The background of the cover is a photograph of a courtroom. It features dark wood paneling with decorative rectangular frames. An American flag is visible on the left side. The title 'THE LEXINGTON LAWYER' is overlaid in large, red, serif capital letters.

THE LEXINGTON LAWYER

**A publication of the
Fayette County Bar Association
2019, Issue 1**

THE LEXINGTON LAWYER

A publication of the Fayette County Bar Association

The Lexington Lawyer Article Submission Guidelines

Unsolicited manuscripts are accepted on subjects of interest to the legal profession. Manuscripts should be submitted in MS Word or PDF as an attachment emailed to info@fcba.com. Articles should not exceed 6 typewritten double-spaced pages.

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President's Message: *Marshall Hixon*



Marshall Hixon
FCBA President

Lessons from the Simpsons

It will come as no surprise to my friends and co-workers that I find inspiration for this President's Message in *The Simpsons*, the best-animated show ever. While I was tempted to summon my inner Saul Goodman with references to *Breaking Bad*, I will leave that to the planners of the annual ethics CLE.

It is hard to avoid regularly reflecting on *The Simpsons*, especially since it predicted the Donald Trump presidency. In an episode that aired in March 2000, Lisa Simpson is set to become the U.S. president tasked with restoring order and repairing a near-bankrupt nation in the wake of a disastrous presidency left by her predecessor, a fictionalized Donald Trump. While I hope *The Simpsons* is wrong about this one, since its debut in December 1989 (which occurred during finals of my freshman year at U.K. while I was living in Holmes Hall), *The Simpsons* have regularly predicted the future. The show's writers foresaw: the U.S. Olympic team winning gold in curling; a FIFA scandal, followed by a Germany win; smartwatches; phones with video; autocorrect; malfunctioning voting machines; an Ebola outbreak; a Nobel Prize winner; Guitar Hero; Greece's economic collapse; and the Siegfried and Roy tiger attack.

It's time to make a prediction of my own: As the annual billable hours for many of us reset back to zero, and as we look ahead to another year of practicing law, most of us will spend at least a few minutes trying to come up with a game plan to tackle the challenges for the next year. While *The Simpsons* is filled with bad personal and business advice – such as “Trying is the first step towards failure,” and “Aim low. Aim so low no one will even care if you succeed” – from time to time *The Simpsons* offered legitimately good lessons that lawyers can use. I leave you with four great lessons gleaned from *The Simpsons*, and I challenge each of you to incorporate them into your daily practice.

Respond timely. Homer Simpson, who is chronically late and undependable, serves as a temporary assistant to Mr. Burns. When Mr. Burns asks for his phone messages, they read: “You have 30 minutes to move your car,” “You have 10 minutes,” “Your car has been impounded,” “Your car has been crushed into a cube,” “You have 30 minutes to move your cube.”

The Lesson: Just respond to those emails and return those phone calls. They do not get better with age.

Be nice. Mr. Burns is jealous of megastore owner Arthur Fortune, who is beloved by the citizens of Springfield. In order to win the people's love, Mr. Burns solicits help from Homer Simpson. When his efforts ultimately fail, Mr. Burns becomes the most hated man in Springfield. To cheer him up, Homer reminds Mr. Burns, “To be loved, you have to be nice to others EVERYDAY! To be hated, you don't have to do squat.”

The Lesson: Like we teach our children if you are nice to people they will be nice to you.

Deliver on your promises. Homer Simpson saw an ad for all-you-can-eat seafood at the Frying Dutchman restaurant. He and Marge hired a babysitter and decided to hit the Frying Dutchman for date night. Hours after the other restaurant patrons had left, with Marge asleep at the table, Homer continued to shovel food into his mouth. Eventually, the restaurant staff kicked him out, and Homer cried, “But the sign said all you can eat!”

When Homer wants to sue the restaurant for false advertising, his attorney proclaims, “Mr. Simpson, this is the most blatant case of fraudulent advertising since my suit against the film *The NeverEnding Story*.” The parties ultimately agree to a settlement: Homer gets more food, and the restaurant uses him as a marketing ploy — “Come see Bottomless Pete, nature's cruellest mistake.”

The Lesson: Only make promises that you can back up, and follow through when you do.

Earn Repeat Clients. When it comes to customer service, no one in Springfield knows the value of a long-term client more than Apu Nahasapeemapetilon, the proprietor of the local Kwik-E-Mart convenience store.

Every customer is given the same cheerful farewell after their purchase: “Thank you, come again!”

Even if the big-box grocery stores offer a larger selection and better prices, they can't beat Apu's convenience and friendly service. For a small town “mom and pop” operation, customer loyalty is earned with every transaction.

The Lesson: Do more than expected, and your existing clients will become repeat clients.

Fayette County Bar Association

LAW ★ DAY
2019



In preparation for our Annual Law Day Celebration the FCBA would like your assistance with award nominations. After reviewing the award descriptions, please nominate a deserving candidate for the most befitting award and submit information by e-mail to: info@fcba.com or by mail to FCBA - Award Nomination, 219 N. Upper Street, Lexington, Kentucky, 40507.

Henry T. Duncan Award

In 1960, the Henry T. Duncan award was created to honor a member of the association who had made an outstanding contribution to the community. This award is presented to an attorney whose integrity, leadership and professional conduct serves to exemplify the high ethical and professional standards that benefit the community.

Citizen Lawyer Award

This award honors one member of the Fayette County Bar Association who has:

- practiced at least 10 years in Fayette County;
- is involved in governmental, civic, charitable or community activities;
- and has demonstrated a sincere desire to maintain and improve the administration of justice, the quality of legal practice and the quality of life for all residents of Fayette County

Outstanding Young Lawyer Award

This award honors one member of the Fayette County Bar Association who has:

- practiced in Fayette County less than 10 years;
- admirably fulfilled the duties owed by an attorney to the Court, clients and the community the attorney serves;
- and shown dedication to the justice system through their involvement and enhancement of community life.

