reinstated the trial court’s order granting the motion to compel. In doing so, it clarified the following important points:

1. “While Facebook — and sites like it — offer relatively new means of sharing information with others, there is nothing so novel about Facebook materials that precludes application of New York’s long-standing disclosure rules to resolve this dispute.”

2. “[W]e reject the notion that the account holder’s so-called ‘privacy’ settings govern the scope of disclosure of social media materials.”

3. “[W]e agree with other courts that have rejected the notion that commencement of a personal injury action renders a party’s entire Facebook account automatically discoverable.”

So what can we take away from this case? First, blanket authorizations for access to someone’s entire Facebook account (or any other social media platform) is very rarely appropriate. Second, so long as the request is specifically tailored to relevant content, a court will likely allow the discovery. Third, “sensitive or materials of marginal relevance” should be protected, just as with any other types of materials. For example, in Forman, the Supreme Court exempted photographs depicting nudity or “romantic encounters” from its discovery order. Like many other areas of discovery, when it comes to social media, questions as to scope are highly factual and should be determined on a case-by-case basis.

**Social Media Discovery in Kentucky**

The Kentucky Supreme Court adopted a similar approach to social media discovery in its April 2018 decision in Thompson v. Coleman, 544 S.W.3d 635 (Ky. 2018). In Thompson, the Estate of Kara Vance claimed that Dr. Lavender and Pikeville Dermatology negligently prescribed Acutane that resulted in Ms. Vance’s suicide. As part of discovery, Dr. Lavender and Pikeville Dermatology requested inspection of Ms. Vance’s social media accounts. The court granted the inspection, but ordered the following:

1. “(1) inspection by a third-party specialist of Lavender and Pikeville Dermatology’s choosing,

2. (2) the information subject to inspection would be limited to a time limit of one year before Vance’s suicide, and

3. (3) a protective order limiting the use of information gleaned from the inspections.”

Plaintiff appealed to the Supreme Court for a writ prohibiting the trial court from enforcing this order. The Kentucky Supreme Court declined and ultimately concluded that “the relevancy of the requested discovery is self-evident because Thompson has placed Vance’s mental state at issue by filing this claim.”

Further, the court held:

“As the Court of Appeals noted, Thompson makes no claim of privilege to Vance’s social media accounts. The argument appears to be that most of the information obtained will simply be irrelevant. Even if Thompson is ultimately correct, this does not warrant the issuance of a writ.”

continued on page 8
Advising Clients as To Social Media Use: Ethical Considerations

Given the widespread social media usage, a client’s online presence should be evaluated early in the litigation process. According to a March 2017 article from the American Bar Association, “a basic search of social media profiles associated with clients, opponents, and witnesses is now considered to be a minimum level of due diligence expected of a competent litigator.”

The American Bar Association also acknowledges that there are times when attorneys should advise clients as to their social media usage, including what they should and should not post, not communicating with the opposing party, and preserving relevant evidence. The matter becomes more complicated if there is a need to “clean up” a client’s social media page, including changing privacy settings or deactivating an account all together.

In providing such advice, counsel must be mindful of ethical boundaries. Specifically the requirements set forth in Professional Rules of Ethics 3.4(a), which states:

“A lawyer shall not: (a) unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act....”

And Rule 8.4, stating, “It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

Fortunately, these issues have been the subject of various ethics opinions from bar associations across the country, including New York, Pennsylvania, and Florida. In 2013, the New York County Lawyer’s Association issued an opinion concluding that an attorney may advise a client as to what they should or should not post on social media. The opinion explained:

“An attorney may not direct or facilitate the client’s publishing of false or misleading information that may be relevant to a claim; an attorney may not participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false. RPC 3.4(a)(4). However, a lawyer may counsel the witness to publish truthful information favorable to the lawyer’s client; discuss the significance and implications of social media posts (including their content and advisability); advise the client how social media posts may be received and/or presented by the client's legal adversaries and advise the client to consider the posts in that light; discuss the possibility that the legal adversary may obtain access to “private” social media pages through court orders or compulsory process; review how the factual context of the posts may affect their perception; review the posts that may be published and those that have already been published; and discuss possible lines of cross-examination.”

In 2014, the Pennsylvania Bar Association issued Formal Opinion 2014-300, stating that an attorney was not only permitted to advise their clients as to social media, but a “competent lawyer” was actually expected to advise clients about “the content that they post publicly online and how it can affect a case or other legal dispute.” Specifically, they concluded:

• A lawyer may advise a client as to what content may be maintained or made private on her social media account, as well as to what content may be “taken down” or removed, whether posted by the client or someone else, as long as there is no violation of common law or any statute, rule, or regulation relating to the preservation of information.

• Unless an appropriate record of the social media information or data is preserved, a party or nonparty may not delete information from a social media profile that is subject to a duty to preserve. This duty arises when the potential for litigation or other conflicts arises.

Under this opinion, the obligation to preserve social media arises when there is a “potential for litigation,” not just when suit is brought. Likely, if an attorney is meeting with the client regarding their dispute, the “potential for litigation” threshold has been met and permanent deletion of social media material should be avoided.

Finally, in a 2015 ethics opinion, the Florida Bar Association specifically provided that a lawyer could advise a client to change the privacy settings on their account. Further, the opinion stated: “Provided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, the inquirer also may advise that a client remove information relevant to the foreseeable proceeding from social media pages as long as the social media information or data is preserved.”

The importance of preserving deleted information cannot be overstated. The New Jersey District Court’s decision in Gatto v. United Air Lines, Inc., 2013 WL 1285285 (D.N.J. Mar. 25, 2013), illustrates the significant risks of sanctions resulting from deleting, or in this case permanently deactivating, a Facebook post or account.

In Gatto, an airport operations employee sued United Airlines claiming injuries from fueling stairs crashing on him. He claimed that he was unable to work, so United Airlines sought information from his Facebook page to discern his level of activity. Gatto initially refused to provide the authorization, but was ordered to do so by the Court. Once Gatto received notification that an unknown IP address had logged into his page, he permanently deactivated his account and all the information was lost. The court sanctioned the conduct with an adverse inference instruction.

Practical Advice to Limit Risks Associated with Social Media

During an initial meeting with a client, it may be prudent to discuss whether to deactivate Facebook (or any other platform) during the pendency of the litigation. Facebook allows you to temporarily deactivate while preserving your records. Facebook explains it as follows:

When your account is deactivated:

• No one else can see your profile.

