

KENTUCKY LAW UPDATE



2025

ADVANCING THE PROFESSION THROUGH EDUCATION

# **The Usual Suspects: AI, Fraud, Bad Intake, and that Bar Complaint You Forgot to Mention**

1 Ethics Credit

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**THE USUAL SUSPECTS:**  
**AI, FRAUD, BAD INTAKE, AND THAT BAR COMPLAINT YOU FORGOT TO MENTION\***  
Jared W. Burke, Esq.

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**I. AI, FRAUD, BAD INTAKE, AND BAR COMPLAINTS – WHAT ABOUT THEM?**

This presentation will explore four topics with which attorneys must grapple – some potentially daily and others at some point in their practice. First, we'll examine the growing role of artificial intelligence in the legal landscape, including its benefits and potential pitfalls. Next, we'll delve into the rise of wire fraud and strategies for protecting client funds. We'll also address common client intake issues that can lead to ethical or operational challenges. Finally, we'll discuss practical steps for effectively responding to and managing bar complaints.

**II. THE RULES AND ETHICS OPINIONS**

The issues that will be discussed during this presentation are covered by both the Kentucky Rules of Professional Conduct (the “Rules”) under [SCR 3.130](#), as well as two (2) relevant KBA and ABA Ethics Opinions. The pertinent Rules that LMICK will focus on are: [SCR 3.130\(1.1\)](#) competence, [\(1.4\)](#) communication, [\(1.5\)](#) fees, [\(1.6\)](#) confidentiality, [\(3.3\)](#) candor toward the tribunal, [\(5.1\)](#) supervision of associates, [\(5.2\)](#) responsibilities of a subordinate lawyer, [\(5.3\)](#) responsibilities regarding nonlawyer assistants, [\(8.1\)](#) disciplinary matters, and [SCR 3.150](#) access to disciplinary matters.

The relevant Ethics Opinions discussed below are [KBA Ethics Opinion E-457](#) citing, *inter alia*, [KBA Ethics Opinion E-437](#) and [ABA Formal Opinion 512](#). The links are provided for your ease of reference.

**The Rules**

- A. Competence ([SCR 3.130\(1.1\)](#))
- B. Communication ([SCR 3.130\(1.4\)](#))
- C. Fees ([SCR 3.130\(1.5\)](#))
- D. Confidentiality of Information ([SCR 3.130\(1.6\)](#))
- E. Candor Toward the Tribunal ([SCR 3.130\(3.3\)](#))
- F. Responsibilities of Partners, Managers and Supervisory Lawyers ([SCR 3.130\(5.1\)](#))

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- G. Responsibilities of a Subordinate Lawyer ([SCR 3.130\(5.2\)](#))
- H. Responsibilities Regarding Nonlawyer Assistants ([SCR 3.130\(5.3\)](#))
- I. Bar Admission and Disciplinary Matters ([SCR 3.130\(8.1\)](#))
- J. Access to Disciplinary Information ([SCR 3.150](#))

### **III. PRACTICAL TIPS**

The preceding Rules are important for every lawyer to understand. Whether you are a partner, managing, or subordinate attorney in a firm, the same Rules and ethical obligations are required of every attorney permitted to practice in Kentucky. The following information is not only important to understand and implement for the actual attorney involved in a case or matter, but critical to supervising attorney(s) as well to avoid any potential disciplinary charges or other causes of action against the attorney and/or their firm.

- A. AI – Artificial Intelligence, Real World Impacts
  - 1. AI can assist attorneys in several ways by streamlining document review, assisting with document preparation, document brainstorming, automating routine tasks including client communication and interaction, and ultimately improving efficiency and reducing costs.
  - 2. However, when using AI in your practice, there are several Rules and ethical Opinions that provide guidance on how attorneys must deal with the rapid integration of AI in the legal landscape.
  - 3. [KBA Ethics Opinion E-457](#)
    - a. Opinion issued March 15, 2024.
    - b. This Opinion posed seven questions with corresponding answers.
    - c. Question #1: ‘Like other technological advances, does an attorney have an ethical duty to keep abreast of the use of AI in the practice of law?’
      - i. Answer: YES!
      - ii. **LMICK TIP**→ LMICK recommends that even if you or your firm are not “tech-savvy”, then you must adapt and/or hire staff that can ensure your firm’s compliance with technological advancements in the practice of law.