Please include the following:

- Letter of nomination explaining your desire to nominate this person and why;
- Any supporting documentation you wish to include.

E-mail: info@fcba.com

Nomination deadline is Friday, March 15, 2019

If you have any questions, please contact the FCBA at 225-9897 or info@fcba.com.



Pro Bono Program



Josh Fain,

Pro Bono Coordinator, LABG

The Definition of JUSTICE

Merriam-Webster named 'Justice' as their 2018 Word of the Year. In order to be named Merriam-Webster's Word of the Year, the word must not only have cultural relevance but also must have been looked up significantly more than the prior year. Justice was looked up

74% more in 2018 than it was in 2017 and was in the top 1% of all searches. Merriam-Webster defines justice as "the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments" and also "the principal or ideal of just dealing or right action." Justice is a common word in our profession, and the definitions might seem straightforward but, it is a concept and reality that escapes many people in our society. The Justice Gap, a term coined by the Legal Services Corporation, is used to describe the difference between the civil legal needs of low-income Americans and the resources available to meet those needs. In short, the need is so great and the resources so little that many low-income Americans are going without legal representation in matters that can negatively affect their home, family, health, and income. Justice for all is something that we at Legal Aid of the Bluegrass fight for every day.

Joining us in the fight for justice for all are our amazing volunteers. Private Attorneys, Paralegals, Law students and other professionals that give freely of their time and talents to close the justice gap and to help provide justice to everyone regardless of their ability to pay. As we do every fall during the American Bar Association's National Celebration of Pro Bono, we celebrated and honored our volunteers in 2018 for all their hard work. The 2018 Fayette County Bar Association Pro Bono Program Inc. volunteer recognition celebration took place on Thursday, November 1st at The Mane on Main. The Pro Bono Attorney of the Year Award was presented to Barbara A. Kriz for her two decades of volunteer service. The Law Student of the Year Award was presented to Julie J. Greenlee, who as a student at the University of Kentucky College of Law has shown just how much of a positive impact a law student truly can have on other people's lives. The Trinia Clemons Friend of Pro Bono Award was presented to McBrayer, McGinnis, Leslie & Kirkland Government Solutions for their tireless work to help secure funding for Legal Aid of the Bluegrass in the 2018 budget. Special recognition was also presented to Justice VanMeter for the support that he and the other members of the Kentucky Supreme Court provide Kentucky civil legal aid programs. The Access to Justice Award was previously presented to Secretary John Tilley at the annual

Fayette County Bar Association Law Day Luncheon. We are grateful for the sponsorship and support 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 which allows us to host such a wonderful celebration.

We are incredibly thankful for these award recipients and the work that they do. They help provide justice to those that others wise would not receive it. Their work serves as a role model to us all and shows us that we have the ability to change people's lives for the better. The demand for services for Legal Aid attorneys far exceeds our capacity. There are approximately 10,000 low-income individuals per Legal Aid attorney in our service area. We rely heavily on the work of volunteers to help us meet the need and to provide justice. If you are looking for opportunities to connect with and support Legal Aid of the Bluegrass or are interested in attending any of our events, trainings or volunteering at any of our new or existing opportunities, please give me a call me at (859) 254-1141 or e-mail me at jfain@lablaw.org. I am confident that by using your knowledge and expertise to help ensure justice for all that you will gain as much from the experience as the client will. Helping others in need is truly a life-changing experience.



McBrayer, McGinnis, Leslie & Kirkland Government Solutions Members



Legal Aid of the Bluegrass Executive Director Joshua Crabtree and Justice VanMeter



Judge Goodwine and Barbara Kriz

New Attorney Swearing-In 2019

On October 31, 2019, Fayette Circuit Chief Judge Pamela Goodwine presided over the swearing-in of Fayette County's newest attorneys. This ceremony has gone on for decades and may be the only local presentation of new bar members in the state. Judges sat en banc to hear the motions of sponsoring attorneys who presented the new attorneys to the court. Kentucky Court of Appeals Judge Glenn Acree administered the constitutional oath of office to the new attorneys who had been formally sworn in at the Kentucky Supreme Court.

FCBA President Marshall Hixson spoke on behalf of the FCBA to welcome the new attorneys to the Fayette County Bar. Following the program, the FCBA hosted a reception for the Court and all attorneys attending.



HANK JONES

Insurance &
Personal Injury
Mediation

PAT MOLONEY

Healthcare, Nursing Home &
Medical Malpractice
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STEVE BARKER

Employment &
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When you need to settle your case, don't settle on your mediator.

The Sturgill Turner Mediation Center is equipped with experienced, AOC certified mediators and superior conference facilities, allowing us to provide prompt, quality mediation services. Located in Lexington and available for mediations statewide. Learn more about mediators Hank Jones, Pat Moloney and Steve Barker at STURGILLTURNERMEDIATIONCENTER.COM.



The Fayette County Bar Foundation is honored to announce the award of grants totaling \$37,000 to support fifteen organizations this year, including several new groups such as GreenHouse17, Junior Achievement of the Bluegrass, and Micah Legal Services. GreenHouse17 is the region's primary provider to assist survivors of domestic violence. Junior Achievement serves upper elementary classes by providing interactive concepts of career aspirations and work-readiness, including the role of attorneys in our community. Micah Legal Services is Kentucky's first sliding scale law office and provides affordable representation to those who otherwise could not afford it.

The Fayette County Bar Foundation recognized the 2018-19 grant recipients at a reception on Tuesday, October 23, 2018, at Shakespeare & Co. The event was well attended by lawyers, several circuit and district judges from Fayette County, and current and former members of the Court of Appeals and Supreme Court of Kentucky.

