The American Academy of Matrimonial Lawyers – Kentucky Chapter,
in conjunction with the
Kentucky Bar Association Family Law Section,
presents

25th Annual Family Law Seminar

This program has been approved in Kentucky for 12 CLE credits including 2 ethics credits.

Compiled and Edited by:
The Kentucky Bar Association
Office of Continuing Legal Education
for
Kentucky Bar Association
Family Law Section

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25th Annual Family Law Seminar

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AAML/KBA 25th Annual Family Law Seminar
April 24-25, 2024
Louisville, Kentucky

Wednesday, April 24, 2024

8:00-8:45 a.m.	**Breakfast**
8:45-9:00 a.m.	**Welcome & Sponsor Speech** Laura A. Rice, Broker, J.D.
9:00-10:30 a.m.	**Gatekeeping/Alienation and Resist-Refuse Dynamics in High Conflict Child Custody Litigation** (1.5 CLE credits) Kelli Marvin, Ph.D. Kristen McCrary, Psy.D.
10:30-10:45 a.m.	**Break**
10:45-11:45 a.m.	**Grappling with Transgender Issues Impacting Kentucky Family Law; Kentucky SB 150 (2023)** (1 CLE credit) Stephanie A. Dietz Richard A. Roane
11:45 a.m.-12:30 p.m.	**Alphabet Street: The ABCs and 123s of GALs, FOCs, and PCs in Kentucky Family Law Cases** (0.75 CLE credit) Nicole S. Bearse James K. Murphy Robert P. Stith Rebecca Adams Simpson Laurel S. Doheny, Moderator
12:30-1:00 p.m.	**Lunch (provided)**
1:00-1:15 p.m.	**Sponsor Speech** Soberlink
1:15-2:15 p.m.	**Understanding Judicial Discretion and How to Effectively Plead and Argue Your Case before the Bench** (1 CLE credit) Judge Joan L. Byer Judge Tyler L. Gill Judge Lucinda C. Masterton Judge Janie C. McKenzie-Wells Steven J. Kriegshaber, Moderator

2:15-3:15 p.m.	**Ethically Managing Emotions of Clients and Lawyers** (1 Ethics credit) Leah Brown Melanie Straw-Boone
3:15-3:30 p.m.	**Break**
3:30-4:30 p.m.	**Racing Ahead with AI: How Kentucky Lawyers Can Harness ChatGPT at the Legal Derby** (1 CLE credit) Charles E. "Chase" Hardy, Jr. Charles E. Hardy
4:30-5:00 p.m.	**Appellate Court Update** (0.5 CLE credit) Lori B. Shelburne

Thursday, April 25, 2024

8:00-8:45 a.m.	**Breakfast**
8:45-9:00 a.m.	**Welcome & Sponsor Speech** QDRO Group
9:00-10:00 a.m.	**Elevate Your Game: Mastering the Art of Distinction in Family Law** (1 CLE credit) J. Benjamin Stevens
10:00-10:15 a.m.	**Break**
10:15-11:15 a.m.	**Media Management for High Profile and Not-So-High Profile Cases** (1 CLE credit) Randall M. Kessler
11:15 a.m.-12:00 p.m.	**Kentucky Child Support – No One is Happy about It** (0.75 CLE credit) Jeffery P. Alford Judge Brandi H. Rogers
12:00-12:30 p.m.	**Lunch (provided)**
12:30-2:00 p.m.	**Navigating the Professional Goodwill Conundrum** (1.5 CLE credits) Missy DeArk, CPA, CFF, MBA, CVA, MAFF Joshua Shilts, CPA, ASA, ABV/CFF/CGMA, CFE
2:00-2:15 p.m.	**Break**

2:15-3:15 p.m.	**Ethically Building Your Case: The Intersection of Legal Ethics and the Ethics of Mental Health Professionals** (1 Ethics credit) Courtney Risk Heather Risk, Psy.D.

PRESENTER BIOGRAPHIES

Kelli Marvin, Ph.D.
Marvin & McCrary Forensic Evaluation Services
Pewee Valley, KY

Kelli Marvin, Ph.D. earned her doctorate in clinical psychology with a specialization in child development from Seton Hall University in 2000. Following completion of a pediatric fellowship, Dr. Marvin was employed as a Senior Psychologist by Manhattan Family and Juvenile (Criminal) Courts. After relocating to Louisville in 2008, Dr. Marvin was employed by the University of Louisville's Weisskopf Child Evaluation Center in the capacity of a developmental psychologist, where she performed evaluations of children who presented with various developmental, genetic, and cognitive anomalies. In 2009, Dr. Marvin sought to blend her pediatric and forensic expertise and developed Forensic Mental Health Services (FMHS), in the Division of Forensic Medicine, Department of Pediatrics, School of Medicine, University of Louisville. FMHS' primary focus was family law forensics, which included evaluations in cases involving child neglect and abuse, termination of parental rights by mental illness and/or intellectual disability, general parental fitness, child custody, and violence risk assessments. In the fall of 2014, Dr. Marvin, along with Dr. Kristen McCrary, established a private practice, Forensic Evaluation Services (FES), which duplicates the services formerly provided by FMHS. At present, Marvin & McCrary FES is licensed in FL, IN, KY, NY, and SC. Dr. McCrary regularly performs work product reviews and other consultative roles.

Kristen McCrary, Psy.D.
Marvin & McCrary Forensic Evaluation Services
Pewee Valley, KY

Dr. McCrary earned her doctorate in clinical psychology with a specialization in forensic psychology from Spalding University in 2012. Prior to earning her doctorate, Dr. McCrary completed a one-year APA-accredited, forensically-specialized internship at the Oklahoma Forensic Center. Following internship, Dr. McCrary completed a two-year, forensically-specialized post-doctoral fellowship at the University of Louisville. As a fellow, Dr. McCrary completed family law evaluations in cases involving child neglect and abuse, termination of parental rights, general parental fitness, child custody, and violence risk assessments. Upon completion of her post-doctoral fellowship, Dr. McCrary joined Dr. Marvin in establishing Forensic Evaluation Services (FES). Dr. McCrary's areas of expertise include child custody evaluations (particularly those that are high conflict), parental capacity evaluations, evaluations of parents and children in court-involved cases specific to allegations of child sexual, physical, and emotional abuse, competency to stand trial evaluations, and criminal responsibility evaluations. Dr. McCrary regularly performs work product reviews and other consultative roles.

Stephanie A. Dietz
Dietz Family Law, PLLC
Edgewood, KY

Stephanie Dietz is a lifelong Kentuckian. Stephanie received her undergraduate degree from the University of Kentucky in 1990. She then went on to receive her law degree from Salmon P. Chase College of Law in Highland Heights, Kentucky and is licensed in Kentucky, Ohio and Indiana. Stephanie is the owner of Dietz Family Law, PLLC in Edgewood, Kentucky. As an attorney, she represents parties in divorce actions including division of business interests, retirement accounts, and other property as well as child custody issues. Stephanie is also a collaboratively trained

attorney and a mediator. In 2022, Stephanie was elected to the Kentucky State House of Representatives and represents the 65th district of Kentucky. Her committee assignments include Judiciary, Families & Children, Veterans, Military Affairs, and Public Protection, Appropriations & Revenue, and BR Sub. on Transportation. Giving back to the community is a big part of Stephanie's life. As an active member of St. Pius X in Edgewood, she was also the Co-Chair of the Red Mass in 2021 and has been active in the St. Thomas More Society of Greater Cincinnati for the last three years. Stephanie has been active with her children's activities, including as an assistant coach for the Covington Catholic High School Mock Trial Team for five years. Stephanie and her husband Jim have lived in Edgewood, Kentucky for nearly 25 years. It's where they chose to raise their two sons: Avery, who is a 2L at Salmon P. Chase College of Law and, and Alex, who is a junior at the University of Kentucky. Stephanie's reputation for focus, fairness, and hard work has gained her respect from law colleagues and the community alike. For 14 years she served as a Board Member of Northern Kentucky Legal Aid of the Bluegrass, whose mission is to resolve the most important problems of low income and other vulnerable people by providing high quality legal assistance through direct representation, education, advice, and advocacy. She just finished her term as President of the Northern Kentucky Bar Association and now serves as Immediate Past President. She also was elected President of the Academy of Northern Kentucky Collaborative Professionals and served in that position until 2022. Stephanie is a fellow in the American Academy of Matrimonial Lawyers.

Richard A. Roane
Warner Norcross + Judd
Grand Rapids, MI

Richard A. Roane is partner with the firm and for more than 37 years has concentrated his practice in domestic relations litigation and alternate dispute resolution, including divorce; child custody; pre- and postnuptial agreements; nonmarital domestic relationships; LGBT family, marriage, and dissolution issues; and complex business valuation and distribution including international family law matters. He is a mediator, an arbitrator certified by the American Academy of Matrimonial Lawyers (AAML), and a trained collaborative attorney. He is an AAML Michigan Chapter Fellow (President 2012-2013) and past delegate to the National Board of Governors. Mr. Roane is the founding chair of the AAML LGBT/Alternative Family Committee. He is a past director of the AAML Foundation. He served on the AAML National Executive Committee as Bylaws and Policies Chair and 2nd Vice President. He is a member of the American Bar Association's Family Law Section, the State Bar of Michigan's Family Law Section (two-term council member) and LGBTQA Section (2016-2017 founding chair), and the Grand Rapids Bar Association Family Law Section (past chair). Mr. Roane is also a member of the International Academy of Family Lawyers, serving on its LGBT committee and serves on the board of governors for the North American Chapter. He was named a top 100 Michigan Super Lawyer in 2010, Best Lawyers Grand Rapids Family Law Attorney of the year in 2012 and 2023, and a Leading Lawyer in Family Law from 2013 to 2023. Mr. Roane is a Diplomate in the American College of Family Trial Lawyers since 2020. Mr. Roane speaks regularly for ICLE and other organizations, teaches on the faculty of the National Family Law Trial Institute (The "Houston Annual"), edits a number of Institute for Continuing Legal Education publications including *Michigan Family Law* 8th edition, and serves on several ICLE and other bar planning committees. Roane serves the West Michigan community as a past trustee of the Grand Rapids Community Foundation and currently serves on the board of the Grand Rapids Symphony as its chair-elect.

Nicole S. Bearse
Goldberg Simpson, LLC
Frankfort, KY

Nicole Bearse was born and raised in the Berkshires in Western Massachusetts and graduated *cum laude* from Lesley University with a B.S. in Human Services. She then relocated to Lexington, Kentucky, where she received her J.D. from the University of Kentucky J. David Rosenburg College of Law in 2003. Ms. Bearse is a member of the American Bar Association, the Kentucky Bar Association, the Franklin County Bar Association and has been accepted as a Fellow with the American Academy of Matrimonial Lawyers. Ms. Bearse is admitted to practice before the United States District Courts in the Eastern and Western Districts of Kentucky and before the United States Court of Appeals for the Sixth Circuit. Following law school, Ms. Bearse worked as staff attorney to Hon. O. Reed Rhorer, Family Court, 48th Judicial Circuit, Frankfort, Kentucky for nearly three years. Thereafter, she began her private practice with a focus primarily on all areas of family law and mediation and ultimately became a partner at Johnson Bearse, LLP in Frankfort. Ms. Bearse is a Certified General Civil Mediator, with a specialization in Family Mediations. She is also a trained Guardian *ad Litem* and Friend of the Court and assists with the representation of, and making recommendations related to, the best interests of children in court. Ms. Bearse has spent her career learning the intricacies of all areas of family law and practices at both the trial and appellate court levels. Additionally, Ms. Bearse is the Secretary of the Board for Legal Aid of the Bluegrass, for which she has served as a board member for more than 12 years. Ms. Bearse has also served on multiple committees relating to the modification of the Kentucky Family Court Rules of Procedure and Practice and when requested by the Kentucky Bar Association. Ms. Bearse lives with her husband and two daughters in Lexington.

James K. Murphy
HP Law, PLLC
Louisville, KY

Jim Murphy is a graduate of Washington & Lee University (B.A. Political Science) and Washington & Lee University Lewis School of Law. He practices primarily family law and is regularly appointed guardian *ad litem*, friend of court, and parenting coordinator on the circuit, dependency, paternity, and domestic violence docket. He is a fellow of the American Academy of Matrimonial Lawyers. He is the past-chairman of the board of the Morton Center and is a board member of the Kentucky Center for Performing Arts. He has a published case, *Greene v. Boyd*, 603 S.W.3d 231 (Ky. 2020), which has become a defining case with regard to friend of the court and has the distinction of being the first Zoom Supreme Court argument made in Kentucky.

Robert P. Stith
The Law Office of Robert P. Stith
Lexington, KY

Robert P. Stith is currently the sole proprietor of the Law Office of Robert Stith in Lexington, KY. He obtained his J.D. from the University of Kentucky J. David Rosenberg College of Law in 2008 and a bachelor's degree in social work from the University of Kentucky in 2004. Born and raised in Lexington, he currently resides in Versailles where he works on his hobby farm raising goats and chickens. He is married to Wilma Stith and has a 10-year-old child, Harrison, who keeps him busy building copious amounts of Legos.

Rebecca Adams Simpson
English Lucas Priest & Owsley LLP
Bowling Green, KY

Rebecca Simpson is a partner with English, Lucas, Priest & Owsley, LLP in her hometown of Bowling Green, KY where she serves as both the family law practice group chair and the diversity, equity, and inclusion chair for her firm. Simpson is a Fellow of the American Academy of Matrimonial Lawyers and is extensively trained in both mediation and collaborative process. Simpson focuses her practice on family law and alternative dispute resolution ("ADR") – namely adoption, divorce, and mediation. Outside of her work as a partner, Simpson is an active member of many local, state, national and international professional associations and serves as a leader within many of these organizations. By appointment of the Kentucky Supreme Court, Simpson is serving her second term on the IOLTA Board of Trustees, where she was elected to serve two terms as chair. By appointment of the Chief Justice of the Kentucky Supreme Court, Simpson is also serving her third term as a Kentucky Bar Association ("KBA") trial commissioner in KBA disciplinary matters. Simpson's work has been recognized through several awards, and she has held numerous leadership roles in her community. Simpson is a frequent panelist for legal presentations and has also taught law courses at Western Kentucky University. Previously a legal services attorney, Simpson remains dedicated to public service, serving as guardian *ad litem* for children in her community and volunteering with a mediation program for low-income families that she helped to develop and implement. Simpson is an honors graduate of both Western Kentucky University and the University of Louisville Louis D. Brandeis School of Law and has been practicing in Kentucky for more than 24 years.

Laurel Doheny
Straw-Boone Doheny Banks & Mudd PLLC
Louisville, KY

Laurel Doheny is a partner with Straw-Boone Doheny Banks & Mudd PLLC in Louisville, where she focuses on domestic relations, civil litigation, collaborative family law, and divorce. Ms. Doheny is a graduate of the University of Louisville and *cum laude* graduate of the University of Louisville Louis D. Brandeis School of Law. She has been practicing law in her home state of Kentucky for more than 32 years. Ms. Doheny has received the AV® Preeminent™ Peer Review rating by Martindale-Hubbell® for her professionalism and ethics. Additionally, she has been recognized by her peers as a 2019 "Lawyer of the Year" in the practice of family law in Louisville; and chosen to be recognized in multiple editions of *The Best Lawyers in America* in the practice area of family law, Super Lawyers' Top 25 Female Attorneys list, the Martindale-Hubbell Bar Register of Preeminent Woman Lawyers, *Louisville Magazine*'s best lawyers and Kentucky Super Lawyers. Ms. Doheny is committed to community service having served as a board member, officer, and volunteer at the Legal Aid Society for more than 25 years. She is a Fellow of the American Academy of Matrimonial Lawyers and is a mentor to current and future law school attendees.

Judge (Ret.) Lucinda C. Masterton
Family Circuit Judge, 22nd Judicial Circuit
Lexington, KY

Judge Lucinda Masterton completed her undergraduate work at Northwestern University in 1972 and graduated from West Virginia University College of Law in 1981. She moved to Lexington in 1983, and engaged in a general practice of law, focusing on family mediation and bankruptcy. She was a Bankruptcy Trustee for the Eastern District of Kentucky and administered almost

10,000 bankruptcy cases before leaving that office. Judge Masterton was elected as the Family Court Judge for the Fifth Division in Fayette County and took the bench in January 2007 and was re-elected in 2014. In addition to her duties as a Family Court Judge, Judge Masterton was the judge for family drug court and juvenile drug court and was the lead judge for the Fayette County Model Court project. She was also the local judge for the START program, which focuses resources on families in the Dependency, Neglect and Abuse Court. She has served on numerous boards and committees; she was the Chair of the Kentucky Child Support Guidelines Commission for over 10 years; she was a lead judge for the RESTORE initiative to address substance abuse in the Kentucky Court system; she served on the National Judicial Opioid Task Force for the National Center for State Courts; and she currently serves on the Judicial Advisory Committee for the National CASA program. Judge Masterton received several state-wide awards for her service as a judge, including a 2008 Kentucky Court of Justice award for outstanding service in the field of substance abuse community advocacy, the 2013 Outstanding Judge Award presented by the Kentucky Citizens Foster Care Review Board, the Kentucky CASA Judge of the Year for 2021, and the 2014 and 2022 Judge of the Year from the Kentucky Chapter of the American Academy of Matrimonial Lawyers. She is very active with the Central Kentucky Chapter of the American Inns of Court, serving as President for the 2018-19 Inn year, and is the past chair of the Program Review Committee for the American Inns of Court. Judge Masterton retired from the bench in January 2023.

Judge (Ret.) Janie C. McKenzie-Wells
Staffordsville, KY

Judge Janie McKenzie-Wells, ret., graduated from the University of Kentucky with a B.A. in 1983 and a J.D. in 1986. At the UK College of Law, she competed as a member of the Moot Court National Team. She was admitted to the practice of law in 1986, and is admitted to the U.S. Supreme Court, the U.S. Court of Appeals for the Sixth Circuit, and the U.S. District Courts for the Eastern and Western Districts of Kentucky. She was the first woman elected and re-elected as 24th Circuit Family Court Judge, consisting of Johnson, Lawrence & Martin Counties in Eastern Kentucky. She also served as one of Kentucky's delegates to the National Conference of State Trial Judges and received the Jim Casey Communities of Hope Award in Seattle, Washington, for her work with the Johnson County Community of Hope. She now serves in the Retired Judges Program and conducts family law and felony mediations. Judge Wells has served on the UK Alumni Association Board of Directors for several years, and now serves as President of the UK National Alumni Association. She is also a member of the UK Alumni Band and has served as Co-President and as a member of the UK Alumni Band Board. She received the UK Alumni Association's Distinguished Service Award and the UK Law Alumni Association's Distinguished Jurist Award and Community Service Award. She is an active member of UK's Women & Philanthropy, where she has served on the Leadership Council. She has also been inducted into the Paintsville High School Alumni Association's Hall of Distinguished Alumni. Judge Wells and her husband, Frank, a retired Technology Engineer for the Kentucky Department of Education, live in Staffordsville, Kentucky. They have one daughter, Dr. Katherine Wells, a resident physician at The Ohio State University.

Judge (Ret.) Joan L. Byer
Bowles and Byer Family Law Mediation
Louisville, KY

Judge Joan Byer has been a family law mediator with Bowles and Byer Family Law Mediation in Louisville, Kentucky since 2015. Prior to that, she served as a Family Court Judge in Jefferson County for almost 20 years. Judge Byer is a graduate of the University of California San Diego

and the Loyola Law School. She is an Executive Board Member for the Coalition for Juvenile Justice, a member of the Louisville, Kentucky, and California Bar Associations, and a Past Chair of the Board of Directors for YMCA Safe Place Services.

Judge (Ret.) Tyler L. Gill
English Lucas Priest & Owsley LLP
Bowling Green, KY

Judge (Ret.) Tyler L. Gill has joined ELPO Law to serve Of Counsel. Judge Gill is a graduate of the National Judicial College (Reno, NV; 1995 – Special Jurisdiction, 1997 – General Jurisdiction) and Western Kentucky University with a B.A. in History and Political Science. He received his J.D. from the University of Kentucky College of Law in 1984. He is admitted to the Kentucky Bar, the U.S. District Court for the Western and Eastern Districts of Kentucky, and the U.S. District Court for the Western District of Tennessee. Judge Gill served as a partner with Gill and Gill and as a Business Law Adjunct Professor at the University of Kentucky Community College before assuming the position of District Judge for the Seventh Circuit Kentucky and then moving onto Circuit Judge. Judge Gill was the Circuit Judge in Logan and Todd Counties for 24 years and District Judge for two years. He retired as Circuit Judge of the 7th Circuit in July 2019 and became "Of Counsel" with the Law Offices of Harold "Mac" Johns. He now participates in the AOC Retired Judges Program which permits him to be assigned as a judge where needed upon order of the Chief Justice. In March 2021, he completed the Northern Kentucky University Alternative Dispute Resolution Center course. He then received the Administrative Office of the Courts certification and meets the Kentucky Court of Justice Mediation Guidelines as a general civil mediator. Additional mediation training allowed him to be certified to conduct felony mediation. Judge Gill has been honored with the Henry V. Pennington Outstanding Trial Judge Award and the District Judges Association Golden Gavel Award for Outstanding Legal Writing. He is currently a member of the Kentucky Bar Association and the Logan-Todd County Bar Association, and a former member of the American Bar Association, the Kentucky Circuit Judges Association, and the Kentucky District Judges Association. Judge Gill initiated the first "drug court" long term drug treatment program in Logan and Todd Counties and presided during the construction of new Justice Centers in both Logan and Todd Counties. He is actively involved with Rotary International serving as a Paul Harris Fellow, past President of the Elkton Rotary club, past Assistant Governor to Rotary District 671, and participated in Study Exchange programs with India and South Africa. He is the recipient of the Rotary Foundation District Service Award and the Presidential Citation Award for Distinguished Service to District 6710. Judge Gill currently holds a commercial pilot license with an instrument rating and formerly served on the Counseling Committee for the Pennyrile Rural Electric Cooperative.

Steven J. Kriegshaber
Bradenton, FL

Steven Kriegshaber is a Supreme Court of Florida certified family law mediator and an American Academy of Matrimonial Lawyers trained arbitrator. He is also a certified guardian *ad litem* in Manatee County, Florida. From 2015-2021, Mr. Kriegshaber was an associate attorney with Goldberg Simpson, LLC in Prospect, Kentucky, and a partner with Conliffe, Sandmann & Sullivan in Louisville, Kentucky from 2012-2015. He also served as GAL in Jefferson County Family Court during this time. He received his B.A. from Indiana University Bloomington and his J.D. from the University of Louisville Brandeis School of Law. Mr. Kriegshaber is a past president of Kentucky Collaborative Family Network, a Fellow of the American Academy of Matrimonial Lawyers, past chair of the Louisville Bar Association's Family Law Section, and co-author of *Guidelines for*

Attorneys Representing Children (AAML). He is a member of the Kentucky and Ohio Bar Associations.

Leah M. Brown
Louisville, KY

Leah Brown is an Executive Life Coach and Trainer with over 25 years of experience. She is the owner of a boutique coaching and consulting firm in Louisville, KY providing individual coaching, leadership team coaching, and customized training programs for teams at all levels. Leah specializes in coaching high-achieving women, helping them let go of perfectionism, people-pleasing, self-doubt and limiting beliefs that keep them feeling overwhelmed and exhausted. In 2019, Leah was selected and trained by Dr. Brené Brown as one of the first Dare to Lead™ facilitators in the world, and in 2020 became one of the only Certified Divorce Coaches in Kentucky. Leah is known for creating safe spaces where leaders can put down their armor and lean into growth. She has seen first-hand how the power of communication and relationship building is the backbone of every successful organization. Her energetic approach to learning through experience and storytelling brings her sessions to life in a fun and relatable way, empowering teams and organizations to transform the way they work, live and lead. She believes that "who we are is how we lead," so the REAL leadership work begins with ourselves. Leah is a Certified DISC and EQ provider, Red Team Strategic Thinking Coach, Trainer and Instructor, Dale Carnegie Trainer, faculty member of the U.S. Chamber of Commerce Institute for Organization Management, and Instructor for the University of Louisville College of Business Executive Education Program. Leah has an unwavering commitment to help her clients discover and share their unique leadership abilities, identify, and remove the roadblocks in the way of their success, step into their full potential, and lead a life filled with courage, authenticity, vulnerability and joy.

Melanie Straw-Boone
Straw-Boone Doheny Banks & Mudd PLLC
Louisville, KY

Melanie Straw-Boone is a partner with Straw-Boone Doheny Banks & Mudd PLLC in Louisville where she focuses on family law, divorce, custody and child support, parenting coordination, and QDROs. She received her B.S. from Indiana University and her J.D*., cum laude*, from the University of Louisville. Ms. Straw-Boone is a Fellow of the American Academy of Matrimonial Lawyers (President, Kentucky Chapter, 2011-2012) and a member of the Jefferson County Women Lawyers Association. She served as co-chair of the Jefferson County Family Court Advisory Committee from 2003-2007 and was a member of the Louis D. Brandeis American Inn of Court from 2003-2006. Ms. Straw-Boone serves on the Ethics Committee for the Kentucky Bar Association and is a member of the Indiana and Louisville Bar Associations.

Charles E. "Chase" Hardy, Jr.
Griffin Purnell LLC
San Antonio, TX

Chase Hardy is an associate with Griffin Purnell LLC in San Antonio, Texas, where he focuses on complex commercial litigation, mass torts, products liability, premises liability, toxic tort defense, and plaintiff's litigation. A San Antonio native, Chase began his primary education in the community of Castle Hills. He studied finance at Baylor University in Waco, Texas where he was heavily involved in student life. Chase stayed in Waco for his legal studies and attended Baylor University School of Law. He contributed to the law school's advocacy programs by competing on multiple mock trial and moot court teams in competitions across the nation. As a law student,

Chase spent his summers clerking for two prominent San Antonio plaintiff and defense firms and had the honor of working with Justice Patricia O. Alvarez of the Fourth Court of Appeals. After receiving his provisional license, Chase began practicing law at the age of 23. By the time he turned 25, Chase had successfully first-chaired a civil trial to verdict. He was hired as an associate attorney with Griffin Purnell in 2021. While outside of the courtroom, Chase enjoys working on his family ranch in Boerne, Texas.

Charles E. Hardy
Higdon, Hardy & Zuflacht, LLP
San Antonio, TX

Charles Hardy is a partner with HHZ Family Law in San Antonio, Texas, where he focuses on divorce and family law matters. Mr. Hardy is a frequent speaker at seminars covering advanced family law matters for organizations such as the State Bar of Texas and the American Academy of Family Lawyers (Chicago). He has been certified in family law by the Texas Board of Legal Specialization since 1984. Mr. Hardy received his B.A. in journalism and his B.B.A. in business from Southern Methodist University and his J.D. from St. Mary's University School of Law. He is a member of the International Academy of Family Law Specialists (2009-present) and a board member and past president of the Texas Academy of Matrimonial Lawyers (2010-2014) and American Academy of Matrimonial Lawyers (2009-2014). Mr. Hardy was named the Texas Pro Bono Lawyer of the Year for pro bono divorces by the *ABA Journal* and received the San Antonio Bar Association's President's Award in 2004 and 2005. He is a member of the State Bar of Texas.

Lori B. Shelburne
Gess, Mattingly & Atchison, PSC
Lexington, KY

Lori B. Shelburne is a member with Gess, Mattingly & Atchinson, PSC in Lexington, Kentucky. She concentrates her practice in all areas of family law. Prior to joining the firm, she worked as an Assistant Fayette County Attorney prosecuting interstate child support matters. Ms. Shelburne received her B.A.*, cum laude*, from Transylvania University and her J.D. from the University of Kentucky J. David Rosenberg College of Law. She is a past president of the Kentucky Chapter of the American Academy of Matrimonial Lawyers and a past chair of the Fayette County Bar Association's Domestic Relations Section.

J. Benjamin Stevens
The Stevens Law Group LLC
Spartanburg, SC

Ben Stevens is the Senior Partner at The Stevens Law Group, LLC, a boutique family law firm based in Spartanburg, SC, and he handles complex divorce, child custody, and other domestic matters statewide. Mr. Stevens currently serves as President of the American Academy of Matrimonial Lawyers, and he has held numerous other positions in the past. He is also a Fellow of the International Academy of Family Lawyers and a Board-Certified Family Trial Advocate by the National Board of Trial Advocacy. Mr. Stevens has been designated as a Super Lawyer in Family Law for multiple years, and he is listed in *The Best Lawyers in America*©. He has held an AV Preeminent Peer Review Rating from Martindale-Hubbell for many years. Mr. Stevens previously served on the Board of Governors of the South Carolina Bar, as well as Chair of both the South Carolina Bar's Family Law Council and the Family Law Section of the South Carolina Association for Justice. Mr. Stevens co-authored *Family Law Essentials: A Primer for the Private Practice before the Family Court in South Carolina*, which was published in 2018 by the South

Carolina Bar. This comprehensive book not only explains the substantive law and procedure, it also provides tips and pointers for a more efficient and effective family law practice. He has planned, moderated, and given presentations on family law topics locally, nationally, and internationally. Mr. Stevens graduated with honors from Clemson University with a Bachelor of Science in Financial Management with a minor in Accounting. He received his Juris Doctor degree from the University of South Carolina. Mr. Stevens is happily married to his law partner, Jenny Stevens, and they are the proud parents of six children, one grandchild, and four cats. In his (infrequent) spare time, he enjoys painting as a hobby.

Randall M. Kessler
Kessler & Solomiany LLC
Atlanta, GA

In 1991, Randall M. Kessler founded the law firm now known as Kessler & Solomiany, LLC, a 30 person family law firm in Atlanta. He is the author of many family law books including *Divorce: Protect Yourself, Your Kids and Your Future*, *The GA Library of Family Law Forms*, and *How to Mediate a Divorce*. He is an adjunct professor of Family Law Litigation at Emory Law School. Mr. Kessler has represented some of the highest profile clients in the country including judges, national and local politicians, professional athletes, TV stars and other celebrities, entertainers and artists. Born in Gainesville, Florida, raised in New Orleans and having attended college at Brandeis University near Boston, MA, Randall M. Kessler came to Georgia in 1985 to attend Emory Law School. He has over 35 years of experience in domestic relations and family law matters including divorce, custody, paternity, prenuptial agreements and child support. He founded KS Family Law in 1991 after practicing for years at other family law boutique firms. Mr. Kessler teaches family law jury trials at Emory Law School and taught family law at John Marshall Law School from 2005-2019. He has lectured for the ABA, AAML, AICPA, NACVA, IAAR, NFLPA, NBPA, the Georgia Psychological Association (GPA), the Georgia Society of CPAs, the Cobb, Gwinnett, DeKalb and Atlanta Bar Associations and others all over the country and in fact, all over the world. Mr. Kessler is the Editor Emeritus of the *Family Law Review* for the State Bar of Georgia and is the former Chair of the Family Law Sections of the American Bar Association, the Georgia Bar Association and the Atlanta Bar Association.

Jeffery P. Alford
Alford Law Office
Paducah, KY

Jeffery P. Alford was born in Paducah, Kentucky, and grew up in Southern Illinois. He has tried numerous divorce, custody, civil, and criminal cases to final judgment or verdict. He has also presented on issues of family law and divorce law before the Kentucky Justice Association, the Kentucky Bar Association, the McCracken County Bar Association, and the West Kentucky Paralegals Association. He has also taught classes through the McCracken Family Court and given presentations on child custody issues at the McCracken County Regional Jail. Mr. Alford attended Murray State University as a Presidential Scholar and received his bachelor's degree in political science, *cum laude,* in the Honors Curriculum. He received his J.D. from Southern Illinois University School of Law. While at SIU, Mr. Alford served as an articles editor for the *SIU Law Journal*, competed in the ABA Regional Negotiation Competition, was selected for membership in the Lincoln's Inn, was a member of the Southern Illinois Inn of Court, and was active in the law school's clinical program providing legal services to elderly residents of the 13 southernmost counties in Illinois. He also handled his first trial before he even graduated from law school with the Williamson County State's Attorney's office. After law school, Mr. Alford worked as an associate in one of the largest firms in Western Kentucky where he quickly was made lead counsel

in several felony criminal cases and divorce cases. As a solo practitioner, Mr. Alford has cultivated a reputation in the legal community for maintaining the highest ethics while providing aggressive, zealous representation to his clients. He is licensed in both Kentucky and Illinois and is currently a member of the American, Illinois, Kentucky, and McCracken County Bar Associations. Mr. Alford is a former co-chair of the Membership Section of the Kentucky Justice Association's Domestic Relations Section and a former web editor for the ABA Litigation Section.

Judge Brandi H. Rogers
Family Court, 5th Judicial Circuit, Division 2
Marion, KY

Judge Brandi H. Rogers is the Family Court Judge for the 5th Circuit (Crittenden, Union & Webster). Judge Rogers is a graduate of Western Kentucky University and Salmon P. Chase College of Law (2006). While in private practice her law practice focused primarily on domestic relations, and she served regularly as guardian *ad litem* for children in many counties. She also served as Master Commissioner and school board attorney for two school districts (Crittenden and Webster). She was elected to the 5th Circuit Court bench as Family Court Judge in 2014. She received the Kentucky Citizens Foster Care Review Board Outstanding Family Court Judge Award (2017), Kentucky CASA Network Judge of the Year (2019), and Kentucky Bar Association Distinguished Judge of the Year (2023). She was a NCJFCJ Judicial Engagement Network Fellow (2020) and has served on numerous commissions, including the National CASA Judicial Leadership Council and the Child Support Guidelines Commission. She now serves as faculty for NCJFCJ and the Kentucky Circuit Judges Association.

Missy DeArk, CPA, CFF, MBA, CVA, MAFF
Dean Dorton
Louisville, KY

Missy DeArk is an Owner and Associate Director of Business Valuation at Dean Dorton, based in Louisville, Kentucky, and one of the largest public accounting firms in the Southeast. Missy is a certified public accountant and is certified in financial forensics by the American Institute of Certified Public Accountants. Additionally, she holds two certifications from the National Association of Certified Valuation Analysts: Certified Valuation Analyst (CVA) and Master Analyst in Financial Forensics (MAFF). Missy leads the Dean Dorton family law practice helping attorneys and clients understand the financial and tax issues specific to the divorce process including disposable income and cash flow analysis, forensic accounting services, marital estate balance sheets, asset tracing, alimony calculations and business valuations, among others. She and her team specialize in the technical financial expertise of marital dissolutions but are also in tune to the emotional challenges and focus on supporting clients and their attorneys to fully analyze the short and long-term financial implications of divorce settlements. Missy and her team of certified experts (CPA, CFF, ABV, CVA, and CFE credentials) provide expert witness services in courts throughout Kentucky, Indiana, Ohio, West Virginia, North Carolina and across the United States. Missy is also the President of the Kentucky Collaborative Family Network, a group of attorneys, financial professionals, and coaches that promote a structured alternative resolution process that helps families avoid going to court for divorce settlements. The goal is to promote family peace and economic stability to the greatest extent possible and minimize adversity in the process and reach an equitable solution without court. When Missy is not testifying or working with clients, she can often be found speaking at events including the American Bar Association, American Academy of Matrimonial Lawyers Family Law Seminar, International Association of Collaborative Professionals and Kentucky Bar Association.

Joshua Shilts, CPA, ASA, ABV/CFF/CGMA, CFE
Shilts CPA, PLLC
Jacksonville, FL

Joshua Shilts is the president and founder of Shilts CPA, PLLC, a firm that provides valuation, forensic, and litigation support services to individuals, businesses, attorneys, and government agencies. He has more than eight years of experience in leading complex financial investigations and disputes, involving fraud, business valuation, economic damages, and accounting issues. As a certified public accountant, a chartered global management accountant, and a certified fraud examiner, Joshua has the credentials, skills, and knowledge to handle challenging and diverse cases. He has been qualified as an expert and testified in state and federal courts, as well as before arbitration panels and regulatory bodies. He is also a frequent lecturer and author on forensic accounting topics, sharing his insights and best practices with the professional community. Joshua's mission is to help his clients resolve their financial problems and disputes with integrity, professionalism, and excellence.

Courtney Risk
Lawyers Mutual of Kentucky
Louisville, KY

Courtney Risk describes her role at Lawyers Mutual as a unicorn, where she gets to combine her skills in relationship building, risk management education, litigation, and organizational collaboration. She joined the Lawyers Mutual team after beginning her career handling litigation – both criminal and civil – as well as transactional work. Courtney has spoken across Kentucky and nationally about the connection between burnout, trauma, well-being, and lawyer liability. She attended Northern Kentucky University Salmon P. Chase College of Law and currently serves as the Mentorship Chair for the Fayette County Bar Association Women's Law Association and as a member of the Women Leaders in Insurance Board.

Heather Risk, Psy.D.
Heather Risk, PsyD & Associates, PLLC
Lexington, KY

Dr. Risk has over two decades of experience working with survivors of traumatic events, is a Nationally Approved TF-CBT Trainer, and an Affiliate of the National Child Traumatic Stress Network. Dr. Risk has devoted her career to providing empirically supported treatments to survivors of all ages, with a primary focus on children and adolescents who have experienced multiple interpersonal traumas. Due to Dr. Risk's focus on increasing survivors' access to interventions supported by research, she has focused her time in recent years on training and consultation services. Dr. Risk has trained thousands of professionals, nationally and internationally, in trauma informed assessment skills, treatment interventions, and best practices to support survivors. Dr. Risk's particular expertise is in the implementation, supervision, consultation, and training of Trauma Focused Cognitive Behavioral Therapy (TF-CBT). Prior to opening this practice, Dr. Risk received a Masters of Science in Clinical Psychology from Eastern Kentucky University, a Doctorate of Psychology from Xavier University, completed an APPIC accredited internship at the University of California, Davis Medical Center, CAARE Center, worked in a variety of outpatient, school-based, residential, and inpatient programs over the years, and was the Project Director of a National Child Traumatic Stress Network (NCTSN) site (the Child and Adolescent Trauma Treatment and Training Institute (CATTTI) at the University of Kentucky, Center on Trauma and Children) for nearly a decade.

GATEKEEPING/ALIENATION AND RESIST-REFUSE DYNAMICS IN HIGH CONFLICT CHILD CUSTODY LITIGATION

Drs. Kelli Marvin & Kristen McCrary

I. WHY TALK ABOUT HIGH CONFLICT AND RESIST-REFUSE CASES?

A. These cases pose serious risk to children and families.

B. Traditional approaches have failed to adequately address these cases.

C. These cases, although representative of the minority of cases in family court, consume the majority of court time and resources.

II. HIGH CONFLICT PERSONALITIES: A FRAMEWORK AND CONTEXT FOR UNDERSTANDING

A. Personality Disorders

1. A personality disorder, as defined by the DSM-5-TR, is an enduring pattern of inner experience and behavior that deviates markedly from the norms and expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment in functioning.

2. Those with these disorders share in common blame externalization – these people cannot see their own contributions to problems which impairs their ability to successfully problem solve.

B. Cluster B Personality Disorders – "Dramatic and Erratic"

These are the types of individuals family law attorneys are most likely to encounter in cases that involve high conflict litigation and allegations of resist/refuse dynamics.

C. Bill Eddy, Esq, LCSW argues that there is an additional dynamic over and above these maladaptive personality features:

1. There are those that are personality disordered and those that are high conflict personality disordered, called HCPs (High Conflict Personalities). These are the cases that are likely to contribute to the incredibly complex dynamics that we see in these high conflict cases.

2. They respond to conflict by increasing the conflicts vs. deescalating conflicts.

3. Targets of blame are typically someone close to the litigation, most often the former partner or the former partner's new spouse.

4. HCPs often take issue with people in authority – they may file complaints against the judge, make ethical complaints against the professionals in the

case, and are likely to involve the police and CPS (or make allegations that these institutions are inept or corrupt).

III. HIGH CONFLICT PERSONALITIES (HCP)

A. Per Eddy's framework, these individuals tend to fall into one of five personality disorder types (PDs); often they have traits of many PDs in combination.

1. Borderline.

Someone who is highly emotionally dysregulated and prone to behavioral acting-out.

a. Rapid mood swings – shifts can run the range of moods; these individuals can be charming and then quickly rageful (either verbally or physical); these shifts are not rooted in episodic mood disorder, but in the disordered character or personality.

b. Impulsive and vindictive behavior.

c. There is often a neediness to their presentation – these individuals need frequent contact and constant reassurance; they are demanding and draining.

d. Splitting behavior (you are the best attorney until you are not) …

2. Narcissistic.

Someone who sees themselves to be superior to others; believes they are deserving of special treatment.

a. Court orders or parenting plan agreements do not apply to them, but to the other party.

b. They know more than every professional in the case.

c. They can be demeaning, condescending, and insulting.

d. They demonstrate a lack of empathy.

e. They are often self-righteous and will seek to ruin your career, business, or file complaints against your license even when such is unnecessary and not at all indicated.

f. They may not contemplate the consequences of their actions and believe the end justifies the means (as they view the conflict in terms of themselves).

3. Antisocial.

   Those who violate societal and personal norms with little to no remorse – Eddy refers to these as the cruel/con artist types.

   a. They are likely to act aggressively, maliciously, and deliberately to achieve a goal (*i.e.*, may file an ethical complaint as a tactic to get an evaluator off of their case if they sense that the evaluator will not support their legal goals).

   b. Often, these individuals engage in repeated violations of court orders.

   c. They display a pervasive pattern of deceitfulness (at the level of "a con" and often for the purpose of achieving a goal).

   d. They are driven by a desire and drive to dominate and control others.

   e. They may deliberately try to cause psychological or financial harm to the opposing party.

   f. Sociopaths and psychopaths often share this diagnostic category, along with narcissistic PD.

4. Paranoid & histrionic (Cluster A).

B. Distinguishing HCP from Those Who Act Out Uncharacteristically Following Separation or Divorce

1. Enduring pattern of behavior.

2. Chronic feelings of internal distress.

3. Blame externalization.

4. Persuasive blamers.

IV. HIGH CONFLICT FAMILIES [BIRNBAUM & BALA, 2010]

A. The definition of high conflict differs in research literature.

B. The term has been used as a term to describe cases involving:

1. High rates of litigation and re-litigation.

2. High levels of anger and distrust.

3. Difficulty communicating about the children.

4. Severe DV/IPV (and/or CCV).

5. Alienating behaviors that negatively impact the child's relationship with the other parent.

C. It is important to note that identification of these families and the dynamics at play in each individual family is difficult and complex, even for child custody evaluators.

V. DISTINGUISHING BETWEEN DIFFERENT TYPES OF HIGH CONFLICT CASES

A. Differentiation of these cases is important as interventions will differ based on the type of conflict.

B. For example, the interventions required for cases involving restrictive gatekeeping/alienation or DV/IPV/CCV are more intensive and complex than cases involving poor communication or parenting-time disputes.

1. The level of conflict dictates the amount and intensity of intervention.

2. Consistent with other forensic treatment models.

VI. HIGH CONFLICT DIFFERENTIATED FROM DV/IPV/CCV [FIDLER, BALA, BIRNBAUM, & KAVASSALIS, 2008]

A. High Conflict

1. Conflict between parents does not preclude any particular child custody arrangement.

2. Both parents allege poor parenting on the part of the other and blame one another for all the family's problems.

3. Safety planning is not the central focus.

B. DV/IPV/CCV

1. Imbalance of power; abusing partner controls the abused parent and children; the abused parent's decision making may be influenced by safety concerns for self or children.

2. Violence between parents must be a factor when considering child custody/access arrangements.

3. The abuser minimizes much of the maltreatment, including the violence in the spousal and co-parenting relationships and the impact on the children.

4. Safety planning is of great importance.

VII. RED FLAGS FOR HIGH CONFLICT FAMILIES

A combination of red flags is of the greatest concern – a red flag in isolation may not be of significance.

A. Arguments about Parenting Time

B. Interference with Parenting Time/Refusal to Follow the Parenting Schedule

C. Claims that One Parent is Verbally Aggressive or Overtly Hostile at Exchanges

D. Multiple Changes in Attorneys

E. Motions for Supervised Visitation

F. Parents Calling CPS (particularly w/multiple unsubstantiated claims and they are the only source of reports)

G. Claims that the Child or Children Does not/Do not Want to See the Other Parent

H. Claims of Sexual Abuse or Escalating CPS Reports from Supervisory Neglect to Medical Neglect to Emotional Abuse to Physical Abuse to Sexual Abuse

I. Claims of Unexplained Bruises

J. Claims of CCV

K. Claims of Criminalized DV/IPV

L. Child rejects one parent and that parent's family (resist-refuse dynamics (RRD)).

M. Clinicians, judges, attorneys, etc. become players in the family drama, being manipulated by one or both parties.

N. Threats to Abduct or Harm Children

O. Threats or Implied Threats against Professionals in the Case; Allegations that Multiple Professionals in the Case are Biased

VIII. GATEKEEPING DEFINED

Gatekeeping (continuum ranging from Facilitative to Restrictive):

A. Protective Gatekeeping (A form of Restrictive Gatekeeping)

Protective gatekeeping (Drozd) is a concept developed to refer to instances where the gatekeeper believes (with justification) there are sound reasons for limiting the other parent's parenting time and involvement due to the risk of emotional or physical harm to the child (harsh discipline, alcohol use, etc.); This represents a reasonable stance re: limiting the access of the problematic parent.

