



2017, Issue 3

# BarNews

## 2017 Summer Picnic

The FCBA Summer Picnic was held September 20 in the 5/3 Pavilion in downtown Lexington. We switched things up this year and held the event at lunch. There was great attendance and comradery over Goodfella's Pizza and Vinaigrette Salad.

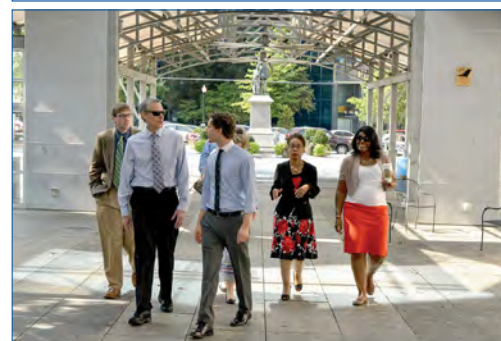


### THANK YOU

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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](mailto:info@fcba.com). Articles should not exceed 6 typewritten double-spaced pages. For complete set of submission guidelines visit [www.fcba.com](http://www.fcba.com) or contact the FCBA office at (859) 225-9897.

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## President's Message: *Lucy Anne VanMeter*



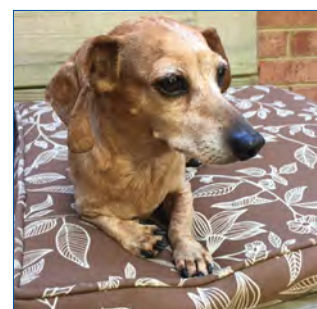
Lucy Anne VanMeter

I recently read an article written by Julius Rather that appeared in a 1992 newsletter of the Fayette County Bar Association. Among other things, the article discussed the changes that had occurred since the local bar's founding in 1887. Mr. Rather noted that when the local bar was created, Lexington was a town of about 25,000 people with 38 lawyers, 36 doctors, 8 daily passenger trains, 6 newspapers and, amazingly, 191 retail groceries of different types. Discussing the setting of what is now known as the "old Courthouse," the article mentioned that the statue of John Cabell Breckinridge would be erected the year the bar was founded and the John Hunt Morgan statue would be erected in 1911.

Lexington has grown to more than 260,000 people and the local bar has more than 1,000 members.

Of course, there are no longer passenger trains, only 1 daily newspaper and a lot fewer groceries. In addition to the statistical changes, great social changes have occurred and the city is contemplating where to relocate the aforementioned statues and what might take their place.

We all experience change in our professional and personal lives. In my professional life, a trusted colleague left the firm to relocate to a new city and a beloved partner retired. In my personal life, I recently married and managed the introduction of my older dachshund, with quite a bit of spunk, to his middle aged cat, who was used to running the house. With months of planning and professional help, a peaceful coexistence and mutual respect was achieved. Annie the dachshund roams the ground floor with a healthy fear of Sophie the cat, who reigns over the upstairs. Perhaps one day they can be loving companions, but for now, I will accept peace.



*Annie the dachshund*

### ***Suggested viewing***

For a heartwarming documentary exploring how life can unexpectedly change overnight, I would recommend *Searching for Sugar Man*, the 2012 Oscar winning documentary about the extraordinary life of an artist known as Rodriguez. I am not giving anything away by telling you that Rodriguez issued two albums from his hometown of Detroit in 1970 and 1971. When the music did not sell well, Rodriguez went to work in construction for the next three decades until one day in 1998 he learned that he was a rock star in South Africa and that his music had become the soundtrack of the anti-apartheid movement. What follows is an uplifting story about how he found his audience and began remarkable new chapter in his life.

At the gym earlier this week, I heard a Rodriguez song that had been updated and turned into a club hit.

As Doc Holliday said to Wyatt Earp in the great movie *Tombstone*, "There's no normal life Wyatt, there's just life. You get on with it."



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# 2017 FCBA





# SUMMER PICNIC



*More photos on page 19*



# Hamblin Receives Kentucky Bar Association's 2017 Distinguished Lawyer Award



*Pierce donated his \$2500 award honorarium to the Bluegrass Veteran Services Office of Legal Aid.*

FCBA past-president Pierce W. Hamblin was awarded the Kentucky Bar Association's 2017 Distinguished Lawyer Award at the annual banquet on Thursday, June 22, during the association's annual convention. President R. Michael Sullivan from Owensboro, Ky., presented the award.

The Distinguished Lawyer Award is presented to any lawyer who has distinguished himself or herself through a contribution of outstanding service to the legal profession. The selection process places special emphasis upon community, civic and/or charitable service, which brings honor to the profession.

Hamblin is a partner in the law firm of Landrum & Shouse, LLP, in Lexington and Louisville. Since 1980, Hamblin has also been, and continues to be, an adjunct professor of law at the University Kentucky College of Law teaching litigation skills to third year students.

In 2006, Hamblin was inducted into the UK College of Law Hall of Fame. Hamblin has spent most of the past 38 years litigating cases. He has tried cases throughout Central and Eastern Kentucky ranging from personal injury, wrongful death and products liability to medical/legal malpractice and municipal civil rights cases and police pursuit cases. He has defended multiple insurance companies in bad faith litigation.

Hamblin is a trained and certified mediator. He has mediated over 10,000 civil cases in the past years. He was named the 2014 and 2016 Best Lawyer of the Year for Mediation in Lexington by Best Lawyers of America. Since 2007, he has been designated as a Top 50 Lawyer by Kentucky Super Lawyers and Top 10 for 2012, 2014, and 2016.

Hamblin served as a Captain in the United States Army and Army Reserves with intensive training in the Branch of Military Intelligence. He was The Distinguished Graduate of the Army Military Intelligence Officer Basic Course for 1977. He is certified both as a Tactical Intelligence Officer and a Counter-Intelligence Officer. He received a degree in Military Law from the University of Virginia College of Law. Thereafter, he served as the Judge Advocate for an Army Training Brigade. In 2015, Hamblin was inducted into the Army ROTC Hall of Fame.