• Some information, like messages you sent to friends, may still be visible.

• Your friends may still see your name in their friends list.

This is only visible to your friends, and only from their friends list.

• Group admins may still be able to see your posts and comments, along with your name.

• If you’d like to come back to Facebook after you’ve deactivated your account, you can reactivate your account at any time by logging back into Facebook or by using your Facebook account to log in somewhere else. Remember, you’ll need to have access to the email or mobile number you use to log in to complete the reactivation.

A client could also choose to permanently delete their Facebook. Facebook explains that if a user chooses to permanently delete their Facebook account, the user will have 14 days to cancel deletion. However, once the 14 days expire without action, all of the information on the account is deleted from Facebook’s server and unrecoverable (like in Gatto).

In order to delete a Facebook account while preserving the data contained in the account, Facebook has created a process to download information prior to deletion. No matter whether the client intends to permanently delete his/her account or just delete some of their posts, it would be prudent to first have a client download his/her data in order to avoid any claims of spoliation.

As an alternative to deactivation, counsel may instruct their client to change privacy settings. Facebook has made this a one-step process within the Privacy Settings tab called Limit Past Posts. With one click, all public posts become visible only to Facebook friends.

Practical Advice to Limit Risks Associated with Social Media

During an initial meeting with a client, it may be prudent to discuss whether to deactivate Facebook (or any other platform) during the pendency of the litigation. Facebook allows you to temporarily deactivate while preserving your records. Facebook explains it as follows:

When your account is deactivated:

• No one else can see your profile.

• Some information, like messages you sent to friends, may still be visible.

• Your friends may still see your name in their friends list.

This is only visible to your friends, and only from their friends list.

• Group admins may still be able to see your posts and comments, along with your name.

• If you’d like to come back to Facebook after you’ve deactivated your account, you can reactivate your account at any time by logging back into Facebook or by using your Facebook account to log in somewhere else. Remember, you’ll need to have access to the email or mobile number you use to log in to complete the reactivation.

A client could also choose to permanently delete their Facebook. Facebook explains that if a user chooses to permanently delete their Facebook account, the user will have 14 days to cancel deletion. However, once the 14 days expire without action, all of the information on the account is deleted from Facebook’s server and unrecoverable (like in Gatto).

In order to delete a Facebook account while preserving the data contained in the account, Facebook has created a process to download information prior to deletion. No matter whether the client intends to permanently delete his/her account or just delete some of their posts, it would be prudent to first have a client download his/her data in order to avoid any claims of spoliation.

As an alternative to deactivation, counsel may instruct their client to change privacy settings. Facebook has made this a one-step process within the Privacy Settings tab called Limit Past Posts. With one click, all public posts become visible only to Facebook friends.

Practical Advice to Limit Risks Associated with Social Media

During an initial meeting with a client, it may be prudent to discuss whether to deactivate Facebook (or any other platform) during the pendency of the litigation. Facebook allows you to temporarily deactivate while preserving your records. Facebook explains it as follows:

When your account is deactivated:

• No one else can see your profile.

• Some information, like messages you sent to friends, may still be visible.

• Your friends may still see your name in their friends list.

This is only visible to your friends, and only from their friends list.

• Group admins may still be able to see your posts and comments, along with your name.

• If you’d like to come back to Facebook after you’ve deactivated your account, you can reactivate your account at any time by logging back into Facebook or by using your Facebook account to log in somewhere else. Remember, you’ll need to have access to the email or mobile number you use to log in to complete the reactivation.

A client could also choose to permanently delete their Facebook. Facebook explains that if a user chooses to permanently delete their Facebook account, the user will have 14 days to cancel deletion. However, once the 14 days expire without action, all of the information on the account is deleted from Facebook’s server and unrecoverable (like in Gatto).

In order to delete a Facebook account while preserving the data contained in the account, Facebook has created a process to download information prior to deletion. No matter whether the client intends to permanently delete his/her account or just delete some of their posts, it would be prudent to first have a client download his/her data in order to avoid any claims of spoliation.

As an alternative to deactivation, counsel may instruct their client to change privacy settings. Facebook has made this a one-step process within the Privacy Settings tab called Limit Past Posts. With one click, all public posts become visible only to Facebook friends.

Practical Advice to Limit Risks Associated with Social Media

During an initial meeting with a client, it may be prudent to discuss whether to deactivate Facebook (or any other platform) during the pendency of the litigation. Facebook allows you to temporarily deactivate while preserving your records. Facebook explains it as follows:

When your account is deactivated:

• No one else can see your profile.

• Some information, like messages you sent to friends, may still be visible.

• Your friends may still see your name in their friends list.

This is only visible to your friends, and only from their friends list.

• Group admins may still be able to see your posts and comments, along with your name.

• If you’d like to come back to Facebook after you’ve deactivated your account, you can reactivate your account at any time by logging back into Facebook or by using your Facebook account to log in somewhere else. Remember, you’ll need to have access to the email or mobile number you use to log in to complete the reactivation.

A client could also choose to permanently delete their Facebook. Facebook explains that if a user chooses to permanently delete their Facebook account, the user will have 14 days to cancel deletion. However, once the 14 days expire without action, all of the information on the account is deleted from Facebook’s server and unrecoverable (like in Gatto).

In order to delete a Facebook account while preserving the data contained in the account, Facebook has created a process to download information prior to deletion. No matter whether the client intends to permanently delete his/her account or just delete some of their posts, it would be prudent to first have a client download his/her data in order to avoid any claims of spoliation.

As an alternative to deactivation, counsel may instruct their client to change privacy settings. Facebook has made this a one-step process within the Privacy Settings tab called Limit Past Posts. With one click, all public posts become visible only to Facebook friends.
An attorney who began his pro bono service 40 years ago and is still taking cases; an attorney who has provided pro bono representation in a divorce for multiple clients every year since 1993; a former law clerk who tirelessly advocated for legal aid funding on behalf of hundreds of thousands of Kentuckians living in poverty, and a law student who changed our service delivery model for elderly clients resulting in more seniors receiving much needed services. What these four advocates share in common, aside from being great legal professionals who care deeply about their communities, is that each one was recently honored by Legal Aid of the Bluegrass (LABG) & Northern Kentucky Volunteer Lawyers (NKVL) for their pro bono service.

