



**KENTUCKY PARALEGAL  
ASSOCIATION  
2023 ANNUAL CONFERENCE  
BOOKLET**

**NOVEMBER 2 - 3, 2023  
HILTON LEXINGTON DOWNTOWN  
LEXINGTON, KY**

# A Message From Our President

Welcome to the 2023 Kentucky Paralegal Association 35th Annual Conference!

Today is a day to not only learn and mingle, but it also marks 35 years that the Kentucky Paralegal Association has been helping paralegals throughout the state succeed in their professions. We are here for you and are proud to have you as our members!

It was 20 years ago when I attended my first KPA Annual Conference as an ECU student. I was in awe of the gathering of so many legal professionals to celebrate such a great organization and invest in their continued legal education. For me, the KPA Annual Conference is now a reunion with old friends and a time to make new ones. I look forward to the various sessions because they are always top notch and thought provoking. My hope is that you have similar experiences as you attend. I encourage you to go to as many sessions as you can and network with other paralegals by handing out lots of business cards. As paralegals we know how important connections and relationships are and the Conference in whole is such a wonderful atmosphere of learning, sharing, and building those relationships.

I'm very proud to say that our Conference Committee has worked very hard this year to make this Conference the best yet. With that said, I hope you can walk away with new knowledge, new friends, and a goal of continued success in the years to come. Please note that as you mingle between sessions you will notice there are members wearing red roses, those members are your KPA Board, and they are the individuals you will communicate with if you have any issues, questions, or concerns. Those wearing white roses are KPA Board members as well as the 2023 Conference Committee, look to them for questions or concerns about the conference.

This year our philanthropy project is with Hank the Horse on its Pages for a Purpose. *Be Like Hank* is an inspirational storybook series about a lonely, neglected horse, who was saved by a friend. The storybook series teaches children lessons in friendship, kindness, giving back and the joys of life despite hardships. Also, a portion of all proceeds raised during the conference goes to Hank's Community Kettle with the Salvation Army. For Hank's Sake is an organization dedicated to harnessing the power and beauty of horses to inspire and encourage children of all ages about literacy. The organization has a steadfast commitment to rescuing neglected and unwanted horses, then providing them loving care, rehabilitation and retraining them for useful purposes. For Hank's Sake uses horses and equine related learning activities to bring love, hope and healing to vulnerable populations. Their mission is to empower communities for a brighter future. You can donate to our philanthropy project and become one of Hank's Heroes by simply scanning the QR code on the next page to help us work towards child literacy.

The best part about this project is that Hank, himself, will be attending in person for the Meet and Greet on Thursday and hanging out for the conference on Friday! So be sure to stop by and meet the star.

Lastly, learning and involvement never ends for legal professionals. I encourage you to get involved with not only the KPA but your local organizations as well. Involvement can be seen at all different levels. You can jump into a board position, or you can start by joining a committee. Elections for the new Board of Directors of the KPA begin in the Spring. Come and join us! It is extra time out of your daily life, but it is a rewarding commitment and something that will help you excel in your legal career. If you are interested in a position or just have questions, feel free to pull me aside, email me, or reach out to other board members.

I am excited to see you all in Lexington as we gather, learn, and continue our paths of continued growth in the legal community.

Welcome to Lexington and have a great Conference!

Mary M. Nichols, CKP  
2023-2024 KPA President  
mnichols@sturgillturner.com



**Hank The Horse®** The only horse with  
a trademark!

# Teaching Kentucky Paralegals to, "BE LIKE HANK"

"Hank teaches us that giving is good. Giving is kind. Giving is compassionate" - Tammi Regan, Hank's Mom

"Hank makes people stronger, kinder, and teaches us to love deeper." - Tammi Regan, Hank's Mom



The KPA is helping Hank publish his very own storybook!

Scan the code below to donate!

Stop by and say hi to Hank and Tammi at the conference!



When Hank visits schools and libraries, it's not only about reading, but about Hank's important community work like ringing his bell to help others. Children get the opportunity to ring Hank's bell with him! Hank's bell represents five important life lessons: **be kind, give back and help others, honor friendships, read more books, you are loved.** Hank is a National Red Kettle bell ringer!

The KPA is collaborating with Hank and Tammi to publish his storybook. "Be Like Hank" is an inspirational storybook series based on the life of Hank! Hank once lived alone and neglected on a farm. He was dirty and covered in mud. Hank didn't have any friends. Until one day he was saved by a new friend who would never give up on him. The storybook series is written for ages 2-6 and 7-12. Readers will learn about Hank's journey from a once forsaken horse to a life filled with love and many happy adventures...including attending the 2023 KPA Conference! All donations from the conference will go to help get Hank's story published and Tammi will make sure to mention the KPA in the book! Pre-orders for "Be Like Hank" will be available during the conference. Proceeds go to The Salvation Army's programs for hunger, homelessness and children's gifts. Go to [\\*\\*\\*\\*\\*forhankssake.org](http://*****forhankssake.org) and click on Hank The Horse Storybook to pre-order.

Hank's bio:

A Kentucky born horse, Hank was abandoned at the tender age of three, and left in a muddy pasture, his basic needs unmet. Tammi, an avid horse enthusiast and animal advocate, saw this emaciated Tennessee Walking Horse standing all alone, fell immediately in love and set about rescuing him.

As Tammi's very first rescue, Hank the Horse® became the Brand Ambassador for the nonprofit rescue organization that bears his face and name, For Hank's Sake. His little splotch of white fur beneath his forelock in the shape of a heart inspired the For Hank's Sake logo, creating a lifelong brand of love. His story became the first of many, and went on to become the driving force behind Tammi's mission: to be a safe haven and a voice for abused and neglected horses.

Since his rescue in 2011, Hank has matured into a strong, healthy, well-trained, and confident horse. He now lives the kind of happy and loving life deserving of all animals. Hank most often can be found grazing and clowning around with his herd mates and caretakers. He protects his herd, comforts the newcomers, and helps them adjust to life "just being a horse."

At the barn, Hank trains regularly for his volunteer duties and his role as an Equine Assisted Learning horse. He practices highly specialized skills which he employs to support community service programs, bring hope to vulnerable children, and empower and encourage kids of all ages. Hank is on a mission to continue giving children a brighter future.

## **A Special Dedication**

**We dedicate this conference to the  
loving memory of a dear friend, colleague, and  
KPA board member  
Tammy Phelps**



Tammy Phelps passed away on March 29, 2023, surrounded by her loving family. Tammy was born on November 8, 1964, in St. Louis, MO. She married Randell Phelps on September 4, 2013.

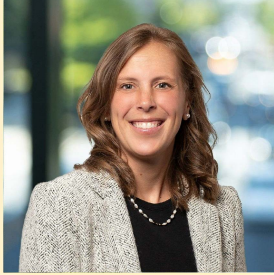
She is remembered as a motherly figure to many members of the KPA as well as a levelheaded paralegal who kept us all in line.

In 2019 Tammy was the recipient of the KPA's Founders Award. She was instrumental in helping to establish a new paralegal association in Bowling Green (SKAP). Tammy served on the board of not only SKAP but also the KPA.

Tammy's cheerful and kind attitude as well as her work ethic was an inspiration to all who knew her. Her family (especially her two grandchildren) and her job were her world.

She will be greatly missed.

# 2023-2024 KENTUCKY PARALEGAL BOARD



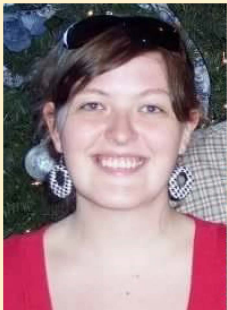
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# 2023 KPA Annual Conference Speakers



**Andrew DeSimone** is a Member attorney and chair of the Healthcare Law practice group at Sturgill, Turner, Barker & Moloney, PLLC, in Lexington, Ky. Andrew's litigation practice includes numerous trial and appellate victories in the areas of medical negligence, health care law, insurance defense, and governmental law. He defends doctors, individuals, hospitals and other facilities against medical negligence claims and federal and state regulatory actions, such as negligent care, wrongful death, and patient neglect and abuse, and has numerous published cases to his credit.

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**Harry L. Dadds**, originally from Louisville, is a Senior Member of and has been Of Counsel with the firm of Stoll Keenon Ogden PLLC since 2012. He was the co-chair of the firm's Health Care Practice Group from 2018-22 and also practices in the Alternative Dispute Resolution section. Mr. Dadds has more than thirty five years' experience in health law and public contracting having practiced health care and employee benefits law at the partner level with three firms and serving as Chief Legal Officer of Erlanger Health System in Tennessee. He returned to Kentucky in 2003 and was employed at the University of Kentucky where he served as Senior Associate General Counsel in the medical center. He has an undergraduate and law degree from the University of Kentucky and a Master of Law (in Taxation) from Emory University. Mr. Dadds is on the commercial panel of arbitrators for the American Arbitration Association and panel of arbitrators for the America Health Law Association. He is a retired Lieutenant Colonel in the Army Reserves. Mr. Dadds has served as adjunct faculty at Bellarmine University in Louisville, Kentucky teaching health law and ethics, and also is a past Chair of the Health Law Section of the Kentucky Bar Association.

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**Barbara Maines Whaley** has served as an Assistant Attorney General for 39 years, prosecuting cases in over 100 counties across the Commonwealth, serving nine Attorneys General. She has prosecuted cases of: child abuse, human trafficking, public corruption, environmental crime, corporate nursing home neglect, and capital murder. Some of Ms. Whaley's significant cases include: obtaining a life sentence for Gary Scott Pennington, the first school shooter in Kentucky - a senior at East Carter High School who killed his teacher, a custodian, and held 24 students hostage; a felony guilty plea with over a million dollars in restitution against a subsidiary of the Servicemaster Corporation for nursing home neglect; and a 20 year sentence against a former Campbell Co. District Judge for 21 counts of Human Trafficking. She served on the first statewide Multi-Disciplinary Team on Child Sexual Abuse; was a contributing author to the Sexual Assault Medical Protocol, and the Adult Abuse, Neglect, and Exploitation Medical Protocol; and now serves on the statewide Human Trafficking Task Force. Ms. Whaley has a B.A. and a J.D degree from the University of Kentucky, and a Master of Divinity Degree from Lexington Theological Seminary.

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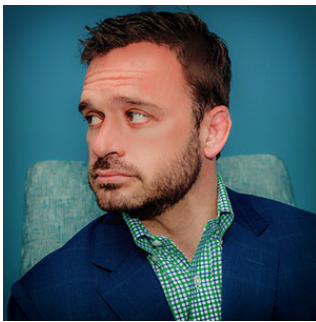
**Serah E. Wiedenhofer** has served as an Assistant Attorney General for two years. In that time she prosecuted cases involving Medicaid fraud and adult abuse, contributed to programs bringing awareness to the issues of human trafficking and child maltreatment, and collaborated with partner organizations and community members in efforts to prevent human trafficking and child maltreatment. Prior to joining the Office of the Kentucky Attorney General, she served as a public defender; practiced in the areas of divorce, child abuse, neglect and dependency, and commercial litigation; and clerked for now retired Justice Marilyn Kelly of the Michigan Supreme Court. Ms. Wiedenhofer has a Bachelor of Arts in Political Science from the University of Louisville and a Juris Doctor from Wayne State University in Detroit, Michigan.

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**Karen Ginn** is the Interim Executive Director and Director of Advocacy at Legal Aid of the Bluegrass. Karen joined Legal Aid of the Bluegrass from private practice in Northern Kentucky where she represented parties in family law conflicts and students with special education needs. She is a certified mediator. Prior to her legal career she worked in public relations/advertising and as an independent writer of educational curriculum. Ms. Ginn is a 2013 graduate of Northern Kentucky University, Chase College of Law. Her undergraduate degree is a B.A. in Journalism from the University of Kentucky. Along with her work at Legal Aid, she actively participates on boards and committees of community organizations and her religious denomination.

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**Dan Carman** is a native of Lexington, and a graduate of Davidson College and the University of Kentucky College of Law. He is a former Marine Officer, Iraq veteran, and former law clerk for the Hon. Jennifer Coffman, United States District Court. He is the Managing Member of Carman Fullerton, PLLC, and practices criminal defense in state and federal courts. He is also the founder of Lexington Bitcoin Consulting. Dan enjoys the Church, his family, music, and thinking about how changes in technology impact society.

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**James Martin** graduated from the University of Kentucky in 1999. Thereafter, he obtained his Juris Doctor from Northern Kentucky University, Salmon P. Chase College of Law in 2002. Since that time he has almost exclusively practiced in the areas of workers' compensation law. In the five years prior to joining Morgan & Morgan, Mr. Martin represented only injured individuals. Prior to that, he served not only as a Staff Attorney for the Kentucky Department of Workers' Claims, but he also spent many years representing employers in workers' compensation claims. Mr. Martin has been honored with the prestigious "AV Rating" by Martindale-Hubbell. The rating is based upon evaluations by other lawyers and is the highest ranking attainable for an attorney for their ability and ethics in the practice of law. Mr. Martin is married to Jennifer McVay Martin with whom he has two children: Connor and Reagan.

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**Carrie Bass** is a Staff Attorney Supervisor in the Division of Non-Advocacy in the KPPA's Office of Legal Services. In her current role, she reviews and consults on proposed legislation, oversees the promulgation of administrative regulations, and advises KPP A staff regarding complex and federal law issues affecting the qualified governmental retirement plans and health insurance trusts operated by the KPP A. Carrie also has experience litigating in KRS Chapter 13B administrative hearings as well as significant appellate experience at the Kentucky Court of Appeals and Kentucky Supreme Court. Carrie received her B.A. from the University of Kentucky and her J.D. from the University College of Law. Carrie resides in Lexington, Kentucky, with her husband, her toddler, a puppy, and two very high-maintenance cats. She enjoys trying new cuisines, science fiction and fantasy television shows and movies, and watching her toddler explore the world.



**Jessica Beaubien** is a Policy Specialist in the Division of Non-Advocacy in the KPPA's Office of Legal Services. Jessica joined the KPPA in April 2022. Jessica revises existing administrative regulations, writes new administrative regulations, and works on various projects related to administrative regulations, including revising publications, updating forms, and providing input on IT projects. Jessica has diverse experience in public service including disability determinations, Medicaid, KTAP and SNAP eligibility, and as a liaison and program coordinator with state Community Mental Health Centers and psychiatric hospitals. She has several years of experience in developing, writing and implementing policies, processes, forms, and trainings. She also has experience with assisting in regulation writing and the development and implementation of a statewide electronic records system. Jessica lived in far western Kentucky where she earned a Bachelor's degree in Criminal Justice and Sociology from Murray State University. In 2016, she and her family moved to Frankfort for career opportunities. When she is not working, Jessica can be found spending time with her husband, their children, and their granddaughter.

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**Stephen G. Amato** concentrates his practice in the area of hospitality law and represents the interests of a multitude of alcoholic beverage producers, wine and spirits wholesalers, malt beverage distributors, and on and off-premise retailers. He assists these businesses in connection with their federal permitting, state and local licensing, enforcement, transactional and public policy needs. Mr. Amato has developed strong and effective relationships with local, state and federal agencies who regulate the clients' businesses. He also serves as outside counsel for the Kentucky Distillers' Association, assisting in the formulation of the policies as set forth by its Board of Directors. He is a 1987 graduation of Transylvania University and a 1990 graduate of the University of Kentucky College of Law.

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**Robert ("Bobby") Houlihan, Jr.**  
**UK Law 1974**  
**(50 years FCBA member)**  
4yrs. - Gess, Mattingly, Saunier & Atchison  
3 yrs. - Assistant U.S. Attorney  
24 yrs. - Stoll, Keenon & Park (now Stoll Keenon Ogden)  
10 yrs.- Plaintiff Practice (Bobby Elliott, Kif Skidmore, Joe Savage, Trey Moore, Kris Mullins, Corey Erdman)  
9 yrs. - Mediator (Houlihan Dispute Resolution PLLC)

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**William "Joe" Fooks** is the Family Court Judge in the Fourth Division of the 14th Judicial District which includes Scott, Woodford and Bourbon County. Joe ran unopposed for that position and was elected on November 8, 2022. Family Circuit Court presides over Divorce, Custody, Status, Adoption, Neglect, Child Support and Domestic Violence Cases. In addition to his responsibilities as Circuit Judge, he is also the Special Judge in Scott County Teen Court. Prior to his election as Circuit Judge, Judge Fooks was a solo practitioner for 24 years. His practice included Family Law, Criminal Law, Probate, Juvenile Law, Personal Injury and Real Estate Closings. Before starting his practice, Joe was a public defender in the Fayette County Public Defender's Office for a year. As a public defender, he worked extensively in criminal law and worked with clients in Mental Health Court at Eastern State Hospital. Joe served for three years in the United States Army as a Spanish Linguist and he worked at the National Security Agency during that time. He graduated from Morehead State University in 1992 and Salmon P. Chase College of Law in 1996. In his spare time, he was a football coach in Bourbon County where he ran the youth and middle school program for a number of years. Joe resides in Georgetown, Kentucky with his wife of 32 years, Cindy. They have two sons. Jake Fooks is a Dentist in Fort Thomas, Kentucky. Ben Fooks is a recent graduate of Salmon P. Chase College of Law and is married to Katie Fooks. Ben is also the father of Joe and Cindy's new granddaughter, Laura Jane Fooks.



**Leah Marie Wedl** grew up in rural Wisconsin amongst dairy farms, cornfields, and truck stops. At 19, she moved to Fort Myers, FL where she received a bachelor's degree in criminal justice with forensic science emphasis. In 2014, she relocated to Lexington and then finished her education at Northern Kentucky University where she earned her juris doctorate in 2018. During school, Leah was on the Student Bar Association and served as an officer in Phi Alpha Delta. She took the July 2019 bar exam and became a licensed attorney in the Commonwealth of Kentucky.

Leah worked as a staff attorney for Legal Aid of the Bluegrass in Lexington before deciding to open her own firm in November of 2021. Leah has been the sole attorney at LMW Law, PLLC since then and has recently added her first employee, an intake specialist and admin named Tish.

LMW Law, PLLC assists clients with small business start-up, contract drafting, construction, debt collection, equine, and family law matters in Lexington and the greater central Kentucky area. She also serves on panels in Fayette and Jessamine Counties as legal counsel for dependent, neglected, and abused children. She is a member of the Fayette County Bar Association and is an officer of the Kentucky Animal Law Section.

Leah is recently married and they welcomed their first child to the family in early 2022. She has rabbits that she shows and pet chickens. In her free time, she likes being outdoors and reading.

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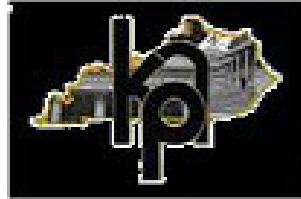
**Langdon Ryan Worley** is a personal injury attorney in Lexington, Kentucky. A graduate of Transylvania University and UK College of Law, Langdon started her legal career as a defense attorney, representing insurance companies and their insureds for approximately thirteen years before shifting to plaintiff's work. She now works at Hicks & Funksinn representing injured people involved in collisions, slip/trip and falls, and any other number of injury accidents. Over the course of her career, Langdon has had the opportunity to conduct discovery, take depositions of parties, witnesses, and experts, and try cases before Kentucky juries on both the plaintiff and defense sides, bringing a unique perspective to the discovery and trial process. Langdon is a member of the Fayette County Bar Association Board of Directors, the former President of the Women Lawyers Association for Fayette County, and a member of the Fayette County Bar Foundation Executive Board. She is also a Circle of Blue Society Member, supporting the UK Children's Hospital, and a member of Ronald McDonald House Charities' Special Events Committee. She lives in Lexington, Kentucky, with her husband, Preston, their two year old son, and their dog, Archie. Langdon's legal career has allowed her the opportunity to meet (and heavily rely upon and learn from) so many talented paralegals in the Lexington community and is honored to be a presenter today.

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**Chrisandrea (Chrissie) Turner** is a bankruptcy and creditors' rights litigator with Stites & Harbison, PLLC in Lexington, focusing on corporate bankruptcy and restructuring and adversary proceeding defense. Ms. Turner regularly represents lenders, trade creditors, lessors and lessees, sureties, and large creditors in Chapter 11 matters and complex bankruptcies around the country. Her litigation practice includes receiverships, preferential and fraudulent transfer defense in bankruptcies, nondischarge of debt adversaries and foreclosure. Chrissie's discipline of practice touches areas beyond bankruptcy, including environmental actions, healthcare matters and corporate transactions.

**Session I**  
**November 2, 2023**  
**5:00 p.m. – 6:00 p.m.**  
**Grand Kentucky Ballroom A**  
**Robert F. Houlihan, Jr.**  
**Paralegals and Mediators**



# Supreme Court of Kentucky

2022-04

## ORDER

**In Re: Adoption of Section XIII, Rule 99 and Rule 100 of the Kentucky Rules of Civil Procedure**

Under Section 116 of the Kentucky Constitution and Supreme Court Rule 1.010, the Supreme Court hereby adopts Section XIII, Rule 99 and Rule 100 of the Rules of Civil Procedure (CR) and replaces in their entirety the Model Mediation Rules (Administrative Order 1999-01) and Administrative Procedure Part XII, Mediation Guidelines for Court of Justice Mediators (Administrative Order 2005-02), effective **February 1, 2022**.

### **XIII MEDIATION RULES**

#### **CR 99 Mediation**

#### **Rule 99.01 Authority, preamble and scope**

#### **New Rule 99.01 shall read:**

1. These rules are adopted pursuant to the constitutional authority granted to the Supreme Court and consistent with Kentucky Revised Statutes (KRS) 454.011 and 446.010.
2. The Supreme Court finds that under some circumstances the process known as mediation may provide an efficient and cost-effective alternative to traditional litigation, and, further, that the wise and judicious use of mediation may benefit litigants.
3. Mediation allows parties an opportunity to resolve their issues through an **informal process independent of, and outside of, the court process**. A mediator serves as a neutral third person who encourages and assists settlement by facilitating communication between the parties.
4. These Rules shall be followed in any mediation ordered by the trial court. Parties are encouraged to follow these Rules in mediations not ordered by the trial court. However, nothing in these Rules shall prohibit parties from resolving disputes through other methods.

5. Mediation shall not be ordered in any case where one party may pose a risk of harm to other participants, and, in no event, shall mediation be ordered in conflict with KRS 403.036.
6. While the Supreme Court intends that the mediation process remain fully independent of, and outside of, the court process, a trial court retains its discretion to enforce its order to mediate; provided, however, a trial court shall not reallocate the cost of mediation after the mediation is completed and shall not fine, sanction, or penalize any party, or reallocate the cost of mediation because a case is settled after the court-ordered mediation.
7. No local rule, practice, procedure, standard order, or other policies of any trial court may conflict with or controvert these Rules.

### **Rule 99.02 Mediation defined**

#### **New Rule 99.02 shall read:**

Mediation is an informal process in which a neutral third person called a mediator facilitates the resolution of a dispute between two or more parties. The process is designed to help disputing parties reach an agreement on all or part of the issues in dispute. Decision-making authority remains with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

### **Rule 99.03 Referral of cases to mediation**

#### **New Rule 99.03 shall read:**

At any time on its own motion or on motion of any party, the court may refer a case or portion of a case for mediation. Courts shall not, however, follow any blanket policy or practice of referring all cases, or any particular type of case, to mediation, nor any blanket policy or practice requiring completion of mediation as a pre-condition to assigning a trial date. In each case, the court shall take the following factors into consideration:

1. The stage of the litigation, including the need for discovery, and the extent to which it has been conducted.
2. The nature of the issues to be resolved.
3. The value to the parties of confidentiality, rapid resolution, or the promotion or maintenance of on-going relationships.
4. The willingness of the parties to mutually resolve their dispute.

5. Other attempts at dispute resolution.
6. The ability of the parties to participate in the mediation process including the ability of any party, counsel or required representative to participate in virtual mediation.
7. The cost to the parties.

**Rule 99.04 No stay of proceedings**

**New Rule 99.04 shall read:**

Referral of a case to mediation shall not operate as a stay of discovery or other proceedings unless otherwise ordered by the court or agreed to in writing by the parties.

**Rule 99.05 Appointment of mediator**

**New Rule 99.05 shall read:**

Within fifteen (15) days of referral, the parties shall agree on a mediator or a mediation service. If the parties cannot agree, they shall notify the court. Only if the parties cannot agree on a mediator, the court will select a mediator who is recognized as a mediator in civil actions.

**Rule 99.06 Mediator compensation**

**New Rule 99.06 shall read:**

The mediator shall be compensated at the rate agreed between the mediator and the parties if the mediator is chosen by agreement. If the mediator is appointed by the court, the fee for the mediator shall be no greater than the mediator's standard rate as a mediator. Unless otherwise agreed by the parties or ordered by the court, the parties shall equally divide the mediator's professional fees.

**Rule 99.07 Mediation procedure**

**New Rule 99.07 shall read:**

1. The mediation conference shall be held at a time and place agreed between the parties. If the parties cannot agree, the court may direct the time or place of mediation.



2. The mediator may confer with the parties or their counsel prior to the mediation conference for the purpose of establishing procedures for the mediation conference and such other reasons the mediator deems appropriate to advance the process. These conferences may be *ex parte* at the mediator's discretion.
3. The mediator may require the parties to submit a confidential statement of the case or other materials that the mediator reasonably believes appropriate for efficiently conducting the mediation conference.

### **Rule 99.08 Attendance at mediation conference**

#### **New Rule 99.08 shall read:**

1. Unless otherwise ordered by the court or explicitly agreed to by the parties, the parties and their counsel, if any, shall attend the mediation conference.
2. If a party is a public entity, it shall appear by the presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body or officer of the entity.
3. If a party is an organization other than a public entity, it shall appear by the presence of a representative, other than the party's counsel of record, who has full authority to settle.
4. If any party is insured for the claim in dispute, that party shall also be required to have its insurance carrier(s) present by the presence of a representative of the insurance carrier(s) who is not that carrier's outside counsel; this representative must have full settlement authority. A court may not restrict a carrier representative from having telephone or other communication to seek additional authority.

Unless expressly ordered by the court, a party who is represented by counsel and the presence of a representative of the party's insurance carrier is not required to be present for the mediation.

5. Full authority to settle, or full settlement authority, means that the representative has authority to negotiate settlement on behalf of a particular party, organization, entity or insurance carrier. It does not require authority to settle for any specific amount or terms.
6. Unless otherwise agreed by the parties or ordered by the court, a mediation may be entirely virtual, or the presence of any attendee may be virtual.

## **Rule 99.09 Reporting to the court**

### **New Rule 99.09 shall read:**

1. If the court designates the mediator, that mediator shall notify the court promptly by written notice to the court and the parties when a case is not accepted for mediation.
2. At any time after a case has been accepted, the mediator may refer it back to the court for good cause, which shall be by written notice to the court and the parties.
3. If a case is settled prior to or during mediation, the attorneys shall promptly notify the court and prepare and submit to the court an order reflecting the fact of settlement as in any other case.
4. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall submit a joint statement to the court enumerating the issues that have been resolved and the issues that remain for trial. This statement shall be submitted within 10 days of the termination of mediation.
5. At the conclusion of cases accepted for mediation, the attorneys shall promptly report to the court in writing the fact that the mediation process has ended. If the parties do not reach an agreement as to any matter at mediation, their attorneys shall promptly report the lack of an agreement to the court. The attorneys by unanimous agreement, or the mediator with explicit unanimous consent of the parties, may report to the court identifying those matters which, if resolved or completed, would facilitate the possibility of settlement.

## **Rule 99.10 Agreement**

### **New Rule 99.10 shall read:**

If an agreement is reached during the mediation conference, it shall be reduced to writing and signed by the parties. The parties shall be responsible for the drafting of the agreement, although the mediator may assist in the drafting of the agreement with the consent of the parties.

## **Rule 99.11 Confidentiality**

### **New Rule 99.11 shall read:**

1. Unless agreed by the parties and the mediator, mediation conferences shall be closed to all persons other than the parties and their legal representatives.
2. No part of mediation may be recorded without express agreement of the parties, counsel and the mediator.
3. Mediation shall be regarded as settlement negotiations for purposes of KRE 408.
4. For purposes of this rule, all mediation communications, including documents, communicated during the mediation process are both privileged and confidential. For this purpose, the mediation process includes any communications with the mediator in advance of, during and after the mediation conference. They are not subject to disclosure through discovery or any other process and are not admissible into evidence in any judicial or administrative proceeding. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure or use during the mediation.
5. A mediator shall not disclose, directly or indirectly, to any non-participant any information communicated to the mediator by a participant within the mediation process.
6. It is the responsibility of each party and/or counsel to explicitly advise the mediator precisely what information communicated to the mediator is communicated in confidence so that it will not be divulged to other mediation participants.
7. A mediator shall not disclose, directly or indirectly, to any participant in the mediation any information communicated to the mediator in confidence unless the mediator is given permission by the communicating participant to do so. A mediator may encourage a participant to permit disclosure, but absent such permission, the mediator shall not disclose.
8. Unless otherwise allowed under CR 99 and CR 100, a mediator shall not disclose to, nor discuss with, court officials or staff any information communicated to the mediator by any participant within the mediation process, including correspondence or

communications regarding scheduling or attendance, nor may the mediator comment about the mediation negotiations in any respect.

9. Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matters shall be considered confidential and privileged in nature except on order of the court for good cause shown. This privilege and immunity reside in the mediator and may not be waived by the parties.
10. Nothing in this rule prohibits a mediator from reporting abuse according to KRS 209.030, KRS 620.030, or other applicable law.
11. Any executed settlement document shall not be deemed privileged and confidential as provided in this rule unless the parties explicitly stipulate that the terms of settlement are to remain confidential. In any event, however, should the settlement agreement be required as proof in a proceeding to enforce the terms of settlement, such settlement agreement shall no longer have the privilege of confidentiality and may be introduced into evidence.
12. Notwithstanding any other provision of this CR 99.11, a mediator will not be bound by the confidentiality requirements of mediation to the extent allowed by a court in considering a claim against the mediator.

## **CR 100 Code of Conduct for Mediators**

### **Rule 100.01 Purpose**

#### **New Rule 100.01 shall read:**

1. This Code of Conduct for Mediators shall apply to all mediators conducting mediations in which CR 99 and CR 100 apply.
2. This Code of Conduct is intended to instill and promote public confidence in the mediation process and to provide uniformity and minimum standards for mediator conduct.
3. It is the mediator's role to facilitate communication and understanding among the parties and to assist them in reaching agreement. The mediator should not, however, render a decision on the issues in dispute. In mediation, the ultimate decision whether, and on what terms, to resolve the dispute belongs to the parties

### **Rule 100.02 Competency**

#### **New Rule 100.02 shall read:**

A mediator's most important qualification is the mediator's competence in procedural aspects of facilitating the resolution of disputes rather than the mediator's familiarity with technical knowledge relating to the subject of the dispute. Therefore, a mediator shall obtain necessary skills and substantive training appropriate to the mediator's practice and upgrade those skills on an ongoing basis.

### **Rule 100.03 Impartiality**

#### **New Rule 100.03 shall read:**

1. A mediator shall, in word and action, maintain impartiality toward the parties and on the issues in dispute.
2. As early as practical and no later than the beginning of the first session, the mediator shall make full disclosure of any known relationships with the parties or their counsel, any personal knowledge of the facts at issue, or an economic interest in the outcome that may affect or give the appearance of affecting the mediator's impartiality.
3. The mediator shall decline to serve or shall withdraw from serving if:
  - a. a party objects to his/her serving on grounds of lack of impartiality, and after discussion, the party continues to object; or
  - b. the mediator determines he/she cannot serve impartially.

### **Rule 100.04 Confidentiality**

#### **New Rule 100.04 shall read:**

A mediator shall strictly endeavor to protect confidentiality as required by CR 99. Subject to exceptions set forth in CR 99.11, a mediator shall maintain the confidentiality of all information obtained within the mediation process.

### **Rule 100.05 Consent**

#### **New Rule 100.05 shall read:**

1. A mediator shall make reasonable efforts to ensure that each party understands the mediation process, the role of the mediator and the party's options within the process.

2. In appropriate circumstances, a mediator may inform the parties of the importance of seeking legal, financial, tax or other professional advice before, during or after the mediation process.

**Rule 100.06 Self-determination**

**New Rule 100.06 shall read:**

1. A mediator shall respect and encourage self-determination by the parties in their decision whether, and on what terms, to resolve their dispute and shall refrain from being directive and judgmental regarding the issues in dispute and options for settlement.
2. A mediator may raise questions for the participants to consider regarding their perceptions of the dispute as well as the acceptability of proposed options for settlement and their impact on third parties. Furthermore, a mediator may suggest for consideration options for settlement in addition to those conceived of by the parties themselves.
3. A mediator shall not impose his/her opinion about the merits of a dispute or about the acceptability of any proposed option for settlement. Upon request, however, a mediator may provide evaluative observations.

**Rule 100.07 Separation of mediation from legal and other professional advice**

**New Rule 100.07 shall read:**

A mediator shall limit himself or herself solely to the role of mediator and shall not give legal or other professional advice during the mediation.

**Rule 100.08 Conflicts of interest**

**New Rule 100.08 shall read:**

1. A mediator shall not allow any personal interest to interfere with the primary obligation to impartially serve the parties to the dispute.
2. A mediator shall not charge a contingent fee or a fee based on the outcome of the mediation.
3. A mediator shall not use information obtained or relationships formed during mediation for personal gain or advantage.

4. A mediator shall not knowingly contract for mediation services which cannot be delivered or completed as directed by a court or in a timely manner.
5. A mediator shall not give or receive any commission, rebate or other monetary or non-monetary form of consideration from a party or representative of a party in return for referral or expectation of referral of clients for mediation services, except that a mediator may give or receive de minimis offerings such as sodas, cookies, snacks or lunches served to those attending mediations conducted by the mediator and intended to further those mediations or intended to show respect for cultural norms.
6. A mediator should neither give nor accept any gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.

**Rule 100.09 Protecting the integrity of the mediation process**

**New Rule 100.09 shall read:**

A mediator shall encourage mutual respect between the parties and shall take reasonable steps, subject to the principle of self-determination, to limit abuses of the mediation process.

This Order shall be effective February 1, 2022.

Entered this 14th day of January 2022.

  
CHIEF JUSTICE

All sitting; all concur.

**RE: Mediation -- \_\_\_\_\_ vs. \_\_\_\_\_ (9-25-23)**

Dear Counsel:

We have scheduled mediation for **Monday, September \_\_ at 10:00 a.m. at my office located at 333 West Vine Street, Suite 300, Lexington.**

For our administrative convenience, and the security of your documents, please direct all email communications to me personally at [rfhjr@houlihandr.com](mailto:rfhjr@houlihandr.com).