Hamblin has been a mentor for law students participating in the Kentucky Legal Education Opportunities (KLEO) Program from diverse areas of the Commonwealth since its inception. In 2013, he received the KBA's Young Lawyers Division Kentucky Service to Young Lawyers Award. He is married to Sandy and has three children.

## 100% CLUB

The FCBA has established the 100% Club, to designate those firms who have made a commitment to have every member join our association. Call or email our office to make sure your firm is recognized. The following firms have joined and shown their commitment to improve our profession by supporting the Fayette County Bar Association.

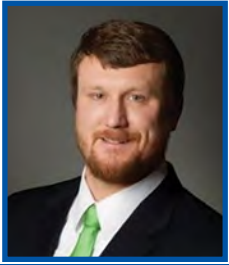
Bingham Greenbaum Doll, LLP  
Clark Law Office, Inc.  
Dickinson Wright PLLC  
Fayette County Attorney's Office  
Fowler Bell, PLLC  
Frost Brown Todd, LLC  
Fulkerson, Kinkel & Mars, PLLC  
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Kentucky League of Cities  
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Kinkead & Stiltz, PLLC  
Landrum & Shouse LLP  
Legal Aid of the Bluegrass  
LFUCG—Department of Law  
Mattmiller Crosbie, PLLC  
McBrayer, McGinnis, Leslie & Kirkland, PLLC

Mehr, Fairbanks & Peterson Trial Lawyers  
Rose Grash Camenisch Mains, PLLC  
Stites & Harbison, PLLC  
Stoll Keenon Ogden PLLC  
Sturgill, Turner, Barker & Moloney, PLLC  
Walters Meadows Richardson, PLLC  
Walther, Gay & Mack, PLC  
Ward, Hocker & Thornton, PLLC  
Wyatt, Tarrant & Combs, LLP



## Celebrating Pro Bono Attorneys



Josh Fain,  
Pro Bono Coordinator for  
Legal Aid of the Bluegrass

Every October during Celebrate Pro Bono Week, Legal Aid of the Bluegrass (LABG) honors and recognizes the outstanding volunteers and professionals that generously donate their time and talents to assist eligible clients on a pro bono basis. In keeping with tradition, LABG will once again be hosting a volunteer recognition event. While this event

has previously been a luncheon, this year, LABG will be opting instead to host a cocktail reception on Thursday, October 26th from 5:00 PM to 7:00 PM at Bigg Blue Martini.

Although the Access to Justice Award was presented to former State Representative Jesse Crenshaw at the FCBA Law Day Luncheon, at the upcoming cocktail reception, we will be presenting our three remaining awards: the Pro Bono Attorney of the Year Award, Outstanding Lay Volunteer Award, and Trinia Clemons Friend of Pro Bono Award.

We sincerely hope to see all of our amazing volunteers in attendance. We also extend the invitation to those that are not currently volunteering with our program, and hope that they get involved and join us in the celebration. In addition to our incredible volunteers, the cocktail reception would not be possible without the support and sponsorship of the Fayette County Bar Association Pro Bono Program, Inc., the Fayette County Bar Association, the Kentucky IOLTA fund and Lawyers Mutual Insurance Company of Kentucky.

LABG would like to express a special gratitude to the FCBA Bankruptcy section, as we lost our primary bankruptcy attorney in the Lexington office earlier in the year. This situation created an urgent need for additional volunteers, and FCBA quickly came to the rescue by graciously offering their time and resources. After the call for help was posted by the FCBA and linked on the Bankruptcy Court's website by Chief Judge Wise, Jim Lyon, Dean Langdon of the DelCotto Law Group PLLC, Jill Hall Rose of the Rose Law Group and Greg Napier of Troutman and Napier PLLC all

agreed to start accepting pro bono bankruptcy cases. They joined existing members, Ryan Atkinson and J. D. Kermode both of Atkinson, Simms & Kermode, as bankruptcy panel members. Their willingness to volunteer in this dire situation has been invaluable as LABG hires and trains a new bankruptcy attorney for the Lexington office, and we are incredibly thankful for their willingness to assist.

Additionally, LABG is always in need of additional divorce panel members. There are approximately 10,000 low-income people per Legal Aid attorney in our service area, and once again, divorce ranked at or near the top of the most recent needs assessment that we completed. The pro bono clients that we refer out would be unable to afford private counsel and therefore would either proceed unrepresented as a pro se litigant or would simply be denied access to the court system altogether but for the willingness of our volunteers. These unsung heroes that agree to represent clients on a pro bono basis ensure that everyone, regardless of ability to pay, gets access to justice thus upholding the integrity of our court system which is essential to our democracy.

If you are interested in volunteering with Legal Aid of the Bluegrass or just want more information about our program, please contact Josh Fain at either (859) 254-1141 or [jfain@lablaw.org](mailto:jfain@lablaw.org).