Each October LABG in conjunction with the American Bar Association’s pro bono awareness month honors individuals and firms for donating their time to help meet the civil legal needs of low-income people in LABG’s 33 county service area. This year LABG and NKVL held its 40th annual pro bono recognition event on Thursday, October 4 at Lissie Steakhouse in Covington to honor those attorneys who volunteer in the Northern Kentucky area.

Steve Wolnitzek, who began serving on LABG’s pro bono panel in 1978, received LABG’s highest honor – the 5th Annual Access to Justice Award. This award honors an individual who has dedicated a career to making sure that the constitutional obligation to provide “justice for all” is not just words but a promise to all in our communities. What is most amazing about Steve’s pro bono service is that while embarking on a distinguished legal career, including building a practice and serving at the highest levels of the Kentucky Bar Association (KBA) and as a term as KBA president in 1994, he never stopped volunteering and handling cases for the neediest of individuals. Since 1978, Steve has provided pro bono representation to over 100 individuals and continues to do so today, including two new clients within the last year.

The recipient of the 2018 Pro Bono Attorney of the Year award was Robert Balthaler. Bob has been taking cases as a member of NKVL every year since 1993. During this 25-year period Bob has represented 79 clients in divorce cases and provided hundreds of hours of high quality legal representation to those who otherwise would have gone without counsel. On average Bob has represented three new clients every year.

William “Bill” Adkins was the recipient of this year’s Nick of Time Award. LABG was contacted by a woman living in Grant County desperate for assistance with a divorce proceeding. She had previously been living in Jefferson County with her in-laws. While out of town for work, her husband allegedly sexually assaulted her daughter from a prior relationship. He was arrested and charged with sodomy, 1st degree, victim under 12 years of age. She also had reason to believe that her 10-year-old son had also been sexually assaulted. As a result, she was forced to vacate her in-laws’ residence and move to Grant County where she had family. She was forced to leave her job to move the children and was therefore unable to afford private counsel. After much searching, LABG was desperate to locate a private attorney to assist her with filing for divorce in Grant County and Bill Adkins stepped up to provide her with pro bono assistance.

Special recognition was also given to Justice Michelle Keller of the Kentucky Supreme Court. Justice Keller, a former IOLTA fellow with LABG, jumped into action when Access to Justice funding was proposed for elimination. Access to Justice funds all of Kentucky Legal Aid Programs. For months, Justice Keller worked tirelessly rallying her colleagues on the Supreme Court, meeting with members of both houses of the General Assembly and the Governor’s staff, as well providing testimony before legislative committees and countless phone calls until funding was restored. Without her extensive efforts on behalf of the state’s legal aid programs, it is doubtful that the funding would have passed in the budget.

Lastly, Courtney VanWay, a third-year law student at the University Of Cincinnati College Of Law received the 2018 Law Student Award. Courtney, who has clerked at LABG for 2 years, and whose father is a pro bono volunteer with NKVL, received the recognition for her work in enhancing our wills clinics for low-income seniors. As part of her award, Courtney received a generous cash prize provided by DBL.

The recent 2017 Justice Gap1 report conducted on behalf of the Legal Services Corporation found that roughly 1 million or 23% of Kentuckians qualify for legal services by making less than $14,850 annually for a single-person household. Of those Kentuckians who are income eligible and who have a civil legal problem that can be handled by legal aid, 48% are turned away because of the limited resources of the legal aid programs. The only way to begin to close this justice gap is through the pro bono service of the private bar. LABG & NKVL wish to thank all of the 2018 Pro Bono Award recipients and all of our volunteer lawyers. The 40th annual NKVL Pro Bono recognition event was part of LABG’s pro bono recognition series that took place in Ashland, Covington, Lexington, and Morehead, Kentucky in September through November. Lawyers Mutual of Kentucky was the proud sponsor of the pro bono recognition series.

---

1. The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans report explores the “justice gap,” the difference between the civil legal needs of low-income Americans and the resources available to meet those needs in 2017.
KBA Report by Gary J. Sergent

The Summer meeting of the KBA Board of Governors was held on Friday, July 20, 2018, in Louisville, Kentucky at the Omni Hotel.

Louisville will be the site of the 2019 KBA Convention. The 2020 KBA Convention will be in Covington. Plan ahead!

New KBA president Doug Ballantine discussed his goals for the coming year and updated the Board generally about the status of items undertaken in the recent past. As I’ve reported previously, the KBA is continuing the process of withdrawing from the Kentucky Retirement Systems, and the City of Frankfort has worked with the KBA to authorize the issuance of up to $6 million in bonds to help fund, in part, the KBA’s withdrawal liability.

There were no disciplinary cases before the Board. The Office of Bar Counsel presented a detailed report on the number of pending cases including the time such cases have been pending. The number of disciplinary cases is somewhat below prior years, and they are moving through the process quicker unless there are ongoing negotiations or a request from the attorney that causes a delay. The Board is concerned with complaints from members about delays in processing cases, but remember, the Board only acts as one level of review in the disciplinary process. Timing of prosecution is largely within our control. Stay well!

The Board considered an ethics opinion on cyber security and the ethical responsibilities of attorneys to protect client’s electronic information and their responsibility to report if, or when, a breach occurs. That opinion should be published this fall in the Bench & Bar. Please look for it and review it carefully as comments will be welcomed. As an aside, you may want to review your general liability policy and consider purchasing coverage for such an occurrence.

Upon the recommendation of the KyLAP Task Force, the Board adopted ABA Resolution 105 and the KBA, through KyLAP and CLE, will work to present programs on “Lawyer Wellness” in the near term. The concept of lawyer wellness is much broader than alcoholism, substance abuse, work/life balance, stress in the profession, or other single-issue studies that have been considered in the past. The ABA website on the Commission on Lawyer Assistance Programs (CoLAP) tab has an extensive list of publications under the topic, “Wellness, Mindfulness, Work-Life Balance.” https://americanbar.org/groups/lawyer_assistance/resources_wellness.html. These are free resources not requiring ABA membership and cover a broad range of topics – odds are one will grab your attention.

In 2017 the ABA, through a CoLAP national task force, published a study on lawyer wellness in response to other studies that indicated the legal profession suffered higher instances of alcohol and substance abuse, depression, and suicide. Because of that task force report, the ABA has developed many publications and a toolkit that can be used by individuals or law firms to develop wellness programs. Those ABA studies and resources are interesting reading and can be accessed at the above site as well.

In its broadest overview, “lawyer wellness” is made up of six general areas:

1) Occupational - cultivating personal satisfaction, growth, work enrichment and financial stability.

