

2016, Issue 3

BarNews

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BarNews

A publication of the Fayette County Bar Association

Bar News Article Submission Guidelines

Unsolicited manuscripts are accepted on subjects of interest to the legal profession. Manuscripts should be submitted in MS Word or WordPerfect in electronic form either on disk to the attention of Dana Arnold, FCBA, 219 N. Upper Street, Lexington, KY 40507 or as an attachment emailed to info@fcba.com. Articles should not exceed 6 typewritten double-spaced pages. For complete set of submission guidelines visit www.fcba.com or contact the FCBA office at (859) 225-9897.

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Kif Skidmore

The Judicial Bar Poll

For the first time in over a decade, the FCBA conducted a judicial performance survey of the Fayette Circuit and District Court judges. Our main goal in implementing a performance evaluation system is to improve the overall quality of the judiciary by:

- identifying areas where judges are performing strongly;
- identifying areas where judges are in need of improvement;
- providing an anonymous, confidential mechanism for judges to receive detailed feedback; and
- providing relevant information to the electorate.

Additionally, as the FCBA is able to conduct a series of surveys, we hope the information collected over time will provide attorneys with a source of information about the attributes of specific judges to whom their cases have been assigned.

How it Came About: The process for implementing the judicial performance survey began during the 2015-2016 FCBA year under the leadership of Ed Clark, who formed a sub-committee of the Board consisting of Marshall Hixon, John Spires, Lucy Ferguson, Amelia Adams and myself. The committee contemplated the goals and purposes of implementing a survey system, reviewed surveys of other bar associations, and consulted the members of the Louisville Bar Association who have conducted surveys for many years. We also considered the various options for distributing the surveys and collecting results, taking into consideration factors such as the cost and anonymity.

Format and Content: After reviewing surveys of other bar associations, the committee settled on a streamlined and simplified format focused on broad judicial attributes and which are important in almost any kind of case. Surveys included an opportunity for respondents to write specific, anonymous comments to the judges which will only be read by the individual judges to whom the comments are directed. The major factor in choosing a simplified format involved our desire to encourage attorney feedback. Let's face it, you are busy and even asking to take a few minutes of your day can be an imposition.

Who Received the Survey: The survey was emailed to all KBA-licensed attorneys with contact addresses in Fayette County, with the exception of current or retired judges.

Results: We are pleased to report that 20% of attorneys who were sent the surveys completed them.

All 2,183 attorneys in Fayette County were emailed a ballot. Because of the small size of the litigation bar, only a limited number of attorneys have had significant professional contact with a particular judge in a specific court. The survey's instructions asked that attorneys vote only on a judge or judges of whom they had had firsthand knowledge. Consequently, from the original 2,183 attorneys who received notice of the evaluation, just a fraction could reasonably be expected to respond to the survey. Of those attorneys who were qualified and participated in the evaluation, many may have had significant experience in only one of the courts evaluated or with a limited number of judges listed. This is why the number of voters varies for each judge.

In our survey, 434 attorneys (20%) cast ballots. Other judicial polls with voters at half our percentage have been held to be statistically valid.

BallotBox Online: The committee chose a computer-based survey to eliminate the cost associated with printing, mailing and collecting the surveys. BallotBox Online was specifically created to serve bar associations with online voting and surveys. BallotBox Online authenticates voter identity and assures voter anonymity by encrypting each ballot within that database record.

We thank those of you who took the time to participate and we welcome any feedback you wish to provide regarding the FCBA's revived judicial evaluation system.

Judicial Bar Poll Results, continued

The Judicial Bar Poll asked the attorney to rate each judge in five categories. The factors in each category are below, as listed in the survey.

Section 1. Legal Ability

Please consider factors including: renders decisions based upon sound legal reasoning; knowledge of substantive law; knowledge of procedural rules and evidentiary law; current in developments in the law.

Section 2. Case Management

Please consider factors including: exercises appropriate control over court proceedings; appropriate enforcement of the court rules, orders, and deadlines; efficient management of court calendar; refrains from interfering with the role of counsel; appropriate use of mediation and alternative dispute resolution.

Section 3. Integrity and Impartiality

Please consider factors including: avoids impropriety and the appearance of impropriety; decisions based on the law and evidence rather than political or social popularity; adequate consideration of both sides of arguments; decisions based on law and facts rather than identity of counsel or parties; refrains from ex parte communications; acts without favor or disfavor based on race, sex, religion, national origin, disability, age, sexual / gender orientation or socioeconomic status.

Section 4. Professionalism and Demeanor

Please consider factors including: promptness; treatment of people with courtesy and dignity; patience and self-control; appropriate level of empathy toward parties; promotes confidence in the courts.

Section 5. Diligence

Please consider factors including: preparedness; work ethic; issuance of reasoned and timely rulings; willingness to provide adequate oral argument and briefing for complex matters.

Section 6. Overall Assessment

The Judicial Bar Poll Results continue on Page 5.

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100% Club 2016-2017

This year the FCBA has instituted the 100% Club, to designate those firms who have made a commitment to have every member join our association. It is not too late to have your firm become a member of the 100% club. Call or email our office to make sure your firm is recognized. The following firms have joined thus far and shown their commitment to improve our profession by supporting the Fayette County Bar Association.



Bingham Greenbaum Doll, LLP
Dinsmore & Shohl, LLP
Fowler Bell, PLLC Frost Brown Todd, LLC
Gess, Mattingly & Atchison, PSC
Henry Watz Raine & Marino, PLLC
Landrum & Shouse, LLP
Legal Aid of the Bluegrass

McBrayer, McGinnis, Leslie & Kirkland, PLLC
Stites & Harbison, PLLC
Stoll, Keenon Ogden, PLLC
Sturgill, Turner, Barker & Moloney, PLLC
Walters Meadows Richardson, PLLC
Ward, Hocker & Thornton, PLLC
Wyatt, Tarrant & Combs, LLP

Judicial Bar Poll Results, continued

In the parenthesis under each judge's name is the total number of attorneys who cast ballots for that judge. Beside each percentage number in the categories for each of the 6 questions, the number in parenthesis is the raw number of voters.