“I don’t understand AI...”

- a) That excuse is NO LONGER VALID.

- b) You must recognize that AI is here to stay.
- d. Question #5: "If an attorney utilizes AI in the practice of law, is the attorney under a continuing duty to safeguard client information?"
  - i. Answer: YES!
  - ii. Also see [SCR 3.130\(1.6\), Confidentiality of Information](#).
    - a) "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)."
- e. **LMICK TIP→** [KBA Ethics Opinion E-457](#) also discusses fees under [SCR 3.130\(1.5\)](#).
  - i. [KBA Ethics Opinion E-457](#) provides that lawyers must consider the following:
    - a) Learning about AI, keeping up to date with advancements, etc. should be considered as part of a lawyer's overhead.
    - b) Lawyers cannot send clients inflated bills due to savings generated by using AI.
    - c) Lawyers may request reimbursement for using AI paid services, but only if discussed before representation commenced.
    - d) Goes back to [SCR 3.130\(1.4\) Communication](#). You must discuss the means by which the client's objectives are to be accomplished with the client.

- ii. **LMICK TIP→** LMICK recommends that you read the full [KBA Ethics Opinion E-457](#) to learn what other requirements are needed of an attorney when dealing with AI.

4. [ABA Formal Opinion 512](#)

- a. Opinion issued July 29, 2024.
- b. The Opinion states, “Lawyers using GAI [generative artificial intelligence] tools have a duty of competence, including maintaining relevant technological competence, which requires an understanding of the evolving nature of GAI. In using GAI tools, lawyers also have other relevant ethical duties, such as those relating to confidentiality, communication with a client...”
  - i. Again, both [KBA Ethics Opinion E-457](#) and [ABA Formal Opinion 512](#) both discuss client confidentiality when using AI.
  - ii. [SCR 3.130\(1.4\), Communication](#)
    - a) “A lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished.”  
Accordingly, if AI is going to be utilized during the representation, the lawyer needs to determine in what scope or capacity, and if asked by the client whether AI will be used during the representation, be honest.
    - b) [ABA Formal Opinion 512](#) also discusses fees and how to approach them when utilizing AI.  
Make sure your client is fully aware that AI may be utilized during the representation and have a fee schedule in place that accounts for AI production.
- iii. **LMICK TIP→** [ABA Formal Opinion 512](#) states each law firm needs to have in place guidelines for using AI, which applies to partners, subordinate lawyers, and support staff. Again, please see SCR 3.130([5.1](#)), ([5.2](#)), and ([5.3](#)).
- iv. **LMICK TIP→** LMICK recommends that you read the full [ABA Formal Opinion 512](#) to learn what other requirements are needed of an attorney when dealing with AI.

5. Additionally, when utilizing AI in your practice, you must always be cognizant of [SCR 3.130\(1.1\), Competence](#).

In addition to being mindful and *competent* of yours and your firm's actions regarding the implementation of AI, you must also now be cognizant of the fact that **experts**, and other third parties are also using AI in their practice.