# The Old Courthouse Renovation: Retired Judges Revisit their Office Spaces



*L-R: Judges Paisley, Overstreet, Adams, Isaac, Clark, Justice Noble*



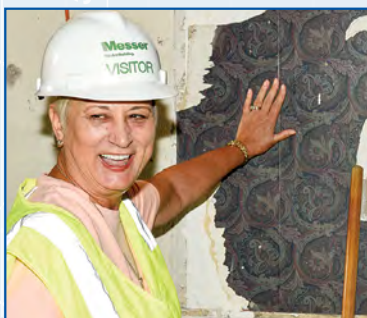
*Beginning the tour*



*Noble and Isaac*



*Jennifer Scutchfield (R), LFUCG 7th District Council Member arranged the tour for the judges and got to visit her old staff attorney office. She was previously a law clerk for Judge John Adams.*



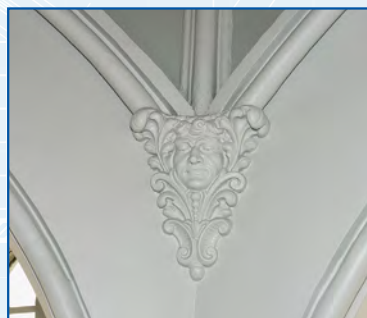
*Justice Noble finds her old office wallpaper*



*Holly Wiedemann, President of AU Associates and co-manager of the renovation, conducted the judges' tour.*



*Restored dome will have pinpoint lights*



*The dome ceiling restoration uncovers an original carved face*



*View from the second floor*



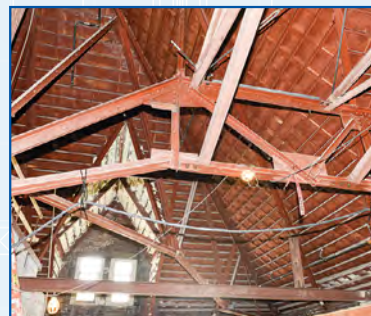
*Interior scaffolding*



*Interior scaffolding*



*Isaac finds her old office looking quite different now*



*The removal of dropped ceilings installed in 1960 has revealed the beautiful original ceiling*



# FCBA Board Member Receives Distinguished Leader of the Year Award



*Distinguished Leader Award Winner  
Steve Stadler*

On June 15, 2017, our Leadership Lexington class came together for a final time for Reflection and Graduation Day. The events of that day confirmed a belief in me that had been taking shape since our overnight retreat at Jabez: while my classmates and I may have applied to participate in Leadership Lexington thinking we would learn about our city, we found that what we will carry with us is a greater understanding of ourselves, within the contexts of leadership and partnership.

We began the day at the Isaac Murphy Memorial Art Garden. We learned that, while the garden officially broke ground in 2011, it had originally been conceived several years before as a community-wide project supported by Leadership Lexington's 2006 Class. This was meaningful for our class to see and hear, because we all had the hope that our own community projects would too have life beyond graduation day. As it turns out, all four of this year's projects have elements that, like the Art Garden, will continue and grow in the future.

While many other events of that day stand out, I believe the highlight for all of us was Steve Stadler's recognition during the graduation ceremony as the Distinguished Leader of the Year. As a member of the project in which Steve participated, I got to see firsthand his service to others, his reliability, his perseverance, and his problem solving. As these qualities illustrate the lesson Jason Cummins shared with us on both the first and last day of Leadership Lexington—"true leaders develop other leaders"—it was a wonderful way to conclude not just the day, but our whole experience.

*- Melissa Tibbs, M.Ed, CCAP  
Director of Planning, Communications and Advancement  
Community Action Council*

## Heistand Named Peter Perlman Outstanding Trial Lawyer Award Winner



*Peter Perlman Award Winner  
Sheila Hiestand*

Sheila Hiestand, partner at McCoy & Hiestand, PLC received the Peter Perlman Outstanding Trial Lawyer Award. The Peter Perlman award is given to an attorney who demonstrates exceptional talent as a trial practitioner. It honors a lawyer who fights for the rights of consumers, shares his or her legal talents with young lawyers and other members of the bar, and gives back to the legal profession by working to protect America's constitutional right to trial by jury.

For the past seventeen years Sheila has been litigating complex cases including medical malpractice, Federal Torts Claims Acts, government litigation, and school law. With hard work and dedication, Sheila has won millions of dollars for her clients and always served as an advocate for injured people.

"I am so thrilled and honored to have received this award," Hiestand said, "Pete Perlman is a Stalwart in Kentucky's legal community, and to be included in the fine group of attorneys to be named a Pete Perlman Outstanding Attorney is truly humbling.

The Peter Perlman Outstanding Trial Lawyer award was created in 1994 and is presented annually at the Kentucky Justice Association convention.



# Applying Heightened Pleading Standards to Affirmative Defenses

Tasked with having to draft an answer to a complaint, young lawyers will often seek out an assigning attorney's old pleadings to use as a template. Those lawyers tempted to simply copy boilerplate affirmative defenses from an old pleading into an answer, however, may be unknowingly setting themselves up for their next assignment – responding to the plaintiff's motion to strike. Attorneys who practice in federal court should be aware that affirmative defenses may be subject to a motion to strike for failure to comply with the heightened pleading standards articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Federal Rule of Civil Procedure ("Rule") 8(a)(2) requires a complaint to include "a short and plain statement of the claim showing that the pleader is entitled to relief[.]" The United States Supreme Court has clarified that the Rule requires a complaint to set forth "enough facts to state a claim of relief that is plausible on its face." *Twombly*, 550 U.S. at 570. Facial plausibility exists "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. To comply with the Rule, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, [will] not suffice." *Id.* A plaintiff, therefore, must fully investigate any claims prior to filing a complaint to ensure that the claims have factual support sufficient to survive a motion to dismiss.

Defendants' pleading requirements are murkier. Rule 8(b)(2) requires a responding party to "state in a short and plain terms its defense to each claim asserted against it." Rule 8(c) further demands that parties "must affirmatively state any avoidance or affirmative defense" within its responsive pleading. Given the similarity between Rule 8(a) and (b)'s "short and plain" language, it is an open question whether *Twombly* and *Iqbal*'s heightened pleading standards apply to a defendant's affirmative defenses. In practice, affirmative defenses have most often been pled in "threadbare", boilerplate fashion, often prior to any investigation to determine whether the affirmative defense is even viable.