2) Emotional - recognizing that our emotions are affected by our practice and affect our mental health; seeking help for mental health when needed.

3) Physical - striving for regular physical activity; getting enough sleep and following proper nutrition; avoiding or minimizing the use of addictive substances.

4) Intellectual - cultivating and keeping lawyers engaged in continuous learning and being aware of cognitive wellness in the profession.

5) Spiritual - developing a sense of meaningfulness and purpose in all aspects of life.

6) Social - developing connection, belonging and well-developed support networks.

As you can see, these areas go well beyond the single focus on “substance abuse” in past bar programs. The KBA is well-positioned in this area with existing KyLAP programs.

In addition, KyLAP’s Director, Yvette Hourigan, was appointed as a member to the ABA CoLAP for the coming year.

The Fall meetings of the Board are set for September 15 and November 9 in Frankfort. If you have questions or concerns to bring before the Board, at any time, feel free to contact either me (859-331-2000); Todd McMurray (859-344-1188); or Steve Smith at (859-578-3070). We all appreciate the opportunity to serve. Stay well!
Are you Ergonomically Correct? by Carol Bredemeyer

Ergonomics: an applied science concerned with the characteristics of people that need to be considered in designing and arranging things that they use in order that people and things will interact most effectively and safely. (Webster’s Ninth New Collegiate Dictionary, 1983)

The introduction of computers into our workspaces has brought with it many new office hazards. One is that we tend to get up and move around less. Experts recommend that you get up and walk around for at least five minutes every hour. If you can’t get up, there are stretches you can do at your desk.

Fitness trainers recommend you hold a stretch 20-30 seconds to get the maximum benefit and some chiropractors recommend at least 90 seconds. Poor posture at the computer (especially if you’re using a laptop in your lap or on the ottoman of your favorite chair) can lead to back and neck pain (“tech neck”).

There are some simple things you can do to improve the ergonomics of your workspace. First, invest in a good chair. It’s easy to order online, but go to a store and actually sit in a variety of chairs for several minutes each. You will probably get more assistance at a retailer that specializes in office furniture.

Do you have your computer configured for optimum ergonomic benefit? First, your monitor. The ideal distance from your monitor is arm’s length. The placement of your keyboard is also important. On top of a standard office desk is not the right place. On top of a stack of papers is not the right place either. This is why many desks now come with a keyboard tray lower than the desk. If you are having to lift and bend your wrists to use the keyboard, that is not a good thing. You may also find that a wrist rest improves your comfort level at the keyboard. There are several ergonomic keyboards on the market that spread the keys into two sections.

If you are taller, shorter, or heavier than average you may have more trouble finding a chair that fits you well. When you sit straight, your feet should be flat on the floor. A good chair will have a variety of adjustments available – even the height of the chair arms. If your chair fits you well, you should be more productive than if you’re fidgeting around trying to get comfortable. Here are a couple of sites that give you more direction about choosing the right chair for you.


A LEADER IN INTELLECTUAL PROPERTY LAW
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 Camden Tower | 541 Vine Street | Cincinnati, Ohio | 45202
Phone: 513.242.2324 |Fax: 513.242.6224

This is an advertisement. Kentucky law does not certify specialization of legal services.

Stand-up computer desks have become popular the last several years. They tend to work better with desktop computers than laptops. Your body will need to two to three weeks to adjust to standing for longer periods of time. If you have back, knee, or hip issues, you may want to consult your doctor before buying a stand-up desk.

Aside from computer ergonomics, put the files and supplies you use most often in an easy to reach space – not where you have to bend at odd angles to get to them.

Height-Adjustable Table Posture

Carol Bredemeyer is the Interim Director of the Salmon P. Chase College of Law Library for 2018-19. She is a graduate of Morehead State University and the University of Kentucky and taught Legal Research for many years at Chase.
Golf Outing: Congratulations to the Winners!

MEN’S FIRST PLACE TEAM
Mickey Fritz, Nate Carlson, Adam Davey, Tracy Stringer

MEN’S SECOND PLACE TEAM
Jonathan Hart, Frank Benton V, Alex Rechtin, Brent Jacobs

MEN’S LONGEST DRIVE: Alex Rechtin

WOMEN’S LONGEST DRIVE: Jennifer Gunning

CLOSEST TO THE PIN: Larry Hicks

MEN’S LONGEST PUTT: Jeremy Rettig

WOMEN’S LONGEST PUTT: Jessica Craven

MOST SWINGIN’ GOLF ATTIRE: Mike Brown

Congratulations to our first place winning team
Mickey Fritz, Nate Carlson, Adam Davey, Tracy Stringer

Congratulations to our second place winning team
Jonathan Hart, Frank Benton V, Alex Rechtin, Brent Jacobs

THANK YOU TO OUR SUPPORTERS

SILVER SPONSOR

BRONZE SPONSORS

FARUKI IRELAND COX RHINEHART & DUSING PLL
HEMMER DEFRANK WESSELS, PLLC
REMINGER CO., LPA
ROBERT W. BAIRD WEALTH MANAGEMENT
THOMSON REUTERS WESTLAW

CART SPONSOR

FINDLAW

HOLE SPONSORS

Barlow Reporting & Video Services, LLC
Bliz Insurance
Bressler & Company, PSC
Cassady Schiller CPAs & Advisors
CJV Reporting Company
Deters, Fichtner & Williams
Focus Insurance & Risk Management

Gatherwright Freeman & Associates
GNGF Marketing
Mentoring Plus
Smith Jones Consulting, LLC
The Madison Event Center
Thomas More College
Waltz Business Solutions

DONORS

Ashley Development
CJV Reporting Company
Coldwell Bankers/The Buckley Team

Gene Weaver & Associates
Heritage Bank
Lampke Court Reporting
Busald Funk Zevely, P.S.C. is proud to announce that E. Andre’ (Andy) Busald has once again been listed in the 2019 Editions of Best Lawyers and Super Lawyers. These two publications (Best Lawyers since 1987 and Super Lawyers since 2008) have a stringent selection process based on rigorous peer review surveys by top attorneys based on the principal that the best lawyers know who the best lawyers are. Additionally no fee or payment to participate is allowed. Busald has been named for 33 consecutive years in Best Lawyers (since its inception in 1987) and 12 consecutive years in Super Lawyers (since its inception Kentucky in 2008).