- a. [Kohls v. Ellison](#), 2025 U.S. Dist. LEXIS 4928, 2025 WL 66514 (D. Minn., Jan. 10, 2025).
  - i. U.S. District Court for Minnesota.
  - ii. The court was faced with the issue of an expert for the defense who unintentionally included “hallucinations” (incorrect or misleading results that AI models generate) in his declaration filed with the Court.
  - iii. In this case, ironically enough, the Plaintiffs were challenging a new Minnesota law that was designed to prohibit “deepfakes” (images, videos, or audio that have been edited or generated using artificial intelligence) and disinformation in political campaigns. In defense of the statute, the Defendants retained an “AI expert” from Stanford University who filed a declaration with the Court in support of his testimony.
  - iv. However, upon reviewing the declaration, the Court became aware that the declaration contained AI hallucinations.
  - v. Accordingly, the Court ultimately **excluded** the expert’s declaration as being untrustworthy.
  - vi. In the case, the expert admitted to using GPT-4o (a paid AI subscription) which generated two fake citations to two non-existent academic articles, and incorrectly cited the authors of a third article. The expert admitted not verifying the AI output before signing the declaration which was filed with the Court.
  - vii. However, in the case, the Court was cautious to not criticize the expert for using AI or admonishing the defense for allowing AI to be used. However, the Court stated, “But Attorney General Ellison’s attorneys are reminded that [Federal Rule of Civil Procedure 11](#) imposes a ‘personal, nondelegable responsibility’ to ‘validate the truth and legal reasonableness of the papers filed’ in an action.”

viii. [SCR 3.130\(3.3\) Candor Toward the Tribunal](#)

The [Kohl](#)'s court makes it clear that it is incumbent upon all attorneys to ascertain the veracity of all documents and information put before the court, whether it be your filings, or that of your expert(s).

- b. **LMICK TIP→** LMICK recommends that you have a checklist or set of questions that you have prepared to submit to each of your potential witnesses regarding their usage of AI in preparation for any testimony. Additionally, similar/same questions should be asked of opposing witnesses, particularly of experts in discovery and depositions.
- c. **LMICK TIP→** “Shepardize” and/or “KeyCite” any citations that are generated by AI. By doing so, you can reduce the risk of inadvertently citing to a hallucination generated by AI.

B. Wire Fraud – Could It Happen to Me?

[CertifID](#),<sup>1</sup> a leader in fraud protection for the real estate industry, published its “[State of Wire Fraud 2025 Report](#).” The [report](#) states, “Losses from cybercrime reported to the FBI Internet Crime Complaint Center (IC3) exceeded \$12.5 billion last year, a 22% increase in annual losses. Most of these losses reported to the IC3 are the result of fraud and scams.” The [report](#) further states, “Real estate has become a particular target, where the problem has grown to nearly \$500 million in losses from business email compromise annually.”

Attorneys in every area of the law should be aware of the serious concerns regarding cybersecurity and wire fraud. However, this is especially true with real estate practitioners, given the sensitive information attorneys and their staff handle and the financial transactions involved with this type of legal work.

The [report](#) goes on to state, “52% of all consumers are ‘not aware’ or only ‘somewhat aware’ of the risks of wire fraud.” Further, the [report](#) states that, “Over 1 in 4 (26%) of home buyers and sellers reported receiving suspicious or fraudulent communications during their closing process.” Additionally, the [report](#) provides that among victims who realized they had become victims of their money being sent to the wrong place, “73% of consumers were able to recover all or most of their funds. However, that left 27% of consumers with less than half to no funds recovered.”

1. Some of the main wire fraud concerns include:

- a. Email spoofing and business email compromise (BEC).

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<sup>1</sup> [CertifID](#) is a leader in fraud protection for the real estate industry. The company safeguards billions of dollars every month with advanced software, digital payments, direct insurance, and proven recovery services. Trusted by title companies, law firms, lenders, realtors, and home buyers and sellers.

- i. Threat: Hackers impersonate attorneys or clients to redirect wire transfers.
- ii. Impact: Funds can be irreversibly stolen if sent to fraudulent accounts.
- iii. Real-life scenario: A hacker gains access to an attorney's email, monitors conversations, and at the right moment sends a fake wire instruction that appears legitimate.

b. Phishing and social engineering.

- i. Threat: Attorneys and staff may receive convincing emails or calls designed to trick them into giving up credentials or downloading malware.
- ii. Impact: Compromised systems or access to sensitive client info.
- iii. Concern: High-value cases and confidential data make law firms prime targets.

c. Inadequate cybersecurity measures.