B. Restrictive Gatekeeping

1. Shades of gray come into play as we move along the continuum from protection to restriction; for example, a mother genuinely perceives the father to be a risk, but her concern is not realistic.

Research demonstrates that women who make claims of child abuse and neglect most often do so as they genuinely believe there to be a risk (though, at times, there is little risk).

2. At the most severe end, restrictive gatekeeping is:

   a. Often motivated by personality-based factors à la the high conflict personality.

   b. May be referred to as “alienation.”

   c. Direct and indirect.

IX. TREATMENT APPROACHES TO RESTRICTIVE GATEKEEPING/“ALIENATION” & RESIST-REFUSE DYNAMICS [RRD]

A. Resist-refuse dynamics (RRD) and families exist on a continuum of mild to severe.

B. Legal professionals and clinicians must remember that the vast majority of cases involving resist-refuse dynamics are multidetermined.

   It is not accurate that children only reject parents who have abused them or who they have been coached to believe abused them.

C. Children are particularly vulnerable to alienating behaviors and resulting resist-refuse dynamics when they are of late elementary and early middle school ages.

D. Is a “parentectomy” ever indicated?

   1. Although some clinicians argue that this is a first line of approach when there is “alienation” or severe resist-refuse, there is limited research support.

   2. While this may be necessary in some of the most severe cases, custodial reversal and elimination of parenting time reversal still should not be the immediate go-to for even the most severe resist-refuse cases – in general, this should be the last alternative.

E. Goal: Child(ren) to have a healthy and functional relationship with both parents.

X. SUCCESSFUL REUNIFICATION APPROACHES

A. Early Assessment and Intervention

B. Highly Educated and Skilled Clinicians Who Can Balance Empathy with Willingness to Use “Strong Arm of the Law”

C. Common thread is the importance of working with the court to create a CLEAR and COMPELLING incentive for the alienating parent to participate in the effort.

D. In the absence of the threat of sanctions success is unlikely.

E. As soon as the alienating parent senses movement of the child/children toward the other parent they may:

1. Stop delivering the child to therapy.

2. Actively turn the child against the therapist.

F. Recognize that a SYSTEMS approach is needed – collaboration between the reunification therapist, the family, attorneys, child welfare/protective services, and the court is necessary.

G. Often different players in the system (traditional mental health focused, law enforcement, and even judicial systems) have been "co-opted" by the alienating parent and they may have unintentionally emboldened the alienating parent.

H. The family court is appropriately oriented toward protection and welfare of children; however, false or inaccurate allegations in high conflict divorce cases may result in unwarranted separation of children from parents and this can be prolonged due to the length of time it takes the system to respond.

I. Successful Reunification Approaches:

1. Are specific – Parameters are well-defined, roles are well-defined, expectations are well-defined.

2. Are educated – Professionals with specific training/education regarding these issues should be accessed – this is NOT a traditional therapy approach.

3. Are swift – The longer the separation occurs, the harder the alienation is to reverse; the quicker the children can have some level of exposure to the targeted parent the better the outcome.

GRAPPLING WITH LGBTQA AND PARTICULARLY TRANSGENDER ISSUES IMPACTING FAMILY LAW; KENTUCKY SB 150 (2023)

Stephanie A. Dietz, Esq.[*] and Richard A. Roane[**]

I. INTRODUCTION TO AND OVERVIEW OF LGBTQA AND TRANSGENDER ISSUES AND A GLOSSARY OF TERMS AND RESPECTFUL LANGUAGE

Divorce can be challenging to the new lawyer as well as to the most seasoned practitioner. Dealing with property valuation disputes, custody and support battles, and the loss of one's "family" as they knew it makes this is a very emotionally challenging practice. Add to this mix a gay or lesbian parent or a transgender parent or child, and judges and practitioners are faced with some of the most difficult of cases to address and resolve, whether by negotiation or at trial. The purpose of this presentation is to identify issues that one may face when grappling with these challenging cases, to offer best practices when working with and making decisions with LGBTQA parties or children, and to present a glossary of terms that will assist in respectfully addressing, identifying, and dealing with these issues in the context of a family law case.

II. LEGAL HISTORY – NATIONAL AND REGIONAL

The following cases are key landmark decisions in our current generation addressing LGBTQA legal issues:

A. *Lawrence v. Texas*, 539 U.S. 558 (2003)

In this case, the U.S. Supreme Court held as unconstitutional the criminalization of consensual sexual conduct between two people of the same sex as a violation of the Due Process Clause of the U.S. Constitution.

B. *U.S. v. Windsor*, 570 U.S. 744 (2013)

Ten years after *Lawrence v. Texas* – to the day – June 26, 2013, SCOTUS held that the Defense of Marriage Act (DOMA), which prohibited same-sex married couples from access to federal benefits and protections which were otherwise available to opposite sex married couples, was unconstitutional as it violated the Equal Protection Clause.

C. *Obergefell v. Hodges*, 576 U.S. 644 (2015)

In this majority opinion authored by Justice Anthony Kennedy, SCOTUS held that marriage is a fundamental right and same-sex couples and their children are equally entitled to the benefits of marriage under the Due Process Clause of the U.S. Constitution.

[*] Kentucky State Representative – 65th District and AAML Kentucky Chapter Fellow.

[**] Warner Norcross and Judd, LLP, Michigan Chapter Fellow.

D. *Boystock v. Clayton County, Georgia,* 590 U.S. 644 (2020)

Employment discrimination based upon a person's sexual orientation or gender identity constitutes sex discrimination in violation of Title VII of the Civil Rights Act of 1964.

E. *Rouch World v. Department of Civil Rights*, 987 N.W.2d 501 (Mich. 2022)

The Elliott-Larsen Civil Rights Act (ELCRA), MCL Sec. 37.2302(a) applies to discrimination based on sexual orientation because the denial of "the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation or public service" on the basis of sexual orientation constitutes discrimination "because of ...sex." ELCRA also applies to discrimination based on gender identity. Michigan Department of Civil Rights May 21, 2018 Interpretive Statement. ELCRA's protection against "discrimination because of ...sex" includes gender identity. *Equal Employment Opportunity Commission v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560 (6th Cir. 2018). State courts have historically looked to federal courts for guidance on interpreting civil rights law. *See Michigan Civil Rights Commission ex rel. Boyd v. Chrysler Corp., Mack Ave. Stamping Plant*, 263 N.W.2d 376 (Mich. Ct. App.1977); *Humenny v. Genex Corp*., 390 F.3d 901 (6th Cir. 2004).

III. FOUR CASE STUDIES

A. Transgender transitioning father "M-F" and her challenges in securing consistent and uninterrupted parenting time with her three young children. ***"For all parenting time, father must appear in the presence of the minor children in a male likeness and image."***

B. Transgender minor child age 15/16 seeking access to hormone blockers over divorced father's objection – a matter of life and death for this child.

C. Non-binary child age 15/16 with a parent who won't recognize the child's desired pronouns, name-change, dress, and punishes the child versus the other parent who may be overcompensating and is at the extreme other end. This case was litigated with an agreement reached that the child and family all engage in therapy.

D. Transgender child age 17 with two supportive parents who have allowed the child to start gender-affirming care in Kentucky, then with the passage of SB 150 moved the child to Ohio, which has now passed similar legislation and the child has nowhere close to home to seek care, including hormone therapy. This case was handled collaboratively.

IV. BEST PRACTICES

Above all, be respectful. Be cautious when asking questions – idle curiosity can have disastrous results. Ask the client, the subject child, the litigant, the attorney, and the judge, "what is your preferred pronoun?" Educate yourself with the glossary that is included with these materials. Be open minded to learn, be mindful that you may make mistakes, and be vigilant to be cautious and assume nothing as you try and succeed in avoiding embarrassing the parties before you as well as their family members and yourself.

V. GLOSSARY (*AAML LGBTQ BENCHBOOK FOR THE JUDICIARY REGARDING A GLOSSARY OF TERMS AND GENDER PRONOUNS*)

The term "LGBTQA+" refers to Lesbian, Gay, Bisexual, Transgender, Questioning or Queer, Allies + others not specifically included in this version of the definition. There is no "right" list or version of this list, as the collection of terms under this umbrella vary from regions around the country and across the globe.

Online sources provide updated terms and should be consulted regularly including the Human Rights Campaign www.HRC.org, the National Center for Lesbian Rights www.nclrights.org, the AAML LGBTQ Section website www.aaml.org, and the State Bar of Michigan LGBTQ+ Law Section Bench Card.

Terms are evolving, fluid, and many terms previously used are now antiquated and/or offensive.

A. **Cisgender** – People who have a gender identity that is the same as the sex they were assigned at birth.

B. **Dead Name** – Refers to the name given to a transgender person at birth which they no longer use.

C. **Gender Dysphoria** – A serious medical condition caused by a discrepancy between a person's gender identity and that person's sex assigned at birth.

D. **Gender Expression** – The way a person expresses their gender through dress, grooming habits, mannerisms, and other characteristics.

E. **Gender Identity** – A person's deeply felt internal sense of being male, female, both, or neither. Gender identity is internal and not necessarily visible to others. This can be the same or different from their sex assigned at birth.

F. **Gender Markers** – A person's gender identity or documents such as a driver's license, birth certificate, or passport. Transgender people whose IDs do not reflect their gender identity are vulnerable to discrimination, harassment, and violence. Passport applications include use of a "X" for an unspecified or other gender identity. In Michigan a gender marker may be changed on a Michigan driver's license, ID, or birth certificate.

G. **Nonbinary** – Describes gender identities that do not fit within the binary of male or female and are often demonstrated by an "X" on identification. *E.g.,* passports, driver's license, birth certificate, etc. Some will use gender neutral pronouns such as "they." Other terms that fall under nonbinary include gender-fluid, gender-nonconforming, and gender-queer.

H. **Queer** – Used by people who reject conventional categories such as LGBT or embrace a political identity as "queer" in addition to being LGB and/or T.

I. **Sex** – Sex reflects a combination of bodily characteristics including chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics, some that can be ambiguous or in conflict within an individual.

J. **Assigned Gender** – The sex designation given to someone at birth and generally based on appearance of external genitalia.

K. **Transgender** – An umbrella term that refers to people whose gender identity, expression or behavior is different from their assigned sex at birth. Some transgender people have legally changed their names and pronouns. Some may have undergone hormone treatment or surgery. Not all transgender people will change their names or take any medical intervention. It is not appropriate to use the term "transgendered."

L. **Asexual** – The lack of sexual attraction or desire for other people.

M. **Bi-sexual** – A person who experiences sexual, romantic, physical, and/or spiritual attraction to people of their own gender as well as another gender.

N. **FTM** – A term for a transgender individual who was assigned female at birth and identifies as a man. *See also* **MTF** for an individual assigned male at birth that identifies as a woman.

O. **Gender-Neutral/Gender-Inclusive** – A unisex or all gender inclusive space. Example – a gender neutral bathroom.

P. **Heterosexual** – A person who is attracted to someone with a different gender than they have. Also referred to as straight.

Q. **Lesbian** – A woman whose primary sexual, emotional, and romantic orientation is toward people of the same gender.

R. **Pansexual** – A person who experiences sexual, romantic, physical, and/or spiritual attraction for members of all gender identities.

VI. TERMS TO AVOID

OFFENSIVE	**PREFERRED**
"homosexual" (n. or adj.) Because of the clinical history of the word "homosexual," it is aggressively used by anti-LGBTQ extremists to suggest that people attracted to the same sex are somehow diseased or psychologically/ emotionally disordered – notions discredited by the American Psychological Association and the American Psychiatric Association in the 1970s. Please avoid using "homosexual" except in direct quotes. Please also avoid using "homosexual" as a style variation simply to avoid repeated use of the word "gay." The Associated Press, *The New York Times* and *The Washington*	**"gay" (adj.); "gay man" or "lesbian" (n.); "gay person/people"** Please use gay, lesbian, or when appropriate bisexual or queer to describe people attracted to members of the same sex.

Post restrict use of the term "homosexual" (*see* AP, Reuters, & *New York Times* Style).	
"homosexual relations/relationship," "homosexual couple," "homosexual sex," etc. Identifying a same-sex couple as "a homosexual couple," characterizing their relationship as "a homosexual relationship," or identifying their intimacy as "homosexual sex" is extremely offensive and should be avoided. These constructions are frequently used by anti-LGBTQ extremists to denigrate LGBTQ people, couples, and relationships.	**"relationship," "couple" (or, if necessary, "gay/lesbian/same-sex couple"), "sex," etc.** As a rule, try to avoid labeling an activity, emotion, or relationship gay, lesbian, bisexual, or queer unless you would call the same activity, emotion, or relationship "straight" if engaged in by someone of another orientation. In most cases, your readers, viewers, or listeners will be able to discern people's sexes and/or orientations through the names of the parties involved, your depictions of their relationships, and your use of pronouns.
"sexual preference" The term "sexual preference" is typically used to suggest that being attracted to the same sex is a choice and therefore can and should be "cured."	**"sexual orientation" or "orientation"** Sexual orientation is the accurate description of an individual's enduring physical, romantic, and/or emotional attraction to members of the same and/or opposite sex and is inclusive of lesbians, gay men, bisexuals, and queer people, as well as straight men and women (*see* AP, Reuters, & *New York Times* Style).
"gay lifestyle," "homosexual lifestyle," or "transgender lifestyle" There is no single LGBTQ lifestyle. LGBTQ people are diverse in the ways they lead their lives. The phrases "gay lifestyle," "homosexual lifestyle," and "transgender lifestyle" are used to denigrate LGBTQ people suggesting that their sexual orientation and/or gender identity (*see Transgender Glossary of Terms*) is a choice and therefore can and should be "cured" (*see* AP, Reuters, & *New York Times* Style).	**"LGBTQ people and their lives"**

"admitted homosexual" or "avowed homosexual" Dated terms used to describe those who self-identify as gay, lesbian, bisexual, or queer in their personal, public, and/or professional lives. The words "admitted" or "avowed" suggest that being attracted to the same sex is somehow shameful or inherently secretive.	**"out gay man," "out lesbian," or "out queer person"** You may also simply describe the person as being out, for example: "Ricky Martin is an out pop star from Puerto Rico." Avoid the use of the word "homosexual" in any case (*see* AP, Reuters, & *New York Times* Style).
"gay agenda" or "homosexual agenda" Notions of a so-called "homosexual agenda" are rhetorical inventions of anti-LGBTQ extremists seeking to create a climate of fear by portraying the pursuit of equal opportunity for LGBTQ people as sinister (*see* AP, Reuters, & *New York Times* Style).	**"Accurate descriptions of the issues (*e.g.,* "inclusion in existing nondiscrimination laws," "securing equal employment protections")** LGBTQ people are motivated by the same hopes, concerns, and desires as other everyday Americans. They seek to be able to earn a living, be safe in their communities, serve their country, and take care of the ones they love. Their commitment to equality and acceptance is one they share with many allies and advocates who are not LGBTQ.
"special rights" Anti-LGBTQ extremists frequently characterize equal protection of the law for LGBTQ people as "special rights" to incite opposition to such things as relationship recognition and inclusive nondiscrimination laws (*see* AP, Reuters, & *New York Times* Style). As such, the term should be avoided.	**"equal rights" or "equal protection"**
"Transexual", "Tranny," "Transvestite," "She-male," "He-she," "It," "Hermaphrodite"	**"transgender"**
"Sex Change"	**Sexual Reassignment Procedures or Sexual Affirmation** This can include hormones, surgery, or other medical intervention

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

JANE DOE 1; JOHN DOE 1; JOHN MINOR DOE 1, by and through his next friend, Jane Doe 1; JOHN DOE 2; JOHN MINOR DOE 2, by and through his next friend, John Doe 2; JANE 3; JOHN DOE 3; JANE MINOR DOE 3, by and through her next friend, Jane Doe 3; JANE DOE 4; JOHN DOE 4; JANE MINOR DOE 4; JANE DOE 5; JOHN DOE 5; JOHN MINOR DOE 5, by and through his next friend, Jane Doe 5; JANE DOE 6; JOHN DOE 6; JANE MINOR DOE 6, by and through her next friend, Jane Doe 6; JANE DOE 7; JOHN DOE 7; and JANE MINOR DOE 7, by and through her next friend, Jane Doe 7

Plaintiffs,

v.

WILLIAM C. THORNBURY, JR., MD, in his official capacity as the President of the Kentucky Board of Medical Licensure; AUDRIA DENKER, RN, in her official capacity as the President of the Kentucky Board of Nursing; and ERIC FRIEDLANDER, in his official capacity as the Secretary of the Cabinet for Health and Family Services,

Defendants

COMPLAINT

Civil No. 3:23CV-230-RGJ

Plaintiffs,[1] by and through their attorneys, bring this Complaint against the above-named Defendants, and state the following in support thereof:

PRELIMINARY STATEMENT

1. On March 29, 2023, the Kentucky legislature voted to override Governor Andy Beshear's veto and enacted Senate Bill 150, which bans medical care for transgender minors (the "Health Care Ban" or "Ban").[2] Absent intervention by this Court, the Ban will go into effect on June 29, 2023, disrupting and/or preventing medical care for the minor Plaintiffs and other

[1] Plaintiffs have filed a separate motion to proceed using pseudonyms, rather than their legal names, in order to protect their privacy regarding minor plaintiffs' transgender status and their medical condition and treatment.

[2] While S.B. 150 also governs bathroom policies and sexual education in schools, Plaintiffs' claims here relate solely to Section 4(2)(a) and (b) of S.B. 150, which bans the prescription and/or administration of puberty blockers and hormone therapy for transgender adolescents.

adolescents in Kentucky. The Ban violates the constitutional rights of Kentucky adolescents and their parents, and – if it goes into effect – will cause severe and irreparable harm.

2. Gender dysphoria is a serious medical condition characterized by clinically significant distress caused by incongruence between a person's gender identity and the sex they were designated at birth. Every major medical association in the United States recognizes that adolescents with gender dysphoria may require medical interventions to treat severe distress. Specifically, for some transgender adolescents, puberty-delaying treatment and, for older adolescents, hormone therapy, are medically indicated to alleviate severe distress associated with gender dysphoria. In providing this medically necessary healthcare, medical providers are guided by widely accepted protocols for assessing and treating transgender adolescents.

3. The Ban interferes with parents' ability to obtain this established treatment for their transgender adolescent children by prohibiting health care providers, including doctors, nurse practitioners, nurses, and physician assistants, among others, from prescribing or administering medications "for the purpose of attempting to alter the appearance of, or to validate a minor's perception of, the minor's sex, if that appearance or perception is inconsistent with the minor's sex" at birth – that is, when used to provide transition-related care to a transgender adolescent. S.B. 150 §4.

4. If the Ban goes into effect, it will have devastating consequences for transgender Plaintiffs, their families, and other transgender adolescents and their families in Kentucky. The Ban will deprive the transgender Plaintiffs and other transgender adolescents of medical care that their doctors and parents agree is medically necessary. Untreated gender dysphoria is associated with severe psychological and emotional harm including anxiety, depression, and suicidality. Disrupting or denying medically needed care will inevitably cause Plaintiffs and other vulnerable adolescents significant, irreparable harm.

5. Plaintiffs seek relief from this Court.

A. Transgender Plaintiffs and Their Plaintiff Families

i. The Doe 1 Family

6. Plaintiffs Jane Doe 1 and John Doe 1 reside in Jefferson County, Kentucky. They are the parents of Plaintiff John Minor ("JM") Doe 1, their twelve-year-old son. JM Doe 1 is transgender and is currently receiving medically necessary care that will be prohibited by the Ban when it goes into effect. JM Doe 1 sues pursuant to Federal Rule of Civil Procedure 17(c), by and through his mother, Jane Doe 1. Plaintiffs JM Doe 1, Jane Doe 1, and John Doe 1 seek to proceed in this case under pseudonyms to protect JM Doe 1's right to privacy given that he is a minor and the disclosure of his identity "would reveal matters of a highly sensitive and personal nature, specifically [JM Doe 1]'s transgender status and [his] diagnosed medical condition – gender dysphoria." *Foster v. Andersen*, No. 18-2552-DDC-KGG, 2019 WL 329548, at *2 (D. Kan. 2019).[3]

ii. The Doe 2 Family

7. Plaintiff John Doe 2 resides in the Eastern District of Kentucky. John Doe 2 is the father of Plaintiff JM Doe 2, a fifteen-year-old boy. JM Doe 2 is transgender and is currently

[3] For each Plaintiff, *see also* Plaintiffs' forthcoming Motion to Proceed Pseudonymously.

receiving medically necessary care that will be prohibited by the Ban when it goes into effect. JM Doe 2 sues pursuant to Federal Rule of Civil Procedure 17(c), by and through his father, John Doe 2. Plaintiffs JM Doe 2 and John Doe 2 seek to proceed in this case under pseudonyms to protect JM Doe 2's right to privacy given that he is a minor and the disclosure of his identity "would reveal matters of a highly sensitive and personal nature, specifically [JM Doe 2]'s transgender status and [his] diagnosed medical condition – gender dysphoria." *Foster*, 2019 WL 329548, at *2.

iii. The Doe 3 Family

8. Plaintiffs Jane Doe 3 and John Doe 3 reside in Jefferson County, Kentucky. They are the parents of Plaintiff Jane Minor (also "JM") Doe 3, their ten-year-old daughter. JM Doe 3 is transgender and is currently receiving medically necessary care that will be prohibited by the Ban when it goes into effect. JM Doe 3 sues pursuant to Federal Rule of Civil Procedure 17(c), by and through her mother, Jane Doe 3. Plaintiffs JM Doe 3, Jane Doe 3, and John Doe 3 seek to proceed in this case under pseudonyms to protect JM Doe 3's right to privacy given that she is a minor and the disclosure of her identity "would reveal matters of a highly sensitive and personal nature, specifically [JM Doe 3]'s transgender status and [her] diagnosed medical condition – gender dysphoria." *Foster*, 2019 WL 329548, at *2.

iv. The Doe 4 Family

9. Plaintiffs Jane Doe 4 and John Doe 4 reside in the Eastern District of Kentucky. They are the parents of Plaintiff JM Doe 4, their fourteen-year-old daughter. JM Doe 4 is transgender and is currently receiving medically necessary care that will be prohibited by the Ban when it goes into effect. JM Doe 4 sues pursuant to Federal Rule of Civil Procedure 17(c), by and through her mother, Jane Doe 4. Plaintiffs JM Doe 4, Jane Doe 4, and John Doe 4 seek to proceed in this case under pseudonyms to protect JM Doe 4's right to privacy given that she is a minor and the disclosure of her identity "would reveal matters of a highly sensitive and personal nature, specifically [JM Doe 4]'s transgender status and [her] diagnosed medical condition – gender dysphoria." *Foster*, 2019 WL 329548, at *2.

v. The Doe 5 Family

10. Plaintiffs Jane Doe 5 and John Doe 5 reside in the Eastern District of Kentucky. They are the parents of Plaintiff JM Doe 5, their sixteen-year-old son. JM Doe 5 is transgender and is currently receiving medically necessary care that will be prohibited by the Ban when it goes into effect. JM Doe 5 sues pursuant to Federal Rule of Civil Procedure 17(c), by and through his mother, Jane Doe 5. Plaintiffs JM Doe 5, Jane Doe 5, and John Doe 5 seek to proceed in this case under pseudonyms to protect JM Doe 5's right to privacy given that he is a minor and the disclosure of his identity "would reveal matters of a highly sensitive and personal nature, specifically [JM Doe 5]'s transgender status and [his] diagnosed medical condition – gender dysphoria." *Foster*, 2019 WL 329548, at *2.

vi. The Doe 6 Family

11. Plaintiffs Jane Doe 6 and John Doe 6 reside in Jefferson County, Kentucky. They are the parents of Plaintiff JM Doe 6, their thirteen-year-old daughter. JM Doe 6 is transgender and is currently receiving medically necessary care that will be prohibited by the Ban when it goes into effect. JM Doe 6 sues pursuant to Federal Rule of Civil Procedure 17(c), by and through her mother, Jane Doe 6. Plaintiffs JM Doe 6, Jane Doe 6, and John Doe 6 seek to proceed in this

case under pseudonyms to protect JM Doe 6's right to privacy given that she is a minor and the disclosure of her identity "would reveal matters of a highly sensitive and personal nature, specifically [JM Doe 6]'s transgender status and [her] diagnosed medical condition – gender dysphoria." *Foster*, 2019 WL 329548, at *2.

vii. The Doe 7 Family

12. Plaintiffs Jane Doe 7 and John Doe 7 reside in the Western District of Kentucky. They are the parents of Plaintiff JM Doe 7, their nine-year-old daughter. JM Doe 7 is transgender and anticipates needing to receive medically necessary care that will be prohibited by the Ban when it goes into effect. JM Doe 7 sues pursuant to Federal Rule of Civil Procedure 17(c), by and through her mother, Jane Doe 7. Plaintiffs JM Doe 7, Jane Doe 7, and John Doe 7 seek to proceed in this case under pseudonyms to protect JM Doe 7's right to privacy given that she is a minor and the disclosure of her identity "would reveal matters of a highly sensitive and personal nature, specifically [JM Doe 7]'s transgender status and [her] diagnosed medical condition – gender dysphoria." *Foster*, 2019 WL 329548, at *2.

B. Defendants

13. Defendant William C. Thornbury, Jr., MD, is the President of the Kentucky Board of Medical Licensure ("KBML"). The KBML is responsible for "all medical and osteopathic licensure functions" in the State. Ky. Rev. Stat. Ann. §311.530(1). In his official capacity, Defendant Thornbury, along with other members of KBML, has the power to license, regulate, and discipline health care providers within the State of Kentucky. Ky. Rev. Stat. Ann. §311.565. The KBML is headquartered at 310 Whittington Parkway, Suite 1B, Louisville, KY 40222. The Ban provides that "a licensing or certifying agency for health care provider . . . shall revoke . . . the licensure or certification" of a health care provider who provides care the Ban prohibits. S.B. 150 §4(4). Defendant Thornbury is sued in his official capacity.

14. Defendant Audria Denker, RN, is the President of the Kentucky Board of Nursing ("KBN"). The KBN is responsible for all nursing licensure functions in the State. Ky. Rev. Stat. Ann. §314.131(2). In her official capacity, Defendant Denker, along with other members of the KBN, has the power to license, regulate, and discipline nurses within the State of Kentucky. *Id.* The KBN is headquartered at 312 Whittington Parkway, Suite 300, Louisville, KY 40222. The Ban provides that "a licensing or certifying agency for health care provider . . . shall revoke . . . the licensure or certification" of a health care provider who provides care the Ban prohibits. S.B. 150 §4(4). Defendant Denker is sued in her official capacity.

15. Defendant Eric Friedlander is the Secretary for the Cabinet for Health and Family Services ("Cabinet"). In his capacity as secretary of the Cabinet, Defendant Friedlander is charged with overseeing the licensure of health care facilities in the State. Ky. Rev. Stat. Ann. §216B.042; *see also* Ky. Rev. Stat. Ann. §216B.105. The Cabinet is headquartered at 275 E. Main St., Frankfort, KY 40601. The Ban provides that "a licensing or certifying agency for health care provider . . . shall revoke . . . the licensure or certification" of a health care provider who provides care the Ban prohibits. S.B. 150 §4(4). Defendant Friedlander is sued in his official capacity.

JURISDICTION AND VENUE

16. Plaintiffs assert claims under 42 U.S.C. §1983 for the deprivation of their constitutional rights and for violations of Section 1557 of the Affordable Care Act, 42 U.S.C. §18116. This Court has subject-matter jurisdiction under 28 U.S.C. §§1331 and 1343.

17. This Court has personal jurisdiction over Defendants because Defendants are domiciled in Kentucky and the denial of Plaintiffs' rights guaranteed by federal law occurred within Kentucky.

18. All Defendants reside in Kentucky, and, upon information and belief, Defendant Thornbury and Denker reside in this judicial district. Therefore, venue is proper in this district pursuant to 28 U.S.C. §1391(b)(1). If enforced, the Ban will violate the federal statutory and constitutional rights of Plaintiffs in this judicial district. Therefore, venue is also proper in this district pursuant to 28 U.S.C. §1391(b)(2).

FACTUAL ALLEGATIONS

A. Gender Identity and Gender Dysphoria

19. Gender identity is an essential element of human identity and a well-established concept in medicine. Everyone has a gender identity. Most people's gender identity is consistent with their birth sex. Transgender people, however, have a gender identity that differs from their birth sex. Being made to live in conflict with a person's gender identity causes discomfort and distress which can interfere with a person's ability to function in a productive and healthy way.

20. Gender dysphoria is the clinical diagnosis for the distress that arises when a transgender person cannot live consistent with their gender identity. To be eligible for a diagnosis of gender dysphoria, a young person must meet the criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision (DSM-5-TR) (DSM-5 released in 2013 and DSM-TR released in 2022) (the "DSM-5").[4] If left untreated, gender dysphoria can cause anxiety, depression, and self-harm, including suicidality.

21. Fifty-six percent of transgender youth have reported a previous suicide attempt and 86 percent have reported suicidality. *See* Austin, Ashley, et al., "Suicidality among Transgender Youth: Elucidating the Role of Interpersonal Risk Factors." *Journal of Interpersonal Violence,* vol. 37, no. 5-6, 2020, https://doi.org/10.1177/086260520915554.

22. In the past, mental health professionals have attempted to treat gender dysphoria by attempting to change the person's gender identity to match their birth sex; these efforts were unsuccessful and caused serious harms. Today, the medical profession recognizes that such efforts put transgender adolescents at risk of profound harm, including dramatically increased rates of suicidality.

23. Gender dysphoria is highly treatable. Health care providers who specialize in the treatment of gender dysphoria follow well-established standards of care and clinical practice guidelines that have been adopted by the major medical and mental health associations in the United States, including, but not limited to, the American Medical Association, the American Academy of Pediatrics, the American Association of Child and Adolescent Psychiatrists, the

[4] Earlier editions of the DSM included a diagnosis referred to as "Gender Identity Disorder." The DSM-5 notes that Gender Dysphoria "is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity *per se.*" DMS-5. Being diagnosed with gender dysphoria "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Am. Psychiatric Ass'n, *Positive Statement on Discrimination Against Transgender & Gender Diverse Individuals* (2012), https://www.psychiatry.org/File%Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf.

Pediatric Endocrine Society, the American Psychiatric Association, the American Psychological Association, and the Endocrine Society.

24. The standards of care for treatment of transgender people, including transgender adolescents, were initially developed by the World Professional Association for Transgender Health ("WPATH"), an international, multidisciplinary professional association of medical providers, mental health providers, researchers, and others, with a mission of promoting evidence-based care and research for transgender health, including the treatment of gender dysphoria. WPATH published the most recent edition of its standards of care for the treatment of gender dysphoria in minors and adults in 2022, Standards of Care for the Health of Transgender and Gender Diverse People, Version 8 ("SOC 8"). Coleman, E. et al. "Standards of Care for the Health of Transgender and Gender Diverse People, Version 8." *International Journal of Transgender Health*, vol. 23, no. 1, 2002, https://doi.org/10.1080/26895269.2022.2100644.

25. The SOC 8 is based upon rigorous and methodological evidence-based approach. Its recommendations are informed by a systematic review of evidence and an assessment of the benefits and harms of alternative care options, as well as expert consensus. The SOC 8 incorporates recommendations on clinical practice guideline development from the National Academies of Medicine and the World Health Organization.

26. The SOC 8's recommendations were graded using a modified GRADE (Grading of Recommendations, Assessment, Development, and Evaluations) methodology considering the available evidence supporting interventions, risks and harms, and feasibility and acceptability.

27. The Endocrine Society has also promulgated a similar standard of care and clinical practice guidelines for the provision of hormone therapy as a treatment for gender dysphoria in minors and adults. *See* Hembree, Wylie C. et al. "Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline." *The Journal of Clinical Endocrinology & Metabolism,* vol. 102, no. 11, 2017, pp. 3869-3902, https://doi.org/10.1210/jc.2017-01658.

28. The American Medical Association, the American Academy of Pediatrics, the American Association of Child and Adolescent Psychiatrists, the Pediatric Endocrine Society, the American Psychiatric Association, the American Psychological Association, and other professional medical organizations also follow the WPATH and Endocrine Society standards of care and clinical practice guidelines, which are comparable to guidelines that those professional medical organizations use to treat other conditions.

29. The treatment of gender dysphoria is designed to reduce a transgender person's clinically significant distress by permitting them to live in alignment with their gender identity. Undergoing treatment for gender dysphoria is commonly referred to as "transition" or "gender transition." There are several components to the gender transition process.

30. The precise treatment of gender dysphoria depends on an individualized assessment of a patient's needs.

31. Social transition involves a transgender person taking measures to live in accordance with their gender identity in all aspects of life. For transgender boys, it means living fully as a boy; for transgender girls, it means living fully as a girl. Social transition can include adopting a name, pronouns, hairstyle, and clothing consistent with the person's gender identity.

The steps a transgender person takes as part of their social transition help align their gender identity with all aspects of everyday life.

32. Gender transition may also involve taking prescribed medications, puberty blockers, and hormones, to bring a person's body into alignment with their gender identity.

33. Before beginning puberty, transgender children are not prescribed medications for the purpose of treating their gender dysphoria.

34. For a transgender adolescent who has begun puberty, puberty blocking medication prevents the patient from going through the physical developments associated with puberty that exacerbate the distress experienced by the incongruence between the patient's gender identity and body. As such, under WPATH Standards of Care and clinical practice guidelines, puberty blocking medication may become medically necessary and appropriate after a transgender adolescent reaches puberty to minimize or prevent the exacerbation of gender dysphoria and the permanent physical changes that puberty would cause. In providing medical treatments to adolescents, pediatric physicians and endocrinologists work in close consultation with qualified mental health professionals experienced in the diagnosis and treatment of gender dysphoria. The effects of puberty delaying treatment are reversible once the treatment is discontinued.

35. For older transgender adolescents, hormone therapy may also be medically necessary to bring their body into alignment with their gender identity and further treat the gender dysphoria they may experience without treatment.

36. The treatment for gender dysphoria is effective. Longitudinal studies have shown that transgender adolescents with gender dysphoria who receive essential medical care, including puberty blockers and hormones, show levels of mental health and stability consistent with those of non-transgender adolescents. Durwood, Lily et al. "Mental Health and Self-Worth in Socially Transitioned Transgender Youth." *Journal of the American Academy of Child and Adolescent Psychiatry*, vol. 56, no. 2 (2017): 116-123. doi:10.1016/j.jaac.2016.10.016; Olson, Kristina R. et al. "Mental Health of Transgender Children Who Are Supported in Their Identities," *Pediatrics*, vol. 137, no. 3 (2016): e20153223. doi:10.1542/peds.2015-3223. Access to puberty blocking medications during adolescence is associated with lower rates of suicide in transgender individuals. Turban, Jack, et al. "Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation." *Pediatrics*, vol. 145, no. 2 (2020); https://doi.org/10.1542/peds.2019-1725. In contrast, transgender adolescents with gender dysphoria who do not receive appropriate medical care are at risk of serious harm, including dramatically increased rates of suicidality and serious depression. *Id.*

B. S.B. 150 and The Ban

37. On March 29, 2023, the Kentucky legislature voted to override Governor Andy Beshear's veto and enact Senate Bill 150. Absent intervention by this Court, the Ban will go into effect on June 29, 2023.

38. The Ban prevents healthcare professionals from providing well-established medically necessary care.

39. Specifically, in relevant part, Section 4, Subsection 2 of the Ban provides that:

> Except as provided in subsection (3) of this section, a health care provider shall not, for the purpose of attempting to alter the appearance of, or to validate a minor's perception of, the minor's sex, if that appearance or perception is inconsistent with the minor's sex, knowingly:
>
> > (a) Prescribe or administer any drug to delay or stop normal puberty;
> >
> > (b) Prescribe or administer testosterone, estrogen, or progesterone, in amounts greater than would normally be produced endogenously in a healthy person of the same age and sex;[5]

40. The Ban states that healthcare professionals who violate Section 4, Subsection 2 will have their licenses revoked by the appropriate regulatory agency. S.B. 150 §4. It also allows private parties to initiate a "civil action to recover damages for injury suffered as a result of a violation." *Id.* §5.

41. As a result of the Ban, health care providers, including doctors, nurse practitioners, nurses, and physician assistants, will be precluded from providing – and transgender adolescents in Kentucky, with the consent of their parents, will be prevented from accessing – medically necessary treatment.

42. The Ban thus prohibits well-established treatments for gender dysphoria in transgender adolescents, including puberty delaying treatment and hormone therapy (testosterone for transgender boys, and estrogen and progesterone suppressants[sic] for transgender girls), because these medications are provided for the purpose of "validat[ing] a minor's" gender identity. S.B. 150 §4. The Ban however would permit medical providers to prescribe and administer the same medications for any other purpose to non-transgender patients. *Id.*

43. These medications are proven safe and effective and are commonly used to treat adolescents not only for gender dysphoria, but for a variety of other conditions. For instance, puberty delaying medication is commonly used to treat central precocious puberty. Central precocious puberty is the premature initiation of puberty by the central nervous system – before 8 years of age in people designated female at birth and before 9 years of age in people designated male. When untreated, central precocious puberty can lead to the impairment of final adult height as well as antisocial behavior and lower academic achievement. The Ban permits puberty delaying treatment of central precocious puberty because it is not provided for purposes of "validat[ing] a minor's" gender identity. S.B. 150 §4.

44. Likewise, the Ban prohibits hormone therapy when the treatment is used to treat transgender adolescents with gender dysphoria but allows the same hormone therapy when prescribed to non-transgender patients.

45. For example, boys with delayed puberty may be prescribed testosterone if they have not begun puberty by 14 years of age. Without testosterone, for most of these patients,

[5] Plaintiffs' challenge here relates solely to sections 4(2)(a) and (b) of the Ban, which if permitted to go into effect will restrict the Transgender Plaintiffs' access to puberty blockers and hormone therapy. Plaintiffs' challenge here does not relate to sections 4(2)(c), (d), or (e) of legislation, which regulate surgical procedures.

puberty would eventually initiate naturally. However, testosterone is prescribed to avoid some of the social stigma that comes from undergoing puberty later than one's peers and failing to develop the secondary sex characteristics consistent with their gender at the same time as their peers.

46. Likewise, girls with primary ovarian insufficiency, hypogonadotropic hypogonadism (delayed puberty due to lack of estrogen caused by a problem with the pituitary gland or hypothalamus), or Turner's Syndrome (a chromosomal condition that can cause a failure of ovaries to develop) may be treated with estrogen. Moreover, girls with polycystic ovarian syndrome (a condition that can cause increased testosterone and, as a result, symptoms including facial hair) may be treated with testosterone suppressants.

47. In each of these circumstances, as well as when prescribing these medications to treat gender dysphoria, doctors advise patients and their parents about the risks and benefits of treatment and tailor recommendations to the individual patient's needs. For adolescents, parents must consent to treatment and the minor patient must give their assent.

C. The Ban Will Irreparably Harm the Plaintiffs

i. The Doe 1 Family

48. JM Doe 1 is a twelve-year-old transgender boy who resides in Kentucky with his mom, Jane Doe 1, dad, John Doe 1, and siblings.

49. When JM Doe 1 began puberty and started menstruating, he grew depressed and suicidal because of the mismatch between his body and his sense of himself as a boy. In August 2022, JM Doe 1's parents took him to medical professionals who diagnosed him with gender dysphoria. With Jane's and John's consent, JM Doe 1 began treatment for gender dysphoria, including menstruation suppression medication. JM Doe 1's treatment has considerably alleviated his depression.

50. If the Ban goes into effect, JM Doe 1 will be unable to continue receiving medically necessary care as treatment for his gender dysphoria in Kentucky.

51. JM Doe 1, Jane Doe 1, and John Doe 1 fear that JM Doe 1 will be irreparably harmed by not being able to continue receiving the medical care he needs because of the Ban, which will cause his severe gender dysphoria and related symptoms of depression and suicidality to return.

ii. The Doe 2 Family

52. JM Doe 2 is a fourteen-year-old transgender boy who resides in Kentucky with his dad, John Doe 2.

53. JM Doe 2 knew he was a boy from an early age. Since at least first grade, JM Doe 2 has preferred more masculine clothing and has wanted to be called by a masculine name. JM Doe 2's dad took him to medical professionals who diagnosed JM Doe 2 with gender dysphoria.

54. JM Doe 2's feelings of dysphoria increased when he began puberty and started menstruating. With John Doe 2's consent, JM Doe 2 was prescribed and began using medication to suppress menstruation, and later, testosterone patches. These treatments improved JM Doe 2's overall wellbeing, significantly reducing his gender dysphoria and suicidality.

55. If the Ban goes into effect, JM Doe 2 will be unable to continue receiving medically necessary care as treatment for his gender dysphoria in Kentucky.

56. JM Doe 2 and John Doe 2 fear that the Ban will cause JM Doe 2 irreparable harm by preventing him from continuing to receive the care he needs to treat his gender dysphoria, which will cause his gender dysphoria and related symptoms of distress, depression, anxiety, and suicidality to return.

iii. The Doe 3 Family

57. JM Doe 3 is a ten-year-old transgender girl who lives in Kentucky with her mom, Jane Doe 3, and dad, John Doe 3.

58. JM Doe 3 has been consistent in her gender identity since a young age. She started asking for "girl's" clothes when she was six; she grew out her hair and stopped using her birth name when she was eight.

59. For most of her youth, JM Doe 3 also has struggled with symptoms of anxiety, which is commonly associated with gender dysphoria. She first received counseling for anxiety when she was five.

60. JM Doe 3 told her parents that she is a girl in March 2022. With her parents' consent, JM Doe 3 was prescribed and began taking puberty blockers in January 2023. In making this important medical decision, JM Doe 3's parents were and remain comforted by the knowledge that JM Doe 3's treatment is reversible. These treatments have been essential to JM Doe 3's health, by making JM Doe 3's gender dysphoria and anxiety symptoms more manageable.

61. If the Ban goes into effect, JM Doe 3 will be unable to continue receiving medically necessary care as treatment for her gender dysphoria in Kentucky.

62. JM Doe 3, Jane Doe 3, and John Doe 3 fear that the Ban will cause JM Doe 3 irreparable harm by preventing her from continuing to receive the care she needs, which will cause her severe gender dysphoria and anxiety to return.

iv. The Doe 4 Family

63. Plaintiff JM Doe 4 is a fourteen-year-old transgender girl who resides in Kentucky. She splits her time between her mom, Jane Doe 4, and her dad, John Doe 4, who share custody of her.

64. JM Doe 4 has always known she is a girl. Her parents took her to medical professionals who diagnosed her with gender dysphoria. With her parents' consent, she was prescribed and now takes estrogen. This treatment has significantly reduced JM Doe 4's gender dysphoria and helped her feel more comfortable in her body. Taking estrogen has provided JM Doe 4 with a comfort and joy that her parents have never seen in her before.

65. If the Ban goes into effect, JM Doe 4 will be unable to continue receiving medically necessary care as treatment for gender dysphoria in Kentucky.

66. JM Doe 4, Jane Doe 4, and John Doe 4 fear that the Ban will cause JM Doe 4 irreparable harm by preventing her from continuing to receive the care she needs, which will cause her severe gender dysphoria to return.

v. The Doe 5 Family

67. Plaintiff JM Doe 5 is a sixteen-year-old transgender boy who resides in Kentucky with his mom, Jane Doe 5, dad, John Doe 5, and a sibling.

68. When JM Doe 5 was fourteen, he told his parents that he is a boy. JM Doe 5's parents took him to healthcare professionals who diagnosed JM Doe 5 with gender dysphoria. After careful discussion with JM Doe 5 and his doctors, Jane Doe 5 and John Doe 5 allowed JM Doe 5 to begin taking medication to suppress menstruation and testosterone. This treatment has improved JM Doe 5's symptoms of depression and anxiety.

69. If the Ban goes into effect, JM Doe 5 will be unable to continue receiving medically necessary care as treatment for his gender dysphoria in Kentucky.

70. JM Doe 5, Jane Doe 5, and John Doe 5 fear that the Ban will cause JM Doe 5 irreparable harm by preventing him from continuing to receive the care he needs, which will cause his severe gender dysphoria, depression, and anxiety to return.

vi. The Doe 6 Family

71. Plaintiff JM Doe 6 is a thirteen-year-old transgender girl who resides in Kentucky with her mom, Jane Doe 6, dad, John Doe 6, and a sibling.