**If I do not hear to the contrary, I will assume you and your respective clients, as well as any participants in the mediation, agree to the terms and conditions in the numbered paragraphs below as the basis for my engagement as mediator.**

1. My fee is \$300 per hour for time spent from the date of this letter forward, including any pre-mediation review or conversations with you. We will bill you when the mediation is concluded. If the mediation is canceled, we will charge whatever time I have spent in preparation.

2. My charges will be allocated proportionately among interests at the mediation, or as agreed among the parties. **To avoid my having to deal with your respective clients, I will assume that the attorney(s) for each party will be responsible to me for payment unless we have some other understanding in advance.** As with all these terms, this will be our agreement unless you advise that this condition needs to be changed.

3. I assume each of you will be present at mediation, accompanied by your respective client, or a representative of your client with full authority to settle. When submitting any mediation position or materials to me before the mediation, identify each person who will attend on your respective side. If there is insurance coverage for your client, please advise me of relevant coverage information and identify any representative of the carrier expected to participate.

4. Other than identities of lawyers and parties, I have no knowledge about your case. If it is case in litigation, I ask that at an early date, one of you send me the most recent iteration of any complaint and any counter or cross claims. Also, if there is an Order to mediate, send that as well.

5. **Please provide any statement of position or materials you want me to review by Monday, September 18.** If this date does not work for you to provide your materials to me, let me know. As you know, the more I know, the more helpful I can be.



6. I do not need hard copies and prefer that you provide materials in pdf format by email to [rfhjr@houlihandr.com](mailto:rfhjr@houlihandr.com). **\*\*Please\*\*** make any attachment/exhibit to a document a separate pdf.

7. I encourage you to share mediation statements of position with opposing counsel. Experience proves that it is conducive to an efficient use of our time and to a successful mediation. If you follow this suggestion, you can put anything you want to say confidentially to me in a separate communication. But I will, of course, honor requests to keep what is shared with me confidential. If you want what you provide me to be kept confidential, make that explicit.

8. I accept this engagement in reliance that counsel and the parties agree that, unless otherwise made known to me, communications during the mediation process will be considered **confidential and privileged in compliance with Kentucky Rule of Civil Procedure 99.11** except on order of a Court for good cause shown. For this purpose, the mediation process includes any communications I have with either of you following this engagement letter in advance of the mediation as well as communications during and after the formal mediation. I will not divulge any confidential information learned by me as mediator unless authorized, or if disclosure is required by law. **By participating in this mediation, the parties and you agree to honor this same commitment of confidentiality to keep all communications made in the mediation process confidential unless otherwise agreed.** At the mediation meeting, I will repeat this agreement and insure it is clearly agreed to by all participants at the mediation. Let me know if you would like to have a signed confidentiality agreement.

9. The content of the previous paragraph and what is said at the mediation is often sufficient to establish a confidentiality. **If you would like to have formal, signed confidentiality agreement, however, attached is a form which is typically acceptable.** When I learn more of your case, if I think it is more prudent to have everyone sign this, I will discuss that with you when we talk before the mediation.

10. As to how the mediation will be conducted, I start from the idea that we have a joint session that includes whatever "openings" you want to do, or none at your option, and then we break into separate rooms and caucus separately, or again jointly if that seems needed. That said, every case is different, and **we** can determine exactly how the mediation will proceed as I learn more about the case. I will for sure call each of you in advance to learn what I can. If it looks like a pre-mediation conference call with all counsel would be helpful, I will set that up. A well-prepared mediator is essential, and I will not be shy about getting myself prepared.

I look forward to seeing everyone on **Monday, September 25 at 10:00 a.m.** I promise to be prepared, listen carefully and work hard to help you resolve your case. If you have any questions, comments, or requests regarding this in the meantime, feel free to call.

Very truly yours,

## CONFIDENTIALITY AGREEMENT

\_\_\_\_\_ v \_\_\_\_\_  
Mediation (date)

1. To promote honest and candid communication and facilitate resolution of the dispute, the parties, their counsel and representatives, and the mediator enter into this Confidentiality Agreement. This Agreement is intended to ensure that any communication during the mediation by any participant in the mediation process, including the mediator, counsel and any other participant in the mediation who sign this Agreement, are both confidential and privileged as described below.
2. This Agreement governs all aspects of the mediation process, including those that pre-date this Agreement, including, but not limited to, the selection of a mediator, the convening of the mediation, all phone calls, correspondence, e-mail and other documents relating to the mediation and the mediation process, all person-to-person meetings, site visits, or conferences of any kind, and any post-mediation communications or conferences relating to the mediation.
3. All statements made during the course of the mediation are privileged settlement discussions within the meaning of KRE 408, and are made without prejudice to any party's legal position, and are non-discoverable and inadmissible for any purpose in any later legal or administrative proceeding of any kind. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its disclosure or use during the mediation.
4. The privileged and confidential character of any information is not altered by disclosure to the mediator. Disclosure of any records, reports, proprietary information, or other documents received or prepared for or by the mediator cannot be compelled. The mediator shall not be subpoenaed or otherwise compelled to testify in any later proceedings, including, but not limited to civil, criminal, and administrative proceedings, and shall not be required to produce any notes or documents, as to any aspect of the dispute that was the subject of the mediation proceedings or was otherwise communicated to the mediator in confidence.
5. No aspect of the mediation nor what is said in mediation will be discussed in any legal, administrative, Court or other proceeding, nor relied upon or introduced in the evidence in any legal, administrative, Court or other proceeding, including but not limited to:
  - a. views expressed or suggestions made, or rejected, by or on behalf of a party with respect to a possible settlement of the dispute,
  - b. admissions made during the mediation proceedings.
  - c. proposals made or views expressed by the mediator or the response of any party, and

- d. the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.
6. In addition to operation of KRE 408, it is understood and agreed that paragraph 5 above is intended and understood by all participants to mean that no party or counsel will communicate to the Court any position taken, or rejected, nor any assertion of fact or law made by any participant during the mediation process. Again, however, evidence that is otherwise admissible or discoverable, and not subject to any promise of confidentiality, shall not be rendered inadmissible or non-discoverable as a result of its disclosure or use during the mediation.
7. The parties further agree that confidentiality does not apply to any executed settlement document unless the parties explicitly stipulate that the terms of settlement are to remain confidential. However, should the settlement agreement be required as proof in a proceeding to enforce the terms of settlement, such settlement agreement shall no longer have the privilege of confidentiality and may be introduced into evidence.
8. Because the parties are disclosing sensitive information in reliance upon this Agreement, any breach of this Agreement could cause irreparable injury for which monetary damages would be inadequate. Consequently, any party to this Agreement may obtain an injunction to prevent disclosure of any such confidential information in violation of this Agreement.
9. The parties fully understand the following with respect to the mediation process:
- a. The mediator is free to meet and communicate separately with each party both before and during the mediation session. Such private caucuses are very beneficial in facilitating a resolution of the dispute.
  - b. The mediator reserves the right to allow parties to provide documents to the mediator marked “Confidential” or “Mediator’s eyes only,” or otherwise made explicit in writing that such documents are not to be shared by the mediator. Such documents will not be shared with an opposing party without explicit authorization by the party supplying the material.
  - c. The mediator reserves the right to share information learned in the private caucuses with the opposing party if the mediator believes that such information will facilitate a resolution of the dispute.
  - d. Should a party, however, divulge certain information that the party does not want an opposing party to know, such divulging party will clearly inform the mediator that such information is to be held in strict confidence and not to be shared with the opposition. The mediator will maintain the confidentiality of such information.
  - e. The mediator is a neutral party who may not act as an advocate for any party during the mediation. Though the mediator may freely express views to the parties on the

legal issues of the dispute and his suggestion of a settlement proposal if such appears beneficial to the resolution of the case, the mediator does not have an attorney-client relationship with any of the parties.

- f. All participants in the mediation shall be bound by the terms of this Agreement and may be required to sign this Agreement as a condition to participation.
10. Any Counsel executing this Agreement on behalf of a client represents that she/he has fully discussed the terms of this Agreement with the client and has full and explicit authority to sign this Agreement and bind that client to this Agreement.
  11. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument and shall become effective when one or more counterparts have been signed by each party hereto. A PDF or facsimile signature on this Agreement shall constitute an original for all purposes.

**[SPACE INTENTIONALLY BLANK; SIGNATURES ON FOLLOWING PAGE]**

Agreed to and accepted this \_\_ day of \_\_\_\_\_, 20\_\_:

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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I understand this matter (i.e., \_\_\_\_\_ Circuit Civil Action No. \_\_\_-CI-\_\_\_\_\_ (the "Civil Action") is settled on the Terms below. Counsel represent they have discussed this fully with their respective clients and insurance companies and have explicit authority to agree to these Terms and bind their respective clients and insurance companies to these terms. If counsel for each party acknowledges this by Reply All email, then the matter will stand as settled awaiting more formal settlement agreement and full release(s) to be worked out among counsel. The Terms of settlement are as follows:

1. Defendants and/or their insurance carrier will pay Plaintiff \$\_\_\_\_\_ payable as Plaintiff's counsel directs as follows:
  - a. \$\_\_\_\_\_ for wages subject to withholding
  - b. \$\_\_\_\_\_ subject to 1099
  - c. \$\_\_\_\_\_ for attorney fee
2. Full release of individuals and entities, employees, agents, or representatives.
3. No admission of wrongdoing or fault by any party.
4. Each party will pay its own costs and attorney fees.
5. Parties will each pay \_\_\_\_\_ of the cost of mediation.
6. The parties agree to full confidentiality of the amount and Terms of settlement and settlement negotiations other than as required by law.
7. Plaintiff indemnity for tax liability and any liens of any kind.
8. Plaintiff will not apply for employment with Defendants or any affiliated entity.
9. Upon execution of final settlement and release documents, and payment of the settlement, counsel will enter an agreed order of dismissal, with prejudice.
10. The parties intend this to be a final and binding settlement. If there is any dispute regarding the content of final settlement document or release, that dispute will be decided by the Judge in the civil action.

**MEDIATION SETTLEMENT AGREEMENT**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of September 2023 by and between: \_\_\_\_\_ (“Plaintiff”) and \_\_\_\_\_ (“Defendant”)

**WHEREAS**, the parties are all are parties to \_\_\_\_\_ Circuit Court Case No. \_\_-CI-\_\_\_\_ (the Civil Action);

**WHEREAS**, Plaintiff has made certain claims arising out of his employment and the termination of that employment by Defendant (“Employment Claims”); and

**WHEREAS**, the parties have settled all their disputes and reached a FULL SETTLEMENT, which they desire to reduce to writing as set forth below.

**NOW THEREFORE**, in consideration of the mutual promises herein, the sufficiency of which is hereby acknowledged by each of the parties and their counsel, it is AGREED as follows:

1. Within 30 days of Plaintiff executing a Full Release of All Claims (“Release”) as agreed to by counsel for the parties and consistent with this Agreement, Defendant agrees to pay Plaintiff \$ \_\_\_\_\_ (the “Settlement Amount”) payable to as follows:

- a. A check to Plaintiff for lost wages and benefits in the gross amount of approximately \$ \_\_\_\_\_ less normal withholding by Defendant. Plaintiff understands and agrees the net check will reduce the gross wage amount mentioned.
- b. A check for the balance of the Settlement Amount payable jointly to Plaintiff and her attorneys for all other claims by Plaintiff subject to an IRS Form 1099.
- c. It is understood and agreed that counsel for Plaintiffs will supply current tax information as requested before any check for the Settlement Amount can be issued.

2. **RELEASE.** In consideration of this Agreement, subject only to receipt of the Settlement Amount and execution of the Release, Plaintiff hereby releases Defendant and its agents and employees, specifically including \_\_\_ and \_\_\_ from any and all claims past, present,

or future, known or unknown, of any kind whether arising in employment, tort, contract, equity, or by statute related to or arising out of Plaintiff's Employment Claims or the circumstances leading to those claims.

3. **FINAL SETTLEMENT.** The parties and their counsel expressly understand and agree that this Mediation Points of Agreement is intended to be a **FULL AND FINAL SETTLEMENT** of all claims they have or might possibly have against each other and will not be null and void even if there is disagreement over the content of documents which must be executed to effectuate the full and final consummation and completion of this Agreement. In the event of such a disagreement, the dispute will be submitted to the Court in the Civil Action for final resolution.

4. **LIENS.** Plaintiff and her attorneys will ensure that any liens or third-party claims of any kind are paid in full and Plaintiff will indemnify and hold harmless Defendants on all such liens.

5. **TAXES.** Plaintiff will indemnify and hold harmless Defendant from any liability for the Plaintiff's tax, or tax reporting obligations, with respect to the proceeds of this settlement.

6. **COMPROMISE / NO ADMISSION OF LIABILITY.** This Agreement is a compromise and settlement of disputed and contested claims and is entered by the Parties in order to avoid the expense and inconvenience of litigation. Nothing contained in this Agreement shall be construed as an admission by any party of wrongdoing or liability of any kind to any party.

7. **TERMS CONFIDENTIAL.** The parties agree that the terms and conditions of this agreement are and shall remain confidential and shall not be disclosed other than as may be required by law.



8. MEDIAITON CONFIDENTIALITY. All parties and their counsel agree to abide by the letter and the spirit of the engagement letter for this mediation and the Confidentiality Agreement between the parties.

9. MEDIATION COSTS. The parties will each pay their own costs and expenses. Plaintiff and Defendant will each pay 50% of the cost of mediation.

10. NOTICE TO COURT. Counsel for the parties will advise the Court that the matter has been fully resolved pending execution of the Release and payment of Settlement Amounts. Upon Plaintiff's receipt of all Settlement Amounts, counsel will enter an Agreed Order of Dismissal, with prejudice.

11. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which shall constitute one and the same instrument, and shall become effective when one or more counterparts have been signed by each party hereto. A PDF or facsimile signature on this Agreement shall constitute an original for all purposes.

**[SPACE INTENTIONALLY BLANK; SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF, MEDIATION POINTS OF AGREEMENT** this \_\_\_\_ day of

September \_\_\_\_.

Signature: \_\_\_\_\_

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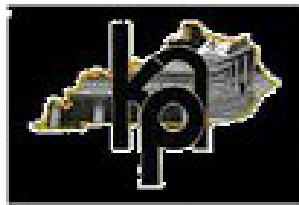
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Date: \_\_\_\_\_

WITNESS:

\_\_\_\_\_  
MEDIATOR

**Session 2**  
**November 2, 2023**  
**6:00 p.m. – 7:00 p.m.**  
**Grand Kentucky Ballroom A**  
**Chrisandrea Turner**  
**Wage Garnishments and**  
**Client Responsibilities**



**Kentucky Paralegal Association Conference**  
**November 2, 2023**  
**Lexington, KY**

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Wage Garnishments and Client Responsibilities

Chrisandrea L. Turner




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**Contact Information**

Chrisandrea L. Turner  
 STITES & HARBISON, PLLC

 859.226.2261  
 [clturner@stites.com](mailto:clturner@stites.com)




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**Wage Garnishments**  
**KRS 425.501 to 425.506**  
**Kentucky Civil Rule 69.02**

- A garnishment is a judicial proceeding in which a judgment creditor asks the court to order a third party indebted to judgment debtor to turn over to the judgment creditor the debtor's property such as wages or bank accounts.
- A garnishment creates a lien on all nonexempt earnings earned during the pay period in which the order is served on the employer and during the succeeding pay periods which may be designated by the order.




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### Tripartite Proceeding

- Garnishee – Third party holding property or funds of the Judgment Debtor
  - » Example: Client Employer
- Judgment Creditor – Party to the lawsuit holding a court entered judgment against defendant
  - Example: Winning Plaintiff
- Judgment Debtor – Party to the lawsuit against whom a judgment has been entered
  - Example: Losing Defendant/Employee




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- Garnishee is involved in this judicial process only because it holds property or owes money to the judgment debtor
- Post-judgment process and judgment must be reduced to a monetary figure
- Garnishment must be issued by a court in the Commonwealth of Kentucky




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### Types of Garnishments

- (1) Wage Garnishment
- (2) Non-wage Garnishment




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### Statutory Deadline Imposed on Garnishee

- Garnishee receiving garnishment must document date of receipt
- Within twenty days upon receipt of the order, Garnishee must file a response



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### Duties of Garnishee

- Under oath, Garnishee must timely and accurately complete the Affidavit and Answer including calculation of funds to which judgment creditor is entitled
  - Practice note: Garnishee may contact attorney for Judgment Creditor to verify the identity of Judgment Debtor through social security number or other distinguishing information



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### Triplicate Form

- Garnishee will complete the calculation
- Keep a copy for its own records
- Serve a copy on the employee
- Return a copy to the court
- Courtesy copy may be mailed to the creditor's attorney



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### What are earnings?

- All compensation paid or payable for personal services
  - Wages
  - Salary
  - Commission
  - Bonus



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### Calculation

**AFFIDAVIT AND ANSWER OF GARNISHEE (EMPLOYER)**

Comes the undersigned Affiant, who after being duly sworn, states:

A. The social security number and name of the Judgment Debtor ("Employee") is: \_\_\_\_\_

B. The date on which this Order was originally served was: \_\_\_\_\_

C. No funds are due employee because: \_\_\_\_\_

D. If no funds are withheld due to superior (earlier) garnishments, the number of those garnishments is: \_\_\_\_\_

E. The pay period of the remittance accompanying this return is from: \_\_\_\_\_ to: \_\_\_\_\_

F. The pay period of this employee is: (choose one)  
 ( ) weekly ( ) bi-weekly ( ) semi-monthly ( ) monthly

1. Gross earnings \$ \_\_\_\_\_

2. Less amounts required by law to be withheld:

Federal Income Tax	\$ _____
State Income Tax	\$ _____
Occupational Tax	\$ _____
Social Security	\$ _____

TOTAL DEDUCTIONS \$ \_\_\_\_\_

3. Disposable earnings (Line 1 less Line 2) \$ \_\_\_\_\_

4. Exempt earnings:

(a) 75% of line 3 \$ \_\_\_\_\_ For wages earned after 7/24/09

(b) \$217.50 if weekly, or \$471.25 if semi-monthly, or \$942.50 if monthly \$ \_\_\_\_\_

(c) Enter greater of 4(a) and 4(b) \$ \_\_\_\_\_

(d) Ordered Child Support \$ \_\_\_\_\_

5. Non-exempt disposable earnings (Line 3 less Lines 4(c) and (d)) \$ \_\_\_\_\_

Remit the amount on Line 5 or the Amount Due shown at the top of this Order plus interest and costs, whichever is less, to the Creditor's Attorney or to the Circuit Clerk (if there is no Creditor's Attorney).

Affiant \_\_\_\_\_ Position/Title \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 My Commission expires: \_\_\_\_\_ Notary Public



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### Non-exempt Funds

- Pay the funds (not exceeding the judgment amount and costs) over to the sheriff, the court, or other person as directed by the court
- Practice tip: most garnishees send funds to the judgment creditor's attorney



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**Answers to Client Questions:**

- Can I ask the employee if she can afford this garnishment?
  - No – this is a court order to be followed
- Do I really have to complete this form?
  - Yes – this is a court order to be followed
- Does it really need to be notarized?
  - Yes – this is a court order to be followed
- Can I put off completing this form for more than twenty days?
  - No – this is a court order to be followed



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**Practice tip**

- If the client insists that you complete the form, have client sign and notarize the document because you do not have first hand knowledge of the information the client provides to you



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**Practice Tip**

- Judgment creditor bears responsibility of presenting name and identifiable information of judgment debtor
- Garnishee must act in good faith



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**Protections Afforded to the Employee**

- There is a procedure in place for the judgment debtor to come forward and claim that garnished funds are exempt and should not be given to or withheld by the judgment creditor.
- This procedure occurs solely at the court level and the garnishee is not involved.
- The court will determine the rights of the judgment debtor.



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**Protections Afforded to the Employee (cont'd)**

- Procedures are in place to provide judgment debtor with express notice of her potential exemptions and that continuous garnishments will occur on successive paychecks until the judgment, interest, and costs are paid.



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**Protections Afforded to the Employee (cont'd)**

- Judgment creditor's attorney, or the clerk of the court if attorney does not exist, must hold the garnished funds in escrow for fifteen days from the issuance of the check by the employer
- Judgment creditor's attorney is obligated to file an Affidavit and Supplemental Order advising of additional sums owed under interest



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**Garnishments Will Continue Each Pay Period**

- Garnishee must perform calculation and remit non-exempt funds until judgment creditor is paid in full.
- Garnishee must keep accurate records.
- Judgment creditor will be disgorged of any overpayment.



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**Multiple Orders of Garnishment**

- Garnishee is to pay according to the first garnishment order. Judgment creditor will receive all non-exempt funds each pay period until judgment creditor is paid in full.
- All subsequent garnishments will receive zero funds because all non-exempt funds are paid to judgment creditor.



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**Failure to Abide by Order of Garnishment**

- Employer may receive a show cause order to appear in court
- Employer may be examined under oath as to its actions and ordered by court to pay funds to judgment creditor
- Employer may be held in contempt and sanctioned



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**Failure to Abide by Order of Garnishment**

- Judgment creditor may sue employer
- Employer may be liable for loss sustained by judgment creditor



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**Costs Assessed by Garnishee**

- Judgment creditor must pay \$10.00 to Garnishee when serving garnishment
- Garnishee is permitted to demand its own payment for costs associated with processing garnishment



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**If Employee Is a Debtor in Bankruptcy**

- 11 U.S.C. Section 362 stays an order of garnishment
- Garnishee may not turn over funds to judgment creditor if it has notice that employee is a debtor in bankruptcy



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# QUESTIONS?

STITES &  
HARBISON  
ATTORNEYS

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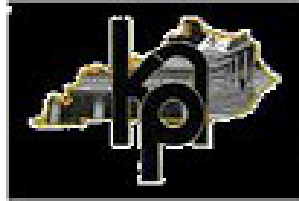
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**Session 3**  
**November 3, 2023**  
**8:00 a.m. – 9:00 a.m.**  
**Grand KY Ballroom A**  
**Honorable Joe Fooks**  
**Paralegals in Family Court**



# Paralegals in family court

A judge's perspective

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## Judge William J. Fooks

- Elected Family Court Judge in 2022
- 14th Judicial Circuit, Division IV
- Scott, Woodford and Bourbon Counties



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### ONE FAMILY, ONE JUDGE, ONE COURT

- Cases are presented in a single court, allowing the same judge to hear all matters involving a particular family.
- The Goal is to reduce stress that can arise when individuals are shuttled between courts

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### ONE FAMILY, ONE JUDGE, ONE COURT

#### HISTORY OF FAMILY COURT

- Began a Family Court pilot program in 1991.
- The program then expanded to rural areas of the state and based on the success of the pilot program it was put on the ballot in November 2002
- The State Constitution was amended when the initiative passed in all 120 counties with more than 75 percent of the vote.
- Today Family Court serves 3.2 million citizens in 71 Kentucky counties.

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### ONE FAMILY, ONE JUDGE, ONE COURT

#### FAMILY COURT JURISDICTION KRS 23A.100 AND KRS 23A.110

- Dissolution of marriage
- Spousal support and equitable
- Distribution
- Child custody, support and visitation
- Paternity, adoption
- Domestic violence
- Dependency, neglect and abuse
- Termination of parental rights
- Status Offenses (runaways, truancy, beyond control)



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PARALEGALS IN FAMILY COURT

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### COMMUNICATION AND CASE MANAGEMENT

- Intake and Conflict Checking
- Setting and Managing Client Expectations
- Managing Deadlines for the client and counsel
- Assisting Client's with Obtaining Exhibits and Documents
- Preparation of pleadings and discovery
- Explaining and Preparing for Mediation and Court



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### YOU CAN'T WIN IF YOU DON'T KNOW WHAT WINNING IS

- ONCE YOU HAVE THE ANSWERS TO YOUR QUESTIONS AND YOUR CLIENT KNOWS PROPER EXPECTATIONS YOU CAN START MANAGING THE CASE
- KNOW ALL THE FORMS YOU NEED WHETHER YOUR FORMS OR AOC FORMS
- KNOW WHAT NEEDS TO BE DONE TO PREPARE FOR DISCOVERY, MOTIONS AND MEDIATION
- KNOW ALL OF YOUR DEADLINES AND RULES FOR GETTING THE CASE TO HEARING



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### A MILLION QUESTIONS PART 1: CUSTODY

- WHAT TYPE OF CUSTODY AND PARENTING TIME IS APPROPRIATE
- WHAT IS THE BEST WAY TO IMPLEMENT PARENTING TIME
- ARE THERE SPECIAL MEDICAL OR EMOTIONAL ISSUES INVOLVED
- WHAT ARE THE FINANCIAL NEEDS OF THE FAMILY
- NEW PARAMOURS AND THEIR ROLES
- ARE THE PARENTS GOOD CANDIDATES FOR FAMILY THERAPY; REUNIFICATION COUNSELING; PARENTING COORDINATION
- IS THERE DOMESTIC VIOLENCE / CHILD ABUSE IN THE HOME?

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### A MILLION QUESTIONS PART 2: PROPERTY

- WHAT ARE THE ASSETS OF THE FAMILY
- HOW CAN THEY BE FAIRLY DIVIDED
- WHAT IS THE DEBT SITUATION AND CAN IT BE EQUALIZED
- IS BANKRUPTCY A PATH FORWARD
- WHEN WERE THE ASSETS ACQUIRED
- WHAT WAS THE SOURCE OF FUNDS
- CAN THE ASSETS PURCHASED BEFORE THE MARRIAGE BE TRACED BACK TO THEIR ORIGINAL ACQUISITION

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Forms are a  
Key to Success  
in Family  
Court

#### FORMS FOR AN UNCONTESTED DIVORCE

- A verified petition;
- Proof of service;
- A verified response, or a verified entry of appearance in lieu of a response;
- A verified separation agreement, unless filing is waived by the court pursuant to KRS 403.180(4)(b);
- The Final Verified Disclosure Statement;
- A verified waiver of notice of final hearing;
- A verified deposition or interrogatories for proof of the allegations of the petition if done without a hearing;
- A divorce education certificate, if required;
- A child support work sheet.
- Motion and Agreed Order to Submit

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#### PVDS – 10 PAGES OF DREAD

- (3) Preliminary Mandatory Disclosure. A preliminary disclosure statement, which is verified and contains the information required in the official AOC form, AOC-238 (Preliminary Verified Disclosure Statement), shall be exchanged between the parties within 45 days of service of the petition on the respondent, and objections thereto shall be exchanged 21 days thereafter but the disclosures shall not be filed in the record unless ordered by the court or required by local rule.

KY ST FAM CT FCRPP 2

The image shows a screenshot of the 'Preliminary Verified Disclosure Statement' (AOC-238) form. It includes sections for 'I. Marital Assets and Liabilities' and 'II. Additional Information'. The form has various input fields for names, addresses, and financial details, along with checkboxes and dropdown menus.

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## CALENDARING IS CRITICAL

- ANSWERS TO PETITION MUST BE FILED WITHIN 20 DAYS
- WOA MUST FILE THEIR REPORT WITHIN 50 DAYS
- HEARING FOR AN ECO IN JUVENILE CASES ARE 72 HOURS
- EPO'S MUST BE HEARD WITHIN 14 DAYS
- PVDS MUST BE EXCHANGED WITHIN 45 DAYS OF SERVICE
- TPR HEARING MUST BE 60 DAYS OF A MOTION TO SET A HEARING
- APPEALS ARE 30 DAYS FROM THE DATE OF ENTRY OF A FINAL AND APPEALABLE ORDER
- IN THE 14<sup>TH</sup> CIRCUIT MOTIONS MUST BE FILED 10 DAYS PRIOR TO MOTION HOUR AND RESPONSES MUST BE FILED THREE DAYS PRIOR TO MOTION HOUR

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## SOURCES OF RULES FOR FAMILY COURT

- LOCAL RULES OF PRACTICE AND PROCEDURE
- DOMESTIC VIOLENCE PROTOCOLS
- KENTUCKY RULES OF CIVILE PROCEDURE
- KENTUCKY FAMILY COURT RULES OF PRACTICE AND PROCEDURE
- STATUTES
- ETHICS RULES
- KENTUCKY ADMINISTRATIVE REGULATIONS

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## GETTING IT RIGHT

- KNOW WHAT THE CLIENTS WANTS THROUGH A RELATIONSHIP WITH THE CLIENT
- MANAGE THEIR EXPECTATIONS AND EMOTIONS
- OBTAIN THE GOALS THROUGH PREPARATION AND KNOWING THE RULES
- FILE WHAT HAS TO BE FILED IN A TIMELY MANNER
- EVERYONE HAS TO BE AT THE RIGHT PLACE AT THE RIGHT TIME
- THE RESULTS – YOU KNEW WHAT THE CLIENT WANTED; YOU KNEW HOW TO OBTAIN IT AND YOUR TEAM DID IT!



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# BE CONFIDENT AND TRUST YOURSELF



TRUST YOUR TRAINING AND EXPERIENCE



YOU ARE A VALUABLE PART OF THE LITIGATION TEAM



YOUR OPINION MATTERS AND MAY MAKE THE DIFFERENCE



ATTORNEYS ARE FALLIBLE AND CAN'T DO MATH



CREATIVITY AND SOLUTIONS BELONG TO ALL MEMBERS OF A TEAM

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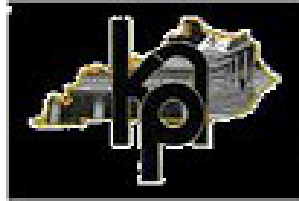
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**Session 3**  
**November 3, 2023**  
**8:00 a.m. – 9:00 a.m.**  
**Grand KY Ballroom D**  
**Steve Amato**  
**Kentucky Bourbon – How Change in Law**  
**Fueled a Boom**



Twenty-Five Years of Change  
We've Come a Long Way ...

Stephen G. Amato



**MCBRAYER**  
www.mcbrayerfirm.com

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Learning Objective

To trace the evolution of Kentucky law regulating distilleries over the past 25 years with an emphasis on the changes which have contributed to the growth in demand for bourbon and the growing popularity of the Kentucky Bourbon Trail.

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1996: The Creation of the  
Souvenir Package



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HB 430

1996 Kentucky Laws Ch. 95 (H.B. 430)

KENTUCKY 1996 SESSION LAWS

1996 REGULAR SESSION

Additions are indicated by <>>> Text <---> deletions by  
 <---> Text <--->. Changes in tables are made but not highlighted.

Committee and floor amendments not incorporated into bill text appear following text.

CH. 95 (H.B. 430)

Wet's No. 139

ALCOHOLIC BEVERAGES—LICENSES—SOUVENIR RETAIL LIQUOR SALES

AN ACT relating to souvenir retail liquor sales.

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1998: SB 169 – Expansion



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98 RS SB 169 EN

AN ACT relating to souvenir retail liquor sales.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

1 Section 1. KRS 243.0305 is amended to read as follows:

(3) A distiller who has obtained a souvenir retail license may sell souvenir packages at retail to distillery visitors of legal drinking age, in quantities not to exceed an aggregate of **three (3) liters**~~one (1) liter~~ per visitor per day. These sales shall be permitted only through the gift shop or other retail outlet on the distiller's premises.

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2013: SB 13 – Overall Modernization at ABC



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Elimination of License



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2016: SB 11 – Major Expansion of Retail Privileges



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**4.5 Liters, Sampling Incease, and NQ Retail Licenses**

UNOFFICIAL COPY AS OF 04/16/16 16 REG. SESS. 16 RS SB 11 EN

AN ACT relating to alcoholic beverages.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

→ Section 1. KRS 241.010 is amended to read as follows:

As used in this chapter and in KRS Chapters 242 and 243, unless the context requires otherwise:

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**2017: HB 100 – Fairs, Festivals, and Dusty Bottles**



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**2018: HB 400 – Expansion and Early Direct Shipping Legislation**



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( HB 400 )

UNOFFICIAL COPY 18 RS HB 400/GA

1 AN ACT relating to direct shipment of alcoholic beverages and declaring an  
 2 emergency.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 → Section 1. KRS 243.0305 is amended to read as follows:

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( 2020: HB 415 – Reimagined Shipping – Direct Shipper License )




( MCBRAYER )

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( 2021: HB 415 – Enhanced DTC Privileges for Distillers )





( MCBRAYER )

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2022: HB 500 and HB 252

- HB 500 – Private Barrel Selections +
- HB 252 – Lower Age for Serving Alcohol

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HB 500 – Private Barrel Selections

- Distilleries can conduct private barrel selection events, allowing individuals, non-profits, businesses, or retailers to choose their own single or small batch barrels.
- Distilleries may sell up to 30% of their annual allotment from these events directly from their gift shops or directly to consumers, non-profits and other unlicensed entities.
- The remaining 70% allotment is made available to licensed retailers customers through the three-tier system.
- Additionally for participants in private barrel selection events, HB 500 removes the 1.75 ounce sample limit and 9 liter bottle sale limit per person per day.



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HB 500 – Satellite Tasting Rooms

- Licensed distilleries that have retail visitor centers can open and operate one "satellite" tasting room, meaning an off-site location where the distiller engages in the same retail and sampling privileges as at its home base gift shop.
- These privileges include sampling, souvenir sales, and cocktails through an NQ2 license, with separate sampling and NQ2 licenses required for the satellite location to serve by-the-drink.
- The satellite must be in a specific location, as stated on the license (i.e. not a mobile tasting room or trailer).
- Distilleries with more than one distilled spirits plant (DSP) with sampling and souvenir sales may open and operate one satellite tasting room for each such DSP location.



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## HB 252 – Age for Selling/Serving

- Allows any licensee, including distillers, to employ someone who is 18 or 19 to sell and serve alcohol, provided that that employee is under the supervision of someone who is at least 20 years old and that employee is not engaging in bartending activities.
- Distillery employees who sell alcohol at retail must be STAR trained, as per KRS 243.0305(9).
- Additionally, the bill allows employees who are at least 18 years of age to work in wholesaler and distributor warehouses if there is a 21-year-old or older employee on premises.
- Given the current labor shortage, this new law expands employers' options for hiring.



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## Practical Regulatory Guidance

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## Origins of Current Regulatory Framework

### THE 21<sup>ST</sup> AMENDMENT

**SECTION 1**  
The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

**SECTION 2**  
The transportation or importation into any State, Territory, or possession of the United States for delivery or use thereof of intoxicating liquors, in violation of the laws thereof\*, is hereby prohibited.