- i. Threat: Weak passwords, unencrypted communications, lack of multi-factor authentication (MFA), or outdated software.
- ii. Impact: Makes it easier for attackers to breach systems.
- iii. Concern: Small or mid-sized firms often lack robust IT departments.

d. Data breaches and client confidentiality.

- i. Threat: Breach of client data (e.g., intellectual property, personal data, case strategies).
- ii. Impact: Legal liability, loss of trust, malpractice claims, bar complaints.
- iii. Concern: ABA and KY Supreme Court Rules require attorneys to safeguard client data. See [SCR 3.130\(1.6\), Confidentiality of Information](#)

e. Ransomware attacks.

- i. Threat: Malware encrypts firm data and demands payment for release.

- ii. Impact: Operational downtime, reputational damage, financial loss.
    - iii. Concern: Even firms with backups may face issues if client data is leaked or sold.
  - f. Wire transfer protocol vulnerabilities.
    - i. Threat: Inconsistent or informal procedures for verifying fund transfers.
    - ii. Impact: Increased risk of sending money to fraudulent accounts.
    - iii. Best practice: Always confirm transfer instructions by phone with a known contact.
  - g. Regulatory and ethical compliance.
    - i. Threat: Failure to meet obligations under data privacy laws (e.g., GDPR, HIPAA, CCPA).
    - ii. Impact: Fines, sanctions, malpractice liability.
    - iii. Concern: Attorneys must understand not only legal risk, but also technical standards. Please see [SCR 3.130\(1.1\), Competence](#), Comment 6 (Technological Competence). Lawyers have a duty to stay abreast of the benefits and risks of relevant technology.
  - h. Third-party vendor risks.
    - i. Threat: Cloud providers, court filing platforms, or e-discovery vendors may be less secure.
    - ii. Impact: Data could be exposed via external systems.
    - iii. Concern: Attorneys are still responsible for protecting client data, even when using outside services.
- 2. Checklist and solutions to mitigate risk of wire fraud.

While this list is certainly not exhaustive, it can at least help you and your firm begin to take the necessary steps to protect your and your client's interests regarding cybersecurity.

  - a. Email & communication security.

- i. Enable multi-factor authentication (MFA) on all email accounts.
  - ii. Use a custom domain email address (avoid Gmail/Yahoo/etc. for legal business).
  - iii. Train staff to spot phishing, spoofed emails, and suspicious attachments. Consider random penetration testing by an outside vendor who will simulate a cyber-attack.
  - iv. Include “DO NOT TRUST WIRE INSTRUCTIONS VIA EMAIL” warnings in email footers.
  - v. Encrypt sensitive emails using secure communication platforms.
- b. Wire transfer protocols.
  - i. Verify all wiring instructions with a phone call to a known, trusted number and person.
  - ii. Implement a dual-authorization system for outgoing wire transfers.
  - iii. Never accept wire changes via email without independent verbal verification.
  - iv. Educate clients about common wire fraud scams before transactions.
- c. Device & network security.
  - i. Use endpoint protection (antivirus, anti-malware) on all devices.
  - ii. Keep software and systems updated (including operating systems and plugins).
  - iii. Encrypt laptops and mobile devices, especially if used outside the office.
  - iv. Disable auto-forwarding of emails unless necessary for security audits.
- d. Staff training & awareness.
  - i. Conduct mandatory cybersecurity training at least annually.