District Court Judges						
		Bruce Bell (207)	Joe Bouvier (196)	Julie Goodman (221)	Megan Thornton (245)	Kim Wilkie (193)
Legal Ability	Excellent	44.28% (89)	73.85% (144)	46.73% (100)	33.47% (80)	48.68% (92)
	Good	32.84% (66)	21.03% (41)	16.82% (36)	28.87% (69)	34.39% (65)
	Acceptable	18.41% (37)	5.13% (10)	17.29% (37)	22.59% (54)	12.70% (24)
	Poor	4.48% (9)	0.00% (0)	19.16% (41)	15.06% (36)	4.23% (8)
Case Management	Excellent	56.32% (107)	67.03% (124)	46.77% (94)	35.09% (80)	47.80% (87)
	Good	34.74% (66)	29.73% (55)	23.38% (47)	25.00% (57)	35.16% (64)
	Acceptable	8.95% (17)	3.24% (6)	17.91% (36)	21.49% (49)	11.54% (21)
	Poor	0.00% (0)	0.00% (0)	11.94% (24)	18.42% (42)	5.49% (10)
Integrity & Impartiality	Excellent	60.20% (118)	82.72% (158)	48.11% (102)	28.63% (67)	71.35% (132)
	Good	20.92% (41)	13.61% (26)	15.57% (33)	17.52% (41)	21.62% (40)
	Acceptable	15.31% (30)	2.62% (5)	13.68% (29)	22.65% (53)	3.78% (7)
	Poor	3.57% (7)	1.05% (2)	22.64% (48)	31.20% (73)	3.24% (6)
Professionalism & Demeanor	Excellent	63.00% (126)	78.53% (150)	47.85% (100)	17.87% (42)	78.92% (146)
	Good	21.50% (43)	18.85% (36)	15.79% (33)	12.34% (29)	15.68% (29)
	Acceptable	11.50% (23)	2.62% (5)	14.35% (30)	22.98% (54)	4.32% (8)
	Poor	4.00% (8)	0.00% (0)	22.01% (46)	46.81% (110)	1.08% (2)
Diligence	Excellent	55.25% (100)	81.32% (148)	56.41% (110)	35.45% (78)	56.18% (100)
	Good	29.28% (53)	16.48% (30)	23.08% (45)	28.64% (63)	32.02% (57)
	Acceptable	14.36% (26)	2.20% (4)	14.87% (29)	21.82% (48)	7.87% (14)
	Poor	1.10% (2)	0.00% (0)	5.64% (11)	14.09% (31)	3.93% (7)
Overall Assessment	Excellent	51.30% (99)	76.44% (146)	48.78% (100)	25.99% (59)	59.02% (108)
	Good	32.64% (63)	20.42% (39)	17.56% (36)	20.70% (47)	31.15% (57)
	Acceptable	13.99% (27)	3.14% (6)	12.20% (25)	25.55% (58)	7.65% (14)
	Poor	2.07% (4)	0.00% (0)	21.46% (44)	27.75% (63)	2.19% (4)

Judicial Bar Poll Results, continued

In the parenthesis under each judge's name is the total number of attorneys who cast ballots for that judge. Beside each percentage number in the categories for each of the 6 questions, the number in parenthesis is the raw number of voters.

Family Court Judges					
		Traci Brislin (100)	Lucinda Masterton (143)	Tim Philpot (168)	Kathy Stein (147)
Legal Ability	Excellent	55.67% (54)	63.50% (87)	28.83% (47)	22.92% (33)
	Good	36.08% (35)	22.63% (31)	26.99% (44)	20.14% (29)
	Acceptable	7.22% (7)	9.49% (13)	26.38% (43)	27.08% (39)
	Poor	1.03% (1)	4.38% (6)	17.79% (29)	29.86% (43)
Case Management	Excellent	64.21% (61)	63.04% (87)	29.30% (46)	17.14% (24)
	Good	28.42% (27)	20.29% (28)	27.39% (43)	33.57% (47)
	Acceptable	6.32% (6)	13.77% (19)	24.20% (38)	32.14% (45)
	Poor	1.05% (1)	2.90% (4)	19.11% (30)	17.14% (24)
Integrity & Impartiality	Excellent	66.67% (64)	69.78% (97)	25.31% (41)	26.24% (37)
	Good	23.96% (23)	14.39% (20)	20.99% (34)	27.66% (39)
	Acceptable	5.21% (5)	10.07% (14)	20.37% (33)	17.73% (25)
	Poor	4.17% (4)	5.76% (8)	33.33% (54)	28.37% (40)
Professionalism & Demeanor	Excellent	75.51% (74)	73.57% (103)	25.31% (41)	29.58% (42)
	Good	19.39% (19)	12.86% (18)	20.37% (33)	26.06% (37)
	Acceptable	3.06% (3)	8.57% (12)	22.22% (36)	26.76% (38)
	Poor	2.04% (2)	5.00% (7)	32.10% (52)	17.61% (25)
Diligence	Excellent	64.58% (62)	70.68% (94)	27.10% (42)	27.74% (38)
	Good	32.29% (31)	15.04% (20)	25.81% (40)	25.55% (35)
	Acceptable	2.08% (2)	11.28% (15)	29.03% (45)	27.01% (37)
	Poor	1.04% (1)	3.01% (4)	18.06% (28)	19.71% (27)
Overall Assessment	Excellent	61.46% (59)	68.12% (94)	24.39% (40)	21.53% (31)
	Good	33.33% (32)	18.84% (26)	24.39% (40)	31.94% (46)
	Acceptable	4.17% (4)	7.97% (11)	23.78% (39)	22.92% (33)
	Poor	1.04% (1)	5.07% (7)	27.44% (45)	23.61% (34)

Judicial Bar Poll Results, continued

In the parenthesis under each judge's name is the total number of attorneys who cast ballots for that judge. Beside each percentage number in the categories for each of the 6 questions, the number in parenthesis is the raw number of voters.