**SECTION 3**  
This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.



\*Fifty-state unique regulation

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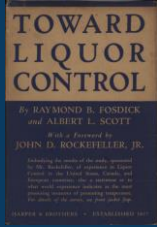
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### Origins of Current Regulatory Framework

As Prohibition drew to a close, policymakers sought a way to curb the abuses of an industry that created enormous societal problems. John D. Rockefeller commissioned a study that hit upon the answer, and that work remains the foundational document for all ABC laws today.



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### The Three-Tier System vs. Control State

A control state is when the government owns one or both of the distribution or retail tiers.

Kentucky's ABC system follows the three-tier structure, as do the systems in most states. The validity and integrity of this system have been consistently upheld in the courts and through legislative enactments.

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### So what is the three-tier system?

The three-tier system divides the alcoholic beverage industry into three distinct segments, each restricted to a particular service:

- Producers
- Distributors
- Retailers



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## The Three-Tier System

The three-tier system is based on an understanding that vertical integration in the industry (brewers/distillers owning distributors and retailers) could create entities so incredibly powerful that they could effectively be beyond the influence of alcohol regulation.

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## Enforcement of the Three-Tier System

Two kinds of laws effectuate this system:

1. Tied-house laws:
  - a. Prohibit each tier from owning interest in another tier, and
  - b. Prohibit suppliers and distributors from giving a retailer anything of value (KRS 244.590 & KRS 244.600)
2. Franchise laws – designed to level the playing field between suppliers and distributors and, similar to tied-house laws, protect the independence of distributors. (KRS 244.602 et seq.)



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## Commercial Pressure on the Three-Tier System Resulting in Significant Exceptions

Realizing the economic impact of alcohol tourism, microbreweries, small farm wineries and distilleries have, in recent years, advocated for changes in the law that allow them to sell products directly to consumers from their breweries, wineries and distilleries, seemingly in direct contravention of the prohibition against vertical integration embodied in the three-tier system. This has been justified primarily on the notion that the encroachment is relatively minor.

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**Kentucky Microbreweries**

KRS 243.157 –

- Permits brewers who produce less than 50,000 barrels per year to sell malt beverages produced on the premises for on-premises and off-premises purposes without a distributor
- May also have:
  - Retail beer and wine/spirits drink license
  - Retail beer package license
  - Now also allows for limited self-distribution and significantly dilutes franchise protection for distributors



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**Kentucky Small Farm Wineries**

KRS 243.155 –

- Permits small farm winery to make and bottle wines, bottle wines produced at other small farm wineries, hold tastings subject to limits per patron, sell alcohol by the drink and wine by the package on the premises or at events, etc.

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**Kentucky Distilleries**

KRS 243.0305 –

- Distillers in wet territory that have a gift shop may sell bottles at retail to visitors of legal drinking age.
- Distillers may also provide free samples and sell alcohol by the glass with the appropriate licenses.
- Recent legislation has expanded this privilege to include the ability to ship bottles to distillery visitors and to increase the quantity that can be sold.
- More to come in 2022

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**Practical Considerations**

- Basic retail licensing
  - Advertisement
  - State and local applications
  - Inspections
- Basic producer permitting and licensing
  - Federal permit/notice
  - Advertisement
  - State and local applications
  - Inspections
- Enforcement

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**Any questions?**

Stephen G. Amato  
samato@mcbrayerfirm.com

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<b>Lexington</b>	<b>Louisville</b>
201 East Main Street, Suite 900 Lexington, KY 40507 859.231.8780	500 West Jefferson Street, Suite 2400 Louisville, KY 40202 502.327.5400

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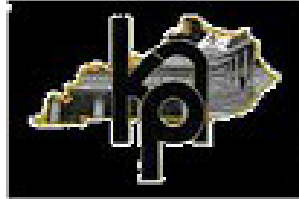
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**Session 4**  
**November 3, 2023**  
**9:00 a.m. – 10:00 a.m.**  
**Grand KY Ballroom A**  
**Langdon Worley**  
**Tips & Tricks from Both**  
**Sides of the V.**





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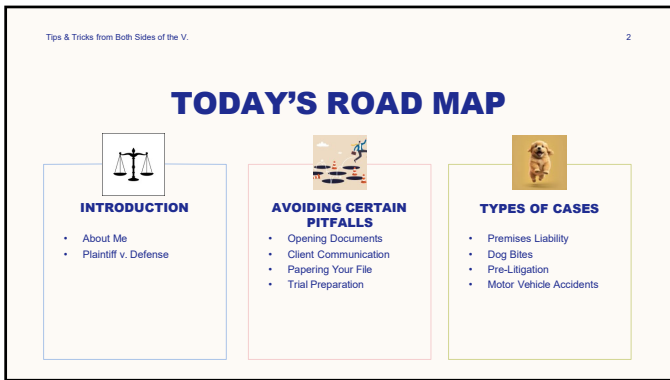
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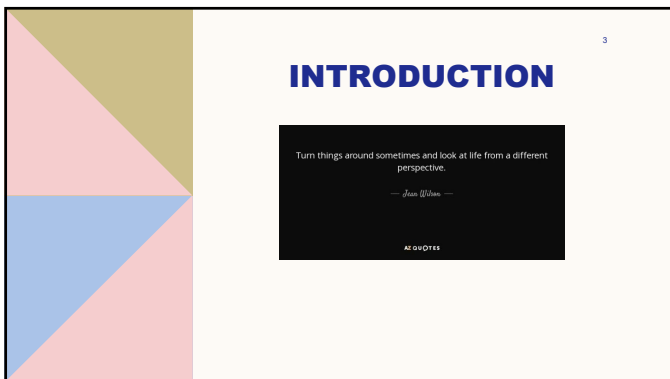
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## GENERAL PITFALLS

Prevention                      Cure

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## OPENING DOCUMENTS

- Communication.
- Anticipation.
- Proactiveness.

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## CLIENT COMMUNICATION

 <b>DEFENSE:</b> What are the insurer's reporting guidelines?	 Save a copy to the file.	 Calendar the deadlines.	 <b>PLAINTIFF:</b> What are client's expectations? What mode of communication do they prefer?	 Call, text, or email every few weeks and note the file.
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## PAPER YOUR FILE

A GOOD  
*system*  
 SHORTENS THE  
 ROAD TO THE  
*goal*

-Orison Sweet Morden

*stlaburns*

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## TRIAL PREPARATION



**1. TECHNOLOGY IN THE COURTROOM**

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## 2. CERTIFICATION OF RECORDS

KRS 422.305 - Certification of Copies

(2) The certification shall be signed before a notary public by the employee of the hospital charged with the responsibility of being custodian of the records and shall include the full name of the patient, the patient's medical record number, the number of pages in the medical record, and a legend substantially to the following effect: "The copies of records for which this certification is made are true and complete reproductions of the original or microfilm medical records which are housed in (name of hospital). The original records were made in the regular course of business, and it was the regular course of (name of hospital) to make such records at or near the time of the matter recorded. This certification is given pursuant to KRS \_\_\_\_\_ by the custodian of the records in lieu of his or her personal appearance." Such copies shall be separately enclosed and sealed in an inner envelope or wrapper bearing the legend "Copies of Medical Records," and the title and number of the action or proceeding, the date of the subpoena, the name of the hospital, the full name of the patient, the patient's medical record number and the name and business telephone number of the employee making the certification, and the sealed envelope or wrapper, together with the certification, shall then be enclosed and sealed in an outer envelope or wrapper, and delivered to the requesting party.

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### 3. SUPPLEMENT DISCOVERY

- Your discovery responses
  - Fratzke v. Murphy* (Ky. 1999)
- Their discovery responses
- Medical Bills Summary
  - KRE 1006

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### PREMISES LIABILITY

#### 1. PLAINTIFF PRESERVATION

- Tailor your letter.
- Send your letter ASAP.
- Confirm receipt of your letter.
- Once suit filed, request the footage.

#### 2. DEFENSE PRESERVATION

- Understand the camera system.
- Send your letter.
- Request any preservation letters.
- Identify your employees and their employment status.

**3. DISCOVERY - REQUEST IT EARLY AND IN WRITING**

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### DOG BITES

Preserve and/or Generate Evidence Early

Plaintiff's side:



Defendant's side:



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Presentation title 13

## MOTOR VEHICLE ACCIDENTS



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## DO THE WORK EARLY.

-  Send discovery requests asap.
-  Calendar deadlines.
-  Document your file with follow-ups.

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## PLAN AHEAD.

 <p><b>BODY CAM/PHOTOS OR RECON</b></p> <p>Check police report carefully. Calendar to follow-up on ORRs.</p>	 <p><b>CRIMINAL AND DRIVING HISTORY</b></p> <p>Get the full, downloaded report.</p>	 <p><b>SURVEILLANCE</b></p> <p>Businesses, but also city/county intersection cameras.</p>	 <p><b>SCENE INSPECTION</b></p> <p>Road signs/road condition changes; document how it looks now.</p>	 <p><b>PRIOR RECORDS</b></p> <p>If you have the capacity, a medical record/bill summary goes a long way early on.</p>
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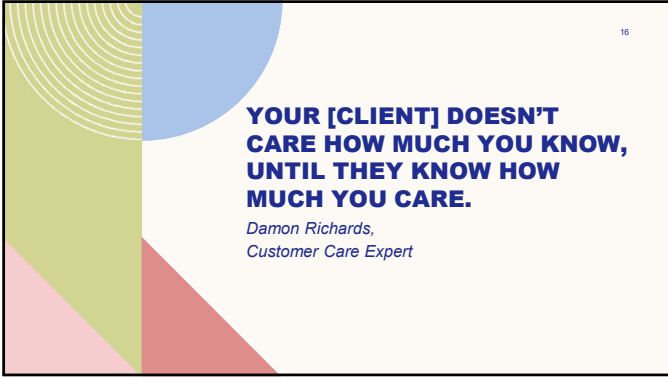
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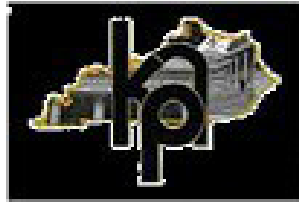
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**Session 4**  
**November 3, 2023**  
**9:00 a.m. – 10:00 a.m.**  
**Grand KY Ballroom D**  
**Andrew DeSimone**  
**Medical Malpractice**





**Medical Malpractice**  
Kentucky Paralegal Association Conference  
Andrew DeSimone November 3, 2023



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**Introduction**

- ▼ Elements of a Medical Malpractice Case
- ▼ Pre-suit Investigation
- ▼ Pleadings and Motions
- ▼ Client Communications
- ▼ Document Production
- ▼ Experts
- ▼ Depositions
- ▼ Trial



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**Elements of a Medical Malpractice Case**

- ▼ Duty
- ▼ Breach
- ▼ Causation
- ▼ Injury



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**Pre-Suit Investigation**

- ▼ Can you trust your client?
- ▼ Certificate of Merit
- ▼ Expert support for Certificate of Merit
- ▼ Witness Interviews
- ▼ Review of Social Media
- ▼ Medical record gathering
- ▼ Probate

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**Pleadings and Motions**

- ▼ Complaint
- ▼ Answer
- ▼ Written Discovery
- ▼ Motion for Ex Parte Communications
- ▼ Case Law

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**Client Communications**

- ▼ Ethical rule
- ▼ Keeping control of your case
- ▼ Manner of communication

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**Document Production**

- ▼ \*\*\*\*\*.youtube.com/watch?v=uaoymfY9Kw0
- ▼ Medical records
- ▼ Education records
- ▼ Employment records
- ▼ Social Security Disability records
- ▼ Medicare/Medicaid records
- ▼ Subpoenas
- ▼ Social Media
- ▼ Miscellaneous records
- ▼ Bates-numbering
- ▼ Redaction
- ▼ Protective orders

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**Experts**

- ▼ \*\*\*\*\*.youtube.com/watch?v=3nGQLQF1b6l
- ▼ Consultant v. Testifying experts
- ▼ KRE 702 and 703
- ▼ Medical research
- ▼ Communication
- ▼ Maintaining an Expert Database
- ▼ Expert document tracking
- ▼ Expert Disclosures
- ▼ Fee Schedules and Travel
- ▼ Overuse of experts
- ▼ Types of medical experts

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**Depositions**

- ▼ Notice of Depositions: Expert v. Fact Witness
- ▼ Preparation of witnesses
- ▼ Expert's file
- ▼ Reports
- ▼ Medical and legal expert research
- ▼ Manner of Deposition: Zoom v. in-person
- ▼ Transcripts and videos
- ▼ Production of transcripts and videos: Do's and Do not's.

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**Trial**

- ▼ Importance of communicating trial dates to clients and witnesses
- ▼ Travel arrangements
- ▼ Exhibits and demonstratives
- ▼ Video editing
- ▼ Deposition Designations
- ▼ Motions in Limine

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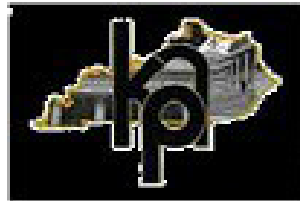
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**Session 5**  
**November 3, 2023**  
**10:15 a.m. – 11:15 a.m.**  
**Grand KY Ballroom A**  
**James Martin**  
**Kentucky Workers' Compensation Primer and**  
**a Paralegal's Role**



# **Kentucky Workers Compensation Primer and a Paralegal's Role**

**BY**

**James R. Martin II**  
**Morgan & Morgan Kentucky PLLC**  
**333 West Vine Street**  
**Suite 1200**  
**Lexington, KY 40507**  
[\*\*jmartin@forthepeople.com\*\*](mailto:jmartin@forthepeople.com)  
**859-219-4529**

## **History of Workers Compensation Laws in KY**

The legal concept of compensation for injury has been traced to the Hammurabi Code, law of Ur, and ancient Arab, Chinese, Greek and Roman law, which provided for specific compensation for particular injuries. These codes, and compensation for injury in the common law, were based on fault of the liable party. During the industrialization of Europe, Otto von Bismarck passed the first modern workers' compensation act in 1871 which provided compensation to workers for accidental injuries which occurred while working. In 1884 an industrial accident insurance act was created, that absolved employers of liability other than that provided under the insurance code. Thus began the historical compromise of guaranteed coverage of injuries without regard to fault, in exchange for limitation of liability. In the United States throughout the late 1800s and early 1900s many state governments began passing workers' compensation laws which were struck down or limited on constitutional grounds. The first state to successfully pass meaningful workers compensation laws was Wisconsin in 1911. Thereafter numerous states passed comprehensive workmen's compensation laws in the 1910s which were based on voluntary acceptance of the Acts. The earliest effort to enact workers' compensation in Kentucky was 1912 and ultimately the first law was put in operation in June 1914<sup>1</sup>

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<sup>1</sup> See History of Kentucky Workers Compensation. [\\*\\*\\*\\*\\*elc.ky.gov/Workers-Compensation/Pages/History.aspx](http://elc.ky.gov/Workers-Compensation/Pages/History.aspx) *Researched and written by:* Dwight Lovan, Former Commissioner, Dept. of Workers' Claims; Charlie Lowther, Former General Counsel, Department of Workers' Claims; James Fogle, Fogle Keller, Purdy PLLC; Scott Miller, Attorney at Law; and written, researched, and edited by Peter Naake, Priddy, Cutler, Naake & Meade, PLLC.

Kentucky Workers Compensation laws can be found in Kentucky Revised Statute Chapter 342 and have undergone many changes over the past hundred years or so, but the current version has largely been in place since 1996 albeit with minor changes in 2000, 2002, 2004, 2006, 2007, 2008, 2014, and 2018.

In Kentucky an injury is defined as “any work-related traumatic event or series of traumatic events, including wear and tear, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.”<sup>2</sup> An “injury” can also include an “occupational disease” arising out of and contracted in the course of employment.<sup>3</sup> Historically these “occupational disease” were primarily “black lung” or coal miners pneumoconiosis” and HIV; however, in the last several years the hotbed in this areas has obviously been COVID 19

If an employee is injured at work in a single event or due to a series of small events (such as may occur from a recurring motion), they are required to report it to their supervisor or other designated person as soon as possible after the event. Often, we see cases where this becomes an issue as sometimes an employee doesn't report aches or generalized pains right away because they “think they will go away”. This isn't fatal as the law allows the reporting to be provided “ as soon as practicable” and similarly an employee is not required to report an “injury” until they know that it is related to the work activities and are not required to self-diagnose their condition. Thus, they are allowed to wait until they are told by their doctor what is wrong and that it is related to their work activities before reporting it to their employer. Likewise, when an employee first experiences an occupational disease, you are required to report it to your supervisor or other designated person as soon as reasonably possible. The employer must report the injury or disease to its workers' compensation insurance carrier within three days of receiving notification from the injured employee. If the injury or disease requires you to miss one day or more from work, the employer's insurance carrier must report the injury or disease to the Department of Workers' Claims via a First Report Of Injury.

For Workers Compensation claims in Kentucky there is generally there is a two-year statute of limitations for injury occurring from a onetime event; however, it can be prolonged by payment

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<sup>2</sup> KRS 342.0011(1)

<sup>3</sup> KRS 342.0011(2)

of wage replacement benefits. The Statute of limitation is either two years from the date of injury, or two years from the date of the last temporary total disability (TTD) payment<sup>4</sup>. Cumulative trauma injury shall be barred unless notice of the cumulative trauma injury is given within two (2) years from the date the employee is told by a physician that the cumulative trauma injury is work-related. However, the right to compensation for any cumulative trauma injury shall be forever barred, unless an application for adjustment of claim is filed with the commissioner within five (5) years after the last injurious exposure to the cumulative trauma <sup>5</sup> An occupational disease claim must be filed three years after a disease becomes known and disabling, but a maximum of five years from the time of the last work-related exposure to the disease-causing agent.<sup>6</sup>

In Kentucky every employer with at least one employee is subject to Kentucky's Workers' Compensation Act and must secure workers compensation coverage. An employer cannot not deduct any portion of the insurance premium from the wages of the employee. Often there arise arguments with smaller employers claiming their "employees" are "independent contractors" in an attempt to get around having workers compensation coverage. Kentucky's Supreme Court has provided guidelines on these types of case to determine whether a person performing a service for the business is an employee or truly an independent contractor. Generally speaking, the court looks at the following six factors:

1. The permanency of the relationship between the parties,
2. The degree of skill required for rendering the service,
3. The worker's investment in equipment or materials for the task,
4. The worker's opportunity for profit or loss, depending upon his or her skill,
5. The degree of the alleged employer's right to control the manner in which the work is performed, and
6. Whether the service rendered is an integral part of the alleged employer's business.

There are essentially three major benefits under KRS 342. First if as a result of workplace injury(ies) an employee is off work for at least seven (7) days, they are entitled to wage replacement benefits call Temporary Total Disability Benefits (TTD) which are paid at a rate of 66 2/3<sup>rd</sup>% of an employee's average weekly wage. Said benefits are generally paid to an injured

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<sup>4</sup> KRS 342.185(1)

<sup>5</sup> KRS 342.185(3)

<sup>6</sup> KRS 342.316(4)(a)



employee until they reach Maximum Medical Improvement (MMI)<sup>7</sup> or until such time the employee has been released to return to work (with or without restrictions) that the employer can accommodate.<sup>8</sup> The second type of benefit KRS Chapter 342 provides to the injured employee is reasonable and necessary medical treatment for the cure and or relief of the workplace injury.<sup>9</sup> However, it should be noted that this does not mean every medical treatment that the treating doctors wish to perform on an injured employee is covered, as there is the requirement that said treatments be reasonable and or necessary which can be subject to dispute among different medical professionals. The third major benefit that injured workers received as a result of a work place injury is compensation based upon any permanent occupational impairment that may result from the injury. This permanent impairment is based upon what is called a permanent impairment rating which is determined by the 5<sup>th</sup> Edition of the Guides to the Evaluation of Permanent Impairment which is put out by the American Medical Association. However, please be advised that not every injury results in a permanent impairment rating and thus not every claim has future value based upon the same. Two important things to note are that because the Kentucky Workers Compensation System is a statutory creation, the legislature sets what damages can and cannot be recovered. When the system was created over 100 years ago there was some give and take by all parties. Two of those notable provisions is that the injured employee does not need to show negligence on behalf of the employer to receive workers compensation benefits. On the other hand, an injured employee can only receive the benefits listed above and is not entitled to receive any compensation for “pain and suffering” or any punitive damages as a result of a work place injury against his/her employer.

### **Paralegal’s Role in KY Workers Compensation Claims**

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<sup>7</sup> AMA Guides defines MMI as “well stabilized and unlikely to change substantially in the next year with or without medical treatment.” Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition, pg. 601

<sup>8</sup>KRS 342.020(1)

For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred ten percent (110%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability.

<sup>9</sup> KRS 342.020 (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter for the length of time set forth in this section, or as may be required for the cure and treatment of an occupational disease

While every attorney in Kentucky who practices Workers Compensation claims does things a bit differently there are essentially two stages of a claim, prelitigation and litigation and the duties and responsibilities of the paralegal differ in each stage. Each will be discussed herein turn.

### Prelitigation

In a prelitigation claim a paralegal not only prepares a case to move toward litigation but also acts like a case manager. Duties can involve everything from initial client contact, correspondence, contact with adjusters and nurse case managers, arranging for recorded statements, medical records and claims file acquisitions, preservation/spoliation of evidence correspondences to employer, witness identification, KY OSHA file requests, police report requests, lien acquisition, expert retention, expert evaluation setup, and most importantly client communications. While obviously this is not an exhaustive list of pre-ligations tasks the most time consuming of them all is client communication. You will find that worker compensation claimants require a high amount of client communication, right up there with family law clients. A large number of clients have never dealt with the Kentucky Workers Compensation system before and unfortunately it is not as intuitive as other areas of the law. Furthermore, a large number of clients are in occupations which have more physical demands and any restrictions to their physical ability to perform their duties seriously impair their ability to work and provide for their livelihood. Is it is not uncommon to get calls from clients in workers compensation claims who are on the verge of losing everything simply because their benefits check is late. Remember, even if a worker is making decent wages and working decent hours, workers compensation benefits are paid at a reduced rate which often puts significant financial strains on injured employees.

### Litigation

Litigation of a worker's claims is quite different than most personal injury cases. The workers' compensation claims process starts out entirely in an administrative setting and filing is done 100% electronically. Furthermore, workers compensation claims while generally following the Kentucky Rules of Civil procedure there are several significant differences. Form 101 is the document we file with the Kentucky Department of Workers' Claims (DWC) in order to initiate formal litigation before an Administrative Law Judge (ALJ) (our version of a complaints). Typically, a claim is filed and enters litigation if the insurance carrier has terminated all benefits;

if settlement discussions have failed; or if we are approaching the statute of limitations deadline. Once a Form 101 has been filed with the Department of Workers Claim, each claim will be assigned to an Administrative Law Judge and a scheduling order will be issued. This order provides the timeline for the litigation process. This includes deadlines for filing Notice of Claims denials (Answers), discovery deadlines, and a preliminary conference which is called a Benefit Review Conference. During the discovery period general tasks of the paralegal include but are not limited to preparation of notice of disclosures, notice of filings, general discovery request and responses, arranging for deposition of fact, lay, and medical experts, reviewing medical records, communication and coordination with opposing counsel staff regarding scheduling depositions and medical evaluations, managing calendars, sending out correspondence to notify clients of events they need to be in attendance for, and again client communication. Workers' Compensation claims are not as heavy in motion practice as other practice areas as there isn't a regular weekly or bi-weekly docket. Additionally, discovery practice is much more truncated than normal practice, usually less than 4-5 months, due largely to prelitigation regulations which require disclosure and exchange of medical records prior to litigation. Ultimately, Ky Workers Compensation Claims undergo a final hearing and decision by an Administrative Law Judge. Again, these are more procedure driven and not argument drive. Ultimately each side will file post hearing briefs rather than oral argument prior to a decision being made. Again, while every practitioner is different, paralegals in our practice group are heavily involved in the brief writing process by providing summary of lay and medical evidence and historical factual backgrounds. Once a claim is decided by the ALJ Kentucky Workers Compensation Claims follow a much different appeals path than that of normal civil claims. Once there is an initial decision by the ALJ, there is a first a "Petitioner for reconsideration" back to the ALJ him/herself for reconsideration.<sup>10</sup> This is similar to a Motion to Alter, Amend, or Vacate filed in general civil practice. From then, there are multiple other levels of appeal including to the Workers Compensation Board<sup>11</sup>, the Kentucky Court of Appeals<sup>12</sup> and to the Kentucky Supreme Court<sup>13</sup>. Unlike in other civil matters, workers' compensation claims have an automatic right of appeal to the Kentucky Supreme Court rather than a discretionary right. Again, in our practice group paralegals play an essential role in

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<sup>10</sup> KRS 342.281; 803 KAR 25:010

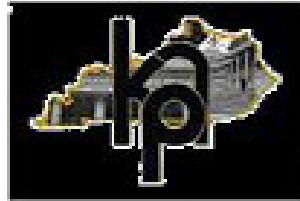
<sup>11</sup> KRS 342.285; 803 KAR 25:010; KYCR 7.02(4)

<sup>12</sup> KYCR 76.25, 76.12 (if briefs are ordered), 76.42

<sup>13</sup> KYCR 76.25, 76.36(7), 76.12, 74.01, 76.42

the appeal process by assisting in the drafting process. Litigation of a Kentucky Workers Compensation claim takes about 12-15 months from filing an Application for Benefits until decision is rendered by an ALJ. If there is an appeal to the Workers Compensation Board you are looking at an additional 6 months, Court of Appeals another 12-15 months, and Supreme Court another 12-24 months until final completion.

**Session 5**  
**November 3, 2023**  
**10:15 a.m. – 11:15 a.m.**  
**Grand KY Ballroom D**  
**Barbara Whaley and Serah Wiedenhoefer**  
**Human Trafficking In Kentucky: An Overview**



**Kentucky Human Trafficking  
Laws and Prosecutions**

Barbara Maines Whaley  
Assistant Attorney General  
Special Prosecutions Unit  
[Barbara.Whaley@ky.gov](mailto:Barbara.Whaley@ky.gov)

Serah E. Wiedenhoefer  
Assistant Attorney General  
Trafficking and Abuse Prevention and Prosecution Unit  
[Serah.Wiedenhoefer@ky.gov](mailto:Serah.Wiedenhoefer@ky.gov)




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**HUMAN TRAFFICKING LAWS**

**KRS 529.100 Human Trafficking:**  
A person is guilty of human trafficking when the person intentionally subjects one or more persons to human trafficking

**Two ways to traffic:**

- **Sex Trafficking:** Commercial sexual activity through the use of force, fraud, or coercion;
- **Labor Trafficking:** obtaining labor or services through the use of force, fraud, or coercion



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**KRS 529.010 Definitions:**

**Human Trafficking** - refers to criminal activity whereby one or more persons are subjected to engaging in

- a) Forced labor or services; or
- b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under age 18, the commercial sexual activity need not involve force, fraud, or coercion.



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**Force, Fraud, Coercion:**

Includes but is not limited to:

- a) use or threat of force against, abduction of, restraint, or serious harm of an individual;
- b) the abuse or threatened abuse of law or legal process;
- c) facilitating, controlling, or threatening to control an individual's access to a controlled substance;
- d) Knowingly destroying, concealing, removing, confiscating, or possessing, or attempting to destroy, conceal, remove, confiscate, or possess an actual or purported passport, or other immigration documents or any other actual or purported governmental documents of the person



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or family member;

- e) use of debt bondage; or
- f) the use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function;

**Serious Harm** – means any harm, whether physical or non-physical, including psychological, financial, or reputational that is sufficiently serious to compel a reasonable person to perform or to continue performing commercial sexual activity to avoid incurring that harm.



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**Forced Labor or Services** means labor or services that are performed or provided by another person and that are obtained through force, fraud, or coercion.

**Commercial Sexual Activity** means prostitution, regardless of whether the trafficked person can be charged with prostitution, participation in the production of obscene material, or engaging in a sexually explicit performance.

**KRS 529.020** a person is guilty of prostitution when he engages, or agrees, or offers to engage in sexual conduct with another in return for a fee.



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# Kentucky Prosecutions



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## JEFFERSON COUNTY 2012

### Justin Ritter and Rebecca Goodwin

Undercover police offered a female \$75 in exchange for sex in a strip club parking lot

Officer suspected trafficking - found that young woman was 17 years old, and had been given heroin & other drugs.

Ritter pled guilty - sentenced to 10 years to serve for Complicity to Human Trafficking of a Minor

Goodwin pled guilty to Facilitation to Human Trafficking of Minor, and Complicity to Unlawful Transaction with Minor –shock probated





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## FRANKLIN COUNTY 2016

### Jonathan Diaz

- Enticing teenage girls to send nude photos, then would meet them at local motel and sell them to men for sex.
- Undercover operation by Franklin County Sheriff's Office - Diaz tried to sell a 15 year old to 2 officers.
- Pled guilty– Human Trafficking of Minor - 10 years to serve
- Sex Offender Registration





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**JEFFERSON COUNTY 2016**  
Kirsten Logsdon

- Undercover Derby Detail - LMPD officer responded to an ad on Backpage.com for sex with a female
- Logsdon and co-defendant transported 13 year-old victim to meet under cover officer.
- Logsdon pled guilty to Promoting Human Trafficking of Minor Commercial Sexual Activity - Sentenced to 5 years, probated, but was revoked.



Attorney General  
**DANIEL CAMERON**

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**BOYD COUNTY 2022**  
Joshua Phillips

- Was asked to babysit for his girlfriend's 9 year-old daughter.
- In addition to committing sex offenses, he offered to buy her a new I Phone if she would "twerk" for him
- Pled guilty to Conspiracy to Commit Human Trafficking of a Minor- Commercial Sexual Activity
- Sentenced to 7 years consecutive to 10 years for Escape and PFO 1<sup>st</sup>



Attorney General  
**DANIEL CAMERON**

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**CAMPBELL COUNTY 2019**  
Timothy Nolan  
former District Judge and member of School Board



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**December 2016**

**A Campbell County High School student reported to the SRO that her friend told her she had been sexually assaulted by her landlord.**

**Detective Dornheggen responded to the school, and contacted a social worker who knew the family.**

**She spoke with the 16 year-old who denied anything had happened.**



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**February 2017: School counselor follow up**

**Nolan invited the 16 year-old and her friend to go "quad riding" at his home.**

**He provided alcohol**

**He offered them \$40 in exchange for a back rub.**

**Friend declined, but minor agreed and went with him into the bedroom**

**She described sexual contact which included him directing her to use a grey massager. When it was over he gave her \$100**

**During a search, police located the grey massager**



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**Victim 2: The 16 year old's mother**

**She became involved with Tim Nolan in 2005. He began by paying her for sex and pornographic videos, and to find other women for him and his buddy.**

**He used her addiction as leverage.**

**Let her live in a trailer he owned.**

**She gave the names of other women he preyed upon to Det. Don Dornheggen.**



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**The Investigation ended with 19 victims:  
5 under age 18**

- He met them through volunteering at a rehabilitation house for women;
- Cold messaging with a fake Facebook profile;
- Some were runaways from Foster Care;
- None of his victims had ever engaged in prostitution – none on Backpage or other sites;
- He used drugs as a means of enticement, then escalated the type of drug—from pills to Heroin;
- He threatened to turn them in for a probation violation.