The City of Covington, Kentucky is pleased to announce the appointment of Michael P. Bartlett as City Solicitor. Mr. Bartlett previously served as Senior Assistant City Solicitor. He replaces Frank Warnock who was named full time Assistant City Manager. The City of Covington also announces the hiring of Gatlin Voelker, PLLC to serve as legal counsel for the City, filling the vacancy left by Mr. Bartlett’s appointment. Jack Gatlin and Brandon Voelker will devote a portion of their practice and legal experience to assist the City’s legal department on a day-to-day basis.

DBL Law is pleased to announce the following partners who were recently listed in the 2019 edition of Best Lawyers in America.

Since it was first published in 1983, Best Lawyers™ has become universally regarded as the definitive guide to legal excellence. Best Lawyers lists are compiled based on an exhaustive peer-review evaluation.

The DBL Law Partners recognized in 2019 include:
- Mark Guilfoyle, Crestview Hills, Administrative/Regulatory Law
- Jeff Schlosser, Cincinnati, Banking and Finance Law and Business Organizations
- Jim Dresman, Crestview Hills, Banking and Finance Law, Commercial Litigation
- Gerald Berstinger, Crestview Hills, Health Care Law
- Matt Klein, Crestview Hills, Health Care Law
- David Kramer, Crestview Hills, Litigation-Health Care
- Ellie Houston, Crestview Hills, Medical Malpractice
- Law-Defendants

Liz Strauss Troy congratulates attorney Liz Reeder on winning the 2018 Next Generation Leader Award in the Legal Services category. The award, presented by Northern Kentucky Young Professionals (formerly LEGACY), salutes the region’s young professionals under the age of 40 for significant accomplishments in their chosen professional field, demonstrated leadership, as well as their contribution to the community.

Reeder has also been named a Business Law Fellow by the American Bar Association. Reeder was selected for the Fellows Program based on her substantive experience in business law and history of leadership opportunities in various bar associations. She is one of only 20 attorneys nationwide selected for the two-year program, which was created by the ABA to provide a springboard to leadership opportunities and develop future leaders of the Section. Liz focuses her practice on business law, counseling individuals and businesses from start-ups to established, regional companies. She serves clients in industries including technology, real estate, healthcare, manufacturing, and automotive industries, and others.

Kristin Turner was recently appointed by Governor Matt Bevin to the board of Kentucky Board of Medical Licensure. Kristin runs her own legal practice, K. Turner Legal Practice. She can be reached at (859) 353-3130 or kristin@kturnerlegal.com.

Liz Reeder

HURRY - LAST CHANCE FOR ETHICS HOURS!!!!

November 20, 2018
1:30 p.m. - 4:15 p.m.
Commonwealth Bank & Trust Co.
(7135 Houston Road, Florence, KY - Lower Level)

NKBA member, Thomas Rouse, will discuss “Applied Ethics: Your Law License is Too Valuable to Lose”. NKBA member and immediate past-president, Shane Sidesbottom, will present on “Maintaining Your Professionalism (and your ethics) in Your Law Practice and on the Web”.

Cost: $75 NKBA Members & $125 Non-Members

2.50 Professional Conduct (Ethics) CLE Hours Pending in KY, OH, IN

SAVE THE DATE

Women Lawyer’s Section

White Elephant Charity Auction

December 4, 2018
5:00pm - 7:00pm
The Roebling Room at Smoke Justis
302 Court Street, Covington, KY

Registration: $35
($32.69 + $2.31 KY State Sales Tax)
Law Students $15
($13.00 + $2.10 KY State Sales Tax)

Includes light appetizers & 1 drink ticket

RSVP by November 27, 2018
Register Online
www.nkybar.com/calendar
or director@nkybar.com
An Explanation of Kentucky’s Persistent Felony Offender Laws and Their Unintended Impact by Olivia Amlung

Kentucky’s Persistent Felony Offender laws are the perfect example. These laws embody the tough-on-crime mentality that has swept the nation over the last few decades. However, many individuals are left blissfully unaware of the unintended consequences that these laws have on not just our criminal justice system, but on every tax-paying Kentuckian, as well.

What is a Persistent Felony Offender?

Kentucky Revised Statute 532.080 authorizes a prosecutor to seek additional punishment for a defendant solely based on his or her criminal history. This enhanced punishment may be sought against a defendant who: 1) is currently charged with a felony (referred to as the “underlying offense”); 2) is at least twenty-one (21) years old; and 3) has been previously convicted of one or more felonies within a certain time period. Qualifying individuals are charged as “persistent felony offenders,” or “PFOs,” under the law. The PFO charge serves as an enhancement to the punishment they will receive if convicted of the underlying felony for which they are currently charged. A PFO conviction affects many aspects of sentencing, including the length of an individual’s prison sentence and whether or not the individual may be eligible for probation or parole.

PFO charges come in two classifications: First Degree Persistent Felony Offenders, which incur a more severe punishment, and Second Degree Persistent Felony Offenders.

When can a defendant be charged as a Persistent Felony Offender?

A prosecutor may seek persistent felony offender in the first degree status for a defendant facing felony charges if he or she:

1. was over the age of 18 years old at the time the prior felonies were committed; and
2. the most recent of said convictions, or release from punishment as a result, occurred within the previous five (5) years from the commission of the underlying offense.

A prosecutor may seek persistent felony offender in the second degree status for a defendant facing felony charges if he or she:

1. has previously been convicted of one (1) felony; and
2. was over the age of 18 years old at the time the prior felony was committed; and
3. said conviction, or release from punishment as a result, occurred within the previous five (5) years from the commission of the underlying offense.

An individual whose sole underlying felony offense is for drug possession may not be charged as a persistent felony offender in any degree. KRS 532.080(8). However, a felony possession charge can be used as a “previous felony conviction” for PFO consideration with an eligible underlying charge. Boone v. Commonwealth, 412 S.W.3d 883 (Ky. Ct. App. 2013).

The law defines a “previous felony conviction” as one designated as a felony in this state or conviction of a crime in any other jurisdiction where the defendant was sentenced to a term of imprisonment of one (1) year or more. KRS 532.080(2)(a).

If an individual was sentenced to more than one (1) year of prison time, but was alternatively probated for any number of years, that conviction may still be used for PFO consideration. KRS 532.080(2)(c)(2)-3.

If a defendant was convicted and sentenced six years prior to the underlying offense, but was released from custody or probation within the five (5) year look back period, that conviction may be used for PFO consideration. KRS 532.080(2)(c)(3).