Circuit Court Judges						
		Kimberly Bunnell (284)	Thomas Clark (302)	Pamela Goodwine (292)	James Ishmael, Jr. (279)	Ernesto Scorsone (280)
Legal Ability	Excellent	44.64% (125)	68.79% (205)	49.47% (140)	56.46% (153)	44.61% (120)
	Good	35.71% (100)	23.83% (71)	23.67% (67)	30.26% (82)	25.28% (68)
	Acceptable	14.29% (40)	6.71% (20)	15.90% (45)	9.59% (26)	20.82% (56)
	Poor	5.36% (15)	0.67% (2)	10.95% (31)	3.69% (10)	9.29% (25)
Case Management	Excellent	53.79% (149)	67.93% (197)	58.33% (161)	47.58% (128)	42.48% (113)
	Good	31.05% (86)	23.79% (69)	25.00% (69)	32.34% (87)	36.84% (98)
	Acceptable	13.36% (37)	4.48% (13)	10.87% (30)	15.61% (42)	16.17% (43)
	Poor	1.81% (5)	3.79% (11)	5.80% (16)	4.46% (12)	4.51% (12)
Integrity & Impartiality	Excellent	61.37% (170)	80.90% (233)	59.44% (170)	63.43% (170)	48.89% (132)
	Good	25.27% (70)	13.54% (39)	20.63% (59)	22.76% (61)	24.81% (67)
	Acceptable	10.47% (29)	4.51% (13)	10.49% (30)	8.21% (22)	13.70% (37)
	Poor	2.89% (8)	1.04% (3)	9.44% (27)	5.60% (15)	12.59% (34)
Professionalism & Demeanor	Excellent	64.23% (176)	87.29% (254)	55.36% (155)	71.56% (189)	56.44% (149)
	Good	19.34% (53)	10.65% (31)	25.71% (72)	18.56% (49)	26.14% (69)
	Acceptable	12.04% (33)	1.37% (4)	10.71% (30)	6.06% (16)	10.61% (28)
	Poor	4.38% (12)	0.69% (2)	8.21% (23)	3.79% (10)	6.82% (18)
Diligence	Excellent	63.24% (172)	67.82% (196)	68.75% (187)	59.70% (157)	46.27% (118)
	Good	29.04% (79)	21.45% (62)	20.59% (56)	28.90% (76)	33.33% (85)
	Acceptable	5.88% (16)	6.92% (20)	6.25% (17)	8.75% (23)	14.90% (38)
	Poor	1.84% (5)	3.81% (11)	4.41% (12)	2.66% (7)	5.49% (14)
Overall Assessment	Excellent	53.28% (146)	75.17% (218)	52.17% (144)	54.65% (147)	40.91% (108)
	Good	33.58% (92)	18.97% (55)	27.54% (76)	33.09% (89)	35.61% (94)
	Acceptable	10.58% (29)	4.48% (13)	11.23% (31)	8.18% (22)	16.29% (43)
	Poor	2.55% (7)	1.38% (4)	9.06% (25)	4.09% (11)	7.20% (19)

Lawyers at Lunch

To sign up for Lawyers at Lunch, where you're randomly matched with a colleague, email info@fcba.com. You go to lunch on us, make a new friend and write a brief report of your discussion. A selfie, or more precisely, an us-ie, is also required.

Susan Kennedy (Fowler Bell) and Kevin Havelda (Frost Brown Todd LLC)



L: Susan Kennedy and R: Kevin Havelda

Susan's Take on Kevin: Kevin Havelda and I went to lunch a couple of weeks ago at Saul Good. He is a pretty new associate with Frost Brown Todd. Kevin has a really interesting background! He was a teacher for Teach for America in New Orleans for a couple of years and then he moved to Brooklyn, New York to assist in opening a charter school there. He lived just a couple of streets away from where my son lives now in Brooklyn. Only then did he decide to attend law school (making a living as a teacher in New York is very challenging). He is engaged to a young lady who used to ride horses professionally and now works at the Horse Park—they will be married in just a few months. Kevin is an intelligent, friendly, hard-working young man—our lunch was very enjoyable!

Kevin's Take on Susan: Susan Kennedy and I just met for lunch at Saul Good. I have to admit, I was a little nervous since I was meeting with a partner of a firm and wondered if she thought she'd be wasting her time with a lowly associate. The juxtaposition of experienced lawyer against newly minted one was nowhere more poignant than when we ordered - I was impressed with her order of some sort of beautifully displayed wrap that looked unnecessarily messy but wonderful, and was even more impressed that she was able to eat it without making a mess at all. The result would have been different for me, so I ordered a salad, and wished I'd ordered the wrap the entire time we ate. Susan was easy-going and extremely kind to me the entire time. She is a downtown lawyer who lives her real life on the beach. Though we'd never met, we found out that the world really is quite small. Two streets small. Her son actually lived 2 streets away from where I used to live in Brooklyn, New York when I was teaching there. When asked about who Susan is other than a lawyer, I found that she spends her time doing things she loves - her involvement with the Woodford Humane Society stems not from her love of fancy parties, but from her love of animals. I liked that. We also share a love of the beach. Susan and her husband are members of a Jimmy Buffett fan club that find the beach wherever they are - truly inspirational. She also had a beautiful Trellis wedding ring that looked similar to my fiancée's; which reinforced my own good taste I thought. Overall I was extremely glad to have responded to the Lawyers at Lunch invitation, and especially grateful that Susan made it such an enjoyable experience. We'll be going to Vinaigrette soon, if for no other reason than to re-take the picture in which I had my eyes closed at Saul Good...

Haley Prevatt and Chanhee Han



L: Chanhee and R: Haley Prevatt
Photo Credit Judge Megan Thornton

Haley's Take on Chanhee: Dudley's on Short - what a nice place to meet a new attorney friend. I was looking forward to having lunch with someone from a big firm and hearing how their work compares and contrasts to my job as a solo practitioner. Chanhee and I have had very different upbringings and events that brought us to the practice of law. In America without family since an early teen, Chanhee is a person who epitomizes achievement of the American Dream.

We also discussed buying houses, food, and our families. Hearing about his recent trip to Mexico, as a company excursion, was fascinating. Apparently, Mexico could one day be known for its production of soft candy chews. Who knew?

Regardless of the topic of stories you discuss with your new lawyer friend, you should definitely sign up for this program. I met a new friend with whom my path may never have crossed but for Lawyers At Lunch. I'm glad I signed up and bet you will be, too.

Chanhee's Take on Haley: Haley Prevatt is a personal injury attorney who is both caring and passionate about her work and her clients. Haley is a native of Lexington, born and raised.

After high school, she then moved onto playing tennis at the Division 1 collegiate level at Austin Peay State University in Tennessee. Following her freshman year, she realized how much she missed Lexington and decided to come back to her hometown to attend University of Kentucky. Following her undergraduate degree in marketing and management, she has also earned J.D. and M.B.A. from University of Kentucky.