These are just three of over \$300,000 in total grants awarded by the Fayette County Bar Foundation in its eleven-year history. The Fayette County Bar Foundation's rich history of positively impacting our community was made possible thanks to an initial gift from the Fayette County Bar Association over a decade ago and ongoing, generous donations from Fayette County attorneys and law firms. The Fayette County Bar Foundation Board consists of members of the Fayette County Bar Association who are committed to the Foundation's mission to improve the judiciary, the administration of justice, law-related education and the legal profession, and to ensure equal access to our justice system for the poor and indigent.

2018-19 Grant Recipients:

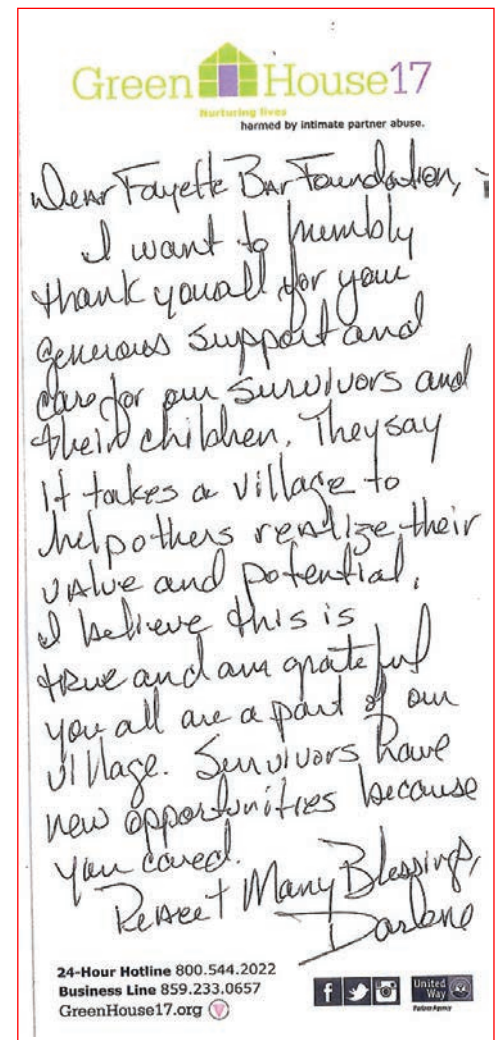
Child Advocacy Today
Court Appointed Special Advocates (CASA)
Children's Law Center
Explorium/Lexington Children's Museum
Grandparents as Parents Conference
GreenHouse17
Institute for Compassion in Justice, Inc.
Junior Achievement of the Bluegrass
Legal Aid of the Bluegrass
Lexington History Museum
Maxwell Street Legal Clinic
Micah Legal Services
The Nest
YMCA

Henry Clay Center for Statesmanship
Institute for Compassion in Justice, Inc.
John Rowe Chapter, National Bar Association Eat Well, Test Well program
Kentucky Access to Justice Commission
Kentucky Legal Education Opportunity (KLEO) program
Legal Aid of the Bluegrass Domestic Violence Program
Lexington Children's Museum- Kids' Court
Lexington Habitat for Humanity
Maxwell Street Legal Clinic
The Nest
Nursing Home Ombudsman
Sunflower Kids

Past Grant Recipients:

Access to Justice/Medical-Legal Partnership
Bluegrass Rape Crisis Center
Carnegie Center- Lawyers Reading to Kids (LARK)
Court Appointed Special Advocates (CASA)
The Children's Law Center
Credit Abuse Resistance Education Project (CARE)
Fayette County Bar Association Pro Bono and Legal Aid of the Bluegrass
FCBA Summer Law Camp
Grandparents as Parents Conference

For more information about the Fayette County Bar Foundation, including how to apply for a grant or become a fellow, please visit the Foundation's website at www.fcbf.net.



2018 FCBA



HOLIDAY PARTY



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Women Lawyer's Association



Mary Ellis Patton,
WLA President

December Charity Auction and New Officers

Each December the WLA hosts its annual luncheon and charity auction. Members bring wrapped gifts which are auctioned off and the proceeds donated to the New Opportunity School for Woman. The New Opportunity School for Women is an organization that works to equip low-income Appalachian women with the knowledge and support to build a fulfilling life for themselves, their families, and their community.

The auction in December 2018 was held at 21C Museum Hotel. Anita Britton and Beth Feamster served as the “elves” (or auctioneers). Members bid (or were harassed to bid by the elves) on a variety of fun items including RGB action figures, candles, coffee, jewelry, Magee’s cookies, and lovely horse t-shirt. The lovely horse t-shirt brought in the most money with a winning bid of \$1,000. Ultimately the group raised over \$6,000 for the New Opportunity School for women.

More information about the New Opportunity School for Women, visit www.NOSW.org.

Katie Martin also ended her term as president of the FCBA WLA in December. Thank you, Katie, for an amazing year!

The 2019 officers are:

President- Mary Ellis Patton – Bluegrass Elderlaw, PLLC.

Vice President - Langdon Ryan Worley - Sturgill, Turner, Barker & Moloney, PLLC

Treasurer – Ella M. Dunbar – Big Ass Solutions

Mentor Chair – Elizabeth A. Combs



*Liz Thompson DISSENTS at the WLA
White Elephant Auction to benefit New
Opportunity School for Women.*

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 Greenebaum Doll LLP
Bluegrass Elder Law, PLLC
Boehl, Stopher & Graves LLP
Casey, Bailey & Maines, PLLC
Clark Law Office, Inc.
Dickinson Wright PLLC
Fowler Bell PLLC
Frost Brown Todd LLC
Gess Mattingly & Atchison, P.S.C.
Golden Law Office PLLC
Green Chesnut & Hughes, PLLC
Hare, Wynn, Newell, & Newton, LLP