Any sentences that run concurrently or as one, uninterrupted consecutive sentence only count as one, singular prior felony conviction for PFO consideration. KRS 532.080(4).

What is the punishment for someone found to be a Persistent Felony Offender?

The enhanced punishment that an individual faces when charged as a persistent felony offender depends on two factors: the PFO degree, and the nature of the underlying felony charge. However, it is also important to remember that the defendant must be found guilty of the underlying charge in order to incur PFO punishment enhancements.

When an individual is sentenced as a Persistent Felony Offender in the First Degree, he or she shall be sentenced as follows:

If the underlying offense is a Class A or Class B felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment.

If an offender is charged with a second felony sex crime against a minor as defined in KRS 17.500, meaning that both the underlying and prior felony conviction fall in this category, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment without parole for parole twenty-five (25) years.

If the underlying offense is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten years nor more than twenty (20) years.

Furthermore, a PFO designation can impact an individual’s ability to be released on probation or parole. A person who is found to be a persistent felony offender in the first degree is not eligible for probation, shock probation, or conditional discharge, unless all of the underlying offenses are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500. If the underlying offense is a Class A, B, or C felony, the individual will not be eligible for parole until he or she has served a minimum term of incarceration of at least ten years.

Understanding the sentencing scheme for Persistent Felony Offenders in the Second Degree, however, requires an understanding of the sentencing ranges set forth in KRS 532.060(2). Under this statute, individuals convicted of a Class D felony will be sentenced to a term of imprisonment anywhere between one (1) to five (5) years. Those convicted of a Class C felony are given a sentencing range of five (5) to ten (10) years, Class B Felonies are sentenced to a term between ten (10) to twenty (20) years, and those convicted of Class A Felonies are sentenced to a minimum of twenty (20) years imprisonment.

When an individual is sentenced as a Persistent Felony Offender in the Second Degree, he or she will be sentenced to a term of imprisonment pursuant to the sentencing scheme described above for the next highest degree than the offense for which convicted. For example, let’s say that a young man named Bob is a bit short on cash. Planning to take a trip to the pawn shop, Bob shoplifted a $600 tool from the hardware store and has now been found guilty of Theft by Unlawful Taking. Over $500, Under $10,000, which is a Class D felony. Normally, this charge would carry a penalty of one (1) to five (5) years imprisonment. However, since the Bob was also found to be a Persistent Felony Offender in the Second Degree because he was convicted of possessing narcotics four years ago, he will be sentenced anywhere from five (5) to ten (10) years in prison—the sentencing range for Class C felonies. However, he will still be eligible for probation, shock probation, or conditional discharge, only second degree PFOs found guilty of a Class C, B, or A felony are ineligible.

continued on page 22
The Unintended Impact of PFO Laws

Kentucky’s PFO laws are the poster child for the tough-on-crime movement. Forget three strikes—you’re basically out after two. For this reason alone, many people support the PFO laws. However, many do not realize that these laws can have serious unintended impacts on Kentucky’s criminal justice system and, more importantly, on their own taxpayer dollars.

Take Bob, for example. Since he is a PFO in the second degree, he is now facing up to double the amount of jail time to which he previously could have been sentenced—this adds up. His $600 shoplifting incident could cost him five to ten years in a state prison. While many whole-heartedly support the tough on crime movement, we must be reminded that Bob’s stay in the slammer isn’t free.

According to statistics provided by the Kentucky Department of Public Advocacy, Kentucky’s prison population is growing annually despite a consistent decline in the crime rate.1 According to the Kentucky Department of Corrections, the cost to incarcerate one (1) inmate ranges from an average of $52.94 to $102.25 each day, depending on which of the twelve facilities the inmate is being housed.2 The average from all twelve facilities comes to $71.14 per day, per inmate.

So let’s look back at Bob’s situation. Being a nonviolent offender convicted of a Class D Felony, Bob must serve 15% of his sentence before he will be eligible for parole. If he is sentenced to the minimum amount of jail time without the PFO enhancement (one year), he will have to serve a minimum of 55 days incarcerated, bringing his incarceration cost to a total of approximately $3,912.70. If he is sentenced to the minimum amount of jail time with the PFO enhancement (five years), the total comes to a whopping $19,492.36 for the minimum of 274 days he is expected to serve. And if he had been a PFO in the First Degree, that number would double. Under PFO standards, Bob is the best case scenario—and the least expensive.

So, instead of saying “don’t do the crime if you can’t do the time,” maybe Kentuckians should think about an alternative maxim: “don’t over-punish crime because it’s all on the taxpayers’ dime.”

1 The Advocate Newsletter, Kentucky Department of Public Advocacy [February 2017 ed.].
2 Kentucky Department of Corrections Cost to Incarcerate Report for the 2018 Fiscal Year, found at: https://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Annual%20Reports/11%20Fiscal%20Year%20Cost%20to%20Incarcerate%20new.pdf

Olivia Amlung is an associate attorney at Adams, Stepner, Woltermann & Dusing, PLLC, a full-service law firm located in Covington, Kentucky. Ms. Amlung is a member of the firm’s General Litigation Practice Group. Her practice primarily focuses on criminal defense, personal injury, government litigation, and a variety of other civil litigation matters.

VOLUNTEER WITH THE NKBA
FOR
HOUSING OPPORTUNITIES OF N. KY
SATURDAY, NOVEMBER 17, 2018
9:00 a.m.—12:00 p.m.
Register to director@nkybar.com

Project can include carpentry, cleaning or light painting. No skills required.
For more information visit www.honkhomes.org

THANK YOU TO OUR SPONSORS FOR

#MATCH
Connect • Invest • Empower
nkBA YLS
Young Lawyers Section

COLLABORATIVE COMMUNITY INVOLVEMENT SESSION
Aaron M. Beck, ESQ.
Arnzen, Storm & Turner, P.S.C.
Michael J. Mcmain, ESQ.
Gatlin Voelker, PLLC
Russell & Ireland Law Group, LLC
Tasha Scott Schaffner, PLLC
The Aylor Law Office, P.S.C.
The Bonecutter Firm, LLC

THANK YOU TO OUR SPONSORS FOR

The Northern Kentucky Bar Association honors attorneys and family members of attorneys from our legal community who have recently passed away.