72. JM Doe 6 told her parents she is a girl when she was eleven. Jane Doe 6 and John Doe 6 took JM Doe 6 to medical professionals who diagnosed her with gender dysphoria. With the consent of her parents, JM Doe 6 was prescribed and takes puberty blockers. This treatment has improved JM Doe 6's symptoms of gender dysphoria.

73. If the Ban goes into effect, JM Doe 6 will be unable to continue receiving medically necessary care as treatment for her gender dysphoria in Kentucky.

74. JM Doe 6, Jane Doe 6, and John Doe 6 fear the Ban will cause JM Doe 6 irreparable harm by preventing her from continuing to receive the care she needs, which will cause her gender dysphoria to return.

vii. The Doe 7 Family

75. Plaintiff JM Doe 7 is a nine-year-old transgender girl who resides in Kentucky with her siblings and her mom, Jane Doe 7, and dad, John Doe 7.

76. JM Doe 7 was diagnosed with gender dysphoria when she was seven. Since being diagnosed, JM Doe 7's parents take her to an endocrinologist, a social worker, and other health care professionals who provide guidance on JM Doe 7's medical care. With her parents' consent and the guidance of these health care professionals, JM Doe 7 has socially transitioned and uses a female name, pronouns, and expression both inside and outside the home. Once JM Doe 7 begins puberty, which could be at any time, JM Doe 7's parents and doctors may determine that she requires medical care that the Ban will prohibit.

77. JM Doe 7, Jane Doe 7, and John Doe 7 worry that the Ban will cause JM Doe 7 irreparable harm by preventing her doctors from providing the medical care she may need when she begins puberty.

CLAIMS FOR RELIEF

COUNT ONE

42 U.S.C. §1983 – Deprivation of the Right to Parental Autonomy Guaranteed by the Due Process Clause of the Fourteenth Amendment

(Parent Plaintiffs Against all Defendants)

78. Plaintiffs incorporate all preceding paragraphs of the Complaint as if set forth fully herein.

79. The Parent Plaintiffs bring this Count against all Defendants.

80. The Fourteenth Amendment to the United States Constitution protects the rights of parents to make decisions "concerning the care, custody, and control of their children." *Troxel v. Granville*, 530 U.S. 57, 66 (2000). That fundamental right includes the liberty to make medical decisions for their minor children, including the right to obtain established medical treatments to protect their children's health and well-being.

81. The Ban violates this fundamental right by preventing the Parent Plaintiffs from obtaining established, medically necessary care for their minor children.

82. By intruding upon parents' fundamental right to direct the upbringing of their children, the Ban is subject to strict scrutiny.

83. Defendants have no compelling justification for preventing parents from ensuring their children can receive established medical care that is necessary to treat a recognized medical condition. The Ban does not advance any legitimate interest, much less a compelling one. Nor is the Ban narrowly tailored to further a compelling governmental interest.

COUNT TWO

42 U.S.C. §1983 – Deprivation of Rights Guaranteed by the Equal Protection Clause of the Fourteenth Amendment

(All Plaintiffs Against all Defendants)

84. Plaintiffs incorporate all preceding paragraphs of the Complaint as if set forth fully herein.

85. All Plaintiffs bring this Count against Defendants Thornbury, Denker, and Friedlander.

86. The Equal Protection Clause of the Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, §1.

87. On its face, the Ban singles out transgender minors and prohibits them from obtaining medically necessary treatment based on their sex and transgender status.

88. In addition to this facially discriminatory classification, the Ban treats transgender minors differently and less favorably than non-transgender minors by allowing minors who are not transgender to obtain the same medications that are prohibited when medically necessary for transgender minors.

89. Under the Equal Protection Clause, government classifications based on sex are subject to heightened scrutiny and are presumptively unconstitutional.

90. Transgender-based government classifications are subject, at a minimum, to heightened scrutiny because they are also sex-based classifications.

91. Because transgender people have obvious, immutable, and distinguishing characteristics, including having a gender identity that is different than their birth sex, they comprise a discrete group. This defining characteristic bears no relation to a transgender person's ability to contribute to society. Nevertheless, transgender people have faced historical discrimination and have been unable to secure equality through the political process. As such, transgender-based classifications meet the criteria for strict scrutiny.

92. The Ban does nothing to protect the health or well-being of minors and lacks any constitutionally sufficient justification. To the contrary, the Ban undermines the health and well-being of transgender minors by denying them essential medical care.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

(1) issue a judgment, pursuant to 28 U.S.C. §§2201-2202, declaring that the Ban is unconstitutional under the Fourteenth Amendment;

(2) temporarily, preliminarily, and permanently enjoin Defendants and their officers, employees, servants, agents, appointees, or successors from enforcing the Ban;

(3) award Plaintiffs reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1988; and

(4) grant such other relief as the Court finds just and proper.

Dated: May 3, 2023

Respectfully Submitted,

/s/ Heather Gatnarek
Corey Shapiro
Heather Gatnarek
Crystal Fryman
Kevin Muench
ACLU OF KENTUCKY FOUNDATION
325 W. Main St. Suite 2210
Louisville, KY 40202

(502) 581-9746
corey@aclu-ky.org
heather@aclu-ky.org
crystal@aclu-ky.org
kevin@aclu-ky.org

Christopher F. Stoll*
Kelly Jo Popkin*
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Janecisco, CA 94102
(415) 365-1320
cstoll@nclrights.org
kpopkin@nclrights.org

Stephanie Schuster*
Randall M. Levine*
MORGAN, LEWIS & BOCKIUS LLP
111 Pennsylvania Ave., NW
Washington, DC 20004-2541
(202) 739-3000
stephanie.schuster@morganlewis.com
randall.levine@morganlewis.com

Amanda J. Ford*
MORGAN, LEWIS & BOCKIUS LLP
One Federal Street
Boston, MA 02110-1726
(617) 431-7700
amanda.ford@morganlewis.com

* *pro hac vice application forthcoming*

Counsel for Plaintiffs

AN ACT relating to children.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "External health care provider" means a provider of health or mental health services that is not employed by or contracted with the school district to provide services to the district's students;

(b) "Health services" has the same meaning as in KRS 156.502;

(c) "Mental health services" means services provided by a school-based mental health services provider as defined in KRS 158.4416 but shall not include academic or career counseling; and

(d) "Parent" means a person who has legal custody or control of the student such as a mother, father, or guardian.

(2) Upon a student's enrollment and at the beginning of each school year, the district shall provide a notification to the student's parents listing each of the health services and mental health services related to human sexuality, contraception, or family planning available at the student's school and of the parents' right to withhold consent or decline any of those specific services. A parent's consent to a health service or mental health service under this subsection shall not waive the parent's right to access the student's educational or health records held by the district or the notifications required under subsection (3) of this section.

(3) Except as provided in subsection (5) of this section, as part of a school district's effort to provide a safe and supportive learning environment for students, a school shall notify a student's parents if:

(a) The school changes the health services or mental health services related to human sexuality, contraception, or family planning that it provides, and shall obtain parental consent prior to providing health services or mental health services to the student; or

(b) School personnel make a referral:

1. For the student to receive a school's health services or mental health services; or

2. To an external health care provider, for which parental consent shall be obtained prior to the referral being made.

(4) School districts and district personnel shall respect the rights of parents to make decisions regarding the upbringing and control of the student through procedures encouraging students to discuss mental or physical health or life issues with their parents or through facilitating the discussion with their parents.

(5) (a) The Kentucky Board of Education or the Kentucky Department of Education shall not require or recommend that a local school district keep any student information confidential from a student's parents. A district or school shall not adopt policies or procedures with the intent of keeping any student information confidential from parents.

(b) The Kentucky Board of Education or the Kentucky Department of Education shall not require or recommend policies or procedures for the use of pronouns that do not conform to a student's biological sex as indicated on the student's original, unedited birth certificate issued at the time of birth pursuant to KRS 156.070(2)(g)2.

(c) A local school district shall not require school personnel or students to use pronouns for students that do not conform to that particular student's biological sex as referenced in paragraph (b) of this subsection.

(d) Nothing in this subsection shall prohibit a school district or district personnel from withholding information from a parent if a reasonably prudent person would believe, based on previous conduct and history, that the disclosure would result in the child becoming a dependent child or an abused or neglected child as defined in KRS 600.020. The fact that district personnel withhold information from a parent under this subsection shall not in itself constitute evidence of failure to report dependency, neglect, or abuse to the Cabinet for Health and Family Services under KRS 620.030.

(6) Prior to a well-being questionnaire or assessment, or a health screening form being given to a child for research purposes, a school district shall provide the student's parent with access to review the material and shall obtain parental consent. Parental consent shall not be a general consent to these assessments or forms but shall be required for each assessment or form. A parent's refusal to consent shall not be an indicator of having a belief regarding the topic of the assessment or form.

(7) Nothing in this section shall:

(a) Prohibit a school district or the district's personnel from seeking or providing emergency medical or mental health services for a student as outlined in the district's policies; or

(b) Remove the duty to report pursuant to KRS 620.030 if district personnel has reasonable cause to believe the child is a dependent child or an abused or neglected child due to the risk of physical or emotional injury identified in KRS 600.020(1)(a)2. or as otherwise provided in that statute.

➔Section 2. KRS 158.1415 is amended to read as follows:

(1) If a school council or, if none exists, the principal adopts a curriculum for human sexuality or sexually transmitted diseases, instruction shall include but not be limited to the following content:

(a)~~[(1)]~~ Abstinence from sexual activity is the desirable goal for all school-age children;

(b)~~[(2)]~~ Abstinence from sexual activity is the only certain way to avoid unintended pregnancy, sexually transmitted diseases, and other associated health problems;~~[and]~~

(c)~~[(3)]~~ The best way to avoid sexually transmitted diseases and other associated health problems is to establish a permanent mutually faithful monogamous relationship***;***

(d) A policy to respect parental rights by ensuring that:

1. Children in grade five (5) and below do not receive any instruction through curriculum or programs on human sexuality or sexually transmitted diseases; or

2. Any child, regardless of grade level, enrolled in the district does not receive any instruction or presentation that has a goal or purpose of students studying or exploring gender identity, gender expression, or sexual orientation; and

(e) A policy to notify a parent in advance and obtain the parent's written consent before the parent's child in grade six (6) or above receives any instruction through curriculum or programs on human sexuality or sexually transmitted diseases authorized in this section.

(2) Any course, curriculum, or program offered by a public school on the subject of human sexuality provided by school personnel or by third parties authorized by the school shall:

(a) Provide an alternative course, curriculum, or program without any penalty to the student's grade or standing for students whose parents have not provided written consent as required in subsection (1)(e) of this section;

(b) Be subject to an inspection by parents of participating students that allows parents to review the following materials:

1. Curriculum;

2. Instructional materials;

3. Lesson plans;
4. Assessments or tests;

5. Surveys or questionnaires;

6. Assignments; and

7. Instructional activities;

(c) Be developmentally appropriate; and

(d) Be limited to a curriculum that has been subject to the reasonable review and response by stakeholders in conformity with this subsection and KRS 160.345(2).

(3) A public school offering any course, curriculum, or program on the subject of human sexuality shall provide written notification to the parents of a student at least two (2) weeks prior to the student's planned participation in the course, curriculum, or program. The written notification shall:

(a) Inform the parents of the provisions of subsection (2) of this section;

(b) Provide the date the course, curriculum, or program is scheduled to begin;

(c) Detail the process for a parent to review the materials outlined in subsection (2) of this section;

(d) Explain the process for a parent to provide written consent for the student's participation in the course, curriculum, or program; and

(e) Provide the contact information for the teacher or instructor of the course, curriculum, or program and a school administrator designated with oversight.

(4) Nothing in this section shall prohibit school personnel from:

(a) Discussing human sexuality, including the sexuality of any historic person, group, or public figure, where the discussion provides necessary context in relation to a topic of instruction from a curriculum approved pursuant to KRS 160.345; or

(b) Responding to a question from a student during class regarding human sexuality as it relates to a topic of instruction from a curriculum approved pursuant to KRS 160.345.

➔ SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Biological sex" means the physical condition of being male or female, which is determined by a person's chromosomes, and is identified at birth by a person's anatomy; and

(b) "School" means a school under the control of a local board of education or a charter school board of directors.

(2) The General Assembly finds that:

(a) School personnel have a duty to protect the dignity, health, welfare, and privacy rights of students in their care;

(b) Children and young adults have natural and normal concerns about privacy while in various states of undress, and most wish for members of the opposite biological sex not to be present in those circumstances;

(c) Allowing students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex:

1. Will create a significant potential for disruption of school activities and unsafe conditions; and

2. Will create potential embarrassment, shame, and psychological injury to students;

(d) Parents have a reasonable expectation that schools will not allow minor children to be viewed in various states of undress by members of the opposite biological sex, nor allow minor children to view members of the opposite sex in various states of undress; and

(e) Schools have a duty to respect and protect the privacy rights of students, including the right not to be compelled to undress or be unclothed in the presence of members of the opposite biological sex.

(3) Each local board of education or charter school board of directors shall, after allowing public comment on the issue at an open meeting, adopt policies necessary to protect the privacy rights outlined in subsection (2) of this section and enforce this subsection. Those policies shall, at a minimum, not allow students to use restrooms, locker rooms, or shower rooms that are reserved for students of a different biological sex.

(4) (a) A student who asserts to school officials that his or her gender is different from his or her biological sex and whose parent or legal guardian provides written consent to school officials shall be provided with the best available accommodation, but that accommodation shall not include the use of school restrooms, locker rooms, or shower rooms designated for use by students of the opposite biological sex while students of the opposite biological sex are present or could be present.

(b) Acceptable accommodations may include but are not limited to access to single-stall restrooms or controlled use of faculty bathrooms, locker rooms, or shower rooms.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

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

(b) "Sex" means the biological indication of male and female as evidenced by sex chromosomes, naturally occurring sex hormones, gonads, and nonambiguous internal and external genitalia present at birth.

(2) Except as provided in subsection (3) of this section, a health care provider shall not, for the purpose of attempting to alter the appearance of, or to validate a minor's perception of, the minor's sex, if that appearance or perception is inconsistent with the minor's sex, knowingly:

(a) Prescribe or administer any drug to delay or stop normal puberty;

(b) Prescribe or administer testosterone, estrogen, or progesterone, in amounts greater than would normally be produced endogenously in a healthy person of the same age and sex;

(c) Perform any sterilizing surgery, including castration, hysterectomy, oophorectomy, orchiectomy, penectomy, and vasectomy;

(d) Perform any surgery that artificially constructs tissue having the appearance of genitalia differing from the minor's sex, including metoidioplasty, phalloplasty, and vaginoplasty; or

(e) Remove any healthy or non-diseased body part or tissue.

(3) The prohibitions of subsection (2) this section shall not limit or restrict the provision of services to:

(a) A minor born with a medically verifiable disorder of sex development, including external biological sex characteristics that are irresolvably ambiguous;

(b) A minor diagnosed with a disorder of sexual development, if a health care provider has determined, through genetic or biochemical testing, that the minor does not have a sex chromosome structure, sex steroid hormone production, or sex steroid hormone action, that is normal for a biological male or biological female; or

(c) A minor needing treatment for an infection, injury, disease, or disorder that has been caused or exacerbated by any action or procedure prohibited by subsection (2) of this section.

(4) If a licensing or certifying agency for health care providers finds, in accordance with each agency's disciplinary and hearing process, that a health care provider who is licensed or certified by the agency has violated subsection (2) of this section, the agency shall revoke the health care provider's licensure or certification.

(5) Any civil action to recover damages for injury suffered as a result of a violation of subsection (2) of this section may be commenced before the later of:

(a) The date on which the person reaches the age of thirty (30) years; or

(b) Within three (3) years from the time the person discovered or reasonably should have discovered that the injury or damages were caused by the violation.

(6) If a health care provider has initiated a course of treatment, for a minor, that includes the prescription or administration of any drug or hormone prohibited by subsection (2) of this section and if the health care provider determines and documents in the minor's medical record that immediately terminating the minor's use of the drug or hormone would cause harm to the minor, the health care provider may institute a period during which the minor's use of the drug or hormone is systematically reduced.

➔Section 5. Whereas situations currently exist in which the privacy rights of students are violated, an emergency is declared to exist, and Sections 1 to 3 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Veto Overridden March 29, 2023.

I. GUARDIANS *AD LITEM* (GALs)

A. History

"The term 'guardian *ad litem*' is very much a chameleon. According to one commentator, the term is employed in all of the United States' fifty-six jurisdictions, but in no two of them does it have exactly the same meaning. Katherine Hunt Federle, *The Curious Case of the Guardian Ad Litem*, 36 U. Dayton L. Rev. 337, 348 (2011)." *Morgan v. Getter*, 441 S.W.3d 94, 106 (Ky. 2014).

"Among CAPTA's provisions was a requirement that 'in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings.' 42 U.S.C. §5103(b)(2)(G) (1976 & Supp. V 1981)." *Morgan v. Getter*, 441 S.W.3d 94, 109 (Ky. 2014).

> The GAL Commission was chaired by former Justice Cooper, and for five months, beginning in May 1999, heard testimony from numerous groups and individuals with interests in the matter, considered approaches taken by other states, and evaluated a Laurel-Knox County pilot GAL training program. The Commission's Report, issued in October 1999, recommended that GAL responsibilities be specified by statute and by rule, and that they include "advocat[ing] the child's best interest, but advis[ing] the court when the child disagrees with the attorney's assessment of the case." Admin. Office of the Courts, Recommendations of the Commission on Guardians *ad litem*, p. 4 (October 25, 1999).

Morgan v. Getter, 441 S.W.3d 94, 110 (Ky. 2014).

B. Appointment of a GAL

"In our jurisdiction 'A guardian ad litem must be a regular, practicing attorney of the court.' He is appointed to represent defendants who are under legal disability and is given the duty to 'attend properly to the preparation of the case' in their behalf. Sec. 38(2, 3), Civil Code of Practice." *Black v. Wiedeman*, 254 S.W.2d 344, 346 (Ky. App. 1952). Superseded in statute by KRS 387.305.

"To the extent that *Wiedeman* could be thought to focus the GAL's representation on the child's preferences, as opposed to his or her 'best interest,' the new provision supersedes it." *Morgan v. Getter*, 441 S.W.3d 94, 108 (Ky. 2014).

"A guardian *ad litem* (a guardian for the purposes of suit or litigation), is then, broadly, a person appointed by a court to appear on behalf of, to 'guard,' a minor (or other incompetent) in a lawsuit." *Morgan v. Getter*, 441 S.W.3d 94, 106 (Ky. 2014).

"The presumption remains, furthermore, that the guardian *ad litem* shall be 'a practicing attorney,' CR 4.04(3), appointed to act in that capacity." *Morgan v. Getter*, 441 S.W.3d 94, 107 (Ky. 2014).

"Rule 6 provides that in family court actions involving a dispute over custody, shared parenting, visitation, or support, the parties may request, or the court on its own motion may order, among other things, the 'appointment of a guardian *ad litem*.'" *Morgan v. Getter*, 441 S.W.3d 94, 96 (Ky. 2014).

"CR 17.03 mandates the appointment of a GAL for an unrepresented minor party to an IPO case. The GAL is the child's agent and is responsible ... for making motions, for introducing evidence, and for advancing evidence-based arguments on the child's behalf." *Smith v. Doe*, 627 S.W.3d 903, 915 (Ky. 2021).

> Our Supreme Court, in *Smith v. Doe*, 627 S.W.3d 903, 913 (Ky. 2021), recently held that the family court was required to appoint a GAL for unrepresented minor petitioners and respondents to an Interpersonal Protective Order ("IPO"). *Smith* also specifically noted that the statutes governing IPOs and DVOs are nearly identical, and that CR 17.03 applies to both.

Hamilton v. Milbry, 676 S.W.3d 42, 46 (Ky. App. 2023).

C. KRS 387.305(4) – A GAL is entitled to a reasonable fee for his or her services.

> The court shall appoint counsel for the child to be paid by the Finance and Administration Cabinet. Counsel shall document participation in training on the role of counsel that includes training in early childhood, child, and adolescent development . . . The fee to be fixed by the court shall not exceed five hundred dollars ($500); however, if the action has final disposition in the District Court, the fee shall not exceed two hundred fifty dollars ($250). KRS 620.100(1)(a).

Morgan v. Getter, 441 S.W.3d 94, 109 (Ky. 2014).

> Affidavits of himself and of other persons are receivable to prove the services rendered, but the court must decide the value without reference to their opinions. Sec. 38(4), Civil Code of Practice. KRS 453.060 also provides for the allowance of a reasonable fee for a guardian ad litem to be taxed as costs in the action.

Black v. Wiedeman, 254 S.W.2d 344, 346 (Ky. App. 1952). Superseded in statute by KRS 387.305.

"The fixing of the fee by the trial court should also cover an allowance for services in the Court of Appeals. *Lacey's Executrix v. Lacey*, 170 Ky. 625, 186 S.W. 501." *Black v. Wiedeman*, 254 S.W.2d 344, 346 (Ky. App. 1952). Superseded in statute by KRS 387.305.

Basic Rules of Thumb on Payment:

1. GALs in the cases listed below are paid by the Finance and Administration Cabinet by submitting the FIN-GAL_1 Form. Always be sure that you are using the most up-to-date version of the form, which can be found on the Finance and Administration Cabinet's website on the Office of General Counsel's page under "Guardian Ad Litem." The form is submitted to the clerk's office and they forward it to Finance.

    a. For children in dependency, neglect, and abuse cases.

    b. For children in voluntary or involuntary TPRs.

    c. For children in domestic violence cases.

    d. For children in minor abortion cases.

    e. For incarcerated adults in child support cases.

2. GALs in adoption cases are paid privately by the petitioner and you typically file a motion for fees, to be approved as a reasonable fee by the court. The exact process can be venue dependent. Some GALs request their fee as part of their report or simply send a bill. Best practice is to file a motion for approval by the court.

3. GALs in dissolution or custody proceedings (also includes other civil actions such as grandparent visitation, etc.) are paid privately. The court may assess a retainer at the start of the appointment to be billed against or give some advance directive as to payment. Fees may be assessed to one party or apportioned in advance or at any point during or at the conclusion of the appointment. Venue and GAL dependent and often require a motion for fees. No right or wrong method – ask for guidance from the court if you are unsure.

D. Expectations of a GAL

> A child's representative appointed to participate actively as legal counsel for the child, to make opening and closing statements, to call and to cross-examine witnesses, to make evidentiary objections and other motions, and to further the child's interest in expeditious, non-acrimonious proceedings – in our terminology a GAL.

Morgan v. Getter, 441 S.W.3d 94, 111 (Ky. 2014).

"The Court defined the role of the GAL as that of a person that advocates consistently for [the child's] best interests. The GAL is not in the business of making the parents happy. Her job is to get information from [the child] and in return give that information to the Court." *Dhawan v. Naumchenko*, 2015 Ky. App. Unpub. LEXIS 409, *5-6, 2015 WL 3533214, *2 (Ky. App. June 5, 2015).

KRS 387.305(2) – A GAL must be a regular, practicing attorney of the court.

KRS 387.305 provides, in the same terms as §38 did formerly, that a guardian ad litem may be appointed to defend an infant who does not have a resident guardian, curator, or conservator; that the guardian ad litem must be a regular, practicing attorney of the court; that his duty is to attend properly to the preparation of the case; and that he is to be allowed a reasonable fee for his services "to be paid by the plaintiff and taxed in the costs." **KRS 387.305(4)**. *Morgan v. Getter*, 441 S.W.3d 94, 107-108 (Ky. 2014).

KRS 387.305(5) – When a GAL is appointed by the court, he or she has a duty to advocate for the child's best interest in the proceeding.

KRS 403.270(2) – GAL applies best interest standard.

KRS 26A.140(1)(a) – Courts may implement measures to accommodate the special needs of children to offer consistency and support to the child and to represent the child's interests when necessary.

SCR 3.130(1.4)(b); *see Morgan v. Getter*, 441 S.W.3d 94 (Ky. 2014) – A GAL should explain a matter to the extent reasonably necessary to permit the client to make informed decisions.

"GALs appointed in DNA cases have 'training appropriate to the role, including training in early childhood, child, and adolescent development.'" 42 U.S.C. §5106a(b)(2), KRS 620.100(1)(a), and *Morgan v. Getter*, 441 S.W.3d 94, 117 (Ky. 2014).

"The GAL is obligated to stand in the infant's place and determine their rights. The GAL is both a fiduciary and lawyer for the infant." *Black v. Wiedeman*, 254 S.W.2d 344, 346 (Ky. App. 1952).

"[T]herefore, that in domestic custody proceedings, the parties' right to due process includes the right to cross-examine the authors, including so-called GALs, of evidentiary reports upon which the fact finder is entitled to rely." *Morgan v. Getter*, 441 S.W.3d 94, 112 (Ky. 2014).

"Additionally, the Court concluded, however, that if a trial court relies on a GAL report, due process demands that the other parties must be afforded an opportunity to question/cross-examine the GAL." *S.E.A. v. R.J.G.*, 470 S.W.3d 739, 743 (Ky. App. 2015).

"A number of courts have required that the constituent roles of the 'hybrid' GAL be separated. *See, e.g., Ross v. Gadwah, Jacobsen v. Thomas*, 2004 MT 273, 323 Mont. 183, 100 P.3d 106 (Mont. 2004); *Clark v. Alexander, Newman v. Newman*, 235 Conn. 82, 663 A.2d 980 (Conn. 1995)." *Morgan v. Getter*, 441 S.W.3d 94, 113 (Ky. 2014).

Supreme Court Order 2020-01 – amending the Family Court Rules of Procedure and Practice, providing standards for court appointed counsel, including Guardians ad Litem.

American Bar Association, *Standards of Practice for Lawyers Representing Children in Custody Cases*, 37 FAM. L.Q. 1, 16 (2003) – "The GAL has the discretion to interview individuals significantly involved with the child which may include social workers, caretakers, neighbors, relatives, school personnel, coaches, clergy, mental health professionals, physicians, and law enforcement officers."

E. Best Interest

1. **Most applicable statute:** KRS 403.270 – Custodial issues – Best interests of child shall determine – Rebuttable presumption that joint custody and equally shared parenting time is in child's best interests – De facto custodian.

"GAL has no duty to advocate for children's wishes, *i.e.* to abide by their decisions concerning objectives of representation."

a. "A GAL should advocate for the child's best interests. However, when the child disagrees with the attorney's assessment of the case, the GAL has a duty to advise the court of this disagreement."

b. "A GAL's recommendation to the court can be based on evidence that was presented to the court or on evidence not available to the court."

c. "A properly trained GAL, in sum, who has thoroughly investigated the child's situation and consulted with the child, is not disqualified from advocating what he or she determines is the child's best interest merely because the child disagrees." *Morgan v. Getter*, 441 S.W.3d 94, 117 (Ky. 2014).

2. Differentiating case types:

a. If the case is a grandparent visitation matter, the modified *Vibbert* best interest factors will apply.

> A trial court can look at several factors to determine whether visitation is clearly in the child's best interest. The *Vibbert* court laid out many of these factors, including:
>
> 1) the nature and stability of the relationship between the child and the grandparent seeking visitation;
>
> 2) the amount of time the grandparent and child spent together;
>
> 3) the potential detriments and benefits to the child from granting visitation;

4) the effect granting visitation would have on the child's relationship with the parents;

5) the physical and emotional health of all the adults involved, parents and grandparents alike;

6) the stability of the child's living and schooling arrangements; and

7) the wishes and preferences of the child.

To this list, we add:

8) the motivation of the adults participating in the grandparent visitation proceedings.

Walker v. Blair, 382 S.W.3d 862, 871 (Ky. 2012).

b. If a GAL is appointed in a dependency, neglect and abuse, or a TPR action and "best interests" are referred to, they are looking to KRS 620.023:

(1) Evidence of the following circumstances if relevant shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interests of the child:

(a) Mental illness as defined in KRS 202A.011 or an intellectual disability as defined in KRS 202B.010 of the parent, as attested to by a qualified mental health professional, which renders the parent unable to care for the immediate and ongoing needs of the child;

(b) Acts of abuse or neglect as defined in KRS 600.020 toward any child;

(c) Substance use disorder, as defined in KRS 222.005, that results in an incapacity by the parent or caretaker to provide essential care and protection for the child;

(d) A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child;

(e) Any other crime committed by a parent which results in the death or permanent physical or mental

disability of a member of that parent's family or household; and

(f) The existence of any guardianship or conservatorship of the parent pursuant to a determination of disability or partial disability as made under KRS 387.500 to 387.770 and 387.990.

(2) In determining the best interests of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.

3. Best interest cases.

"[W]e believe the safer course is simply to require a 'best interest' role for GALs appointed in custody cases as well as in DNA and termination cases." *Morgan v. Getter*, 441 S.W.3d 94, 117 (Ky. 2014).

The court stated in weighing the factors in consideration of a custody dispute between parents, the overriding issue is what is in the best interest of the child. *Calhoun v. Calhoun*, 559 S.W.2d 721 (Ky. 1977).

Cases with the child's best interest at issue: *Atwood v. Atwood*, 550 S.W.2d 465 (Ky. 1976) and *S. v. S.*, 608 S.W.2d 64 (Ky. App. 1980).

> "Without an appointment, the guardian ad litem shall have no obligation to initiate action or to defend the client in other proceedings. KRS 387.305(5). To the extent that *Wiedeman* could be thought to focus the GAL's representation on the child's preferences, as opposed to his or her "best interest," the new provision supersedes it."

Morgan v. Getter, 441 S.W.3d 94, 108 (Ky. 2014).

4. Critique of "best interest" advocacy.

a. "Critics also maintain that legal training simply does not qualify lawyers to make 'best interest' judgments for other people, in particular for people whose backgrounds, experience, and prospects are far different from the lawyer's own." *Morgan v. Getter*, 441 S.W.3d 94, 116-117 (Ky. 2014).

b. "The lawyer's discretion, furthermore, is constrained by the statutory best-interest factors (including the wishes of the child) that the court is obliged to consider and hence the lawyer is obliged to address, as well as by the particular facts of the case." *Morgan v. Getter*, 441 S.W.3d 94, 117 (Ky. 2014).

c. [T]he asserted tendency of "best interest" representation to suppress the voices of children and to disempower them in proceedings that will significantly affect their interests. "Child centered" or "client directed" representation, on the other hand, is seen as respecting and encouraging child autonomy as well as keeping the attorney appropriately focused on protecting his or her client's rights, the only role attorneys are deemed competent to play.

Morgan v. Getter, 441 S.W.3d 94, 118 (Ky. 2014).

F. The GAL's Role in Protecting a Minor's Mental Health Records

The Court of Appeals has held that minors are entitled to a psychotherapist-patient privilege pursuant to KRE 507, which protects their mental health records from disclosure to even their parent during discovery in a custody matter. The court may either interview the therapist directly, or review their records *in camera*, to determine what portions of the records are relevant, or may a appoint guardian *ad litem* to do so. *Bond. v. Bond*, 887 S.W.2d 558, 561 (1994) *and Williams v. Williams*, 526 S.W.3d 108, 117 (Ky. 2017).

G. Appointment of GALs for Domestic Violence and Interpersonal Violence Actions Involving Minors

In September 2023, the Court of Appeals in *Hamilton v. Milbry*, 676 S.W.3d 42 (Ky. App. 2023), surprised Kentucky judges and attorneys alike with their decision reversing the trial court because a guardian ad litem had not been appointed for the minor child who was listed by the petitioner/mother as an "other protected person" in her petition.

The Court's decision was guided by the Kentucky Supreme Court's ruling in *Smith v. Doe*, 627 S.W.3d 903 (Ky. 2021), which had been decided just two years prior. In *Doe*, the Court held that a guardian ad litem must be appointed for an unrepresented minor who is a party to an Interpersonal Protective Order case in accordance with CR 17.03, which provides as follows:

> CR 17.03 **Infants and persons of unsound mind**
>
> (1) Actions involving unmarried infants or persons of unsound mind shall be brought by the party's guardian or committee, but if there is none, or such guardian or committee is unwilling or unable to act, a next friend may bring the action.
>
> (2) Actions involving unmarried infants or persons of unsound mind shall be defended by the party's guardian or committee. If there is no guardian or committee or he is unable or unwilling to act or is a plaintiff, the court, or the clerk thereof if its judge or judges are not present in the county, shall appoint a guardian ad litem to defend unless one has been previously appointed under Rule 4.04(3) or

> the warning order attorney has become such guardian under Rule 4.07(3).
>
> (3) No judgment shall be rendered against an unmarried infant or person of unsound mind until the party's guardian or committee or the guardian ad litem shall have made defense or filed a report stating that after careful examination of the case he is unable to make defense.
>
> (4) Papers required to be served on a party under Rule 5.01 shall be served on the person bringing or defending an action under this rule.
>
> (5) The court shall allow the guardian ad litem a reasonable fee for services, to be taxed as costs. Fees allowed to counsel for children, indigent parents or non-parental custodians of children in dependency, abuse or neglect cases, and to counsel for children or indigent parents in parental rights termination cases, under the Juvenile Code, shall not exceed the amounts specified in KRS 620.100 or KRS 625.080. Counsel fee awards shall not exceed the statutory maximum, regardless of the number of persons represented in a proceeding by the counsel.

In rendering its decision, the *Doe* Court cites to its prior decision in *Morgan v Getter*, 441 S.W.3d 94 (Ky. 2014), defining the role of the GAL stating "the GAL is the child's agent and is responsible ... for making motions, for introducing evidence, and for advancing evidence-based arguments on the child's behalf."

The Court in *Milbry* vastly expanded the *Doe* holding, requiring the appointment of a GAL in all DVO or IPO hearings where a minor is listed as a protected party.

The practical challenges for courts and GALs have been significant, although the new requirement has certainly resulted in more child-centric discussions and arguments, especially when an adult petitioner seeks to lift restrictions or dismiss an action.

II. FRIENDS OF THE COURT (FOCs)

A. History of FOCs

"The statute authorizing the use of FOC investigators in custody proceedings, KRS 403.300, has been in place since 1972, when the General Assembly adopted the Uniform Marriage and Divorce Act." *Greene v. Boyd*, 603 S.W.3d 231, 236 (Ky. 2020).

B. Appointment of an FOC

KRS 403.300 – "In contested proceedings, and in other custody proceedings, if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and

report may be made by the friend of the court or such other agency as the court may select."

"The investigation and report may be made by the friend of the court or such other agency as the court may select." KRS 403.300(1). *Morgan v. Getter*, 441 S.W.3d 94, 104 (Ky. 2014).

"A family court's appointment of a friend-of-court investigator (FOC) to investigate and generate a report amounts to a determination that the FOC is sufficiently qualified to offer opinion evidence concerning the fitness of a parent and child's custody arrangements." *Greene v. Boyd*, 603 S.W.3d 231, 233 (Ky. 2020).

C. Expectations of the FOC

1. Investigation.

KRS 403.300(2): In preparing their report, the FOC may consult "any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16, unless the court finds that he lacks the mental capacity to consent."

2. Report.

KRS 403.300(3): The FOC must file a report at least 10 days prior to the hearing, which the clerk shall mail to counsel and any party not represented by counsel. The FOC's file, including all data, reports and diagnostic reports, including the names and addresses of everyone consulted in their investigation, shall be made available to counsel or unrepresented parties to allow them to be cross-examined. Parties *cannot* waive their right to be cross-examined prior to the hearing. (emphasis added)

3. Hearsay objections.

> These reports consist largely of hearsay declarations often double-or triple-level hearsay as well as opinions of various social workers, medical or paramedical personnel, psychologists, teachers and the like, which may or may not have a reasonable basis. Statements contained in a custody investigation report have no special indicia of reliability. They are generally not under oath and often emanate from people having overt or covert bias. In many instances, the statements represent subjective feelings and perceptions rather than objective observations or empiric data.

Greene v. Boyd, 603 S.W.3d 231, 239 (Ky. 2020).

> Filing the report at least 10 days prior to affords sufficient due process protection to allow hearsay evidence contained therein to be admitted and relied on by the court by allowing the parties ample time to call the witnesses relied on in the report to testify. *Greene v. Boyd*, 603 S.W.3d 231, 239-240 (Ky. 2020); *see also Morgan v. Getter*, 441 S.W.3d 94, 104 (Ky. 2014). "Provided the parties were given adequate notice of it, the investigator's report could be received in evidence at the custody hearing, but then 'any party to the proceeding' could 'call the investigator and any person whom he has consulted for cross-examination.'"

D. Objections to the Qualifications of an FOC

A friend of the court is an individual appointed by the court to "to investigate the child's and the parents' situations, to file a report summarizing his or her findings, and to make recommendations as to the outcome of the proceeding…" *Morgan v. Getter*, 441 S.W.3d 94, 111 (Ky. 2014).

"An FOC's ability to render opinions is constrained by the requirements KRE 701 & 702." *Greene v. Boyd*, 603 S.W.3d 231, 243 (Ky. 2020).

"That is, an FOC must still properly be qualified as a medical expert to render medical opinions about the mental health of the parents in a custody proceeding." *Greene v. Boyd*, 603 S.W.3d 231, 243 (Ky. 2020).

"A family court's appointment of a friend-of-court investigator (FOC) to investigate and generate a report amounts to a determination that the FOC is sufficiently qualified to offer opinion evidence concerning the fitness of a parent and child's custody arrangements." *Greene v. Boyd*, 603 S.W.3d 231, 233 (Ky. 2020).

> [G]iven the role of an FOC – to investigate and make custodial recommendations to the family court – we think the appointment of an FOC is simultaneously a determination that the FOC possesses the knowledge, skill and experience sufficient to render credible opinions about the fitness of a parent and child's custody arrangements and the ability of parents to care for their child. Such a determination is within the wise discretion of the trial court and may be challenged as such.
>
> But we caution that family courts must be careful to admit those opinions only where they do not cross into the realm of medical-expert testimony, and judges should be particularly vigilant in guarding against those opinions when medical experts that appeared in the FOC's report do not themselves testify."

Greene v. Boyd, 603 S.W.3d 231, 244-45 (Ky. 2020).

E. Compensation of an FOC

1. FCRPP 6(2) – Allows for a parent or custodian, or the court to request the appointment of an FOC at the cost of the parent or custodian.

> The friend of the court's compensation was to come from the authorizing county. *Id. See* Delmer D. Howard, "*Friend of the Court*," 45 Ky. L. J. 128, 128 (1956-57) (discussing the advent of this statute and noting that it was in part a response to courts becoming aware "of the need of an investigative officer to represent the children in contested divorce cases where it was apparent that the parties were prone to exaggerate the favorable conditions of each home.)

Morgan v. Getter, 441 S.W.3d 94, 104 (Ky. 2014).

2. Basic rules of thumb regarding payment.

   a. All cases are private pay. There is some chatter that some counties have had some ability to get payment from fiscal court resources (*see* above), but payment is acquired from the parties in nearly all circumstances.

   b. A retainer is often ordered and billed against; ask for one if you can. Some judges will leave it open to the FOC to assess what they think is reasonable or say nothing at all. You are a third-party provider as an FOC. This leaves you open to ask for payment as you see fit if not ordered otherwise.

   c. Be clear from the outset in an email or letter how you intend to assess payment and bill.

   d. If the court is assessing fees at the end, make it clear what you will be billing for and how you will be requesting payment (*i.e.* lump sum for overage of the retainer, or if there was no retainer, whether you will be open to payments).

   e. Being clear on your role with attorneys and parties makes your billing clearer.

F. Direct Comparisons between GAL and FOC

1. Attorney v. advisor.

"The role of a GAL and a friend of the court are quite different. A GAL functions as an attorney advocating for a party and a friend of the court advises the court." *Feller v. Kimble*, 2017 Ky. App. Unpub. LEXIS 127, *10, 2017 WL 541079, *4 (Ky. App. Feb. 10, 2017).

> Like the FOC investigator, the GAL should undertake a thorough examination of the custodial circumstances, but *unlike* the investigator the GAL is the child's agent and is responsible, as is counsel for the parties, for making motions, for introducing evidence, and for advancing evidence-based arguments on the child's behalf. The GAL

should *not* file reports, testify, make recommendations, or otherwise put his own or her own credibility at issue.

Morgan v. Getter, 441 S.W.3d 94, 114 (Ky. 2014).

2. Witness v. advocate.

a. SCR 3.130(3.7) **– Lawyer as witness**

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

Whereas the friend of the court investigates, reports, and makes custodial recommendations on behalf of the court, and is subject to cross-examination, the guardian *ad litem* is a lawyer for the child, counseling the child and representing him or her in the course of proceedings by, among other things, engaging in discovery, in motion practice, and in presentation of the case at the final hearing. The guardian *ad litem* neither testifies (by filing a report or otherwise) nor is subject to cross-examination.

Morgan v. Getter, 441 S.W.3d 94, 119 (Ky. 2014).

b. Should an FOC be allowed to observe the testimony of others prior to testifying?

KRE 615 **– Exclusion of Witnesses**

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses and it may make the order on his own motion. This rule does not authorize the exclusion of:

(1) A party who is a natural person;

(2) An officer or employee of a party which is not a natural person designated as its representative by its attorney; or

> (3) A person whose presence is shown by a party to be essential to the presentation of the party's cause.

3. Participant v. observer.

> The first is a distinction between, on the one hand, a child's representative appointed as an officer of the court to investigate the child's and the parents' situations, to file a report summarizing his or her findings, and to make recommendations as to the outcome of the proceeding – in Kentucky statutory terminology a sort of "friend of the court" (FOC); and on the other hand, a child's representative appointed to participate actively as legal counsel for the child, to make opening and closing statements, to call and to cross-examine witnesses, to make evidentiary objections and other motions, and to further the child's interest in expeditious, non-acrimonious proceedings – in our terminology a GAL.

Morgan v. Getter, 441 S.W.3d 94, 111 (Ky. 2014).

4. Confidentiality.

When serving as a GAL, an attorney maintains an attorney-client relationship with their minor child client, while *Morgan v. Getter* and *Greene v. Boyd* both make it clear that the FOC's file is open, and that their reports must include references to all material collected and all individuals interviewed. The FOC should give no expectation of confidentiality to those interviewed. *Morgan v. Getter*, 441 S.W.3d 94, 111, 113 (Ky. 2014) and *Greene v. Boyd*, 603 S.W.3d 231, 239-240 (Ky. 2020).

The GAL's duty to report, pursuant to KRS 620.030(1), does override the attorney-client privilege if there is a suspicion of dependency, neglect, and abuse, however.

5. Immunity.

FOCs are integral to the judicial process and have immunity for actions made in good faith. *See* *Briscoe v. LaHue*, 460 U.S. 325 (1983) and *Kurzawa v. Mueller*, 732 F.2d 1456 (6th Cir. 1984).

G. Role Confusion

1. Should an FOC be allowed to sit through a hearing and observe the testimony of others prior to testifying?

2. Should an FOC attend court appearances other than when required to testify if not ordered to do so or subpoenaed?

3. Should an FOC be relied on to weigh in on smaller decisions during their investigation, or between the filing of a report and their testimony, outside

of the ultimate decision they have been appointed to make recommendations related to?

4. When is the GAL's appointment over? When is an FOC's?

5. Do both GALs and FOCs have to sign off on agreed orders?

6. Do both GALs and FOCs have to be sent copies of pleadings?

7. Can an FOC file a motion?

8. Should both GALs and FOCs file motions for fees, or should an FOC simply submit an invoice?

> The problem is that, however referred to, the appointee is often expected to blur these roles – to investigate for the court and to litigate for the child. In this case, for example, the "GAL" was appointed expressly "to help the court decide the case," and in that role he examined records, interviewed the family members, and filed a report with concluding recommendations, a report that was introduced into evidence and was expressly considered by the trial court.

Morgan v. Getter, 441 S.W.3d 94, 111 (Ky. 2014).

H. **<u>You Can Always Have Both – and Sometimes that is Needed</u>**

> We agree that an attorney should not be asked to serve simultaneously as both a *de facto* FOC investigator on the court's behalf and a GAL attorney for the children involved. Expediency and informality may argue for such a hybrid approach, but…the hybrid approach compromises basic notions of due process and is not consistent with the provisions the General Assembly has made for investigation in child custody matters.

Morgan v. Getter, 441 S.W.3d 94, 111 (Ky. 2014).

> Under FCRPP 6(2)(e), the appointment of a GAL is not limited to those circumstances, however, and the rule does not preclude (although expense certainly might) the appointment of both a *de facto* FOC investigator and a GAL, the need for which may become apparent only after some initial investigation.

Morgan v. Getter, 441 S.W.3d 94, 111 (Ky. 2014).