Kentucky League of Cities
Kershaw and Baumgardner
Kessinger Law Group, PLLC
Kinkead & Stilz, PLLC
Landrum & Shouse LLP
Legal Aid of the Bluegrass
LFUCG-Dept. of Law
Littler Mendelson, PSC
Mattmiller Crosbie, PLLC
McBrayer, McGinnis, Leslie & Kirkland
Mehr, Fairbanks & Peterson Trial Lawyers
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Miller, Griffin & Marks, PSC
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Rose Grascch 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
Williams, Kilpatrick & True, PLLC
Wyatt, Tarrant & Combs, LLP



Judge VanMeter Swearing-In

Judge Lucy VanMeter was formally sworn-in to the Fayette County Circuit Court Div. 3 on December 21, 2018. Chief Circuit Judge Kim Bunnell presided over the formal investiture of Judge VanMeter. Special Remarks were delivered by William M. Lear. Justice Laurance VanMeter held the bible while Chief Justice John Minton administered the oath of office. Judge VanMeter was robed by Perry Bentley, Judge Sheila Isaac (Ret.) and Judge Lewis Paisley (Ret.). After the ceremony, a reception was held by the Fayette County Bar Association in the first floor assembly room in at the Kentucky Supreme Court.



Judge Goodwine Swearing-In

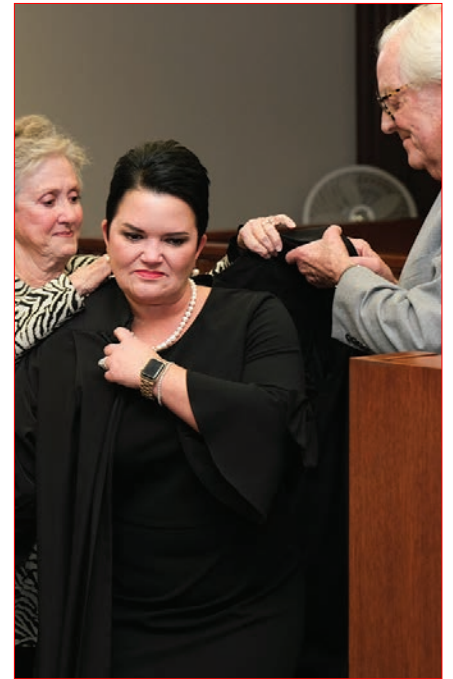
Judge Pamela Goodwine was formally sworn-in to the Kentucky Court of Appeals on Monday, January 7, 2019. Chief Kentucky Court of Appeals Judge Denise Clayton presided over the formal investiture of Judge Goodwine at the Fayette Circuit Courthouse. Judge Vanessa Dickson and Barbara Edelman gave remarks during the ceremony. Lee Padgett held the bible while Supreme Court Justice Laurance VanMeter administered the oath of office. Lee Padgett and Beth Keller (in memory of Justice James Keller) robed Judge Goodwine. The Fayette County Bar Association held a reception immediately following the ceremony.



Justices of the Supreme Court and fellow Judges of the Court of Appeals were present.

Judge Thurston Swearing-In

Judge Lindsay Hughes Thurston was formally sworn-in as Fayette District Judge, 3rd Division on Friday, January 11, 2019. Chief District Judge T. Bruce Bell presided. Allison Connelly and W. Terry McBrayer made remarks during the ceremony. Kentucky Supreme Court Justice Michelle Keller administered the oath of office, and John Thurston held the bible. Judge Thurston was robed by Terry McBrayer and Phyllis Thompson Halloran. The Fayette County Bar Association held a reception immediately after the ceremony.



Judge Tackett Swearing-In

Judge John Lindsay Tackett was formally sworn-in as Fayette District Judge, 1st Division on Friday, January 18, 2019. Chief District Judge T. Bruce Bell presided. Judge Megan Lake Thornton (Ret.) delivered remarks during the ceremony. Kentucky Court of Appeals Judge Pamela Goodwine administered the oath of office while Sarah Michelle Merlin held the bible. Edward Dove and Joseph Childers robed Judge Tackett. The Fayette County Bar Association held a reception immediately after the ceremony.



2019 Legal Food Frenzy

Did you know there are 700,000 Kentuckians, including more than 200,000 children, who struggle with hunger every day? That means about one out of every six adults, and one out of every five children in Kentucky lack enough food for a healthy, active lifestyle. Although the Kentucky Association of Food Banks (“KAFB”) exists to provide food and quality services to those suffering from hunger, almost 40% of Kentucky’s food banks do not have enough food to meet the needs. They need our help!

KAFB joined forces with The Office of the Attorney General, the Young Lawyers Division of the Kentucky Bar Association, and the office of the Secretary of State in 2017 to create The KY Legal Food Frenzy aimed at helping fight hunger. An annual hunger-relief campaign that supports Kentucky’s seven regional food banks, the Legal Food Frenzy is a friendly competition among Kentucky law firms, legal organizations, and law schools. In 2019, our goal is to raise \$100,000—the equivalent of 800,000 lbs. of food—for hungry Kentuckians!

The 2019 Legal Food Frenzy campaign will then take place on **March 11-18, 2019**. (Registration is open now at www.kyfoodfrenzy.com). This year, we will be hosting a “virtual campaign” where participants can donate money in person or online. Due to the buying power of the food banks, every \$1 donated can purchase 8 lbs. of food!

Participants will compete in the following categories:

- Solo Law Firms (1-3 attorneys)
- Small Law Firms (4-10 attorneys)
- Mid-Sized Law Firms (11-49 attorneys)
- Large Law Firms (50+ attorneys)
- Corporate Legal Departments
- Government Entities
- Law Schools

The firm or organization that contributes the most will be awarded the prestigious Attorney General’s Cup. In addition, there will be a new award this year presented to the KBA Supreme Court District that contributes the most to the 2019 Legal Food Frenzy. All winners will receive their awards during a special luncheon and reception at the KBA Annual Convention in June 2019 in Louisville. The winners will also be recognized for their achievement in the Bench & Bar.