In federal district courts throughout the nation, plaintiffs' attorneys are testing the reach of *Twombly* and *Iqbal*'s heightened pleading standards by moving to strike defendants' boilerplate affirmative defenses. *See*,

*e.g.*, *Doe v. Bd. of Educ.*, 2017 U.S. Dist. LEXIS 133199, \*6-8 (S.D. Ohio August 21, 2017) (granting motion); *Scottsdale Ins. Co. v. Pushing Daizies, Inc.*, 2017 U.S. Dist. LEXIS 137735, \*7-9 (M.D. Fla. Aug. 28, 2017) (denying motion but acknowledging application of *Twombly* to affirmative defenses). Rule 12(f) permits a court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter" on its own or by motion. Plaintiffs' attorneys thus argue that, if heightened pleading standards apply to affirmative defenses, then boilerplate language underpinning those defenses – such as, for example, "Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or laches" – is insufficient and should be stricken.

The argument that heightened pleading standards should apply to affirmative defenses is intellectually appealing, particularly given the nature of affirmative defenses. After all, affirmative defenses are not simple denials of a plaintiff's allegations. To the contrary, an affirmative defense "admits the allegations in the complaint, but seeks to avoid liability, in whole or in part, by new allegations of excuse, justification, or other negating matter." *Reimer v. Chase Bank USA, N.A.*, 274 F.R.D. 637, 639 (N.D. Ill. 2011). That is, affirmative defenses assert that there are additional facts showing that the defendant cannot be held liable even if the plaintiff's factual allegations are true. *See, e.g.*, *Ford Motor Co. v. Transport Indem. Co.*, 795 F.2d 538, 546 (6th Cir. 1986). If plaintiffs are tasked with pleading specific facts in order to provide adequate notice of the bases of their claims, why should defendants be permitted to toss out boilerplate affirmative defenses in hopes that one will prove fruitful? Several district courts have proven receptive to this argument and held that defendants cannot be so cavalier when pleading affirmative defenses. *See, e.g.*, *Doe*, 2017 U.S. Dist. LEXIS 133199 at \*6-8; *Scottsdale*, 2017 U.S. Dist. LEXIS 137735 at \*7-9.

In the Sixth Circuit, no clear answer has emerged with district courts being sharply divided. For example, in *HCRI TRS Acquirer, LLC v. Iwer*, 708 F. Supp. 2d 687, 690-91 (N.D. Ohio 2010), the Northern District of Ohio applied the heightened pleading standard to strike the defendant's three affirmative defenses. Recognizing that *Twombly* and *Iqbal* were concerned specifically with pleading standards under Rule 8(a), the Court nonetheless concluded that any difference in language between Rule 8(a) and Rule (b) and (c) was "minimal



# Heightened Pleading Standards, continued

... [and] [s]ince all three subparagraphs of Rule 8 contain “the ‘short and plain’ language...the pleading requirements for affirmative defenses [were] the same as for claims of relief.” *Id.* at 691.

The Court further found that the same policies underlying a heightened pleading standard for complaints under Rule 8(a) applied equally to affirmative defenses. Explaining that *Twombly* and *Iqbal* were “designed to eliminate the potential high costs of discovery associated with meritless claims,” the Court reasoned that “[b]oilerplate affirmative defenses that provide little or no factual support can have the same detrimental effect on the cost of litigation as poorly worded complaints.” *Id.* (internal quotations and citations omitted). See also *Microsoft Corp. v. Lutian*, 2011 U.S. Dist. LEXIS 109918, 6-7 (N.D. Ohio 2011) (finding “no logical reason why the heightened pleading standard would only apply to complaints and not pleadings generally”).

By contrast, in *Holley Performance Prods. v. Quick Fuel Tech., Inc.*, 2011 U.S. Dist. LEXIS 81710, 7 (W.D. Ky. 2011), Judge McKinley for the Western District of Kentucky held that *Twombly* and *Iqbal*’s heightened pleading standards did not apply to affirmative defenses. There, Judge McKinley relied upon the Sixth Circuit Court of Appeals’ decision in *Montgomery v. Wyeth*, 580 F.3d 455, 468 (6th Cir. 2009), which held that a heightened standard did not apply to a statute of repose defense pled under Rule 8(b)(1). In doing so, though, Judge McKinley acknowledged the sharp divide within the Sixth Circuit’s district courts about whether to apply heightened pleading to affirmative defenses and the fact that the Court of Appeals has yet to definitively address the issue. *Holley Performance*, 2011 U.S. Dist. LEXIS 81710 at 7.

Notwithstanding its intellectual and academic appeal, applying heightened pleading standards to affirmative defenses carries with it obvious pitfalls and potentially drastic consequences. As master of his complaint, a plaintiff may have months or even years to conduct a thorough investigation into the facts underlying his claims. Plaintiff’s counsel is thus armed with specific facts upon which he may build his complaint, and is often gifted with ample drafting time. Subjecting a complaint to heightened pleading standards is therefore not particularly burdensome to plaintiffs or their counsel, and should indeed serve to reduce the amount of frivolous or meritless claims. A defendant, on the other hand, may

or may not anticipate receiving the complaint against him. Given that Rule 12(a)(1)(A) requires a defendant to respond to a complaint within 21 days, an unanticipated complaint strains both a defendant’s ability to gather facts and counsel’s ability to analyze those facts to determine whether they support an affirmative defense. Applying heightened pleading standards to affirmative defenses is likely to prove particularly burdensome in complex litigation, such as mass tort or intellectual property litigation. Add to this the potential risk that a defendant has of waiving defenses not timely asserted in an answer, and the pragmatic appeal of allowing boilerplate affirmative defenses is obvious.