I. Model Orders for GAL and FOC

A clear and concise order from the judge clarifies the roles, keeps costs down, minimizes questions, and assists counsel in explaining to third party providers who they are and what they need. *See attached, a sample order provided by the Woodford, Scott, and Bourbon Family Court.* A helpful order can clarify:

1. That you are allowed access to the child.

2. That you are allowed access to inspect and get copies of records.

3. That you will keep that information confidential, except that your file is open to the court, counsel, and the parties – and whether the court wants to put any safeguards in place for how access to your file will be requested.

4. What the court expects in terms of you having notice of proceedings and *your attendance*.

5. How the court will notify you if they want you to attend.

6. Cite to the appointing statute.

7. Inform counsel that if they want you to testify that they need to tell you (that won't be assumed).

8. Outline the scope of your appointment.

9. Set out terms of payment, *i.e.* retainer, division of expenses if already determined, etc.

10. It's lovely if it cites to the immunity cases, but not required.

III. PARENTING COORDINATORS: COURT DELEGATION OF POWER TO THIRD PARTIES

A. History of Parenting Coordination

Parenting coordination (PC) began gaining recognition in the 1990s as a result of presentations and trainings first offered at conferences such as the Association of Family and Conciliation Courts (AFCC) and by experienced parenting coordinators. Initially there were variations in role, source and degree of authority, and practice in different jurisdictions, and different titles were used to describe this innovative intervention model, including special masters, co-parenting facilitators, or mediator/arbitrators. In 2003, AFCC appointed an interdisciplinary task force to develop Guidelines for Parenting Coordination to guide mental health professionals, mediators, and lawyers with respect to training, practice, and ethics (AFCC, 2006).

Parenting coordination and the parenting coordinator were envisioned as a non-adversarial dispute resolution process in high conflict or highly litigated cases. The focus of the PC, as with the FOC and GAL, is and should be the children's best interest and should be designed to help parents make timely decisions to reduce the amount of damaging conflict between parents and diminish unnecessary re-litigation about child related issues.

Jefferson County Rule 705 sets forth the role and anticipated uses of the parenting coordinator. Specifically, the parenting coordinator is employed to facilitate

decision making and, when agreed to by the parties, make decisions, with the exception of custody or primary residence, on behalf of the families.

These decisions include:

1. Revising the parenting schedule or conditions of contact.

2. Recommend orders regarding exchange and/or transportation of the child (including time and place of exchange).

3. Change education, daycare, and/or extracurricular activities for the child.

4. Require drug screens, psychological or custody evaluations, and provide releases for results.

5. Recommend more specific orders to facilitate implementation of court orders.

6. Change the times for religious observances and training for the child.

7. Address other issues raised by the parties.

The parties may agree (by agreed order) to comply with the decisions of the PC (if contemplated by the agreed order) or if the parties have not agreed then the PC may make recommendations (not orders) to the court. The court will consider the recommendations and other evidence at a hearing when making the decisions.

Studies have shown that parenting coordination can work for family court. *See* Ergun, S., *Evaluating Parenting Coordination: Does It Really Work*, Institute for Court Management, ICM Fellows, Program, 2016. While not perfect, PC's do appear to be effective in reducing litigation, can deescalate situations but may not necessarily improve the coparenting relationship, and do satisfy the stated need of quick resolutions in difficult cases.

However, while the rules seem to imply that some of the PC's decisions could be binding on the parties without court approval, the recent case of *Warawa v. Warawa*, 587 S.W.3d 631, 636-637 (Ky. App. 2019), effectively stated that the parenting coordinator was limited in their role as the court cannot delegate the authority to resolve issues affecting the best interests of the children to the parenting coordinator.

In *Warawa*, as part of an agreed order, Mother and Father agreed they would use a parenting coordinator with a "limited role." "Issues of custody and parenting time, other than minor issues such as vacation dates, special occasions, etc. [were to] be addressed by the Court." Later, Mother filed a motion to compel Father to pay parenting coordinator, and Father objected, requesting a hearing on why a parenting coordinator was necessary. The family court ordered the parties to submit their outstanding issues to the parenting coordinator, without conducting a hearing. Father later filed several motions regarding custody and contempt for which he requested a hearing. The family court issued an order requiring all issues, including the contempt motion, be sent to the parenting coordinator. The parenting

coordinator submitted recommendations to the family court, to which Father filed objections and requested a hearing. The family court denied the request for a hearing and adopted the recommendations of the parenting coordinator as orders of the court.

Father argued, on appeal, that the family court improperly delegated its judicial authority to the parenting coordinator, and that he was denied due process when the family court would not hold a hearing on the recommendation of the parenting coordinator. The Court of Appeals held the family court improperly delegated its judicial authority to the parenting coordinator and denied Father due process. It reasoned that family courts have the authority to enlist the assistance of persons outside the judicial system, including parenting coordinators, through FCRPP 6(2). However, "a court may not delegate to a parenting coordinator the authority to resolve issues affecting the best interests of the children." A parenting coordinator should not be a final decision-maker and independent review should be conducted by the family court if a party so requests.

The conclusion supported by *Warawa* is that it is not an unlawful delegation of judicial power to permit parties to select a nonjudicial person to hear proof on child-related claims and make presumptively binding recommendations. Rather, it is an unlawful delegation of judicial power to deny parties the right to have a judge review and pass final judgment on such recommendations (*i.e.*, it is unlawful to give a parenting coordinator the final say).

B. Relevant Citations

> However, that agreement did not permit the parenting coordinator to be a final decision-maker without the family court conducting an independent review if requested by one of the parties. That is the overriding problem. The family court delegated its final decision-making authority to the parenting coordinator. While no doubt the family court was familiar with the parties and the case, as it should have been given the one-family one-judge approach of our family courts, that familiarity does not relieve the family court of making judicial decisions on an issue-by-issue basis."

Warawa v. Warawa, 587 S.W.3d 631, 636-637 (Ky. App. 2019).

> We agree with the Court's concise statement in *Silbowitz v. Silbowitz*, 88 A.D.3d 687, 687-88, 930 N.Y.S.2d 270, 271 (2011) [citations omitted]: "Although a court may properly appoint a parenting coordinator to mediate between parties and oversee the implementation of their court-ordered parenting plan[,] a court may not delegate to a parenting coordinator the authority to resolve issues affecting the best interests of the children.

Warawa v. Warawa, 587 S.W.3d 631, 636 (Ky. App. 2019).

> Because the parties can turn to the family court for a final decision, we held that participation in *counseling* with a parenting coordinator is not an improper delegation of the family court's judicial function.

> *Id.* "Rather, in a high conflict case . . . the parenting coordinator merely assists the court by ensuring that the court's mandates are being carried out in a manner that serves the best interests of the child."

Id. at 635

> Although the use of a parenting coordinator was not at issue, this Court's decision in *Maclean v. Middleton*, 419 S.W.3d 755 (Ky. App. 2014), including the well-written dissent in that case, is insightful. This Court addressed the use of a Master Commissioner in a Jefferson Family Court case and the delegation of judicial authority to decide the distribution of marital property.
>
> The majority addressed the dissent's view that the family court lacked the authority to appoint the Master Commissioner. While the majority agreed that there was no statutory or procedural authority for the process used, neither party raised the issue and both agreed to have the issues concerning marital property decided by the commissioner. *Id.* at 761.

Warawa v. Warawa, 587 S.W.3d 631, 635-636 (Ky. App. 2019).

C. Questions after *Warawa*

1. What does *Warawa* mean for the role of parenting coordinator?

2. Does *Warawa* effectively negate the role of the PC?

3. Is there a future role for the PC?

4. Is there a way for decisions to be made "temporarily" pending court review?

5. Even if the parties agree to abide by the "decisions" or "recommendations," isn't there a need for judicial review of these agreements?

COMMONWEALTH OF KENTUCKY
SCOTT CIRCUIT COURT
DIVISION III – FAMILY COURT
CASE NO. 21-CI-05555

JOHN DOE PETITIONER

v.

JANE DOE RESPONDENT

ORDER APPOINTING FRIEND OF THE COURT

Issued *sua sponte* by this Court, it is hereby ORDERED that the Hon. _____, a practicing attorney of this Court, is hereby appointed as Friend of the Court for the minor child subject to this action: ____(*child initials*) XX/XX/___ pursuant to *Morgan v. Getter*, 441 S.W.3d 94 (Ky. 2014), KRS 403.090, and subject to KRS 403.300. This appointment is limited to an investigation and written report regarding (*short description of reason for appointment*).

It is further ORDERED that the Friend of the Court shall:

1. Be allowed access to the child by the caretaker of the child whether caretakers are individuals, authorized agencies or health care providers;

2. Have, upon presentation of this Order to any agency, hospital, organization, school, individual or office, including but not limited to the Clerk of this Court, human services and/or child caring agencies, public or private institutions and/or facilities, medical and mental health professionals, law enforcement agencies and the Attorney General, the authority to inspect and receive copies of any records, notes and electronic recordings concerning the child that are relevant to the proceedings without the consent

of the child or individuals and authorized agencies who have control of the child unless consent of the child is required pursuant to KRS 403.300(2) if the child has reached the age of 16 unless there has been a finding by this Court that the child lacks the mental capacity to consent;

3. Hold all information received from any such source as confidential, and shall not disclose the same except to the Court, where allowed by the Court, to other parties in this matter, and where provided by law;

4. Be given notice of all hearing and proceedings including, but not limited to, administrative, family, civil, criminal, grand juries or appellate; and all conferences including, but not limited to, multi-disciplinary team meetings, individual educational program meetings or inter-agency cluster meetings involving the child(ren);

5. Be copied on all pleadings filed into the record and file and respond to pleadings in his or her discretion unless directed otherwise for good cause shown by the Court. The Friend of the Court shall not be required to appear at regular motion hour for new motions filed by the parties. If a party or the Court determines the presence of the Friend of the Court is necessary, notice to the Friend of the Court and request for appearance shall be made;

6. Conduct an investigation and prepare a report pursuant to KRS 403.300;

7. So long as the Friend of the Court has complied with KRS 403.300(3), his or her report may be received into evidence without additional testimony. If either party wishes to call the Friend of the Court for additional testimony or to cross examine him or her regarding the report, the party shall notify the Friend of the Court and opposing party in writing at least three days prior to the hearing;

8. The scope of this Friend of the Court appointment shall be limited to the investigation, report, and testimony (if requested) as set forth in KRS 403.300 relevant to the pending motions before the Court. Any ongoing matters shall require a new appointment unless otherwise agreed. The Friend of the Court shall have discretion to limit the information deemed necessary to complete his or her investigation and is not required to fill the role of mediator, parenting coordinator, child counselor, or referee;

9. Unless otherwise agreed by both parties and the appointed Friend of the Court, the parties shall pay $_____ as an advancement of F.O.C. fees within 10 days of the entry of this Order with the Petitioner paying 50% and the Respondent paying 50% of said fee. Final allocation of Friend of the Court fees shall be determined after final hearing on this matter. Failure to timely pay Friend of the Court fees may result in a delay of any final hearing or other appropriate sanctions until such time as payment arrangements have been made. The appointed Friend of the Court may be excused from further duties on any matter in which he or she has been appointed if fees for services are not being paid by the parties. Court hereby orders that the appointed FOC shall have leave to file motions in this matter regarding payment of fees or enforcement of this order;

10. Be hereby declared to be an "integral part of this judicial process," pursuant to *Briscoe v. LaHue*, 460 U.S. 325 (1983) and *Kurzawa v. Mueller*, 732 F.2d 1456 (6th Cir. 1984), and as such, shall be granted absolute immunity for any actions, made in good faith, in this matter.

Entered this the _____ day of _____, 2024.

_____
JUDGE, SCOTT CIRCUIT FAMILY COURT

CERTIFICATE OF SERVICE

The foregoing ORDER was served by first class mail, postage prepaid, to the following on this the _____ day of _____, 2024:

Hon. Santa Claus
123 Main Street
Christmastown, KY 11111
Counsel for Petitioner

Hon. John Doe
123 Main Street
Christmastown, KY 11111
Counsel for Respondent

Hon. Jane Doe
123 Main Street
Christmastown, KY 11111
Friend of the Court

_____, D.C.
SCOTT COUNTY CLERK

Finance Cabinet, 702 Capital Avenue Room 195 Capitol Annex Frankfort, KY 40601 https://finance.ky.gov/Pages/default.aspx		ORDER FOR GAL/CAC ATTORNEY FEES

GAL/CAC ATTORNEY INFORMATION

Law Firm/Attorney: Goldberg Simpson, LLC/Nicole S. Bearse

Address: 229 West Main Street, Frankfort, Kentucky 40601

Phone: 502-699-2355 Email: nbearse@goldbergsimpson.com

Commonwealth of Kentucky eMARS Vendor Number: KY0034075

(If law firm/attorney has not registered as a vendor with the Commonwealth of Kentucky, please visit eMARS311.ky.gov to register)

CASE INFORMATION

Case Numbers*:				

*CR 17.03(5) states, "Counsel fee awards shall not exceed the statutory maximum, regardless of the number of persons represented in a proceeding by the counsel." If more than four case numbers were included in the sibling group for this proceeding, please list the remaining numbers on a separate sheet and attach it to the order.

On _____ (date) the above-named Attorney/Law Firm was appointed as either a GAL or CAC in the following case name(s):

_____

in ☐District Court ☐Family/Circuit Court in _____ County.

If appointed as a CAC in a DNA/TPR case, list client's name and relationship of client to the child(ren): _____

I was appointed pursuant to the appropriate Kentucky Revised Statute (KRS) and in the role marked below. *(Check only one box.)*

KRS 620.100 DNA Cases	☐ GAL for child(ren) – GAL ☐ CAC for indigent parent – CACP ☐ CAC for indigent family non-parent exercising custodial control or supervision of the child(ren) – CACF ☐ CAC for indigent non-family exercising custodial control or supervision of the child(ren) – CACN
KRS 625.0405, .041 Voluntary TPR	☐ GAL for child(ren) if Cabinet for Health and Family Services (CHFS) receives custody of the child(ren) – GAL ☐ CAC for parent if TPR is not granted or if CHFS receives custody of the child(ren) – CACP
KRS 625.080 Involuntary TPR	☐ GAL for child(ren) if CHFS is the proposed custodian of the child(ren) – GAL ☐ CAC for indigent parent – CACP
KRS 202B.210 Commitment	☐ Private counsel appointed for individual alleged to have an intellectual disability – GAL
KRS 311.732(3)(c),(6) Minor Abortion	☐ GAL/CAC for minor on a petition seeking self-consent for an abortion – GAL
KRS 199.502(3)(b) Adoption	☐ CAC for biological parent who does not consent to the adoption and the petitioner is the child's blood relative or fictive kin in accordance with KRS 199.470(4)(a) – CACP
KRS 403.100 Dissolution/Custody	☐ GAL for respondent who is incarcerated for a conviction pursuant to KRS Chapter 507, 508, 509, or 510, where petitioner was the victim – GAL

1. Counsel certifies that he/she performed duties justifying the fees requested on this form.
2. Counsel certifies that he/she has not been paid the statutory maximum amount by the Commonwealth related to this appointment.
3. If the Commonwealth has not paid the maximum fee for this appointment, counsel certifies he/she has already been paid _____.
4. Counsel certifies that he/she has not been paid by the client or by anyone on his/her/their behalf.

It is hereby ordered that said Attorney/Law Firm be awarded a fee of _____

_____ (Date) _____ (Attorney's Signature)

_____ (Date) _____ (Judge's Signature)

_____ (Judge's Printed or Typed Name)

UNDERSTANDING JUDICIAL DISCRETION AND HOW TO EFFECTIVELY ARGUE YOUR CASE BEFORE THE BENCH

Steven J. Kriegshaber

Since nearly all family law hearings are not before a jury, the presiding judge has wide judicial discretion to rule on the credibility of testimony, sufficiency of evidence, effectiveness of procedures, and the findings of fact in every case. Judicial discretion has been defined as "a judge's power to make decisions based on their individual evaluations, guided by principles of law." (Cornell Law School Legal Information Institute.) In Kentucky, such decisions must be deemed equitable under the circumstances and not arbitrary. Discretion of the court is said to be a "liberty or privilege allowed to a judge, within the confines of right and justice, to decide and act in accordance with what is fair, equitable, and wholesome, as determined by the peculiar circumstances of the case, and as discerned by [the judge's] personal wisdom and experience…to be exercised in accordance with a wise, as distinguished from a mere arbitrary, use of power under the law…" *City of Louisville v. Allen*, 385 S.W.2d 179 (Ky. 1964).

The flip side of judicial discretion is the abuse of discretion. As held in *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001), "…a trial court's discretion is not unlimited. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." For example, the Court of Appeals found in *Penner v. Penner*, 411 S.W.3d 775 (Ky. App. 2013), that the divorce court abused its discretion in finding that the husband's restricted stock shares were both marital property and income to the husband for child support calculation purposes. Other defined limitations to judicial discretion are found in the Kentucky Code of Judicial Conduct, Rule SCR 4.300, Canon 2. That rule dictates, "[A] judge shall perform the duties of judicial office impartially, competently, and diligently," and goes into detail as to how a judge's conduct must conform with impartiality and fairness and must avoid prejudice and bias. In general, the appellate courts, barring a finding of arbitrary, unreasonable, unfair, or unsound legal principles, will uphold the discretionary power of the trial court. So then, what can we do as practitioners in family court to best represent our clients to assure the case will be resolved within the scope of reasonable judicial discretion?

It is within the trial judge's discretion to set a hearing date, continue a trial, determine the probative value of evidence, equitably divide marital property, decide what is in the best interest of children, allow or disallow exhibits, rule on conflicts of interest, adopt a proposed settlement agreement, and even find that a marriage is irretrievably broken in order to grant a decree of dissolution. Hopefully, by understanding the discretionary guidelines and how the trial judges apply these guidelines, practitioners can find more effective ways to present and argue their case before the bench. Our panel of distinguished retired family court judges will provide some insight into what is effective and not effective in determining how they fashion decisions. How does a trial judge determine the credibility of a witness? What weight do they give to certain expert witnesses? What arguments of counsel are persuasive and what arguments are likely to be dismissed? Our panel will offer a rare view into how judicial findings are formulated and how we as practitioners can make the most effective presentations to the court for our clients. Participants are encouraged to pose questions to the panel. Index cards will be available at the registration desk so that specific questions can be tendered in advance of the panel discussion. Be sure to take this opportunity to gain insight into the realm of judicial discretion.

Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

Effective: March 1, 2020

Rule 2.1. Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.

Comment

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. *See* Canon 3.

[2] Although not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Rule 2.2. Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

Comment

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] A judge does not violate this Rule by making reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard.

Rule 2.3. Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

Comment

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Rule 2.4. External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Comment

[1] An independent judiciary requires that judges decide cases according to the law* and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Rule 2.5. Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

Comment

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6. Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Comment

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality,* but also on the appearance of their objectivity and impartiality. Despite

a judge's best efforts, instances may occur when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. *See* Rule 2.11(A)(1).

Rule 2.7. Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*

Comment

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence,* integrity,* and impartiality* of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Rule 2.8. Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law* from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Rule 2.9. *Ex Parte* Communications

(A) A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending* matter, except as follows:

(1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the *ex parte* communication, and gives the parties an opportunity to respond.

(2) As a part of legal research, a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any *ex parte* communication when expressly authorized by law* to do so.

(B) If a judge inadvertently receives an unauthorized *ex parte* communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

Comment

[1] To the extent reasonably possible, all parties or their lawyers shall be included in all communications to or from a judge. *See* Rule 2.6(A); *see also Commonwealth v. Carman,* 455 S.W.3d 916, 923 (Ky. 2015) (holding that *ex parte* communications to modify conditions of release are improper); *Commonwealth v. Wilson,* 384 S.W.3d 113, 114 (Ky. 2012) (holding that Commonwealth is entitled to notice and opportunity to be heard on criminal defendant's motion to vacate or set aside arrest warrant).

[2] Whenever the presence of a party or notice to a party is required by this Rule, notice shall be given to the party's lawyer or, if the party is unrepresented, to the party.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider *ex parte* communications expressly authorized by law, such as when serving on specialty or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid *ex parte* discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

Rule 2.10. Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

Comment

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence,* integrity,* and impartiality of the judiciary. Paragraphs (A) and (B) make clear that the prohibition applying to judges and judicial candidates in Rule 4.1(A)(12) and (13) applies to sitting judges at all times, and the Commentary to Rule 4.1(A)(12) and (13) is applicable to this Rule as well.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

Rule 2.11. Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

> (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
>
> (b) acting as a lawyer in the proceeding;
>
> (c) a person who has more than a *de minimis** interest that could be substantially affected by the proceeding; or
>
> (d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.

(4) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

> (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
>
> (b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;
>
> (c) was a material witness concerning the matter; or
>
> (d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Comment

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions, the term “recusal” is used interchangeably with the term “disqualification.”

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] “Economic interest,” as set forth in the Terminology section, means ownership of more than a *de minimis* legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

Rule 2.12. Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13. Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Comment

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law,* nepotism is the appointment or hiring of any relative within the third degree of relationship* of either the judge or the judge's spouse or domestic partner,* or the spouse or domestic partner of such relative.

Rule 2.14. Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Comment

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include, but is not limited to, speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority,* agency, or body. *See* Rule 2.15.

Rule 2.15. Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

(E) A judge acting in good faith in the discharge of disciplinary responsibilities required or permitted by this Rule shall be immune from any action, civil or criminal.

Comment

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include, but are not limited to, communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

Rule 2.16. Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

Credits

Amended by Order 2018-17, eff. 10-29-18. Prior amendments eff. 3-22-18 (Order 2018-04); 2-18-13 (Order 2013-04), 12-15-10 (Order 2010-11), 2-16-06 (Order 2006-03), 9-15-05 (Order 2005-9), 1-1-05 (Order 2004-5), 2-1-00 (Order 99-1), 1-1-99 (Order 98-2), 11-1-95 (Order 95-1), 4-4-91, 1-1-87, 10-1-82, 7-1-81, 1-1-80, 7-1-79, 1-29-79, 6-1-78, 3-1-78, 2-22-78, 1-1-78; adopted eff. 1-1-78

Note: Former Rules of Appellate Procedure (RAP) were amended and redesignated as Rules of the Supreme Court (SCR) by Order of the Supreme Court effective January 1, 1978. Prior Rules of the Court of Appeals (RCA) had been redesignated as Rules of Appellate Procedure effective March 12, 1976.

Sup. Ct. Rules, Canon 2, KY ST S CT Canon 2

Current with amendments received through February 1, 2024. Some sections may be more current, *see* credits for details.

"Leaders must either invest a reasonable amount of time attending to fears and feelings, or squander an unreasonable amount of time trying to manage ineffective and unproductive behavior." – Brené Brown

TRUTH #1: You are only in control of you. As much as we may want to manage our client's emotions, it's not possible. Other's emotions come from their own thinking.

Managing the emotions of clients and ourselves requires us to first accept that we all experience emotions in very different ways from one another. The way one person experiences fear, anxiety, and loss are based solely on their experiences and how they process that experience. The same can be said for how we experience love, belonging, and joy. Our actions or behaviors are driven by the emotions we are experiencing at any given time. Our emotions come from our thoughts about things that are outside our control.

Circumstances

> *Things that are outside our control. These include other people, our past, and the weather. Facts can be proven in a court of law and there are circumstances that everyone would agree upon at any given time. As your clients describe a problem or situation to you, they will include very FEW circumstances, but they may not realize this. They may think they're just relaying the facts, but in reality they are their thoughts instead.*

Thoughts

> *As humans, we give meaning to our circumstances through our thoughts, which are the sentences that constantly run through our minds. Differentiating thoughts from circumstances is an important first step in helping you help your clients.*

Feelings

> *Feelings are the emotions or vibrations we experience in our bodies, and they are directly related to the thoughts we are thinking. Because we have over 40 thousand thoughts a day, we are not consciously aware of them all, but they are the reasons for every feeling we have.*

Actions

> *Actions refer to behavior, reaction, or inaction, and they are directly related to our feelings. Examples include yelling at someone when we are feeling anger, withdrawing from relationships when we are feeling unloved. Sometimes actions are subtle, such as a change in the tone of your voice. Or it might be inaction, such as avoiding certain people or situations.*

Results

> *Results are the effects of our actions. We may think our results are circumstances that have been handed to us and that are beyond our control. But the truth is, we are entirely*

responsible for our results because they come from our actions and are a result of our feelings, which come from our thoughts.

ANGER or SHUT DOWN

Anger and shut down are the "safe" emotions to show to others. Almost everyone recognizes them, can name them, and does not want to investigate them. But anger and shut down can come from many different emotions that are usually hidden beneath the water. Rarely do we dive down to see what is really going on. For instance, if my anger is coming from jealousy, that is very different than anger that comes from regret, grief, or frustration. Getting curious about what is driving the emotion can help us understand and therefore better manage our subsequent behaviors, especially in relation to our clients' emotions.

I. COMMUNICATION

A. Set expectations from the start – **CLEAR IS KIND**. (*See* SCR 3.130(2.1) Advisor.)

B. Check for understanding.

1. This is NOT asking “Any questions?” or “Do you understand?”

2. Define ambiguous language; *i.e.*, reasonable, prompt, consult, etc. (*See* SCR 3.130(1.4) Communication.)

C. Be consistent

1. If your actions are different than your words, you are going to have trouble!

2. Teach and Model what good communication is to you.

3. BIFF-Brief, Informative, Friendly, Firm.

D. Do not wait till the last minute – You will be the one to suffer! (*See* SCR 3.130(1.3) Diligence.)

E. Listen more than you talk.

II. TRUST

A. Trust is a two-way street, and you are the only one driving – **GIVE TRUST to GET TRUST**.

B. Trust consists of seven elements:

1. **Boundaries** – Making clear what is okay and what is not okay, and why.

2. **Reliability** – Do what you say you are going to do. Stay aware of your competencies and limitations so you do not overpromise, and you are able to deliver on commitments and balance competing priorities.

3. **Accountability** – Own your mistakes, apologize, and make amends.

4. **Vault** – Do not share information or experiences that are not yours to share.

5. **Integrity** – Choosing courage over comfort; choosing what’s right over what’s fun, fast or easy; and practicing your values, not just professing them.

6. **Nonjudgment** – Not judging yourself or others when asking for help. Asking for help is the number one trust building behavior at work.

7. **Generosity** – Extending the most generous interpretation to the intentions, words, and actions of others. People are probably not pissing you off on purpose…

III. CURIOSITY

A. Notice when you begin to see or feel heightened emotions coming up in yourself or others.

B. Remember emotions come from our THOUGHTS.

C. Dive under the water to see what may be showing up as anger or shut down.

IV. KENTUCKY SUPREME COURT RULES

A. SCR 3.130(1.3) Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment:

(1) A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. *See* Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

(2) A lawyer's workload must be controlled so that each matter can be handled competently.

(3) Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

(4) Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased

to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. *See* Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. *See* Rule 1.2.

HISTORY: Amended by Order 2009-05; eff. 7-15-09; adopted by Order 89-1, eff. 1-1-90.

B. SCR 3.130(1.4) Communication

(a) A lawyer shall:
(1) **promptly** inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) **reasonably consult** with the client about the means by which the client's objectives are to be accomplished;
(3) keep the client **reasonably informed** about the status of the matter;
(4) **promptly** comply with reasonable requests for information; and
(5**) consult** with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
(b) A lawyer shall explain a matter **to the extent reasonably necessary** to permit the client to make informed decisions regarding the representation. [emphasis added]

Comment:

(1) Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

(2) If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain io a criminal case must promptly inform the client of its substance unless the client has previously communicated to the lawyer that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* Rule 1.2(a).

…..

HISTORY: Amended by Order 2009-05, eff. 7-15-09; adopted by Order 89-1, eff. 1-1-90.

C. SCR 3.130(2.1) Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Comment:

Scope of Advice

(1) A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

(2) Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

(3) A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

(4) Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

….

HISTORY: Amended by Order 2009-05, eff. 7-15-09; adopted by Order 89-1, eff. 1-1-90.

I. INTRODUCTION

The rapid advancement of artificial intelligence (AI) has the potential to revolutionize the legal profession. As AI continues to evolve and become more sophisticated, it is crucial for attorneys to understand how this technology can be leveraged to improve efficiency, accuracy, and ultimately, the quality of legal services provided to clients.

In recent years, one AI tool that has garnered significant attention is ChatGPT, a powerful large language model (LLM) developed by OpenAI. ChatGPT has demonstrated remarkable capabilities in natural language processing, enabling it to understand and generate human-like text based on input prompts through a simple chatbox. This technology has far-reaching implications for the legal field which inherently involves the ability to analyze, interpret, and generate legal documents.

As the legal landscape becomes increasingly complex and competitive, attorneys who embrace and effectively integrate AI tools like ChatGPT into their practice will likely gain a significant advantage over those who resist adoption. However, the use of AI in the legal profession also raises important ethical considerations, particularly concerning the accuracy, reliability, and security of the information generated by these tools.

This CLE article aims to provide attorneys with a deep understanding of ChatGPT and its potential applications in legal practice. The article will begin by explaining what ChatGPT is, its underlying technology, and how it differs from other AI tools. It will then guide readers through the process of signing up for ChatGPT and highlight the differences between the available models, such as GPT-3.5 and GPT-4.

The ethical implications of using ChatGPT in legal practice will be thoroughly examined, addressing concerns such as the accuracy and reliability of the generated content, the importance of verifying the AI's outputs, and the security of client data. The article will also delve into practical use cases for ChatGPT, showcasing how attorneys can leverage this technology to draft correspondence, summarize discovery, and generate comprehensive discovery requests based on novel case facts.

Looking ahead, the article will explore advanced AI tools, such as Claude AI, and discuss their potential impact on the future of legal practice. The changing landscape of legal research will also be addressed, with a focus on the rise of AI-powered search engines and the integration of AI into established legal research platforms like Lexis and Westlaw.

By the conclusion of this article, readers will have gained a comprehensive understanding of ChatGPT and its ethical application in the legal field. They will be equipped with the knowledge and tools necessary to incorporate this technology into their practice, enabling them to work more efficiently, provide higher-quality services to their clients, and remain competitive in an increasingly AI-driven legal landscape.

II. WHAT IS CHATGPT?

ChatGPT is a state-of-the-art large language model developed by OpenAI, a leading artificial intelligence research laboratory. At its core, ChatGPT is a sophisticated text prediction algorithm, capable of generating human-like text based on input prompts. To understand the power of ChatGPT, it is helpful to draw a comparison to the everyday text prediction feature found on smartphones.

When typing on a smartphone, the device suggests words based on the context of the message and the user's typing history. ChatGPT operates on a similar principle but on a vastly more advanced scale. While smartphone text prediction might suggest the next few words, ChatGPT can generate entire paragraphs, essays, or even documents based on the input it receives.

The technical foundation of ChatGPT lies in its training process, which consists of two primary phases: the learning phase and the teaching phase. During the learning phase, ChatGPT is exposed to a vast corpus of trusted data sources, such as books, articles, and websites with various levels of authority. The generative AI company processes this information using powerful computing resources, such as GPU clusters, to build a comprehensive understanding of language and the association of words – an association commonly described as “weights.”

Once the learning phase is complete, ChatGPT enters the teaching phase, where it can be fine-tuned and guided by human beings. This phase allows users to “align” the AI with human values, safety concerns, and basic formatting of outputs.

It is important to note that ChatGPT's knowledge base has certain limitations. As of writing, the AI's knowledge extends up to April 2023, meaning that it may not have information on events or developments that have occurred since then. However, the developers of ChatGPT are continuously working on updating the model's knowledge base to ensure its relevance and accuracy.

Understanding the capabilities and limitations of ChatGPT is crucial for attorneys who wish to incorporate this technology into their practice. By leveraging the AI's ability to process and generate text based on vast amounts of data, lawyers can streamline their workflows, improve the quality of their work, and provide more efficient services to their clients. In the following sections, we will explore the process of signing up for ChatGPT and delve into the ethical considerations surrounding its use in the legal profession.

III. HOW TO SIGN UP FOR CHATGPT

Signing up for ChatGPT is a straightforward process that can be completed in just a few steps. To begin, users should navigate to the official ChatGPT website (chat.openai.com) and click on the "Sign Up" button. The website offers several options for creating an account, including using an existing Google or Microsoft account or signing up with an email address.

Once the account is created, users can choose between two primary models: GPT-3.5 and GPT-4. The GPT-3.5 model is the base version of ChatGPT and is available for free. This model has demonstrated impressive capabilities in understanding context and

generating coherent responses. However, for attorneys seeking the most advanced AI assistance, the GPT-4 model is substantially more knowledgeable and intelligent.

GPT-4 represents a significant leap forward in AI language processing. Compared to its predecessor, GPT-4 has a vastly improved ability to understand context, nuance, and complex instructions. This enhanced understanding allows GPT-4 to generate more accurate and relevant responses, which is particularly valuable in the legal realm, where precision and clarity are paramount.

Another key advantage of GPT-4 is its reduced propensity for "hallucinations." In the context of AI, hallucinations refer to instances where the model generates content that is not based on factual information. GPT-4's advanced training and fine-tuning have significantly minimized the occurrence of hallucinations, ensuring that the generated content is more reliable and trustworthy. As of writing, accessing GPT-4 requires a paid subscription, which is priced at $20 per month.

As the legal industry continues to adopt AI technologies like ChatGPT, staying informed about the latest developments and models will be essential for attorneys looking to stay ahead of the curve. By understanding the differences between GPT-3.5, GPT-4, and what is yet to come, lawyers can harness the power of AI to enhance their practice and provide better service to their clients.

IV. IS CHATGPT ETHICAL FOR LEGAL USE?

The use of ChatGPT in the legal profession raises important ethical considerations that must be carefully examined. One of the primary concerns surrounding the use of AI in legal practice is the accuracy and reliability of the generated content. In a field where even minor inaccuracies can have significant consequences, it is crucial for attorneys to ensure that the information they rely on is trustworthy.

A cautionary tale illustrating the importance of verifying ChatGPT's outputs involves a now-infamous lawyer who was sanctioned for submitting raw ChatGPT-generated content to a New York court. The AI-generated material contained inaccurate information and fabricated case citations, leading to disciplinary action against the attorney. This incident highlights the need for lawyers to exercise due diligence when using AI tools like ChatGPT.

It's important to note that the offending attorney used an early version of ChatGPT’s 3.5 model which was more prone to hallucination. Attempting to replicate the hallucination of case law he experienced is very difficult today.

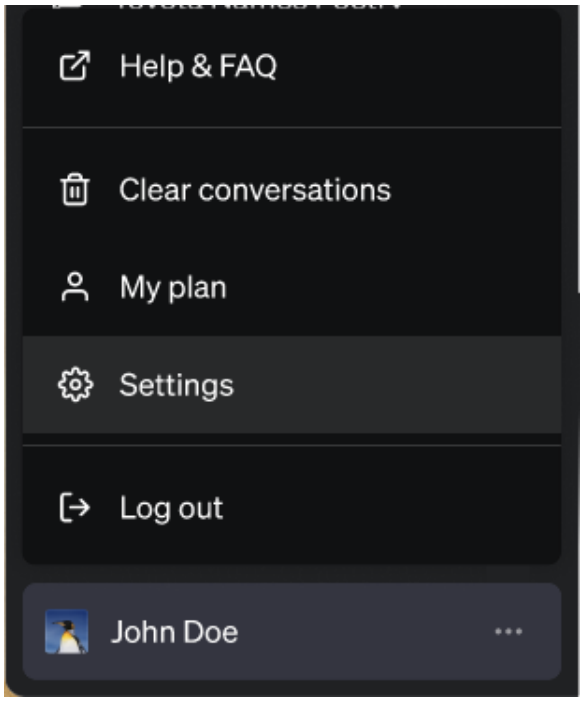
Attorneys have a professional and ethical obligation to verify the accuracy of any information they present to a court or use in their practice. This duty is enshrined in Rule 3.3 of the Model Rules of Professional Conduct (adopted in Texas), which states that lawyers shall not knowingly make false statements of fact or law to a tribunal. The comments to Rule 3.3 further emphasize that attorneys are responsible for the accuracy of pleadings and other documents prepared for litigation.

To uphold these ethical standards, attorneys must treat ChatGPT-generated content as they would any other source of information. This means thoroughly reviewing the AI's outputs, cross-referencing the information with reliable legal databases, and ensuring that any citations or legal arguments are accurate and up to date.

Another critical ethical consideration when using ChatGPT is the security of client data. Attorneys have a duty to protect their clients' confidential information and must take steps to ensure that the use of AI tools does not compromise this obligation. Fortunately, ChatGPT has made clear commitments regarding the privacy and security of user data.

On a purely technical level, user inputs cannot be used as learning data for the AI model. If they could, the 100 million+ users of ChatGPT could easily manipulate and exploit the model with their own malicious prompts. Incentives are aligned such that the information attorneys enter into ChatGPT will not be incorporated into the model's knowledge base or shared with other users. However, it is important to note that user inputs may be used as teaching data to help refine the AI's formatting and manners.

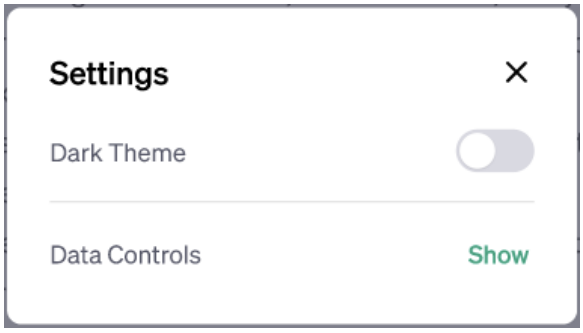
For attorneys who wish to maintain complete control over their data, ChatGPT offers what the authors of this paper refer to as an "ethics switch."[1] This feature, accessible through ChatGPT's settings pane, allows users to prevent their inputs from being used for any training purposes. By enabling this option, lawyers can ensure that their interactions with ChatGPT remain entirely private and secure.[2]



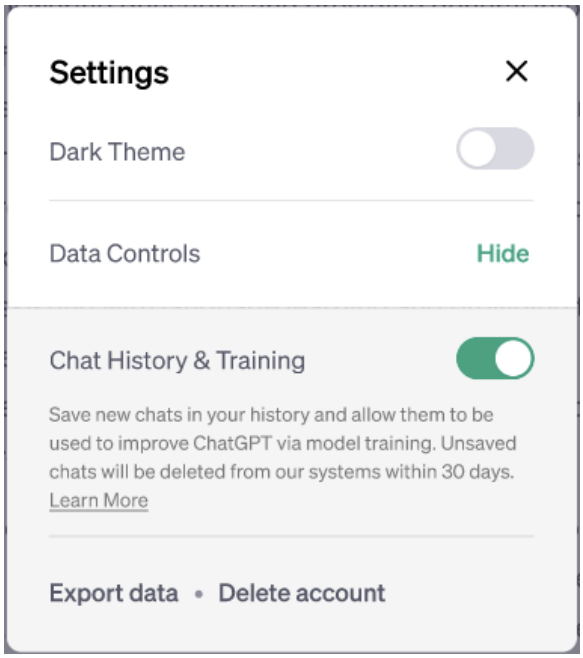
Click on "Settings" to open the popup settings modal where you will see "Data Controls" → click "Show":

[1] You can also permanently opt out of training for all data by selecting "do not train on my content" at OpenAI's privacy portal: https://privacy.openai.com/.

[2] *See* https://help.openai.com/en/articles/7730893-data-controls-faq.



A menu will appear where you can toggle the setting "Chat History & Training"; as you can see below the setting is enabled.



Ultimately, the ethical use of ChatGPT in the practice of law requires a combination of professional judgment, due diligence, and a commitment to upholding the highest standards of accuracy and client confidentiality. By understanding the potential risks and taking appropriate precautions, attorneys can harness the power of AI to improve their practice while maintaining the trust and confidence of their client's data and attorney work product.

V. USE CASES FOR CHATGPT IN LEGAL PRACTICE

ChatGPT offers numerous applications in legal practice that can help attorneys work more efficiently, effectively, and accurately. From drafting correspondence to summarizing discovery and generating comprehensive discovery requests, ChatGPT has the potential to streamline many aspects of an attorney's daily work.

A. Drafting Correspondence

One of the most valuable use cases for ChatGPT is in drafting correspondence. Attorneys often need to communicate with clients, colleagues, and other parties in a clear, professional, and timely manner. ChatGPT can assist in this process by quickly generating well-written, easy-to-understand drafts based on simple prompts.

For example, suppose an attorney needs to provide a client with an update on a case but lacks the time to craft a polished letter from scratch. By providing ChatGPT with a brief summary of the key points and the desired tone, the AI can generate a professional and clear draft in a matter of seconds. The attorney can then review and refine the draft as needed, saving significant time and effort.

B. Summarizing Discovery

Another area where ChatGPT can provide significant value is in summarizing discovery. Cases often involve vast amounts of information, including documents, interrogatories, and depositions. Sifting through this material can be a time-consuming and tedious process, but ChatGPT can help streamline the task.

By inputting lengthy discovery documents into ChatGPT, attorneys can quickly generate concise summaries that capture the most relevant information. The AI can also be prompted to identify potential objections or issues that may require further attention. This not only saves time but also helps ensure that important details are not overlooked in the process of reviewing discovery.

C. Drafting Discovery

In addition to summarizing discovery, ChatGPT can also assist attorneys in drafting comprehensive discovery requests tailored to the specific needs of a case. This is particularly valuable when dealing with novel or complex fact patterns that may require a more nuanced approach to discovery.

For example, in a divorce case involving a spouse who has invested significant funds in a niche hobby, ChatGPT can help generate targeted interrogatories and document requests that address the unique issues at play. By providing the AI with a brief summary of the case facts and the areas of inquiry, attorneys can quickly generate a set of custom comprehensive discovery requests that cover all relevant angles. Once you are done with the discovery, ask ChatGPT to define key terms to include in your definitions.

While ChatGPT allows a user to communicate using plain language, to maximize the effectiveness of ChatGPT in these use cases, attorneys should follow best practices for prompting the AI.

1. Giving the AI a role (“You are a brilliant Texas attorney”).

2. Giving the AI a task (“Your task is to draft an update to the client”).

3. Set parameters ("the client update should be written at a high school reading level").

As attorneys become more familiar with ChatGPT and its capabilities, they will likely discover additional use cases that can benefit their practice. By staying informed about the latest developments in AI and experimenting with new applications, lawyers can position themselves at the forefront of this rapidly evolving field and deliver exceptional value to their clients.

VI. ADVANCED AI TOOLS AND THE FUTURE OF LEGAL PRACTICE

While ChatGPT has garnered significant attention in the legal community, it is just one example of the many advanced AI tools that are poised to shape the future of legal practice. As technology continues to evolve, attorneys must stay informed about emerging AI solutions and their potential applications in the field.

A. Claude AI Model

One notable example of an advanced AI tool is the Claude AI model, developed by Anthropic. Claude AI boasts several key advantages over ChatGPT, making it an attractive option for attorneys seeking to leverage the power of AI in their practice.

One of the most significant benefits of Claude AI is its expansive context window. While ChatGPT is limited to processing around 6,000 words at the time of writing,[3] Claude AI can handle up to 150,000 words – the equivalent of two full-length novels. This increased capacity allows attorneys to input and analyze larger volumes of text, such as lengthy legal documents or multiple case files.

Another advantage of Claude AI is its ability to process PDFs and Word documents directly while being "contextually aware" of their entire contents. This feature streamlines the workflow for attorneys, eliminating the need to convert documents into plain text before inputting them into the AI. Claude AI's knowledge base is also more up to date, with information extending through August 2023, compared to ChatGPT's knowledge cutoff of April 2023 at the time of writing.

B. Using AI for Deposition Summaries and CLE Materials

Advanced AI tools like Claude AI and ChatGPT can also be leveraged to streamline the process of summarizing depositions and analyzing CLE materials. By inputting deposition transcripts or CLE course content into these AI models, attorneys can quickly generate concise summaries and extract key insights.

For example, an attorney preparing for trial could use Claude AI to summarize a lengthy deposition, highlighting the most relevant testimony and identifying potential areas for further questioning. Similarly, an attorney seeking to stay current on the latest legal developments could use ChatGPT to analyze a CLE

[3] ChatGPT can currently handle inputs of extremely lengthy PDFs and Word documents but will only pull out the most relevant "chunks" in its analysis. In other words, ChatGPT is only "contextually aware" of around ~6,000 words in the consumer Plus model at the time of writing.

presentation transcript or article, generating a summary of the key points, and actionable takeaways.

C. The Decline of Google and the Rise of AI-Powered Search Engines

As AI continues to advance, traditional search engines like Google may face significant challenges. AI-powered search engines, such as Perplexity AI and Parallel Search by Casetext, offer attorneys more targeted and efficient ways to find relevant legal information.