Most importantly, though, the support of attorneys across our Commonwealth will help ensure that the food banks are fully stocked at a time of critical need: the summer months when children are out of school and do not have access to government-funded lunch programs. The YLD is hopeful that every member of the KBA will participate in this important initiative. And, a strong showing from Fayette County would be a big help!

Register your firm or organization to participate today!

More information can be found at

www.kyfoodfrenzy.com.

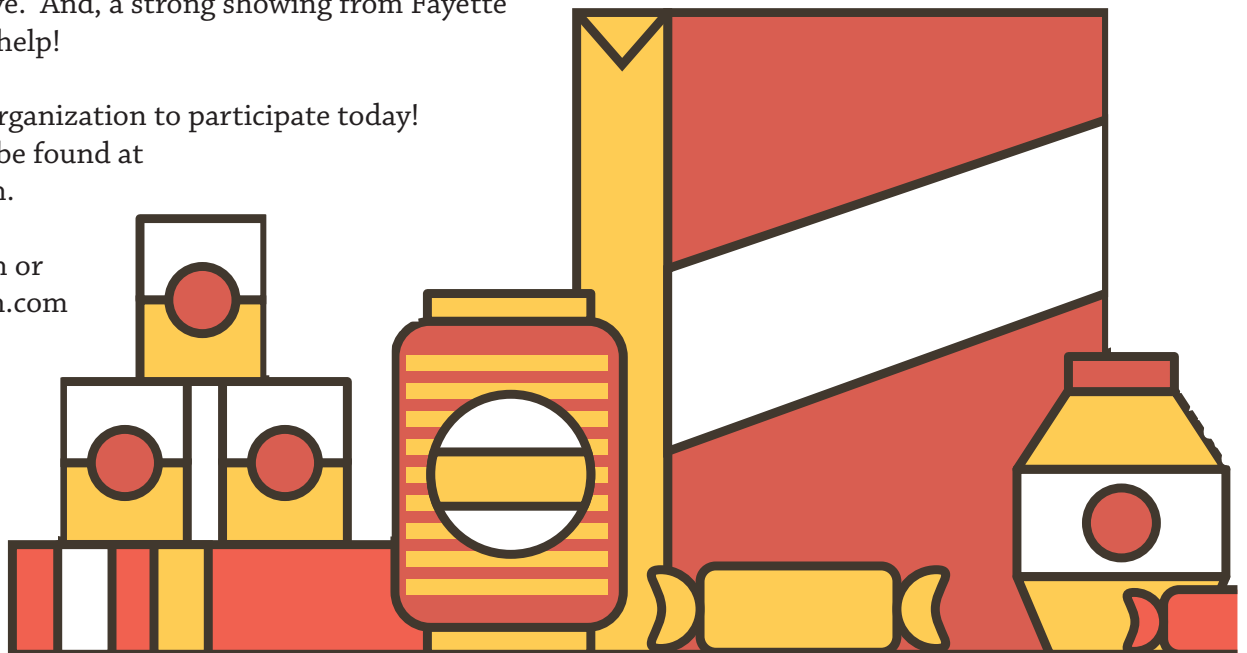
Please email

info@kyfoodfrenzy.com or

ecombs@wilkesmchugh.com

with any questions.

Follow our Facebook page – “Ky Legal Food Frenzy” – for updates throughout the campaign. We hope you will help us #feedthefrenzy!



Judge Thornton Retirement

*FCBA celebrated 25 years of Judicial Service
by Judge Megan Lake Thornton on Friday, January 3 at Oscar Diggs.
Thanks to all who came to celebrate Judge Thornton.*



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Judge Philpot Portrait Unveiling

Judge Timothy Philpot (Ret.) was presented a portrait by the Fayette County Bar Association on December 18, 2018. Judge Libby Messer presided over the dedication ceremony that was held in the multi-purpose room of the Fayette Circuit Courthouse. Judge James Ishmael (Ret.) shared special remarks, and Judge Philpot and his wife Susan unveiled the portrait. Portrait artist Kiza Mukandama was present, and a reception hosted by the Fayette County Bar Association was held immediately following the ceremony.



Judge Tackett Portrait Unveiling

Newly sworn Judge John Tackett and his sister, Sarah Tackett unveil the portrait of their mother, Judge Julia Kurtz Tackett on January 18, 2019. The portrait will be hung in the Judge Julia Kurtz Tackett Courtroom on the third floor of the Fayette District Courthouse. The unveiling was part of Judge John Tackett's investiture.



CARE Presentations at Lafayette High School



Guion Johnstone

Late last fall, Matthew Bunch, Robert Johnson, Guion Johnstone, and Judge John Tackett gave Credit Abuse Resistance Education (CARE) presentations at Lafayette High School. These four volunteers gave a total of eight presentations to reach nearly 500 high school seniors.

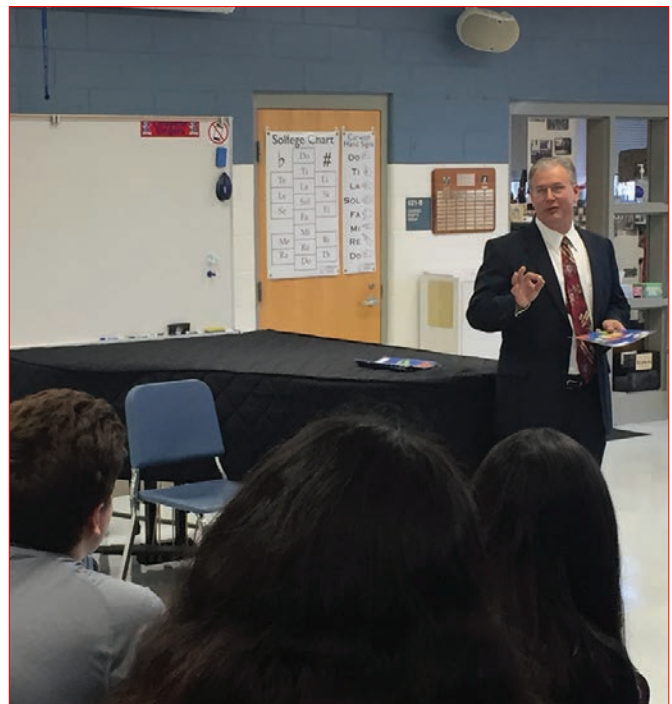
CARE is a national program in which volunteer attorneys and judges go into high school classrooms to speak with teens about credit responsibility. Without CARE, many students would not receive these critical financial lessons either at home or at school. Bunch explained, “Smart finances start young. CARE teaches kids when parents forget.”