After receiving her bar license, Haley became a staff attorney for Fayette Circuit Judge James D. Ishmael and gained invaluable experience of seeing the inner workings of the justice system. With this experience, she opened her practice in 2008 and successfully served clients both in criminal cases and personal injury cases. However, after her father was involved in a big auto accident, she realized that her passion lies with the personal injury practice area and started to focus her practice mainly in the automobile and motorcycle accidents.

I am extremely glad and thankful for Lawyers at Lunch and FCBA, as I had an opportunity to make a friend and a connection with Haley. I highly recommend to take advantage of this program to everyone

Outside the Practice – Anita Britton

In November, 1978, I got the call anyone who ever owned a horse never wants to get. My beloved friend, FOR PETE'S SAKE, an American Saddlebred 3-Gaited pleasure horse, had been playing in the pasture, fallen and broken his leg. We'd been together for eight years and the decision, which really was no decision at all, to "humanely destroy" him was devastating. He had been my friend, my confidant, and my quite successful show horse. I was starting law school in the Fall of 1979. There would be no new horses.

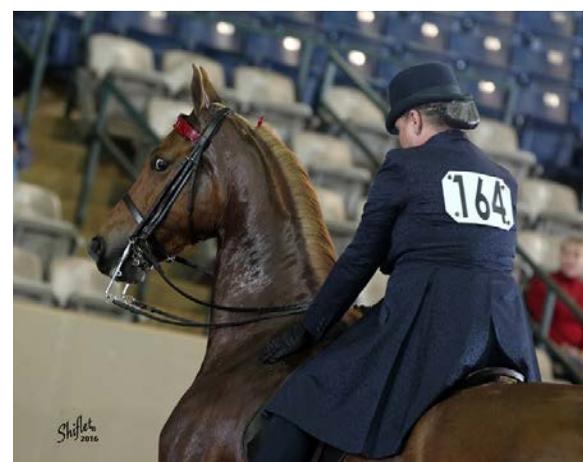
Fast forward to December of 2014. My now-recovering lawyer spouse has told me he is retiring and planning on pretty much having the life I hoped to lead. It was not feasible for me to follow suit but I could certainly start working on my bucket list, top of which was a desire to once again own a show horse, show at a pretty high level while I still had the physical strength to do so, and experience the pure joy of competition when you really did not live or die by outcomes. I announced this to the very talented team of Stephanie and Chris Brannan at Wingswept Farm and they went to work. I don't know how many horses I tried or how many miles we travelled, but about the time I thought all hope was lost of finding that "great fit," I bought exactly what I said I did not want: a mare. And a small mare at that. The late, great "Pete" was chosen the moment I saw him. I could not articulate what I wanted but I knew he was mine when I saw him. Same situation with Rosie (HER MAJESTY'S ROSES). I clearly did not articulate that one but I knew she was it the moment I climbed on her for the test drive.

She came home on Memorial Day weekend 2015. She shipped to Louisville for practice in a horse show setting the following week and was shown for the first time, by me, a 60-year-old woman who had not shown a show horse in 36 years, the following week. To say that we exited the ring without benefit of a ribbon more often than not in that first season is being kind to myself. At the end of show season, however, the Wingswept team decided to take her and me up a notch. We worked hard all winter and so far, the 2016 season has been a different story. Rosie has been shut out in only one show this year and that was rider error. I got a very direct set of instructions and got my act much more together after that. So much so that the second item on my bucket list, to ride on Championship night at the Junior League Horse Show, became a reality. That we got a ribbon in the championship was very tasty icing.

All of this by way of telling you, this mare has changed my life. I take complete and total joy in her. When I am on her, I cannot think about the law, my clients, departing partners or anything else. If I did, I would be on the ground. She demands and deserves my complete attention. I love her with all my heart and she returns the favor by keeping me safe in tough situations.

So I share with you two life lessons. First, find what gives you joy and engage it as often as possible. You deserve it. Second, life is more fun when you win ribbons.

--Anita Britton



Kentucky Supreme Court Reaffirms Standard for Insurance Bad Faith



Austin Mehr

In Hollaway v. Direct General Ins. Co. of Miss., ___ S.W.3d ___ (Ky. Sept. 22, 2016), the Kentucky Supreme Court addressed the first substantive insurance bad faith case to come before it in ten years. In its decision, the Court affirmed a summary judgment granted by Fayette Chief Regional Circuit Judge Thomas Clark, who had found an absence of evidence of bad faith on the part of the insurer. The Court had no trouble agreeing with Judge Clark, who had found that liability for the disputed parking lot fender bender that gave rise to the claim was never reasonably clear. Without clearly proving liability for the accident, or the injuries stemming from it, the plaintiff could not prevail on a claim of bad faith, which requires that an insurer be obligated to pay under the terms of the policy.

There are three key takeaways from Hollaway. Most importantly, the Court rejected the idea that a claimant must prove an “evil motive” on the part of the insurance company. As practitioners who have litigated insurance cases know, the phrase “evil motive” has been an oft-quoted line by insurers arguing that a plaintiff has failed to prove that they had acted with evil intent. Second, the Court also dispelled the notion that a bad faith claim could only lie if the claimant proved that liability for the accident was “beyond dispute.” The Court of Appeals had used the “beyond dispute” language in its lower decision in Hollaway, but the Supreme Court did not adopt the “beyond dispute” standard. Instead, the Supreme Court discussed whether there was a “genuine dispute as to liability,” and whether “fault for the accident [was] debatable.” Finally, the Court’s decision reaffirmed that third-party bad faith claims under the Unfair Claims Settlement Practices Act are viable in Kentucky when there is proof of “recklessly indifferent” conduct on the part of an insurer. This harkens back to one of the first discussions of the bad faith cause of action by the Kentucky Supreme Court in Federal Kemper Ins. Co. v. Hornback, 711 S.W.2d 844, 846 (Ky. 1986) (Liebson, J., dissenting) (adopted by Curry v. Fireman’s Fund Ins. Co., 784 S.W.2d 176 (Ky. 1989)), where the “reckless disregard” standard was first discussed.

Given the facts of the Hollaway case, the result reached by the Court to affirm the grant of summary judgment is what one might expect. What’s important is that the Court reinforced the long-held “reckless indifference” standard while clarifying that seemingly higher standards of “evil motive” and “beyond dispute” are not required.

Faith Healing of Bad Faith: Giving Medicine to the Needy

Austin Mehr, Mehr, Fairbanks and Fairbanks Trial Lawyers, PLLC



Wednesday, October 26, 2016
Fayette Circuit Courthouse Multi-Purpose
Room
11:30 a.m. - 1:00 p.m.