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*"He used his position of power to belittle me. He said no one would ever believe me if I came forward."*


*"He demanded sex and took videos, saying you can either be dope sick or do this."*

*"He tried to get me to leave rehab, and said if I tried to get him in trouble his buddies in the Iron Horsemen would kill me and my family."*

*"He bonded me out and I had to have sex with him and his buddy. He held legal power over me so I always did what he said."*

*"He had the money, and the courts. He finds girls 15 or 16 who don't know much about the drug scene and gets them into it."*

*"He took advantage of a girl who was barely alive and used my addiction to control me. He looked at me as nothing, and I believed he was right."*



17

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**Timothy Nolan pleaded guilty**  
Sentenced to 20 years to serve on 21 counts  
\$100,000 Asset Forfeiture, \$10,000 HT Victim Fund

- Human Trafficking of an Adult
- Promoting Human Trafficking of a Minor
- Unlawful Transaction with Minor under 16, and under 18, Controlled Substance
- Criminal Attempt Human Trafficking of a Minor
- Criminal Attempt Human Trafficking of Adult
- Prostitution

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Robert L. Poole – Attorney  
friend of Timothy Nolan



Attorney General  
DANIEL CAMERON

19

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Robert Poole - 2022

**Kenton Co.: 5 counts of Promoting Human Trafficking of five victims: Sentenced to 8 years and put on probation - served 6 months in jail; Paid \$40,000 to Human Trafficking Victims' Fund.**

**Boone Co.: 2 counts of Promoting Human Trafficking of two victims: Sentenced to 5 years. Paid \$10,000 to Human Trafficking Victims' Fund.**

**10 year Interpersonal Protective Order for 13 victims**

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Reports of suspected human trafficking  
of minors in Kentucky

2013 through 9/30/2022:

- Total reported incidents 1,827
- Number of alleged victims 2,189

Cabinet for Health and Family Services, Department of Community Based Services, Human Trafficking Report to Legislative Research Commission, November 1, 2022 (reporting period of 10/1/2021 to 9/30/2022)

Attorney General  
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21

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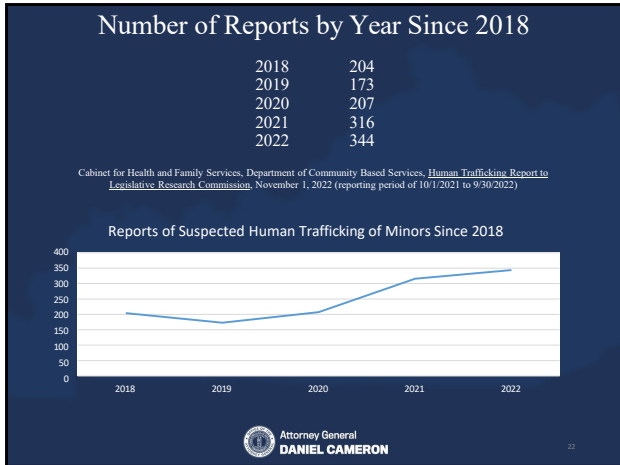
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### Tactics Used to Recruit Victims

Internet reported as the top recruitment location for all forms of human trafficking\*

Internet platforms with highest use in 2020 and 2021\*\*:

- o Dating sites
- o Facebook
- o "Other mobile apps"
- o Instagram

Most traffickers use psychological means to recruit victims such as tricking, defrauding, manipulating, or threatening\*\*\*

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23

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### Means and Methods of Control

Top Risk Factors/Vulnerabilities of Victims:

- Recent migration/relocation
- Substance use concerns
- Unstable housing
- Runaway/homeless youth
- Mental health concerns

Methods of Exploiting Victims' Risk Factors/Vulnerabilities:

- Economic abuse
- Emotional abuse
- Intimidation
- Isolation
- Threats

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## Misconceptions vs. Reality

	<b>KIDNAPPED / TAKEN</b> BY LOVE + FALSE PROMISES	
	<b>SHACKLED</b> BY DRUGS, ALCOHOL + TRAUMA	
	<b>HELD HOSTAGE</b> BY THREATS, VIOLENCE + FEAR	

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## Who is Recruiting the Victims

Human trafficking victims are generally recruited by someone they know

The top three recruiter types:

- Family member or caregiver (33%)
- Intimate partner (28%)
- Employer (22%)

[Public Awareness of 2021 Data Shows Increased Victim Identification Through Technology](#)

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26

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## 2020 US District Court Case Statistics

- Sex
  - Male 91.9%
  - Female 08.1%
- Race
  - White 62.6%
  - Black 17.6%
  - Hispanic 16.8%
  - American Indian or Alaska Native 01.1%
  - Asian, Native Hawaiian, or Other Pacific Islander 01.9%

US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, [Human Trafficking Data Collection Activities, 2022](#) (October 2022) (statistics based on US district court cases in fiscal year 2020)

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Human Trafficking Signage must be posted in:

a prominent place easily seen by patrons  
all restrooms of the following

-  Airports
-  Bus Stations
-  Truck Stops
-  Passenger Train Stations
-  Rest Areas

 Attorney General  
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### Human Trafficking Outreach Prevention and Education Initiative (a/k/a HOPE Initiative)


Addresses the illicit massage industry

Defined as an establishment that puts on a façade of a legitimate massage business in order to facilitate commercial sex services\*

Third most frequent type of human trafficking reported nationally in 2021\*\*

\*The Network, [https://www.the-network.org/](#)

\*\*Polaris Analysis of 2021 Data from the National Human Trafficking Hotline. Retrieved from [https://www.polarisproject.com/2022/01/2021-national-human-trafficking-report/](#)

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Estimated more than 11,000 illicit massage businesses (IMBs) operating through the nation in 2022\*

IMBs operating in all 50 states\*

Estimated \$4.3 billion per year in illicit revenue\*

Goal of the H.O.P.E. Initiative:

- reduce instances of human trafficking
- prevent the recruitment of potential human trafficking victims
- close illicit massage businesses

[www.kentucky.gov/newsroom/2022/11/01/11-01-22-imbs](http://www.kentucky.gov/newsroom/2022/11/01/11-01-22-imbs)



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### Community engagement efforts through the Kentucky Office of the Attorney General

Your Eyes Save Lives Campaign

- based on the premise that every Kentuckian plays a vital role in eradicating human trafficking in the Commonwealth
- uses media and training to raise awareness of the signs of human trafficking and empower citizens, law enforcement, and community leaders to identify, report, and handle suspected trafficking situations
- created a website with a variety of resources such as informational videos, tip sheets on a variety of topics pertaining to human trafficking, on demand training videos related to preventing human trafficking in Kentucky, and signs of sex and labor trafficking

[youreyessavelives.ky.gov](http://youreyessavelives.ky.gov)



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Questions



Barbara Maines Whaley  
Special Prosecutions Unit  
(502)696-5337

[Barbara.Whalen@ky.gov](mailto:Barbara.Whalen@ky.gov)



Sarah E. Wiedenhoefer  
Office of Trafficking and Abuse  
Prevention and Prosecution  
(502) 764-0684

[sarah.wiedenhoefer@ky.gov](mailto:sarah.wiedenhoefer@ky.gov)



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**KENTUCKY STATUTES RELATED TO HUMAN  
TRAFFICKING**

## Kentucky Law Related to Human Trafficking

### **KRS 529.010 Definitions.**

The following definitions apply in this chapter unless the context otherwise requires:

- (1) "Abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action;
- (2) "Advancing prostitution" -- A person "advances prostitution" when acting other than as a prostitute or as a patron thereof, he or she knowingly causes or aids a person to engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any conduct designed to institute, aid or facilitate an act or enterprise of prostitution;
- (3) "Commercial sexual activity" means: (a) Any sex act, for which anything of value is given to, promised to, or received by any person; (b) Participation in the production of obscene material as set out in KRS Chapter 531; or (c) Engaging in a sexually explicit performance;
- (4) "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for the debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (5) "Forced labor or services" means labor or services that are performed or provided by another person and that are obtained through force, fraud, or coercion;
- (6) "Force, fraud, or coercion" includes but is not limited to: (a) The use or threat of force against, abduction of, restraint, or serious harm of an individual; (b) The abuse or threatened abuse of law or legal process; (c) Facilitating, controlling, or threatening to control an individual's access to a controlled substance; (d) Knowingly destroying, concealing, removing, confiscating, or possessing, or attempting to destroy, conceal, remove, confiscate, or possess any actual or purported passport or

other immigration documents or any other actual or purported governmental identification documents of the person or family member; (e) Use of debt bondage; or (f) The use of an individual's physical or mental impairment when the impairment has a substantial adverse effect on the individual's cognitive or volitional function;

(7) "Human trafficking" refers to criminal activity whereby one (1) or more persons are subjected to engaging in: (a) Forced labor or services; or (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the trafficked person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion;

(8) "Human trafficking victims fund" is the fund created in KRS 529.140;

(9) "Labor" means work of economic or financial value;

(10) "Minor" means a person under the age of eighteen (18) years;

(11) "Profiting from prostitution" -- A person "profits from prostitution" when acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly accepts or receives or agrees to accept or receive money or other property pursuant to an agreement or understanding with any person whereby he or she participates or is to participate in proceeds of prostitution activity;

(12) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious to compel a reasonable person to perform or to continue performing commercial sexual activity in order to avoid incurring that harm;

(13) "Services" means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor;

(14) "Sexual conduct" means sexual intercourse or any act of sexual gratification involving the sex organs;

(15) "Sexually explicit performance" means a performance of sexual conduct involving: (a) Acts of masturbation, homosexuality, lesbianism, bestiality, sexual intercourse, or deviant sexual intercourse, actual or simulated; (b) Physical contact with, or willful or intentional exhibition of, the genitals; (c) Flagellation or excretion for the purpose of sexual stimulation or gratification; or (d) The exposure, in an obscene manner, of the unclothed or apparently unclothed human male or female

genitals, pubic area, or buttocks, or the female breast, whether or not subsequently obscured by a mark placed thereon, or otherwise altered, in any resulting motion picture, photograph, or other visual representation, exclusive of exposure portrayed in matter of a private, family nature not intended for distribution outside the family; and (16) "Victim of human trafficking" is a person who has been subjected to human trafficking.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 75, sec. 6, effective July 15, 2020. – Amended 2013 Ky. Acts ch. 25, sec. 7, effective June 25, 2013. --Amended 2007 Ky. Acts ch. 19, sec. 4, effective June 26, 2007. -- Created 1974 Ky. Acts ch. 406, sec. 250, effective January 1, 1975.

### **KRS 529.100 Human trafficking.**

(1) A person is guilty of human trafficking when the person intentionally subjects one (1) or more persons to engage in: (a) Forced labor or services; or (b) Commercial sexual activity through the use of force, fraud, or coercion, except that if the person is under the age of eighteen (18), the commercial sexual activity need not involve force, fraud, or coercion.

(2) (a) Human trafficking is a Class C felony unless it involves serious physical injury to a trafficked person, in which case it is a Class B felony.(b) If the victim of human trafficking is under eighteen (18) years of age, the penalty for the offense shall be one (1) level higher than the level otherwise specified in this section.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 75, sec. 7, effective July 15, 2020. – Created 2007 Ky. Acts ch. 19, sec. 5, effective June 26, 2007.

### **KRS 529.110 Promoting human trafficking.**

(1) A person is guilty of promoting human trafficking when the person intentionally: (a) Benefits financially or receives anything of value from knowing participation in human trafficking; or (b) Recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means,

another person, knowing that the person will be subject to human trafficking.

(2) Promoting human trafficking is a Class D felony unless a victim of the trafficking is under eighteen (18), in which case it is a Class C felony.

Effective: June 26, 2007

History: Created 2007 Ky. Acts ch. 19, sec. 6, effective June 26, 2007.

**KRS 529.120 Treatment of minor suspected of prostitution offense.**

(1) Notwithstanding KRS 529.020 or 529.080, if it is determined after a reasonable period of custody for investigative purposes, that the person suspected of prostitution or loitering for prostitution is under the age of eighteen (18), then the minor shall not be prosecuted for an offense under KRS 529.020 or 529.080.

(2) A law enforcement officer who takes a minor into custody under subsection (1) of this section shall immediately make a report to the Cabinet for Health and Family Services pursuant to KRS 620.030.

Pursuant to KRS 620.040, the officer may take the minor into protective custody.

(3) The Cabinet for Health and Family Services shall commence an investigation into child dependency, neglect, or abuse pursuant to KRS 620.029.

Effective: June 25, 2013

History: Created 2013 Ky. Acts ch. 25, sec. 11, effective June 25, 2013.

**KRS 529.130 Human trafficking victims service fee.**

Any person convicted of an offense in KRS 529.100 or 529.110 shall be ordered to pay, in addition to any other fines, penalties, or applicable forfeitures, a human trafficking victims service fee of not less than ten thousand dollars (\$10,000) to be remitted to the fund created in KRS 529.140.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 75, sec. 8, effective July 15, 2020. – Created 2013 Ky. Acts ch. 25, sec. 8, effective June 25, 2013.

**KRS 529.140 Human trafficking victims fund.**

(1) The "human trafficking victims fund," referred to in this section as the "fund," is created as a separate revolving fund within the Office of the Attorney General.

(2) The fund shall consist of proceeds from assets seized and forfeited pursuant to KRS 529.150, proceeds from the fee in KRS 529.130, grants, contributions, appropriations, and any other moneys that may be made available for purposes of the fund.

(3) Moneys in the fund shall be distributed to agencies serving victims of human trafficking, including but not limited to law enforcement agencies, prosecutorial agencies, and victim service agencies. The Office of the Attorney General shall promulgate administrative regulations to develop procedures for distributing funds pursuant to this section. The administrative regulations shall require that: (a) The Office of the Attorney General use funds received to maintain programs for the prevention of human trafficking, provide education, training, or public outreach programs about human trafficking, and conduct human trafficking investigations. The Office of the Attorney General may recoup costs for conducting any programs or trainings; and (b) The Cabinet for Health and Family Services use funds received to serve minor victims of human trafficking under KRS 620.029.

(4) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.

(5) Any interest earnings on moneys in the fund shall become a part of the fund and shall not lapse to the general fund.

(6) Moneys in the fund are hereby appropriated for the purposes set forth in this section.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 75, sec. 9, effective July 15, 2020. – Created 2013 Ky. Acts ch. 25, sec. 9, effective June 25, 2013.

### **529.150 Forfeiture of property used in connection with human trafficking -- Distribution of proceeds.**

(1) All property used in connection with or acquired as a result of a violation of KRS 529.100 or 529.110 shall be subject to forfeiture under the same terms, conditions, and defenses and using the same process as



set out in KRS 218A.405 to 218A.460, with the exception of the distribution of proceeds, which shall be distributed as required in this section.

(2) Proceeds from the assets seized and forfeited shall be distributed as follows: (a) Fifty percent (50%) shall be paid to the human trafficking victims fund; (b) Forty-two and one-half percent (42.5%) shall be paid to the law enforcement agency or agencies that seized the property, to be used for direct law enforcement purposes; and (c) Seven and one-half percent (7.5%) shall be paid to the Office of the Attorney General or, in the alternative, to the Prosecutors Advisory Council for deposit on behalf of the Commonwealth's attorney or county attorney who has participated in the forfeiture proceeding, as determined by the court pursuant to KRS 218A.420(9). Notwithstanding KRS Chapter 48, these funds shall be exempt from any state budget reduction acts. The moneys identified in this subsection are intended to supplement any funds otherwise appropriated to the recipient and shall not supplant other funding of any recipient.

Effective: June 25, 2013

History: Created 2013 Ky. Acts ch. 25, sec. 10, effective June 25, 2013.

**KRS 529.160 Expungement of records relating to violation of chapter when person charged or convicted was a victim of human trafficking at time of offense -- Motion -- Finding -- Presumption.**

(1) When a person is charged or convicted under this chapter, or with an offense which is not a violent crime as defined in KRS 17.165, and the person's participation in the offense is determined to be the direct result of being a victim of human trafficking, the person may make a motion in the court in which the charges were filed to expunge all records of the offense.

(2) The motion shall be filed no sooner than sixty (60) days following the date the final judgment was entered by the court in which the charges were filed.

(3) (a) A motion filed under this section, any hearing conducted on the motion, and any relief granted are governed by KRS 431.076, 431.078, and 431.079 unless otherwise provided in this section. (b) For the purposes of expungement under KRS 431.076, a finding by the court that the person's participation in the offense was a direct result of being

a victim of human trafficking shall deem the charges as dismissed with prejudice. (c) No official determination or documentation is required to find that the person's participation in the offense was a direct result of being a victim of human trafficking, but documentation from a federal, state, local, or tribal governmental agency indicating that the defendant was a victim at the time of the offense shall create a presumption that the defendant's participation in the offense was a direct result of being a victim.

Effective: July 15, 2014

History: Created 2014 Ky. Acts ch. 70, sec. 1, effective July 15, 2014.

**KRS 529.170 Being victim of human trafficking is affirmative defense to violation of chapter.**

A person charged under this chapter, or charged with an offense which is not a violent crime as defined in KRS 17.165, may assert being a victim of human trafficking as an affirmative defense to the charge.

Effective: July 15, 2014

History: Created 2014 Ky. Acts ch. 70, sec. 2, effective July 15, 2014.

**KRS 529.180 Conditions that are not a defense in prosecution involving commercial sexual activity.**

In any prosecution under KRS 529.100 or 529.110 involving commercial sexual activity, it shall not be a defense that:

- (1) The defendant was unaware of the minor's actual age;
  - (2) A minor consented to engage in commercial sexual activity;
  - (3) The intended victim of the offense is a law enforcement officer posing as a minor as part of a criminal investigation or operation;
  - (4) The solicitation was unsuccessful, the conduct was not engaged in, or the law enforcement officer could not engage in the solicited offense;
- or
- (5) The victim is charged with an offense.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 75, sec. 10, effective July 15, 2020. -- Created 2015 Ky. Acts ch. 122, sec. 3, effective June 24, 2015.

**Additional Kentucky Revised Statutes Applicable in Human  
Trafficking Cases**

**KRS 209.020 Definitions for chapter.**

As used in this chapter, unless the context otherwise requires:

(1) "Secretary" means the secretary of the Cabinet for Health and Family Services;

(2) "Cabinet" means the Cabinet for Health and Family Services;

(3) "Department" means the Department for Community Based Services of the Cabinet for Health and Family Services;

(4) "Adult" means a person eighteen (18) years of age or older who, because of mental or physical dysfunctioning, is unable to manage his or her own resources, carry out the activity of daily living, or protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others, and who may be in need of protective services;

(5) "Protective services" means agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited. These services may include but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action; social services aimed at preventing and remedying abuse, neglect, and exploitation; and services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and to ensure that he or she obtains suitable care in or out of his or her home;

(6) "Caretaker" means an individual or institution who has been entrusted with or who has the responsibility for the care of the adult as a result of family relationship, or who has assumed the responsibility for the care of the adult person voluntarily or by contract, employment, legal duty, or agreement;

(7) "Deception" means but is not limited to: (a) Creating or reinforcing a false impression, including a false impression as to law, value, intention, or other state of mind; (b) Preventing another from acquiring information that would affect his or her judgment of a transaction; or (c) Failing to correct a false impression that the deceiver previously created or reinforced, or that the deceiver knows to be influencing

another to whom the person stands in a fiduciary or confidential relationship;

(8) "Abuse" means the infliction of injury, sexual abuse, unreasonable confinement, intimidation, or punishment that results in physical pain or injury, including mental injury;

(9) "Exploitation" means obtaining or using another person's resources, including but not limited to funds, assets, or property, by deception, intimidation, or similar means, with the intent to deprive the person of those resources;

(10) "Investigation" shall include but is not limited to: (a) A personal interview with the individual reported to be abused, neglected, or exploited. When abuse or neglect is allegedly the cause of death, a coroner's or doctor's report shall be examined as part of the investigation; (b) An assessment of individual and environmental risk and safety factors; (c) Identification of the perpetrator, if possible; and (d) Identification by the Office of Inspector General of instances of failure by an administrator or management personnel of a regulated or licensed facility to adopt or enforce appropriate policies and procedures, if that failure contributed to or caused an adult under the facility's care to be abused, neglected, or exploited;

(11) "Emergency" means that an adult is living in conditions which present a substantial risk of death or immediate and serious physical harm to himself or herself or others;

(12) "Emergency protective services" are protective services furnished an adult in an emergency;

(13) "Protective placement" means the transfer of an adult from his or her present living arrangement to another;

(14) "Court" means the Circuit Court or the District Court if no judge of that Circuit Court is present in the county;

(15) "Records" means the medical, mental, health, and financial records of the adult that are in the possession of any hospital, firm, corporation, or other facility, if necessary to complete the investigation mandated in this chapter. These records shall not be disclosed for any purpose other than the purpose for which they have been obtained;

(16) "Neglect" means a situation in which an adult is unable to perform or obtain for himself or herself the goods or services that are necessary to maintain his or her health or welfare, or the deprivation of services

by a caretaker that are necessary to maintain the health and welfare of an adult; and

(17) "Authorized agency" means: (a) The Cabinet for Health and Family Services; (b) A law enforcement agency or the Department of Kentucky State Police; (c) The office of a Commonwealth's attorney or county attorney; or (d) The appropriate division of the Office of the Attorney General.

Effective: June 26, 2007

History: Amended 2007 Ky. Acts ch. 85, sec. 242, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 99, sec. 294, effective June 20, 2005; and ch. 132, sec. 2, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 14, sec. 41, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 370, sec. 1, effective July 15, 1998; and ch. 426, sec. 239, effective July 15, 1998. -- Amended 1986 Ky. Acts ch. 56, sec. 1, effective July 15, 1986. -- Amended 1980 Ky. Acts ch. 372, sec. 2, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 370, sec. 2, effective June 17, 1978. -- Created 1976 Ky. Acts ch. 157, sec. 3.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

Legislative Research Commission Note (6/20/2005). Under 2005 Ky. Acts chs. 184, sec. 18, changes in the names of agencies and officers that are made in bills confirming a reorganization of the executive branch are to be codified only to the extent those changes do not conflict with other 2005 amendments.

Accordingly, an amendment to this section in Acts ch. 132 prevails over a name change made in Acts ch. 99.

**KRS 209.030 Administrative regulations -- Reports of adult abuse, neglect, or exploitation -- Cabinet actions -- Status and disposition reports.**

(1) The secretary may promulgate administrative regulations in accordance with KRS Chapter 13A to effect the purposes of this chapter. While the cabinet shall continue to have primary responsibility for

investigation and the provision of protective services under this chapter, nothing in this chapter shall restrict the powers of another authorized agency to act under its statutory authority.

(2) Any person, including but not limited to physician, law enforcement officer, nurse, social worker, cabinet personnel, coroner, medical examiner, alternate care facility employee, or caretaker, having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation, shall report or cause reports to be made in accordance with the provisions of this chapter. Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.

(3) An oral or written report shall be made immediately to the cabinet upon knowledge of suspected abuse, neglect, or exploitation of an adult.

(4) Any person making such a report shall provide the following information, if known: (a) The name and address of the adult, or of any other person responsible for his care; (b) The age of the adult; (c) The nature and extent of the abuse, neglect, or exploitation, including any evidence of previous abuse, neglect, or exploitation; (d) The identity of the perpetrator, if known; (e) The identity of the complainant, if possible; and (f) Any other information that the person believes might be helpful in establishing the cause of abuse, neglect, or exploitation.

(5) Upon receipt of the report, the cabinet shall conduct an initial assessment and take the following action: (a) Notify within twenty-four (24) hours of the receipt of the report the appropriate law enforcement agency. If information is gained through assessment or investigation relating to emergency circumstances or a potential crime, the cabinet shall immediately notify and document notification to the appropriate law enforcement agency; (b) Notify each appropriate authorized agency. The cabinet shall develop standardized procedures for notifying each appropriate authorized agency when an investigation begins and when conditions justify notification during the pendency of an investigation; (c) Initiate an investigation of the complaint; and (d) Make a written report of the initial findings together with a recommendation for further action, if indicated.

(6) (a) The cabinet shall, to the extent practicable, coordinate its investigation with the appropriate law enforcement agency and, if indicated, any appropriate authorized agency or agencies. (b) The

cabinet shall, to the extent practicable, support specialized multidisciplinary teams to investigate reports made under this chapter. This team may include law enforcement officers, social workers, Commonwealth's attorneys and county attorneys, representatives from other authorized agencies, medical professionals, and other related professionals with investigative responsibilities, as necessary.

(7) Any representative of the cabinet may enter any health facility or health service licensed by the cabinet at any reasonable time to carry out the cabinet's responsibilities under this chapter. Any representative of the cabinet actively involved in the conduct of an abuse, neglect, or exploitation investigation under this chapter shall also be allowed access to financial records and the mental and physical health records of the adult which are in the possession of any hospital, firm, financial institution, corporation, or other facility if necessary to complete the investigation mandated by this chapter. These records shall not be disclosed for any purpose other than the purpose for which they have been obtained.

(8) Any representative of the cabinet may with consent of the adult or caretaker enter any private premises where any adult alleged to be abused, neglected, or exploited is found in order to investigate the need for protective services for the purpose of carrying out the provisions of this chapter. If the adult or caretaker does not consent to the investigation, a search warrant may be issued upon a showing of probable cause that an adult is being abused, neglected, or exploited, to enable a representative of the cabinet to proceed with the investigation.

(9) If a determination has been made that protective services are necessary when indicated by the investigation, the cabinet shall provide such services within budgetary limitations, except in such cases where an adult chooses to refuse such services.

(10) In the event the adult elects to accept the protective services to be provided by the cabinet, the caretaker shall not interfere with the cabinet when rendering such services.

(11) The cabinet shall consult with local agencies and advocacy groups, including but not limited to long-term care ombudsmen, law enforcement agencies, bankers, attorneys, providers of nonemergency transportation services, and charitable and faith-based organizations, to

encourage the sharing of information, provision of training, and promotion of awareness of adult abuse, neglect, and exploitation, crimes against the elderly, and adult protective services.

(12) (a) By November 1 of each year and in accordance with state and federal confidentiality and open records laws, each authorized agency that receives a report of adult abuse, neglect, or exploitation shall submit a written report to the cabinet that provides the current status or disposition of each case referred to that agency by the cabinet under this chapter during the preceding year. The Elder Abuse Committee established in KRS 209.005 may recommend practices and procedures in its model protocol for reporting to the cabinet under this section. (b) By December 30 of each year, the cabinet shall provide a written report to the Governor and the Legislative Research Commission that summarizes the status of and actions taken on all reports received from authorized agencies and specific departments within the cabinet under this subsection. The cabinet shall identify any report required under paragraph (a) of this subsection that is not received by the cabinet. Identifying information about individuals who are the subject of a report of suspected adult abuse, neglect, or exploitation shall not be included in the report under this paragraph. The report shall also include recommendations, as appropriate, to improve the coordination of investigations and the provision of protective services. The cabinet shall make the report available to community human services organizations and others upon request.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 132, sec. 3, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 370, sec. 2, effective July 15, 1998. -- Amended 1980 Ky. Acts ch. 372, sec. 3, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 370, sec. 3, effective June 17, 1978. -- Created 1976 Ky. Acts ch. 157, sec. 4. Legislative Research Commission Note (7/15/98). The amendment to this statute proposed in the introduced version of House Bill 652 was deleted in the House Committee Substitute that was adopted and became 1998 Ky. Acts ch. 370; no changes to the existing statute were left in that Act as enacted.

Legislative Research Commission Note (11/9/93). Prior references to the "department" in this statute were changed to



"cabinet" pursuant to 1982 Ky. Acts ch. 393, sec. 50(5), and KRS 7.136(2).

**KRS 336.075 Reports of human trafficking -- Immunity.**

(1) The cabinet shall report all incidents of human trafficking as defined in KRS 529.010 about which the cabinet knows or has reasonable cause to believe within twenty-four (24) hours to a local law enforcement agency or the Department of Kentucky State Police, and the appropriate Commonwealth's attorney or county attorney.

(2) Anyone acting upon reasonable cause in the making of a report under subsection (1) of this section in good faith shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed.

Effective: June 25, 2013

History: Created 2013 Ky. Acts ch. 25, sec. 24, effective June 25, 2013.

**KRS 506.150 Criminal gang activity or recruitment -- Actions not constituting defenses.**

(1) To establish the existence of a "criminal gang" as defined in KRS 506.135, competent evidence that is probative of the existence of or membership in a criminal gang shall be admissible, including two (2) or more of the following: (a) Self-proclamation, either at the time of arrest or any time before or thereafter; (b) A common name, insignia, flag, or means of recognition; (c) Common identifying hand or body signs, signals, graffiti, or code; (d) A common identifying mode, style, or color of dress; (e) An identifying tattoo or body marking; (f) Membership, age, or other qualifications; (g) Creed of belief; (h) An organizational or command structure, overt or covert; (i) A de facto claim of territory or jurisdiction; (j) Participation, whether present or under direction, in an initiation ritual; (k) Directing or ordering participation in an initiation ritual; (l) A concentration or specialty; (m) A method of operation or criminal enterprise; (n) Identification as a gang member by a reliable informant; (o) Identification as a criminal gang member by the alleged gang member's parent or guardian; (p) Self-proclamation of association, whether for business or enjoyment, with criminal gang members; (q) Identification through criminal gang publications, rosters, or bylaws; (r) Participation in some form of verbal or written communication

indicating the commission of a crime by the criminal gang; (s) Participation in photos or social media interaction with criminal gang members promoting or furthering criminal activity; or (t) Having committed or planning to commit crime or a criminal activity to target a rival criminal gang.

(2) It is no defense to prosecution under KRS 506.120, 506.140, 506.160, or 506.170 that: (a) One (1) or more members of the gang are not criminally responsible for the offense; (b) One (1) or more members of the gang have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are under prosecution; (c) A person has been charged with, acquitted, or convicted of any offense under KRS 506.120, 506.140, 506.160, or 506.170; (d) The participants may not know each other's identity; (e) The membership in the criminal gang may change from time to time; or (f) The participants may stand in a wholesaler-retailer or other arm's length arrangement in the conduct of illicit distribution or other operations.

(3) Once the initial combination of three (3) or more persons is formed, the number or identity of persons remaining in the gang is immaterial as long as two (2) or more persons in the gang, excluding the defendant, are involved in a continuing pattern of criminal gang activity constituting a violation of KRS 506.120, 506.140, 506.160, or 506.170.

Effective: April 26, 2018

History: Amended 2018 Ky. Acts ch. 202, sec. 4, effective April 26, 2018. – Amended 2000 Ky. Acts ch. 431, sec. 2, effective July 14, 2000. -- Created 1998 Ky. Acts ch. 606, sec. 84, effective July 15, 1998.

**KRS 506.170 Enhancement of penalty and minimum service of sentence for conviction of criminal gang-related felonies resulting in risk of physical injury, serious physical injury, or death -- Application to juveniles and persistent felony offenders.**

(1) Other provisions of law notwithstanding, a person shall be penalized one (1) class more severely than provided in the penalty provision pertaining to that felony offense, unless the reclassification would move the offense to a capital offense, and shall not be released on parole until he or she has served at least eighty-five percent (85%) of the sentence imposed, if that person: (a) Is convicted of an offense classified as a felony under any provision of the Kentucky Revised Statutes and for

which the commission of the felony or felonies could or did place a member of the public at risk of physical injury, serious physical injury, or death; and (b) At the time of the commission of the offense or offenses was a member of a criminal gang as defined in KRS 506.135 and acting for the purpose of benefitting, promoting, or furthering the interests of a criminal gang or any individual member of a criminal gang.

(2) This section shall not apply to a juvenile unless: (a) He or she has been transferred to Circuit Court as a youthful offender pursuant to KRS 640.010 and has on at least one (1) prior separate occasion been adjudicated a public offender for a felony offense; or (b) He or she is a violent offender, as defined in KRS 439.3401.

(3) This section shall not apply in cases where the defendant is found to be a persistent felony offender under KRS 532.080.

Effective: April 26, 2018

History: Created 2018 Ky. Acts ch. 202, sec. 6, effective April 26, 2018.

### **KRS 605.030 Duties of court-designated workers.**

(1) A court-designated worker may: (a) Receive complaints; (b) Review complaints taken by peace officers; (c) Investigate complaints except neglect, abuse, and dependency; (d) Perform an initial screening for human trafficking as defined in KRS 529.010 for referral to the cabinet for investigation as a case of dependency, neglect, or abuse; (e) Dispose of complaints limited to a total of three (3) status or nonfelony public offense complaints per child and, with written approval of the county attorney, one (1) felony complaint that does not involve the commission of a sexual offense or the use of a deadly weapon; (f) Administer oaths; (g) Issue summonses; (h) Issue subpoenas; (i) Make advisory dispositional recommendations and provide, within forty-eight (48) hours, exclusive of weekends and holidays, information concerning a child who has chosen to waive the investigation pursuant to KRS 610.100; (j) Perform such duties as required by KRS Chapter 645; (k) Administer evidence-based screenings and assessments to identify the risk and needs of a child and his or her family; (l) Enter into diversion agreements, including referral to programs or service providers, providing case management and service coordination, assisting with barriers to completion, and monitoring progress; (m) Impose graduated sanctions, from least restrictive to most restrictive, in response to

violations of the terms of a diversion agreement; (n) Gather information necessary to track and record outcomes of all diversion agreement recommendations and final diversion disposition; (o) Collaborate and cooperate with the family accountability, intervention, and response team, director of pupil personnel as appropriate, and service providers to ensure all appropriate interventions are utilized; (p) Report annually to his or her local public school districts and to the Administrative Office of the Courts an inventory of all programs and service providers within the judicial district they serve; (q) Request from the schools a student's education records pursuant to KRS 17.125; and (r) Perform such other functions related to activities of children as may be authorized or directed by the court.

(2) Upon the filing of a petition which initiates a formal court action in the interest of the child, the court-designated worker's involvement, with the exception of the activities defined in subsection (1)(i) of this section, shall cease.

(3) When a child is to be tried as an adult, the court-designated worker need not make dispositional recommendations.

Effective: July 15, 2014

History: Amended 2014 Ky. Acts ch. 132, sec. 28, effective July 15, 2014. -- Amended 2013 Ky. Acts ch. 25, sec. 5, effective June 25, 2013. -- Amended 1996 Ky. Acts ch. 358, sec. 11, effective July 15, 1997. -- Amended 1988 Ky. Acts ch. 350, sec. 2, effective April 10, 1988. -- Created 1986 Ky. Acts ch. 423, sec. 6, effective July 1, 1987.

Legislative Research Commission Note (7/15/96). Under 1996 Ky. Acts ch. 358, sec. 67(1), the amendment of this statute by Section 11 of that Act becomes effective July 15, 1997.

### **KRS 620.040 Duties of prosecutor, police, and cabinet -- Prohibition as to school personnel -- Multidisciplinary teams. (Effective until June 29, 2023)**

(1) (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), or a report alleging a child is a victim of human trafficking pursuant to KRS 620.030(3), the recipient of the report shall immediately notify the cabinet or its

designated representative, the local law enforcement agency or the Department of Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source. (b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse or human trafficking of a child shall be considered high risk and shall not be referred to any other community agency. (c) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or the Department of Kentucky State Police concerning the action that has been taken on the investigation. (d) If the report alleges abuse or neglect by someone other than a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or person exercising custodial control or supervision, or the human trafficking of a child, the cabinet shall immediately notify the Commonwealth's or county attorney and the local law enforcement agency or the Department of Kentucky State Police.

(2) (a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall immediately notify the cabinet or its designated representative. (b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse or human trafficking of a child shall be considered high risk and shall not be referred to any other community agency. (c) The cabinet need not notify the local law enforcement agency or the Department of Kentucky State Police or county attorney or Commonwealth's attorney of reports made under this subsection unless the report involves the

human trafficking of a child, in which case the notification shall be required.

(3) If the cabinet or its designated representative receives a report of abuse by a person other than a parent, guardian, fictive kin, person in a position of authority, person in a position of special trust, or other person exercising custodial control or supervision of a child, it shall immediately notify the local law enforcement agency or the Department of Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents, and they shall investigate the matter. The cabinet or its designated representative shall participate in an investigation of noncustodial physical abuse or neglect at the request of the local law enforcement agency or the Department of Kentucky State Police. The cabinet shall participate in all investigations of reported or suspected sexual abuse or human trafficking of a child.

(4) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(5) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant, a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer. (b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he or she is returned to the persons having custody of him or her, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours. (c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury, is being sexually abused, or is a victim of human trafficking and that the parents or other person exercising custodial

control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order. (d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability. (e) 1. If a report includes a child fatality or near fatality, and the law enforcement officer has reasonable grounds to believe any parent or person exercising custodial control or supervision of the child was under the influence of alcohol or drugs at the time the fatality or near fatality occurred, the law enforcement officer shall request a test of blood, breath, or urine from that person. 2. If, after making the request, consent is not given for the test of blood, breath, or urine, a search warrant shall be requested from and may be issued by the judge to the appropriate law enforcement official upon probable cause that a child fatality or near fatality has occurred and that the person exercising custodial control or supervision of the child at the time of the fatality or near fatality was under the influence. 3. Any test requested under this section shall be conducted pursuant to the testing procedures and requirements in KRS 189A.103.

(6) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.

(7) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties. (b) Membership of the multidisciplinary team shall include but shall not be limited to social service workers employed by the Cabinet for Health and Family Services and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, children's advocacy center staff, mental health professionals, medical professionals, victim advocates including advocates for victims of human trafficking, educators, and other related professionals, as deemed appropriate. (c) The multidisciplinary team shall review child sexual abuse cases and child human trafficking cases involving commercial sexual activity

referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system. (d) The team shall hold regularly scheduled meetings if new reports of sexual abuse or child human trafficking cases involving commercial sexual activity are received or if active cases exist. At each meeting, each active case shall be presented and the agencies' responses assessed. (e) The multidisciplinary team shall provide an annual report to the public of nonidentifying case information to allow assessment of the processing and disposition of child sexual abuse cases and child human trafficking cases involving commercial sexual activity. (f) Multidisciplinary team members and anyone invited by the multidisciplinary team to participate in a meeting shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members and others attending meetings shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information. (g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval. (h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding. (i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center. (8) Nothing in this section shall limit the cabinet's investigatory authority under KRS 620.050 or any other obligation imposed by law.