Perplexity AI, for instance, uses advanced natural language processing to understand the context and intent behind a user's search query. Instead of simply returning a list of web pages, Perplexity AI generates a concise, coherent summary of the most relevant web pages. This approach saves attorneys time and effort, allowing them to quickly find the information they need without sifting through numerous search results.

Parallel Search by Casetext takes a similar approach, leveraging AI to help attorneys find relevant case law and legal authorities. By understanding the context and meaning behind a search query, Parallel Search can surface the most pertinent cases and highlight key passages, even if the exact search terms are not present in the text.

D. AI-Powered Legal Research Tools

Established legal research platforms like Lexis and Westlaw are also integrating AI technologies into their offerings. Lexis AI Research and Westlaw AI Research use advanced natural language processing and machine learning to provide attorneys with more targeted, efficient, and insightful legal research capabilities.

These AI-powered tools can analyze vast amounts of legal data, identifying relevant cases, statutes, and secondary sources based on the specific issues and arguments at hand. They can also generate summaries and highlight key points of law, helping attorneys quickly grasp the essential elements of a case or legal concept.

As AI continues to evolve and mature, it is likely that these advanced tools will become increasingly integral to legal practice. Attorneys who stay informed about the latest developments in AI and actively seek out opportunities to integrate these technologies into their workflows will be well-positioned to thrive in the future of the legal profession.

VII. THE FUTURE OF AI

As our legal landscape continues to evolve, it is clear that AI will play an increasingly significant role in shaping the future of the profession. From streamlining daily tasks to providing powerful insights and analysis, tools like ChatGPT and Claude AI have the potential to revolutionize the way attorneys work and serve their clients.

A. The Importance of Law Students and New Attorneys Embracing AI

For law students and new attorneys entering the field, embracing AI is not just an option – it is a necessity. As AI technologies become more prevalent and sophisticated, the ability to effectively leverage these tools will become a key differentiator in the legal job market.

Law schools and legal educators have a responsibility to incorporate AI training into their curricula, ensuring that the next generation of lawyers is prepared to thrive in an AI-driven legal landscape. This includes not only teaching students how to use AI tools but also imparting the critical thinking and problem-solving skills necessary to apply these technologies ethically and effectively. Some law schools have emphasized this commitment by allowing students to submit AI generated application essays.

B. AI as a Tool to Enhance, Not Replace, Lawyers

Despite the many benefits of AI, it is important to recognize that these technologies are not a replacement for human lawyers. Rather, AI should be viewed as a tool to enhance and augment the capabilities of legal professionals.

At its core, legal practice is about applying judgment, creativity, and empathy to complex human problems. While AI can assist in tasks such as research, analysis, and document drafting, it cannot replace the unique perspective and insight that human attorneys bring to their work. The most successful lawyers of the future will be those who can effectively leverage AI to improve their efficiency and accuracy while still maintaining the human touch that is so essential to building strong client relationships and achieving optimal outcomes.

C. The Potential Competitive Advantage of Lawyers Who Effectively Use AI

As AI adoption becomes more widespread, attorneys who are able to effectively integrate these technologies into their practice will gain a significant competitive advantage.

By using AI to automate routine tasks, generate insights, and improve the quality of their work product, these lawyers will be able to provide more value to their clients in less time. This increased efficiency can translate into lower costs, faster turnaround times, and ultimately, higher client satisfaction.

Moreover, as clients become more aware of the benefits of AI-powered legal services, they may begin to actively seek out firms and attorneys who are at the forefront of this technological revolution. Lawyers who can demonstrate a deep understanding of AI and its applications in the legal field will be well-positioned to attract and retain these discerning clients.

The future of law belongs to those who are willing to embrace change, adapt to new technologies, and leverage the power of AI to deliver exceptional value to their clients. As we move forward into this exciting new era of legal practice, it is up to each individual attorney to seize the opportunities presented by AI and to use these

tools in a way that upholds the highest standards of ethics, professionalism, and client service.

VIII. PRACTICAL PROMPTS (CHATGPT REAL LIFE EXAMPLES)

A. Proposed Orders

Scenario #1: Drafting/Updating Proposed Order with Ruling from Court

Facts: You've argued your motion, and the court has issued complex alterations that you need to incorporate into a new proposed order.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your ultimate task is to adjust a draft proposed order to follow with the following rulings from the court [Insert Rulings]. Here is the order that you will be updating [Insert Proposed Order]."

B. Drafting DCO

Scenario #2: Inserting Proper Dates Into Proposed DCO

Facts: You have a trial date and need to quickly draft a Discovery Control Order that has dates reasonably spaced apart that do not fall on a weekend or holiday.

ChatGPT Prompt:

> "You are a brilliant Texas attorney and calendar expert. Your task is to adapt an old DCO to a new case with completely new deadlines. Note, it is imperative that the dates do not fall on any weekends or holidays. All dates flow from the trial date which is [INSERT TRIAL DATE]. All other dates should be reasonably spaced apart based on the deadline involved in relation to other deadlines. Here is the example DCO to adopt to the dates of this case described above: [Insert Old DCO]."

C. Drafting Correspondence

Scenario #3: Make Okay Letters Great

Facts: You need to quickly get a letter out to a client providing a case update but don't want to waste time and focus on ensuring eloquence so you can instead focus on content.

ChatGPT Prompt:

> "You are an eloquent writer with great communication skills. Your task is to convey the following: [Insert a rough draft or simple points of what the message should say]."

Scenario #4: Convey Empathy

Facts: You've received a tough ruling in an emotional case and want to convey the results in an empathetic way.

ChatGPT Prompt:

> "You are a brilliant Attorney. Your task is to convey the following to a client in a manner that is empathetic and easy to understand: [Insert a rough draft or simple points of what the message should say]."

Scenario #5: Make a Mean Letter Nice

Facts: you have had it with opposing counsel and draft a message letting them know how you really feel. Before you hit send your judgment gets the better of you. You want to convey the contents of the message but cannot find the words to do so nicely.

ChatGPT Prompt:

> "You are a kind and empathetic attorney dealing with an opposing counsel who is arrogant and rude. Your task is to convey the following letter in a nice and professional manner: [Insert the message you REALLY want to send]."

D. Review Drafts for Consistency of Word Choice and Pronouns

Scenario #6: Ensuring Consistent Use of Gendered Terms in a Document

Facts: You've drafted a document, but you're unsure if all the gendered terms used are consistent and correctly applied.

ChatGPT Prompt:

> "You are a meticulous Texas attorney. Your task is to review the following document for consistency in the use of gendered terms. For reference [Insert gender info]. Here is the document you are reviewing: [Insert Document]."

E. Mediation

Scenario #7: Multiple Representation of 50/50 Asset Division

Facts: You have a list of assets included in a divorce estate. You need to provide several statistical options for a fair 50/50 division of these assets.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to analyze the list of assets in a divorcing couple's estate and generate several possible avenues for dividing property in a 50/50 allocation. Here is a copy of the community assets: [Paste table of assets]."

Scenario #8: Explaining the Benefits of Mediation in Divorce Cases

Facts: Your client is contemplating whether to settle their divorce case through mediation. They need to understand the benefits of this process in Texas.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to offer a straightforward but thorough explanation of why a client should consider settling their divorce case in Texas through mediation, emphasizing the benefits, cost-effectiveness, and potential outcomes of this process given the facts of their case. Here are some basic facts to use in drafting the output: [Insert case facts]."

F. Thank You Letters

Scenario #9: Drafting a letter to accompany a new client contract.

Facts: A client has agreed to retain you and pay your retainer of $10,000 and has asked for a contract. Write her a nice letter thanking her for hiring you and transmit the contract.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to draft a thank you letter to [Client] thanking them for hiring you. The letter should note the agreed to retainer of [retainer amount] and reference the attached contract."

Scenario #10: Drafting a Thank You Letter to a Referral Source

Facts: Charles Hardy referred a difficult divorce case of John Smith to your law firm. You appreciate this referral and want to express your gratitude.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to draft a thank you letter to [Charles Hardy] expressing gratitude for his referral of the [John Smith] divorce case. Be sure to mention that the case is challenging, but you appreciate his trust in your capabilities to handle it."

Scenario #11: Drafting a Thank You Letter to a Potential Client

Facts: John Doe, a potential client, recently stopped by your office to interview you about their case. You appreciate his time and want to express your willingness to assist him further.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to draft a thank you letter to [John Doe] expressing appreciation for taking the time to visit your office and interview you about their case. Offer to be available by phone should he have any additional questions."

G. Risk Assessment

Scenario #12: Risk Assessment for Hunting on a Private Ranch in Texas

Facts: Your client is considering offering hunting for pay on their private ranch in Texas. You want a primer that inspires understanding of broad risks involved in a landowner's liability.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to provide an overview of the legal risks associated with allowing hunting for pay on a private ranch in Texas. Discuss potential liabilities, relevant regulations, insurance considerations, and any other pertinent risks."

Scenario #13: Risk Assessment for Drafting Prenuptial Agreements for Other Lawyers

Facts: You have been approached to draft a prenuptial agreement for a fellow lawyer. You want to understand the specific legal risks associated with this proposal.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to outline the potential legal risks associated with drafting prenuptial agreements for other lawyers. Discuss issues like conflict of interest, professional liability, informed consent, and other potential pitfalls."

H. Marketing

Scenario #14: Creating Attorney Bios for Law Firm's Website

Facts: Your law firm's website needs updated attorney bios to inform potential clients about the professional experience and qualifications of your legal team and members of your staff.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to create engaging and professional attorney bios for your law firm's website based on the following information that I will provide. Ensure to highlight each attorney's unique skills, experiences, and contributions to the firm. Here is the attorney info: [Insert old bio/raw attorney info]."

Scenario #15: Creating Informative Client Articles for Law Firm's Website

Facts: Your law firm wants to provide valuable content to its clients by posting informative articles on the firm's website.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to create an informative article on the following legal topic for your firm's website. The content should be easily understood by clients, offering insights that can help them navigate their legal issues. Here is the information to use in crafting the article: [Insert relevant information]."

Scenario #16: Creating Social Media Content for your Law Firm

Facts: Your law firm wants to expand its digital presence and engage more effectively with its online audience. You have been asked to create content for the firm's social media platforms.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to create engaging and informative social media content for your law firm. This can include updates about the firm, legal advice, past case victories, or other relevant information that can attract and engage the firm's online audience. Your output should space out the posts in [insert time increments (one week)] over the next three months. The posts should highlight the following [Insert relevant firm information, case information, holidays you want to include, etc.]."

Scenario #17: Creating a Christmas Card/Mailer

Facts: The holiday season is approaching, and your law firm wants to send out Christmas cards/mailers to its clients, expressing appreciation and offering well wishes.

ChatGPT Prompt:

> "You are a brilliant Texas attorney. Your task is to create content for a warm and professional Christmas card/mailer for your law firm. The message should convey your firm's appreciation for its clients, extend best wishes for the holiday season, and strengthen the client-lawyer relationship."

I. Present Value Calculations

Scenario #18: Determining the Present Value of a Pension Plan

***Very important to verify all financial calculations.**

Facts: Spouse A is considering giving up rights in Spouse B's pension plan. Spouse B's plan is expected to pay out $1,500 per month, starting in 15 years, for a period of 20 years. We need to determine the present value of this pension plan at a 5 percent discount rate to make an informed decision.

*Note: must verify number outputs. Mathematical equations are dependent on an advanced model like GPT-4. ChatGPT's free model is likely to make up results.

ChatGPT Prompt:

"You are a brilliant Texas attorney. Your task is to calculate the present value of a series of payments that are $1,500 per month, starting in 15 years, and lasting for 20 years, assuming a 5 percent annual discount rate."

Scenario #19: Calculating Child Support Value for Life Insurance Purposes

***Very important to verify all financial calculations.**

Facts: Spouse C is required to pay child support of $2,500 per month for a period of 18 years. We need to determine the present value of this obligation at a 5 percent discount rate to make an informed decision about life insurance coverage.

ChatGPT Prompt:

"You are a brilliant Texas attorney. Your task is to calculate the present value of a series of payments that are $2,500 per month, lasting for 18 years, assuming a 5 percent annual discount rate."

IX. CONCLUSION

In the end, AI tools like ChatGPT are set to change the legal world in a big way. While these tools can't replace the unique skills and judgment of human lawyers, they can help us work smarter and faster. By using AI responsibly to assist with research, writing, and analysis, lawyers can provide even better service to their clients. However, as we dive into this exciting new technology, it's important that we keep our ethical duties and professional values front and center. As the legal pros steering this ship, it's on us to make sure AI in the practice of law is used fairly and openly. By staying on top of these tools and adapting our practices, we can lead the charge into a new age of law – one where the awesomeness of human smarts and the power of AI work together to achieve amazing things!

X. LEGAL AI – TECH GUIDE

A. ChatGPT Plus

1. Great for general tasks and tasks requiring the most intelligent model. Remember to use “GPT-4” available to Plus subscribers.

2. Link: https://chat.openai.com/auth/login.

B. Claude AI

1. Great for tasks requiring lengthy summarization such as full-length depositions and case law. Plus model provides increased privacy and a context window of approximately 150,000 words.

2. Link: https://claude.ai/login?returnTo=%2F.

C. Perplexity

1. A fast search engine that allows for quick detailed results with inline citations.

2. Link: https://www.perplexity.ai/.

D. AssemblyAI

1. Amazing speech to text technology that enables the fast transcription of lengthy raw audio with multi-speaker support and sentiment analysis.

2. Link: https://www.assemblyai.com/playground.

E. Parallel Search

1. Free legal research tool that enables a user to “find a case that says…”

2. Link: https://parallelsearch.casetext.com/.

F. Lexis+ AI™

1. Available on the homepage of supported plans, this service uses Retrieval Augmented Generation (vector-based solution) to verify the accuracy of case law outputs and legal research.

2. Learn more: https://www.lexisnexis.com/en-us/products/lexis-plus-ai.page.

G. Westlaw Precision AI-Assisted Research

1. Available on the homepage of supported plans, this service uses Retrieval Augmented Generation (vector-based solution) to verify the accuracy of case law outputs and legal research.

2. Learn more: https://legal.thomsonreuters.com/en/c/westlaw/westlaw-precision-generative-ai.

I. SUPREME COURT

A. *Mahl v. Mahl*, 671 S.W.3d 140 (Ky. 2023)

In original divorce action, trial court awarded maintenance to wife of "$6,000 per month until husband reaches the age of sixty-five years in 2017 or upon her death, remarriage, or cohabitation." In December 2016, wife (now ex) filed a motion to both extend the duration and increase the amount of the original maintenance award citing changed circumstances which rendered the original award unconscionable. Trial court sustained the motion and increased the award to $8,688 per month until her remarriage, cohabitation, or death or until she collects the $800,000 property judgment as originally awarded to her in the original divorce decree. The trial court additionally ordered ex-husband to pay $45,619.60 in ex-wife's attorney's fees and specified the award was payable to the ex-wife's attorney who could enforce the judgment in his own name.

The ex-husband appealed both the maintenance award and the award of attorney's fees but failed to name the ex-wife's attorney as a party to the appeal.

Holding 1: Modification of monthly maintenance from $6,000 to $8,688 paid to former wife was warranted by wife's loss of $800,000 in funds awarded to her in dissolution decree after a friend invested the money in a Ponzi scheme and by former husband's establishment of a new medical practice despite his disability at time of dissolution; wife did not receive the considerable sum of money awarded to her in the original dissolution decree ending the 28-year marriage, did not receive any interest she could have earned on those sums, and was disabled and unable to return to work; husband was not expected to earn money above his disability payments at time of dissolution but had returned to medical practice and opened a successful clinic at time of modification, and these changes in circumstances rendered the original award manifestly unfair.

The parties' circumstances at the time of the decree and creation of the maintenance obligation are the status quo against which the changed circumstances requirement is to be measured for modification of maintenance.

Holding 2: Former husband's failure to name former wife's attorney as a party in the notice of appeal was not a fatal defect; husband timely filed the notice of appeal and included an argument about the validity of the attorney's fee award, and ex-wife's attorney was listed in the distribution list and thus had adequate notice of the appeal.

Failure to name an indispensable party is no longer automatically fatal to an appeal, and strict compliance with the rule for naming an indispensable party is no longer required.

B. *Aldava v. Johnson*, 2024 WL 1145869 (Ky. Mar. 14, 2024). *This opinion is not yet final.*

Under the UCCJEA a "temporary absence" from the home state is assessed using an objective standard, with the central inquiry focused on simply where the child was living in the six months preceding the child custody proceeding. If in the previous six months the child has lived in a single state, then that state is the home state. If the child did not reside in a single state in the preceding six months, then the child lacks a home state and some other basis for jurisdiction must be found.

II. COURT OF APPEALS

A. *Bankston v. Mattingly*, 661 S.W.3d 755 (Ky. App. 2023)

Parties shared joint custody of their child with equal timesharing. Father had a higher income than mother. The trial court ordered the parties to alternate the dependency exemption, noting that would roughly benefit the parties equally but without making any findings of how the ordered allocation would benefit the child.

Holding 1: The award of a tax exemption in a child-support case to a party who does not qualify for it under the Internal Revenue Code, and the attendant order requiring the otherwise entitled party to sign an involuntary waiver of his or her federal statutory right to claim the exemption against income taxes, requires the state trial court to meet the heavy burden of stating sound reasons that this award actually serves as a support issue benefiting the *child*. If the court cannot articulate a sound reason for why awarding the exemption to the non-eligible parent actually benefits the child, and thus affects the child's support, then it is not making a support award in the first instance, and it simply should not be done.

The trial court in a child-support case cannot award a tax exemption like a piece of property and thereby bind third parties, like the IRS, by its orders. The court can only order the eligible parent to sign a waiver in favor of the noneligible party for a stated, sound reason reliably related to the support of the child.

Note – per IRS rules, when parents have equal timesharing, the parent with the higher AGI is entitled to claim the children under IRS rules.

Practice point: Consider awarding each parent one additional day every other year in the timesharing agreement to support alternation of the dependency exemption.

B. *W.H.J. v. J.N.W.,* 669 S.W.3d 52 (Ky. App. 2023) *See also R.V.K.H. v. S.M.S.*, 678 S.W.3d 648 (Ky. App. 2023) for similar holding.

Mother was awarded sole custody in divorce. Father failed to satisfy substance and mental health treatment requirements and therefore had no contact with the child for three years and also paid no child support during that time. After mother remarried, her new husband filed a stepparent adoption petition. Father appeared *pro se* at the hearing on stepfather's motion to set a trial date and advised the trial court that he intended to contest the termination of his parental rights. The trial court asked the father if he planned to retain an attorney and the father said yes. The family court offered to give the father an affidavit of indigency to fill out but

stated the court did not know if father would qualify. Father told trial court he would pay for an attorney. Father appeared *pro se* at trial.

Holding 1: The trial court did not sufficiently explore whether father was indigent or whether he could actually afford private counsel.

The statute governing adoption without consent of a child's biological living parent expressly provides that an indigent parent who contests an adoption is entitled to appointed counsel. KRS 199.502.

> (3) A biological living parent has the right to legal representation in an adoption wherein he or she does not consent. The Circuit Court shall determine if a biological living parent is indigent and, therefore, entitled to counsel pursuant KRS Chapter 31. If the Circuit Court so finds, the Circuit Court shall inform the indigent parent; and, upon request, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an attorney to represent the biological living parent pursuant to KRS Chapter 31 ...."

Holding 2: Family court failed to use the clear and convincing evidence standard in finding that biological father had failed to provide essential parental care and protection for the child for at least six months and that there was no reasonable expectation of improvement, as required to involuntarily terminate biological father's parental rights in proceeding on stepfather's petition for adoption of child. The court was required to make findings of fact and conclusions of law pursuant to the clear and convincing evidence standard, as biological father did not consent to the adoption and the proceeding terminated his parental rights.

C. *Turner v. Turner*, 672 S.W.3d 43 (Ky. App. 2023)

Classic ongoing custody battle with kids in the middle. Father had a history of supervised timesharing. Both parties filed post-decree motions to modify timesharing. During those proceedings, father would not comply with court order for psych evaluation or with the therapist's recommendations. Court ordered that pending father's compliance, he would have supervised timesharing in a therapeutic setting with one child and timesharing at therapist's recommendation for the other. The older child then attempted suicide citing threat of unsupervised timesharing with father as the reason. The therapist recommended father's timesharing be suspended until he underwent individual therapy resulting in change of attitude. The trial court suspended all contact between father and the children for at least three months "while father seeks individual therapy." In so ordering, the trial court did not make specific findings as to whether timesharing posed a threat of serious endangerment to the children.

Holding: The portion of the family court's order that denied father any form of timesharing or visitation for at least three months would be vacated and remanded for the trial court to address standard of serious endangerment, in proceeding on father's motion to enforce his visitation or timesharing rights and to modify visitation/timesharing and mother's motion to modify timesharing; family court was required to determine whether visitation seriously endangered children or whether suspension of visitation for three months with additional conditions for resuming

visitation represented the only visitation arrangement that would not seriously endanger the children's physical, mental, or emotional health. KRS 403.320(2) and (3).

A court cannot restrict timesharing, meaning order less than reasonable timesharing, unless it finds the child's health was seriously endangered. KRS 403.320(3).

Query: This case tells us that no contact at all amounts to less than reasonable timesharing, but what would satisfy the requirement of reasonable timesharing?

D. *Swan v. Gatewood*, 678 S.W.3d 463 (Ky. App. 2023)

The parties and their one child lived in Fayette County. Parties' joint custody agreement provided for equal timesharing and stated that the parties are to make joint decisions with respect to all issues impacting major areas of the child's life but if, after consultation, the parties cannot reach agreement, then mother shall have final decision-making power regarding education and medical choices. The agreement contained standard language prohibiting relocation without notice to the other party and court permission.

The parties disagreed over where the child would attend kindergarten. Mother wanted to enroll child in a French immersion program at a Louisville school. Father wanted child to attend school in Fayette County. Mother exercised her final decision-making authority and enrolled the child in the Louisville program over father's objection. Father filed an emergency motion asserting that mother's unilateral decision to enroll the child in the Louisville school was unreasonable and amounted to a relocation in violation of the agreement. The trial court sustained father's motion.

Holding: Agreement giving mother final decision-making authority did not authorize her to exercise her power in a manner that affects father's rights. Mother's exercise of her final decision-making authority is subject to judicial review.

E. *W.R.G. v. K.C.*, 673 S.W.3d 81 (Ky. App. 2023)

Biological father was served with stepparent adoption petition at a halfway house. Father subsequently left the halfway house and did not inform the court or counsel for petitioner of his new whereabouts. All subsequent pleadings and correspondence sent to father either by the petitioner, the court, or the Cabinet were returned as undeliverable. Father did not appear at final hearing; however, mother introduced copy of father's Kentucky Sex Offender Registry listing which showed an address other than the halfway house. The trial court nevertheless proceeded and granted the adoption petition.

Holding: Continuing to serve a party at an address only to have the mail repeatedly returned as undeliverable is entirely insufficient under the rule providing that service is complete upon mailing *unless the serving party learns or has reason to know that it did not reach the person to be served*. CR 5.02(1). Trial court and counsel for stepmother's violations of the rule requiring parties to ensure service of process in proceeding on stepmother's petition to adopt her wife's minor child

without father's consent constituted palpable errors mandating a new hearing on the petition, despite stepmother's claim that the burden was on father to inform the court of any address change; father's current address was on his sex-offender individual report, and the issue could have been remedied earlier if either stepmother's counsel or the court had followed the rule governing service of process. CR 5.02(1).

Upon discovering a new address for another party or learning that he or she is not receiving mail at their last known address, the serving party must promptly inform the court of the newly discovered address or that the party's address is no longer accurate, and a new address is unknown. CR 5.02(1).

F. *Strong v. Gary*, 673 S.W.3d 77 (Ky. App. 2023)

Victim filed petition for an IPO alleging a former friend threw a brick through his window then a couple of days later returned to victim's residence and knocked on the door. The trial court dismissed the petition finding that victim failed to prove that the former friend's actions amounted to stalking.

Holding: Affirmed. KRS 508.130 requires the victim to prove two or more separate instances of stalking. Knocking on the victim's door, absent proof it was done to threaten victim or that such action would cause a reasonable person to suffer substantial emotional distress, is not an act of stalking.

G. *Lazar v. Lazar*, 678 S.W.3d 472 (Ky. App. 2023)

Wife filed for divorce on March 17th. Mutual restraining and no contact order (MRO) was entered on April 13th in the divorce action. In October, wife initiated a DV petition against husband referencing alleged domestic violence in March in which husband grabbed her by the neck and threatened to kill her. Wife further alleged in her DV petition that husband had driven in the vicinity of her home on numerous occasions thereafter. The trial court entered a DVO ordering husband have no contact with wife and to remain at least 500 feet away from her.

Holding: Affirmed. The MRO in the divorce action did not preclude the trial court from entertaining the DV petition. *Res judicata* did not apply. The MRO was not entered into pursuant to the DV statute and it was not based upon same conduct at issue. The MRO was merely a restraining order predicated upon the parties' mutual agreement.

H. *Hamilton v. Milbry*, 676 S.W.3d 42 (Ky. App. 2023)

Mother filed a DV petition against father on her behalf and on behalf of the parties' minor child. The family court entered a DVO after an evidentiary hearing in favor of mother and listed the minor child as an "other protected person." No GAL was appointed for the child. Father appealed.

Holding: Affirmed as to entry of the DVO in favor of mother but reversed as to entry of the DVO in favor of the child because no GAL was appointed to represent the child, extending the holding in *Smith v. Doe*, 627 S.W.3d 903 (Ky. 2021) which

requires a GAL be appointed for any unrepresented minor who is a party to an IPO petition.

These holdings are premised on the interpretation of CR 17.03 which provides in pertinent part:

> (1) Actions involving unmarried infants or persons of unsound mind shall be brought by the party's guardian or committee, but if there is none, or such guardian or committee is unwilling or unable to act, a next friend may bring the action.
>
> (2) Actions involving unmarried infants or persons of unsound mind shall be defended by the party's guardian or committee. If there is no guardian or committee or he is unable or unwilling to act or is a plaintiff, the court, or the clerk thereof if its judge or judges are not present in the county, shall appoint a guardian *ad litem* to defend unless one has been previously appointed under Rule 4.04(3) or the warning order attorney has become such guardian under Rule 4.07(3).
>
> (3) No judgment shall be rendered against an unmarried infant or person of unsound mind until the party's guardian or committee or the guardian *ad litem* shall have made defense or filed a report stating that after careful examination of the case he is unable to make defense.

Essentially, the Kentucky Supreme Court has held that a parent does not qualify as a child's guardian for purposes of CR 17.03.

ELEVATE YOUR GAME: MASTERING THE ART OF DISTINCTION IN FAMILY LAW

J. Benjamin Stevens

I. INTRODUCTION

In the fiercely competitive world of family law, simply blending in with the crowd is no longer a viable option for success. As seasoned practitioners, it is imperative that we continuously redefine our practices, transforming them into beacons of innovation and excellence that not only stand out but also shine brilliantly in a crowded marketplace.

This program is designed to provide you with actionable advice and tangible strategies to revolutionize your approach to your practice, unleashing what sets you and your firm apart from the competition. By the end of this session, you will be equipped with the tools to elevate your practice in authentic and meaningful ways that resonate deeply with your clients and your community, empowering you to rise above and achieve the thriving practice you've worked tirelessly to build.

II. NICHE SPECIALIZATION AND DEFINING YOUR UVP

The foundation of any distinctive family law practice lies in clearly identifying and articulating what makes you and your firm unique. One powerful strategy for achieving this is developing a niche specialization within the field of family law. By focusing your expertise on a specific sub-area, such as high net worth divorces, custody cases involving parental alienation, or family law issues unique to military personnel, you can position yourself as the go-to authority for clients facing these particular challenges.

Niche specialization allows you to develop a deep understanding of the nuances and complexities involved in your chosen area, enabling you to provide highly targeted and effective solutions for your clients. Moreover, by establishing yourself as a specialist, you can attract clients who are specifically seeking your unique expertise, command higher fees for your specialized knowledge, and build a reputation as a thought leader in your niche.

To effectively carve out your niche and attract your ideal clients, it's essential to clearly define and articulate your Unique Value Proposition (UVP), the distinct combination of skills, experience, approach, and personality that sets you apart from other family law attorneys in your market. Your UVP should succinctly convey the unique benefits and value that clients can expect when working with you.

Perhaps your UVP centers on the niche specialization, but it could also be something like your firm's collaborative approach to its cases, the experience and credentials of your team, your dedication to minimizing conflict and promoting collaborative solutions, or your compassionate approach to helping clients through the emotional challenges of family law matters.

Take the time to reflect on the qualities that make you exceptional as a family law attorney, and then craft a compelling UVP statement that encapsulates your unique strengths and resonates with your target clients. By consistently communicating your UVP through your marketing materials, client interactions, and professional network,

you'll attract clients who appreciate your unique value and build a strong brand identity in your chosen niche.

Action Steps to Implement Niche Specialization and Defining Your UVP:

A. Identify Your Niche

1. Reflect on your strengths, passions, and experiences within family law.

2. Analyze your client base and identify common themes or challenges.

3. Select a niche that aligns with your expertise, interests, and market demand.

B. Develop Your Niche Expertise

1. Invest in targeted continuing education and training programs.

2. Join or create a network of professionals specializing in your niche.

3. Stay current on the latest developments, case law, and best practices.

C. Define Your Unique Value Proposition (UVP)

1. Identify the unique qualities, skills, and experiences that set you apart.

2. Craft a clear, concise, and compelling UVP statement.

3. Test your UVP with trusted colleagues, mentors, and clients for feedback.

D. Integrate Your Niche and UVP into Your Marketing Strategy

1. Update your website, bio, and marketing materials to feature your niche and UVP.

2. Create targeted content that showcases your niche expertise and provides value.

3. Optimize your online presence for niche-specific keywords to attract targeted traffic.

E. Communicate Your Niche and UVP to Your Network

1. Educate your clients, colleagues, and referral sources about your niche and value.

2. Participate in niche-specific organizations, communities, and events.

3. Collaborate with complementary professionals who serve clients in your niche.

III. DEVELOPING INNOVATIVE SERVICE OFFERINGS

In a field as dynamic as family law, staying ahead of the curve requires a proactive approach to service innovation. Look for opportunities to offer something that goes beyond the standard and addresses your clients' biggest challenges in new and creative ways. There are countless ways to do this, but the key is to anticipate and address your clients' evolving needs, positioning your firm as a forward-thinking leader in the field.

For instance, my firm (The Stevens Law Group, LLC) recognized years ago that family law is an emotionally charged field where clients seek not only legal guidance but also support and understanding. As a result, we created an in-house library and offer books and other materials to clients and potential clients.

A well-curated lending library can empower clients to better understand their legal situation and cope with the emotional challenges they may face during the process. Providing access to informative materials enables our firm to help clients feel more in control and engaged in their cases. Essential materials to include in the library are books on divorce, child custody, and co-parenting strategies; guides to communication with difficult parties (*e.g.*, Bill Eddy's excellent BIFF series); resources for managing stress, anxiety, and emotional trauma; and books to help clients explain divorce/family changes to children in an age-appropriate manner.

Offering a lending library or providing helpful materials will show that your firm cares about its clients' overall well-being, not just their legal outcomes or the fees they generate for your firm. This approach can help build trust and strengthen attorney-client relationships, leading to increased client satisfaction and loyalty. When clients feel informed and supported, they are more likely to actively participate in their cases and communicate openly with their legal team. These resources can also lead to new referrals for your firm when they are later passed from clients to their friends facing similar issues.

<u>Action Steps to Implement Developing Innovative Service Offerings</u>:

A. Conduct a Client Needs Assessment

1. Survey clients to identify their most pressing challenges and unmet needs.

2. Analyze feedback to pinpoint areas where innovative services could provide value.

3. Monitor industry trends and emerging legal issues to anticipate future needs.

B. Brainstorm and Develop Innovative Service Ideas

1. Generate ideas for new service offerings through team brainstorming sessions.

2. Evaluate ideas based on feasibility, potential impact, and alignment with values.

3. Develop and test pilot programs for the most promising service ideas.

C. Integrate and Continuously Evaluate New Services

1. Fully integrate successful pilot programs into your firm's operations.

2. Train your team and create marketing materials for the new offerings.

3. Regularly solicit client feedback and stay attuned to evolving needs.

D. Integrate New Services into Your Practice

1. Develop standardized processes, protocols, and pricing for new services.

2. Train your team to ensure consistent quality and client experience.

3. Create marketing materials to inform clients and referral sources.

E. Continuously Evaluate and Improve

1. Regularly assess client satisfaction and identify areas for improvement.

2. Monitor the impact of new services on outcomes, referrals, and profitability.

3. Foster a culture of innovation and ongoing enhancement of service offerings.

IV. MARKETING MASTERY: BUILDING A POWERFUL PERSONAL BRAND IN FAMILY LAW

In the highly competitive world of family law, building a strong personal brand is essential for attracting clients, establishing credibility, and differentiating yourself from other attorneys. Your personal brand is the unique combination of your expertise, personality, values, and reputation that sets you apart in the minds of your target audience.

In today's digital age, having a strong online presence is crucial for building your personal brand and attracting clients to your family law practice. Your website serves as the hub of your online brand, providing a platform to showcase your expertise, share your story, and connect with potential clients. Invest in a professional, mobile-responsive website design that reflects your brand identity and makes it easy for visitors to learn about your services and contact you. Develop compelling website copy that clearly communicates your unique value proposition, highlights your achievements and accolades, and establishes your credibility in your niche. If permitted by your ethical rules, incorporate client testimonials, case studies, and success stories to provide social proof and build trust with your audience.

Beyond your website, leverage social media platforms like LinkedIn, Facebook, and X (formerly known as Twitter) to expand your reach, engage with your network, and share valuable content that demonstrates your expertise. Develop a consistent posting schedule and mix of content types, including educational articles, legal updates,

personal insights, and behind-the-scenes glimpses into your practice. By building a strong and authentic online brand, you'll attract more of your ideal clients, establish yourself as a go-to resource in your field, and ultimately grow your family law practice.

V. KNOW WHEN TO ENGAGE CONSULTING EXPERTS

Experienced family law attorneys understand the complex and multifaceted nature of the cases we handle. While our legal expertise is essential, there are instances where engaging consulting experts can significantly benefit our clients and their cases. These experts, such as the ones listed below, can provide valuable insights and support, ultimately leading to better outcomes for our clients.

As experienced practitioners in the field of family law, we recognize the intricacies and nuances that characterize the matters we take on. Nevertheless, there are situations where collaborating with consulting experts can substantially enhance the representation we provide to our clients and thus bolster their cases. The specialists enumerated below possess the capacity to offer invaluable perspectives and assistance, ultimately contributing to more favorable resolutions for the individuals we serve.

The key factors you should consider when engaging consulting experts include:

1. Expertise: Ensure the expert has relevant experience and qualifications. Whenever possible, engage experts who have previously been accepted and qualified as an expert in your jurisdiction, as they will have a better idea as to what judges may or may not be helpful if the case goes to trial.

2. Objectivity: Seek experts who can provide unbiased opinions and assessments. Prior to engaging the expert, discuss how they prefer to work with the clients and attorneys on consulting cases. Some experts prefer to do their work independently with their only communication being with the attorney. Some experts require at least some contact with or evaluation of the client, but they do not want direct, continuing communication with the client. Set and then document the rules of engagement clearly in the retainer agreement to avoid any misunderstandings.

3. Communication skills: Look for experts who can clearly and effectively communicate their findings. If the information you receive from the consulting expert is not easy to follow or is dense and boring, it's likely to be less helpful to your client's case. Your expert should be skilled at communicating in a way that is professional and credible, but without ego and condescension, particularly if there is any chance that you may want to later convert them to a testifying expert (but that is a completely different topic that warrants much more discussion and is not addressed in these materials).

4. Cost: Consider the expert's fees and the potential return on investment for your client. Expert fees vary widely. Some experts charge straight hourly fees for the time invested in their cases, while others have flat fees for stages of work. You will also want a clear understanding of what other costs and fees are expected (if any), as knowing these costs upfront will

allow you to determine if the result you seek to gain from their involvement outweighs the investment.

A. Financial Experts

Financial experts, such as forensic accountants and CPAs, can provide invaluable assistance to family law attorneys “behind the scenes” in navigating complex financial matters. By collaborating with financial experts, attorneys can gain a deeper understanding of their clients’ financial situations, develop strong case strategies, and make informed decisions throughout the legal process.

These experts can help identify and value marital assets, trace separate property, uncover hidden assets or income streams, identify discrepancies or irregularities that may impact the division of assets, conduct a lifestyle analysis, and assist with child and/or spousal support calculations. They can also provide valuable support in preparing for negotiations, mediation, or trial by creating clear and concise reports and exhibits that illustrate key points and support the client’s position.

B. Retired Family Court Judges

In contested child custody or visitation cases, consider engaging a retired family court judge to conduct an Early Neutral Evaluation (ENE). An ENE is a process where a neutral third party assesses the merits of the case and provides an objective, unbiased opinion on the likely outcome if the matter were to proceed to trial. This valuable insight can help clients and attorneys gain a clearer understanding of the strengths and weaknesses of their positions, as well as the potential risks and rewards associated with pursuing litigation.

Obtaining an ENE early in the process helps parties make more informed decisions about how to proceed with their cases. Knowing that your client is the more likely party to prevail at trial can provide leverage during settlement negotiations. On the other hand, knowing early on about any significant weaknesses in your case can serve as a reality check and motivate the client to consider alternative resolutions. In either scenario, an ENE can help parties avoid the time, expense, and stress of a prolonged court battle, ultimately leading to a more efficient and satisfactory resolution of their case.

C. Experienced Guardians *ad Litem*

Consider engaging an experienced Guardian *ad Litem* (GAL) as a consulting expert to evaluate the work done by court-appointed GALs and review their files in contested custody cases. Getting an objective perspective from someone with extensive experience in child custody matters can be particularly helpful when there are concerns that the appointed GAL may have “gone rogue,” failed to do a proper investigation, or has done a poor job representing the best interests of the child.

A consulting expert GAL can review the appointed GAL’s file to assess the thoroughness of their investigation; look for any red flags or inconsistencies that may indicate a lack of objectivity, bias, or insufficient diligence in gathering and

analyzing relevant information; provide a detailed critique of their work and suggest strategies for addressing these shortcomings at or before trial.

D. Psychologists and Psychiatrists for Evaluation Reviews

When mental health issues or custody evaluations arise in family law cases, collaborating with a psychologist or psychiatrist as a consulting expert can provide invaluable guidance to both you and your client. These experienced professionals offer a detailed analysis of the case, highlighting strengths and weaknesses from a psychological perspective, helping you develop an effective strategy for addressing concerns, and challenging problematic evaluations.

If you suspect bias or inconsistencies in a custody evaluation by a court-appointed or opposing expert, these experts can review the report in detail; identify any methodological flaws, unsupported conclusions, biases, or inconsistencies; offer alternative interpretations or recommendations; and provide guidance as to how to rebut or best address these issues. Similarly, if the opposing party has raised concerns about your client's mental health or parenting capacity, a consulting psychologist or psychiatrist can assess the legitimacy of these claims and provide guidance as to how to respond effectively.

E. Nurse Consultants

Having insight into medical issues can have a substantial impact on the outcome in family court cases involving complex medical conditions, disabilities, or injuries, particularly those that affect a parent's ability to care for their children or a spouse's capacity to work and maintain financial independence. Engaging a nurse consultant to review medical records can identify critical information within the records, clarify complex medical terminology, and provide valuable insights into how specific medical conditions may influence the case.

If medical records are extensive or challenging to interpret, a nurse consultant can review and highlight the most pertinent details, which could include opinions based on their medical knowledge and experience. If a case involves intricate medical issues or disabilities that require a deep understanding of the diagnosis, treatment, and prognosis, a nurse consultant can break down the information into clear, concise terms that are easily understandable to both the legal team and the court.

F. Experienced Family Law Attorneys

Collaborating with a seasoned family law attorney as a consultant can provide immense value to your clients in complex cases. These experienced professionals offer fresh perspectives, help develop effective strategies, and guide you through challenging legal issues. Their expertise is particularly beneficial in high-stakes cases involving substantial assets or complex legal questions, situations where a second opinion could significantly impact the outcome, when preparing for crucial hearings or trials, and in cases involving novel legal theories or requiring extensive research and motion practice.

Experienced family law consultants can assist by conducting case reviews to identify strengths, weaknesses, and potential roadblocks; offering strategic advice on legal arguments, evidence presentation, and witness preparation; providing guidance on local court procedures, judicial preferences, and opposing counsel's tactics; and collaborating on negotiation strategies and settlement discussions. Developing these relationships can provide long-term benefits for your practice, including mentorship, networking opportunities, and access to knowledge and resources. When selecting a consultant, consider their experience, reputation, communication skills, and availability to ensure a successful collaboration that benefits your clients and your practice.

VI. THE ART OF PERSUASION: WORDS MATTER AND PICTURES ARE WORTH 1,000 WORDS

The ability to persuade the court is a critical tool in advocating for our clients and securing favorable outcomes. When crafting affidavits or preparing other submissions for the court, it is essential to make them as easy to read and follow as possible. The use of clear, concise, and consistent language throughout your documents can significantly enhance their effectiveness. Instead of alternating between various labels such as Plaintiff/Defendant, Mother/Father, Husband/Wife, or the parties' names (*e.g.,* John/Jane), determine which set of terms will be most compelling in your case and use them consistently. This approach minimizes confusion and allows the reader, particularly the judge, to focus on the substance of your arguments without the distraction of shifting terminology.

Moreover, the adage "a picture is worth a thousand words" holds true in the legal persuasion. Incorporating relevant photos into your affidavits and other submissions can be a powerful way to illustrate key points and humanize the individuals involved, especially when children are at the center of the case. Carefully selected images can evoke empathy, provide context, and make your arguments more tangible and relatable. For example, including photographs of the children engaging in activities with your client can illustrate the strong bond they share and support your client's request for custody or visitation. Similarly, photos of the family home or other relevant locations can help paint a clearer picture of the circumstances surrounding your case. By strategically leveraging the power of visual aids, you can enhance the impact of your written submissions and create a more compelling narrative that resonates with the Court.

In addition, creating summary exhibits can be an incredibly effective way to present information in a clear and easily digestible format. Summary exhibits, such as a one-page summary of your affidavits, timelines, charts, etc., allow you to distill large amounts of data or events into a visually appealing and straightforward representation. For instance, consider the following examples:

- If each parent alleges that he/she had more time with the child, a color-coded calendar can quickly illustrate a child's actual parenting time with each parent over a given time, even if several months or longer;

- In a case involving a long history of parenting time disputes, a timeline summarizing the key events and prior orders can provide the court with a concise overview of the relevant facts;

- A chart or graph comparing the incomes and expenses of both parties can be a powerful tool in supporting arguments for child support or alimony; or

- Charts or graphs can illustrate differences in a child's grades on tests, quizzes, and exams in school during and after time with each parent.

By using summary exhibits, you can help the judge quickly grasp the essential points of your case without wading through extensive text or raw data. These exhibits not only save the court's time but also demonstrate your ability to present information effectively and persuasively, strengthening your credibility as an advocate for your client.

VII. MASTERING THE ART OF CLIENT COMMUNICATION: STRATEGIES FOR BUILDING RAPPORT AND MANAGING EXPECTATIONS

Effective communication is the cornerstone of a successful attorney-client relationship in family law cases. It is essential to establish clear lines of communication from the outset and to train your clients on how to effectively communicate with you and your firm. This begins with the initial consultation and should be reinforced throughout the representation. During the intake process, clearly explain your communication policies, including how and when clients can expect to receive updates on their cases, the preferred methods of communication, and the anticipated response times.

Incorporating these communication policies into your retainer agreement will help set expectations and minimize misunderstandings. For example, your retainer agreement might specify that you will respond to client emails within 24-48 business hours and that clients should schedule a phone call or in-person meeting for more complex or sensitive matters. It is also important to set boundaries around your availability, such as specifying that you do not respond to emails or calls outside of regular business hours, except in true emergencies.

One key aspect of managing client expectations is to avoid the temptation to respond to emails too quickly. While it may seem counterintuitive, responding to every email immediately can actually set an unsustainable precedent and lead to unrealistic expectations. Instead, aim to respond within a reasonable timeframe that allows you to provide thoughtful and thorough answers. This approach not only helps manage client expectations but also ensures that you have adequate time to review their concerns and provide well-considered advice.

Another important consideration is whether to give clients your cell phone number. While some attorneys believe that providing a cell phone number can improve client communication and build rapport, others find that it can lead to boundary issues and unrealistic expectations of 24/7 availability. Ultimately, this decision depends on your personal preferences and communication style. If you do choose to give clients your cell phone number, it is crucial to set clear guidelines around its use, such as specifying that it is for urgent matters only and that you may not always be available to answer immediately.