Members \$25 | Non-Member \$35 | Lunch provided with pre-registration

To register for this program go to www.fcba.com and click on the calendar.
This CLE has received 1 hour of CLE credit from the KBA CLE Commission.

Outside the Practice – Nora Coffman

When I was growing up my parents were runners. Dad ran after work. Mom ran during the day while I stayed with my grandmother or went to school. They ran on vacation. My mom worked part time in a Phiddipides running store in our local mall for a few years. They both ran the Marine Corps Marathon and the New York City Marathon.

While I was athletic and fit throughout school, I thought this running business was a bit crazy. Now, having completed three Ironman triathlons and currently training for my fourth in September 2016, it turns out I am probably the one who is nuts. (For those not familiar, an Ironman consists of a 2.4 mile swim, a 112 mile bike ride, and a full 26.2 mile marathon. Participants have 17 hours to finish.)

In 2009, my mother, who had taken up cycling in her 60s and still rode daily at age 69, was diagnosed with stage 4 non-Hodgkins lymphoma. She spent weeks in the hospital. My dad made a point of telling almost every doctor or nurse who came in her room that she was a marathoner and rode her bike every day at age 69. In contrast, if I had been the one in the hospital bed in 2009, I would have been described as a 33 year-old lawyer who had sunk into a sedentary lifestyle and did not shy away from a pizza.

By the start of 2010, Mom appeared well on her way to recovery. I slowed my focus on her health and instead focused on my own. My husband and I had friends who had done an Ironman, so I simply decided I would do one too. Because deciding to do a 140 mile triathlon is totally reasonable. Of course, I first had to get back in shape to put this plan into motion. On January 1, 2010, I started running 2-3 miles a few days a week, riding a bike trainer, and going to the pool. When I started, riding the bike trainer 30 to 45 minutes seemed like an eternity – now it's just a warm-up. I got relatively fit by the end of 2010 with the plan of doing a half Ironman race in fall 2011 and Ironman Wisconsin in September 2012.

I trained six days a week from February through the end of August 2012 with many weeks consisting of 12-to15 hours of training, including 3 hour runs and 6-7 hour bike rides all over the Bluegrass. In early September, we drove to Madison, Wisconsin and I checked in at the Monona Terrace to pick up my race numbers and bag of race swag. The day before the race, I delivered my bike to the area designated for the transition from the swim to the bike. The following morning, my heart was pounding as I tread water in Lake Monona with about 2000 other folks waiting for the cannon to signal the mass start. Fourteen and a half hours and 140.6 miles later, I ran down the finisher's chute with people cheering on either side and was told over the loudspeaker, "You are an Ironman!"

The Ironman is grueling. It is exhausting. It hurts. One study shows that an Ironman basically ages the body the equivalent of 20 years in the span of a day – although you recover in a few weeks. And yet I fell in love with it. I loved it so much that I immediately signed up for Ironman Canada in Whistler, British Columbia the following year. I managed to finish with a bit faster time in Canada and enjoyed seeing an incredibly beautiful part of the world.

I raced at Ironman Chattanooga in my home state of Tennessee in 2015. The swim is in the Tennessee River, the bike passes Lookout Mountain and loops through northern Georgia, including the Chickamauga battlefield, and finishes with a run through Chattanooga. I am registered to race there again this year in late September 2016 with several of my local triathlete friends (all of whom are also multiple Ironman finishers). I am spending the summer building up my endurance again with training every evening and weekend.

Why do I put myself through all this? Well...it keeps me fit and annihilates stress from working as a lawyer. I like the test of my physical and mental strength. And, it doesn't get any better than the thirty seconds of feeling like a rock star in the finisher's chute and when you cross the line and receive a medal.



EEOC Issues Fact Sheet on Transgender Restroom Access



Anne-Tyler Morgan

Posted In EEOC, [Employment Discrimination Laws](#), [Title VII of the 1964 Civil Rights Act](#)

On Monday, May 2nd, 2016, the Equal Employment Opportunity Commission (EEOC) issued a fact sheet entitled “[Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII of the Civil Rights Act of 1964.](#)” The fact sheet comports with the agency’s stance that Title VII protects gender identity under the prohibitions on discrimination based on sex and serves as a reminder to employers that federal law – and the EEOC’s interpretation of it – trumps state law on this issue, despite recent attention-grabbing media headlines.

The fact sheet itself begins with a definition of “transgender,” segueing into a brief restatement of EEOC policy concerning Title VII and the agency’s interpretation of it. The fact sheet hangs its hat on two cases before the EEOC and their effect on restroom access policies - *Macy v. Dep’t of Justice*,[1] and *Lusardi v. Dep’t of the Army*. [2] The latter opinion held that prohibiting access to a common restroom that corresponds to the individual’s gender identity constitutes prohibited sex discrimination. The fact sheet also cites the Fourth Circuit opinion in *G.G. ex rel Grimm v. Gloucester Cty. Sch. Bd.*, [3] decided this April, which determined that prohibitive restroom policies against transgender individuals in schools violate sex discrimination provisions in Title IX.

One simple statement outlines clearly the EEOC’s stance on whether state law contrary to the Commission’s interpretation of Title VII should have any bearing on restroom access for transgender individuals: “Contrary state law is not a defense under Title VII. 42 U.S.C. § 2000e-7.” The EEOC’s position on this issue is clear: employers may not discriminate on the basis of gender identity, and all employees have the right to be free of such discrimination and harassment in the workplace. The onus is on employers to comply. For more information on EEOC policies with respect to transgender persons, contact your McBrayer attorney today.



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The Changing of the Guard

Ray Larson: Can't stop. Won't stop.

With his recent retirement after 32 years as Fayette County's chief prosecutor, former Commonwealth's Attorney Ray Larson is now setting his sights on the newfound daily schedule of so-called "retirement." What many will not be surprised to learn is the agenda does not include free time. I sat down with Larson this week in his new Lexington office space for a candid interview on what he has planned in the near future and why his line of work will never take a break.

The first few days of Larson's "retirement" have allowed him to take on new roles outside his former office. Caring for his sick grandchildren home from school, spending time with his wife Betty, and sleeping a few minutes later in the mornings have all been an adjustment after the same routine he held for so many years. Despite the enthusiasm and pride he holds in our conversation about recent events with family, the talk of retirement and free time are quickly thrown to the wayside when he describes his calendar that is beginning to fill up. This newfound freedom of sorts is something of an unknown on where it may lead, but Larson minces few words with where he is poised to fight on.