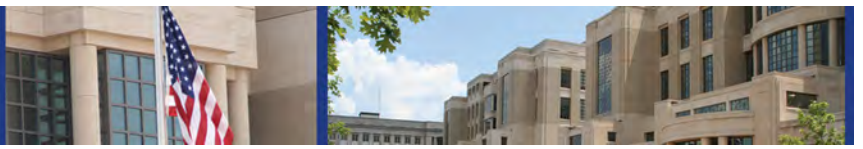
How individual district courts or the Sixth Circuit Court of Appeals will rule on questions regarding heightened pleading standards for affirmative defenses remains questionable. Equally unclear are the consequences for failing to plead an affirmative defense with sufficient factual support, as federal district courts have shown inconsistent willingness to permit a party to amend its insufficiently pled affirmative defenses versus simply striking the defenses, with some courts adopting a three-strikes-and-out approach.

Counsel should be alert to the increasing amount of litigation in federal courts concerning pleading standards for affirmative defenses and be prepared to defend accordingly against a motion to strike. Moreover, defense counsel who practice in both federal and state court should not be surprised to see similar types of litigation in Kentucky state courts. Based upon the proposition that Kentucky courts rely upon federal case law when interpreting a Kentucky rule of procedure that is similar to its federal counterpart, some Kentucky courts have already adopted and applied *Twombly* and *Iqbal* to state court complaints. See, e.g., *Cales v. Medtronic, Inc.*, Civil Action No. 14-CI-1774, 2014 Ky. Cir. LEXIS 1, \*12 (22nd Judicial Circuit Court, Fayette County Nov. 21, 2014). See also, *McDaniel v. Commonwealth*, 495 S.W.3d 115, fn6 (Ky. 2016) (noting with approval the notice pleading standard set forth in *Twombly* and *Iqbal*).

- Dana R. Howard and Quinn M. Hill  
Stoll Keenon Ogden PLLC



# Domestic Relations Update



Crystal Shepard

The Family Law Section of the Fayette County Bar is pleased to announce our Tuesday presentations began September 12, 2017.

Each month from September through May, the Family Law Section will meet on the second Tuesday from 11:30 to 1:00. Lunch is provided and the cost is \$25.00 for members and \$35.00 for non-members.



Anna Dominick

The September presentation was a judicial panel with all four of the family law Judges in Fayette County speaking. On October 10, Elizabeth Hill will discuss how to effectively use social media in family law cases. On November 14, Josh Fain from Legal Aid of the Bluegrass will speak regarding the need for more practitioners to take on pro bono family law cases and how Legal Aid of the Bluegrass can assist in these matters. December 12 will be our yearly Family Law Jeopardy, which is always an entertaining time. January 9, Glen Bagby will deliver a CLE titled “Wills, Trusts and Divorce-Sometimes A Bad Combination.” February 13, Calvin “Dee” Cranfill will be discussing tax issues and divorce.

We are working to finalize speakers for the remainder of the 2018 year and will provide further information in future issues.



## FCBA Health Law Section Update



Tricia Shackelford

I am deeply honored to have the opportunity serve as your Chair of the Fayette County Bar Association’s Health Law Section this year. We are in the midst of a historic transformation of our nation’s health care system. Insurance companies, providers, and patients continue to operate in a world of great uncertainty. There is confusion and controversy surrounding the Affordable Care Act. Now the “repeal and replace” debate over competing proposals to “fix” problems such as coverage, access and quality of care only serve to prolong this uncertainty.

My goal over this year is to work with you to breathe new life into this revitalized Section of the FCBA by providing a forum for communication and education leading to the understanding and development of the field of health law for our members.

We have already scheduled a great CLE Lunch & Learn on Medical Review Panels planned for October 17. I would also like to develop regularly scheduled informal lunches and Section social outings, like Keeneland, to provide our members with a forum to network and share ideas on a regular basis.

If I can be of individual assistance to you, do not hesitate to contact me at (859) 231-1560 or [tricia@slofirm.com](mailto:tricia@slofirm.com).



# Women Lawyers Association

## **Habitat for Humanity Women Build**

Members of the WLA understand the importance of women supporting women. That is why we have teamed up with Lexington Habitat for Humanity to co-sponsor this year's Women Build. Developed through the partnership between Lowe's and Habitat for Humanity, the annual Women Build challenges women to help eliminate poverty housing by constructing simple, decent, and affordable housing in the community.

The 2017 Lexington Women Build will provide a new home for Tamar Israel and her three sons Tylín, Noah, and Bryan (pictured right). The Israels will become the 18th family helped through Lexington Habitat Women Build! Tamar told her story at the FCBA WLA Luncheon in August, and expressed her sincere gratitude for the opportunity to become a homeowner.

Before she can accept the keys to her family's new home, Tamar will go through extensive training on homeownership, property maintenance, and financial management. She and her boys must also put in at least 200 hours of "sweat equity" working on their home.

The FCBA WLA set a goal to raise \$10,000 of the funds required to build the Israels' new home, and we have raised over \$7,000 to date! You can help us meet our goal by mailing a check payable to "Lexington Habitat for Humanity" to Trish Hatler's attention at 700 East Loudon Avenue, Lexington, KY 40505. Please be sure to write "WLA – Women Build" in the memo line.

The Women Build begins on October 25th and will continue through the end of the year. If you are interested in participating, contact Trish Hatler at [trishh@lexhabitat.org](mailto:trishh@lexhabitat.org) or 859-252-2224 ext. 123. All volunteers are welcome regardless of gender, and no experience is required.

"This is the perfect example of women helping women," states FCBA WLA President Amanda Lockaby. "We are so grateful for the opportunity to really make a difference in the Lexington community while also strengthening the relationships among women in the legal community at the same time."

More information about the Women Build is available online at <https://www.facebook.com/pg/>

[lexhabitatwomen.org](http://lexhabitatwomen.org). THANK YOU to everyone who has donated to the 2017 Women Build.



## **In Other WLA News:**

- In July, we were honored to host Kentucky State Representatives Sannie Overly, Kelly Flood, and James Kay at our monthly luncheon. They gave an excellent summary of the recent legislative updates.
- Our next luncheon will take place on October 18 at Portofino. Join us for a one-hour CLE about female imprisonment from UK College of Law Professor Allison Connelly.
- Our November 15 luncheon will feature Michelle Browning Coughlin, founder of MothersEsquire, [www.mothersesquire.com](http://www.mothersesquire.com).