Effective: July 14, 2022

History: Amended 2022 Ky. Acts ch. 139, sec. 1, effective July 14, 2022. -- Amended 2019 Ky. Acts ch. 33, sec. 10, effective June 27, 2019. -- Amended 2013 Ky. Acts ch. 25, sec. 3, effective June 25, 2013. -- Amended 2007 Ky. Acts ch. 85, sec. 331, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 99, sec. 665, effective June 20, 2005. -- Amended 2000 Ky. Acts ch. 14,



sec. 63, effective July 14, 2000; ch. 144, sec. 6, effective July 14, 2000; and ch. 164, sec. 1, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 426, sec. 617, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 18, sec. 5, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 217, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 434, sec. 2, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 39, sec. 1, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 258, sec. 3, effective July 15, 1988; and ch. 350, sec. 44, effective April 10, 1988. -- Created 1986 Ky. Acts ch. 423, sec. 65, effective July 1, 1987.

**KRS 620.095 Restriction on placement of nonoffender.**

A nonoffender, as defined in KRS 600.020, shall not be placed in secure or nonsecure detention.

Effective: July 15, 2008

History: Created 2008 Ky. Acts ch. 87, sec. 6, effective July 15, 2008.

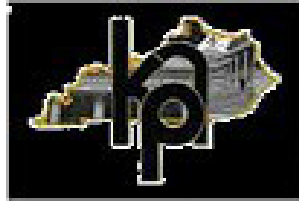
**KRS 630.125 Child not to be charged with or found guilty of status offense related to human trafficking.**

If reasonable cause exists to believe the child is a victim of human trafficking, as defined in KRS 529.010, the child shall not be charged with or adjudicated guilty of a status offense related to conduct arising from the human trafficking of the child unless it is determined at a later time that the child was not a victim of human trafficking at the time of the offense.

Effective: June 25, 2013

History: Created 2013 Ky. Acts ch. 25, sec. 6, effective June 25, 2013.

**Session 6**  
**November 3, 2023**  
**11:15 a.m. – 12:15 p.m.**  
**Grand KY Ballroom A**  
**Harry Dadds**  
**Fifty Years of Working with Paralegals-**  
**How to Deal with Older Attorneys**





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**50 Years of Working With Paralegals**

How to deal with older attorneys  
 Harry L. Dadds  
 November 3, 2023

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**Goals**

- Review the developments in the Legal Profession over the past 50 years
- Concentrate on what this has meant for Paralegals during this time
- Use this review to build better understanding of the background of older attorneys
- Attempt to Predict future trends
- Entertain and keep you awake until lunch!

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### Base Year- 1973

- What Was Going On
- Technology
- Legal System
- Legal Profession
- Paralegal Profession

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### What Was Going On-1973

- End of Vietnam War
- End of Draft
- Volunteer Army
- Gerald Ford- Sworn in as VP
- Watergate Hearings
- Roe v. Wade
- Readjustment Act of 1973
- 1st Mobile Phone (April 1, 1973-Motorola)

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### Technology

- Legal Research
- Word Processing
- Transcription
- Photocopying
- Telecommunications
- Delivery Options
- Other

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## Legal System

- Federal Courts
  - 1) Similar to now
  - 2) Diversity Jurisdiction \$10K in controversy
- Kentucky State Courts
  - 3) Two Tier Court System
  - 4) Non-attorney judicial positions

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## Legal Profession

- Demographics
- Education
- Restraints
  - 1) Fee Schedules
  - 2) No Advertising
- Ethics
- Bar Exam

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## Paralegal Profession

- Demographics
- Education and Training
- Job Responsibilities
- Formal Organizations
- Certifications
- Other

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### Legal System Since 1973

- Federal
  - 1) Organization is similar- 2 new Circuits (11<sup>th</sup> and Federal)
  - 2) Diversity Jurisdiction now \$75K
  - 3) Electronic Filing
- Kentucky
  - 4) 1975 Constitutional Amendment
    - a) Creates State Supreme Court
    - b) Creates District Courts
    - c) Judges now attorneys
  - 1) New Courts-Family, Drug, Business
  - 2) Electronic Filing

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### Technology Since 1973-TheTidal Wave

- Legal Research
- Word Processing
- Transcription
- Photocopying
- Telecommunications
- Personal Computers
- Artificial Intelligence

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### The Legal Profession Since 1973

- Demographics
- Bar Exam/Education
- Ethics
- 1) Fee Schedules-Goldfarb v. Virginia State Bar (1975)
- 2) Advertising-Bates v. State Bar of Arizona (1977)
- Organizational Structure
- Specialization
- Response to Technology
- Other

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### The Paralegal Profession Since 1973

- Demographics
- Training
- Organizations
- Certifications
- Specialization
- Ethics
- Independent Practice
- Licensure
- Other

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### Ethics- A Deeper Dive

Court Decision- KBA v. Vogt, 416 S.W.2d 72 (Ky. 1967)-No representation at UE hearings

- Significant KBA Opinions
  - a) Unauthorized Practice of Law Opinion KBA U-19 (May 1978)-1)No listing on letterhead, etc.; 2)No representation at hearing;3) No representation at quasi-judicial hearing; 4) No signing of pleadings.
  - b) Unauthorized Practice of Law Opinion KBA U-35 (July 1981)-No Representation of DOJ before Board of Claims.
  - c) Unauthorized Practice of Law Opinion KBA U-47 (Nov. 1994)-No Legal advice outside office, even if attorney is supervising it.

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### Kentucky Supreme Court Rule 3.700

- Sub-rule 1- A lawyer must ensure no unauthorized practice by employed paralegals
- Sub-rule 2- Unauthorized practice does not include assisting if:
  - 1) Client understands paralegal is not a lawyer
  - 2) Lawyer supervises paralegal
  - 3) Lawyer remains responsible for services
  - 4) No court or admin. appearance except under Sub-rule 3
- Sub-rule 3- Practice in administrative matters is not unauthorized if allowed by Court decision or rule
- Sub-rule 4- Lawyer must protect client confidences and secrets when using paralegal
- Sub-rule 5- No partnership with lawyer or proportionate sharing of fees
- Sub-rule 6- Paralegal may be on letterhead or attorney on paralegal business care with disclosure
- Sub-rule 7- Lawyer must require paralegal to disclose that they are a paralegal when dealing with clients, courts, agencies, other attorneys or public

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## Future Trends and Risks

- Increased Licensure
- More Specialization
- Greater Standardization
- Increased Independent Practice/Freelancing
- Off-Shore Resource Utilization
- Technology
- AI
- More Regulation
- Other

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## Dealing with Older Practitioners

- Remember what has occurred over the last 50 years and consider the practitioner's likely background- **Put yourself in their position**
- Have a discussion early on about technological needs
- Seek their opinion/guidance- **They like that & you might learn from it**
- Communication
- Respect
- Humor

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## Questions/Discussion

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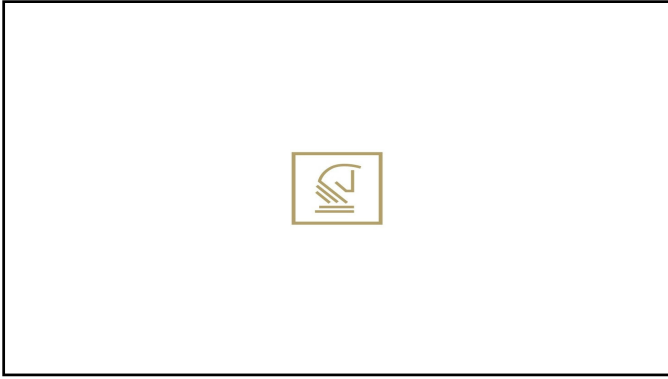
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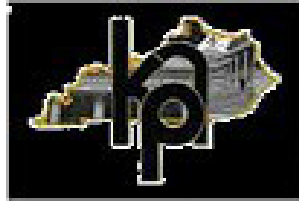
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**Session 6**  
**November 3, 2023**  
**11:15 a.m. – 12:15 p.m.**  
**Grand KY Ballroom D**  
**Carrie Bass and Jessica Beaubien**  
**The Regulators: Navigating Administrative**  
**Regulations in Kentucky**



 **KPPA**  
Kentucky Public Policy Association

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# The Regulators:

## Navigating Administrative Regulations in Kentucky

Presented by Carrie Bass, KPPA Staff Attorney Supervisor, and Jessica Beaubien, KPPA Policy Specialist, on November 3, 2023

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 **KPPA** **Presentation Goals**  
Kentucky Public Policy Association

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- ] What are administrative regulations?
- ] How administrative regulations are made
- ] The role of non-attorneys (including paralegals) in making and amending administrative regulations



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 **Back to Basics: Three Branches of Government**  
Kentucky Public Policy Association

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Legislative Branch	Judicial Branch	Executive Branch
		
<ul style="list-style-type: none"> <li>• Writes and enacts the law (statutes)</li> <li>• Examples:               <ul style="list-style-type: none"> <li>§ General Assembly (Kentucky)</li> <li>§ Congress (United States)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Interprets the law (case law)</li> <li>• Examples:               <ul style="list-style-type: none"> <li>§ Kentucky courts</li> <li>§ Federal courts</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Carries out and enforces the law through various methods</li> <li>• Examples:               <ul style="list-style-type: none"> <li>§ Governor (Kentucky)</li> <li>§ President (United States)</li> </ul> </li> </ul>

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**KPPA** **Executive Branch (Kentucky)**



By Commonwealth of Kentucky - File:Flag of Kentucky.svg, Public Domain, \*\*\*\*\*commons.wikimedia.org/w/index.php?curid=7036216

**Governor, Commonwealth of Kentucky**

- Kentucky Public Pensions Authority
- Kentucky Finance & Administration Cabinet
- Kentucky Education & Workforce Development Cabinet
- Kentucky Energy & Environment Cabinet
- Kentucky Cabinet for Health & Family Services

Examples of Kentucky Administrative Agencies

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**KPPA** **Administrative Agencies (Roles & Responsibilities)**

- ] Carry out and enforce laws (executive)
- ] Hold administrative hearings (judicial)
- ] Promulgate **administrative regulations** (legislative)



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**KPPA** **Administrative Regulations (What are they?)**

**What is an administrative regulation?**

An administrative regulation is a written set of rules and requirements issued by an administrative agency.



Source: REGULATION, Black's Law Dictionary (11th ed. 2019)

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**KPPA** **Administrative Regulations (What are they?)**

Hierarchy of Legal Authority (Kentucky)

Administrative regulations have legal force

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**KPPA** **Administrative Regulations (What are they?)**

Examples of areas covered by administrative regulations

- Kentucky Department of Revenue (Title 103) – state taxes for individuals and businesses
- Boards for various professional licensing (Title 201) – accountancy, pharmacy, dentistry, medical licensure, real estate, architects, veterinarians, funeral director, cosmetology, therapists and counselors, etc.
- Kentucky Department of Agriculture (Title 302) – livestock, produce, pesticides, bulk storage, hay, etc.
- Kentucky Department for Environmental Protection (Title 401) – water, waste, air, certain chemicals, etc.
- Kentucky Department of Corrections (Title 501) – jails and parole board.
- Kentucky Labor Cabinet (Title 803) – labor standards, occupational safety standards, etc.
- Kentucky Department of Alcoholic Beverage Control (Title 804) – advertising, licensing, transportation, and selling of alcoholic beverages
- Kentucky Department of Housing, Building, and Construction (Title 815) – home and commercial building requirements
- Kentucky Department for Medicaid Services (Title 907) – Medicaid rules governing individuals and medical providers

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**KPPA** **Administrative Regulations (What are they?)**

KPPA example of administrative regulation that carries out and enforces the law

- Beneficiaries of hazardous duty KPPA members who pass away as a result of an act performed in the line of duty may be entitled to additional enhanced benefits.
- 105 Kentucky Administrative Regulation (“KAR”) 1:457, In-line-of-duty survivor benefits, establishes:
  - ] How these benefits must be requested
  - ] The process the KPPA uses to determine whether someone is entitled to these benefits
  - ] Forms required to pay benefits to eligible recipients
  - ] Appeal rights if benefits are denied

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**KPPA** **Kentucky Regulations: Legal Requirements**



**Authority for the administrative agency to promulgate administrative regulations**

- Federal law authorizing the administrative agency to promulgate and/or
- State statute authorizing the administrative agency to promulgate

**Requirements and process for promulgating administrative regulations**

- Kentucky Revised Statutes ("KRS") Chapter 13A

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**KPPA** **Kentucky Regulations: Agency Authority**

When does an administrative agency have the authority to promulgate an administrative regulation?

"An administrative body may promulgate administrative regulations to implement a statute only when the act of the General Assembly creating or amending the statute specifically authorizes the promulgation of administrative regulations or administrative regulations are required by federal law, in which case administrative regulations shall be no more stringent than the federal law or regulations." KRS 13A.120(1)(a)

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**KPPA** **Kentucky Regulations: Agency Authority**

KPPA examples of agency authority

- The KPPA "shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations orders by promulgation of administrative regulations in accordance with KRS Chapter 13A..." KRS 61.690(3)(b)
- The KPPA "may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section..." KRS 61.598(6)
- The KPPA "shall promulgate an administrative regulation to establish a medical insurance reimbursement plan to provide reimbursement for hospital and medical insurance plan premiums of recipients of a retirement allowance..." KRS 78.5536(6)(a)

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**KPPA** **Ky. Regulations: Process (Drafting)**

3 Section 3. (1) A new administrative regulation shall not include any unenforcing, brackets,  
 4 or other throughs.  
 5 (2) A proposed amended administrative regulation shall:  
 6 (a) Underline proposed new material, and  
 7 (b) Bracket and strike through material to be deleted.  
 8 Section 4. This is an example of new language to be inserted. NOTE: Brackets need to  
 9 Section 5. This is an example of an existing administrative regulation that is  
 10 amended.

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**KPPA** **Ky. Regulations: Process (Drafting)**

**Getting Started**

- ] Determine the team.
  - Who needs to be involved in the development process?
  - Who needs to review the completed regulation?
  - Who needs to approve the final regulation?
- ] Review existing laws and regulations that impact the regulation you are working on.
  - Federal and state statutes and regulations.
  - Case law.
- ] Determine if further research into specific areas of concerns is needed.
- ] Ask questions.



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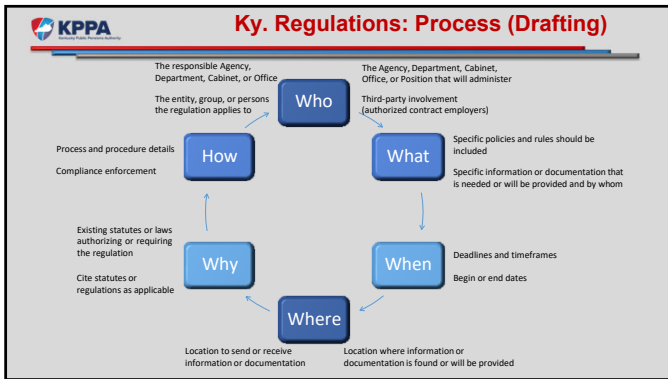
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**KPPA** **Ky. Regulations: Process (Drafting)**

KPPA Example - Sections of a New Administrative Regulation:

105 KAR 1:457. In-line-of-duty survivor benefits.

**Section 1.** Definitions.

**Section 2.** Use of Third-party Vendors.

**Section 3.** Requesting In-line-of-duty Survivor Benefits.

**Section 4.** Determining Eligibility for In-line-of-duty Survivor Benefits.

**Section 5.** Additional Supporting Information After Denial.

**Section 6.** Election of Benefits.

**Section 7.** Requirements to Receive In-line-of-duty Survivor Benefits.

**Section 8.** Distribution of Payments.

**Section 9.** Requirements for Dependent Children After In-line-of-duty Survivor Benefits Begin.

**Section 10.** Right to Appeal.

**Section 11.** Incorporation by Reference.

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**KPPA** **Ky. Regulations: Process (Drafting)**

**It's all in the details...**

- ] Written in easily understandable language.
- ] Consistent language.
- ] Consider defining terms that may be subject to interpretation.
  - Example:
  - "Gainful employment" means work in any capacity that is, or may be, performed with regularity and is, or may be, usually done for pay, whether or not pay is received, including seasonal, volunteer, part-time, and on-call work.*
  - "Beneficiary" is defined by KRS 16.505(25), 61.510(26), and 78.510(25).*
- ] Consider defining terms to shorten words or phrases.
  - Example:
  - "Boards" means the Board of Trustees of the Kentucky Retirement Systems and the Board of Trustees of the County Employees Retirement System.*

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**KPPA** **Ky. Regulations: Process (Drafting)**

**It's all in the details...**

- ] Reference other parts of the regulation appropriately.
  - Example:
  - ..as provided in Section 2 of this administrative regulation*
  - ..as indicated in subsection (1)(a) of this section*
- ] Make sure the information is in the applicable and appropriate Section.
- ] Details are important.
- ] Ask more questions! ù
- Revisit and revise.



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**KPPA** **Ky. Regulations: Reqs & Process (Drafting)**

Material incorporated by reference ("MIR")

] MIR developed by the promulgating administrative agency must be available on the administrative agency's website.

] Examples of MIR:

- Forms
- Manuals and informational materials
- Schedules
- Maps
- Misc.

11 Section 6(4) Incorporation by Reference. (1) The following material is incorporated by

12 reference:

13 (a) "The Title of the First Item Incorporated", its edition date, and

14 (b) "The Title of the Second Item Incorporated", its edition date.

15 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,

16 at (name of agency, full address), Monday through Friday, (8 a.m. to 4:30 p.m.)

NOTE: Insert agency's regular office hours  
For example: "8 a.m. to 5 p.m." or "8:30 a.m. to 4 p.m."

KRS 13A.2251

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**KPPA** **Ky. Regulations: Reqs & Process (Drafting)**



] Signature of an authorized signor for the administrative agency

] Date of signature

] Information on public comment period

] Contact information for a designated contact for the administrative agency

KRS 13A.220(6)-(7)

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**KPPA** **Ky. Regulations: Reqs & Process (Drafting)**

Information on the public comment period must be included in the administrative regulation filed with the Regulations Compiler's Office

- Included in the RegWatch Notification
- Included in the copy of the administrative regulation published in the Administrative Register

**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 24, 2017, at 10:30 a.m. Eastern Time at the Amphibian Research Complex, 200 Lizard Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: John Smith, General Counsel, Department of Frogs, 200 Lizard Lane, Frankfort, Kentucky 40601, phone (502) 555-1234, fax (502) 555-2345, email john.smith@frogs.ky.gov.

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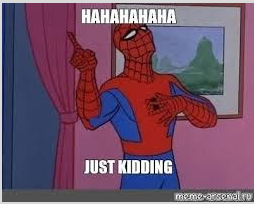
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**KPPA** **Ky. Regulations: Reqs & Process (Drafting)**

Appendices to an administrative regulation:

- ] Regulatory impact analysis and tiering statement
- ] Fiscal note on state and local government
- ] Federal mandate analysis comparison (if applicable)
- ] Summary of material incorporated by reference
- ] Actual copies of material incorporated by reference



KRS 13A.240, 13A.245, 13A.250, 13A.2251(3)-(4)

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**KPPA** **Ky. Regulations: Reqs & Process (Filing)**

Filing

- Once an administrative regulation is completed, it must be filed the Regulations Compiler's Office at the Capitol Annex in Frankfort, Kentucky
- Filing an administrative regulation with the Regulations Compiler's Office includes:
  - ü Filing an electronic copy and
  - ü Filing hard copies
- Filing "deadline" always occurs at noon on the 15<sup>th</sup> day of the month or the preceding business day



KRS 13A.220(1)-(2); KRS 13A.050(3)

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**KPPA** **Ky. Regulations: Reqs & Process (Post-Filing)**

RegWatch

- ] Register with administrative agencies to receive notification when that agency files proposed changes to existing administrative regulations and files proposed new administrative regulations
- ] Email notification is an option
- ] Free to register
- ] Registration good for 4 years



[secure.kentucky.gov/regwatch/](https://secure.kentucky.gov/regwatch/)

KRS 13A.270(3)

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**KPPA** **Ky. Regulations: Reqs & Process (Post-Filing)**

**Administrative Register of KY**

- On the 1<sup>st</sup> of each calendar month, the Regulations Compiler's Office publishes all administrative regulations filed by the deadline (noon on the 15<sup>th</sup> or the preceding business day) of the prior calendar month.
- The publication is called the "Administrative Register of Kentucky" and is available online or through a paper subscription.

KRS 13A.050

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**KPPA** **Ky. Regulations: Reqs & Process (Public Cmt)**

**Public Comments**

**You were not in the PUBLIC HEARING.**

**It should have been a WRITTEN COMMENT.**

**Public hearing:**

- Held at a date/time/location chosen by the administrative agency
- Held within a period established by statute based on filing date

**Written public comment:**

- Allowed within a period established by statute based on date of filing

Any member of the public can submit a public comment on an administrative regulation:

- Verbally at a public hearing
  - Must notify the administrative body no later than five workdays prior to the scheduled hearing of their intent to attend
- In writing
  - Must submit their written public comment to the contact listed, and by the deadline indicated, in the public hearing notice

\*\*\*\*\*legislature.ky.gov/Law/kar/Pages/KarFaqs.aspx

KRS 13A.270

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**KPPA** **Ky. Regulations: Reqs & Process (Public Cmt)**

**Public comment (written or verbal) tips:**

- State the issue
- Provide suggested solution to the issue (i.e., deleting language, adding language, rephrasing language, etc.)
- Know what is statutorily required or prohibited
- Cite the specific section, subsection, paragraph, subparagraph, etc. the comment references
- Be concise
- Don't expect a debate or to receive immediate feedback on the comment

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**KPPA** **Ky. Regulations: Reqs & Process (Consideration)**

Response to Public Comments

Administrative agencies:

- Must provide written notification to the Regulations Compiler’s Office of whether or not comments were received
- Must consider all public comments received in a “Statement of Consideration” that:
  - ] Addresses each comment; and
  - ] Whether they choose to amend or not amend the administrative regulation based on the comment received
- Must file electronic and hard copies of the Statement of Consideration with the Regulations Compiler’s Office by a deadline set by statute
  - ] If the administrative agency amends the administrative regulation, they must also file an Amended After Comments regulation with the changes reflected
- Can submit a public comment on their own regulation!
  - ] Used to correct errors noted by the administrative agency since the administrative regulation was initially filed with the Regulations Compiler’s Office

KRS 13A.280

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**KPPA** **Ky. Regulations: Reqs & Process (Agency Amends)**

Agency Amendment

- Administrative agencies have another mid-process opportunity to amend an administrative regulation that has been filed with the Regulations Compiler’s Office, called an Agency Amendment.
- Why would an administrative agency do Agency Amendment?
  - Informal public comments
  - Administrative agency independently recognized errors
- The administrative agency is required to file an electronic copy and 1 single sided with 20 additional hard copies (1) of the Agency Amendment



KRS 13A.320

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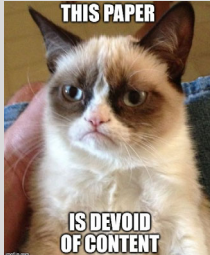
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**KPPA** **Ky. Regulations: Reqs & Process (Compiler Review)**

Suggested Amendment



- Regulations Compiler’s Office staff will review the administrative regulation and make suggested changes, usually technical in nature, called a Suggested Amendment
  - ] Staff will work with the administrative agency on the changes
- **The administrative agency** is required to file copies of the Suggested Amendment
  - ] Electronic, and
  - ] 1 single sided, plus 20 additional, hard copies!

KRS 13A.320

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**KPPA** **Ky. Regulations: Reqs & Process (GA Review)**

Administrative Regulation Review Subcommittee

All administrative regulations are reviewed by the Administrative Regulation Review Subcommittee ("ARRS") of the Kentucky General Assembly

- ARRS meetings are irregularly scheduled, but occur at least monthly
  - Dates and times are located on the General Assembly's website and in the Administrative Register
- At least one representative of the administrative agency must be present at the ARRS meeting at which the administrative regulation is reviewed in order to answer question from the ARRS
- Members of the public may also attend the ARRS meeting and give a statement to the ARRS
- The ARRS may:
  - Defer the administrative regulation to the next meeting
  - Approve the administrative regulation with/without amendments
  - Find the administrative regulation deficient

KRS 13A.290

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**KPPA** **Ky. Regulations: Reqs & Process (GA Review)**

Other Committee Meetings



- If the ARRS approves the administrative regulation with/without amendments, the following month, another committee of the Kentucky General Assembly *may* also review the administrative regulation
- Members of the public and/or representatives of the administrative agency may also attend the committee meeting and give a statement concerning the administrative regulation to the committee

KRS 13A.290

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**KPPA** **Ky. Regulations: Reqs & Process (Gvnr. Review)**

Deficient Regulations

- If the ARRS determines than an administrative regulation is deficient, the administrative regulation is transmitted to the Governor of Kentucky
- The Governor determines whether the administrative regulation will be:
  - Withdrawn,
  - Amended to conform to the finding of deficiency, or
  - Become effective notwithstanding the finding of deficiency



KRS 13A.330

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**KPPA** **Ky. Regulations: Reqs & Process (Effective Date)**



213 Will Regulate

Typically, an ordinary administrative regulation or ordinary amendment to an administrative regulation becomes effective 90 days after the beginning of the period for the additional legislative committee to review the administrative regulation

KRS 13A.290(7), 13A.331

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**KPPA** **The End**

Questions?

Contact info:  
[carrie.bass@kyret.ky.gov](mailto:carrie.bass@kyret.ky.gov)  
[jessica.beaubien@kyret.ky.gov](mailto:jessica.beaubien@kyret.ky.gov)

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## The Regulators: Navigating Administrative Regulations in Kentucky

Presented by Carrie Bass, Staff Attorney Supervisor, Kentucky Public Pensions Authority  
and Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority

November 3, 2023

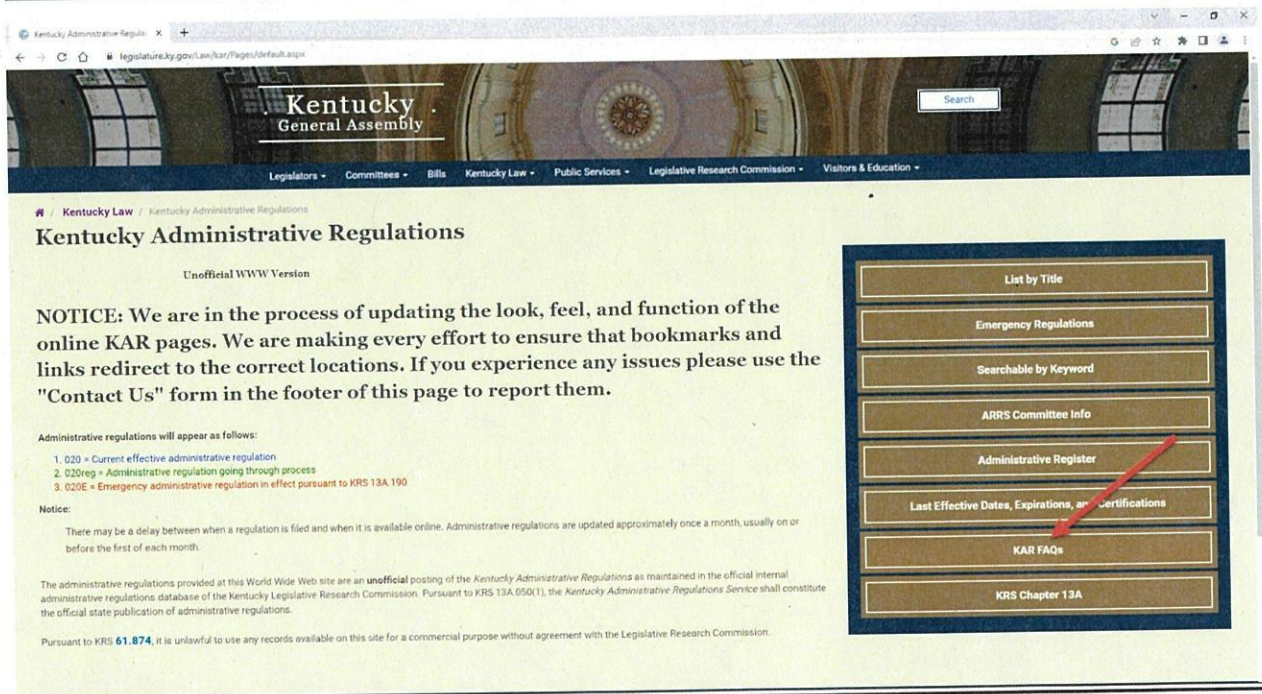
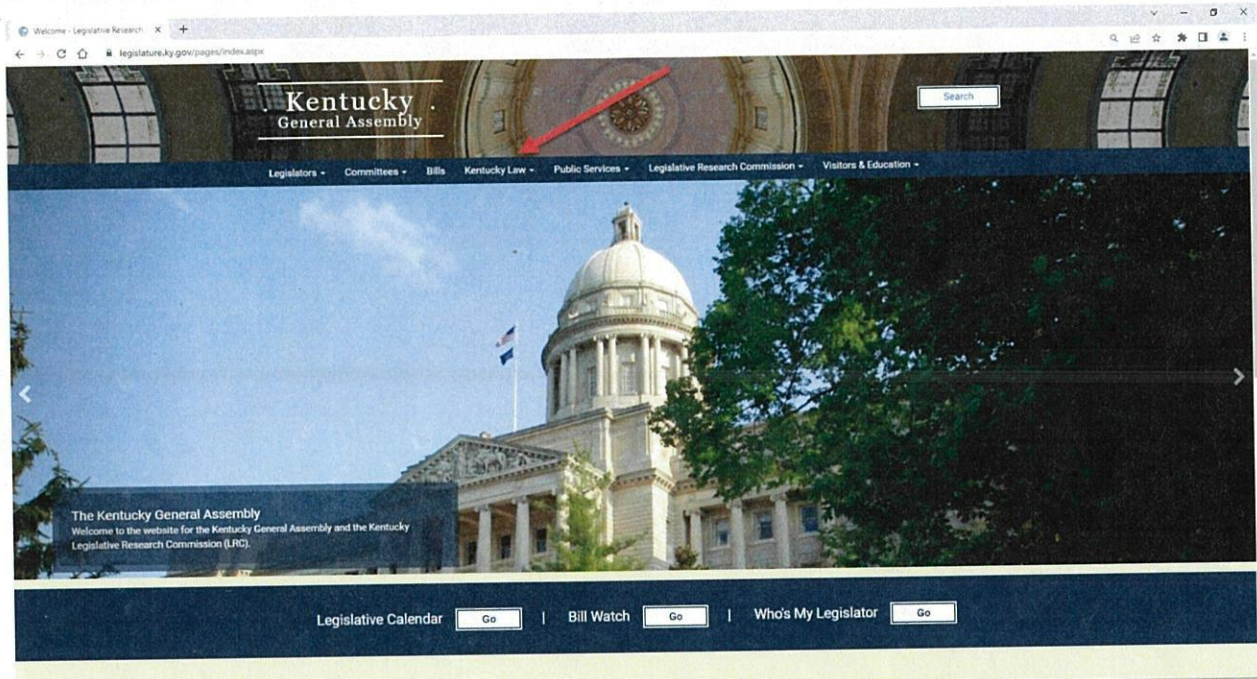
- Refresher on the three branches of government and the roles of each branch
  - Legislative branch
  - Judicial branch
  - Executive branch
- Spotlight on the Executive branch
  - Administrative agencies under the Executive branch
  - Roles of administrative agencies, including promulgation of administrative regulations
- What are administrative regulations?
  - Examples of administrative agencies in Kentucky that have promulgated administrative regulations
  - Example of KPPA administrative regulation
- How do administrative regulations get promulgated?
  - Administrative agency must have the authority under state and/or federal law to promulgate the administrative regulation
  - Administrative agency must follow the requirements and process to promulgate the administrative regulation
- Requirements administrative agencies in Kentucky must follow when drafting or amending administrative regulations under KRS Chapter 13A
  - Overview of drafting requirements
  - Tips on drafting the substance of the administrative regulation
- Process administrative agencies in Kentucky must follow to put an administrative regulation into effect under KRS Chapter 13A
  - Filing by the administrative agency
  - Staying informed of administrative regulations that have been filed
    - RegWatch notifications by the administrative agency
    - Publication by the Regulations Compiler's Office
  - Public comments received by the administrative agency
    - Tips on preparing public comments for consideration by an administrative agency
  - Public comments considered by the administrative agency
  - Regulations Compiler's Office review
  - Administrative Regulation Review Subcommittee of the General Assembly review
  - Effective date of the administrative regulation



**Information on administrative regulations from the Regulations  
Compiler's Office/General Assembly website**

# How to find information about administrative regulation requirements on the Kentucky General Assembly website:

Kentucky General Assembly website: legislature.ky.gov



**ORDINARY REGULATIONS - 2023 Deadline Dates**

Administrative regulation filed by noon on		Publication date	Hearing held between	Agencies accept comments through the end of the day	Notice to Compiler due COB on	SOC or Extension due by noon	If Extension filed, new SOC due date is by noon
January 2023	13	Feb. 1	Mar. 21 – 31	Mar. 31	Apr. 4	Apr. 14	May 15
February	15	Mar. 1	Apr. 21 – 28	Apr. 30	May 2	May 15	Jun. 15
March	15	Apr. 1	May 21 – 31	May 31	Jun. 2	Jun. 15	Jul. 14
April	14	May 1	Jun. 21 – 30	Jun. 30	Jul. 5	Jul. 14	Aug. 15
May	15	Jun. 1	Jul. 21 – 31	Jul. 31	Aug. 2	Aug. 15	Sep. 15
June	15	Jul. 1	Aug. 21 – 31	Aug. 31	Sep. 5	Sep. 15	Oct. 13
July	14	Aug. 1	Sep. 21 – 29	Sep. 30	Oct. 3	Oct. 13	Nov. 15
August	15	Sep. 1	Oct. 21 – 31	Oct. 31	Nov. 2	Nov. 15	Dec. 15
September	15	Oct. 1	Nov. 21 – 30	Nov. 30	Dec. 4	Dec. 15	Jan. 12 2024
October	13	Nov. 1	Dec. 21 – 28	Dec. 31	Jan. 3 2024	Jan. 12 2024	Feb. 15
November	15	Dec. 1	Jan. 21 – 31	Jan. 31 2024	Feb. 2	Feb. 15	Mar. 15
December	15	Jan. 1	Feb. 21 – 29	Feb. 29	Mar. 4	Mar. 15	Apr. 15
January 2024	12	Feb. 1	Mar. 21 – 31	Mar. 31	Apr. 2	Apr. 15	May 15

**NOTES:** \* Comment Period closes at the end of the day, the last day of the month regardless of weekends or holidays. {KRS 13A.270(1)} The Personnel Cabinet maintains the official list of state holidays: <https://personnel.ky.gov/pages/leave.aspx>  
 \* If no comments received, the regulation is tentatively scheduled for the ARRS meeting held the same month the Notice to the Compiler is due.  
 \* If comments are received, the regulation is tentatively scheduled for the ARRS meeting the month after the SOC is due.