Moving from elected prosecutor to involved citizen is where he sees himself now, holding true to the same concerns from the past decades despite a different office. He quickly lets me know, "If anyone thinks I've started to no longer care anymore, they're WRONG!" This is evident when he describes his hopes for the city of Lexington, as well as the state itself, in the years to come. From this new office space, Larson plans to advocate for victims, their families, and the community on a constant basis through social media, radio and other potential avenues. These are all outlets where he has gained notoriety over the years as an outspoken, but honest prosecutor. Calling on the Legislature and those in office wielding the power to take a stand on crime in the state is something that will undoubtedly keep Larson busy in the months and years to come. With statistics in hand from the briefcase on his desk, Larson describes the rate of crimes that are growing while the rate of repeat offenders being released to the streets does the same. "Crime pays," says Larson, "If we don't have consequences for those in the court system, why have the laws at all?" The danger and consequences this poses for our communities motivates him to continue his work, even as a citizen.

"You should never be satisfied with less than you're seeking." For Larson, that means a revived emphasis on building community relations, particularly between the citizens, officials, and the police force of Lexington to help curb crime. Programs that he introduced during his time as the Commonwealth's Attorney like D.A.R.E., where police and children built relationships from the elementary school classroom through their time in high

school, serve as a model he hopes to revive. If relationships begin young, even in small numbers, the impact will be long and wide in building community relations. Larson is discouraged in the relationships and trust that are lost between young adults and officials across the nation today. He believes the "don't snitch" mentality has become more popular than supporting the officers protecting these very same lives. After years of handling violent cases involving our own community, it is clear that the devotion and compassion of his former role will not waiver. Prosecution is not a glamorous or uplifting field to be involved with; "positives" are not found when it comes to a criminal case. "With victims, there is just a next step in their lives, no complete resolution. There may be temporary relief, but never a clean outcome or positive. There will always be a scar, a huge knot, left in the lives of victims for as long as they live." In his newfound role as a citizen advocate, the personal drive to see that justice finally pays, rather than the crime, remains steadfast.

As one of the last Assistant Commonwealth's Attorney to be hired by Larson prior to his retirement, I always appreciated his dedication, discipline, and honesty he brought to our office as Ray the D.A. each day. Crime, courtrooms, and objections immediately come to mind when the role of prosecutor is mentioned in today's society. Victims, costs, and recidivism do not garner this same appeal or notoriety despite their equally important role in each case. Rest assured, Ray Larson is not stopping in retirement, just re-inventing himself in his new role where the crime-fighting mission presses on; a mission that entails laws being enforced, offenders facing consequences, and victims receiving justice with an outspoken honesty that is second to none.

■ --Eric Finke, Assistant Fayette Commonwealth's Attorney

Meet Lou Anna Red Corn

On September 22nd, 2016, Governor Matt Bevin appointed Lou Anna Red Corn, to fill the vacancy created by the retirement of long-time Commonwealth's Attorney Ray Larson. On October 1st, Lou Anna was sworn in as Commonwealth's Attorney for the 22nd Judicial Circuit along with her staff at a midnight ceremony in front of the Circuit Courthouse. Then on October 3rd a ceremony was held inside the Circuit Courthouse that included her sister Rox Ann and her Aunt Kathryn wrapping an Indian blanket around Lou Anna to show her respect, admiration, and love. Lou Anna is the first female Commonwealth's Attorney in a city the size of Lexington and the first known enrolled Native American to hold this office in Kentucky. She was born in Oklahoma and is member of the Osage Nation.

The Changing of the Guard, continued

FCBA Director Sheila Isaac recently talked to Lou Anna about her new job.

Isaac: How long have you been in Ray's office?

Red Corn: Since 1987, when I made the move from the Department of Public Advocacy in Stanton, Kentucky to the Fayette Commonwealth's Attorney's Office. Ray had been on the job for two years, and I was the fourth assistant he hired. In 2008, Ray made me his First Assistant when Mike Malone retired.

Isaac: Did you always want to be a prosecutor?

Red Corn: Like many aspiring law students I had a romantic notion of what it meant to practice law. During my second and third years of law school I clerked for a mid-size firm that represented consumer and commercial creditors doing collection work. This is important work, and necessary for the operation of our economy, but I realized this was not how I wanted to spend my days. When I started practicing in 1984, women attorneys were still rare in the mountains and I sat through many a docket because the judge wouldn't call the case until the attorney (a man) arrived. There was an opening in the Stanton Office of the Department of Public Advocacy and I applied – at that time DPA was paying starting attorneys a whopping \$18,500 a year. I moved to Stanton and represented indigent defendants in Powell, Wolfe, Breathitt, Estill, Lee and Owsley. It was a growing experience, and one that made life time impressions upon me. My first felony trial was an assault. Mary Ann shot her husband because he was holding a knife to their teenage son's neck. The family lived in Owsley County, and when I visited their home I saw she had a dirt floor and no indoor plumbing. Again, a growing experience. The jury acquitted Mary Ann and I was hooked.

Isaac: What's been the best thing about your job and what has been the most challenging thing?

Red Corn: The rewards of being a prosecutor are many. The personal satisfaction of truly helping a crime victim ranks at the top. I also enjoy the advocacy of jury trials. Among the most challenging types of cases to prosecute are familial child sexual abuse because of the relationship between the victim and the offender.

Isaac: Tell us about your family.

Red Corn: Luke Morgan and I are in our 23rd year of marriage. Luke is a member at McBrayer, McGinnis, Leslie, and Kirkland. We have two sons, Jason Darling, and Joe Morgan. Jason has a successful career in Charlotte, North Carolina, and Joe is studying Chemical

Engineering at UK. We are empty nesters, and loving it!

Isaac: What are your goals for this office going forward?

Red Corn: To continue to improve the trial skills of our young attorneys. When I started in 1987 most attorneys tried between 15 and 30 cases a year. These days young attorneys are lucky to get 10 jury trials a year. The only way to become a good trial attorney is to try cases. It's a challenge. Another challenge is the arrival of body cameras at the Lexington Police Department. It is still in the preliminary stages, but it won't be long before all patrol officers are wearing body cameras. The time required to review camera footage will be tremendous and will impact both prosecutors and defenders.