In addition to setting clear communication policies, it is important to train your clients on how to communicate effectively with your firm. This might include providing guidelines on how to organize and present information, such as using bullet points or numbered lists in emails, or providing templates for common types of communication, such as status

update requests or document submissions. By training your clients to communicate in a clear and efficient manner, you can help streamline your own processes and ensure that you have the information you need to effectively represent their interests.

Ultimately, mastering the art of client communication requires a proactive and intentional approach. By setting clear expectations, establishing boundaries, and training your clients on effective communication strategies, you can build strong, productive relationships with your clients and provide the highest level of service in your family law practice.

VIII. THE BUSINESS OF LAW: IMPLEMENTING EFFICIENT SYSTEMS AND PROCESSES TO MAXIMIZE PROFITABILITY

As experienced family law attorneys, we understand the importance of providing our clients with the highest quality representation while managing a demanding caseload. To achieve this goal, it is crucial to streamline our workflows and develop efficient internal processes and systems. By optimizing our firm's operations, we can enhance our ability to deliver effective legal services, improve client satisfaction, and ultimately grow our practice.

A. The Benefits of Streamlined Workflows

1. Increased efficiency.

   By implementing streamlined workflows, attorneys can reduce time spent on administrative tasks, minimize duplication of efforts, and focus on high-value activities such as client communication, legal strategy, and court appearances.

2. Enhanced client experience.

   Efficient internal processes enable attorneys to provide more responsive and attentive service to clients, keeping them informed and engaged throughout their cases.

3. Improved profitability.

   Streamlined workflows can help reduce overhead costs, increase billable hours, and boost overall profitability for the firm.

4. Better collaboration.

   Well-designed systems facilitate seamless collaboration among team members, ensuring that everyone is working together effectively to achieve the best possible outcomes for clients.

5. Reduced stress and burnout.

   By minimizing inefficiencies and creating a more organized work environment, attorneys can reduce stress levels and prevent burnout, leading to a healthier and more sustainable practice.

B. Strategies for Streamlining Workflows

1. Assess current processes.

   Conduct a thorough evaluation of your firm's existing workflows to identify areas for improvement, bottlenecks, and potential inefficiencies.

2. Embrace technology.

   Utilize practice management software, document automation tools, and other technologies to streamline repetitive tasks, improve organization, and enhance communication with clients and team members.

3. Develop standardized procedures.

   Create clear, documented processes for common tasks such as client intake, case management, and billing to ensure consistency and efficiency across the firm.

4. Foster a culture of continuous improvement.

   Encourage team members to share ideas for process enhancements and regularly review and update workflows to adapt to changing needs and technologies.

C. Considering Hiring an Expert Systems Consultant

For some firms, developing and implementing streamlined workflows may require specialized expertise beyond the scope of their internal resources. In these cases, considering hiring an expert systems consultant can be a wise investment. An experienced consultant can provide valuable insights, best practices, and tailored solutions to help your firm optimize its processes and systems.

Benefits of Engaging an Expert Systems Consultant:

1. Specialized knowledge.

   Consultants bring a wealth of experience and knowledge from working with various law firms, allowing them to identify industry best practices and innovative solutions.

2. Objective perspective.

   An external consultant can provide an unbiased assessment of your firm's current processes and offer fresh insights for improvement.

3. Tailored solutions.

   A skilled consultant will work closely with your team to develop customized workflows and systems that align with your firm's unique needs, goals, and culture.

4. Time and cost savings.

   By leveraging a consultant's expertise, your firm can achieve more efficient and effective results in less time, ultimately saving valuable resources.

When selecting a systems consultant, consider their experience working with family law firms specifically, their experience with working with similarly sized firms, their experience working with firms in your state, their track record of success with previous clients, and their ability to understand and address your firm's specific challenges and objectives. With the right consultant and a firm-wide commitment to implementing streamlined workflows, your family law firm can achieve new levels of efficiency, profitability, and client satisfaction.

IX. LEVERAGING TECHNOLOGY TO ENHANCE CLIENT EXPERIENCE

In an increasingly digital world, leveraging technology to improve your clients' experience is no longer optional. Identify the key touchpoints in your client journey and explore how technology can enhance them, prioritizing improvements that will have the greatest impact. This could involve offering a secure online portal for document sharing and bill payment, implementing an AI-powered chatbot on your website to answer frequently asked questions 24/7, or utilizing automated appointment scheduling to make booking consultations seamless.

In the fast-paced world of family law, one of the easiest things to overlook is the significance of a well-crafted email signature. While it may seem like a minor detail, your email signature is a powerful tool that can leave a lasting impression on your clients and colleagues. All email programs allow you to create a signature and to designate when that signature will be attached to your emails. At a bare minimum, your email signature should include your name, office address, telephone number(s), email address, and a confidentiality disclosure.

But why settle for a mundane, forgettable signature when you can make it memorable? A sleek, professional email signature not only includes your essential contact information but also showcases your firm's logo, links to your social media profiles, and even the latest updates from your Facebook or Twitter feed. Suddenly, your email becomes more than just a message; it's a powerful marketing tool that leaves a lasting impression on your recipients.

For those using web-based email services like Gmail, Google Apps for Business, Yahoo, Hotmail, or Outlook.com, taking your email signature to the next level is easier than ever. Plugins like WiseStamp (www.wisestamp.com), Exclaimer (www.exclaimer.com), MySignature (www.mysignature.io), and many others offer completely customizable solutions that enable you to create professional-looking signatures that reflect your unique brand.

In a world where first impressions matter, let your email signature be the key that unlocks new opportunities and sets you apart from the rest. Take a moment to revamp your signature and embrace the power of customization. Your clients and colleagues will thank you for it.

X. CONCLUSION

Elevating your family law practice to new heights requires a commitment to continuous innovation, differentiation, and client-centric service. By focusing on key areas such as niche specialization, unique value proposition, innovative service offerings, personal branding, client communication, and leveraging technology, you will position your practice to thrive in an increasingly competitive landscape.

The strategies and action steps outlined in this program provide a roadmap for success, but the true power lies in your ability to adapt and implement these principles in a way that aligns with your unique goals and values. As you embark on this journey of mastering the art of distinction in family law, remember that every step you take towards standing out is a step towards building a practice that not only succeeds but also makes a meaningful difference in the lives of your clients and your community.

MEDIA MANAGEMENT FOR HIGH PROFILE AND NOT-SO-HIGH PROFILE CASES

Randall M. Kessler[1]

I. ADVOCACY MEETS CELEBRITY

Our law firm has been fortunate to have the opportunity to represent a number of celebrity clients and develop a team strategy and approach for those successful representations. We've also had the opportunity to represent the spouse or significant other of celebrities, where our skills representing celebrities gives us insight into the decision making and media influence our "less famous" spouses will be facing. These celebrity clients, who garner greater-than-ordinary public attention, bring the same family law issues we deal with daily, to the interest and scrutiny of the press. Representing these individuals can be both exhilarating and challenging. While a celebrity client may seem larger than life, their family law issues are as unique and individual to them, and just as important as the family law issues facing all of our clients. The tips herein are based on our firm's collective experience, but understand each celebrity is a unique individual. Although not all celebrity clients are in the movies, we rely on movie titles below to distinguish different categories of concern in the representation of this type of client.

II. A LIFE LESS ORDINARY

As anyone who has represented a celebrity client will tell you, they bring with them particular areas of concern, but, at the end of the day, their concerns about their cases are remarkably similar to those of any other client whose life has suddenly been rendered less ordinary by the onset of a domestic case. Most celebrities, like most other clients, want closure in the form of a speedier resolution than the courts can typically provide. Most celebrities, like most other clients, feel their privacy being chipped away by public record pleadings and the burdensome process of discovery. Finally, most celebrities, like most other clients, want an attorney who can be a doggedly protective force as well as available to them during the majority of hours on any particular day.

Apart from the special areas of concern that must be kept in mind when dealing with a celebrity client – areas that will be discussed in greater detail below – perhaps the baseline difference, then, between a celebrity client and another client is simply the level of expectation that must be managed. All clients come into a case with certain expectations, and it is part of an attorney's job to contour those expectations in accordance with legal and practical realities. Unlike a more typical client, however, celebrity clients may have a level of expectation that is unusually elevated due to the "instant gratification" factor that their careers, incomes, and lifestyles have come to contain. For a period of time, you will become a part of their intimate network of care and service providers. Navigating this network, and the expectations of perhaps multiple layers of assistants and family, will become part of your job. Celebrity clients, perhaps more than other clients, require meetings during unusual hours, quicker turnaround on phone calls, and more detailed reassurances about the progress of their case. Establishing a reasonable level of expectation from the beginning is therefore essential to keeping and cultivating a celebrity client's (as well as any other client's) satisfaction.

[1] Randall M. Kessler is the founding partner of Kessler & Solomiany, LLC, a 30-person Atlanta law firm; practice exclusive to family law. He is the former Chair of the American Bar Association Family Law Section and the Georgia Bar, Family Law Section and the author of the *Georgia Library of Family Law Forms*.

III. SIX DEGREES OF SEPARATION

One of the greatest challenges in representing a celebrity, or the significant other of a celebrity, in a domestic case lies in the degrees of separation that often come between 1) the client and an attorney's communications with him or her; and 2) the client and the everyday management of his or her finances. Both kinds of divides have the potential to jeopardize the outcome of a case.

Counsel to celebrity clients do not always have the benefit of direct communication with their clients, but must instead give messages or instructions through a third-party intermediary, such as an agent. Develop a relationship with your client's trusted intermediaries, but remind your client that a domestic relations case is intimately associated with him or her, and that his or her individual participation cannot be taken for granted. The outcome of a domestic relations case is so dependent on the relationship between attorney and client, it simply can't be facilitated through only third-party contact. That being said, having a comfortable client and meeting their service needs and expectations is critical. Thus, when possible, take advantage of the celebrity's communication and scheduling intermediaries and/or system, but develop a relationship such that you can gain access to your client when it's essential.

In addition, since your non urgent and essential communications will go through intermediaries, it is a great idea to protect both attorney and client by communicating in letter or email. This will prevent any miscommunication which may occur through well intentioned, but not always the most sophisticated, third parties. Written communications are particularly crucial where deadlines are concerned. Although memorializing advice in writing tends to create something of a defensive posture, it avoids the "telephone" game of miscommunication that frequently results from indirect contact with a client and creates a point of reference for future client and attorney use.

Maintaining a good relationship with any third-party intermediary is key to effective representation for obvious communication reasons, but it may also help when it is time for a bill to be paid. Because of what are surely a multitude of rationales, celebrity clients do not always address the issue of unpaid attorney's fees in a timely fashion. This phenomenon may stem from the fact that these clients frequently see the role of attorneys as an unpleasant side effect of the development of his or her art or commercial success. It may also be that a particular client views him or herself as "good for it" in the end and does not understand the immediate impact on an attorney's bottom line and office resources. Whatever the case may be, the unpaid bill clearly impacts the attorney and his or her ability to continue forward in the case, and an amicable relationship with a third-party intermediary can work to clear the obstacle of an unpaid bill much more quickly. Additionally, it is wise to be very clear about how the fee is to be paid. Even when very wealthy people say, "Don't worry about the cost," they may be upset with a bill if they did not anticipate the amount. Be sure to mention dollar amounts as early as possible to avoid "sticker shock" later on.

Apart from the problems inherent in indirect communication with a celebrity client, challenges also arise from the client's unfamiliarity with the management of his or her everyday income and expenses. In a recent case handled by our firm, it was the client's accountant, not the client himself, who alone had the requisite knowledge to verify the domestic relations financial affidavit submitted to the court. Unlike the typical family law client who can, at a glance, determine whether his or her spouse is artificially inflating the

expenses of the parties' child based upon his or her own common sense and experience, celebrity clients are often utterly at a loss as to what expenses they incur on a month-to-month basis – whether for their child or for something else. Fortunately, they typically delegate this responsibility to a trusted member of their team, who, if you are provided direct access to this individual, will be able to provide you with the celebrity's income and expenses in great detail. However, the accountants or financial advisors are hired to pay bills and to manage money, not to make judgments or distinctions as to what expenses are being incurred. Proving finance-related elements of a case therefore requires much more effort and creativity than may be normal from the attorneys and financial consultants involved.

IV. BROADCAST NEWS

The one aspect of a celebrity case that unquestionably distinguishes it from other cases is the media interest component. While all clients are concerned about very private aspects of their lives being made part of the public record, very few need be concerned that anyone will actually go to the trouble of finding or further investigating the public record. The contrary, of course, is true for a celebrity client who is subject to media scrutiny. In a celebrity case, public opinion can play a large role in the impact of a case on a client's life and career, if not in the disposition of the case itself. The celebrity and his or her spouse may have very different uses and desires for the media in the case; it can create a new kind of leverage not available in a more typical case. A way to protect your celebrity, create an arena for open and honest communication between the parties, and keep the primary breadwinner earning is to use a confidentiality contract or a confidentiality order to keep the celebrity matters private. Confidentiality orders, as well as use and coordination with the client's public relations staff, are invaluable tools when publicity has the potential to figure largely in a case as well as the ongoing career of the celebrity.

While the availability of confidentiality orders is somewhat constrained by constitutional issues such as the public's right of access to information, these kinds of orders will generally be entered by a court when both sides are able to agree to the information that warrants protection. Of course, the more precise the proposed order is as to what remains confidential, such as the value of the next record deal, why it is important it remain confidential (for example to reveal the record deal value would inform consumers that the celebrity wasn't making as much with this album as the last and it may negatively impact sales), and an explanation as to how the public isn't harmed by this knowledge, the more likely the order is to be granted. If you do not have a proposed confidentiality order already on file with your office, try contacting colleagues to see if they have a form that they are willing to share with you. Because of their protective benefits, such orders should almost always be sought to shield a client's privacy in a high profile case.

As for the role of any public relations firm hired on the client's behalf, it is always useful to confer with the client and the PR firm itself as to how the client's public image can be benefitted as the case goes on. Often a "no comment" statement from an attorney creates a negative inference on behalf of the client, but any comments other than "no comment" should be carefully crafted in light of the client's wishes, legal advice, and the PR firm's expert advice. Attorneys are used to running an entire case and providing direction on all aspects which may impact the outcome of the case, so a celebrity case may involve a collaborative approach with other professionals, which doesn't always come naturally. For the celebrity, the family law litigation is a personal event, with the possibility of negatively

impacting his or her career indefinitely. To mitigate the potential damage to your celebrity's career, you will have to work with the PR professionals while never losing sight of your ultimate obligations of advocacy to your client. Since press images and sound bites from a celebrity case are likely to have a longer shelf-life than the case itself, we must carefully consider not only how the publicity will affect the case, but also how it will affect the client's career and future opportunities.

V. THE INSIDER

Because celebrity clients do not always have the same level of intimacy with the management of their finances or other details of their daily lives that other clients might have, experts are particularly useful in the development of a celebrity case. Financial experts such as forensic accountants, for example, are invaluable in sorting out the myriad transactions that occur on a monthly or yearly basis in the bank and credit card accounts of parties with extraordinarily high income. In addition, many celebrity clients have nothing like a "standard" income to which they can refer. Their incomes vary widely from project to project, and the compensation they receive from each project is often contingent on sales figures or radio plays. Unless you are very familiar with these contracts and payment arrangements, and very few domestic lawyers are, an expert is practically essential to provide you with the knowledge to understand your client's finances.

Another expert you may want to consider is a custody expert such as a psychologist. Custody experts are particularly helpful where a celebrity client's "image" as a public persona may be confused by the trier of fact with what is the client's much more private, but much more accurate, at-home persona. As always, the bottom line is how to put on the most compelling case possible on the client's behalf. To the extent that such presentation can be improved with the use of experts, those experts should be retained and their testimony presented. In this sense, representation of a celebrity client is not altogether different from any client who walks through an attorney's door.

VI. INTOLERABLE CRUELTY

But what our celebrity clients, and all the rest of our clients for that matter, want to know is how do I keep "my" money when we go to divorce court. Perhaps more than most wage earners, celebrities view their income as uniquely their own, and not an asset of the marriage, because it was often earned as a result of their individual personality, talent, or special ability. However, the courts will likely disagree with them, unless they have done some serious pre-planning. If you are fortunate enough to be representing a celebrity client before they marry, the absolute best asset protection tool is a prenuptial agreement.[2]

However, as anyone who has encouraged a reluctant client towards a prenuptial agreement or negotiated a prenuptial agreement can tell you, it is far more than a simple financial planning tool. A prenuptial agreement comes with a ton of emotion, and certain individuals are adamantly opposed to them, regardless of the potential financial cost.

[2] For more information on prenuptial agreements, please visit our website at www.ksfamilylaw.com. There you will find several excellent articles by Partner, Marvin Solomiany, Esq. Mr. Solomiany has set himself apart as the preeminent drafter of prenuptial agreements in Georgia.

But a new trend is taking hold, and that is the postnuptial agreement. More and more couples are deciding to define their financial obligations to each other during and after the marriage in a postnuptial agreement. A postnuptial agreement follows the same basic form and topics as a prenuptial agreement; however the consideration herein is remaining married, not getting married. They are most commonly considered by couples who are going through a separation but wish to reconcile. The separation has created some loss of trust, and the couple want to define their financial rights and obligations to one another if the reconciliation fails and they ultimately end up in divorce. A postnuptial agreement can be a wonderful tool for the right couple. It should be noted that postnuptial agreements are so new, they have not yet been tested in the courts.

VII. "SHOW ME THE MONEY"

Many celebrity clients, perhaps those who failed to take your advice on getting a prenuptial agreement, will want to know what they can do while they remain married to prevent assets from being equitably distributed by the divorce court. We are confident that if divorce lawyers had determined the answer to this question, we would all be entirely out of work. The field of asset protection law was developed to assist high net worth individuals and couples from third party creditors and to reduce tax obligations; it was not developed to assist one spouse from shielding assets from another spouse.

Furthermore, even if a client were to put the majority of marital assets into a trust instrument which reduced the present value of the asset and his or her accessibility to the asset, the divorce court has such broad discretion to do what is "fair" that any perceived inequalities created by the formation of the trust would be within the authority of the court to "correct."

For example, your celebrity client feels a divorce is on the horizon and decides to place the marital residence into a trust, along with all but 5 percent of the marital cash reserves. Your client selects a relative to be the trustee of the trust. Sometime later a divorce is filed, and your celebrity client claims the only marital asset is the 5 percent of cash which was not placed in the trust. Opposing counsel will present to the court that your celebrity client inappropriately removed assets from the marriage and does enjoy the benefit of the asset at the discretion of his relative who allows frequent withdrawals. While the divorce court may not be able to dissolve the trust, the court would certainly be able to require your client to pay substantial alimony, or transfer other assets within his or her control, to balance what the court views as an inequity.

Your client may not like to hear it, but there is no "fail proof" way to protect your assets from your spouse. The law, absent a pre- or postnuptial agreement, views your marriage as a joint effort, and what comes in and goes out is shared. How you treated your spouse also plays a role in the distribution of assets, and it will cause perhaps more harm than good to start moving assets out of the marriage in contemplation of divorce, than it is simply to take your chances with the judge.

In conclusion, celebrity clients bring atypical challenges with them in the form of adequate attorney-client communication, never-ending public scrutiny, and effective fact development. Should these hurdles be met, and we hope that they might be better met with the suggestions set forth above, celebrity clients are, in essence, no different from the other clients who form the basis of our practice. They, like every client, deserve our respect, our attention, and our best efforts.

Ultimately, adapting to the special concerns which arise in celebrity cases is simply another challenge for family law practitioners who regularly strive to handle all types of personalities, emotions, and practical problems. Although these special clients may require additional degrees of perseverance and creativity from those who represent them, those extra efforts almost certainly will be rewarded in the form of a well-presented case, a more satisfied client, and, last but not least, a hard earned and well deserved fee.

Kentucky's Legislature has tinkered with the state's child support statutes in almost every session for the past 15 years. This year, they have debated even more changes, but they have not passed as of this writing.

I. ALTHOUGH KENTUCKY HAS TINKERED WITH THE CHILD SUPPORT STATUTES, IT ACTUALLY TOOK THE LEGISLATURE A LONG TIME TO UPDATE THE ACTUAL GUIDELINES

A. Family Support Act of 1988 started the process.

B. KRS 403.212 enacted in 1990 and based on data from 1987.

C. Recommendations by Policy Studies, Inc. were not implemented in 2006, 2010, 2011, 2013, 2014, 2015, 2016, 2018 (died without passage).

D. In 2016, 45 CFR 302.56 required that states receiving funding MUST establish guidelines that are reviewed and revised, if appropriate every four years and MUST analyze case data on applications of the Guidelines and MUST consider family income below 200 percent of poverty level and other factors.

E. In 2018, the presumption of joint custody with equal (or maximized) parenting time was passed.

F. In 2019, the legislature passed a statute that would have adopted the Colorado Method, but it was vetoed by then Governor Bevin.

G. In 2021, the beginning of the current statute was passed; current version went into full effect on March 31, 2023.

II. 2021 CHANGES (HB 404)

A. Updated the guidelines and extended to include combined parental adjusted gross income to $30,000 per month (over 30 years).

B. Increased amount in definition of extraordinary medical expenses in KRS 403.211(9) as uninsured expenses in excess of $250 per child per calendar year.

C. Added guidelines for imputing potential income: assets and residence, employment, earning history and job skills, education level, literacy, age, health and criminal record that could impair ability to gain or continue employment, record of seeking work, local labor market, including availability of employment for which the parent may be qualified and employable; prevailing earnings in the local labor market; and other relevant background factors including employment barriers.

D. Reduced the liability for child support to attach in paternity actions from four years to two years.

E. Established requirement for child support to be addressed when a DNA action places the child outside the home.

F. Established the Self-Support Reserve

1. Required to be done to comply with 45 CFR 302.56(c)(1)(ii) which requires CS guidelines to take into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay by incorporating a low-income adjustment.

2. Kentucky's SSR is $915 per month, which is the 2019 federal poverty amount ($1,041) multiplied by Kentucky's price party (0.879).

3. The monthly adjusted gross income of the obligated parent and number of children for whom support is being calculated determines if the SSR is applicable.

4. If the SSR is applicable, only the obligated parent's monthly adjusted gross income is used to determine the support obligation. *The online calculators will do it for you*.

III. 2022 CHANGES (HB 501)

A. Corrected the definition of split custody.

B. Corrected the problem where the use of SSR is higher than at least one straight calculation.

C. Corrected the 2021 statute which required institution of child support action (without deference to UIFSA) in DNA action – corrected to instead inquire and take action with consideration of UIFSA.

D. This statute also clarified that you are to use SSR if lower than straight calculation.

E. Essentially, the 2022 legislation was supposed to "fix" the 2021 legislation; however, its implementation was delayed until March 2023, and it didn't repeal the 2021 legislation.

1. "Don't worry about it. We'll fix it."

2. The sponsor got primaried.

3. The legislation went into effect in March 2023 – here we are.

IV. SELF-SUPPORT RESERVE

A. The self-support reserve means a low-income adjustment amount to the obligated parent of $915 per month that considers the subsistence needs of the parent with a limited ability to pay in accordance with 45 CFR §302.56(c)(1)(ii).

B. A self-support reserve is the amount of money a parent paying support needs to support themselves. Many states have adopted this idea and most likely many more will be adopting this idea because of the federal regulation requiring it. The idea is to ensure that low-income parties can meet their own basic needs as well as provide an incentive for continued employment.

C. According to the federal poverty guidelines for the contiguous 48 states, the poverty line for a single person is currently $12,880. The self-support reserve established by the new Kentucky statute equals approximately 85 percent of the federal poverty guideline.

D. The self-support reserve comes into play to limit the amount of child support owed by the obligated parent. Under Section 3(b) of the statute if the obligated parent's income is $1,100 or less with one or more children, $1,300 or less with two or more children, $1,400 or less with three or more children, $1,500 or less with four or more children, $1,600 or less with six or more children, his/her basic child support obligation will be calculated by using the monthly adjusted gross income of the obligated parent only to provide the obligated parent with the self-support reserve.

For example: A parent making minimum wage at full time ($1,257) per month with two children would owe child support of no more than $342 per month ($1,257 - $915 = $342). Under the current guidelines, if the custodial parent did not work and the children were under four years of age to where income could not be imputed, the obligor could owe $367 before factoring in the cost of health insurance and/or childcare.

V. SHARED PARENTING

A. 2021 – The legislature first established KRS 403.2121.

1. If parents have equal time, the parent with the greater obligation shall pay the parent with the lesser obligation the difference.

2. If unequal parenting time, the court shall:

   a. Calculate the CSO;

   b. Determine % of overnight stays the child spends with each parent on an annual basis based on order or agreement;

   c. Multiply each parent's obligation by percentage of the other parent's overnights;

   d. Set the difference between the amounts as the monetary transfer or credit necessary between the parents for the care of the child; and

   e. Use discretion in adjusting each parent's CSO in accordance with factors: Income, likelihood will exercise schedule, whether all children are exercising same schedule and whether plan results in

fewer overnights due to geographical distance between parties may affect CSO.

f. Overnight stay includes costs …. merely providing place to sleep doesn't count.

g. This section does not apply if children receive KCHIP, K-TAP, food stamps or Medicaid. (NOT FIXED IN 2022's HB 501).

B. 2022 – HB 501 repealed and reenacted KRS 403.2121 and became effective March 2023.

1. Gives a definition for "day" (more than 12/24 hours).

2. Keep in mind the legislature's intention was that "guideline child support" (*i.e.* child support without application of a parenting time credit) would be used for parents who were essentially absentee parents with little contact with the children.

3. Sets minimum of 73 days before shared parenting time credit.

4. KRS 403.2121(3): The CSO *shall* be subject to further adjustment upon motion for parents who share parenting time.

5. Adds that this and SSR don't get applied together.

6. **PARENTING TIME CREDIT (PTC) CHART:**

DAYS	**%Adjustment**
73-87	10.5%
88-115	15%
116-129	20.5%
130-142	25%
143-152	30.5%
153-162	36%
163-172	42%
173-181	48.5%
182-182.5	50%

7. Failure of a party to consistently comply shall be grounds for modification.

8. Allows modification if timesharing changes by 15 percent.

C. Application

1. Arguably, a recipient parent could frustrate the Parenting Time Credit by applying for state assistance without the other parent's consent or even knowledge. KRS 403.2121(6). Courts seem to be standing as a bulwark against this provision.

2. Courts have discretion in adjusting each parent's child support obligation. KRS 403.2121(3)(b).

3. Since March 2023, courts seem more willing than before to find good cause to deviate from the guidelines.

4. Factors for the court's consideration in whether to apply or deviate:

   a. Obligor's income and ability to maintain basic necessities of home for the child.

   b. Likelihood either parent will exercise PT schedule.

   c. Whether all the children do that PT schedule.

   d. Whether the PT results in fewer overnights due to geographical distance that may affect CSO.

   e. Military deployments or extended service obligation.

   f. Health insurance or medical care provided by either parent.

5. What if a parent fails to consistently exercise their parenting time?

   a. Failure by a party to consistently comply with the PT shall be grounds for the other to seek modification.

   b. A party may seek modification following a 15 percent change in number of PT days and has burden of proving material change in PT circumstances.

   c. KRS 403.213(2) still applicable.

D. Mechanics of Calculation

1. Calculate Child Support Obligation.

2. Determine *number of days* on an annual basis for each parent.

3. Determine Parenting Time Credit (PTC) using chart – KRS 403.2121(4).

4 Multiply the base support obligation by the PTC.

5. Subtract that from the obligor's total obligation.

VI. EXAMPLES

A. Situation #1

ROSIE and SAM have two children together and share true equal parenting time with that child. ROSIE pays for children's health insurance at a cost of $120 per

month for just the child. ROSIE has gross monthly income of $2,917 per month and SAM has gross monthly income of $7,083.

Step 1: Calculate the child support obligation set forth in the child support guidelines table in accordance with subsection (5)(a) of Section 1 of this Act using the combined gross adjusted incomes of the parties. With 50/50, assume the parent with the higher income is the obligor.

ROSIE	SAM/Obligor	Combined
$2,917	$7,083	
		$10,000
29.17%	70.83%	
		$1533
HI – $120		$120
		$1653.00
$482.18	$1170.82	

Step 2: Determine the number of days for both parents on an annual basis based upon either a court-ordered time-sharing schedule or a time-sharing schedule exercised by agreement of the parties.

With equal time, each party has 182.5 (or 183 in leap years like 2024).

Step 3: Using the days a child spends with the obligated parent, determine the adjustment percentage using the shared Parenting Time Credit table.

182.5 = 50%

Step 4: Determine the shared parenting time credit adjustment by multiplying the obligated parent's adjustment percentage by the total support obligation found on the child support obligation worksheet to establish the shared parenting expense adjustment for the obligated parent.

$1533 X .50 = $766.50

Step 5: Subtract the amount calculated in Step 4 from the obligated parent's monthly obligation found on the child support worksheet.

$1,170.82 - $766.50 = $404.32

To put it another way, you could also leave out the health insurance in the total child support calculation which would make the total child support $1,533 under the guideline chart. SAM's portion would be $1,086.

$1086 - $766.50 = $319.50, but SAM would also owe ROSIE 70.83 percent of the $120 health insurance premium which would be $85.

Total money SAM would owe each month: $319.50 + $85.00 = $404.32.

B. Situation #2

Sam is very busy and not able to maintain an equal timesharing schedule; instead he has more of a traditional “standard” visitation schedule. He has the children every week from the time school lets out on Wednesday until the time school starts on Thursday (roughly 3:30 p.m. on Wednesday to approximately 8:00 a.m. on Thursday) and alternate weekends from the time he picks them up from school at approximately 3:30 p.m. on Friday to Sundays at 6:00 p.m. If school is not in session, his parenting time is roughly the same.

Go through the same steps:

Step 1: Calculate the child support obligation set forth in the child support guidelines table in accordance with subsection (5)(a) of Section 1 of this Act using the combined gross adjusted incomes of the parties.

ROSIE	SAM/Obligor	Combined
$2,917	$7,083	$10,000
29.17%	70.83%	
		$1,533
HI – $120		$120
		$1653.00
$482.18	$1170.82	

Step 2: Determine the number of days for both parents on an annual basis based upon either a court-ordered timesharing schedule or a timesharing schedule exercised by agreement of the parties.

KRS 403.2121(1)(a):

> (1) For purposes of this section, "day":
>
> (a) Means more than twelve (12) consecutive hours in a twenty-four (24) hour period under the care, control, or direct supervision of one (1) parent or caretaker, or as the court determines based on findings of substantially equivalent care or expense; and
>
> (b) Unless the context requires otherwise, includes housing, entertaining, feeding, and transporting the child, attending to school, work, athletic events, extracurricular activities, or other activities that transfer with the child as he or she moves from one parent to the other.

Therefore, Wednesday would be a day, and the weekends would consist of two days.

52 + (2 x 26)
52 + 52

Step 3: Using the days a child spends with the obligated parent, determine the adjustment percentage using the shared Parenting Time Credit table.

104 Days = 15% Parenting Time Credit

Step 4: Determine the shared parenting time credit adjustment by multiplying the obligated parent's adjustment percentage by the total support obligation found on the child support obligation worksheet to establish the shared parenting expense adjustment for the obligated parent.

$1,533 X .15 = $229.95

Step 5: Subtract the amount calculated in Step 4 from the obligated parent's monthly obligation found on the child support worksheet.

$1,170.82 - $229.95 = $940.87

OR

$1,086 - $229.95 = $856.05, but SAM would also owe ROSIE 70.83 percent of the $120 health insurance premium which would be $85.

$856.05 + 85 = $941.05 (basically the difference is a rounding error).

C. Situation #3

Same facts as before, except on his weekend Sam can get the children on Friday morning at 8:00 a.m. if the children are not in school and the school is aware that if school is in session and it is Sam's day, they will need to call him instead of Rosie because Rosie has to be out of town for work on those Fridays.

Under KRS 403.2121(1)(a), you would now have to count Friday as a "day" because he would have control over the children for more than 12 hours and, therefore, Sam's weekends would now be three-day weekends. This would increase his total number of days from 104 to 130. That would increase his parenting time credit from 15 percent to 25 percent.

$1,533 X .25 = $383.25

$1,170.82 - $383.25 = $787.57

OR

$1,086 - $383.25 = $702.75, but SAM would also owe ROSIE 70.83 percent of the $120 health insurance premium which would be $85.

$702.75 + $85.00 = $787.75

NOTE: Difference just by stretching Friday by roughly 7-8 hours results in a difference of approximately $154 per month or $1,848 per year.

D. Situation #4

Mary Jane is a struggling model and actress in the big city and has two children with her ex, Peter, who is a student and freelancer in the modern "gig" economy. MJ makes about $2,800 per month and Peter, on average, pulls in $1,500 gross per month. Peter and Mary Jane get along fairly well and they share equal time with the children. Peter, knowing that with great fatherly power comes great father responsibility, takes it upon himself to go and sign the children up for a state medical card.

In this scenario, under KRS 403.2121(6), no one would get a parenting time credit even though they have 50/50 timesharing. Mary Jane would be the obligor because she has the higher income.

Peter	Mary Jane/Obligor	Combined
$1,500	$2,800	$4300
34.88%	65.12%	
		$969
$338.02	$630.98	

Mary Jane would owe Peter $630.98 per month in child support because the children have a medical card and she would, therefore, not be entitled to a parenting time credit.

Most courts would find a reason to deviate in this situation.

> KRS 403.211(2) provides in relevant part that:
>
> > [I]n any proceeding to modify a support order, the child support guidelines in KRS 403.212 or KRS 403.2121 shall serve as a rebuttable presumption for the . . . modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. **Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.**

Commonwealth ex rel. S.B. v. R.M., 2023-CA-0938-ME, 2024 WL 56929 (Ky. App. Jan. 5, 2024) (emphasis in the original).

"'Hence, a circuit court clearly must consider and apply the guidelines in each and every proceeding which seeks modification of a support order." *Wiegand v. Wiegand*, 862 S.W.2d 336, 337 (Ky. App. 1993).

If the court deviates, it is imperative on the practitioner to ensure that the court enters sufficient specific findings to justify the deviation.

E. Situation #5

Wanda and Vision are estranged, and Wanda is left with primary care of their two children, Billy and Tommy. Vision is a cold and unfeeling automaton who almost never exercises any parenting time with the children. However, the job market for an android is not great, and there are surprisingly few employment protections for a sentient construct, so he is only able to get a job working full-time at minimum wage earning $1,257 in gross monthly income. Wanda is an amazingly successful stage magician who easily grosses $20,000 or more per month while acting as the primary care provider for Billy & Tommy.

In this situation, Vision would be the child support obligor and Wanda's income would not matter in the calculation. Vision's income of $1,257 falls below the line of $1,300 for two children under the self-support reserve. Therefore, the court would only consider his income, and he would pay $312 per month under the self-support reserve to Wanda.

COMMONWEALTH OF KENTUCKY

WORKSHEET FOR MONTHLY CHILD SUPPORT OBLIGATION

INSTRUCTIONS FOR USE

Effective March 31, 2023, KRS 403.2121 established an adjustment to the child support obligation based on parenting time that is court-ordered or approved and consistently exercised [KRS 403.2121(2)(b) and (3)(a)]. In order to receive shared parenting time credit, a parent shall maintain care, custody, and control over a child for a minimum of seventy-three (73) days per year [KRS 403.2121(2)(a)].

Per KRS 403.2121(6), parenting time credit shall not apply if the child or children subject to the child support award receive public assistance, including:

- Kentucky Children's Health Insurance Program (KCHIP);
- Kentucky Transitional Assistance Program (KTAP);
- Supplemental Nutrition Assistance Program (SNAP); or
- Medicaid

Detailed Procedures

This worksheet has three columns, A, B, and C, that are fillable. This worksheet and instruction may use these terms interchangeably:

- Parent A or Column A
- Parent B or Column B
- Both Parents or Column C

First, determine which parent is Parent A (Column A) and Parent B (Column B). If parenting time is unequal, list the parent with more parenting time as Parent A and the other parent as Parent B.

> Exception: if parents have equal parenting time, list the parent with greater monthly gross income as Parent B.

Second, before proceeding, ensure you have each party's monthly gross income, court ordered maintenance amount, prior-born child support amount, total childcare cost for the child(ren), total health insurance premium cost for the child(ren), and the number of days the child is under the care, custody, and control of Parent B.

Lines

1. Enter the monthly gross income for Parent A on line 1A and Parent B on line 1B [KRS 403.212(3)(a)(b)(c) and (e)].

2. Enter the monthly amount paid by each parent for court ordered maintenance for prior spouse(s) plus the amount of maintenance ordered in the current proceeding [KRS 403.212(3)(i)(1)] in the appropriate columns.

3. Enter the monthly amount of child support by each parent on line 3A for Parent A and line 3B for Parent B that is:

   a. paid pursuant to a court/administrative order for prior-born children [KRS 403.212(3)(i)(1)];

b. paid, but not pursuant to a court/administrative order, for prior-born children for whom the parent is legally responsible [KRS 403.212(3)(i)(2)]; and

c. imputed for prior-born children residing with the parent [KRS 403.212(3)(i)(3)].

4. Subtract any amounts on lines 2 and 3 from the amounts on line 1 for each columns A and B and enter on lines 4A and 4B. If the result is less than 0, enter 0.

Caution: If after considering Parent A's and Parent B's monthly adjusted gross income, it is determined that Parent B represents 100% of the combined monthly adjusted parental gross income, you are required to use the Worksheet for Monthly Child Support Obligation Exception (CS-71.1) to calculate the child support obligation. ***Do not proceed with this Worksheet For Monthly Child Support Obligation (CS-71).***

Note: If there is a finding that the obligated parent is voluntarily unemployed or underemployed, child support shall be calculated pursuant to KRS 403.212(3)(e)1.-3.

5. Add the amounts on line 4 in columns A and B to obtain the combined monthly adjusted parental gross income and enter on line 5C.

6. Divide amounts on line 4A by line 5C and 4B by line 5C. Enter Parent A's percentage on line 6A and Parent B's percentage on line 6B.

7. Determine the total child support obligation by referring to the Guidelines Table [KRS 403.212(9)] using the combined monthly adjusted gross income as entered on line 5C and the number of children for whom the parents share a joint legal responsibility.

   Before proceeding, determine whether self-support reserve (SSR) applies in the case. Check to see if Parent B's monthly adjusted gross income (line 4B) and the number of children for whom support is being determined falls within the defined self-support reserve (SSR) [KRS 403.212(5)(b)] described and illustrated in the shaded area of the chart below.

   - Parent B's monthly adjusted gross income is equal to or less than $1,100 and support is being determined for one child;
   - Parent B's monthly adjusted gross income is equal to or less than $1,300 and support is being determined for two or more children;
   - Parent B's monthly adjusted gross income is equal to or less than $1,400 and support is being determined for three or more children;
   - Parent B's monthly adjusted gross income is equal to or less than $1,500 and support is being determined for four or five children; or
   - Parent B's monthly adjusted gross income is equal to or less than $1,600 and support is being determined for six or more children.

Combined Monthly Adjusted Parental Gross Income	One child	Two children	Three children	Four children	Five children	Six or more children
0	60	60	60	60	60	60
100	60	60	60	60	60	60
200	60	60	60	60	60	60
300	60	60	60	60	60	60
400	60	60	60	60	60	60
500	60	60	60	60	60	60
600	60	60	60	60	60	60
700	60	60	60	60	60	60
800	60	60	60	60	60	60
900	60	60	60	60	60	60
1000	85	85	85	85	85	85
1100	148	150	152	154	155	157
1200	200	231	234	237	239	242
1300	216	312	316	320	323	327
1400	231	339	398	403	407	412
1500	247	362	437	486	491	497
1600	262	384	464	518	570	582

If Parent B's monthly adjusted gross income (line 4B) and the number of children for whom support is being determined **falls within the defined SSR,** determine Parent B's total child support obligation using only Parent B's monthly adjusted gross income (AGI) in the Guidelines Table and enter on line 7C [KRS 403.212(5)(b)].

If Parent B's monthly adjusted gross income (line 4B) and the number of children for whom support is being determined **does not fall within the defined SSR**, on line 7C enter the total child support obligation using the combined monthly adjusted gross income on line 5C for the number of children for whom support is being determined using the Child Support Guidelines Table [KRS 403.212(9)].

Check the box on line 7 (I or II) to indicate whether the total child support obligation entered on line 7C was determined from application of the SSR using only Parent B's monthly adjusted gross income on line 4B or the parent's combined monthly adjusted gross income on line 5C. Insert the amount under line 7 after checking the appropriate box.

Only complete line 7 III if shared parenting adjustment applies. Insert the amount under line 7 after checking the appropriate box.

8. Enter the monthly payment for childcare costs [KRS 403.211(6)] paid to the provider by Parent A on line 8A, Parent B on line 8B, and the total of lines 8A and 8B on line 8C.

9. Enter the monthly payment for the child(ren)'s health insurance premium or cash medical support [KRS 403.211(7)(a)] paid to the provider by Parent A on line 9A, Parent B on line 9B, and the total of lines 9A and 9B on line 9C.

10. Add lines 7C, 8C, and 9C and enter this amount on line 10C to determine the total child support obligation with proportionate share of the childcare and healthcare insurance cost.

11. If the total child support obligation on line 7C **was not determined using the SSR,** multiply line 10C by 6A and 6B to determine the monthly child support obligation of each parent. Enter Parent A's share on line 11A and Parent B's share on line 11B.

    If the total child support obligation on line 7C **was determined using the SSR**, use two methods to determine the monthly child support obligation:

    1) For Parent A, find the total child support obligation located in the Guidelines Table using the combined monthly adjusted parental gross income on line 5C for the number of children for whom support is being determined. Enter this amount on line 7 under 7(II). Add that amount to the total of lines 8C and 9C then multiply[~~e~~] by 6A to determine the monthly child support obligation Parent A. Enter this amount on line 11A.

    2) For Parent B, add lines 8C and 9C and multiply the total by 6B, and add the sum, to the SSR, in line 7C or listed under 7(I), to calculate the monthly child support obligation of Parent B. Enter this amount on line 11B.

12. Determine the amount that each parent paid directly to the provider under lines 8 and 9. Subtract that amount from 11A for Parent A and 11B for Parent B. This new amount represents each parent's share of their monthly child support obligation including childcare and health insurance cost after considering any direct payments to the service provider.

    If Shared Parenting Adjustment applies, continue to line 13 instruction. If Shared Parenting Adjustment does not apply, skip to line 16, instruction 16, and line 16(B).

13. Determine the number of days Parent B has the child(ren) on an annual basis based upon parenting time that is either court-ordered or approved and consistently exercised. Enter the number under line 13B. [KRS 403.2121(2)(a)(b)].

14. Using the days listed under line 13B, enter the adjustment percentage on line 14B using the below chart.

Parenting Time Days	**Adjustment Percentage**
73 – 87	10.5%
88 – 115	15%
116 – 129	20.5%
130 – 142	25%
143 – 152	30.5%
153 – 162	36%
163 – 172	42%
173 – 181	48.5%
182 – 182.5	50%

15. Enter the parenting time credit adjustment on line 15B by multiplying the obligated parent's adjustment percentage (14B) by the total child support obligation (7C, SSR not applied amount).

16. This line determines the final allocated child support amount paid by Parent B:

    a) **If Shared Parenting Applies:** Subtract line 15B from line 12B Parent B. If this amount is negative, Parent A pays the positive sum of the amount in column B to Parent B.

    b) **If Shared Parenting Does Not Apply**: The amount listed on line 12B is the amount Parent B is responsible for paying as child support to Parent A. **Do not proceed to line 17.**

17. If Self-Support Reserve (SSR), as determined under line 7(I) is lower than the shared parenting amount listed on line 16B, Parent B pays the SSR amount determined on line 7C as their total child support obligation. If there is childcare or health insurance cost for the minor child(ren), return to line 7, using only Parent B's monthly adjusted gross income and complete each step, skipping lines 13 to 15. List this amount on line 17B to show the SSR amount is lower than the parenting time adjustment.