**EMERGENCY REGULATIONS - 2023 Deadline Dates**

Administrative regulation filed by noon on		Publication date	Hearing held between	Agencies accept comments through the end of the day	Notice to Compiler due COB on	SOC due by noon	SOC extensions do not apply to emergency regulations. See KRS 13A.280(2).
January 2023	13	Feb. 1	Feb. 21 – 28	Feb. 28	Mar. 2	Mar. 15	
February	15	Mar. 1	Mar. 21 – 31	Mar. 31	Apr. 4	Apr. 14	
March	15	Apr. 1	Apr. 21 – 28	Apr. 30	May 2	May 15	
April	14	May 1	May 21 – 31	May 31	Jun. 2	Jun. 15	
May	15	Jun. 1	Jun. 21 – 30	Jun. 30	Jul. 5	Jul. 14	
June	15	Jul. 1	Jul. 21 – 31	Jul. 31	Aug. 2	Aug. 15	
July	14	Aug. 1	Aug. 21 – 31	Aug. 31	Sep. 5	Sep. 15	
August	15	Sep. 1	Sep. 21 – 29	Sep. 30	Oct. 3	Oct. 13	
September	15	Oct. 1	Oct. 21 – 31	Oct. 31	Nov. 2	Nov. 15	
October	13	Nov. 1	Nov. 21 – 30	Nov. 30	Dec. 4	Dec. 15	
November	15	Dec. 1	Dec. 21 – 28	Dec. 31	Jan. 3 2024	Jan. 12 2024	
December	15	Jan. 1	Jan. 21 – 31	Jan. 31 2024	Feb. 2	Feb. 15	
January 2024	12	Feb. 1	Feb. 21 – 29	Feb. 29	Mar. 4	Mar. 15	

2023 Tentative Referral/Effective Dates for Administrative Regulations		
Administrative regulation on ARRS Agenda in	Committee Review Period Begins After Referral on	Unless deferred or found deficient, an ordinary regulation will go into effect on or before expiration of the 90-day review period
January 2023	Feb 1	May 2
February 2023	Mar. 1	May 30
March 2023	Apr. 5	Jul. 5 <sup>†</sup>
April 2023	May 3	Aug. 1
May 2023	Jun. 7	Sep. 5
June 2023	Jul. 5	Oct. 3
July 2023	Aug. 2	Oct. 31
August 2023	Sep. 6	Dec. 5
September 2023	Oct. 4	Jan. 2 2024
October 2023	Nov. 1	Jan. 30
November 2023	Dec. 6	Mar. 5
December 2023	Jan. 3 2024	Apr. 2
January 2024	Feb. 7	May 7
February 2024	Mar. 6	Jun. 4

<sup>†</sup> Because the end of the 90-day review period would fall on a holiday, the end of the review period is moved to the next workday.  
{KRS 13A.150(3)}

2023 Kentucky State Holidays		
Dates	Holiday	Notes
*January 16	Martin Luther King, Jr.'s B-day	* If the agency holds public hearing after this date, this state holiday may affect the date the public must notify the agency about their intent to attend the public hearing. Notification of the intent to attend a hearing must be submitted no later than 5 <u>workdays</u> prior to the hearing.
April 7 (half-day)	Good Friday	
*May 29	Memorial Day	
July 4	Independence Day	
September 4	Labor Day	
November 10	Veterans Day	
*November 23-24	Thanksgiving	
*December 25 & 26	Christmas	
December 29, 2023 & January 1, 2024	New Year's	

(This table is for informational purposes only. The Personnel Cabinet maintains the official list of state holidays at: <https://personnel.ky.gov/pages/leave.aspx>)

1 CABINET

2 Department, Board, Commission

3 Division

4 (Type of Administrative Regulation) {See [KRS 13A.220\(4\)\(c\)](#)}

5 ### KAR #:###. Title of administrative regulation. {[KRS 13A.220\(4\)\(d\)](#)}

6 RELATES TO: (Insert KRS, C.F.R., U.S.C., etc., to which administrative regulation relates)

7 {[KRS 13A.220\(4\)\(e\)](#)}

8 STATUTORY AUTHORITY: (Insert KRS, C.F.R., U.S.C., etc., which gives administrative  
9 body authority to promulgate this administrative regulation) {[KRS 13A.220\(4\)\(e\)](#)}

10 NECESSITY, FUNCTION, AND CONFORMITY: This paragraph shall contain a brief  
11 statement setting forth the necessity for promulgating the administrative regulation and a summary  
12 of the functions intended to be implemented by the administrative regulation. If the administrative  
13 regulation is more stringent or otherwise differs from a federal law or regulation governing the  
14 subject matter, this paragraph shall also include a detailed statement that sets out the manner in  
15 which, and the reasons, the administrative regulation is more stringent than or otherwise differs  
16 from the federal law or regulation. {[KRS 13A.220\(4\)\(f\)](#), [13A.245\(2\)\(b\)](#)}

17 Section 1. Definitions.

18 (1) "Administrative regulation" is defined by KRS 13A.010(2).

Note: Italics are used to show instructional language. Do not apply italics to an administrative regulation. Also, hyperlinks are not used in administrative regulations; however, they have been included here for quick-reference purposes.

1 (2) "Definition" means a one (1) sentence statement regarding the meaning of a word that  
2 complies with KRS 13A.222(4)(d) and (e).

3 Section 2. Format. There shall always be a Section 1 to an administrative regulation.  
4 Additional sections shall be numbered as Section 2, Section 3, etc.

5 (1) This is a subsection. If the section has one (1) subsection, there shall also be a second  
6 subsection.

7 (2) An administrative regulation may be subdivided as established in this subsection.

8 (a) This is a paragraph.

9 (b) If the subsection has one (1) paragraph, there shall also be a second paragraph.

10 1. This is a subparagraph.

11 2. If the paragraph has one (1) subparagraph, there shall also be a second subparagraph.

12 a. This is a clause.

13 b. If the subparagraph has one (1) clause, there shall also be a second clause.

14 (i) This is a subclause (and is the lowest subdivision level in an administrative regulation).

15 (ii) If the clause has one (1) subclause, there shall also be a second subclause.

16 (3)(a) The administrative regulation shall be printed on white, single-sided paper measuring eight  
17 and one-half (8 1/2) by eleven (11) inches.

18 (b) The administrative regulation shall have a two (2) inch top margin on the first page for  
19 the Regulations Compiler's stamp. Additional margin settings of one (1) inch are recommended.

20 (c) The body of the administrative regulation shall be double-spaced. A form attached to the  
21 administrative regulation may be single-spaced.

22 (d) The pages of an administrative regulation shall be numbered.

1 (e) The lines of each page shall be numbered and each page shall begin with the number one

2 (1).

3 Section 3. (1) A new administrative regulation shall not include any underlining, brackets,  
4 or strike-throughs.

5 (2) A proposed amended administrative regulation shall:

6 (a) Underline proposed new material; and

7 (b) Bracket and strike through material to be deleted.

NOTE: Insertions need to come before deletions.

8 Section 4. This is an example of new language to be inserted.

9 Section 5. This is an example~~[a sample]~~ of an existing administrative regulation that is  
10 amended.

11 Section 6[5]. Incorporation by Reference. (1) The following material is incorporated by  
12 reference:

13 (a) "The Title of the First Item Incorporated", its edition date; and

14 (b) "The Title of the Second Item Incorporated", its edition date.

15 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,  
16 at {name of agency, full address}, Monday through Friday, {8 a.m. to 4:30 p.m.}

NOTE: Insert agency's regular office hours. For example: "8 a.m. to 5 p.m." or "8:30 a.m. to 4 p.m."

This is to certify that the chief amphibian officer has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 156.070(4).

Note: This type of statement is only necessary if a statute requires a prior review or approval. **This is not common.**

Keith Hobermann  
Keith Hobermann, Chief Amphibian Officer

8/9/17  
Date

Note: [KRS 13A.220\(7\)](#) requires that the name and title of the person signing shall be typed immediately beneath the signature line.

James O'Brian  
James O'Brian, Deputy Secretary for  
David R. Johnson, Secretary  
Amphibian Protection Cabinet

8/9/17  
Date



**PUBLIC HEARING AND PUBLIC COMMENT PERIOD:** A public hearing on this administrative regulation shall be held on July 24, 2017, at 10:30 a.m. Eastern Time at the Amphibian Research Complex, 200 Lizard Lane, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact person: John Smith, General Counsel, Department of Frogs, 200 Lizard Lane, Frankfort, Kentucky 40601, phone (502) 555-1234, fax (502) 555-2345, email [john.smith@frogs.ky.gov](mailto:john.smith@frogs.ky.gov).

See [KRS 13A.270\(1\)](#)

# REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

### KAR #:###

Contact Person:

Phone:

Email:

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does:
  - (b) The necessity of this administrative regulation:
  - (c) How this administrative regulation conforms to the content of the authorizing statutes:
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation:
  - (b) The necessity of the amendment to this administrative regulation:
  - (c) How the amendment conforms to the content of the authorizing statutes:
  - (d) How the amendment will assist in the effective administration of the statutes:
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
  - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
  - (a) Initially:
  - (b) On a continuing basis:
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

(9) TIERING: Is tiering applied? (Explain why or why not)

## FISCAL NOTE

### KAR ##:###

Contact Person:

Phone:

Email:

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

## FEDERAL MANDATE ANALYSIS COMPARISON

### KAR ##:###

Contact Person:

Phone:

Email:

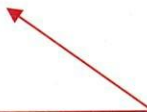
- (1) Federal statute or regulation constituting the federal mandate.
- (2) State compliance standards.
- (3) Minimum or uniform standards contained in the federal mandate.
- (4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
- (5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

## SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The "Bullfrog Hunting Permit", Form 100-Z, is the 4-page permit application form that hunters are required to file before engaging in bullfrog hunting. KRS 150.802 requires hunters to complete a permit application form prescribed by the cabinet.

## SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

The "Bullfrog Hunting Permit", Form 100-Z, is the 4-page permit application form that hunters are required to file before engaging in bullfrog hunting. Page 4 was amended to include a space for the hunter to provide his or her credit or debit card number and expiration date to allow payments by MasterCard, Visa, or American Express for the application fee. Hunters may still submit payment with cash or personal check payable to the Kentucky State Treasurer.



**NOTE:** If material previously incorporated by reference is changed, the agency needs to include a detailed summary of the changes to the material incorporated by reference in sufficient detail that a person reading the summary will know the differences between the previously incorporated material and the new material. Also, if the material being amended was developed by the agency, [KRS 13A.2255\(1\)\(d\)](#) requires that the agency also file a copy of each changed page with the changes marked as required by [KRS 13A.222\(2\)](#) with the inserted language underlined and the deleted language struck through and surrounded by brackets.

# Reg Writer's Quick-reference Sheet

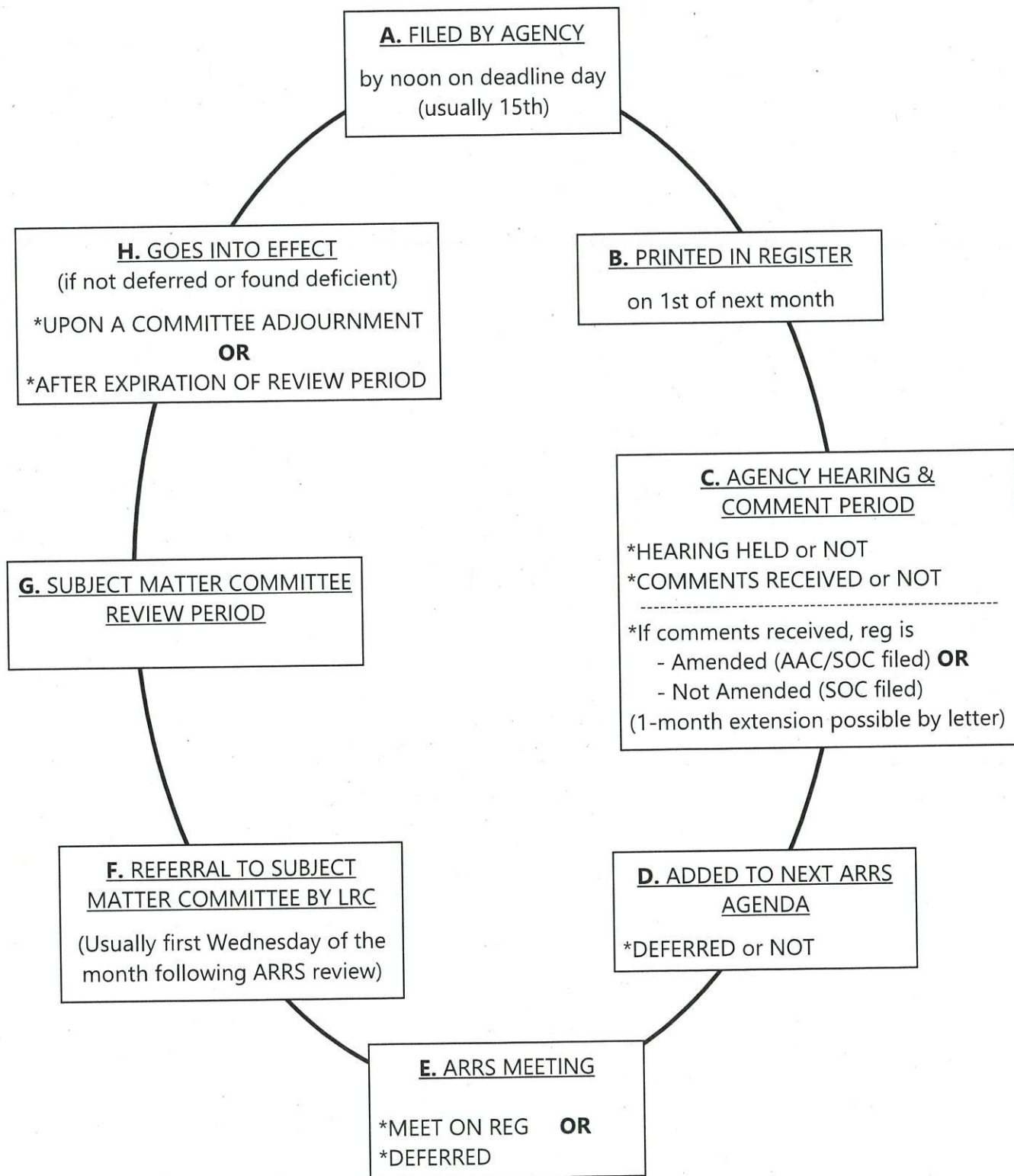
<p style="text-align: center;"><b><u>Capitalization</u></b></p> <p><b>Course:</b> upper when specific course title (World History 101), lower if not (...a world history course)</p> <p><b>Degrees:</b> lowercase (bachelor's degree, master's degree)</p> <p><b>Form Names:</b> uppercase the word "form" when part of the form name, lowercase if not</p> <p><b>Job titles:</b> general rule: lowercase unless identifying proper name or proper title</p> <p>Examples:          - KRS 99.999 requires the executive director to....  <u>Exception:</u> the Governor (re: the Governor of Kentucky)</p>	<p style="text-align: center;"><b><u>Prohibited Words and Phrases</u></b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Do Not Use:</th> <th style="text-align: center;">Use:</th> </tr> </thead> <tbody> <tr> <td>And/or</td> <td>"and" for a conjunctive "or" for a disjunctive</td> </tr> <tr> <td>Any and all</td> <td>either word</td> </tr> <tr> <td>As provided in this administrative regulation</td> <td>----</td> </tr> <tr> <td>And the same hereby is</td> <td>is</td> </tr> <tr> <td>Either directly or indirectly</td> <td>----</td> </tr> <tr> <td>Except where otherwise provided</td> <td>State specific exemption.</td> </tr> <tr> <td>Final and conclusive</td> <td>final</td> </tr> <tr> <td>Full force and effect</td> <td>force or effect</td> </tr> <tr> <td>In the event that; In case</td> <td>if</td> </tr> <tr> <td>Including but not limited to</td> <td>State the specific items to be included.</td> </tr> <tr> <td>Is authorized; Is empowered</td> <td>may</td> </tr> <tr> <td>Is defined and shall be construed to mean</td> <td>means</td> </tr> <tr> <td>Is hereby required to</td> <td>shall</td> </tr> <tr> <td>It shall be lawful</td> <td>may</td> </tr> <tr> <td>Latin words</td> <td>Do not use unless medical or scientific terminology. However, "et seq." may be used for citations.</td> </tr> <tr> <td>Null and void and of no effect</td> <td>void</td> </tr> <tr> <td>Order and direct</td> <td>either word</td> </tr> <tr> <td>Provision of law</td> <td>law</td> </tr> <tr> <td>Until such time as</td> <td>until</td> </tr> <tr> <td>Whenever</td> <td>if</td> </tr> </tbody> </table>	Do Not Use:	Use:	And/or	"and" for a conjunctive "or" for a disjunctive	Any and all	either word	As provided in this administrative regulation	----	And the same hereby is	is	Either directly or indirectly	----	Except where otherwise provided	State specific exemption.	Final and conclusive	final	Full force and effect	force or effect	In the event that; In case	if	Including but not limited to	State the specific items to be included.	Is authorized; Is empowered	may	Is defined and shall be construed to mean	means	Is hereby required to	shall	It shall be lawful	may	Latin words	Do not use unless medical or scientific terminology. However, "et seq." may be used for citations.	Null and void and of no effect	void	Order and direct	either word	Provision of law	law	Until such time as	until	Whenever	if
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<p style="text-align: center;"><b><u>Other Formatting Rules</u></b></p> <ul style="list-style-type: none"> <li>- <b>Grades:</b> grade 12, not grade twelve (12) K-12, not K through twelve (12)</li> <li>- <b>Measurements:</b> 10 in. x 11 in. x 2 ft.</li> <li>- <b>Tables:</b> <ul style="list-style-type: none"> <li>- Use only numbers (not five (5))</li> <li>- % sign may only be used in tables</li> </ul> </li> </ul> <p><b>One if used in the place of "a person"</b>          ...if one is given a chance          ...in a one-on-one meeting</p>	<p style="text-align: center;"><b><u>Citations</u></b></p> <p>405 KAR 5:020, Section 2(2)(b)1.a.(iv)          405 KAR Chapter 5          Code of Federal Regulations - C.F.R.          Executive Order - EO          KAR Title 16          Kentucky Acts Chapter - Ky Acts ch.          Public Law - Pub.L.          United States Code - U.S.C.</p>																																										
<p style="text-align: center;"><b><u>Regs Numbering Sequence</u></b></p> <p>Section 1.          subsection (1)          paragraph (a)          subparagraph 2.          clause a.          subclause (iv)</p>	<p style="text-align: center;"><b><u>Numbers</u></b></p> <p><b>Zero:</b> spelled only</p> <p><b>1 – 99 (&amp; decimals to tenths place)</b>          spelled and in parentheses          "three (3) dollars" "fifty-five (55)" "eighty and five-tenths (80.5)"</p> <p><b>100+ (&amp; decimals to hundredths+ place)</b>          number only (nothing in parentheses)          "101" "145.23" "3,798" "\$10.65" "\$4.8 million"</p>																																										
<p style="text-align: center;"><b><u>Material Incorporated by Reference Samples</u></b></p> <div style="display: flex; justify-content: space-between;"> <div style="width: 65%;"> <p><b>Language for incorporating only ONE item:</b>              Section (#). Incorporation by Reference. (1) "{Title of Material}", {edition date}, is incorporated by reference.              (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at {agency name}, {address}, Monday through Friday, {agency office hours}.</p> <p><b>Language for incorporating MULTIPLE items:</b>              Section (#). Incorporation by Reference. (1) The following material is incorporated by reference:              (a) "{Title of Material}", {edition date};              (b) "{Title of Material}", {edition date}; and              (c) "{Title of Material}", {edition date}.              (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at {agency name}, {address}, Monday through Friday, {agency office hours}.</p> </div> <div style="width: 30%; text-align: center;"> <p><b>Including Web sites in MIR Section of a reg:</b></p> <p>If the Web site is:</p> <p><u>Agency-based</u>, put the Web site at the end of subsection (2)</p> <p><u>External to the state agency</u>, create a subsection (3)              "(3) This material may also be obtained at {Web site}."</p> </div> </div>																																											
<p style="text-align: center;"><b><u>Types of Regulations</u></b></p> <table style="width: 100%; border: none;"> <tr> <td style="text-align: center;">(New Administrative Regulation)</td> <td style="text-align: center;">(New Emergency Administrative Regulation)</td> </tr> <tr> <td style="text-align: center;">(Amendment)</td> <td style="text-align: center;">(Emergency Amendment)</td> </tr> <tr> <td style="text-align: center;">(Repealer)</td> <td style="text-align: center;">(Emergency Repealer)</td> </tr> <tr> <td style="text-align: center;">(Amended After Comments)</td> <td></td> </tr> </table>		(New Administrative Regulation)	(New Emergency Administrative Regulation)	(Amendment)	(Emergency Amendment)	(Repealer)	(Emergency Repealer)	(Amended After Comments)																																			
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# Reg Filer's Quick-reference Sheet

<p style="text-align: center;"><b><u>General Filing Deadlines</u></b></p> <p><b>Regulations, SOCs, SOC extensions</b> Due by noon on the 15th of the month.</p> <p>If the 15th falls on a Saturday, Sunday, or holiday, the deadline is moved to noon on the preceding workday.</p> <p><b>Agency Amendments</b> Due by COB 3 workdays prior to the ARRS meeting.</p> <p><b>Public Comment Period Notices</b> Due by COB the 2nd workday of the month after the Public Comment Period ends.</p>	<p style="text-align: center;"><b><u>Before Filing</u></b></p> <p><b>Make sure</b></p> <ul style="list-style-type: none"> <li>• Signatures have been obtained</li> <li>• The most recent RIA, Federal Mandate (if applicable), and Fiscal Note forms have been used</li> <li>• To email the Compiler to check for filing compliance</li> <li>• To apply Compiler's filing compliance changes</li> <li>• Copies have been made</li> <li>• To email finalized administrative regulation in MS Word format to RegsCompiler@LRC.ky.gov</li> <li>• To take copies of material incorporated by reference (if applicable)</li> </ul>
<p style="text-align: center;"><b><u>Number of Copies to File</u></b></p> <p><b>Filing a regulation or an SOC</b></p> <ul style="list-style-type: none"> <li>• Original</li> <li>• 4 copies, stapled (one is yours to take back)</li> <li>• 1 copy, paper-clipped (no staple holes)</li> </ul> <p>SOC Not Amended After Comments ONLY - add two unstapled copies for each additional administrative regulation listed on the SOC.</p> <p><b>Filing a Suggested Amendment, Suggested Substitute, or Agency Amendment</b></p> <ul style="list-style-type: none"> <li>• Cover letter with one copy of the amendment</li> <li>• 20 copies of the amendment for ARRS (call for number of copies needed for other committees)</li> </ul> <p>(To get a stamped copy of the letter to bring back, please bring an extra copy.)</p>	<p style="text-align: center;"><b><u>Regs Compiler Email</u></b> RegsCompiler@LRC.ky.gov</p> <p><b>Use this email address to send</b></p> <p><b>Administrative Regulations</b></p> <ul style="list-style-type: none"> <li>• Each is its own <u>MS Word document</u> and the document includes <u>all</u> attachments (including RIA, Fiscal Note, etc.)</li> <li>• Signature page required, no actual signature needed in the electronic copy</li> <li>• Multiple regulations can be sent in one email</li> <li>• Please title email with reg numbers</li> <li>• Sending MIR by email is not required</li> </ul> <p><b>Letters</b> - Must be on letterhead and contain a signature</p> <ul style="list-style-type: none"> <li>• Notifications about Public Hearings</li> <li>• Notifications about Public Comment Periods</li> <li>• Deferral requests</li> <li>• SOC extensions</li> <li>• Recodification requests</li> <li>• Technical Amendment requests</li> <li>• Withdrawals</li> </ul>
<p style="text-align: center;"><b><u>MIR</u></b></p> <p><b>Paper material</b> 4 pages or less (and single-sided, 8-1/2 x 11", and on white paper)</p> <ul style="list-style-type: none"> <li>• Attach copies of the Summary and the MIR to the back of the original and each copy of the regulation</li> </ul> <p>5 pages or more (or double sided, oddly-dimensional, or colored paper)</p> <ul style="list-style-type: none"> <li>• Place one copy of the MIR in a binder that can stand alone on a shelf</li> <li>• Label the binder with the reg number and date filed</li> <li>• Binder's first page is a copy of the Summary of Material Incorporated by Reference</li> </ul> <p><b>On a disk</b></p> <ul style="list-style-type: none"> <li>• Files shall be in PDF format</li> <li>• Label the disk and the case with the reg number and date filed</li> </ul>	<p style="text-align: center;"><b><u>Content Pre-review Policy</u></b></p> <p>ARRS Staff will do content pre-reviews as workload allows. Staff is busier as meetings and deadlines approach.</p> <p>Agency representatives are expected to apply similar changes to remaining administrative regulations and to future administrative regulations.</p>
<p><b><u>What can be done by Technical Amendment?</u></b></p>	
<p><b>Examples include</b></p> <ul style="list-style-type: none"> <li>• Typos that do not affect the substance of the regulation</li> <li>• Mailing address, phone number, or email address of the administrative body</li> <li>• Citations to statutes or other regulations if a format change within that statute or administrative regulation has changed the numbering or lettering of parts</li> <li>• As a response to a statute or executive order, changing the name of the administrative body or making any other technical changes necessary to carry out the provisions of the statute or executive order</li> </ul> <p><b>NOT Included</b> A substantive change to a regulation or form. This has to go through the administrative regulation promulgation process.</p>	

## GENERAL OVERVIEW OF REGULATIONS PROCESS CYCLE



**Example of KPPA Regulation recently filed**

**FINANCE AND ADMINISTRATION CABINET**  
**Kentucky Public Pensions Authority**  
**(New Administrative Regulation)**

**105 KAR 1:457. In-line-of-duty survivor benefits.**

RELATES TO: KRS 13B.010-13B.170, 16.578, 16.601, 61.505, 61.615, 61.640, 61.665, 61.691, 78.545, 78.5518, 78.5528, 78.5532, 78.5534

STATUTORY AUTHORITY: KRS 61.505(1)(g)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 16.601 and 78.5534 establish survivor benefits for certain eligible beneficiaries in the event of a hazardous position employee's death resulting from an act in-line-of-duty. This administrative regulation establishes the procedures for filing and administering an application for in-line-of-duty survivor benefits, and the appeal procedures if denied.

**Section 1. Definitions.**

- (1) "Contingent eligible beneficiary" means a person that meets the requirements to be an eligible beneficiary, except that he or she is superseded by a different eligible beneficiary.
- (2) "Eligible beneficiary" means a person who meets the eligibility qualifications for in-line-of-duty survivor benefits as provided by KRS 16.601(1)-(3) and 78.5534(1)-(3).
- (3) "Submit" means the required form, documentation, report, or payment has been received by the retirement office via mail, fax, electronic mail, the Employer Self Service Web site, or other mode specifically detailed in this administrative regulation.

**Section 2. Use of Third-party Vendors.**

- (1) The agency may contract with third-party vendors to act on its behalf throughout the in-line-of-duty survivor benefit application and review process.
- (2) The agency may utilize independent, licensed physicians provided by third-party vendors to serve as medical examiners pursuant to KRS 61.665 and 78.545. Third-party vendors may provide additional persons to fulfill non-physician roles throughout the in-line-of-duty survivor benefit application process.
- (3) Third-party vendors may act on behalf of the agency and the systems with all the rights and responsibilities therein.

**Section 3. Requesting In-line-of-duty Survivor Benefits.**

- (1)
  - (a) In-line-of-duty survivor benefits pursuant to KRS 16.601 and 78.5534 may be requested for an eligible beneficiary by filing a written request that shall include:
    1. Member's name and date of birth or other identifying number;
    2. Member's date of death;
    3. Employer's name and circumstance surrounding the member's death; and
    4. Name, relationship, and contact information for the person making the request.
  - (b) If the agency becomes aware of a hazardous position employee's death potentially resulting from an act in-line-of-duty, the agency or the agency's third-party vendor may notify an eligible beneficiary, or his or her parent or legal guardian, of his or her ability to file a written request for in-line-of-duty survivor benefits.
- (2) If the agency becomes aware of a hazardous position employee's death potentially resulting from an act in-line-of-duty, the agency or the agency's third-party vendor shall notify the member's employer of the following requirements that shall be completed and submitted to the agency or the agency's third-party vendor:

- (a) A copy of the deceased member's death certificate;
  - (b) The employer's death investigation report;
  - (c) A detailed position description or a valid Form 8030, Employer Job Description; and
  - (d) A valid Form 6800, Application for Duty Related/In-Line-of-Duty Survivor Benefits, certified by the deceased member's immediate supervisor and agency head.
- (3) If requested by the agency or the agency's third-party vendor, the eligible beneficiary or his or her parent or legal guardian, or the employer, shall respectively file or submit any additional information including additional medical information, autopsy or other medical records, information about the member's job duties and accommodations, documentation relating to workers' compensation claims, and police or other crime reports.

#### Section 4. Determining Eligibility for In-line-of-duty Survivor Benefits.

- (1) Once all forms and documentation required by Section 3 of this administrative regulation are on file, the agency or the agency's third-party vendor shall evaluate and make a determination regarding in-line-of-duty survivor benefits pursuant to KRS 16.601 and 78.5534. The agency or the agency's third-party vendor shall notify the eligible beneficiary, or his or her parent or legal guardian, of the findings.
- (2) If in-line-of-duty survivor benefits are approved, the eligible beneficiary, or his or her parent or legal guardian, shall complete all requirements in Sections 6 to 8 of this administrative regulation prior to any benefits beginning.
- (3)
- (a) If in-line-of-duty survivor benefits are denied, the eligible beneficiary, or his or her parent or legal guardian, shall have until the end of day one hundred eighty (180) calendar days from the date the notice of denial is mailed to complete one of the following:
    - 1. Submit additional supporting information in accordance with Section 5 of this administrative regulation; or
    - 2. Request a formal hearing to appeal the decision in accordance with Section 10 of this administrative regulation.
  - (b) Denial of in-line-of-duty survivor benefits shall not affect any other benefits to which an eligible beneficiary may be entitled.

#### Section 5. Additional Supporting Information After Denial.

- (1) If the eligible beneficiary, or his or her parent or legal guardian, files additional supporting information including additional medical information, autopsy or other medical records, information about the member's job duties and accommodations, documentation relating to Workers' Compensation claims, police or other crime reports, or other required documentation by the end of day 180 calendar days from the date of a denial of in-line-of-duty survivor benefits, the agency or the agency's third-party vendor shall review and evaluate the additional supporting information.
- (2) Once the agency or the agency's third-party vendor completes the evaluation of the additional supporting information provided in accordance with subsection (1) of this section, the agency or the agency's third-party vendor shall make a determination and notify the eligible beneficiary of the findings.
- (a) If the application for in-line-of-duty survivor benefits is approved, the eligible beneficiary, or his or her parent or legal guardian, shall complete all requirements in Sections 6 to 8 of this administrative regulation prior to any benefits beginning.
  - (b) If the findings indicate the additional supporting information filed failed to provide enough evidence to approve in-line-of-duty survivor benefits, the in-line-of-duty survivor benefits shall be denied, and the eligible beneficiary, or his or her parent or legal guardian, shall have 180 calendar days from the date the notification of denial is

mailed to request a formal hearing to appeal the findings in accordance with Section 10 of this administrative regulation.

#### Section 6. Election of Benefits.

(1) An eligible beneficiary who has been approved for in-line-of-duty survivor benefits in accordance with Section 4 or 5 of this administrative regulation shall have the option to select either in-line-of-duty survivor benefits pursuant to KRS 16.601(1)-(3) and 78.5534(1)-(3) or any other type of benefit under the provisions of KRS 16.505-16.582 and 78.510-78.852.

(2) If the deceased member's accumulated account balance has been withdrawn by his or her beneficiary pursuant to KRS 16.578, 61.592(4), and 78.5532, no beneficiary shall be eligible for in-line-of-duty survivor benefits.

(3) While an application for in-line-of-duty survivor benefits is pending, but not approved, a potential eligible beneficiary may elect to receive benefits under KRS 16.578(2)(a) or (b), 61.592(4), or 78.5532(2)(a) or (b). If the potential eligible beneficiary is approved for in-line-of-duty survivor benefits, the agency shall determine what is owed to the eligible beneficiary in accordance with KRS 16.601(6) and 78.5534(6).

#### Section 7. Requirements to Receive In-line-of-duty Survivor Benefits.

(1) The agency shall provide the eligible beneficiary, or his or her parent or legal guardian, with a Form 6810, Certification of Beneficiary. The eligible beneficiary, or his or her parent or legal guardian, shall complete and file a valid Form 6810.

(2) The agency shall provide the eligible beneficiary, or his or her parent or legal guardian, the monthly payment options available on the Form 6010, Estimated Retirement Allowance. The eligible beneficiary, or his or her parent or legal guardian, shall complete and file a valid Form 6010.

(3)  
(a) If the eligible beneficiary, or his or her parent or legal guardian, elects the in-line-of-duty survivor benefit option that includes the one-time payment of \$10,000, the eligible beneficiary, or his or her parent or legal guardian, shall be given the option to receive the payment as either a direct rollover or as a direct payment. The eligible beneficiary, or his or her parent or guardian, shall complete and file a valid Form 6025, Direct Rollover/Direct Payment Election Form for a Member, or a Spouse Beneficiary of an Eligible Rollover Distribution, indicating the payment option elected.

(b) If the eligible beneficiary, or his or her parent or legal guardian, intends to have the funds rolled over directly into an IRA or other qualified plan, the eligible beneficiary, or his or her parent or legal guardian, shall have the trustee or institution relevant to the IRA or other qualified plan complete the applicable section of the Form 6025 certifying that the rollover will be accepted.