Margaret Jane Clore
MOTHER OF ATTORNEY GWEN VICE
Patricia Ann Franzen
MOTHER OF ATTORNEY STEVE FRANZEN
Deanna Hicks
MOTHER OF ATTORNEY T. LAWRENCE HICKS
Charles Edward Maggard
FATHER OF ATTORNEY TABITH HOCHSCHEID
Thelma F. Martin
MOTHER OF ATTORNEY DAVID W. MARTIN

*Contributions have been received in memory of this person to the Northern Kentucky Bar Foundation.

THANK YOU TO OUR SPONSORS FOR

#MATCH
Connect • Invest • Empower
nkBA YLS
Young Lawyers Section

COLLABORATIVE COMMUNITY INVOLVEMENT SESSION
Aaron M. Beck, ESQ.
Arnzen, Storm & Turner, P.S.C.
Michael J. Mcmain, ESQ.
Gatlin Voelker, PLLC
Russell & Ireland Law Group, LLC
Tasha Scott Schaffner, PLLC
The Aylor Law Office, P.S.C.
The Bonecutter Firm, LLC

THANK YOU TO OUR SPONSORS FOR

The Northern Kentucky Bar Association honors attorneys and family members of attorneys from our legal community who have recently passed away.

Margaret Jane Clore
MOTHER OF ATTORNEY GWEN VICE
Patricia Ann Franzen
MOTHER OF ATTORNEY STEVE FRANZEN
Deanna Hicks
MOTHER OF ATTORNEY T. LAWRENCE HICKS
Charles Edward Maggard
FATHER OF ATTORNEY TABITH HOCHSCHEID
Thelma F. Martin
MOTHER OF ATTORNEY DAVID W. MARTIN

*Contributions have been received in memory of this person to the Northern Kentucky Bar Foundation.

THANK YOU TO OUR SPONSORS FOR

#MATCH
Connect • Invest • Empower
nkBA YLS
Young Lawyers Section

COLLABORATIVE COMMUNITY INVOLVEMENT SESSION
Aaron M. Beck, ESQ.
Arnzen, Storm & Turner, P.S.C.
Michael J. Mcmain, ESQ.
Gatlin Voelker, PLLC
Russell & Ireland Law Group, LLC
Tasha Scott Schaffner, PLLC
The Aylor Law Office, P.S.C.
The Bonecutter Firm, LLC

THANK YOU TO OUR SPONSORS FOR

The Northern Kentucky Bar Association honors attorneys and family members of attorneys from our legal community who have recently passed away.

Margaret Jane Clore
MOTHER OF ATTORNEY GWEN VICE
Patricia Ann Franzen
MOTHER OF ATTORNEY STEVE FRANZEN
Deanna Hicks
MOTHER OF ATTORNEY T. LAWRENCE HICKS
Charles Edward Maggard
FATHER OF ATTORNEY TABITH HOCHSCHEID
Thelma F. Martin
MOTHER OF ATTORNEY DAVID W. MARTIN

*Contributions have been received in memory of this person to the Northern Kentucky Bar Foundation.
In an effort to raise awareness about the Committee and its mission, the Northern Kentuckians for the Judiciary have submitted the following Q&A with Chair, Mark Arnzen, as asked by James Dady:

1. Northern Kentuckians for the Judiciary (NKJ) is filing with the Kentucky Registry of Election Finance. Does this mean the group plans to raise money and make contributions in judicial races?

   ANSWER: We do not intend to raise money and make contributions in judicial races. We will have a need for operating funds to promote and publish our endorsements. The Steering Committee will make contributions to cover these costs on an as needed basis.

2. What steps will be taken to protect the anonymity of lawyers speaking candidly about current and potential judges during the judicial evaluation process?

   ANSWER: All members will take an oath of confidentiality with respect to the process.

3. It has been said that lawyers should lead public opinion in the selection of judges. Is this initiative a step in that direction?

   ANSWER: We do hope that our efforts in this regard will lead to the continued selection of good judges now and in the future.

4. If so, is there a reasonable expectation that the group’s imprimatur will help the lay voter sort through what they hear about judges and judging?

   ANSWER: We will take no position with gubernatorial appointments unless and until the appointee encounters opposition to his or her appointed seat.

5. NKJ has expressed that its mission is based upon a similar effort in Jefferson County, which was begun in 1983. What were the concerns expressed there that led to the formation of their program? How well has the Louisville program worked in addressing those concerns?

   ANSWER: Justice Liebson, who was a trial judge in Jefferson County before serving on the Kentucky Supreme Court, had a concern that there were some judges who were successful in being elected to the bench based upon name recognition as opposed to merit. The electorate in Jefferson County has given great deference to the endorsements of the Steering Committee over the past 30 years.

6. Many vacancies on the bench are filled by gubernatorial appointment. Will NKJ be evaluating and taking a position in those situations?

   ANSWER: We have identified qualities and characteristics in candidates to be valued in the process. These qualities and characteristics are the same as those used to evaluate sitting judges during their term of office.

7. There will be no periodic evaluation of the sitting judges beginning in 2019. Is this initiative a separate and apart from the electoral process?

   ANSWER: Obviously, we cannot expect members to refrain from seeking interested members of our community to participate in this very worthwhile endeavor.

8. Is there a substantial citizen – that is, non-lawyer – component to your organization? Can you describe what the role of the lay people will be in the process?

   ANSWER: A member of our organization cannot give money or lend his or her name to any candidate in a given race. Because our organization is in its formative stage, some of our members had to recuse themselves from the process this election cycle because of their previous endorsement of candidates. They will not participate in any way in this year’s endorsement process.

9. What additional steps are you taking in this regard?

   ANSWER: We believe that we have a very good trial bench in Northern Kentucky. The Bar is interested in promoting the best possible candidates to run for judicial office. We hope that our efforts will promote the continued election of outstanding judges in the future.

10. If judicial candidates run unopposed, will they nevertheless be evaluated?

   ANSWER: If a candidate runs unopposed, there will not be an endorsement process; however, the candidate, if elected, would still be subject to periodic evaluation by the KBA as a sitting judge.

11. Is the formation of NKJ born from a concern that the best possible candidates are not seeking judicial office?

   ANSWER: We believe that we have a very good trial bench in Northern Kentucky. The Bar is interested in promoting the best possible candidates to run for judicial office. We hope that our efforts will promote the continued election of outstanding judges in the future.

12. Has NKJ identified the qualities and characteristics in candidates to be valued in the process? In other words, what template will be applied?