Isaac: Tell us something most people don't know about you.

Red Corn: I have the unique honor of having tried the last case in the old Fayette Courthouse and the first case in the new Fayette Courthouse. No one but me can claim that honor.



Lou Anna Red Corn was sworn in as Fayette Commonwealth's Attorney on Monday October 3, 2016, by Judge Kimberly Bunnell.



Red Corn is a member of the Osage Indian Nation and honoring tradition, she was wrapped in a blanket that belonged to her late mother, Iris.



Ray Larson and Lou Ann Red Corn, outgoing and incoming Commonwealth's Attorney



Lou Ann Red Corn and her father, C. R. Red Corn.

Photos courtesy Mark Cornelison, Lexington Herald-Leader

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FCBA Summer Picnic

For the first time ever the Summer Picnic was held on the District Courthouse lawn on September 9, 2016. There were several ways for our membership to enjoy the evening. The kids enjoyed decorating pumpkins and frolicking in the fountain. The adults enjoyed the never-ending fajita bar, live music and ice cream that Elsa herself scooped. A special "Thank You" to our ice cream sponsor Judge Larry VanMeter.

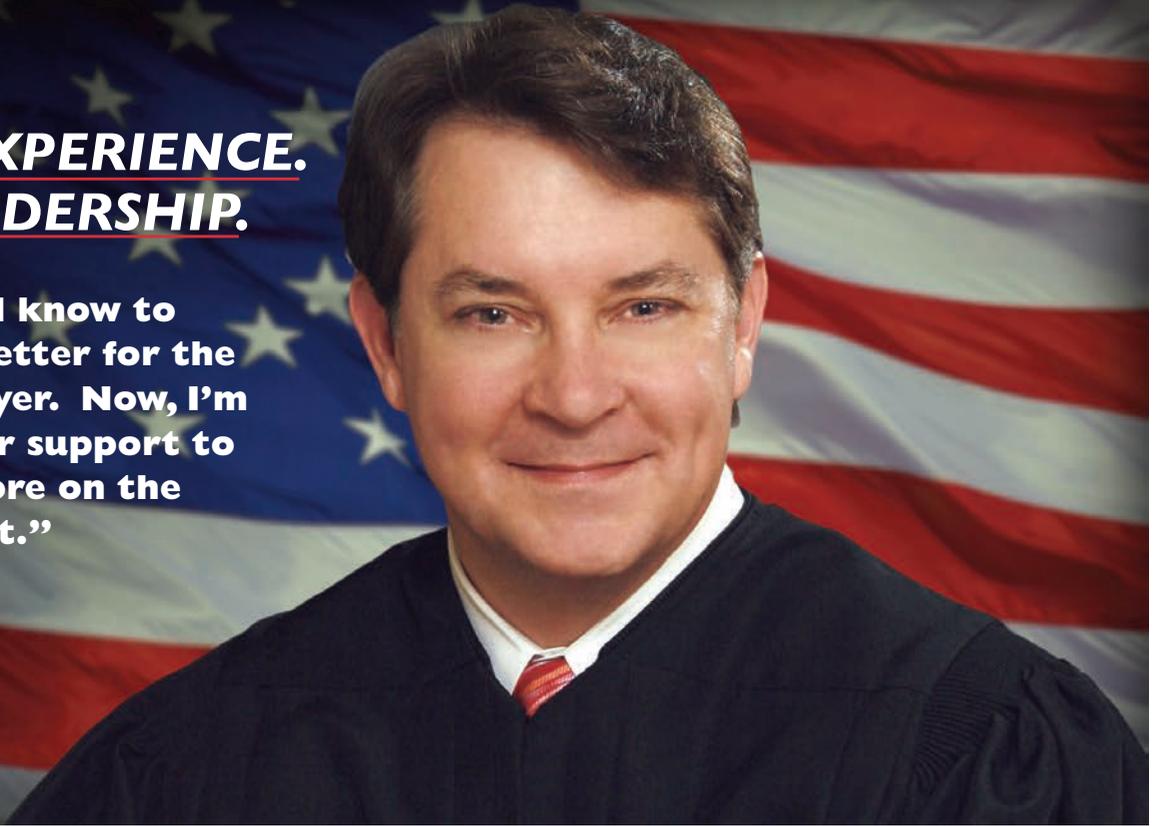


Walter Cox and his family. Walter will turn 94 next month and he's still at his office every day!

The famous Tony, (Anthony Likirdopulos of Tony's Shoe Repair) and his wife, Anastasia enjoyed the festivities.

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PRACTICED law over twenty years in the courtroom & learned to empathize with folks facing legal problems

STARTED a firm & learned that the law must be consistent and predictable to promote business

VOLUNTEERS with many charitable organizations & learned giving money is not the same as giving your time

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ELECTED by the Judges of the Court of Appeals to be their Chief Judge from 2012 to 2016

CHOSEN by Chief Judges across the nation to serve on the Executive Committee of the National Center for State Court’s Council of Chief Judges

FOUNDED and was elected President of the Central Kentucky American Inn of Court from 2013-2015 - a lawyer mentoring organization

ESTABLISHED the Appellate Advocacy Section of the Kentucky Bar Association in 2007



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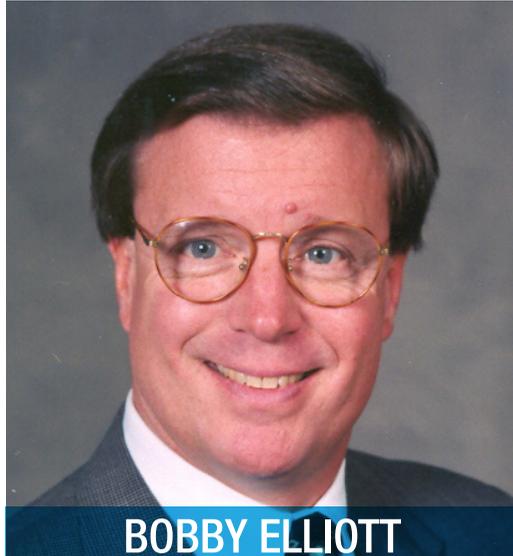


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Delcotto Law Group PLLC

DelCotto Law Group PLLC paralegal **Heather Purnell** recently earned a two year extension of her current designation as a PACE Registered Paralegal®. In 2012 Heather passed the Paralegal Advanced Competency Exam (PACE) and earned the designation of PACE Registered Paralegal®. She is one of twenty-three paralegals in the Commonwealth of Kentucky to earn this distinction. In addition to maintaining the credentials, Heather also serves as Certification Ambassador for the Greater Lexington Paralegal Association, Inc.