The 50-minute classroom presentation is based on key financial literacy themes – dealing with money, budgeting know-how, using credit responsibly, common forms of credit, and real-life experiences with credit after high school. The presenters share with students their unique knowledge and experiences and provide them with lessons, tactics, and techniques they need in order to help them lead a financially responsible, consumer debt-free life.

“Financial literacy is vitally important to keeping young people out of debilitating debt. I wish the CARE program was taught when I was in high school. It was a great pleasure to speak to many thoughtful students who were eager to learn about commonsense approaches to managing their finances and building good credit,” Tackett offered following his presentation.

When asked about his volunteer work with CARE, Judge Johnson explained, “I got involved in the CARE program because it is a great way to reach out to high school seniors to teach them about some of the pitfalls of accumulating debt and misusing credit. I have gone through the materials with my own kids.”

The CARE Program has a presence in all fifty states and the District of Columbia. CARE, which is in its 12th year in Kentucky, is administered and funded by the Kentucky Bar Foundation.



The Federal Arbitration Act and Independent Contractor Truck Drivers

With the Kentucky Supreme Court's recent decision in *Northern Kentucky Area Development District v. Snyder*, arbitration has been a hot topic for Kentucky litigators. The United States Supreme Court recently reached an important decision in *New Prime, Inc. v. Oliveira* that also merits close consideration.

The Federal Arbitration Act ("FAA") broadly applies to a wide variety of employment and contracting arrangements, but contains a limited exception excluding certain transportation workers from its coverage. On January 17, 2019, the Supreme Court countered its recent wave of opinions favoring arbitration, unanimously holding that Section 1 of the FAA excludes from its coverage interstate truck drivers even if they are independent contractors and not employees. These workers, the Court held, fall within the FAA's Section 1 "contracts of employment exclusion."

The Supreme Court decided two questions of law about which trial and appellate courts had disagreed:

- (1) When an arbitration agreement delegates to an arbitrator questions regarding whether a matter should be arbitrated, must courts leave the determination whether Section 1 applies to the arbitrator?
- (2) Should Section 1's reference to "contracts of employment" apply only to employment relationships, or should the reference extend to include independent contractors?

The Supreme Court answered the first question in the negative—a reviewing court, not an arbitrator, should decide whether Section 1's "contracts of employment" exclusion applies before mandating arbitration. The Court held that the delegation clause would apply only if it was contained in a contract that does not trigger Section 1's exemption. Thus, if the Section 1 exemption applied, the delegation clause would not.

As to the second question, the Court focused on the FAA's statutory language and the meaning of the language when the FAA was enacted in 1925. Exploring the master/servant relationship and the interpretation of "contracts of employment" at that time, the Court concluded the FAA's drafters intended the statute to cover all relationships between employers and their

workers, not just employers and employees. In the Court's view, legal authority at the time provided no evidence that a "contract of employment" necessarily signaled a formal employer-employee relationship. Finally, the Court declined to address New Prime's suggestion that it order arbitration under its inherent authority to stay litigation in favor of an alternative dispute resolution mechanism of the parties, highlighting perhaps the narrow scope of its ruling.

After *New Prime*, employers will no longer be able to distinguish independent contractors from employees when assessing application of the FAA's Section 1 exemption. If these individuals are not covered by the FAA, individual state arbitration laws may well govern, leaving employers subject to a state-by-state patchwork of requirements.

■ Jay Inman and Rachel Satinsky, Littler Mendelson



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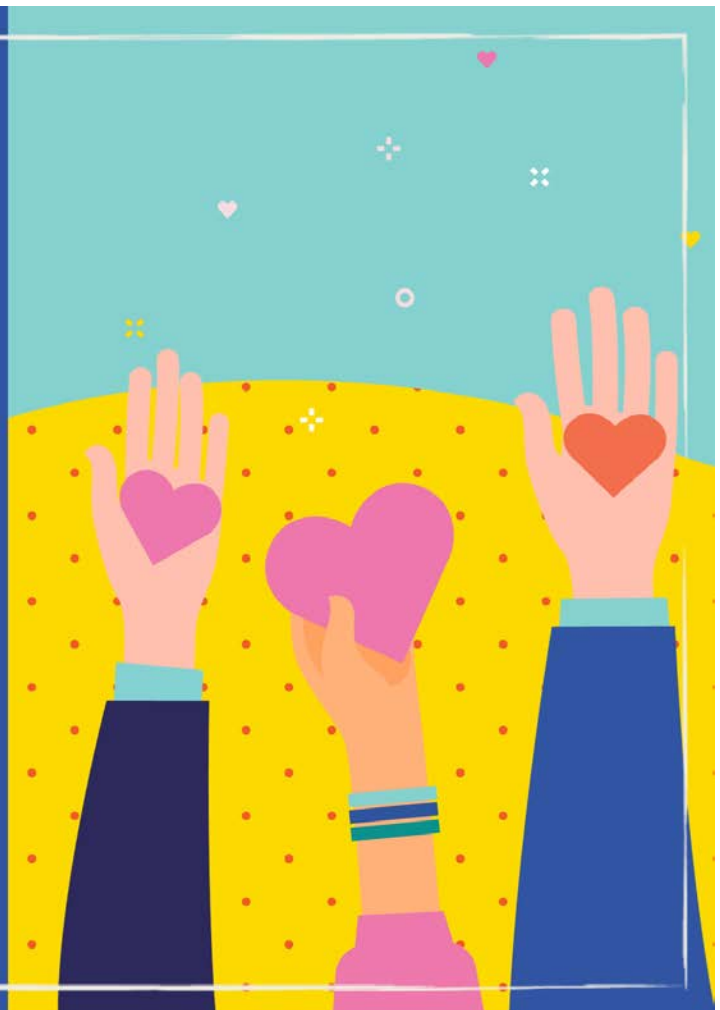
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Names in the News