# Legislature Takes the Bite Out of Landlord Liability for Dogs

In news that should have tails wagging for landlords and insurance providers throughout the Commonwealth, the statehouse passed a revision to the law that confers liability on dog owners by largely exempting landlords from liability. This modification is a response to a 2012 Kentucky Supreme Court case that conferred potential strict liability on landlords for dog bites. Since that decision five years ago, landlord groups, insurance companies, and chambers of commerce have been working to pass a law to clarify that liability is the responsibility of the dog owner. Earlier this year, Rep. Stan Lee of Lexington led the charge to make the change in law, which is expected to result in lower insurance premiums and less court appearances for landlords across the state.

The new provision is a course-correction from the 2012 Kentucky Supreme Court decision in *Benningfield v. Zinsmeister*, 367 S.W.3d 561 (Ky. 2012). In that opinion, the court interpreted the definition of a dog's "owner" under KRS 385.095(5) to include landlords, as the text of the law read, "'Owner'...includes every person having a right of property in the dog and every person who keeps or harbors the dog, or has it in his care, or *permits it to remain on or about premises owned or occupied by him ...*" (Emphasis added). Liability would then flow from KRS 258.235(4), which states, "Any owner whose dog is found to have caused damage to a person, livestock, or other property shall be responsible for that damage."

To prevent landlords from continuing to get bitten by this interpretation of the dog bite statute's ownership provisions, HB 112 was passed in the 2017 legislative session and signed into law by Gov. Matt Bevin in March. The following changes to KRS 258.095 took effect on June 29:

(5) "Owner," when applied to the proprietorship of a dog, includes:

- (a) Every person having a right of property in the dog; and
- (b) Every person who:
  - 1. Keeps or harbors the dog;
  - 2. Has the dog in his or her care;
  - 3. *Permits the dog to remain on or about premises owned and occupied by him or her; or*
  - 4. *Permits the dog to remain on or about premises leased and occupied by him or her ...*

(Emphasis added).

By requiring that "ownership" of a dog only attaches when the person occupies the premises in question, this new language effectively bars strict liability (liability absent a showing of negligence) for a large swath of landlords, liability that has been hounding them since 2012. This change may not eliminate potential negligence claims, but the liability of landlords for dog bite claims is expected to be curtailed significantly.

-John Michael Carter,  
McBrayer, McGinnis, Leslie & Kirkland PLLC

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**The FCBA Young Lawyers Section would like to recognize and thank the top five donors to our 16th Annual School Supply Drive:**

1. Stites & Harbison, PLLC
2. Sturgill, Turner, Barker & Moloney, PLLC
3. Kinkead & Stiltz, PLLC
4. Stoll Keenon Ogden, PLLC
5. Monzingo Law Office

The Young Lawyers Section thanks these firms and all who helped make this drive a success. Together, we provided nearly \$2,000 worth of school supplies to Fayette County middle school students. Thanks to all for participating, and we hope all will continue their generosity in the upcoming 28th Annual Thanksgiving Basket Drive.

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# How Cancer Saved My Life



Shelley Chatfield

I was a “social exerciser” – meaning I would go try out the latest exercise trend with a friend followed by laughter at a coffee shop or shopping at the local mall. It was good I exercised regularly, but it wasn’t great. There was no real commitment, and a sale at Nordstrom could definitely knock a workout of the schedule for the day. And don’t even get me started talking about the holiday season! Workout? When do you fit that in?

But then it happened. A routine mammogram in 2013 was followed by another and then there was this:

I lay on my side and watched the needle on the ultrasound screen penetrate my body and then, slide into each of the solid masses, one after another. My silent prayers started as pleas to help me accept and face the outcome, but the pleas soon became more desperate as I watched the needle prod the dense, white spots on the screen. Finally, at a loss for how else to beg, I began reciting the Lord’s Prayer, in an audible whisper. I later wondered what my radiologist thought, but he stayed focused on his work. I’m not sure how many times I got through the Lord’s Prayer, but I know it was more than twice. The radiologist completed his work and before leaving the room, leaned over me, looked into my eyes, squeezed my hand, and said, “I hope everything turns out okay.”

He knew.

I knew.

But even though I thought that I knew at that moment, I still wasn’t prepared to hear it. After you hear the “c-word” come through the phone, the rest is just noise. Family and friends later peppered me with questions – “What stage are you?” “How many tumors are there?” “How big are they?”

I couldn’t answer any of their questions because all I had heard was just a bunch of noise.

The days to follow were the loneliest moments in my life because despite all the love showered on me by friends and family, despite the flowers that arrived at my door, and the cards in my mailbox, despite all that –

this cancer was in **MY** body. The love, the flowers, the cards – none of that could destroy the cancer. It was **MY** battle.

It’s been said you never know how strong you are until you have to be. I uncovered herculean strength over the next year. After a bilateral mastectomy that March, my sister-in-law (and as I have three brothers, she is really a sister) came to stay with me for a few days. She undressed me and gingerly lowered me in the bathtub to take my first bath after surgery. I sat in shallow water and looked straight ahead, afraid to look down at what had been taken from me. When I was ready to emerge, I stood facing away from the mirror, stepped over the tub and lowered my head as my body turned toward the mirror. I was trying with all my might to work up the courage to look at what stood before the mirror. I took a deep breath and slowly raised my eyes to meet those looking back at me. Another deep breath and my eyes moved down the torso. What I saw was not what I expected. My upper body was covered with black lines drawn by the surgeon to map out his work and yellow and purple bruising filled in the white spaces between the grid lines appearing as a sort of impressionistic painting. There were steri strips covering incisions that appeared to be battle wounds. My shoulders appeared to point more rigidly and capped off the limbs beneath them which were defined by slight curves hugging inner strength. What I saw was not the vision of a victim, but was every bit a warrior complete with war paint black, yellow and purple. I gazed at the figure in the mirror and pushed those shoulders back a little farther and stood a little straighter. A resounding deep breath. All I could see was power and strength. A survivor. A victor.