PARENT A NAME:_____ PARENT B NAME: _____
IVD#, IF APPLICABLE:_____ COURT CASE NUMBER:_____COUNTY:_____
NUMBER OF CHILDREN INCLUDED IN THIS GUIDELINE CALCULATION: _____
PRIOR SUPPORT OBLIGATION: _____ PERCENTAGE OF CHANGE, IF APPLICABLE: _____

COMMONWEALTH OF KENTUCKY WORKSHEET FOR MONTHLY CHILD SUPPORT OBLIGATION			
	Parent A (Column A)	**Parent B (Column B)**	**Both Parents (Column C)**
1. Monthly gross income	**$**	**$**	
2. Deduction for maintenance payments	$	**$**	
3. Deduction for other child support for prior-born children	$	**$**	
4. Monthly adjusted gross income	$	**$**	
5. Combined monthly adjusted parental gross income			**$**
6. Percentage of combined monthly adjusted parental gross income	**%**	**%**	
7. Total child support obligation was determined using: ☐ I. Only Parent B's monthly AGI (4B) – SSR applied ☐ II. Parents combined monthly AGI (5C) – SSR not applied ☐ III. Shared Parenting Adjustment – Use amount under 7(II)			**$**
8. Childcare costs paid by each parent			**$**
9. Child(ren)'s health insurance premium or cash medical support paid by each parent			**$**
10. Total child support obligation with proportionate share of childcare and healthcare insurance cost			**$**
11. Each parent's monthly child support obligation	**$**	**$**	
12. Subtract childcare or health insurance costs paid by each parent to the provider from each Parent's line 11. Enter result on line 12. *(Skip to line 16 if Shared Parenting Adjustment does not apply)*	**$**	**$**	
13. **Shared Parenting Time Applies –** Enter number of days for Parent B and complete lines 14 and 15			

14. Insert the adjustment percentage credit		**%**	
15. For Parent B, multiply line 7C by line 14		**$**	
16. Amount Parent B pays to Parent A. Insert the amount from line 12B as line 16B for the final allocated child support amount. **For Shared Parenting only:** Subtract line 15B from line 12B for the final allocated child support amount. If the amount on line 16B is negative, Parent A pays the positive sum of the amount in column B to Parent B.		**$**	
17. ☐ **For (SSR) only:** Mark this box if SSR is the lowest amount. See instructions for details.		**$**	

ALTERNATIVE CHILD SUPPORT WORKSHEET
Prepared by Nicole S. Bearse, Esq.

PARENT A NAME:_____ PARENT B NAME: _____
IVD # IF APPLICABLE:_____ COURT CASE NUMBER:_____COUNTY:_____
NUMBER OF CHILDREN INCLUDED IN THIS GUIDELINE CALCULATION: _____
PRIOR SUPPORT OBLIGATION: _____ PERCENTAGE OF CHANGE, IF APPLICABLE: _____

MODIFIED WORKSHEET FOR MONTHLY CHILD SUPPORT OBLIGATION			
	Parent A (Column A)	**Parent B (Column B)**	**Both Parents (Column C)**
1. Monthly gross income	**$**	**$**	
2. Deduction for maintenance payments	$	**$**	
3. Deduction for other child support for prior-born children	$	**$**	
4. Adjusted monthly income	$	**$**	
5. Combined monthly adjusted parental gross income			**$**
6. Percentage of combined monthly adjusted parental gross income	**%**	**%**	
7. Base monthly support/Total Child Support Obligation Amount was determined using: ☐ I. Only parent – SSR ☐ II. Both parents– Regular worksheet ☐ III. Shared Parenting Adjustment			**$**
8. Each parent's monthly child support obligation	**$**	**$**	
9. Shared Parenting Time Applies – Enter number of days for Parent B and complete Lines 10 and 11			
10. Insert the adjustment percentage credit			
11. For Parent B, Multiply Line 7C by Line 10		**$**	
12. Amount Parent B pays to Parent A. Insert the amount from 8b as 12b. For Shared Parenting Subtract Line 11b from Line 8b. If the amount on Line 14b is negative, Parent A pays the positive sum of the amount in column B to Parent B.		**$**	
13. ☐ For (SSR) only: Mark this box if SSR is the lowest amount.		**$**	

14. Childcare costs paid by each parent	**$**	**$**	**$**
15. Child(ren)'s health insurance premium or cash medical support paid by each parent	**$**	**$**	**$**
16. Total cost paid by each parent	**$**	**$**	
17. Multiply each parent's percentage of combined monthly adjusted parental gross income by the other parent's total costs paid: 16a x 6b and 16b x 6a	**$**	**$**	
18. Apply appropriate cost sharing credit or addition to obligation of paying party	**$**	**$**	

INSERT RECORD SCRATCH SOUND HERE…

ON THE LAST DAY OF SESSION THE LEGISLATURE PASSED HB 244 AND IT WAS SIGNED INTO LAW BY GOV. BESHEAR ON APRIL 19, 2024. HERE'S WHAT TO KNOW:

These provisions are effective 7/14/24.

I. KRS 403.2121 IS REPEALED AND A NEW SECTION OF KRS CHAPTER 403 IS CREATED

A. "Day" is somewhat better defined:

1. Specified that parenting time begins at the exchange from one parent to the other.

2. Unless otherwise ordered, if the exchange occurs at school or care provider, the receiving parent's time shall end at the time the child is picked up from school or from the care provider.

B. Changed the Parenting Time Credit (PTC) chart to eliminate a PTC for 77 to 87 overnights. Now a parent must maintain care, custody, and control over the child for a minimum of 88 days per year, and the PTC chart starts at 15 percent.

C. The PTC requirement of a minimum of 88 days is regardless of the age of the child.

D. Modified the language of KRS 403.2121(3)(b).

1. Removed the language "in accordance with factors proscribed in this section" to make it clear they intend for courts to actually use the factors in the statute.

2. Added that the court can also consider health insurance or medical care provided by either parent – even though it is already considered as part of the calculation(?).

E. Nothing in this section relating to the application of the PTC affects the application of KRS 403.213(2).

F. Specifies that the court shall have discretion in awarding a shared parenting time credit if the obligee (or presumably the child) receives state assistance benefits.

II. KRS 403.211 WAS AMENDED/MODIFIED

A. Adds that the presumption of the application of the child support guidelines may be rebutted if one party consistently fails to exercise the court-ordered timesharing schedule or timesharing agreement.

B. Changes the definition of “extraordinary medical expense” to the excess of the first $250 for the child or children subject to the order (not per child) per calendar year.

C. The first $250 of medical expenses shall be covered by the parent who maintains health insurance for the child unless agreed otherwise. NOTE – no provision for if there is no agreement and no one covers insurance.

What happened during the 2024 Legislative Session???

KRS 403.2121 REPEALED

New Section of KRS Chapter 403 to be created

Shared Parenting Child Support

- Child Support Obligors SHALL receive a PARENTING TIME CREDIT (PTC) if parenting time is court-ordered or exercised by consent of the parties; ~~consistently exercised~~.
- PTC – short for Parenting Time Credit (AKA – I call it the "COUPON")
- PTC is *not* meant to make a parent "whole" as a parent who is engaging in shared parenting time is incurring more expenses.
- Cannot have SSR and PTC together – Obligor pays the lesser amount

SPECIFICS

To receive PTC, a parent shall maintain care, custody and control over a child for a **minimum of 88 days per year regardless of age of child.**

Average it over the year to get the days for the PTC

- **Define "Day"**
- More than 12 consecutive hours out of 24 under care, control or supervision of one parent, or as Court determines.

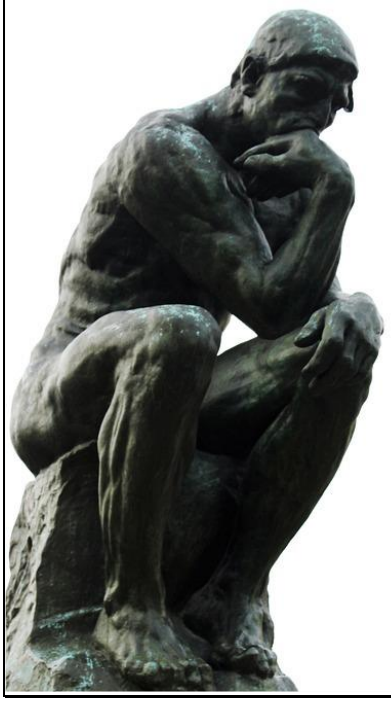
MODIFICATION

- **Failure by a party to consistently comply** with the PT schedule shall be **grounds** for the other to seek modification
- A party may seek modification following a 15% change in number PT days and has burden of proving material change in PT circumstances
- KRS 403.213(2) still applicable

Dividing medical expenses

KRS 403.211(9): The initial $250 of medical expenses

- Shall be covered by the parent who maintains health insurance subject to the order per calendar year
- Unless the parties agree otherwise



We Love Discretion

Factors to adjust CS

- Obligor's low income and ability to maintain necessities of the home for the child
- Likelihood of exercising PT schedule
- Whether all children have same PT schedule
- Whether geographical distance has limited overnights
- Military deployments or extended service obligations
- **Health insurance or medical care provided by either parent**

Public Assistance

Court has discretion whether to award PTC

if child receives

K-TAP, KCHIP, Medicaid or SNAP

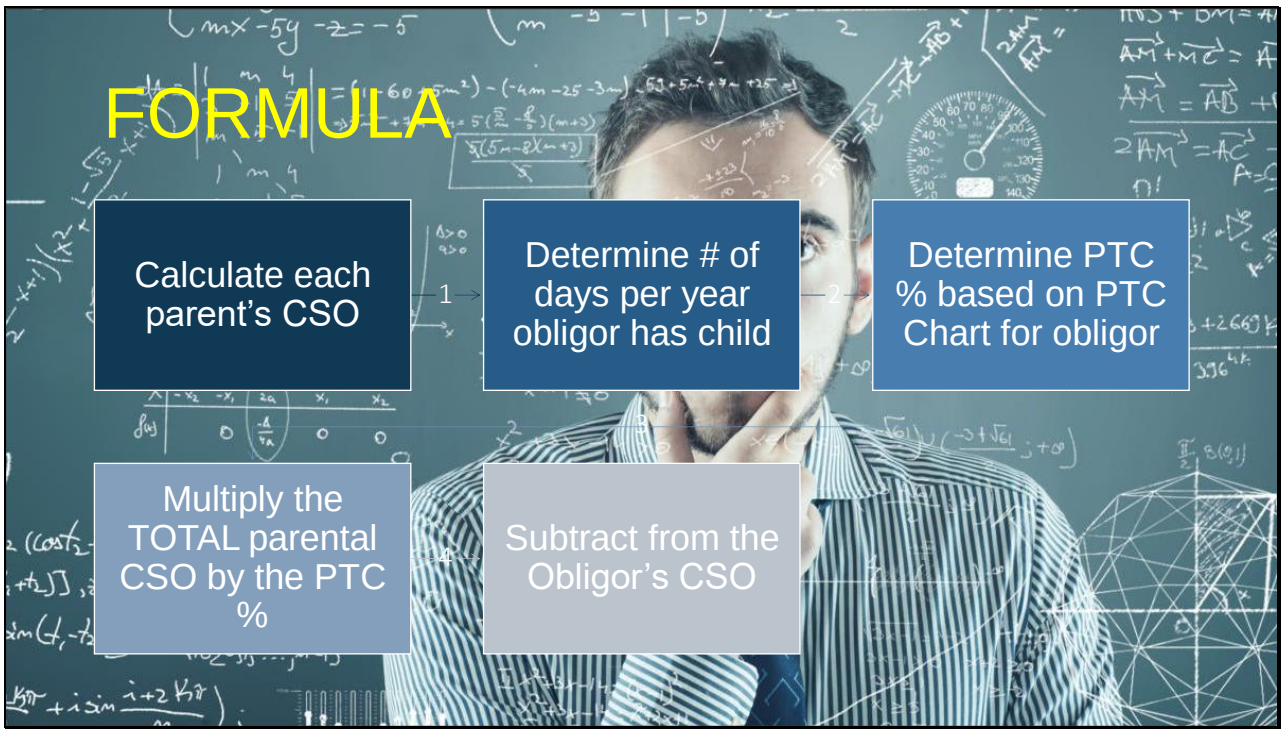
HOW MUCH IS MY COUPON?

PT Guidelines in the 5th circuit = 81 days (10.5%)

PARENTING TIME DAYS	ADJUSTMENT PERCENTAGE
~~73-87~~	~~10.5%~~
88-115	15%
116-129	20.5%
130-142	25%
143-152	30.5%
153-167	36%
163-172	42%
173-181	48.5%
182-182.5	50%

Every weekend or 5/2 schedule = 123 days (20.5%)

60/40 or every weekend extended or 4/3 = 160 days (36%)



COMMONWEALTH OF KENTUCKY
WORKSHEET FOR MONTHLY
CHILD SUPPORT OBLIGATION

	Parent A (Column A)	Parent B (Column B)	Both Parents (Column C)
1. Monthly gross income.	$	$	
2. Deduction for maintenance payments.	$	$	
3. Deduction for other child support for prior-born children.	$	$	
4. Monthly adjusted gross income.	$	$	
5. Combined monthly adjusted parental gross income.			$
6. Percentage of combined monthly adjusted parental gross income.	%	%	
7. Total child support obligation was determined using: ☐ I. Only Parent B's monthly AGI (4B) – SSR applied ☐ II. Parents combined monthly AGI (5C) – SSR not applied ☐ III. Shared Parenting Adjustment – Use amount under 7 (II)			$
8. Childcare costs paid by each parent.			$
9. Child(ren)'s health insurance premium or cash medical support paid by each parent.			$
10. Total child support obligation with proportionate share of childcare and healthcare insurance cost.			$
11. Each parent's monthly child support obligation.	$	$	
12. Subtract childcare or health insurance costs paid by each parent to the provider from each Parent's line 11. Enter result on line 12. *(Skip to line 16 if Shared Parenting Adjustment does not apply)*	$	$	
13. **Shared Parenting Time Applies** – Enter number of days for Parent B and complete lines 14 and 15.			
14. Insert the adjustment percentage credit.		%	
14. For Parent B, Multiply line 7C by line 14.		$	
14. Amount Parent B pays to Parent A. Insert the amount from 12B as 16B for the final allocated child support amount. **For Shared Parenting only:** Subtract line 15B from line 12B for the final allocated child support amount. If the amount on line 16B is negative, Parent A pays the positive sum of the amount in column B to Parent B.		$	
14. ☐ **For (SSR) only:** Mark this box if SSR is the lowest amount. See instructions for details.		$	

Reminders

The CSE child support obligation estimator figures all the math and states which parent pays based on user input. The estimator also provides two worksheets when SSR is applicable, but NCP also receives PTC.

When completing a manual calculation using the CS-71 or CS-71.1 the user:

- Completes line 7 of the CS-71 to display how the total CSO was determined
- Completes line 8 of the CS-71 to display how the total CSO was determined
- Utilizes lines 13-15 to determine the PTC
- Line 16 displays the final allocated child support amount
- Line 17 displays the SSR amount the NCP is responsible for IF this amount is lower than the CSO with or without PTC.

Scenario 1

One child

Both parents make minimum wage

No Health Insurance
No Childcare

Parent B has 156 days
156 = 36% or .36

	Parent A	Parent B	
Incomes	$1,256.67	$1,256.67	
			$2,513.34
	50%	50%	
Total "base" Support			$397.00
Add HI			$0
Add CC			$0
Total CSO			**$397.00**
CSO	$198.50	$198.50	
Minus CC/HI paid	$0	$0	
PTC calculated			397.00 x .36 = $142.92
PTC applied		198.50 – 142.92	
CSO		**$55.58**	

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Scenario 2

Two children

Parent A $3,500.00
Parent B $1,256.67

No Health Insurance
No Childcare

Parent B has 104 days = 15% CREDIT OR .15

	Parent A	Parent B	
Incomes	$3,500.00	$1,256.67	
			$4,756.67
	74%	26%	
Total "base" Support			$1,064.00
Add HI			$0
Add CC			$0
TOTAL CSO			**$1,064.00**
CSO	$787.36	$276.64	
Minus CC/HI paid	$0	$0	
PTC calculated			1,064.00 x .15 = 159.60
PTC applied		276.64 – 159.60	
CSO with PTC		**$117.04**	

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Scenario 3

One child

Parent A $6,250.00
Parent B $3,500.00

PA pays HI $200.00
PA pays CC $600.00

Parent B has 156 days = 36% or .36

	Parent A	Parent B	
Incomes	$6,250.00	$3,500.00	
			$9,750.00
	64%	36%	
Total "base" Support			$1,090
Add HI			$200
Add CC			$600
TOTAL CSO			**$1,890.00**
CSO	$1,209.60	$680.40	
Minus CC/HI paid	-800 = $409.60	$0	
PTC calculated			1,090 x .36 = $392.40
PTC applied		680.40 – 392.40	
CSO with PTC		**$288.00**	

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Scenario 4

Two children

Parent A $4,200.00
Parent B $4,600.00

PA pays HI $400.00
No Childcare

PB has 182 days = 50% or .50

straight CSO v. offset v. PTC

	Parent A	Parent B	
Incomes	$4,200.00	4,600.00	
			$8,800.00
	48%	52%	
Total "base" Support			$1,464.00
Add HI			$400.00
Add CC			$0
Total CSO			**$1,864.00**
CSO	$894.72	$969.28	
Minus CC/HI paid	-$400	$0	
PTC calculated			$1,464 x .5 = $732.00
PTC applied		~~969.28~~ – 732.00	An Offset was = $474.56
CSO with PTC		$237.28	

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Scenario 5

One child

Parent A $7,000.00
Parent B $3,500.00

PA pays CC $700.00
PB pays HI $300.00

Parent B has 156 days = 36%

Is PB exercising his every weekend parenting time?

	Parent A	Parent B	
Incomes	$7,000.00	$3,500.00	
			$10,500.00
	67%	33%	
Total "base" Support			$1,130.00
Add CC			$700.00
Add HI			$300.00
Total CSO			**$2,130.00**
CSO	$1427.10	$702.90	
Minus CS/HH paid	-700.00 = 727.10	-300.00 = 402.90	
PTC calculated			1,130 x .36 = $406.80
PTC applied		$402.90 - $406.80	
CSO with PTC	PA pays $3.90 to PB	$-3.90	

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Scenario 6
CS-71.1

One child lives with a GM

Parent A Deceased
Parent B $3,400.00

PB pays HI $200.00

PB has 104 days = 15%

	Parent A	Parent B	
Incomes	$0	$3,400.00 **- $200** (403.211(7)(b))	
			$3,200.00
	0%	100%	
Total "base" Support			$532.00
Add HI			$0
Add CC			$0
TOTAL CSO			**$532.00**
CSO	$0	$532.00	
Minus CS/HH paid	$0	$0	
PTC calculated			532.00 x .15 = $79.80
PTC applied		532.00 – 79.80	
CSO with PTC		**$452.20**	

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Scenario 7

Two children live with GM

Parents live together
Parent A $1,256.67
Parent B $1,256.67

No Health Insurance
No Childcare

Parents have 104 days = 15% each?

Is child receiving Benefits – is this going to state?

	Parent A	Parent B	
Incomes	$1,256.67	$1,256.67	
			$2,513.34
	50%	50%	
Total "base" Support			$582.00
Add HI			$0
Add CC			$0
TOTAL CSO			**$582.00**
CSO	$291	$291	
Minus CC/HI paid	$0	$0	
PTC calculated			582.00 x .15 = 87.30
PTC applied	291 – 87.30	291- 87.30	
CSO with PTC	**$203.70**	**$203.70**	

Both parents getting credit for same PT days!?

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AN ACT relating to children.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO READ AS FOLLOWS:

(1) (a) As used in this section, "day" means more than twelve (12) consecutive hours in a twenty-four (24) hour period under the care, control, or direct supervision of one (1) parent or caretaker, or as the court determines based on findings of substantially equivalent care or expense. Unless the context requires otherwise, "day" shall include housing, entertaining, feeding, transporting the child, attending to school work, athletic events, extracurricular activities, or other activities that transfer with the child as the child moves from one (1) parent to the other.

(b) The parenting time for either parent shall begin at the time of exchange of the child or children from one (1) parent to the other.

(c) Unless otherwise ordered, if the exchange occurs at school or with a care provider, the receiving parent's time shall begin and the other parent's time shall end at the time the child is picked up from school or from the care provider.

(2) (a) In order to receive a shared parenting time credit, a parent shall maintain care, custody, and control over the child for a minimum of eighty-eight (88) days per year, as defined by this section, regardless of the age of the child.

(b) The shared parenting time credit shall only be applicable for parenting time that is court-ordered or parenting time that is exercised by consent of the parties.

(3) Except as provided in subsection (6) of this section or otherwise provided in this chapter, the child support obligation determined under KRS 403.212 shall be subject to further adjustment upon motion of the parent seeking credit as follows:

(a) For parents who share parenting time under an order that is court-ordered or exercised by consent of the parties, the court shall:

1. a. Calculate the child support obligation set forth in the child support guidelines table in accordance with KRS 403.212(5)(a) using the combined gross adjusted income of the parties.

b. If both parents exercise their equal shared parenting time, the parent with the higher gross monthly income shall be deemed the obligor;

2. Determine the number of days for both parents on an annual basis based upon an order that is court-ordered or approved and exercised;

3. Using the days a child spends with the obligated parent, determine the adjustment percentage using the shared parenting time credit chart in subsection (4) of this section;

4. Determine the shared parenting time credit adjustment by multiplying the obligated parent's adjustment percentage by the total support obligation found on the child support obligation worksheet to establish the shared parenting expense adjustment for the obligated parent, as determined in subparagraph 1. of this paragraph; and

5. Subtract the amount calculated in subparagraph 4. of this paragraph from the obligated parent's monthly obligation, found on the child support obligation worksheet, as determined in subparagraph 1. of this paragraph;

(b) The court may use its discretion in adjusting each parent's child support obligation under this subsection after consideration of the following:

1. The obligated parent's income and ability to maintain the basic necessities of the home for the child;

2. Whether either parent has consistently exercised, or is likely to

consistently exercise, the court-ordered time-sharing schedule or time-sharing agreement between the parents;

3. Whether all of the children are subject to the same time-sharing schedule;

4. Whether the time-sharing plan results in fewer overnights due to a significant geographical distance between the parties that may affect the child support obligation;

5. The military deployment or extended service obligations of the parties; and

6. The health insurance or medical care provided by either parent; and

(c) The self-support reserve, as calculated under KRS 403.212(5)(b), and the shared parenting time credit, as calculated under this subsection, shall not be applied together. The obligor shall be responsible for the lesser support amount as determined under KRS 403.212(5)(c).

(4) The shared parenting time credit chart is as follows:

Parenting Time Days	*Adjustment Percentage*
88-115	*15%*
116-129	*20.5%*
130-142	*25%*
143-152	*30.5%*
153-162	*36%*
163-172	*42%*
173-181	*48.5%*
182-182.5	*50%*

(5) (a) Failure by one (1) party to consistently exercise the court-ordered time-sharing schedule or time-sharing agreement between the parents shall be grounds for the other party to seek modification from the court.

(b) A party may seek modification following a fifteen percent (15%) change in the number of timesharing days and shall have the burden of proving a material change in timesharing circumstances.

(c) Nothing in this section shall affect or prevent the application of KRS 403.213(2).

(6) The court shall have discretion in awarding a shared parenting time credit if the obligee receives:

(a) Kentucky Children's Health Insurance Program (KCHIP);

(b) Kentucky Transitional Assistance Program (KTAP);

(c) Supplemental Nutrition Assistance Program (SNAP); or

(d) Medicaid.

➔Section 2. KRS 403.211 is amended to read as follows:

(1) An action to establish or enforce child support may be initiated by the parent, custodian, or agency substantially contributing to the support of the child. The action may be brought in the county in which the child resides or where the defendant resides.

(2) At the time of initial establishment of a child support order, whether temporary or permanent, or in any proceeding to modify a support order, the child support guidelines in KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~ shall serve as a rebuttable presumption for the establishment or modification of the amount of child support. Courts may deviate from the guidelines where their application would be unjust or inappropriate. Any deviation shall be accompanied by a written finding or specific finding on the record by the court, specifying the reason for the deviation.

(3) A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption and allow for an appropriate adjustment of the guideline award if based upon one (1) or more of the following criteria:

(a) A child's extraordinary medical or dental needs;

(b) A child's extraordinary educational, job training, or special needs;

(c) Either parent's own extraordinary needs, such as medical expenses;

(d) The independent financial resources, if any, of the child or children;

(e) Combined monthly adjusted parental gross income in excess of the Kentucky child support guidelines;

(f) The parents of the child, having demonstrated knowledge of the amount of child support established by the Kentucky child support guidelines, have agreed to child support different from the guideline amount. However, no such agreement shall be the basis of any deviation if public assistance is being paid on behalf of a child under the provisions of Part D of Title IV of the Federal Social Security Act;~~[and]~~

(g) Failure by one (1) party to consistently exercise the court-ordered time-sharing schedule or time-sharing agreement between the parents; and

(h)~~[(g)]~~ Any similar factor of an extraordinary nature specifically identified by the court which would make application of the guidelines inappropriate.

(4) "Extraordinary" as used in this section shall be determined by the court in its discretion.

(5) When a party has defaulted or the court is otherwise presented with insufficient evidence to determine gross income, the court shall order child support based upon the needs of the child or the previous standard of living of the child, whichever is greater. An order entered by default or due to insufficient evidence to determine gross income may be modified upward and arrearages awarded from the date of the original order if evidence of gross income is presented within two (2) years which would have established a higher amount of child support pursuant to the child support guidelines set forth in KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~.

(6) The court shall allocate between the parents, in proportion to their combined

monthly adjusted parental gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.

(7) (a) Pursuant to 45 C.F.R. sec. 303.31(a)(2), for the purposes of this section, "health care coverage" includes fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to a dependent child. If health care coverage is reasonable in cost and accessible to either parent at the time the request for coverage is made, the court shall order the parent to obtain or maintain coverage, and the court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, the cost of health care coverage for the child, in addition to the support ordered under the child support guidelines.

(b) A parent, who has one hundred percent (100%) of the combined monthly adjusted parental gross income, shall be entitled to a reduction in gross income of the entire amount of premiums incurred and paid.

(c) The court shall order the cost of health care coverage of the child to be paid by either or both parents of the child regardless of who has physical custody. The court order shall include:

1. A judicial directive designating which parent shall have financial responsibility for providing health care coverage for the dependent child, which shall include but not be limited to health care coverage, payments of necessary health care deductibles or copayments;

2. If appropriate, cash medical support. "Cash medical support" means an amount to be paid toward the cost of health care coverage, fixed payments for ongoing medical costs, extraordinary medical expenses, or

any combination thereof; and

3. A statement providing that if the designated parent's health care coverage provides for covered services for dependent children beyond the age of majority, then any unmarried children up to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the insured parent for maintenance and support shall be covered.

(d) If health care coverage is not reasonable in cost and accessible at the time the request for the coverage is made, the court order shall provide for cash medical support until health care coverage becomes reasonable in cost and accessible.

(8) (a) For purposes of this section, "reasonable in cost" means that the cost of coverage to the responsible parent does not exceed five percent (5%) of his or her gross income. The five percent (5%) standard shall apply to the cost of adding the child to an existing policy, the difference in the cost between a single and a family policy, or the cost of acquiring a separate policy to cover the child. If the parties agree or the court finds good cause exists, the court may order health care coverage in excess of five percent (5%) of the parent's gross income.

(b) For purposes of this section, "accessible" means that there are providers who meet the health care needs of the child and who are located no more than sixty (60) minutes or sixty (60) miles from the child's primary residence, except that nothing shall prohibit use of a provider located more than sixty (60) minutes or sixty (60) miles from the child's primary residence.

(9) ***The initial two hundred fifty dollars ($250) of medical expenses shall be covered by the parent who maintains health insurance for the child or children subject to the order per calendar year, unless the parties have agreed otherwise.***

(10) (a) The cost of extraordinary medical expenses shall be allocated between the parties in proportion to their combined monthly adjusted parental gross incomes.

(b) 1. "Extraordinary medical expenses" means uninsured expenses in excess of two hundred fifty dollars ($250) ***for the*** ~~[per]~~ child ***or children subject to the order*** per calendar year.

2. "Extraordinary medical expenses" includes but is not limited to the costs that are reasonably necessary for medical, surgical, dental, orthodontal, optometric, nursing, and hospital services; for professional counseling or psychiatric therapy for diagnosed medical disorders; and for drugs and medical supplies, appliances, laboratory, diagnostic, and therapeutic services.

(11) ~~[(10)]~~ The court order shall include the Social Security numbers, provided in accordance with KRS 403.135, of all parties subject to a support order.

(12) ~~[(11)]~~ In any case administered by the Cabinet for Health and Family Services, if the parent ordered to provide health care coverage is enrolled through an insurer but fails to enroll the child under family coverage, the other parent or the Cabinet for Health and Family Services may, upon application, enroll the child.

(13) ~~[(12)]~~ In any case administered by the cabinet, information received or transmitted shall not be published or be open for public inspection, including reasonable evidence of domestic violence or child abuse if the disclosure of the information could be harmful to the custodial parent or the child of the parent. Necessary information and records may be furnished as specified by KRS 205.175.

(14) ~~[(13)]~~ In the case in which a parent is obligated to provide health care coverage, and changes employment, and the new employer provides health care coverage, the Cabinet for Health and Family Services shall transfer notice of the provision for coverage for the child to the employer, which shall operate to enroll this child in the

obligated parent's health plan, unless the obligated parent contests the notice as specified by KRS Chapter 13B.

(15) ~~[(14)]~~ Notwithstanding any other provision of this section, any wage or income shall not be exempt from attachment or assignment for the payment of current child support or owed or to-be-owed child support.

(16) ~~[(15)]~~ A payment of money received by a child as a result of a parental disability shall be credited against the child support obligation of the parent. A payment shall not be counted as income to either parent when calculating a child support obligation. An amount received in excess of the child support obligation shall be credited against a child support arrearage owed by the parent that accrued subsequent to the date of the parental disability, but shall not be applied to an arrearage that accrued prior to the date of disability. The date of disability shall be as determined by the paying agency.

➔Section 3. KRS 403.090 (Effective until July 1, 2025) is amended to read as follows:

(1) The fiscal court of any county may, by resolution, authorize the appointment of a "friend of the court." If the Circuit Court of the county has but one (1) judge, the appointment shall be made by the judge. If the court has two (2) or more judges, the appointment shall be made by joint action of the judges, at the general term. The person appointed to the office of friend of the court shall serve at the pleasure of, and subject to removal by, the appointing authority. The person appointed shall be a licensed practicing attorney. The appointed person shall take the constitutional oath of office and shall give bond in such sum as may be fixed by the appointing judge or judges.

(2) Except for those cases administered pursuant to 42 U.S.C. secs. 651 et seq., it shall be the duty of the friend of the court to supervise and enforce the payment of sums ordered or adjudged by the Circuit Court in divorce actions to be paid for the care

and maintenance of minor children. All persons who have been ordered or adjudged by the court, in connection with divorce actions, to make payments for the care and maintenance of children, shall, if so ordered by the court, make such payments to the friend of the court. The friend of the court shall see that the payments, except for those cases administered pursuant to 42 U.S.C. secs. 651 et seq., are properly applied in accordance with the order or judgment. However, if the court so directs, the payments may be made through the juvenile session of District Court of the county; in such case the friend of the court shall render such assistance as may be required in keeping records concerning such payments and in the enforcement of delinquent payments, and the Circuit Court may direct that a designated amount or portion of the funds appropriated by the fiscal court for expenses of the friend of the court be paid to the juvenile session of District Court as reimbursement for the expenses incurred by the juvenile session of District Court in connection with the handling of such payments. The friend of the court shall promptly investigate all cases where payments have become delinquent, and when necessary shall cause the delinquent person to be brought before the court for the purpose of compelling payment. The friend of the court shall ascertain the facts concerning the care, custody, and maintenance of children for whom payments are being made, and shall report to the court all cases in which the children are not receiving proper care or maintenance, or in which the person having custody is failing to furnish proper custody. He shall make such other reports to the court as the court may require.

(3) In the event that a waiver is granted under 42 U.S.C. secs. 651 et seq., allowing payment of wage withholding collections to be directed to the friend of the court, an obligor shall be given the option of payment either to the friend of the court or the centralized collection agency.

(4) In any action for divorce where the parties have minor children, the friend of the court, if requested by the trial judge, shall make such investigation as will enable

the friend of the court to ascertain all facts and circumstances that will affect the rights and interests of the children and will enable the court to enter just and proper orders and judgment concerning the care, custody, and maintenance of the children. The friend of the court shall make a report to the trial judge, at a time fixed by the judge, setting forth recommendations as to the care, custody, and maintenance of the children. The friend of the court may request the court to postpone the final submission of any case to give the friend of the court a reasonable time in which to complete the investigation.

(5) The friend of the court shall have authority to secure the issuance by the court of any order, rule, or citation necessary for the proper enforcement of orders and judgments in divorce actions concerning the custody, care, and maintenance of children. In performing duties under subsection (4) of this section the friend of the court shall attend the taking of depositions within the county, and shall have authority to cross-examine the witnesses. In the case of depositions taken on interrogatories, the friend of the court may file cross-interrogatories. The friend of the court shall be duly notified of the time and place of the taking of depositions in all divorce actions where the parties have minor children, and shall attend the taking of all such depositions when the friend of the court deems it necessary for the protection of the minor children, or when the friend of the court may be directed by the court to attend.

(6) The friend of the court shall not directly or indirectly represent any party to a divorce action except as herein authorized to represent the minor children of parties to a divorce action, but if an allowance is made for the support of a spouse and an infant child or children, may proceed to enforce the payment of the allowance made to the spouse also.

(7) Where a friend of the court is acting as a designee of the cabinet pursuant to KRS 205.712 and an applicant for Title IV-D services pursuant to KRS 205.721 has

requested a modification of an existing child support order pursuant to a divorce or other judicial order, the friend of the court shall seek the modification, providing all jurisdictional requirements are met. The friend of the court's representation shall extend only for the limited purpose of seeking a modification of an existing child support order consistent with the provisions of KRS 403.212 or ***Section 1 of this Act*** ~~[403.2121]~~.

(8) The fiscal court of any county which has authorized the appointment of a friend of the court under this section shall, by resolution, fix a reasonable compensation for the friend of the court and make a reasonable allowance for necessary expenses, equipment, and supplies, payable out of the general fund of the county, upon approval of the appointing judge or judges.

➔Section 4. KRS 403.090 (Effective July 1, 2025) is amended to read as follows:

(1) The fiscal court of any county may, by resolution, authorize the appointment of a "friend of the court." If the Circuit Court of the county has but one (1) judge, the appointment shall be made by the judge. If the court has two (2) or more judges, the appointment shall be made by joint action of the judges, at the general term. The person appointed to the office of friend of the court shall serve at the pleasure of, and subject to removal by, the appointing authority. The person appointed shall be a licensed practicing attorney. The appointed person shall take the constitutional oath of office and shall give bond in such sum as may be fixed by the appointing judge or judges.

(2) Except for those cases administered pursuant to 42 U.S.C. sec. 651 et seq., it shall be the duty of the friend of the court to supervise and enforce the payment of sums ordered or adjudged by the Circuit Court in divorce actions to be paid for the care and maintenance of minor children. All persons who have been ordered or adjudged by the court, in connection with divorce actions, to make payments for the care and maintenance of children, shall, if so ordered by the court, make such payments to

the friend of the court. The friend of the court shall see that the payments, except for those cases administered pursuant to 42 U.S.C. sec. 651 et seq., are properly applied in accordance with the order or judgment. However, if the court so directs, the payments may be made through the juvenile session of District Court of the county; in such case the friend of the court shall render such assistance as may be required in keeping records concerning such payments and in the enforcement of delinquent payments, and the Circuit Court may direct that a designated amount or portion of the funds appropriated by the fiscal court for expenses of the friend of the court be paid to the juvenile session of District Court as reimbursement for the expenses incurred by the juvenile session of District Court in connection with the handling of such payments. The friend of the court shall promptly investigate all cases where payments have become delinquent, and when necessary shall cause the delinquent person to be brought before the court for the purpose of compelling payment. The friend of the court shall ascertain the facts concerning the care, custody, and maintenance of children for whom payments are being made, and shall report to the court all cases in which the children are not receiving proper care or maintenance, or in which the person having custody is failing to furnish proper custody. He shall make such other reports to the court as the court may require.

(3) In the event that a waiver is granted under 42 U.S.C. sec. 651 et seq., allowing payment of wage withholding collections to be directed to the friend of the court, an obligor shall be given the option of payment either to the friend of the court or the centralized collection agency.

(4) In any action for divorce where the parties have minor children, the friend of the court, if requested by the trial judge, shall make such investigation as will enable the friend of the court to ascertain all facts and circumstances that will affect the rights and interests of the children and will enable the court to enter just and proper orders and judgment concerning the care, custody, and maintenance of the children.

The friend of the court shall make a report to the trial judge, at a time fixed by the judge, setting forth recommendations as to the care, custody, and maintenance of the children. The friend of the court may request the court to postpone the final submission of any case to give the friend of the court a reasonable time in which to complete the investigation.

(5) The friend of the court shall have authority to secure the issuance by the court of any order, rule, or citation necessary for the proper enforcement of orders and judgments in divorce actions concerning the custody, care, and maintenance of children. In performing duties under subsection (4) of this section the friend of the court shall attend the taking of depositions within the county, and shall have authority to cross-examine the witnesses. In the case of depositions taken on interrogatories, the friend of the court may file cross-interrogatories. The friend of the court shall be duly notified of the time and place of the taking of depositions in all divorce actions where the parties have minor children, and shall attend the taking of all such depositions when the friend of the court deems it necessary for the protection of the minor children, or when the friend of the court may be directed by the court to attend.

(6) The friend of the court shall not directly or indirectly represent any party to a divorce action except as herein authorized to represent the minor children of parties to a divorce action, but if an allowance is made for the support of a spouse and an infant child or children, may proceed to enforce the payment of the allowance made to the spouse also.

(7) Where a friend of the court is acting as a designee of the Office of the Attorney General pursuant to KRS 15.802 and an applicant for Title IV-D services pursuant to KRS 15.810 has requested a modification of an existing child support order pursuant to a divorce or other judicial order, the friend of the court shall seek the modification, providing all jurisdictional requirements are met. The friend of the

court's representation shall extend only for the limited purpose of seeking a modification of an existing child support order consistent with the provisions of KRS 403.212 or ***Section 1 of this Act*** ~~[403.2121]~~.

(8) The fiscal court of any county which has authorized the appointment of a friend of the court under this section shall, by resolution, fix a reasonable compensation for the friend of the court and make a reasonable allowance for necessary expenses, equipment, and supplies, payable out of the general fund of the county, upon approval of the appointing judge or judges.

➔Section 5. KRS 403.212 (Effective until July 1, 2025) is amended to read as follows:

(1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.

(2) The Cabinet for Health and Family Services shall:

(a) Promulgate an administrative regulation in accordance with KRS Chapter 13A establishing a child support obligation worksheet; and

(b) Make accessible on its ***website*** ~~[Web site]~~ a manual providing examples or illustrations of the application of the child support guidelines and the child support obligation worksheet.

(3) For the purposes of the child support guidelines:

(a) "Income" means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed;

(b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts,

prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps;

(c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight-line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues;

(d) "Self-support reserve" means a low-income adjustment amount to the obligated parent of nine hundred fifteen dollars ($915) per month that considers the subsistence needs of the obligor with a limited ability to pay in accordance with 45 C.F.R. sec. 302.56(c)(1)(ii), and as applied under

subsection (5) of this section;

(e) 1. If there is a finding that a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a finding of voluntary unemployment or underemployment and a determination of potential income shall not be made for a parent who is incarcerated, physically or mentally incapacitated, or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility;

2. A court may find a parent is voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation; and

3. Imputation of potential income, when applicable, shall include consideration of the following circumstances of the parents, to the extent known:

a. Assets and residence;

b. Employment, earning history, and job skills;

c. Educational level, literacy, age, health, and criminal record that could impair the ability to gain or continue employment;

d. Record of seeking work;

e. Local labor market, including availability of employment for which the parent may be qualified and employable;

f. Prevailing earnings in the local labor market; and

g. Other relevant background factors, including employment barriers;

(f) "Obligor" has the same meaning as in KRS 205.710;

(g) "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines;

(h) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include, but shall not be limited to, income tax returns, paystubs, employer statements, or receipts and expenses if self-employed;

(i) "Combined monthly adjusted parental gross income" means the combined monthly gross incomes of both parents, less any of the following payments made by the parent:

1. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the court;

2. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and

3. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children; and

(j) "Split custody arrangement" means a situation where each parent has sole custody and decision-making authority while the child or children is in his or her residence. Visitation only occurs when the child is in residence with the other parent.

(4) Any child support obligation shall be calculated by using the number of children for whom the parents share a joint legal responsibility.

(5) (a) Except as provided in paragraph (b) of this subsection, the child support

obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their combined monthly adjusted parental gross income.

(b) The child support obligation of an obligated parent whose monthly adjusted gross income is equal to or less than the amounts in subparagraphs 1. to 5. of this paragraph shall be calculated using the monthly adjusted gross income of the obligated parent alone to provide for the self–support reserve. The following monthly adjusted gross income amounts shall qualify an individual for the self-support reserve:

1. One thousand one hundred dollars ($1,100) with one (1) child;
2. One thousand three hundred dollars ($1,300) with two (2) children;
3. One thousand four hundred dollars ($1,400) with three (3) children;
4. One thousand five hundred dollars ($1,500) with four (4) or five (5) children; or
5. One thousand six hundred dollars ($1,600) with six (6) or more children.

(c) The obligated parent shall pay the lesser support amount calculated in accordance with:

1. Paragraph (a) of this subsection;
2. Paragraph (b) of this subsection; and
3. As determined under ***Section 1 of this Act***~~[KRS 403.2121]~~ if the shared parenting time credit is applicable.

(6) The minimum amount of child support shall be sixty dollars ($60) per month, except as provided in ***subsection (3) of Section 1 of this Act***~~[KRS 403.2121(3)]~~.

(7) The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.

(8) The child support obligation in a split custody arrangement shall be calculated in

the following manner:

(a) Two (2) separate child support obligation worksheets shall be prepared, one (1) for each household, using the number of children born of the relationship in each separate household, rather than the total number of children born of the relationship.

(b) The parent with the greater monthly obligation amount shall pay the difference between the obligation amounts, as determined by the worksheets, to the other parent.