   ANSWER: A member of our organization cannot give money or lend his or her name to any candidate in a given race. Because our organization is in its formative stage, some of our members had to recuse themselves from the process this election cycle because of their previous endorsement of candidates. They will not participate in any way in this year’s endorsement process.

13. How have you handled any potential conflicts and/or appearances of impropriety?

   ANSWER: We do not intend to raise money and make contributions in judicial races. We will have a need for operating funds to promote and publish our endorsements. The Steering Committee will make contributions to cover these costs on an as needed basis.

14. What were the concerns expressed there that led to the formation of their program? How well has the Louisville program worked in addressing those concerns?

   ANSWER: The lay individual’s role is (1) to participate in the questioning of the candidate by posing questions that might not otherwise be asked by the attorneys on the Steering Committee; and (2) to ensure that the process and by-laws are adhered to by the Steering Committee.

   9. Will there be a periodic evaluation of sitting judges, separate and apart from the electoral process?

   ANSWER: There will be no periodic evaluation of the sitting judges at this time, as the KBA will conduct the evaluation of the sitting judges beginning in 2019.

Currently, the Committee consists of:

2018 NKJ Officers:
• Mark G. Arnzen, Chair
• Jennifer L. Lawrence*, Vice Chair
• Beverly R. Storm, Treasurer

Attorney Steering Committee Members:
• André E. Busald*
• Sarah Cameron
• Joshua Crabtree
• Joseph E. Conley, Jr.*
• Gerald F. Dusing*
• Lawrence Hicks*
• Richard D. Lawrence
• Todd V. McMurtry
• James W. Morgan, Jr.*
• Kevin L. Murphy
• Robert E. Sanders*
• David B. Sloan
• David Spaulding
• Henry L. Stephens

Citizen Review Board Members:
• Lynnette Benton*
• Arnold Caddell
• Jon Draud
• Elizabeth Grause
• Joyce Griffin
• Robert Griffin
• Bert M. Huff
• Kelly Malatesta
• Jack Moreland*
• Joan Robinson
• Arnold Simpson

*Not participating as an NKJ Officer or Steering Committee Member during the 2018 election cycle because of potential conflict.
†Not participating as a Citizen Review Board Member during the 2018 election cycle because of potential conflict.

Northern Kentuckians for the Judiciary’s mission is to maintain and improve the quality of judges in Northern Kentucky’s courts.
Leadership in the Making
by Aaron Sutherland, YLS Chair

It has been a busy year for the NKBA Young Lawyers Section!

Since the last Lex Loci issue, YLS held its annual summer social and our group attended a Reds game with a post-game concert by local band Walk the Moon. Our group also supported the Northern Kentucky Bar Foundation by moving our monthly meeting to the event held at Mercedes Benz of Fort Mitchell in August.

In September YLS hosted the 2018 Raise Your Glass Bourbon Tasting fundraiser with Cork-n-Bottle. The event was held at O’Bryon’s Bar & Grill in Newport, and helped raise funds for the YLS operating budget. The event also provided funds for one of our favorite charities, the Emergency Cold Shelter of Northern Kentucky. We want to extend a special thanks to the sponsors of the 2018 Raise Your Glass Bourbon Tasting with Cork-n-Bottle: O’Bryon’s Bar & Grill Newport; Cork-n-Bottle; Adams, Stepner, Woltermann & Dusing; Law Offices of Shannon C. Smith, Monohan & Blankenship, The Berger Firm, The Lawrence Firm, Ziegler & Schneider.

The Young Lawyers Section has continued its involvement in community projects and volunteer opportunities. In addition to the project with the Emergency Shelter of Northern Kentucky, YLS also sponsored a team for the Trash Bash Challenge, a community cleanup event, where volunteers compete to clean up the City of Newport. Additionally, YLS teamed up with NKBA’s #MATCH program and volunteered with Go Pantry, a local organization that helps raise awareness of childhood hunger by providing at-risk children with backpacks containing food and other essentials to get them through the weekend.

Finally, YLS has a volunteer day with Housing Opportunities of Northern Kentucky (HONK) scheduled for November 17, 2018.

As the year winds to a close, YLS will be accepting nominations for its executive board and holding elections in November. Any young lawyers who are interested in getting involved should contact Julie Jones or Immediate Past Chair, Colby Cowherd.

Our regular meetings are held on the second Thursday of each month on the second floor of Molly Malone’s in Covington and include two free drinks for attendees. We hope to see you there!

Aaron Sutherland is a 2013 Chase College of Law graduate and serves as the Chair of the Young Lawyers Section. He works as an Attorney Advisor at the Social Security Administration.

SAVE THE DATE

The Northern Kentucky Bar Association
An Evening in Toyland Gala and Silent Auction

Friday, December 7, 2018
Summit Hills Country Club
Cocktails 6:30 pm
Dinner & Program 7:30 pm
Silent Auction 6:30 – 10:00 pm
Black Tie Optional
Toys will be collected for the Steinford Foundation.

Dear Friend of the NKBF,

“The Northern Kentucky Bar Foundation’s mission is to promote the administration of justice, to educate the public about the importance of law in their daily lives, and to enhance the image of the legal profession in our local community.”

Thank you on behalf of the Northern Kentucky Bar Foundation (NKBF) Trustees for your support at the tailgate fundraising event at Mercedes Benz of Ft. Mitchell. We were able to raise $2,800 in tax deductible contributions at this successful fundraiser. It has been many years since the NKBF conducted a formal fund raising drive so thank you for your support.

In the past several years the NKBF has funded over $16,000 annually in requests to the Children’s Law Center, NaviGo Scholars Attorney Program, Mentoring Plus, the NKBA #MATCH Mentee Program, Court Appointed Special Advocate (CASA), local high schools mock trial teams, the Judge Judy West Scholarship, Legal Aid of the Bluegrass, the Northern Kentucky Teen Court Program and the Northern Kentucky Traumatic Brain Injury Conference. They also provide scholarships for the A.J. Jolly Scholarship and the NAACP Diversity Bar Exam Scholarship to students at our local Colleges of Law.

Charitable gifts are the lifeblood of the NKBF, for it is through your generous contributions that the foundation can continue to provide grants to those whose mission is consistent with ours.

If you wish to make a gift please send your contribution payable to the Northern Kentucky Bar Foundation at 529 Centre View Boulevard, Crestview Hills, KY 41017 or during the 2019 NKBA membership drive please consider a $25 gift while paying your annual dues. For more information please contact chair, James Kruer at (859) 581-3030.
34th Annual Golf Outing