- ii. Create a cyber incident response plan and test it with drills.
    - iii. Assign a cybersecurity point person or team within the firm.
  - e. Data protection & backup.
    - i. Regularly back up critical files (both locally and in the cloud).
    - ii. Store backups offsite or in secure, encrypted cloud environments.
    - iii. Use secure client portals for file sharing instead of email attachments.
  - f. Vendor & third-party risk management.
    - i. Vet all third-party services (e.g., cloud storage, case management systems) for security compliance.
    - ii. Sign data protection agreements with vendors.
    - iii. Avoid free or consumer-grade software for case-related work.
  - g. Legal, ethical, and insurance considerations.
    - i. Review and comply with any applicable KBA and ABA cybersecurity ethics opinions (see [KBA Ethics Opinion E-457](#) and [ABA Formal Opinion 512](#)).
    - ii. Maintain cyber liability insurance (ensure it covers wire fraud, ransomware, and theft).
    - iii. Include cybersecurity clauses in engagement letters and retainer agreements.
- 3. **LMICK TIP→** LMICK also wishes to remind you that most cyber insurance policies **do not** cover theft. Thus, please be sure to have in place the appropriate safeguards necessary to ensure cybersecurity and protect you, your client, and your firm from wire fraud and theft.

### C. Client Intake – I've Got a Lead, Now What?

- 1. Lawyers and law firms often face significant challenges in their intake departments, which are critical for converting leads into clients and ensuring smooth case management from the start. Below are some key challenges and practical solutions to address them:
  - a. Slow response time.

- i. Issue: Prospective clients expect prompt responses. Delays often lead to lost opportunities as they may contact multiple firms.
  - ii. Solutions:
    - a) Implement a 24/7 answering service or live chat to ensure no call or message goes unanswered.
    - b) Train intake staff to respond within minutes, not hours.
- b. Poor lead qualification.
  - i. Issue: Intake staff may fail to properly qualify leads, wasting attorney time on non-viable cases.
  - ii. Solutions:
    - a) Develop a standardized intake questionnaire tailored to each practice area in which you provide legal services.
      - i) Having a specific questionnaire for a particular field of law will help you determine whether a client is suitable or not.
      - ii) If your firm does not provide services catered to the potential client's needs, have referral services with other attorneys that you can refer clients to, so that they can reciprocate potential clients/business.
    - b) Use legal intake software or "CRM" (client relationship management software) with built-in screening tools.
- c. Inconsistent follow-up.
  - i. Leads are not consistently nurtured, leading to drop-offs.
  - ii. Solutions:
    - a) Use a CRM that tracks all communications.
    - b) Automate drip campaigns (emails/texts) for leads not ready to immediately commit.
    - c) Assign follow-up schedules and accountability to intake staff.

- d. Lack of training and legal knowledge.
  - i. Intake staff often lack the legal knowledge needed to handle questions or identify case value.
  - ii. Solutions:
    - a) Conduct regular training sessions on legal basics and client empathy.
    - b) Involve attorneys in refining intake processes and training materials.
- e. Data entry errors and disorganization.
  - i. Inaccurate or incomplete information can lead to confusion, compliance issues, or lost cases.
  - ii. Solutions:
    - a) Use intake forms integrated with your case management system to avoid double entry.
    - b) Require mandatory fields and validation checks in forms.
    - c) Conduct regular audits of intake data for quality control.
- f. Client experience issues.
  - i. Poor intake processes create a bad first impression, damaging client trust and referrals.
  - ii. Solutions:
    - a) Ensure intake staff are empathetic, professional, and efficient.
    - b) Solicit feedback from clients about their intake experience.

- 2. Best practices for optimizing intake.
  - a. Use technology: Legal-specific tools like Clio Grow, Lawmatics, or Lead Docket streamline intake.
  - b. Standardize processes: Document workflows to ensure consistency.

- c. Track performance indicators: Monitor metrics like conversion rate of prospective client to actual client, average response time, and lead source performance.
- d. Regular staff evaluations: Monitor performance and incentivize quality.
- e. Prioritize mobile and online access: Make it easy for prospects to reach you via mobile-friendly intake forms and chatbots.