It was at that moment that cancer saved my life.

I wish I had taken a picture of what I saw that day, but I did not, and maybe it is better. Maybe that vision required the lens of woman whose breasts had only just been amputated. Nonetheless, it is indelible in my mind.

I knew then, how very strong I am. I knew then how very strong I would become.

More surgeries and procedures followed – reconstruction, but I viewed it as the making of the \$6 million-dollar man. “We can rebuild her. We can make her better.” Food was no longer just enjoyment and

## How Cancer Saved My Life, continued

social (though it is still that, admittedly), but it was now fuel to power this corps I inhabit. Exercise was no longer just social (though it still is that, too), but it was now the means to strengthen the body and sweat out toxins. Nordstrom could no longer derail my workout (there's time for both). I am healthier than I have ever been, and oh, yeah, I did have cancer.

In fact, I became so devoted, I got certified to teach spin classes. I now teach at an indoor cycling studio which focuses on personal empowerment. I motivate our clients as they motivate me by their very presence.

I am not a victim. To be a victim, one has to be harmed. I was strengthened by cancer. I am a warrior – each and every day. Though no one can see my war paint, I did and I do. It is permanently etched on that figure in the mirror and in the corners of my soul. That is who I am and will always be.

*-Shelley Chatfield is an attorney by day and a motivator/instructor for CycleYOU Lexington nights and weekends.*

# FCBA Holiday Party



*Thursday, December 14, 2017  
5-7 pm, 21 C Hotel*

# *Save the Date!*



# Big League Debut

Karen Walker's son, Walker Buehler, made his major league debut with the Los Angeles Dodgers on September 7, 2017 with two scoreless innings of relief against the Colorado Rockies, including a strikeout. Buehler also played ball at Henry Clay High School, where he maintained a 4.3 GPA, and Vanderbilt University when they won the College World Series in 2014.

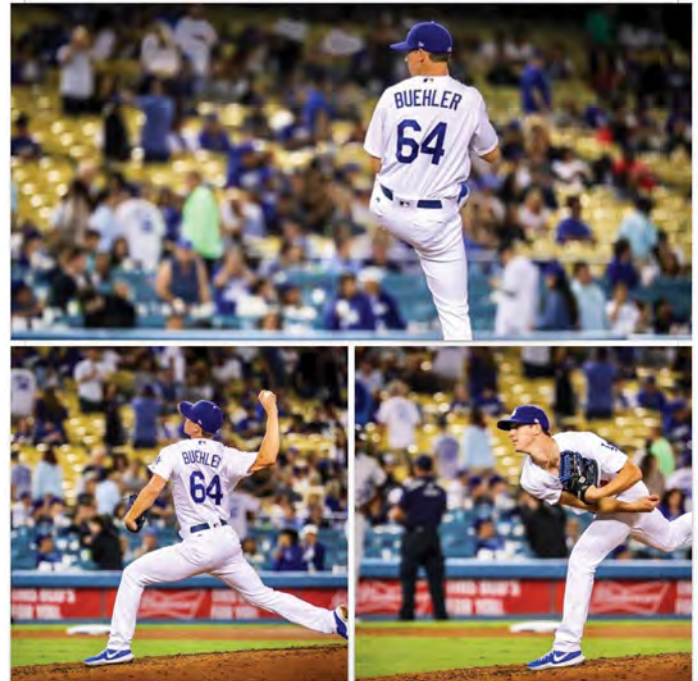


Los Angeles Dodgers added 3 new photos.



Friday at 1:23 AM • 🌐

That's a scoreless eighth for Walker Buehler in his MLB debut. #LetsGoDodgers



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# More from the 2017 FCBA



# SUMMER PICNIC







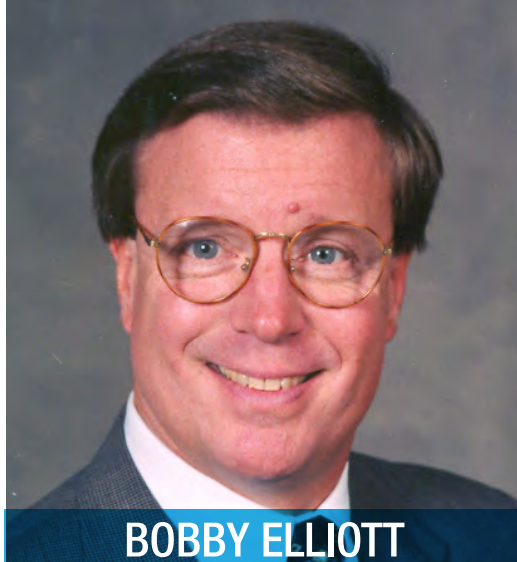
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## **Delcotto Law Group PLLC**

DelCotto Law Group PLLC is pleased to announce the addition of attorney **Heather M. Thacker** to the firm's Lexington office. Heather received her law degree, Cum Laude, from the Louis D. Brandeis School of Law at the University of Louisville, and her bachelor's degree from the University of Notre Dame. Before moving to Lexington, Heather practiced with a Cincinnati law firm where she focused primarily on creditors' rights. Here, Heather looks forward to concentrating her practice on consumer, business and municipal bankruptcies.

## **Dickinson Wright PLLC**

Dickinson Wright PLLC is pleased to announce that Chambers 2017 High Net Worth (HNW) Guide has named the firm's Private Wealth Law practice in Kentucky as a "Top Ranked" practice. Two Dickinson Wright attorneys are listed as "Leaders in their Fields". Private Wealth Law- **Jeffrey L. Gehring** and **Henry C.T. Richmond, III**

## **Dinsmore & Shohl**

Dinsmore & Shohl LLP welcomes **Shaye Page Johnson** to the firm's Lexington office.