(4) If an eligible beneficiary is a spouse, he or she shall file the following documents:

(a) A copy of his or her certificate of marriage to the member; and

(b) Proof of his or her date of birth by filing one of the following:

1. Age record of the Social Security Administration;

2. Immigration and naturalization service records;

3. Birth certificate;

4. Military discharge;

5. U.S. passport;

6. Driver's license issued by the Commonwealth of Kentucky; or

7. Other reliable proof of date of birth that may be used by the courts to verify date of birth.

(5) If an eligible beneficiary is a dependent child, each dependent child, or his or her parent or legal guardian, shall file the following documents:

- (a) A valid Form 6458, Designation of Dependent Child for In Line of Duty/Duty-Related;
  - (b) If a dependent child is under the age of eighteen (18), a valid Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the dependent child has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, the guardian or conservator shall file a copy of the court order appointing the guardian or conservator.
  - (c) If the dependent child is age eighteen (18) or over and a full-time student, verification of full-time student status;
  - (d) If the dependent child is age eighteen (18) or over and receives federal Social Security disability benefits, a copy of the most recent statement issued by the Social Security Administration indicating the dependent child is disabled; or if the dependent child is being claimed as a qualifying child for tax purposes due to the dependent child's total and permanent disability, a copy of the deceased member's most recent tax return showing the dependent child was totally and permanently disabled for tax purposes, or duly appointed order of the court specifying the dependent child is a disabled dependent child of the deceased member; and
  - (e)
    - 1. A copy of the dependent child's birth certificate; or
    - 2. A final order or decree of adoption which shall include his or her date of birth or other reliable proof of date of birth that may be used by the courts to verify date of birth.
- (6) If an eligible beneficiary is a dependent as provided by KRS 16.601(3) and 78.5534(3), each dependent, or each dependent's parent or legal guardian, shall file the following:
- (a) A copy of the deceased member's most recent tax return showing the dependent was the deceased member's qualifying dependent for tax purposes, or duly appointed order of the court specifying the dependent is a dependent of the deceased member.
  - (b) If the dependent is under the age of eighteen (18), a valid Form 6110, Affidavit of Authorization to Receive Funds on Behalf of Minor. If the dependent has a court appointed guardian or conservator and the court appointed guardian or conservator completed the Form 6110, the guardian or conservator shall file a copy of the court order appointing the guardian or conservator; and
  - (c) Proof of his or her date of birth by filing one (1) of the following:
    - 1. Age record of the Social Security Administration;
    - 2. Immigration and naturalization service records;
    - 3. Birth certificate;
    - 4. Military discharge;
    - 5. U.S. passport;
    - 6. Driver's license issued by the Commonwealth of Kentucky; or
    - 7. Other reliable proof of date of birth that may be used by the courts to verify date of birth.
- (7) A contingent eligible beneficiary shall be required to provide proof that he or she is the eligible beneficiary. The agency shall not process benefits for a contingent eligible beneficiary unless the following requirements are met:
- (a) If the agency identified eligible beneficiary is deceased, a copy of his or her death certificate shall be on file; or
  - (b) If the agency identified eligible beneficiary was divorced from the deceased member, a copy of the divorce decree shall be on file.

Section 8. Distribution of Payments.

(1) The agency shall not disburse payment for in-line-of-duty survivor benefits until the eligible beneficiary, or his or her parent or legal guardian, has completed the requirements of either subsection (2) or (3) of this section.

(2)

(a) To receive in-line-of-duty survivor benefits the eligible beneficiary, or his or her parent or legal guardian, shall authorize direct deposit to an account in a financial institution, in the following way:

1. File a valid Form 6130, Authorization for Deposit of Retirement Payment; and
2. Provide the information and authorizations required for the electronic transfer of funds from the State Treasurer's Office to the designated financial institution, including any authorizations or information needed from the financial institution.

(b) At any time while receiving a monthly benefit, the eligible beneficiary, or his or her parent or legal guardian, may change the designated institution by completing and filing a new valid Form 6130, Authorization for Deposit of Retirement Payment, or by updating the authorization for deposit of retirement payments on the Member Self-Service Web site maintained by the agency.

(3) If the eligible beneficiary, or his or her parent or legal guardian, does not currently have an account with a financial institution, or his or her financial institution does not participate in the electronic funds transfer program, the eligible beneficiary, or his or her parent or guardian, may receive in-line-of-duty survivor benefits by check. For the eligible beneficiary to receive payment by check, the eligible beneficiary, or his or her parent or legal guardian, shall complete and file a valid Form 6135, Request for Payment by Check.

(4) The most recently filed valid Form 6130, Authorization for Deposit of Retirement Payment, authorization for deposit of retirement payments on the Member Self-Service Website, or valid Form 6135, Request for Payment by Check, shall control the payment or electronic transfer designation of the eligible beneficiary's in-line-of-duty survivor benefits.

(5)

(a) Once an eligible beneficiary is approved for in-line-of-duty survivor benefits and has completed and filed all forms and documentation required by Sections 3 to 8 of this administrative regulation, in-line-of-duty survivor benefits shall be paid retroactive to the month following the month of the member's date of death.

(b) Any increases provided under KRS 61.691 and 78.5518 shall be applied in determining the ongoing monthly payments and total retroactive payments owed to the eligible beneficiaries.

#### Section 9. Requirements for Dependent Children After In-line-of-duty Survivor Benefits Begin.

(1) Once an eligible dependent child begins receiving in-line-of-duty survivor benefits, each dependent child, or his or her parent or legal guardian, shall be required to:

- (a) Notify the agency of the death or marriage of the dependent child;
- (b) If applicable, notify the agency if the dependent child ceases to be a full-time student;
- (c) If applicable, notify the agency if the dependent child's disability status changes; and
- (d) If applicable, file a copy of the dependent child's verification of full-time student status with the agency for each semester of study within thirty (30) calendar days following the start, and within thirty (30) calendar days following the end of each semester.

(2) Each dependent child, or his or her parent or legal guardian, shall be responsible for repaying any benefits overpaid to the dependent child, or his or her parent or legal



guardian, due to the failure of the dependent child, or his or her parent or legal guardian, to provide the information required by this section.

#### Section 10. Right to Appeal.

- (1) A request for a formal hearing to appeal a denial of in-line-of-duty survivor benefits may be made by an eligible beneficiary, or his or her parent or legal guardian, in accordance with KRS 61.665 and 78.545. The request shall be made by filing a written request containing a short and plain statement of the issues being appealed.
- (2) The hearing shall be conducted in accordance with KRS Chapter 13B.010-13B.170.
- (3) The hearing officer presiding over an administrative hearing shall review the administrative record and any records introduced at the administrative hearing.
  - (a) The determination of other state and federal agencies' approval of benefits, including the Kentucky Department of Workers' Claims and the Social Security Administration, may support a final determination if accompanied by underlying objective medical evidence or vocational evidence.
  - (b) Written statements from medical providers within the administrative record shall not themselves be objective medical evidence, but may be relied upon if accompanied by, and reviewed in concert with, other supporting objective medical evidence.
- (4) The final determination shall not be bound by factual or legal findings of other state or federal agencies. The final determination shall be based on objective medical evidence and vocational records, including objective medical evidence and vocational records contained within or that accompany a determination by another state or federal agency.
- (5) Once a final determination is issued, the person who filed the appeal shall be notified of the final order of the Administrative Appeals Committee (AAC) in accordance with KRS 61.615(3)(g) and 78.5528(3)(g).

#### Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) Form 6010, "Estimated Retirement Allowance", updated April 2021;
  - (b) Form 6025, "Direct Rollover/Direct Payment Election Form for a Member, beneficiary, or Alternate Payee Regarding an Eligible Rollover Distribution", updated June 2023;
  - (c) Form 6110, "Affidavit of Authorization to Receive Funds on Behalf of Minor", updated June 2023;
  - (d) Form 6130, "Authorization for Deposit of Retirement Payment", updated June 2023;
  - (e) Form 6135, "Request for Payment by Check", updated June 2023;
  - (f) Form 6458, "Designation of Dependent Child for In Line of Duty/Duty-Related", updated June 2023;
  - (g) Form 6800, "Application for Duty Related/In Line of Duty Survivor Benefits", updated June 2023;
  - (h) Form 6810, "Certification of Beneficiary", updated April 2021; and
  - (i) Form 8030, "Employer Job Description", updated June 2023.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at [kyret.ky.gov](http://kyret.ky.gov).

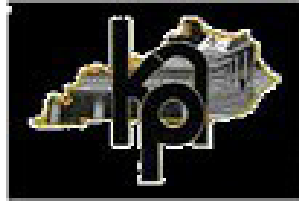
*DAVID L. EAGER, Executive Director*

APPROVED BY AGENCY: June 30, 2023  
FILED WITH LRC: July 6, 2023 at 11:40 a.m.

**PUBLIC HEARING AND COMMENT PERIOD:** A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, September 26, 2023, at 2:00 p.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

**CONTACT PERSON:** Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext. 8570, fax (502) 696-8615, email [Legal.Non-Advocacy@kyret.ky.gov](mailto:Legal.Non-Advocacy@kyret.ky.gov).

**Session 7**  
**November 3, 2023**  
**1:45 p.m. – 2:45 p.m.**  
**Grand KY Ballroom A**  
**Dan Carman**  
**No Sugar: The Real Tech Talk For Legal**  
**Professionals**





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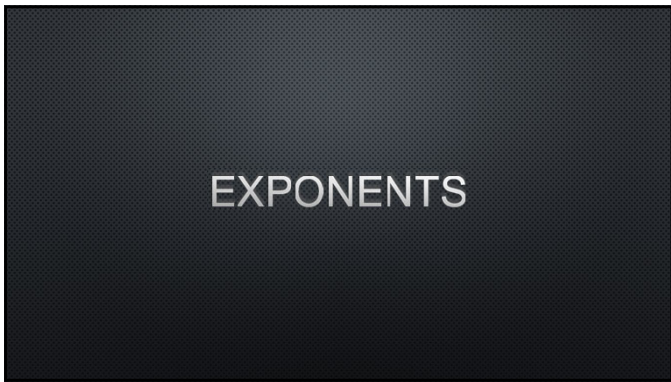
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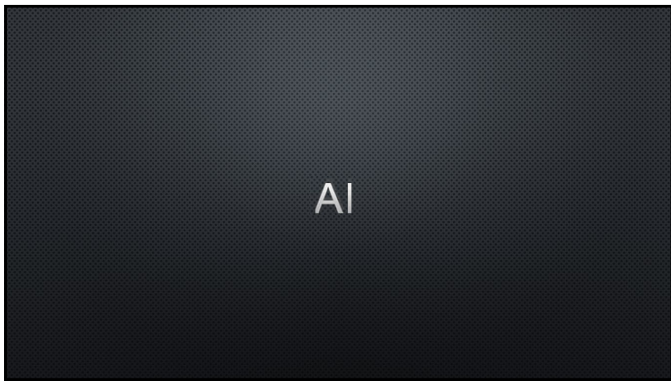
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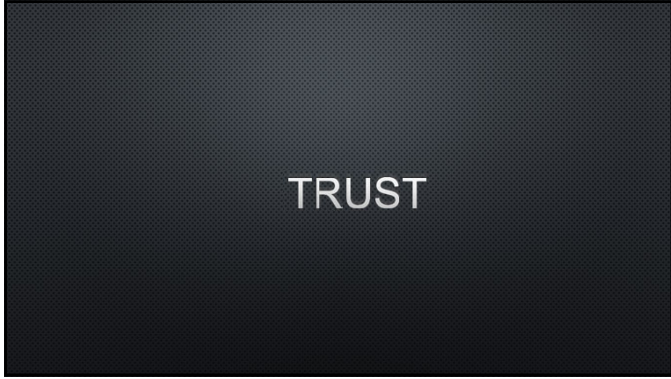
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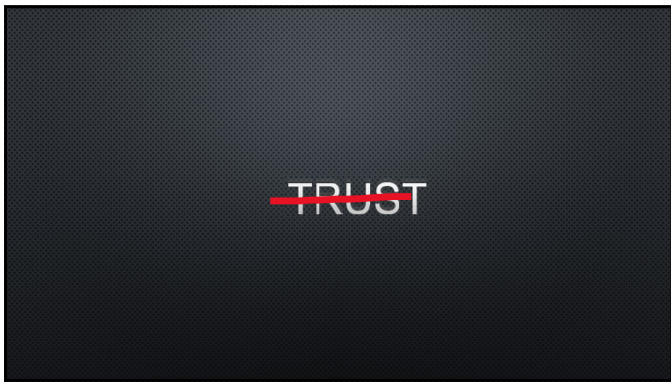
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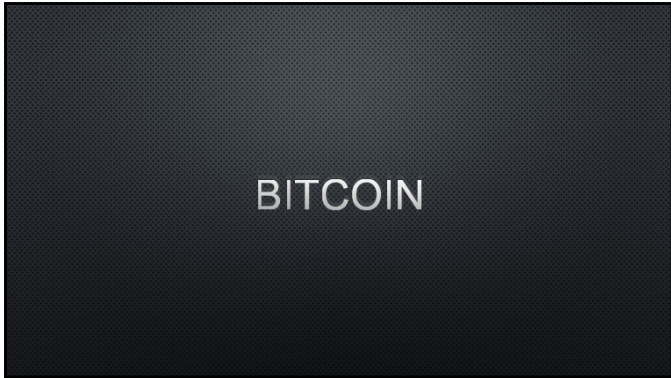
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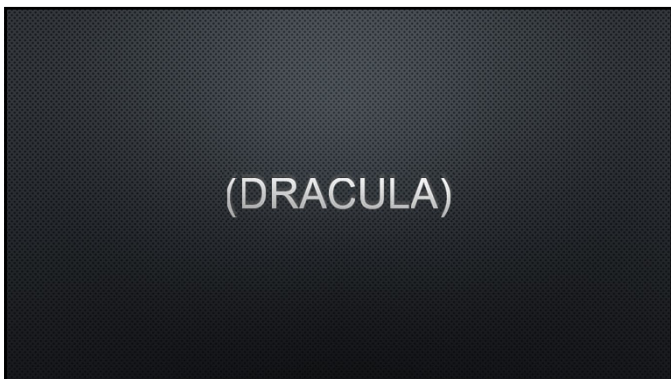
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WHERE DOES THIS LEAVE YOU?

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- [\\*\\*\\*.CARMANFULLERTON.COM](http://***.CARMANFULLERTON.COM)
- [\\*\\*\\*.LEXINGTONBITCOINCONSULTING.COM](http://***.LEXINGTONBITCOINCONSULTING.COM)
- @DAN\_CARMAN ON NOSTR, X, TELEGRAM, ETC.

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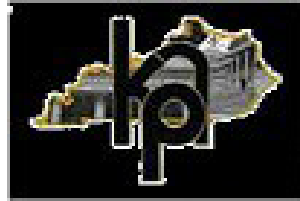
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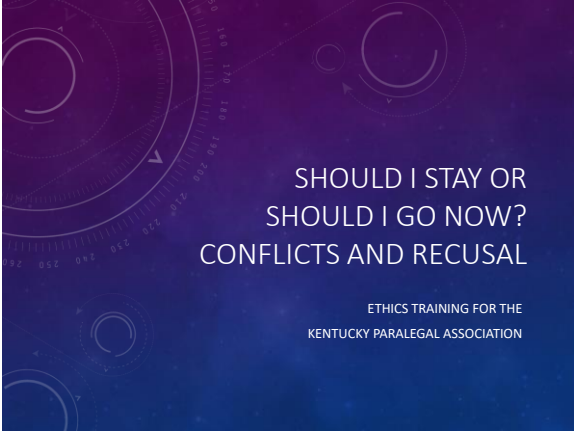
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**Session 7**  
**November 3, 2023**  
**1:45 p.m. – 2:45 p.m.**  
**Grand KY Ballroom D**  
**Susan Clary**  
**Should I Stay or Should I Go:**  
**Ethical Conflicts and Recusal**







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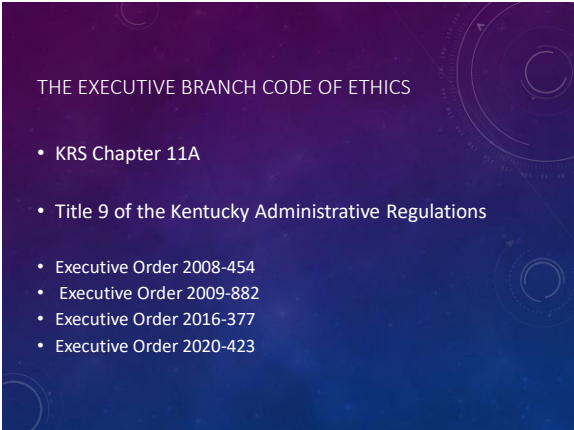
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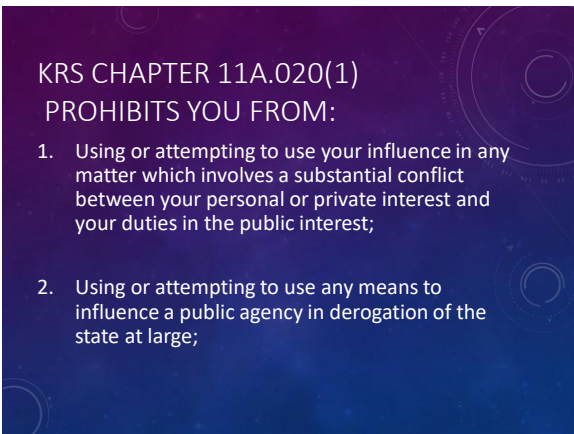
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KRS CHAPTER 11A.020(1)  
PROHIBITS YOU FROM:

3. Using your official position or office to obtain financial gain for yourself or any members of your family; or
4. Using or attempting to use your official position to secure or create privileges, exemptions, advantages, or treatment for yourself or others in derogation of the public interest at large.

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## CONFLICTS OF INTEREST

KRS Chapter 11A.020(2)  
**requires** you to:

➤ Avoid all conduct which might in any way lead members of the general public to conclude that you are using your official position to further your professional or private interest when appearing before a state agency.

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## CONFLICTS OF INTEREST

KRS Chapter 11A.020(3)  
**requires** you to:

- Disclose in writing to your agency/board the fact that you have abstained from action on an official decision in which you have or may have a personal or private interest.
- This may be done by stating your abstention during an open meeting of the Board and ensuring that the abstention is noted in the meeting minutes.

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IF YOU THINK YOU SHOULD ABSTAIN FROM ACTION ON AN OFFICIAL DECISION, ASK YOURSELF THESE QUESTIONS:

1. Has your personal/private interest created a substantial threat to your independence of judgment?
2. Will your participation have an effect on public confidence in the integrity of the executive branch?
3. Is your participation likely to have any significant effect on the disposition of the matter?
4. Is there a need for your particular contribution, such as special knowledge of the subject matter, for the executive branch to function effectively?
5. Will the official decision affect you in a manner differently from the public?

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### ABSTAINING FROM OFFICIAL ACTION

When in doubt, talk to your agency's Ethics Officer or make an inquiry to the staff of the Executive Branch Ethics Commission.

- Contact: **Susan Stokley Clary, Executive Director**  
Executive Branch Ethics Commission  
1025 Capital Center Drive, Suite 104  
Frankfort, KY 40601  
(502) 564-7954  
(502) 892-3400 direct  
[Susan.Clary@ky.gov](mailto:Susan.Clary@ky.gov)

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KRS 11A.040(1) & (2) SAYS THAT YOU **SHALL NOT**

- knowingly disclose or use confidential information acquired in the course of your official duties, when such would further your own economic interests.
- knowingly receive, directly or indirectly, any interest or profit arising from the use or loan of public funds in your hands or to be raised through any state agency.

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KRS 11A.040(3) SAYS THAT YOU **SHALL NOT**

- knowingly act as a representative or agent for the Commonwealth or any agency in the transaction of any business or regulatory action with
  - yourself, or
  - any business in which you or a member of your family has any interest greater than 5% of the total value thereof.

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KRS 11A.040(4) SAYS THAT YOU **SHALL NOT**

- Knowingly hold, bid on, negotiate or hold any contract, lease, sale, or purchase made, entered into, awarded, or granted by the Kentucky Retirement System.
- This does not apply to
  - Eminent domain – when the state seeks to purchase your property for the public good;
  - Public funds disbursed through entitlement programs;
  - Your spouse or child doing business with any state agency other than the Kentucky Retirement System;
  - Purchases from a state agency available on the same terms to the general public or made at public auction; or
  - Sale of craft items to a state park by an interim state employee designated as a craftsperson.

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### WHAT IF I'M NOT SURE?

When in doubt, make a written request for an advisory opinion from the Executive Branch Ethics Commission.

- Contact: Susan Stokley Clary, **Executive Director**  
 Executive Branch Ethics Commission  
 1025 Capital Center Drive, Suite 104  
 Frankfort, KY 40601  
 (502) 564-7954  
 (502) 892-3400 direct  
 Susan.Clary@ky.gov

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**KENTUCKY PARALEGAL ASSOCIATION  
PARALEGAL PROFESSIONAL STANDARDS OF CONDUCT  
Second Edition – 2010**

**CONTENTS**

**PREAMBLE – Page 2**

**PARALEGAL STANDARDS OF CONDUCT – Page 2**

**DEFINITIONS – Page 5**

**ANNOTATED PARALEGAL STANDARDS OF CONDUCT**

Standard 1. Competence – **Page 6**

Standard 2. Diligence – **Page 7**

Standard 3. Relations With Clients – **Page 9**

Standard 4. Client And Firm Confidentiality – **Page 12**

➤ **Standard 5. Conflicts Of Interest – Page 17**

Standard 6. Client And Firm Property – **Page 34**

Standard 7. Relations With Persons Other Than Clients – **Page 37**

Standard 8. Law Firm Paralegal Policies – **Page 42**

Standard 9. Unauthorized Practice Of Law – **Page 46**

Standard 10. Donated Paralegal Service – **Page 48**

Standard 11. Advertising And Solicitation – **Page 50**

Standard 12. Misconduct – **Page 57**

**APPENDIX A – Page 59**

Full Text: Supreme Court Rule 3.700 Provisions Relating to Paralegals

**APPENDIX B – Pages 64**

Full Text: Selected KBA Ethics and Unauthorized Practice Opinions Relating to Paralegals:

1. Scope of Paralegal Practice: KBA U-47; KBA U-54; KBA U-63 – **Page 64**
2. Client Confidentiality, Conflicts Of Interest, Sharing offices, and Changing Employers: KBA E-308; KBA E-406; KBA E-417 – **Page 70**
3. Unsupervised Paralegals and Suspended and Disbarred Lawyers: KBA U-45; KBA E-256; KBA E-255; KBA E-336 – **Page 78**
4. Paralegal Limitations in the Courtroom: KBA E-266 – **Page 82**
5. Paralegals and Depositions: KBA E-341 – **Page 84**

**APPENDIX C – Page 85**

Changes in the 2009 Kentucky Rules of Professional Conduct of Special Significance for Paralegals

*direct service of the client. Client information learned when working with a former law firm must be kept confidential even though a paralegal is no longer employed by that firm.*

### **Standard 5. Conflicts Of Interest**

**(a) To avoid conflicts of interest a paralegal shall inform supervising lawyers of any responsibilities the paralegal has to third persons or by the paralegals own personal or financial interests that may conflict with the interests of firm clients. The supervising lawyer is responsible for resolving paralegal conflict issues.**

**(b) A paralegal shall not use information relating to a client learned in the course of employment to the disadvantage of a client unless the supervising lawyer is informed and the lawyer obtains client consent after consultation.**

**📖 Cross Reference to the Kentucky Rules of Professional Conduct:**

#### **Rule 1.7 Conflict of Interest: Current Clients**

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing. The consultation shall include an explanation of the implications of the common representation and the advantages and risks involved.

#### **Comment**

**26A.015 Disqualification of justice or judge of the Court of Justice, or master commissioner.**

- (1) For the purposes of this section the following words or phrases shall have the meaning indicated:
  - (a) "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
  - (b) "Fiduciary" includes such relationships as executor, administrator, conservator, trustee, and guardian;
  - (c) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:
    1. Ownership in a mutual or common investment fund that holds securities, or a proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, or ownership of government securities is a "financial interest" only if the outcome of the proceeding could substantially affect the value of the interest;
    2. An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.
- (2) Any justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding:
  - (a) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding;
  - (b) Where in private practice or government service he served as a lawyer or rendered a legal opinion in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter in controversy, or the judge, master commissioner or such lawyer has been a material witness concerning the matter in controversy;
  - (c) Where he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a pecuniary or proprietary interest in the subject matter in controversy or in a party to the proceeding;
  - (d) Where he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
    1. Is a party to the proceeding, or an officer, director, or trustee of a party;
    2. Is acting as a lawyer in the proceeding and the disqualification is not waived by stipulation of counsel in the proceeding filed therein;
    3. Is known by the judge or master commissioner to have an interest that could be substantially affected by the outcome of the proceeding;
    4. Is to the knowledge of the judge or master commissioner likely to be a material witness in the proceeding.

- (e) Where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.
- (3) (a) Any justice or judge of the Court of Justice disqualified under the provisions of this section shall be replaced by the Chief Justice.
- (b) Any master commissioner disqualified under the provisions of this section or unable to discharge the duties of his office for any other reason shall be replaced by a special commissioner who shall be appointed by the judge of the court before whom the action is pending. The special commissioner shall meet the same qualifications as a master commissioner and shall take an oath and execute a bond as the regular commissioner is required to do.

**Effective:** July 1, 1982

**History:** Amended 1982 Ky. Acts ch. 141, sec. 41, effective July 1, 1982. -- Created 1976 (1st Extra. Sess.) Ky. Acts ch. 22, sec. 4.

**Note:** 1980 Ky. Acts ch. 396, sec. 44 would have amended this section effective July 1, 1982. However, 1980 Ky. Acts ch. 396 was repealed by 1982 Ky. Acts ch. 141, sec. 146, also effective July 1, 1982.



**26A.020 Designation of retired justice or judge as special judge.**

- (1) When, from any cause, a judge of any Circuit or District Court fails to attend, or being in attendance cannot properly preside in an action pending in the court, or if a vacancy occurs or exists in the office of circuit or district judge, the circuit clerk shall at once certify the facts to the Chief Justice who shall immediately designate a regular or retired justice or judge of the Court of Justice as special judge. If either party files with the circuit clerk his affidavit that the judge will not afford him a fair and impartial trial, or will not impartially decide an application for a change of venue, the circuit clerk shall at once certify the facts to the Chief Justice who shall immediately review the facts and determine whether to designate a regular or retired justice or judge of the Court of Justice as special judge. Any special judge so selected shall have all the powers and responsibilities of a regular judge of the court.
- (2) A retired justice or judge serving as a special judge shall be compensated as provided by KRS 21A.110.

**History:** Created 1976 (1st Extra. Sess.) Ky. Acts ch. 22, sec. 5.

Memorandum of SCALIA, J.

**SUPREME COURT OF THE UNITED STATES**

**RICHARD B. CHENEY, VICE PRESIDENT OF THE  
UNITED STATES, ET AL. v. UNITED STATES  
DISTRICT COURT FOR THE DISTRICT OF  
COLUMBIA ET AL.**

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA CIRCUIT**

No. 03-475. Decided March 18, 2004.

Memorandum of JUSTICE SCALIA.

I have before me a motion to recuse in these cases consolidated below. The motion is filed on behalf of respondent Sierra Club. The other private respondent, Judicial Watch, Inc., does not join the motion and has publicly stated that it “does not believe the presently-known facts about the hunting trip satisfy the legal standards requiring recusal.” Judicial Watch Statement 2 (Feb. 13, 2004) (available in Clerk of Court’s case file). (The District Court, a nominal party in this mandamus action, has of course made no appearance.) Since the cases have been consolidated, however, recusal in the one would entail recusal in the other.

I

The decision whether a judge’s impartiality can “reasonably be questioned” is to be made in light of the facts as they existed, and not as they were surmised or reported. See *Microsoft Corp. v. United States*, 530 U. S. 1301, 1302 (2000) (REHNQUIST, C. J.) (opinion respecting recusal). The facts here were as follows:

For five years or so, I have been going to Louisiana during the Court’s long December-January recess, to the duck-hunting camp of a friend whom I met through two hunting companions from Baton Rouge, one a dentist and

## Memorandum of SCALIA, J.

the other a worker in the field of handicapped rehabilitation. The last three years, I have been accompanied on this trip by a son-in-law who lives near me. Our friend and host, Wallace Carline, has never, as far as I know, had business before this Court. He is not, as some reports have described him, an “energy industry executive” in the sense that summons up boardrooms of ExxonMobil or Con Edison. He runs his own company that provides services and equipment rental to oil rigs in the Gulf of Mexico.

During my December 2002 visit, I learned that Mr. Carline was an admirer of Vice President Cheney. Knowing that the Vice President, with whom I am well acquainted (from our years serving together in the Ford administration), is an enthusiastic duck-hunter, I asked whether Mr. Carline would like to invite him to our next year’s hunt. The answer was yes; I conveyed the invitation (with my own warm recommendation) in the spring of 2003 and received an acceptance (subject, of course, to any superseding demands on the Vice President’s time) in the summer. The Vice President said that if he did go, I would be welcome to fly down to Louisiana with him. (Because of national security requirements, of course, he must fly in a Government plane.) That invitation was later extended—if space was available—to my son-in-law and to a son who was joining the hunt for the first time; they accepted. The trip was set long before the Court granted certiorari in the present case, and indeed before the petition for certiorari had even been filed.

We departed from Andrews Air Force Base at about 10 a.m. on Monday, January 5, flying in a Gulfstream jet owned by the Government. We landed in Patterson, Louisiana, and went by car to a dock where Mr. Carline met us, to take us on the 20-minute boat trip to his hunting camp. We arrived at about 2 p.m., the 5 of us joining about 8 other hunters, making about 13 hunters in all; also present during our time there were about 3 members

## Memorandum of SCALIA, J.

of Mr. Carline's staff, and, of course, the Vice President's staff and security detail. It was not an intimate setting. The group hunted that afternoon and Tuesday and Wednesday mornings; it fished (in two boats) Tuesday afternoon. All meals were in common. Sleeping was in rooms of two or three, except for the Vice President, who had his own quarters. Hunting was in two- or three-man blinds. As it turned out, I never hunted in the same blind with the Vice President. Nor was I alone with him at any time during the trip, except, perhaps, for instances so brief and unintentional that I would not recall them—walking to or from a boat, perhaps, or going to or from dinner. Of course we said not a word about the present case. The Vice President left the camp Wednesday afternoon, about two days after our arrival. I stayed on to hunt (with my son and son-in-law) until late Friday morning, when the three of us returned to Washington on a commercial flight from New Orleans.

## II

Let me respond, at the outset, to Sierra Club's suggestion that I should "resolve any doubts in favor of recusal." Motion to Recuse 8. That might be sound advice if I were sitting on a Court of Appeals. But see *In re Aguinda*, 241 F.3d 194, 201 (CA2 2000). There, my place would be taken by another judge, and the case would proceed normally. On the Supreme Court, however, the consequence is different: The Court proceeds with eight Justices, raising the possibility that, by reason of a tie vote, it will find itself unable to resolve the significant legal issue presented by the case. Thus, as Justices stated in their 1993 Statement of Recusal Policy: "[W]e do not think it would serve the public interest to go beyond the requirements of the statute, and to recuse ourselves, out of an excess of caution, whenever a relative is a partner in the firm before us or acted as a lawyer at an earlier stage. Even one unnec-

## Memorandum of SCALIA, J.

essary recusal impairs the functioning of the Court.” (Available in Clerk of Court’s case file.) Moreover, granting the motion is (insofar as the outcome of the particular case is concerned) effectively the same as casting a vote against the petitioner. The petitioner needs five votes to overturn the judgment below, and it makes no difference whether the needed fifth vote is missing because it has been cast for the other side, or because it has not been cast at all.

Even so, recusal is the course I must take—and will take—when, on the basis of established principles and practices, I have said or done something which requires that course. I have recused for such a reason this very Term. See *Elk Grove Unified School District v. Newdow*, 540 U. S. \_\_\_ (cert. granted, Oct. 14, 2003). I believe, however, that established principles and practices do not require (and thus do not permit) recusal in the present case.

## A

My recusal is required if, by reason of the actions described above, my “impartiality might reasonably be questioned.” 28 U. S. C. §455(a). Why would that result follow from my being in a sizable group of persons, in a hunting camp with the Vice President, where I never hunted with him in the same blind or had other opportunity for private conversation? The only possibility is that it would suggest I am a friend of his. But while friendship is a ground for recusal of a Justice where the personal fortune or the personal freedom of the friend is at issue, it has traditionally *not* been a ground for recusal where *official action* is at issue, no matter how important the official action was to the ambitions or the reputation of the Government officer.

A rule that required Members of this Court to remove themselves from cases in which the official actions of

## Memorandum of SCALIA, J.

friends were at issue would be utterly disabling. Many Justices have reached this Court precisely because they were friends of the incumbent President or other senior officials—and from the earliest days down to modern times Justices have had close personal relationships with the President and other officers of the Executive. John Quincy Adams hosted dinner parties featuring such luminaries as Chief Justice Marshall, Justices Johnson, Story, and Todd, Attorney General Wirt, and Daniel Webster. 5 *Memoirs of John Quincy Adams* 322–323 (C. Adams ed. 1969) (Diary Entry of Mar. 8, 1821). Justice Harlan and his wife often “stopped in” at the White House to see the Hayes family and pass a Sunday evening in a small group, visiting and singing hymns. M. Harlan, *Some Memories of a Long Life, 1854–1911*, p. 99 (2001). Justice Stone tossed around a medicine ball with members of the Hoover administration mornings outside the White House. 2 *Memoirs of Herbert Hoover* 327 (1952). Justice Douglas was a regular at President Franklin Roosevelt’s poker parties; Chief Justice Vinson played poker with President Truman. J. Simon, *Independent Journey: The Life of William O. Douglas* 220–221 (1980); D. McCullough, *Truman* 511 (1992). A no-friends rule would have disqualified much of the Court in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579 (1952), the case that challenged President Truman’s seizure of the steel mills. Most of the Justices knew Truman well, and four had been appointed by him. A no-friends rule would surely have required Justice Holmes’s recusal in *Northern Securities Co. v. United States*, 193 U. S. 197 (1904), the case that challenged President Theodore Roosevelt’s trust-busting initiative. See S. Novick, *Honorable Justice: The Life of Oliver Wendell Holmes* 264 (1989) (“Holmes and Fanny dined at the White House every week or two . . .”).