3. Seven essentials for an optimized client intake process.

- a. Structured intake form.
  - i. Use a standardized and customizable form that captures all necessary client and case details.
  - ii. Tailor fields based on the practice area (e.g., personal injury, family law, criminal defense).
- b. Thorough conflict check protocol.
  - i. Run a conflicts-check early in the intake.
  - ii. Integrate this step into your intake software or CRM for efficiency.
  - iii. Document all results to protect against ethical violations.
- c. Clear case qualification criteria.

Define what qualifies as a viable case before attorney time is invested.
- d. Prompt and professional communication.
  - i. Respond to all inquiries **within minutes** when possible.
  - ii. Automate initial follow-up messages but ensure personal interaction quickly follows.
  - iii. Maintain a polite, informative tone that builds client trust from the start.
- e. Detailed documentation of consultations.
  - i. Record key points from the initial consultation: case facts, legal goals, expectations.

- ii. Use intake notes templates or CRM logging features to ensure consistency.
- f. Digital engagement & e-signatures.
  - i. Allow clients to **sign engagement letters electronically.**
  - ii. Use secure online forms or portals to collect documents and signatures.
  - iii. Offer mobile-friendly intake options for convenience.
- g. Smooth handoff to legal team.
  - i. Ensure all intake data **flows seamlessly into your case management system.**
  - ii. Assign the case and schedule tasks for the legal team.
  - iii. Send onboarding materials (e.g., welcome email, what to expect, initial checklist).

An efficient client intake department is critical to the success of any law firm, as it serves as the gateway for converting leads into loyal clients and setting the tone for the entire attorney-client relationship.

By implementing essential practices such as standardized intake forms, prompt communication, thorough conflict checks, and digital engagement tools, lawyers and their firms can reduce administrative bottlenecks, improve client satisfaction, and ultimately boost conversion rates and firm profitability.

#### D. Bar Complaints – I've Received One, Now What?

- 1. Authority to discipline lawyers.
  - a. Kentucky Constitution, [§116](#): “The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.”
  - b. [SCR 3.025](#): “The mission and purpose of the association is to maintain a proper discipline of the members of the bar in accordance with these rules and with the principles of the legal profession as a public calling...”
- 2. Progression of a bar complaint.
  - a. Complaint is filed with the Office of Bar Counsel (OBC).

i. [SCR 3.155\(1\)](#): Bar counsel shall be responsible for investigating and prosecuting all disciplinary cases and such other duties as the Board may designate.

ii. Upon receipt of a complaint, the OBC may, but is not limited to, do the following:

a) Dismiss the complaint without any investigation.

b) Refer the matter for Alternative Disposition/“Alt3(c)” under [SCR 3.160 Initiation of disciplinary cases](#).

c) Issue a warning letter.

d) Open the complaint and investigate.

b. Inquiry Commission (IC).

i. Nine members total (six lawyers; three laypeople/nonlawyers).

ii. Three panels: Each panel consists of two lawyers and one layperson.

iii. One of the lawyers serves as the panel chair.

iv. Once a bar complaint has been assigned to bar counsel for investigation, the IC will hear OBC’s recommendation on disposition.

v. IC may either dismiss the complaint, issue a warning, issue a warning with conditions, issue a private admonition, issue a private admonition with conditions, or issue a charge.

vi. The IC may also open investigative files; issue complaints based on outside information/tips regarding an attorney’s conduct; issue subpoenas *duces tecum*; rule on routine motions (abeyance, extension of time to file a response/answer, etc.); and dismiss/amend charges after issuance.

c. Trial Commissioners.

i. If the IC issues a charge, and the case cannot settle through consensual discipline (or settlement), then the case is tried before a trial commissioner.

- ii. "The burden of proof shall rest upon the Association in a disciplinary proceeding, and the facts must be proven by a *preponderance of the evidence.*" [SCR 3.330](#) [emphasis added]
- d. Board of Governors (BOG).

Appeals from the trial commissioner are appealed to the BOG as well as issues of law and any default by a non-responding attorney to a charge issued by the IC.

- e. Supreme Court of Kentucky.