Dickinson Wright

Dickinson Wright PLLC is pleased to announce the election of Attorney **Andrew Sparks** as Member of the firm, effective January 1, 2019. Andrew Sparks is a Member in the firm's Lexington office. He practices in the area of litigation with a particular emphasis on false claims act matters, government enforcement, white-collar criminal defense, internal and government investigations, health care, and complex business disputes. He also has worked as an Assistant United States Attorney in the Eastern District of Kentucky where he served as the chief of the white-collar crime division, responsible for all matters involving health care fraud, financial fraud, bank fraud, mortgage fraud, tax fraud, public corruption, cybercrime, environmental crime and civil False Claims Act cases. He is President of the Kentucky Federal Bar Association, and a member of the Kentucky Bar Association, the Fayette Bar Association, and the American Health Lawyers Association. Mr. Sparks received his B.A. from Transylvania University and his J.D. from the University of Kentucky College of Law.

Dinsmore & Shohl

Dinsmore & Shohl LLP has elected attorney and **Grahmn N. Morgan** to its board of directors. Grahmn is a partner in the firm's Lexington office and focuses his practice on complex business litigation. Grahmn represents corporations, financial institutions, and individuals in breach of fiduciary duty matters, shareholder disputes, breach of contract claims, mineral and energy litigation, and class actions. He also regularly advises clients in non-litigation matters, such as the negotiation and preparation of business contracts and due diligence for business ventures.

Fowler Bell

Fowler Bell PLLC is pleased to announce that **Jamie L. Collins** has joined the law firm as an Associate in the firm's Workers' Compensation, Litigation, and Commercial & Business Law Groups, with a focus on Workers' Compensation. He specializes in evaluating, litigating, and settling workers' compensation claims, medical disputes and subrogation matters for employers and their insurers.

Garmer & Prather

Bill Garmer, Garmer & Prather, PLLC, has been named the #3 attorney in the 2019 edition of the Super Lawyers® Top Ten for the Commonwealth of Kentucky. Bill is a graduate of the University of Kentucky, the University of Kentucky College of Law, and was inducted into the University of Kentucky College of Law Hall of Fame in 2014. Bill is the Immediate Past President of the Kentucky Bar Association. His office is located at 141 N. Broadway in Lexington.

Greater Lexington Paralegal Association

Newly elected and appointed 2019 Board Members for the Greater Lexington Paralegal Association.

President: Mary Clark; Vice President: Rachel Floyd; Secretary: Katie Stinnett; Treasurer: Mary Nichols; Board at Large: Whitney Turpin, Jennifer Warren.

Jackson Kelly

Jackson Kelly PLLC is pleased to announce that the firm has named **Clifton B. Clark** as the Lexington office managing member.

Clark will be assuming the duties and responsibilities of Mr. Robert F. Duncan who has served as the firm's Lexington office managing member since 2009. Clifton B. Clark's practice focuses primarily on corporate structuring and finance, commercial lending, mergers and acquisitions, and tax. From investment banking to non-profit organizations, his experience is wide-ranging. Clark has represented individuals and business clients of all sizes in industries including manufacturing, marketing, wholesale and retail sales, mining, banking and insurance, coal and natural resources, and the healthcare and pharmaceutical industries.

McBrayer, McGinnis, Leslie & Kirkland

Attorneys **Trevor Nichols** and **Thomas "Neal" Morris** have joined McBrayer law firm's Lexington team. Both are 2018 graduates of the University of Kentucky School of Law and worked as summer associates before joining the firm as attorneys.

The addition of Trevor Nichols enhances the litigation practice, an area for which the firm is recognized in Kentucky and beyond. Trevor was active with the UK Legal Clinic in his time at the university including raising a record amount of funds at last year's Trivia Night fundraiser. He continues to volunteer with Big Brothers Big Sisters of the Bluegrass and is a native of Louisville.

Neal Morris's practice focuses on hospitality, specifically alcoholic beverage regulation. Before starting law school, Neal worked at Brown-Forman where he gained firsthand experience on how complex the highly regulated alcohol business can be and the challenge of staying in compliance.

Neal also practices in the areas of general litigation and insurance defense.

Attorney **Anne-Tyler Morgan** has returned to her legal practice as a Member in the Lexington office of the McBrayer law firm. For the past two years, Ms. Morgan has served the Commonwealth of Kentucky as Senior Policy Advisor and Deputy General Counsel to the Kentucky House of Representatives in 2017 and as Deputy Commissioner for the Kentucky Department for Medicaid Services beginning in January 2018. Starting in May, she acted as Senior Advisor to the Secretary of the Kentucky Cabinet for Health and Family Services.

Anne-Tyler Morgan previously practiced at McBrayer from 2013-2016 in the firm's thriving healthcare and administrative areas. The McBrayer team is thrilled to bring Ms. Morgan's extensive experience to serve the firm's clients again. Having led the compliance department of a Fortune 500 managed care organization before private practice, Ms. Morgan now brings a unique public/private balance to her understanding of how healthcare providers can thrive in compliance with legal and regulatory guidelines. Ms. Morgan now rejoins the McBrayer team and will consult with healthcare stakeholders as a primary component of her practice, representing clients on issues ranging from compliance with the Commonwealth's complex regulatory framework to the continued transformation of the state's adoption and foster care systems. She will also assist clients with legal issues related to campaign finance, elections, and Political Action Committees.