Dinsmore & Shohl

Dinsmore & Shohl LLP's **Brady W. Dunnigan** has been elected to serve on the Board of Directors of the Kentucky Mansions Preservation Foundation (KMPF). Dunnigan will serve a three-year term.

Mazanec, Raskin & Ryder Co., L.P.A.

Mazanec, Raskin & Ryder announced today that **Teresa T. Combs** has joined the firm as a partner in its Lexington, Kentucky, office. For more than 30 years, Ms. Combs has concentrated her practice in the area of school law. She has represented school districts as both in-house and local counsel. For the past 20 years, she has worked for school districts across the Commonwealth of Kentucky as an attorney with the Kentucky School Boards Association. In that position, she has advised and trained staff and board members from nearly every public school district in the Commonwealth concerning school law issues. Teresa is particularly known for her experience in the areas of special education and disability law, including the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act. She has a vast amount of experience in advising and training school district administrators on implementation of legal requirements in public schools. She also has extensive experience in the area of personnel law specific to Kentucky public school staff.

McBrayer McGinnis Leslie & Kirkland

As Kentucky's business community thrives, McBrayer law firm expands with the addition of new Director of Business Development, **Elizabeth Bagby**. Ms. Bagby comes to the McBrayer law firm with a wealth of experience in marketing and business development, having last served as Corporate Marketing Manager for Alltech, Inc., a company she worked with starting in 1997.

Stites & Harbison

We are pleased to announce that **Jennifer J. Cave** has joined the firm as a Member in the Louisville office's Environmental, Energy and Natural Resources Service Group.

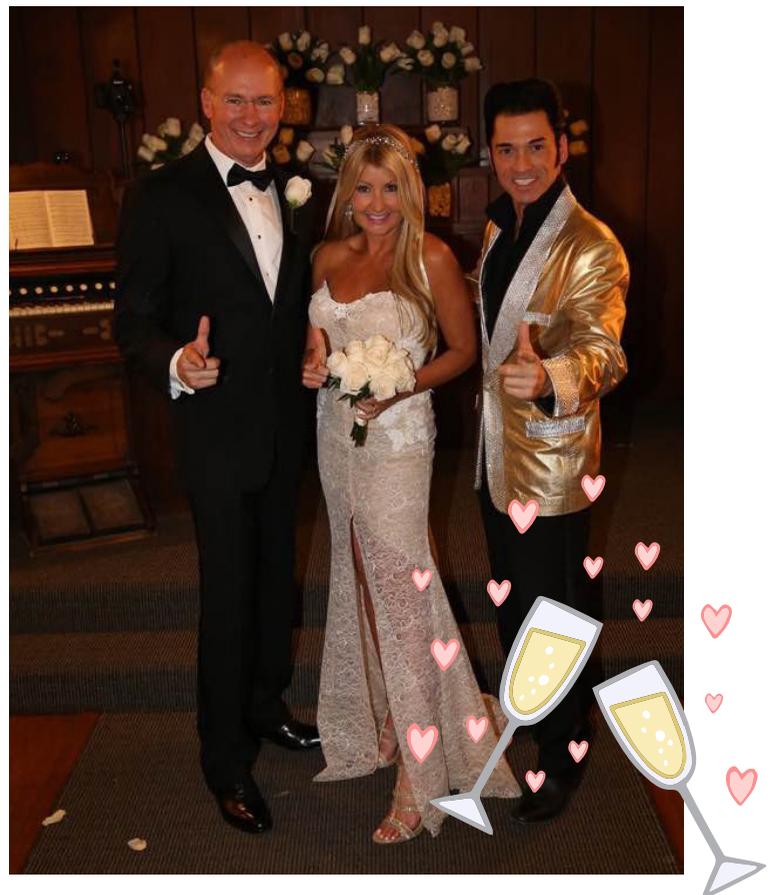
Walther, Gay & Mack, PLC

Walther, Gay & Mack PLC announces that **Matthew D. Doane** has joined the firm as an associate. Doane's practice focuses in Bankruptcy and Creditor Rights, Education Law, Commercial/General Civil Litigation, Estate and Probate, and Real Estate. He received his J.D., cum laude, from the University of Kentucky College of Law in 2015, and two B.A.s from the University of Kentucky in 2012.

Wyatt Tarrant & Combs, LLP

George Miller, a Partner in the Lexington office of Wyatt, Tarrant & Combs, has authored a chapter on Responsive Pleadings in the latest edition of the Kentucky Civil Practice before Trial Handbook (4th ed. 2016) for the University of Kentucky Office of Continuing Legal Education. Mr. Miller has authored the chapter in all four editions of the book.

Wyatt, Tarrant & Combs, LLP is pleased to announce that **Sharon Gold** has been selected by Commerce Lexington for its Leadership Lexington Class of 2017.



Congratulations to two of our FCBA members, Jill Hall Rose and Austin Mehr, who wed on October 1st in Las Vegas at The Little Church Of The West, with Elvis presiding, of course. Jill tagged the photo, "Hitched and Kitsched!"

SAVE THE DATE!

Wednesday, December 7, 2016 • 5:00-7:00 p.m. 21C Hotel



*This year's Holiday party will be a Celebration for
Judge Tom Clark
who is retiring after 27 years on the bench!*

Thanks to the following attorneys and Judges who volunteered their time to help with the 2016 Law Camp in June:



Judge Joe Bouvier
Matt Boyd
Taylor Brown
Judge Kim Bunnell
Julie Butcher
Traci Caneer
Connor Egan
Lucy Ferguson
John Hayne
Robert Houlihan, Jr.
Kelly Kilgore
LaToi Mayo
Austin Mehr
Larry Roberts
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Calendar of Events

October 2016

- 25 Pro Bono Volunteer Recognition Luncheon
- 26 Bad Faith CLE

November 2016

- 8 Election Day
- 11 Veteran's Day
- 14 Dialogue with the Judges – Civil
- 16 Domestic Relations Practice Section Meeting
- 24-25 Thanksgiving Holiday

December 2016

- TBA Annual Holiday Party
- 9 Winter Blood Drive
- 23-26 Holiday
- 30 New Year Observance