Johnson is an experienced litigator, representing clients at depositions, mediations/arbitrations, hearings, trials and oral argument in state and federal courtrooms throughout the Commonwealth of Kentucky. Johnson will practice out of the firm's Litigation Department and focus her practice in complex commercial litigation, tort litigation and insurance coverage and bad faith litigation.

**Dinsmore & Shohl LLP** partner **J. Tanner Watkins** has been named Kentucky's 2017 Outstanding Young Lawyer. The award, given annually by the Kentucky Bar Association's Young Lawyers Division, recognizes a Kentucky attorney under 40 who has demonstrated exemplary legal accomplishment, civic service and community involvement. It is the Commonwealth's highest honor for a young attorney.

## **Fowler Bell PLLC**

Managing Member **Taft McKinstry** was inducted to the University of Kentucky Law Alumni Association Hall of Fame during the Alumni Awards Reception held at the Owensboro Convention Center on Wednesday,

June 21, 2017. The University of Kentucky Law Alumni Association Hall of Fame was established to acknowledge graduates and long-serving faculty of the College whose extraordinary professional success and contributions, profound positive influence on the College of Law, and high degree of character and integrity are recognized by their peers. Inclusion in the Hall of Fame is the highest honor bestowed by the UK Law Alumni Association.

Fowler Bell PLLC is pleased to announce that **Shawn D. Chapman** has joined the law firm as Associate in the firm's Litigation and Commercial & Business Law Groups.

His practice will focus on trial and appellate litigation and appellate consultations for other attorneys. Mr. Chapman brings more than a decade of experience working for the Kentucky Supreme Court on appellate cases touching on a broad spectrum of legal subjects, including commercial, corporate, and banking law; attorney discipline; extraordinary writs; contracts and torts; civil rights and employment; sovereign and governmental immunity; and the state and federal constitutions.

## **Hargrove Traughber LLP**

**Jamie Hargrove** and **Jamie Traughber** are pleased to announce their Estate and Trust Law Firm Hargrove Traughber LLP. Hargrove Traughber LLP has one of the largest Estate and Trust Practices in the Midwest, and it will continue focusing its practice in Estate Planning, Probate, Trust Administration and related Tax matters.

## **Kinkead & Stilz**

The members of Kinkead & Stilz, PLLC, are pleased to announce that **Melanie S. Marrs**, **David A. Trevey**, and **Tonya S. Rager** have joined the firm as members. Together, Melanie, David, and Tonya bring over 50 years of experience defending healthcare professionals, healthcare institutions, and other professionals. Their litigation practice enhances the firm's broad strengths – including municipal officer defense, business law, environmental law, real estate litigation and transactions, estate planning and litigation, and tax litigation.

## **McBrayer, McGinnis, Leslie & Kirkland PLLC**

As healthcare regulations mount, McBrayer increases its resources for providers with the addition of **Bill George** in the firm's Lexington office.

## Names in the News, continued

Mr. George began his legal career as a prosecutor at the Fayette County Attorney's Office in 2007. After working in medical malpractice, Bill joined Frost Brown Todd and for the next six years helped defend long term care providers, but also provided critical assistance to national and international insurance carriers. In this role, Bill supported clients' insurance regulatory and compliance operations, market conduct examinations, insurance product development and insolvency proceedings while coordinating and conducting regulatory and administrative hearings across the United States.

Congratulations to McBrayer Member **Jon Woodall** and all the team members and parents of Lexington's Eastern Little League. Mr. Woodall currently serves as President of the league. Eastern's 11/12 year old All-Stars were State Champions and Great Lakes Regional Tournament qualifiers! Over 3000 teams competed for a trip to the Little League World Series in Williamsport, Pennsylvania. Eastern was one of 32 teams remaining before being eliminated by eventual Regional Champion and Little League World Series qualifier Grosse Pointe, Michigan.

### **Morgan & Pottinger, PSC**

Morgan & Pottinger, P.S.C. announced that **Michele Whittington** has joined the firm's Lexington office as a member. Whittington's practice focuses on state and local taxation and administrative law. With more than 30 years of experience, she has represented taxpayers in a wide variety of tax and administrative matters, including real and personal property tax protests, public service corporation tax matters, occupational and license taxes, tax exemptions and insurance company taxes.

### **Stites & Harbison**

Stites & Harbison, PLLC attorney **Adam Smith** has been selected as a member of Leadership Lexington's Class of 2017-18.

United Way of the Bluegrass recently elected Stites & Harbison, PLLC attorney **John Pollom** to its Board of Directors. He will serve a three-year term.

## Broadway Debut

Colton Ryan, son of FCBA member and former president Kathy Warnecke Ryan, had his Broadway debut this past April in the title role of *Dear Evan Hansen*, the critically acclaimed winner of six Tony awards. Colton is the standby for the lead and two other roles. He is a graduate of SCAPA and Baldwin Wallace University in Berea, Ohio.







**Fayette County Bar Association**  
**219 N. Upper Street**  
**Lexington, KY 40507**



## Calendar of Events

### October 2017

- 17 Kentucky Medical Review Panel Law and Regs
- 18 WLA Meeting
- 26 Pro Bono Reception

### November 2017

- 10 Courts and FCBA Closed
- 14 Domestic Relations Practice Section Meeting
- 15 WLA Meeting
- 15 Dialogue with the Judges – Criminal Law
- 23-24 Courts and FCBA Closed

### December 2017

- 8 Winter Blood Drive
- 14 Holiday Party
- 25-26 Courts and FCBA Closed
- 29 Courts and FCBA Closed

### January 2018

- 1 Courts and FCBA Closed
- 15 Courts and FCBA Closed