Names in the News, cont.

Attorney **Kenton L. Ball** has joined the McBrayer law firm at our Lexington office. Mr. Ball's main practice area is taxation and covers the full range of related subjects from income taxation to real property taxation, employment/payroll tax to estate taxation and beyond.

Mr. Ball has litigated tax matters before the US Tax Court, the Kentucky Claims Commission (formerly the Kentucky Board of Tax Appeals), and local boards of assessment appeals. He is a former attorney manager with the Division of Legal Services of the Kentucky Revenue Cabinet (1991-1998) and subsequently headed the tax department of a large CPA firm's Lexington office. He also holds an LL.M. in Taxation.

Reminger

Reminger Co., LPA is pleased to announce that **Alex L. Scutchfield** has joined our Lexington, Kentucky office. Alex has practiced law in Lexington for the past 21 years. Prior to moving his practice to Reminger, he worked at two large regional firms and was also a founding member of his own.

A trial lawyer with a breadth of experience, Alex has represented insurance, equine, real estate, banking, and other business interests in state and federal courtrooms throughout Central and Eastern Kentucky. In addition to experience in a variety of jury trials, bench trials, and arbitrations, Alex has successfully represented clients in hundreds of mediations. He also represents executors, administrators, individuals and families in simple probate administration as well as complex disputes regarding wills, powers of attorney and trust agreements.

After graduating from the University of California at Los Angeles, Alex attended the University of Kentucky's College of Law, where he served as President of the Student Bar Association, as Associate Editor of the Kentucky Law Journal and as a member of the Trial Advocacy Board. Alex is a past President of the Fayette County Bar Association and was named that organization's Outstanding Young Lawyer in 2004. He is currently a member of the Board of Directors of the Fayette County Pro Bono Program and the Lexington Challenger Tennis Charity, Inc., as well as a former Commissioner of the Lexington Fayette Urban County Human Rights Commission. He graduated from Leadership Kentucky in 2009.

Stites & Harbison

The Kentucky Chamber of Commerce recently appointed Stites & Harbison, PLLC attorney **W. Blaine Early, III** as Chair of the Energy & Environment Council. He will serve a two-year term.

The Kentucky Chamber has established five public policy councils to develop legislative priorities for each policy area of focus. The Energy & Environment Council assists the Chamber in promoting Kentucky as an energy leader and implementing policies that achieve environmental protection while supporting economic development and business growth.

Stites & Harbison, PLLC announced attorneys had been promoted within the law firm effective January 2019. The new Lexington Member (Partner) is **Ashley Owens Hopkins**. Hopkins is an experienced litigator and counselor on employment law issues, in addition to years of practice in tort and insurance defense. She has

trial experience in employment cases involving discrimination and retaliation under several federal statutes, including the ADA, FMLA, and FLSA. In addition, she frequently counsels clients on non-compete and non-solicitation agreements, employee handbooks, and other day-to-day employment issues.

The Construction Lawyers Society of America (CLSA) has elected Stites & Harbison, PLLC attorney **Cassidy Rosenthal** as a Fellow in its organization.

The CLSA is an invitation-only international honorary society composed of preeminent lawyers practicing in all areas of construction law. Membership is limited to 1,200 Fellows, with lawyers being invited into Fellowship upon a proven record of excellence and accomplishment in construction law at both the trial and appellate levels. Nominees may be from any discipline in the construction law field and must have outstanding ethical reputations. The CLSA is dedicated to promoting superior advocacy and ethical standards in construction law and fostering a scholarly exchange of ideas in construction law and related fields.

Rosenthal is a Member (Partner) of Stites & Harbison and based in the Lexington, Ky., office where she is the Lexington Office Executive Member. Her practice focuses on advising clients throughout all phases of construction projects including planning, contract drafting and negotiation, and project administration. She successfully guides her clients through construction claims and disputes including informal negotiations, mediation, litigation in state and federal courts, and in arbitration throughout the country.

Sturgill Turner Barker and Moloney

Sturgill, Turner, Barker & Moloney, PLLC welcomes **Michael J. LaCourse** and **Andrew K.N. Williams** to the firm.

Michael J. LaCourse is an associate attorney in the firm's Torts & Insurance and Business Law practice groups. His legal experience includes a term as law clerk for Chief Circuit Judge Paul F. Isaacs and several years in private practice with an insurance defense firm. Michael is a 2012 graduate of Gettysburg College and a 2015 graduate of the University of Kentucky College of Law.

Andrew K.N. Williams is an associate attorney practicing in the areas of business law, commercial litigation, civil litigation, and wills, trusts and estate law. Andrew is a 2012 graduate of the University of Kentucky and a 2018 graduate of the University of Kentucky College of Law.

Sturgill, Turner, Barker & Moloney, PLLC is pleased to announce that **L. Scott Miller** has been promoted to Member of the firm.

Scott's litigation practice focuses on defending police departments and police officers against claims of excessive use of force, malicious prosecution, unlawful search and seizure, and other federal civil rights actions. He also provides expert review of police policies and makes recommendations for best practices.



Calendar of Events

March 2019

12 Domestic Relations Practice Session Meeting

April 2019

9 Domestic Relations Practice Session Meeting

17 Women Lawyers' Association Lunch Meeting

May 2019

1 Annual Law Day Luncheon, *Hilton Downtown*

17 Blood Drive

21 Annual Two-Hour Ethics CLE, *Kentucky Theatre*

June 2019

25-26 Annual Bench & Bar CLE, *Fayette Circuit Courthouse*