Decisions rendered by the BOG, as well as consensual discipline and issues of fact (not appealed) are all elevated to the Kentucky Supreme Court for review and decision.

- 3. [SCR 3.150, Access to Disciplinary Information:](#) "In a discipline matter, the proceeding is confidential..."

All investigations in a bar complaint are confidential unless (*inter alia*):

- a. [SCR 3.150\(i\):](#) The respondent has waived confidentiality.
- b. [SCR 3.150\(iii\):](#) The disclosure of any information is made for the purpose of conducting an investigation by the Inquiry Commission or the Office of Bar Counsel.

- 4. I've received a bar complaint – now what?

- a. Don't panic!
- b. Read the rules! ([SCR 3.130 – Kentucky Rules of Professional Conduct](#))
- c. Do you need counsel? Consider the following:
  - i. Can you clear up the matter with a phone call to OBC or the client?
  - ii. Can you clear up the matter by providing documents from your file?
  - iii. Is there any merit to the alleged violation(s)?
  - iv. How serious is the alleged violation(s)?
  - v. Can you keep your emotions in check?

- d. Keep it simple!
  - i. When explaining to OBC the sequence of events and facts related to the bar complaint, keep things as simple as possible.

Do not share “war stories” unless they have a direct bearing on the case.
  - ii. Do NOT ignore the Office of Bar Counsel (OBC), the Inquiry Commission (IC), or any other disciplinary authority. See [SCR 3.130\(8.1\)\(b\)](#)

Even if you believe the complaint is meritless, frivolous, retaliatory, etc., you still MUST file a response with the OBC.
- e. Failing to file a response to a bar complaint or respond to requests from the OBC and/or the IC can subject you to an additional disciplinary charge for violating [SCR 3.130\(8.1\)\(b\)](#).

**LMICK TIP→** Do not be afraid to reach out to the OBC’s investigating bar counsel and request additional time to file a response or provide requested documents! Just be sure that your request is reasonably made and not intended to simply delay.

- 5. Sometimes clients ask lawyers to destroy all copies of their file. It may not be prudent for the lawyer to comply with this request for purposes of a malpractice claim, bar complaint, or to avoid complicity in questionable conduct of a client. So, be sure to explain your client file retention policy in your engagement letter.
  - a. **LMICK TIP→** In a bar complaint, the OBC’s investigating attorney will undoubtedly request documents or supporting evidence from the attorney against whom the complaint has been made. If you have the file in safekeeping, being able to easily provide supporting evidence in your response will help the OBC process and resolve the complaint much quicker and assist in your defense of alleged violations.
  - b. **LMICK TIP→** Check your malpractice insurance policy to see whether bar complaints are covered by your insurance policy.

Avoid arguments which are based on:

- i. Standing.
- ii. Statute of limitations.
- iii. Character attacks on complainant.

- iv. "I've been punished enough..."
- v. "You people in Frankfort..."
- c. Call your malpractice carrier.

**LMICK TIP→** Call and confirm whether your malpractice insurance carrier provides you with bar complaint coverage! Some carriers do, and some do not.

- 6. Elements of a good response to a bar complaint.
  - a. Provide full, clear, and complete information.
  - b. Attach and provide any and all relevant documents that explain your position or refute any allegations of wrongdoing.
  - c. Provide any relevant background information to OBC that may provide some context for why the complaint may have been filed to begin with.
  - d. Make sure your response has an independent review; since it is your license at risk, attorneys can become jaded and reflect as much in their response.
- 7. Duty to respond, [SCR 3.130\(8.1\)\(b\)](#): "An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not...knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority..."

**LMICK TIP→** Failing to respond to a bar complaint, even if it is frivolous, meritless, retaliatory, etc., may lead to an additional charge for violating [SCR 3.130\(8.1\)\(b\)](#).
- 8. Ethics Hotline – [SCR 3.530, Ethics Committee and Unauthorized Practice Committee](#).
  - a. If you have an ethics issue and aren't sure how to conduct yourself, contact the [KBA's ethics hotline](#).
  - b. Only covers *prospective* conduct.
  - c. Can be used *defensively* in disciplinary proceedings if a bar complaint arises from the "approved" conduct.