It is said, however, that this case is different because the federal officer (Vice President Cheney) is actually a

## Memorandum of SCALIA, J.

*named party*. That is by no means a rarity. At the beginning of the current Term, there were before the Court (excluding habeas actions) no fewer than 83 cases in which high-level federal Executive officers were named in their official capacity—more than 1 in every 10 federal civil cases then pending. That an officer is named has traditionally made no difference to the proposition that friendship is not considered to affect impartiality in official-action suits. Regardless of whom they name, such suits, when the officer is the plaintiff, seek relief not for him personally but for the Government; and, when the officer is the defendant, seek relief not against him personally, but against the Government. That is why federal law provides for *automatic substitution* of the new officer when the originally named officer has been replaced. See Federal Rule of Civil Procedure 25(d)(1); Federal Rule of Appellate Procedure 43(c)(2); this Court’s Rule 35.3. The caption of Sierra Club’s complaint in this action designates as a defendant “Vice President Richard Cheney, *in his official capacity* as Vice President of the United States and Chairman of the National Energy Policy Development Group.” App. 139 (emphasis added). The body of the complaint repeats (in paragraph 6) that “Defendant Richard Cheney is sued *in his official capacity* as the Vice President of the United States and Chairman of the Cheney Energy Task Force.” *Id.*, at 143 (emphasis added). Sierra Club has *relied* upon the fact that this is an official-action rather than a personal suit as a basis for denying the petition. It asserted in its brief in opposition that if there was no presidential immunity from discovery in *Clinton v. Jones*, 520 U. S. 681 (1997), which was a private suit, “[s]urely . . . the Vice President and subordinate White House officials have no greater immunity claim here, especially when the lawsuit relates to their official actions while in office and the primary relief sought is a declaratory judgment.” Brief in Opposition 13.

## Memorandum of SCALIA, J.

Richard Cheney's name appears in this suit only because he was the head of a Government committee that allegedly did not comply with the Federal Advisory Committee Act (FACA), 5 U. S. C. App. §2, p. 1, and because he may, by reason of his office, have custody of some or all of the Government documents that the plaintiffs seek. If some other person were to become head of that committee or to obtain custody of those documents, the plaintiffs would name that person and Cheney would be dismissed. Unlike the defendant in *United States v. Nixon*, 418 U. S. 683 (1974), or *Clinton v. Jones*, *supra*, Cheney is represented here, not by his personal attorney, but by the United States Department of Justice in the person of the Solicitor General. And the courts at all levels have referred to his arguments as (what they are) the arguments of "the government." See *In re Cheney*, 334 F. 3d 1096, 1100 (CA DC 2003); *Judicial Watch, Inc. v. Nat. Energy Policy Development Group*, 219 F. Supp. 2d 20, 25 (DC 2002).

The recusal motion, however, asserts the following:

"Critical to the issue of Justice Scalia's recusal is understanding that this is not a run-of-the-mill legal dispute about an administrative decision. . . . Because his own conduct is central to this case, the Vice President's 'reputation and his integrity are on the line.' (Chicago Tribune.)" Motion to Recuse 9.

I think not. Certainly as far as the legal issues immediately presented to me are concerned, this *is* "a run-of-the-mill legal dispute about an administrative decision." I am asked to determine what powers the District Court possessed under FACA, and whether the Court of Appeals should have asserted mandamus or appellate jurisdiction



## Memorandum of SCALIA, J.

over the District Court.<sup>1</sup> Nothing this Court says on those subjects will have any bearing upon the reputation and integrity of Richard Cheney. Moreover, even if this Court affirms the decision below and allows discovery to proceed in the District Court, the issue that would ultimately present itself *still* would have no bearing upon the reputation and integrity of Richard Cheney. That issue would be, quite simply, whether some private individuals were *de facto* members of the National Energy Policy Development Group (NEPDG). It matters not whether they were caused to be so by Cheney or someone else, or whether Cheney was even aware of their *de facto* status; if they *were de facto* members, then (according to D. C. Circuit law) the records and minutes of NEPDG must be made public.

The recusal motion asserts, however, that Richard Cheney's "reputation and his integrity are on the line" because

"respondents have alleged, *inter alia*, that the Vice President, as the head of the Task Force and its subgroups, was responsible for the involvement of energy industry executives in the operations of the Task Force, as a result of which the Task Force and its subgroups became subject to FACA." *Ibid.*

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<sup>1</sup>The Questions Presented in the petition, and accepted for review, are as follows:

"1. Whether the Federal Advisory Committee Act (FACA), 5 U. S. C. App. 1, §§1 *et seq.*, can be construed . . . to authorize broad discovery of the process by which the Vice President and other senior advisors gathered information to advise the President on important national policy matters, based solely on an unsupported allegation in a complaint that the advisory group was not constituted as the President expressly directed and the advisory group itself reported.

2. Whether the court of appeals had mandamus or appellate jurisdiction to review the district court's unprecedented discovery orders in this litigation." Pet. for Cert. (I).

## Memorandum of SCALIA, J.

As far as Sierra Club's *complaint* is concerned, it simply is not true that Vice President Cheney is singled out as having caused the involvement of energy executives. But even if the allegation had been made, it would be irrelevant to the case. FACA assertedly requires disclosure if there were private members of the task force, *no matter who* they were—"energy industry executives" or Ralph Nader; and *no matter who* was responsible for their membership—the Vice President or no one in particular. I do not see how the Vice President's "reputation and integrity are on the line" any more than the agency head's reputation and integrity are on the line in virtually all official-action suits, which accuse his agency of acting (to quote the Administrative Procedure Act) "arbitrar[ily], capricious[ly], [with] an abuse of discretion, or otherwise not in accordance with law." 5 U. S. C. §706(2)(A). Beyond that always-present accusation, there is nothing illegal or immoral about making "energy industry executives" members of a task force on energy; some people probably think it would be a good idea. If, in doing so, or in allowing it to happen, the Vice President went beyond his assigned powers, that is no worse than what every agency head has done when his action is judicially set aside.

To be sure, there could be political consequences from disclosure of the fact (if it be so) that the Vice President favored business interests, and especially a sector of business with which he was formerly connected. But political consequences are not my concern, and the possibility of them does not convert an official suit into a private one. That possibility exists to a greater or lesser degree in virtually all suits involving agency action. To expect judges to take account of political consequences—and to assess the high or low degree of them—is to ask judges to do precisely what they should not do. It seems to me quite wrong (and quite impossible) to make recusal depend upon what degree of political damage a particular case can be

## Memorandum of SCALIA, J.

expected to inflict.

In sum, I see nothing about this case which takes it out of the category of normal official-action litigation, where my friendship, or the appearance of my friendship, with one of the named officers does not require recusal.

## B

The recusal motion claims that “the fact that Justice Scalia and his daughter [sic] were the Vice President’s guest on Air Force Two on the flight down to Louisiana” means that I “accepted a sizable gift from a party in a pending case,” a gift “measured in the thousands of dollars.” Motion to Recuse 6.

Let me speak first to the value, though that is not the principal point. Our flight down cost the Government nothing, since space-available was the condition of our invitation. And, though our flight down on the Vice President’s plane was indeed free, since we were not returning with him we purchased (because they were least expensive) round-trip tickets that cost precisely what we would have paid if we had gone both down and back on commercial flights. In other words, none of us saved a cent by flying on the Vice President’s plane. The purpose of going with him was not saving money, but avoiding some inconvenience to ourselves (being taken by car from New Orleans to Morgan City) and considerable inconvenience to our friends, who would have had to meet our plane in New Orleans, and schedule separate boat trips to the hunting camp, for us and for the Vice President’s party. (To be sure, flying on the Vice President’s jet was more comfortable and more convenient than flying commercially; that accommodation is a matter I address in the next paragraph.)<sup>2</sup>

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<sup>2</sup>As my statement of the facts indicated, by the way, my daughter did not accompany me. My married son and son-in-law were given a ride—

## Memorandum of SCALIA, J.

The principal point, however, is that social courtesies, provided at Government expense by officials whose only business before the Court is business in their official capacity, have not hitherto been thought prohibited. Members of Congress and others are frequently invited to accompany Executive Branch officials on Government planes, where space is available. That this is not the sort of gift thought likely to affect a judge's impartiality is suggested by the fact that the Ethics in Government Act of 1978, 5 U. S. C. App. §101 *et seq.*, p. 38, which requires annual reporting of transportation provided or reimbursed, excludes from this requirement transportation provided by the United States. See §109(5)(C); Committee on Financial Disclosure, Administrative Office of the U. S. Courts, Financial Disclosure Report: Filing Instructions for Judicial Officers and Employees, p. 25 (Jan. 2003). I daresay that, at a hypothetical charity auction, much more would be bid for dinner for two at the White House than for a one-way flight to Louisiana on the Vice President's jet. Justices accept the former with regularity. While this matter was pending, Justices and their spouses were invited (*all* of them, I believe) to a December 11, 2003, Christmas reception at the residence of the Vice President—which included an opportunity for a photograph with the Vice President and Mrs. Cheney. Several of the Justices attended, and in doing so they were fully in accord with the proprieties.

## III

When I learned that Sierra Club had filed a recusal

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not because they were relatives and as a favor to me; but because they were other hunters leaving from Washington, and as a favor to them (and to those who would have had to go to New Orleans to meet them). Had they been unrelated invitees to the hunt, the same would undoubtedly have occurred. Financially, the flight was worth as little to them as it was to me.

## Memorandum of SCALIA, J.

motion in this case, I assumed that the motion would be replete with citations of legal authority, and would provide some instances of cases in which, because of activity similar to what occurred here, Justices have recused themselves or at least have been asked to do so. In fact, however, the motion cites only two Supreme Court cases assertedly relevant to the issue here discussed,<sup>3</sup> and nine Court of Appeals cases. Not a single one of these even involves an official-action suit.<sup>4</sup> And the motion gives not a single instance in which, under even remotely similar circumstances, a Justice has recused or been asked to recuse. Instead, the Argument section of the motion consists almost entirely of references to, and quotations from, newspaper editorials.

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<sup>3</sup>The motion cites a third Supreme Court case, *Public Citizen v. Department of Justice*, 491 U. S. 440 (1989), as a case involving FACA in which I recused myself. It speculates (1) that the reason for recusal was that as Assistant Attorney General for the Office of Legal Counsel I had provided an opinion which concluded that applying FACA to presidential advisory committees was unconstitutional; and asserts (2) that this would also be grounds for my recusal here. My opinion as Assistant Attorney General addressed the precise question presented in *Public Citizen*: whether the American Bar Association's Standing Committee on Federal Judiciary, which provided advice to the President concerning judicial nominees, could be regulated as an "advisory committee" under FACA. I concluded that my withdrawal from the case was required by 28 U. S. C. §455(b)(3), which mandates recusal where the judge "has served in governmental employment and in such capacity . . . expressed an opinion concerning the merits of the particular case in controversy." I have never expressed an opinion concerning the merits of the present case.

<sup>4</sup>*United States v. Murphy*, 768 F. 2d 1518 (CA7 1985), at least involved a judge's going on vacation—but not with the named defendant in an official-action suit. The judge had departed for a vacation with the prosecutor of Murphy's case, immediately after sentencing Murphy. Obviously, the prosecutor is personally involved in the outcome of the case in a way that the nominal defendant in an official-action suit is not.

## Memorandum of SCALIA, J.

The core of Sierra Club's argument is as follows:

"Sierra Club makes this motion because . . . damage [to the integrity of the system] is being done right now. As of today, 8 of the 10 newspapers with the largest circulation in the United States, 14 of the largest 20, and 20 of the 30 largest have called on Justice Scalia to step aside . . . . Of equal import, there is no counterbalance or controversy: not a single newspaper has argued against recusal. Because the American public, as reflected in the nation's newspaper editorials, has unanimously concluded that there is an appearance of favoritism, any objective observer would be compelled to conclude that Justice Scalia's impartiality has been questioned. These facts more than satisfy Section 455(a), which mandates recusal merely when a Justice's impartiality 'might reasonably be questioned.'" Motion to Recuse 3-4.

The implications of this argument are staggering. I must recuse because a significant portion of the press, which is deemed to be the American public, demands it.

The motion attaches as exhibits the press editorials on which it relies. Many of them do not even have the facts right. The length of our hunting trip together was said to be several days (San Francisco Chronicle), four days (Boston Globe), or nine days (San Antonio Express-News). We spent about 48 hours together at the hunting camp. It was asserted that the Vice President and I "spent time alone in the rushes," "huddled together in a Louisiana marsh," where we had "plenty of time . . . to talk privately" (Los Angeles Times); that we "spent . . . quality time bonding together in a duck blind" (Atlanta Journal-Constitution); and that "[t]here is simply no reason to think these two did not discuss the pending case" (Buffalo News). As I have described, the Vice President and I were never in the same blind, and never discussed the case.

## Memorandum of SCALIA, J.

(Washington officials know the rules, and know that discussing with judges pending cases—their own or anyone else’s—is forbidden.) The Palm Beach Post stated that our “transportation was provided, appropriately, by an oil services company,” and Newsday that a “private jet . . . whisked Scalia to Louisiana.” The Vice President and I flew in a Government plane. The Cincinnati Enquirer said that “Scalia was Cheney’s guest at a private duck-hunting camp in Louisiana.” Cheney and I were Wallace Carline’s guest. Various newspapers described Mr. Carline as “an energy company official” (Atlanta Journal-Constitution), an “oil industrialist,” (Cincinnati Enquirer), an “oil company executive” (Contra Costa Times), an “oilman” (Minneapolis Star Tribune), and an “energy industry executive” (Washington Post). All of these descriptions are misleading.

And these are just the inaccuracies pertaining to the *facts*. With regard to the *law*, the vast majority of the editorials display no recognition of the central proposition that a federal officer is not ordinarily regarded to be a personal party in interest in an official-action suit. And those that do display such recognition facilely assume, contrary to all precedent, that in such suits mere political damage (which they characterize as a destruction of Cheney’s reputation and integrity) is ground for recusal. Such a blast of largely inaccurate and uninformed opinion cannot determine the recusal question. It is well established that the recusal inquiry must be “made from the perspective of a *reasonable* observer who is *informed of all the surrounding facts and circumstances*.” *Microsoft Corp. v. United States*, 530 U. S. 1301, 1302 (2000) (REHNQUIST, C. J.) (opinion respecting recusal) (emphases added) (citing *Liteky v. United States*, 510 U. S. 540, 548 (1994)).

## IV

While Sierra Club was apparently unable to summon

## Memorandum of SCALIA, J.

forth a single example of a Justice's recusal (or even motion for a Justice's recusal) under circumstances similar to those here, I have been able to accomplish the seemingly more difficult task of finding a couple of examples establishing the negative: that recusal or motion for recusal did *not* occur under circumstances similar to those here.

*Justice White and Robert Kennedy*

The first example pertains to a Justice with whom I have sat, and who retired from the Court only 11 years ago, Byron R. White. Justice White was close friends with Attorney General Robert Kennedy from the days when White had served as Kennedy's Deputy Attorney General. In January 1963, the Justice went on a skiing vacation in Colorado with Robert Kennedy and his family, Secretary of Defense Robert McNamara and his family, and other members of the Kennedy family. Skiing Not The Best; McNamara Leaves Colorado, Terms Vacation "Marvelous," *Denver Post*, Jan. 2, 1963, p. 22; D. Hutchinson, *The Man Who Once Was Whizzer White* 342 (1998). (The skiing in Colorado, like my hunting in Louisiana, was not particularly successful.) At the time of this skiing vacation there were pending before the Court at least two cases in which Robert Kennedy, in his official capacity as Attorney General, was a party. See *Gastelum-Quinones v. Kennedy*, 374 U. S. 469 (1963); *Kennedy v. Mendoza-Martinez*, 372 U. S. 144 (1963). In the first of these, moreover, the press might have said, as plausibly as it has said here, that the reputation and integrity of the Attorney General were at issue. There the Department of Justice had decreed deportation of a resident alien on grounds that he had been a member of the Communist Party. (The Court found that the evidence adduced by the Department was inadequate.)

Besides these cases naming Kennedy, another case pending at the time of the skiing vacation was argued to



Memorandum of SCALIA, J.

the Court by *Kennedy* about two weeks later. See *Gray v. Sanders*, 372 U. S. 368 (1963). That case was important to the Kennedy administration, because by the time of its argument everybody knew that the apportionment cases were not far behind, and *Gray* was a significant step in the march toward *Reynolds v. Sims*, 377 U. S. 533 (1964). When the decision was announced, it was front-page news. See High Court Voids County Unit Vote, N. Y. Times, Mar. 19, 1963, p. 1, col. 2; Georgia's Unit Voting Voided, Washington Post, Mar. 19, 1963, p. A1, col. 5. Attorney General Kennedy argued for affirmance of a three-judge District Court's ruling that the Georgia Democratic Party's county-unit voting system violated the one-person, one-vote principle. This was Kennedy's only argument before the Court, and it certainly put "on the line" his reputation as a lawyer, as well as an important policy of his brother's administration.

*Justice Jackson and Franklin Roosevelt*

The second example pertains to a Justice who was one of the most distinguished occupants of the seat to which I was appointed, Robert Jackson. Justice Jackson took the recusal obligation particularly seriously. See, e.g., *Jewell Ridge Coal Corp. v. United Mine Workers*, 325 U. S. 897 (1945) (Jackson, J., concurring in denial of rehearing) (oblique criticism of Justice Black's decision not to recuse himself from a case argued by his former law partner). Nonetheless, he saw nothing wrong with maintaining a close personal relationship, and engaging in "quite frequent[t]" socializing with the President whose administration's acts came before him regularly. R. Jackson, *That Man: An Insider's Portrait of Franklin D. Roosevelt* 74 (J. Barrett ed. 2003).

In April 1942, the two "spent a weekend on a very delightful house party down at General Watson's in Char-

## Memorandum of SCALIA, J.

lottesville, Virginia. I had been invited to ride down with the President and to ride back with him.” *Id.*, at 106 (footnote omitted). Pending at the time, and argued the next month, was one of the most important cases concerning the scope of permissible federal action under the Commerce Clause, *Wickard v. Filburn*, 317 U.S. 111 (1942). Justice Jackson wrote the opinion for the Court. Roosevelt’s Secretary of Agriculture, rather than Roosevelt himself, was the named federal officer in the case, but there is no doubt that it was important to the President.

I see nothing wrong about Justice White’s and Justice Jackson’s socializing—including vacationing and accepting rides—with their friends. Nor, seemingly, did anyone else at the time. (The *Denver Post*, which has been critical of me, reported the White-Kennedy-McNamara skiing vacation with nothing but enthusiasm.) If friendship is basis for recusal (as it assuredly is when friends are sued personally) then activity which suggests close friendship must be avoided. But if friendship is *no* basis for recusal (as it is not in official-capacity suits) social contacts that do no more than evidence that friendship suggest no impropriety whatever.

Of course it can be claimed (as some editorials have claimed) that “times have changed,” and what was once considered proper—even as recently as Byron White’s day—is no longer so. That may be true with regard to the earlier rare phenomenon of a Supreme Court Justice’s serving as advisor and confidant to the President—though that activity, so incompatible with the separation of powers, was not widely known when it was occurring, and can hardly be said to have been generally approved before it was properly abandoned. But the well-known and constant practice of Justices’ enjoying friendship and social intercourse with Members of Congress and officers of the Executive Branch has *not* been abandoned, and ought not

## Memorandum of SCALIA, J.

to be.

## V

Since I do not believe my impartiality can reasonably be questioned, I do not think it would be proper for me to recuse. See *Microsoft*, 530 U. S., at 1302. That alone is conclusive; but another consideration moves me in the same direction: Recusal would in my judgment harm the Court. If I were to withdraw from this case, it would be because some of the press has argued that the Vice President would suffer political damage *if* he should lose this appeal, and *if*, on remand, discovery should establish that energy industry representatives were *de facto* members of NEPDG—and because some of the press has elevated that possible political damage to the status of an impending stain on the reputation and integrity of the Vice President. But since political damage often comes from the Government's losing official-action suits; and since political damage can readily be characterized as a stain on reputation and integrity; recusing in the face of such charges would give elements of the press a veto over participation of any Justices who had social contacts with, or were even known to be friends of, a named official. That is intolerable.

My recusal would also encourage so-called investigative journalists to suggest improprieties, and demand recusals, for other inappropriate (and increasingly silly) reasons. The Los Angeles Times has already suggested that it was improper for me to sit on a case argued by a law school dean whose school I had visited several weeks before—visited not at his invitation, but at his predecessor's. See *New Trip Trouble for Scalia*, Feb. 28, 2004, p. B22. The same paper has asserted that it was improper for me to speak at a dinner honoring Cardinal Bevilacqua given by the Urban Family Council of Philadelphia because (ac-

## Memorandum of SCALIA, J.

ording to the Times's false report)<sup>5</sup> that organization was engaged in litigation seeking to prevent same-sex civil unions, and I had before me a case presenting the question (whether same-sex civil unions were lawful?—no) whether homosexual sodomy could constitutionally be *criminalized*. See *Lawrence v. Texas*, 539 U. S. \_\_\_\_ (2003). While the political branches can perhaps survive the constant baseless allegations of impropriety that have become the staple of Washington reportage, this Court cannot. The people must have confidence in the integrity of the Justices, and that cannot exist in a system that assumes them to be corruptible by the slightest friendship or favor, and in an atmosphere where the press will be eager to find foot-faults.

\* \* \*

As I noted at the outset, one of the private respondents in this case has not called for my recusal, and has ex-

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<sup>5</sup>The Times's reporter had interviewed the former President of the Urban Family Council, who told him categorically that the Council was neither a party to, nor had provided financial support for, the civil-union litigation. The filed papers in the case, publicly available, *showed* that the Council was not a party. The Los Angeles Times nonetheless devoted a lengthy front-page article to the point that (in the words of the lead sentence) "Justice Antonin Scalia gave a keynote dinner speech in Philadelphia for an advocacy group waging a legal battle against gay rights." Serrano and Savage, *Scalia Addressed Advocacy Group Before Key Decision*, Mar. 8, 2004, at A1. Five days later, in a weekend edition, the paper printed (at the insistence of the Council) a few-line retraction acknowledging that this asserted fact was wrong—as though it was merely one incidental fact in a long piece, rather than the central fact upon which the long piece was based, and without which *there was no story*. See *For the Record*, Mar. 13, 2004, at A2. Other inaccurate facts and insinuations in the article, brought to the paper's attention by the Council, were not corrected. See e-mail from Betty Jean Wolfe, President, Urban Family Council, to Richard Serrano, Los Angeles Times (Mar. 8, 2004) (available in Clerk of Court's case file).

## Memorandum of SCALIA, J.

pressed confidence that I will rule impartially, as indeed I will. Counsel for the other private respondent seek to impose, it seems to me, a standard regarding friendship, the appearance of friendship, and the acceptance of social favors, that is more stringent than what they themselves observe. Two days before the brief in opposition to the petition in this case was filed, lead counsel for Sierra Club, a friend, wrote me a warm note inviting me to come to Stanford Law School to speak to one of his classes. (Available in Clerk of Court's case file.) (Judges teaching classes at law schools normally have their transportation and expenses paid.) I saw nothing amiss in that friendly letter and invitation. I surely would have thought otherwise if I had applied the standards urged in the present motion.

There are, I am sure, those who believe that my friendship with persons in the current administration might cause me to favor the Government in cases brought against it. That is not the issue here. Nor is the issue whether personal friendship with the Vice President might cause me to favor the Government in cases in which *he* is named. None of those suspicions regarding my impartiality (erroneous suspicions, I hasten to protest) bears upon recusal here. The question, simply put, is whether someone who thought I could decide this case impartially despite my friendship with the Vice President would reasonably believe that I *cannot* decide it impartially because I went hunting with that friend and accepted an invitation to fly there with him on a Government plane. If it is reasonable to think that a Supreme Court Justice can be bought so cheap, the Nation is in deeper trouble than I had imagined.

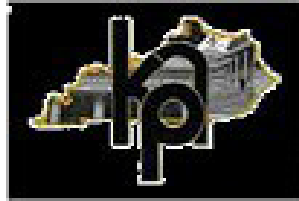
As the newspaper editorials appended to the motion make clear, I have received a good deal of embarrassing criticism and adverse publicity in connection with the matters at issue here—even to the point of becoming (as the motion cruelly but accurately states) “fodder for late-

Memorandum of SCALIA, J.

night comedians.” Motion to Recuse 6. If I could have done so in good conscience, I would have been pleased to demonstrate my integrity, and immediately silence the criticism, by getting off the case. Since I believe there is no basis for recusal, I cannot. The motion is

*Denied.*

**Session 8**  
**November 3, 2023**  
**3:00 p.m. – 4:00 p.m.**  
**Grand KY Ballroom A**  
**Karen Hoskins-Ginn**  
**Realm of Attorney Ethics in**  
**Supervising a Paralegal**



# KY SCR 3.700

## PROVISIONS RELATING TO PARALEGALS

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### Paralegals and Unauthorized Practice of Law

§ A paralegal works under the supervision and direction of a licensed lawyer and may apply knowledge of the law or legal assistant to lawyers engaged in legal research, preparation of documents, and development of procedures.

§ Baldwin's Kentucky Revised Statutes Rules of the Supreme Court provide guidance in Section 3.700, containing a 7-part rule.

KY SCR 3.700

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### Sub-Rule 1

§ A lawyer shall ensure that a paralegal in his employment does not engage in the unauthorized practice of law.

KY SCR 3.700

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### Sub-Rule 2

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§What is considered “unauthorized” practice of law?

§What should the client understand?

KY SCR 3.700

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### Sub-Rule 3

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§The unauthorized practice of law shall not include representation before any administrative tribunal or court.

KY SCR 3.700

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### Sub-Rule 4

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§A lawyer shall instruct a paralegal employee to preserve the confidences and secrets of a client and shall exercise care to do so.

KY SCR 3.700

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### Sub-Rule 5

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§ A lawyer shall not form a partnership with a paralegal nor share legal fees with a paralegal.

KY SCR 3.700

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### Sub-Rule 6

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§ Paralegals must have a clear indication of status listed on any business card or letterhead associated with the lawyer or law firm.

KY SCR 3.700

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### Sub-Rule 7

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§ When dealing with clients, a paralegal must disclose at the outset of meeting that she is not a lawyer.

KY SCR 3.700

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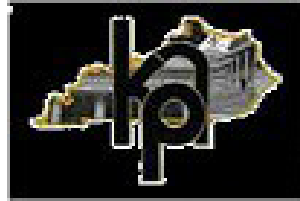
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**Session 8**  
**November 3, 2023**  
**3:00 p.m. – 4:00 p.m.**  
**Grand KY Ballroom D**  
**Leah Wedl**  
**Protecting Domestic Violence Victims**  
**By Protecting Their Pets**







ABUSE DOES NOT OCCUR IN A VACUUM

THE "LINK"

Animal abuse is rarely an isolated offense. It can be a strong indicator that some other type of abuse is occurring in a household.

- Intimate partner violence
- Child abuse/neglect
- School shooters
- Sexual abuse
- Financial abuse

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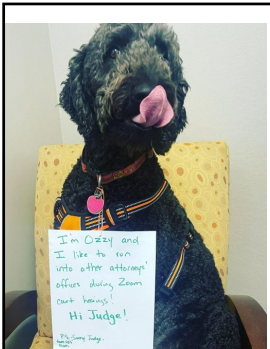
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- Abusers harm companion animals in a number of ways in order to control, manipulate, hurt abuse victims and to exploit the emotional attachments victims have with companion animals to exercise power and demonstrate force, thus, creating an environment of fear, compliance, and emotional abuse.
- Abusers will
  - get rid of companion animals,
  - allow them to 'get lost,'
  - send companion animals to shelters to be euthanized,
  - sexually abuse companion animals;
  - harm or threaten violence to companion animals.
- Abusers also threaten children's pets, or harm the pets to punish children.

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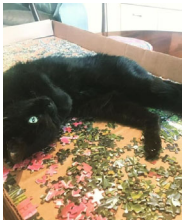
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PROTECTIVE ORDERS - GENERALLY



- Can Order
  - Respondent to have no contact with
    - Petitioner
    - Children
    - Others who might need protecting (e.g. threats against Petitioner's parents, family members)
  - Respondent to stay away from certain addresses (home, school)
  - Respondent to stop abusing, threatening, stalking, assaulting Petitioner
  - Respondent to leave a shared home
  - Can award temporary custody

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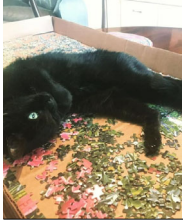
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### STATUTORY AMENDMENTS RELATED TO DOMESTIC ANIMALS AND DOMESTIC VIOLENCE



- Emergency Protective Order / Domestic Violence Order
  - Amends KRS 403.720 to include violence against a domestic animal when used as coercive conduct in the definition of "domestic violence and abuse";
  - Amends KRS 403.740 to allow a judge to award possession of a shared domestic animal to the petitioner;
- Interpersonal Protection Orders
  - Amends KRS 456.010 to include violence against an animal when used as coercive conduct in the definition of "dating violence and abuse"; and
  - Amends KRS 456.060 to allow a judge to award possession of a shared domestic animal to the petitioner.

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### PURPOSE



- Protect domestic violence victims
- Protect pets of domestic violence victims
- Encourage domestic violence victims to leave abusive situations by affording some legal protection to pets

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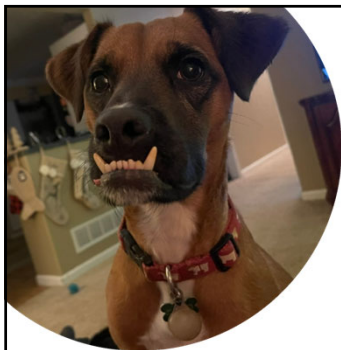
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- Children exposed to animal abuse are nearly three times as likely to engage in cruelty to animals.
- 26% of child abuse victims (including those children who had witnessed domestic abuse or animal abuse) went on to become abusers themselves.

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Louisville mother arrested after 10-year-old son found dead in trunk of her car



Updated: 8:50 AM EDT Apr 22, 2021

10

Horizontal lines for notes

By 16 News Now

Published: Sep. 21, 2022 at 10:40 PM EDT



LAPORTE COUNTY, Ind. (WNDU) - A LaPorte County father pleaded guilty in the death of his 4-year-old son on Wednesday.

According to charging documents, investigators found the home in major disarray, with trash, rotten food, and animal feces intermixed with clothes. Authorities found an extremely malnourished dog in a locked crate as well as a refrigerator that had a lock, preventing others from opening it.

11

Horizontal lines for notes

Judge allows prosecution to show Parkland school shooter's interest in hate speech, child porn, animal abuse

Judge allows prosecution to include swastikas as evidence of antisocial personality disorder diagnosis

Andrea Torres, Digital Journalist

Christina Vazquez, Reporter

Published: September 26, 2022 at 12:33 PM

12

Horizontal lines for notes

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### Dallas Doctor Jailed in Tainted IV Case Has Troubled History, Owed IRS \$4 Million, Records Show

By **Scott Gordon** • Published September 14, 2022 • Updated on September 15, 2022 at 10:53 am

In a bizarre case, Ortiz was arrested in Murphy in 2015 and accused of shooting his neighbor's dog with a pellet gun after the neighbor helped Ortiz's girlfriend move out and later testified against him in a court hearing.

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• Kentucky joins 36 other states and Washington D.C. to include express statutory language addressing companion animals, pets, or household pets. The terminology and definitions vary, as do the extent of protection provided.

The definition of domestic violence and abuse is expanded to say that any conduct prohibited by KRS 525.125, 525.130, 525.135, or 525.137, or the infliction of fear of such imminent conduct, taken against a domestic animal when used as a method of coercion, control, punishment, intimidation, or revenge directed against a family member or member of an unmarried couple who has a close bond of affection to the domestic animal. KRS 403.720(2)(b).

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### FEDERAL PAWS ACT: PET AND WOMEN



The Federal Paws Act is legislation that directs the Department of Agriculture to award grants to domestic violence shelters / housing programs who provide space for pets of abuse victims, as well as support services.

This law amended federal criminal code to broaden definition of stalking; includes conduct causing a reasonable person to fear pet's death or injury.

The law also includes that an interstate violation of a state protective order that includes a pet within the scope of the protective order provides stiff penalties: including prison term of up to five years, a fine, or both; mandatory restitution in the full amount of victim's losses.

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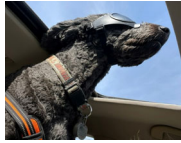
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### LEGAL AND ETHICAL OBLIGATIONS – REPORTING CHILD ABUSE

- Kentucky mandates reporting of child abuse, dependency, or neglect.
- Kentucky law defines an "Abused or neglected child" as a child whose health or welfare is harmed, or threatened with harm when his or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means.
- Because threats of harm, or harm, to a domestic animal, now falls within the definition of domestic violence, an act of harm, or threats of harm, against a child's pet is a form of child abuse and must be reported.



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### LEGAL AND ETHICAL OBLIGATIONS – REPORTING ANIMAL ABUSE



- Twenty states require veterinarians or other professionals in the animal care field to be mandatory reporters for any suspected animal abuse that they discover.
- Kentucky is one of five states that does not require a veterinary professional to report abuse but does have laws on voluntary reporting.
- Twelve states have no laws regarding the reporting of animal abuse, while the rest of the states do not have laws regarding mandatory or voluntary reporting but do provide immunity for those professionals that choose to do so.

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## An Update from NKAP



To say 2023 has been an eventful year for NKAP is an understatement. The *Northern Kentucky Association of Paralegals (NKAP)* entered a partnership with the *Northern KY Bar Association (NKBA)* and became the *Paralegal Section of the NKBA*. Our membership is very fortunate to have the strong backing and support of the NKBA and its member attorneys.

This partnership has provided our member paralegals with opportunities to enjoy the same benefits enjoyed by NKBA member attorneys such as: professional development, mentoring, continuing education, networking opportunities, publications, discounted services, a job bank, and volunteer opportunities.

We continue to meet regularly and have several events planned. We are in the process of building a web page. In the meantime, if you are interested in membership, the NKBA Membership Application is available at \*\*\*\*\*[nkybar.com/join](http://nkybar.com/join). The cost of annual membership for a paralegal is only \$50.

If you have any questions, please reach out to us at:

Leslie Smith - [leslie@rittgers.com](mailto:leslie@rittgers.com)  
Paralegal Section President

Melanie Chenot - [melanie@ruberlaw](mailto:melanie@ruberlaw)  
Paralegal Section Vice President