LMICK trusts that these topics discussed will hopefully have a big impact on your practice. For questions, please feel free to reach out to us and check out our risk mitigation resources at [www.lmick.com](#). Please also feel free to reach out to Jared Burke, LMICK's Risk Manager, for any questions you may have about this presentation or anything else related to your insurance needs.

## FOR YOUR INFORMATION ...

### **The Kentucky Law Update: Continuing Legal Education for All Kentucky Lawyers**

The Supreme Court of Kentucky established the Kentucky Law Update Program as an element of the minimum continuing legal education system adopted by Kentucky attorneys in 1984. The KLU program is now offered in a hybrid format. The 2025 Kentucky Law Update is presented as a one-day, in-person program at nine different locations across the state. The 2025 On-Demand Kentucky Law Update is available virtually on the Kentucky Bar Association website from September 1st until December 31st. These two programs combined offer every Kentucky attorney the opportunity to meet the 12 credit CLE requirement, including the 2 ethics credit requirement **close to home and at no cost!** Judges can also earn continuing judicial education credits through the Kentucky Law Update.

This program was designed as a service to all Kentucky attorneys regardless of experience level. It is supported by membership dues and is, therefore, every member's program. The program is a survey of current issues, court decisions, ethical opinions, legislative and rule changes, and other legal topics of general interest that Kentucky practitioners encounter daily. As such, the program serves both the general practitioner and those who limit their practice to specific areas of law. The Kentucky Law Update program is not intended to be an in-depth analysis of a particular topic. It is designed to alert the lawyers of Kentucky to changes in the law and rules of practice that impact the day-to-day practice of law.

### **About the Written Materials and Presentations**

The KLU written materials are the result of the combined efforts of numerous dedicated professionals from around Kentucky and elsewhere. The KBA gratefully acknowledges the following individuals who graciously contributed to this publication:

Jared Burke	Tressa Hamilton	Jeffery L. Sallee
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AppalReD Legal Aid	Kentucky Court of Appeals
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KBA Criminal Law Section	Legislative Research Commission
KBA Elder Law Section	Legal Aid of the Bluegrass
KBA Law Practice Committee	Legal Aid Society
KBA Office of Bar Counsel	New Americans Initiative
Kentucky Access to Justice Commission	Supreme Court of Kentucky

Presentations are also made on a voluntary basis. To those who volunteer in this capacity, special gratitude is owed. Individuals who contribute to this program support the professional development of all members of the Kentucky Bar Association. We wish to express our sincere appreciation in advance to these individuals.

A special acknowledgment to the organizations, authors, presenters, moderators, and other 2025 Kentucky Law Update program volunteers will appear in the January 2026 issue of the *Bench & Bar*.

### **CLE and Ethics Credit**

The one-day, in-person 2025 Kentucky Law Update program is accredited for 6 CLE credits, including 2 ethics credits. The 2025 On-Demand Kentucky Law Update is accredited for 9.25 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction, as noted on the agendas provided on the KBA website.

The Kentucky Bar Association's 2025 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state to state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out-of-state information for the on-demand sessions will be available on the program website.

Kentucky judges: don't forget you can claim CJE credit for attending this program.

**REMEMBER:** Reporting attendance credits is now done online. Visit the Kentucky Bar Association [website](#) for reporting information. The activity numbers for the in-person and on-demand programs are listed on the corresponding agendas and must be used to report credits through the Member CLE Portal.

### **Evaluations**

The 2025 Kentucky Law Update is *your* program, and your input is valued and needed. Links to the program evaluations for the live, in-person programs will be provided to all registrants via email. A link for the on-demand evaluation will be located on the program webpage. Please take a few minutes to complete the evaluation. We appreciate your assistance in improving this program.

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