(9) The child support guidelines table is as follows:

COMBINED MONTHLY ADJUSTED PARENTAL GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE	FOUR	FIVE	SIX OR MORE
$ 0	$60	$60	$60	$60	$60	$60
100	60	60	60	60	60	60
200	60	60	60	60	60	60
300	60	60	60	60	60	60
400	60	60	60	60	60	60
500	60	60	60	60	60	60
600	60	60	60	60	60	60
700	60	60	60	60	60	60
800	60	60	60	60	60	60
900	60	60	60	60	60	60
1,000	85	85	85	85	85	85

1	1,100	148	150	152	154	155	157
2	1,200	200	231	234	237	239	242
3	1,300	216	312	316	320	323	327
4	1,400	231	339	398	403	407	412
5	1,500	247	362	437	486	491	497
6	1,600	262	384	464	518	570	582
7	1,700	277	406	491	548	603	655
8	1,800	292	428	517	578	635	691
9	1,900	307	450	544	607	668	726
10	2,000	322	472	570	637	701	762
11	2,100	337	494	597	667	734	797
12	2,200	352	516	624	697	766	833
13	2,300	367	538	650	726	799	869
14	2,400	382	560	677	756	832	904
15	2,500	397	582	704	786	865	940
16	2,600	412	604	730	816	897	975
17	2,700	427	626	757	845	930	1,011
18	2,800	442	648	783	875	963	1,046
19	2,900	457	670	810	905	995	1,082
20	3,000	472	692	837	935	1,028	1,118
21	3,100	487	714	863	964	1,061	1,153
22	3,200	502	737	890	994	1,094	1,189
23	3,300	517	759	917	1,024	1,126	1,224
24	3,400	532	781	943	1,054	1,159	1,260
25	3,500	547	803	970	1,083	1,192	1,295
26	3,600	562	825	997	1,113	1,224	1,331
27	3,700	577	847	1,023	1,143	1,257	1,367

1	3,800	592	869	1,050	1,173	1,290	1,402
2	3,900	607	891	1,076	1,202	1,323	1,438
3	4,000	621	912	1,102	1,230	1,353	1,471
4	4,100	634	931	1,125	1,256	1,382	1,502
5	4,200	647	950	1,148	1,282	1,410	1,533
6	4,300	660	969	1,171	1,308	1,439	1,564
7	4,400	673	988	1,194	1,334	1,467	1,595
8	4,500	686	1,007	1,217	1,359	1,495	1,625
9	4,600	699	1,026	1,240	1,385	1,524	1,656
10	4,700	712	1,045	1,263	1,411	1,552	1,687
11	4,800	725	1,064	1,286	1,437	1,580	1,718
12	4,900	738	1,084	1,309	1,463	1,609	1,749
13	5,000	751	1,103	1,332	1,488	1,637	1,780
14	5,100	764	1,122	1,356	1,514	1,666	1,810
15	5,200	777	1,141	1,379	1,540	1,694	1,841
16	5,300	790	1,160	1,402	1,566	1,722	1,872
17	5,400	799	1,172	1,415	1,581	1,739	1,890
18	5,500	805	1,177	1,419	1,585	1,744	1,896
19	5,600	810	1,181	1,423	1,590	1,749	1,901
20	5,700	815	1,186	1,427	1,594	1,753	1,906
21	5,800	820	1,191	1,431	1,598	1,758	1,911
22	5,900	825	1,195	1,435	1,603	1,763	1,916
23	6,000	831	1,200	1,439	1,607	1,768	1,922
24	6,100	837	1,208	1,449	1,618	1,780	1,935
25	6,200	844	1,217	1,459	1,629	1,792	1,948
26	6,300	851	1,226	1,469	1,641	1,805	1,962
27	6,400	858	1,234	1,479	1,652	1,817	1,975

1	6,500	865	1,243	1,489	1,663	1,829	1,988
2	6,600	871	1,251	1,499	1,674	1,841	2,002
3	6,700	881	1,263	1,513	1,690	1,859	2,021
4	6,800	892	1,278	1,530	1,709	1,880	2,044
5	6,900	903	1,292	1,548	1,729	1,902	2,067
6	7,000	914	1,306	1,565	1,748	1,923	2,090
7	7,100	925	1,320	1,582	1,767	1,944	2,113
8	7,200	935	1,335	1,600	1,787	1,965	2,136
9	7,300	946	1,348	1,616	1,805	1,986	2,159
10	7,400	954	1,360	1,630	1,820	2,003	2,177
11	7,500	962	1,372	1,643	1,836	2,019	2,195
12	7,600	969	1,384	1,657	1,851	2,036	2,213
13	7,700	977	1,396	1,670	1,866	2,052	2,231
14	7,800	984	1,407	1,683	1,880	2,068	2,248
15	7,900	991	1,419	1,696	1,895	2,084	2,266
16	8,000	996	1,426	1,704	1,903	2,094	2,276
17	8,100	1,000	1,429	1,709	1,908	2,099	2,282
18	8,200	1,004	1,433	1,713	1,914	2,105	2,288
19	8,300	1,008	1,437	1,718	1,919	2,110	2,294
20	8,400	1,012	1,441	1,722	1,924	2,116	2,300
21	8,500	1,016	1,444	1,727	1,929	2,122	2,306
22	8,600	1,020	1,448	1,731	1,934	2,127	2,312
23	8,700	1,026	1,456	1,740	1,944	2,138	2,324
24	8,800	1,033	1,464	1,749	1,953	2,149	2,336
25	8,900	1,039	1,472	1,758	1,963	2,160	2,347
26	9,000	1,046	1,480	1,766	1,973	2,170	2,359
27	9,100	1,052	1,488	1,775	1,983	2,181	2,371

1	9,200	1,059	1,496	1,784	1,993	2,192	2,382
2	9,300	1,065	1,502	1,792	2,002	2,202	2,393
3	9,400	1,070	1,507	1,799	2,010	2,211	2,403
4	9,500	1,075	1,511	1,807	2,018	2,220	2,413
5	9,600	1,080	1,516	1,814	2,026	2,229	2,423
6	9,700	1,085	1,520	1,822	2,035	2,238	2,433
7	9,800	1,090	1,524	1,829	2,043	2,247	2,443
8	9,900	1,094	1,529	1,836	2,051	2,256	2,453
9	10,000	1,099	1,533	1,844	2,059	2,265	2,463
10	10,100	1,104	1,538	1,851	2,068	2,275	2,472
11	10,200	1,109	1,542	1,859	2,076	2,284	2,482
12	10,300	1,115	1,549	1,867	2,086	2,294	2,494
13	10,400	1,123	1,560	1,878	2,098	2,308	2,509
14	10,500	1,130	1,571	1,889	2,110	2,321	2,523
15	10,600	1,137	1,582	1,900	2,123	2,335	2,538
16	10,700	1,145	1,593	1,911	2,135	2,349	2,553
17	10,800	1,152	1,604	1,922	2,147	2,362	2,568
18	10,900	1,159	1,615	1,933	2,160	2,376	2,582
19	11,000	1,167	1,626	1,944	2,172	2,389	2,597
20	11,100	1,174	1,637	1,956	2,185	2,403	2,612
21	11,200	1,182	1,649	1,968	2,198	2,418	2,628
22	11,300	1,191	1,661	1,980	2,212	2,433	2,644
23	11,400	1,199	1,673	1,992	2,225	2,448	2,660
24	11,500	1,207	1,685	2,004	2,239	2,462	2,677
25	11,600	1,215	1,695	2,016	2,252	2,477	2,693
26	11,700	1,222	1,705	2,029	2,266	2,493	2,710
27	11,800	1,229	1,714	2,041	2,280	2,508	2,726

1	11,900	1,237	1,723	2,054	2,294	2,523	2,743
2	12,000	1,244	1,732	2,066	2,308	2,539	2,759
3	12,100	1,252	1,742	2,078	2,322	2,554	2,776
4	12,200	1,259	1,751	2,091	2,336	2,569	2,793
5	12,300	1,267	1,760	2,103	2,349	2,584	2,809
6	12,400	1,274	1,769	2,116	2,363	2,600	2,826
7	12,500	1,282	1,778	2,128	2,377	2,615	2,842
8	12,600	1,289	1,788	2,141	2,391	2,630	2,859
9	12,700	1,296	1,797	2,153	2,405	2,645	2,876
10	12,800	1,304	1,806	2,165	2,419	2,661	2,892
11	12,900	1,311	1,815	2,178	2,433	2,676	2,909
12	13,000	1,319	1,825	2,190	2,447	2,691	2,925
13	13,100	1,326	1,834	2,203	2,461	2,707	2,942
14	13,200	1,334	1,843	2,215	2,474	2,722	2,959
15	13,300	1,341	1,852	2,228	2,488	2,737	2,975
16	13,400	1,348	1,861	2,238	2,500	2,750	2,990
17	13,500	1,353	1,868	2,247	2,510	2,761	3,001
18	13,600	1,359	1,875	2,255	2,519	2,771	3,012
19	13,700	1,364	1,882	2,264	2,529	2,781	3,023
20	13,800	1,370	1,889	2,272	2,538	2,792	3,035
21	13,900	1,375	1,896	2,281	2,547	2,802	3,046
22	14,000	1,381	1,903	2,289	2,557	2,812	3,057
23	14,100	1,386	1,910	2,297	2,566	2,822	3,068
24	14,200	1,391	1,916	2,304	2,574	2,831	3,078
25	14,300	1,396	1,922	2,312	2,582	2,841	3,088
26	14,400	1,401	1,929	2,319	2,591	2,850	3,098
27	14,500	1,406	1,935	2,327	2,599	2,859	3,108

1	14,600	1,410	1,941	2,334	2,607	2,868	3,118
2	14,700	1,415	1,947	2,342	2,616	2,877	3,128
3	14,800	1,420	1,954	2,349	2,624	2,886	3,138
4	14,900	1,425	1,960	2,357	2,632	2,896	3,147
5	15,000	1,430	1,966	2,364	2,641	2,905	3,157
6	15,100	1,435	1,972	2,371	2,649	2,914	3,167
7	15,200	1,440	1,978	2,379	2,657	2,923	3,177
8	15,300	1,444	1,985	2,386	2,666	2,932	3,187
9	15,400	1,449	1,991	2,394	2,674	2,941	3,197
10	15,500	1,454	1,997	2,401	2,682	2,950	3,207
11	15,600	1,459	2,003	2,409	2,691	2,960	3,217
12	15,700	1,464	2,010	2,416	2,699	2,969	3,227
13	15,800	1,469	2,016	2,424	2,707	2,978	3,237
14	15,900	1,474	2,022	2,431	2,715	2,987	3,247
15	16,000	1,478	2,028	2,439	2,724	2,996	3,257
16	16,100	1,484	2,035	2,445	2,732	3,005	3,266
17	16,200	1,490	2,041	2,452	2,739	3,013	3,275
18	16,300	1,495	2,047	2,459	2,747	3,022	3,285
19	16,400	1,501	2,053	2,466	2,755	3,030	3,294
20	16,500	1,506	2,059	2,473	2,763	3,039	3,303
21	16,600	1,512	2,065	2,480	2,770	3,047	3,313
22	16,700	1,518	2,071	2,487	2,778	3,056	3,322
23	16,800	1,523	2,077	2,494	2,786	3,065	3,331
24	16,900	1,529	2,083	2,501	2,794	3,073	3,340
25	17,000	1,534	2,089	2,508	2,801	3,082	3,350
26	17,100	1,540	2,095	2,515	2,809	3,090	3,359
27	17,200	1,545	2,102	2,522	2,817	3,099	3,368

1	17,300	1,551	2,108	2,529	2,825	3,107	3,378
2	17,400	1,557	2,114	2,536	2,832	3,116	3,387
3	17,500	1,562	2,120	2,543	2,840	3,124	3,396
4	17,600	1,568	2,126	2,550	2,848	3,133	3,405
5	17,700	1,573	2,132	2,557	2,856	3,141	3,415
6	17,800	1,579	2,138	2,563	2,863	3,149	3,423
7	17,900	1,584	2,144	2,570	2,870	3,157	3,432
8	18,000	1,589	2,149	2,576	2,878	3,166	3,441
9	18,100	1,595	2,155	2,583	2,885	3,174	3,450
10	18,200	1,600	2,161	2,590	2,893	3,182	3,459
11	18,300	1,605	2,167	2,596	2,900	3,190	3,467
12	18,400	1,611	2,173	2,603	2,907	3,198	3,476
13	18,500	1,616	2,178	2,609	2,915	3,206	3,485
14	18,600	1,621	2,184	2,616	2,922	3,214	3,494
15	18,700	1,627	2,190	2,623	2,929	3,222	3,503
16	18,800	1,632	2,196	2,629	2,937	3,231	3,512
17	18,900	1,637	2,202	2,636	2,944	3,239	3,520
18	19,000	1,642	2,207	2,642	2,952	3,247	3,529
19	19,100	1,648	2,213	2,649	2,959	3,255	3,538
20	19,200	1,653	2,219	2,656	2,966	3,263	3,547
21	19,300	1,658	2,225	2,662	2,974	3,271	3,556
22	19,400	1,664	2,231	2,669	2,981	3,279	3,565
23	19,500	1,669	2,236	2,675	2,989	3,287	3,573
24	19,600	1,674	2,242	2,682	2,996	3,295	3,582
25	19,700	1,680	2,248	2,689	3,003	3,304	3,591
26	19,800	1,685	2,254	2,695	3,011	3,312	3,600
27	19,900	1,690	2,260	2,702	3,018	3,320	3,609

1	20,000	1,696	2,265	2,709	3,025	3,328	3,617
2	20,100	1,701	2,271	2,715	3,033	3,336	3,626
3	20,200	1,706	2,277	2,722	3,040	3,344	3,635
4	20,300	1,710	2,282	2,728	3,047	3,352	3,643
5	20,400	1,713	2,287	2,733	3,053	3,358	3,651
6	20,500	1,717	2,292	2,739	3,059	3,365	3,658
7	20,600	1,720	2,297	2,745	3,066	3,372	3,666
8	20,700	1,723	2,302	2,750	3,072	3,379	3,673
9	20,800	1,726	2,307	2,756	3,078	3,386	3,681
10	20,900	1,730	2,313	2,761	3,084	3,393	3,688
11	21,000	1,733	2,318	2,767	3,091	3,400	3,695
12	21,100	1,736	2,323	2,773	3,097	3,407	3,703
13	21,200	1,739	2,328	2,778	3,103	3,413	3,710
14	21,300	1,743	2,333	2,784	3,109	3,420	3,718
15	21,400	1,746	2,338	2,789	3,116	3,427	3,725
16	21,500	1,749	2,343	2,795	3,122	3,434	3,733
17	21,600	1,752	2,348	2,801	3,128	3,441	3,740
18	21,700	1,756	2,353	2,806	3,134	3,448	3,748
19	21,800	1,759	2,358	2,812	3,141	3,455	3,755
20	21,900	1,762	2,363	2,817	3,147	3,462	3,763
21	22,000	1,765	2,368	2,823	3,153	3,469	3,770
22	22,100	1,769	2,373	2,829	3,160	3,475	3,778
23	22,200	1,772	2,378	2,834	3,166	3,482	3,785
24	22,300	1,775	2,383	2,840	3,172	3,489	3,793
25	22,400	1,778	2,388	2,845	3,178	3,496	3,800
26	22,500	1,782	2,393	2,851	3,185	3,503	3,808
27	22,600	1,785	2,398	2,857	3,191	3,510	3,815

1	22,700	1,788	2,403	2,862	3,197	3,517	3,823
2	22,800	1,791	2,408	2,868	3,203	3,524	3,830
3	22,900	1,795	2,413	2,873	3,210	3,531	3,838
4	23,000	1,798	2,418	2,879	3,216	3,537	3,845
5	23,100	1,801	2,423	2,885	3,222	3,544	3,853
6	23,200	1,804	2,429	2,890	3,228	3,551	3,860
7	23,300	1,808	2,434	2,896	3,235	3,558	3,868
8	23,400	1,811	2,439	2,901	3,241	3,565	3,875
9	23,500	1,814	2,444	2,907	3,247	3,572	3,883
10	23,600	1,817	2,449	2,913	3,253	3,579	3,890
11	23,700	1,821	2,454	2,918	3,260	3,586	3,898
12	23,800	1,824	2,459	2,924	3,266	3,593	3,905
13	23,900	1,827	2,464	2,929	3,272	3,599	3,913
14	24,000	1,830	2,469	2,935	3,278	3,606	3,920
15	24,100	1,834	2,474	2,941	3,285	3,613	3,928
16	24,200	1,837	2,479	2,946	3,291	3,620	3,935
17	24,300	1,840	2,484	2,952	3,297	3,627	3,943
18	24,400	1,843	2,489	2,957	3,304	3,634	3,950
19	24,500	1,847	2,494	2,963	3,310	3,641	3,957
20	24,600	1,850	2,499	2,969	3,316	3,648	3,965
21	24,700	1,853	2,504	2,974	3,322	3,655	3,972
22	24,800	1,856	2,509	2,980	3,329	3,661	3,980
23	24,900	1,860	2,514	2,986	3,335	3,668	3,987
24	25,000	1,863	2,519	2,991	3,341	3,675	3,995
25	25,100	1,866	2,524	2,997	3,347	3,682	4,002
26	25,200	1,869	2,529	3,002	3,354	3,689	4,010
27	25,300	1,873	2,534	3,008	3,360	3,696	4,017

1	25,400	1,876	2,540	3,014	3,366	3,703	4,025
2	25,500	1,879	2,545	3,019	3,372	3,710	4,032
3	25,600	1,882	2,550	3,025	3,379	3,716	4,040
4	25,700	1,886	2,555	3,030	3,385	3,723	4,047
5	25,800	1,889	2,560	3,036	3,391	3,730	4,055
6	25,900	1,892	2,565	3,042	3,397	3,737	4,062
7	26,000	1,895	2,570	3,047	3,404	3,744	4,070
8	26,100	1,899	2,575	3,053	3,410	3,751	4,077
9	26,200	1,902	2,580	3,058	3,416	3,758	4,085
10	26,300	1,905	2,585	3,064	3,422	3,765	4,092
11	26,400	1,908	2,590	3,070	3,429	3,772	4,100
12	26,500	1,912	2,595	3,075	3,435	3,778	4,107
13	26,600	1,915	2,600	3,081	3,441	3,785	4,115
14	26,700	1,918	2,605	3,086	3,447	3,792	4,122
15	26,800	1,921	2,610	3,092	3,454	3,799	4,130
16	26,900	1,925	2,615	3,098	3,460	3,806	4,137
17	27,000	1,928	2,620	3,103	3,466	3,813	4,145
18	27,100	1,931	2,625	3,109	3,473	3,820	4,152
19	27,200	1,934	2,630	3,114	3,479	3,827	4,160
20	27,300	1,938	2,635	3,120	3,485	3,834	4,167
21	27,400	1,941	2,640	3,126	3,491	3,840	4,175
22	27,500	1,944	2,645	3,131	3,498	3,847	4,182
23	27,600	1,948	2,650	3,137	3,504	3,854	4,190
24	27,700	1,951	2,656	3,142	3,510	3,861	4,197
25	27,800	1,954	2,661	3,148	3,516	3,868	4,205
26	27,900	1,957	2,666	3,154	3,523	3,875	4,212
27	28,000	1,961	2,671	3,159	3,529	3,882	4,219

28,100	1,964	2,676	3,165	3,535	3,889	4,227
28,200	1,967	2,681	3,170	3,541	3,896	4,234
28,300	1,970	2,686	3,176	3,548	3,902	4,242
28,400	1,972	2,689	3,179	3,551	3,907	4,247
28,500	1,974	2,691	3,182	3,555	3,911	4,251
28,600	1,976	2,694	3,185	3,558	3,914	4,255
28,700	1,978	2,696	3,188	3,561	3,918	4,259
28,800	1,980	2,699	3,191	3,565	3,922	4,263
28,900	1,982	2,701	3,194	3,568	3,926	4,268
29,000	1,984	2,704	3,197	3,571	3,930	4,272
29,100	1,986	2,707	3,200	3,575	3,934	4,276
29,200	1,988	2,709	3,203	3,578	3,938	4,280
29,300	1,990	2,712	3,206	3,581	3,941	4,284
29,400	1,992	2,714	3,209	3,584	3,945	4,289
29,500	1,993	2,717	3,212	3,588	3,949	4,293
29,600	1,995	2,719	3,215	3,591	3,953	4,297
29,700	1,997	2,722	3,218	3,594	3,957	4,301
29,800	1,999	2,724	3,221	3,598	3,961	4,305
29,900	2,001	2,727	3,224	3,601	3,965	4,310
30,000	2,003	2,730	3,227	3,604	3,968	4,314

➔Section 6. KRS 403.212 (Effective July 1, 2025) is amended to read as follows:

(1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.

(2) The Office of the Attorney General shall:

(a) Promulgate an administrative regulation in accordance with KRS Chapter 13A establishing a child support obligation worksheet; and

(b) Make accessible on its website a manual providing examples or illustrations

of the application of the child support guidelines and the child support obligation worksheet.

(3) For the purposes of the child support guidelines:

(a) "Income" means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed;

(b) "Gross income" includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps;

(c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight-line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income. Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child

support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues;

(d) "Self-support reserve" means a low-income adjustment amount to the obligated parent of nine hundred fifteen dollars ($915) per month that considers the subsistence needs of the obligor with a limited ability to pay in accordance with 45 C.F.R. sec. 302.56(c)(1)(ii), and as applied under subsection (5) of this section;

(e) 1. If there is a finding that a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a finding of voluntary unemployment or underemployment and a determination of potential income shall not be made for a parent who is incarcerated, physically or mentally incapacitated, or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility;

2. A court may find a parent is voluntarily unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation; and

3. Imputation of potential income, when applicable, shall include consideration of the following circumstances of the parents, to the extent known:

a. Assets and residence;

b. Employment, earning history, and job skills;

c. Educational level, literacy, age, health, and criminal record that could impair the ability to gain or continue employment;

d. Record of seeking work;

e. Local labor market, including availability of employment for which the parent may be qualified and employable;

f. Prevailing earnings in the local labor market; and

g. Other relevant background factors, including employment barriers;

(f) "Obligor" has the same meaning as in KRS 15.800;

(g) "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines;

(h) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include, but shall not be limited to, income tax returns, paystubs, employer statements, or receipts and expenses if self-employed;

(i) "Combined monthly adjusted parental gross income" means the combined monthly gross incomes of both parents, less any of the following payments made by the parent:

1. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the court;

2. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and

3. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the

prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children; and

(j) "Split custody arrangement" means a situation where each parent has sole custody and decision-making authority while the child or children is in his or her residence. Visitation only occurs when the child is in residence with the other parent.

(4) Any child support obligation shall be calculated by using the number of children for whom the parents share a joint legal responsibility.

(5) (a) Except as provided in paragraph (b) of this subsection, the child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their combined monthly adjusted parental gross income.

(b) The child support obligation of an obligated parent whose monthly adjusted gross income is equal to or less than the amounts in subparagraphs 1. to 5. of this paragraph shall be calculated using the monthly adjusted gross income of the obligated parent alone to provide for the self–support reserve. The following monthly adjusted gross income amounts shall qualify an individual for the self-support reserve:

1. One thousand one hundred dollars ($1,100) with one (1) child;
2. One thousand three hundred dollars ($1,300) with two (2) children;
3. One thousand four hundred dollars ($1,400) with three (3) children;
4. One thousand five hundred dollars ($1,500) with four (4) or five (5) children; or
5. One thousand six hundred dollars ($1,600) with six (6) or more children.

(c) The obligated parent shall pay the lesser support amount calculated in

accordance with:

1. Paragraph (a) of this subsection;
2. Paragraph (b) of this subsection; and
3. As determined under ***Section 1 of this Act*** ~~[KRS 403.2121]~~ if the shared parenting time credit is applicable.

(6) The minimum amount of child support shall be sixty dollars ($60) per month, except as provided in ***subsection (3) of Section 1 of this Act*** ~~[KRS 403.2121(3)]~~.

(7) The court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.

(8) The child support obligation in a split custody arrangement shall be calculated in the following manner:

(a) Two (2) separate child support obligation worksheets shall be prepared, one (1) for each household, using the number of children born of the relationship in each separate household, rather than the total number of children born of the relationship.

(b) The parent with the greater monthly obligation amount shall pay the difference between the obligation amounts, as determined by the worksheets, to the other parent.

(9) The child support guidelines table is as follows:

COMBINED MONTHLY ADJUSTED PARENTAL GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE	FOUR	FIVE	SIX OR MORE

1	$ 0	$60	$60	$60	$60	$60	$60
2	100	60	60	60	60	60	60
3	200	60	60	60	60	60	60
4	300	60	60	60	60	60	60
5	400	60	60	60	60	60	60
6	500	60	60	60	60	60	60
7	600	60	60	60	60	60	60
8	700	60	60	60	60	60	60
9	800	60	60	60	60	60	60
10	900	60	60	60	60	60	60
11	1,000	85	85	85	85	85	85
12	1,100	148	150	152	154	155	157
13	1,200	200	231	234	237	239	242
14	1,300	216	312	316	320	323	327
15	1,400	231	339	398	403	407	412
16	1,500	247	362	437	486	491	497
17	1,600	262	384	464	518	570	582
18	1,700	277	406	491	548	603	655
19	1,800	292	428	517	578	635	691
20	1,900	307	450	544	607	668	726
21	2,000	322	472	570	637	701	762
22	2,100	337	494	597	667	734	797
23	2,200	352	516	624	697	766	833
24	2,300	367	538	650	726	799	869
25	2,400	382	560	677	756	832	904
26	2,500	397	582	704	786	865	940
27	2,600	412	604	730	816	897	975

1	2,700	427	626	757	845	930	1,011
2	2,800	442	648	783	875	963	1,046
3	2,900	457	670	810	905	995	1,082
4	3,000	472	692	837	935	1,028	1,118
5	3,100	487	714	863	964	1,061	1,153
6	3,200	502	737	890	994	1,094	1,189
7	3,300	517	759	917	1,024	1,126	1,224
8	3,400	532	781	943	1,054	1,159	1,260
9	3,500	547	803	970	1,083	1,192	1,295
10	3,600	562	825	997	1,113	1,224	1,331
11	3,700	577	847	1,023	1,143	1,257	1,367
12	3,800	592	869	1,050	1,173	1,290	1,402
13	3,900	607	891	1,076	1,202	1,323	1,438
14	4,000	621	912	1,102	1,230	1,353	1,471
15	4,100	634	931	1,125	1,256	1,382	1,502
16	4,200	647	950	1,148	1,282	1,410	1,533
17	4,300	660	969	1,171	1,308	1,439	1,564
18	4,400	673	988	1,194	1,334	1,467	1,595
19	4,500	686	1,007	1,217	1,359	1,495	1,625
20	4,600	699	1,026	1,240	1,385	1,524	1,656
21	4,700	712	1,045	1,263	1,411	1,552	1,687
22	4,800	725	1,064	1,286	1,437	1,580	1,718
23	4,900	738	1,084	1,309	1,463	1,609	1,749
24	5,000	751	1,103	1,332	1,488	1,637	1,780
25	5,100	764	1,122	1,356	1,514	1,666	1,810
26	5,200	777	1,141	1,379	1,540	1,694	1,841
27	5,300	790	1,160	1,402	1,566	1,722	1,872

1	5,400	799	1,172	1,415	1,581	1,739	1,890
2	5,500	805	1,177	1,419	1,585	1,744	1,896
3	5,600	810	1,181	1,423	1,590	1,749	1,901
4	5,700	815	1,186	1,427	1,594	1,753	1,906
5	5,800	820	1,191	1,431	1,598	1,758	1,911
6	5,900	825	1,195	1,435	1,603	1,763	1,916
7	6,000	831	1,200	1,439	1,607	1,768	1,922
8	6,100	837	1,208	1,449	1,618	1,780	1,935
9	6,200	844	1,217	1,459	1,629	1,792	1,948
10	6,300	851	1,226	1,469	1,641	1,805	1,962
11	6,400	858	1,234	1,479	1,652	1,817	1,975
12	6,500	865	1,243	1,489	1,663	1,829	1,988
13	6,600	871	1,251	1,499	1,674	1,841	2,002
14	6,700	881	1,263	1,513	1,690	1,859	2,021
15	6,800	892	1,278	1,530	1,709	1,880	2,044
16	6,900	903	1,292	1,548	1,729	1,902	2,067
17	7,000	914	1,306	1,565	1,748	1,923	2,090
18	7,100	925	1,320	1,582	1,767	1,944	2,113
19	7,200	935	1,335	1,600	1,787	1,965	2,136
20	7,300	946	1,348	1,616	1,805	1,986	2,159
21	7,400	954	1,360	1,630	1,820	2,003	2,177
22	7,500	962	1,372	1,643	1,836	2,019	2,195
23	7,600	969	1,384	1,657	1,851	2,036	2,213
24	7,700	977	1,396	1,670	1,866	2,052	2,231
25	7,800	984	1,407	1,683	1,880	2,068	2,248
26	7,900	991	1,419	1,696	1,895	2,084	2,266
27	8,000	996	1,426	1,704	1,903	2,094	2,276

1	8,100	1,000	1,429	1,709	1,908	2,099	2,282
2	8,200	1,004	1,433	1,713	1,914	2,105	2,288
3	8,300	1,008	1,437	1,718	1,919	2,110	2,294
4	8,400	1,012	1,441	1,722	1,924	2,116	2,300
5	8,500	1,016	1,444	1,727	1,929	2,122	2,306
6	8,600	1,020	1,448	1,731	1,934	2,127	2,312
7	8,700	1,026	1,456	1,740	1,944	2,138	2,324
8	8,800	1,033	1,464	1,749	1,953	2,149	2,336
9	8,900	1,039	1,472	1,758	1,963	2,160	2,347
10	9,000	1,046	1,480	1,766	1,973	2,170	2,359
11	9,100	1,052	1,488	1,775	1,983	2,181	2,371
12	9,200	1,059	1,496	1,784	1,993	2,192	2,382
13	9,300	1,065	1,502	1,792	2,002	2,202	2,393
14	9,400	1,070	1,507	1,799	2,010	2,211	2,403
15	9,500	1,075	1,511	1,807	2,018	2,220	2,413
16	9,600	1,080	1,516	1,814	2,026	2,229	2,423
17	9,700	1,085	1,520	1,822	2,035	2,238	2,433
18	9,800	1,090	1,524	1,829	2,043	2,247	2,443
19	9,900	1,094	1,529	1,836	2,051	2,256	2,453
20	10,000	1,099	1,533	1,844	2,059	2,265	2,463
21	10,100	1,104	1,538	1,851	2,068	2,275	2,472
22	10,200	1,109	1,542	1,859	2,076	2,284	2,482
23	10,300	1,115	1,549	1,867	2,086	2,294	2,494
24	10,400	1,123	1,560	1,878	2,098	2,308	2,509
25	10,500	1,130	1,571	1,889	2,110	2,321	2,523
26	10,600	1,137	1,582	1,900	2,123	2,335	2,538
27	10,700	1,145	1,593	1,911	2,135	2,349	2,553

1	10,800	1,152	1,604	1,922	2,147	2,362	2,568
2	10,900	1,159	1,615	1,933	2,160	2,376	2,582
3	11,000	1,167	1,626	1,944	2,172	2,389	2,597
4	11,100	1,174	1,637	1,956	2,185	2,403	2,612
5	11,200	1,182	1,649	1,968	2,198	2,418	2,628
6	11,300	1,191	1,661	1,980	2,212	2,433	2,644
7	11,400	1,199	1,673	1,992	2,225	2,448	2,660
8	11,500	1,207	1,685	2,004	2,239	2,462	2,677
9	11,600	1,215	1,695	2,016	2,252	2,477	2,693
10	11,700	1,222	1,705	2,029	2,266	2,493	2,710
11	11,800	1,229	1,714	2,041	2,280	2,508	2,726
12	11,900	1,237	1,723	2,054	2,294	2,523	2,743
13	12,000	1,244	1,732	2,066	2,308	2,539	2,759
14	12,100	1,252	1,742	2,078	2,322	2,554	2,776
15	12,200	1,259	1,751	2,091	2,336	2,569	2,793
16	12,300	1,267	1,760	2,103	2,349	2,584	2,809
17	12,400	1,274	1,769	2,116	2,363	2,600	2,826
18	12,500	1,282	1,778	2,128	2,377	2,615	2,842
19	12,600	1,289	1,788	2,141	2,391	2,630	2,859
20	12,700	1,296	1,797	2,153	2,405	2,645	2,876
21	12,800	1,304	1,806	2,165	2,419	2,661	2,892
22	12,900	1,311	1,815	2,178	2,433	2,676	2,909
23	13,000	1,319	1,825	2,190	2,447	2,691	2,925
24	13,100	1,326	1,834	2,203	2,461	2,707	2,942
25	13,200	1,334	1,843	2,215	2,474	2,722	2,959
26	13,300	1,341	1,852	2,228	2,488	2,737	2,975
27	13,400	1,348	1,861	2,238	2,500	2,750	2,990

1	13,500	1,353	1,868	2,247	2,510	2,761	3,001
2	13,600	1,359	1,875	2,255	2,519	2,771	3,012
3	13,700	1,364	1,882	2,264	2,529	2,781	3,023
4	13,800	1,370	1,889	2,272	2,538	2,792	3,035
5	13,900	1,375	1,896	2,281	2,547	2,802	3,046
6	14,000	1,381	1,903	2,289	2,557	2,812	3,057
7	14,100	1,386	1,910	2,297	2,566	2,822	3,068
8	14,200	1,391	1,916	2,304	2,574	2,831	3,078
9	14,300	1,396	1,922	2,312	2,582	2,841	3,088
10	14,400	1,401	1,929	2,319	2,591	2,850	3,098
11	14,500	1,406	1,935	2,327	2,599	2,859	3,108
12	14,600	1,410	1,941	2,334	2,607	2,868	3,118
13	14,700	1,415	1,947	2,342	2,616	2,877	3,128
14	14,800	1,420	1,954	2,349	2,624	2,886	3,138
15	14,900	1,425	1,960	2,357	2,632	2,896	3,147
16	15,000	1,430	1,966	2,364	2,641	2,905	3,157
17	15,100	1,435	1,972	2,371	2,649	2,914	3,167
18	15,200	1,440	1,978	2,379	2,657	2,923	3,177
19	15,300	1,444	1,985	2,386	2,666	2,932	3,187
20	15,400	1,449	1,991	2,394	2,674	2,941	3,197
21	15,500	1,454	1,997	2,401	2,682	2,950	3,207
22	15,600	1,459	2,003	2,409	2,691	2,960	3,217
23	15,700	1,464	2,010	2,416	2,699	2,969	3,227
24	15,800	1,469	2,016	2,424	2,707	2,978	3,237
25	15,900	1,474	2,022	2,431	2,715	2,987	3,247
26	16,000	1,478	2,028	2,439	2,724	2,996	3,257
27	16,100	1,484	2,035	2,445	2,732	3,005	3,266

1	16,200	1,490	2,041	2,452	2,739	3,013	3,275
2	16,300	1,495	2,047	2,459	2,747	3,022	3,285
3	16,400	1,501	2,053	2,466	2,755	3,030	3,294
4	16,500	1,506	2,059	2,473	2,763	3,039	3,303
5	16,600	1,512	2,065	2,480	2,770	3,047	3,313
6	16,700	1,518	2,071	2,487	2,778	3,056	3,322
7	16,800	1,523	2,077	2,494	2,786	3,065	3,331
8	16,900	1,529	2,083	2,501	2,794	3,073	3,340
9	17,000	1,534	2,089	2,508	2,801	3,082	3,350
10	17,100	1,540	2,095	2,515	2,809	3,090	3,359
11	17,200	1,545	2,102	2,522	2,817	3,099	3,368
12	17,300	1,551	2,108	2,529	2,825	3,107	3,378
13	17,400	1,557	2,114	2,536	2,832	3,116	3,387
14	17,500	1,562	2,120	2,543	2,840	3,124	3,396
15	17,600	1,568	2,126	2,550	2,848	3,133	3,405
16	17,700	1,573	2,132	2,557	2,856	3,141	3,415
17	17,800	1,579	2,138	2,563	2,863	3,149	3,423
18	17,900	1,584	2,144	2,570	2,870	3,157	3,432
19	18,000	1,589	2,149	2,576	2,878	3,166	3,441
20	18,100	1,595	2,155	2,583	2,885	3,174	3,450
21	18,200	1,600	2,161	2,590	2,893	3,182	3,459
22	18,300	1,605	2,167	2,596	2,900	3,190	3,467
23	18,400	1,611	2,173	2,603	2,907	3,198	3,476
24	18,500	1,616	2,178	2,609	2,915	3,206	3,485
25	18,600	1,621	2,184	2,616	2,922	3,214	3,494
26	18,700	1,627	2,190	2,623	2,929	3,222	3,503
27	18,800	1,632	2,196	2,629	2,937	3,231	3,512

1	18,900	1,637	2,202	2,636	2,944	3,239	3,520
2	19,000	1,642	2,207	2,642	2,952	3,247	3,529
3	19,100	1,648	2,213	2,649	2,959	3,255	3,538
4	19,200	1,653	2,219	2,656	2,966	3,263	3,547
5	19,300	1,658	2,225	2,662	2,974	3,271	3,556
6	19,400	1,664	2,231	2,669	2,981	3,279	3,565
7	19,500	1,669	2,236	2,675	2,989	3,287	3,573
8	19,600	1,674	2,242	2,682	2,996	3,295	3,582
9	19,700	1,680	2,248	2,689	3,003	3,304	3,591
10	19,800	1,685	2,254	2,695	3,011	3,312	3,600
11	19,900	1,690	2,260	2,702	3,018	3,320	3,609
12	20,000	1,696	2,265	2,709	3,025	3,328	3,617
13	20,100	1,701	2,271	2,715	3,033	3,336	3,626
14	20,200	1,706	2,277	2,722	3,040	3,344	3,635
15	20,300	1,710	2,282	2,728	3,047	3,352	3,643
16	20,400	1,713	2,287	2,733	3,053	3,358	3,651
17	20,500	1,717	2,292	2,739	3,059	3,365	3,658
18	20,600	1,720	2,297	2,745	3,066	3,372	3,666
19	20,700	1,723	2,302	2,750	3,072	3,379	3,673
20	20,800	1,726	2,307	2,756	3,078	3,386	3,681
21	20,900	1,730	2,313	2,761	3,084	3,393	3,688
22	21,000	1,733	2,318	2,767	3,091	3,400	3,695
23	21,100	1,736	2,323	2,773	3,097	3,407	3,703
24	21,200	1,739	2,328	2,778	3,103	3,413	3,710
25	21,300	1,743	2,333	2,784	3,109	3,420	3,718
26	21,400	1,746	2,338	2,789	3,116	3,427	3,725
27	21,500	1,749	2,343	2,795	3,122	3,434	3,733

1	21,600	1,752	2,348	2,801	3,128	3,441	3,740
2	21,700	1,756	2,353	2,806	3,134	3,448	3,748
3	21,800	1,759	2,358	2,812	3,141	3,455	3,755
4	21,900	1,762	2,363	2,817	3,147	3,462	3,763
5	22,000	1,765	2,368	2,823	3,153	3,469	3,770
6	22,100	1,769	2,373	2,829	3,160	3,475	3,778
7	22,200	1,772	2,378	2,834	3,166	3,482	3,785
8	22,300	1,775	2,383	2,840	3,172	3,489	3,793
9	22,400	1,778	2,388	2,845	3,178	3,496	3,800
10	22,500	1,782	2,393	2,851	3,185	3,503	3,808
11	22,600	1,785	2,398	2,857	3,191	3,510	3,815
12	22,700	1,788	2,403	2,862	3,197	3,517	3,823
13	22,800	1,791	2,408	2,868	3,203	3,524	3,830
14	22,900	1,795	2,413	2,873	3,210	3,531	3,838
15	23,000	1,798	2,418	2,879	3,216	3,537	3,845
16	23,100	1,801	2,423	2,885	3,222	3,544	3,853
17	23,200	1,804	2,429	2,890	3,228	3,551	3,860
18	23,300	1,808	2,434	2,896	3,235	3,558	3,868
19	23,400	1,811	2,439	2,901	3,241	3,565	3,875
20	23,500	1,814	2,444	2,907	3,247	3,572	3,883
21	23,600	1,817	2,449	2,913	3,253	3,579	3,890
22	23,700	1,821	2,454	2,918	3,260	3,586	3,898
23	23,800	1,824	2,459	2,924	3,266	3,593	3,905
24	23,900	1,827	2,464	2,929	3,272	3,599	3,913
25	24,000	1,830	2,469	2,935	3,278	3,606	3,920
26	24,100	1,834	2,474	2,941	3,285	3,613	3,928
27	24,200	1,837	2,479	2,946	3,291	3,620	3,935

1	24,300	1,840	2,484	2,952	3,297	3,627	3,943
2	24,400	1,843	2,489	2,957	3,304	3,634	3,950
3	24,500	1,847	2,494	2,963	3,310	3,641	3,957
4	24,600	1,850	2,499	2,969	3,316	3,648	3,965
5	24,700	1,853	2,504	2,974	3,322	3,655	3,972
6	24,800	1,856	2,509	2,980	3,329	3,661	3,980
7	24,900	1,860	2,514	2,986	3,335	3,668	3,987
8	25,000	1,863	2,519	2,991	3,341	3,675	3,995
9	25,100	1,866	2,524	2,997	3,347	3,682	4,002
10	25,200	1,869	2,529	3,002	3,354	3,689	4,010
11	25,300	1,873	2,534	3,008	3,360	3,696	4,017
12	25,400	1,876	2,540	3,014	3,366	3,703	4,025
13	25,500	1,879	2,545	3,019	3,372	3,710	4,032
14	25,600	1,882	2,550	3,025	3,379	3,716	4,040
15	25,700	1,886	2,555	3,030	3,385	3,723	4,047
16	25,800	1,889	2,560	3,036	3,391	3,730	4,055
17	25,900	1,892	2,565	3,042	3,397	3,737	4,062
18	26,000	1,895	2,570	3,047	3,404	3,744	4,070
19	26,100	1,899	2,575	3,053	3,410	3,751	4,077
20	26,200	1,902	2,580	3,058	3,416	3,758	4,085
21	26,300	1,905	2,585	3,064	3,422	3,765	4,092
22	26,400	1,908	2,590	3,070	3,429	3,772	4,100
23	26,500	1,912	2,595	3,075	3,435	3,778	4,107
24	26,600	1,915	2,600	3,081	3,441	3,785	4,115
25	26,700	1,918	2,605	3,086	3,447	3,792	4,122
26	26,800	1,921	2,610	3,092	3,454	3,799	4,130
27	26,900	1,925	2,615	3,098	3,460	3,806	4,137

1	27,000	1,928	2,620	3,103	3,466	3,813	4,145
2	27,100	1,931	2,625	3,109	3,473	3,820	4,152
3	27,200	1,934	2,630	3,114	3,479	3,827	4,160
4	27,300	1,938	2,635	3,120	3,485	3,834	4,167
5	27,400	1,941	2,640	3,126	3,491	3,840	4,175
6	27,500	1,944	2,645	3,131	3,498	3,847	4,182
7	27,600	1,948	2,650	3,137	3,504	3,854	4,190
8	27,700	1,951	2,656	3,142	3,510	3,861	4,197
9	27,800	1,954	2,661	3,148	3,516	3,868	4,205
10	27,900	1,957	2,666	3,154	3,523	3,875	4,212
11	28,000	1,961	2,671	3,159	3,529	3,882	4,219
12	28,100	1,964	2,676	3,165	3,535	3,889	4,227
13	28,200	1,967	2,681	3,170	3,541	3,896	4,234
14	28,300	1,970	2,686	3,176	3,548	3,902	4,242
15	28,400	1,972	2,689	3,179	3,551	3,907	4,247
16	28,500	1,974	2,691	3,182	3,555	3,911	4,251
17	28,600	1,976	2,694	3,185	3,558	3,914	4,255
18	28,700	1,978	2,696	3,188	3,561	3,918	4,259
19	28,800	1,980	2,699	3,191	3,565	3,922	4,263
20	28,900	1,982	2,701	3,194	3,568	3,926	4,268
21	29,000	1,984	2,704	3,197	3,571	3,930	4,272
22	29,100	1,986	2,707	3,200	3,575	3,934	4,276
23	29,200	1,988	2,709	3,203	3,578	3,938	4,280
24	29,300	1,990	2,712	3,206	3,581	3,941	4,284
25	29,400	1,992	2,714	3,209	3,584	3,945	4,289
26	29,500	1,993	2,717	3,212	3,588	3,949	4,293
27	29,600	1,995	2,719	3,215	3,591	3,953	4,297

29,700	1,997	2,722	3,218	3,594	3,957	4,301
29,800	1,999	2,724	3,221	3,598	3,961	4,305
29,900	2,001	2,727	3,224	3,601	3,965	4,310
30,000	2,003	2,730	3,227	3,604	3,968	4,314

➔Section 7. KRS 403.740 is amended to read as follows:

(1) Following a hearing ordered under KRS 403.730, if a court finds by a preponderance of the evidence that domestic violence and abuse has occurred and may again occur, the court may issue a domestic violence order:

(a) Restraining the adverse party from:

1. Committing further acts of domestic violence and abuse;
2. Any unauthorized contact or communication with the petitioner or other person specified by the court;
3. Approaching the petitioner or other person specified by the court within a distance specified in the order, not to exceed five hundred (500) feet;
4. Going to or within a specified distance of a specifically described residence, school, or place of employment or area where such a place is located; and
5. Disposing of or damaging any of the property of the parties;

(b) Authorizing, at the request of the petitioner:

1. Limited contact or communication between the parties that the court finds necessary; or
2. The parties to remain in a common area, which may necessitate them being closer than five hundred (500) feet under limited circumstances with specific parameters set forth by the court.

Nothing in this paragraph shall be interpreted to place any restriction or restraint on the petitioner;

(c) Directing or prohibiting any other actions that the court believes will be of

assistance in eliminating future acts of domestic violence and abuse, except that the court shall not order the petitioner to take any affirmative action;

(d) Directing that either or both of the parties receive counseling services available in the community in domestic violence and abuse cases; and

(e) Additionally, if applicable:

1. Directing the adverse party to vacate a residence shared by the parties to the action;

2. Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822, grant temporary custody, subject to KRS 403.315;

3. Utilizing the criteria set forth in ***Section 1 of this Act and*** KRS 403.211, 403.212,~~[403.2121,]~~ and 403.213, award temporary child support; and

4. Awarding possession of any shared domestic animal to the petitioner.

(2) In imposing a location restriction described in subsection (1)(a)4. of this section, the court shall:

(a) Afford the petitioner and respondent, if present, an opportunity to testify on the issue of the locations and areas from which the respondent should or should not be excluded;

(b) Only impose a location restriction where there is a specific, demonstrable danger to the petitioner or other person protected by the order;

(c) Specifically describe in the order the locations or areas prohibited to the respondent; and

(d) Consider structuring a restriction so as to allow the respondent transit through an area if the respondent does not interrupt his or her travel to harass, harm, or attempt to harass or harm the petitioner.

(3) When temporary child support is granted under this section, the court shall enter an order detailing how the child support is to be paid and collected. Child support ordered under this section may be enforced utilizing the same procedures as any

other child support order.

(4) A domestic violence order shall be effective for a period of time fixed by the court, not to exceed three (3) years, and may be reissued upon expiration for subsequent periods of up to three (3) years each. The fact that an order has not been violated since its issuance may be considered by a court in hearing a request for a reissuance of the order.

➔Section 8. KRS 405.430 (Effective until July 1, 2025) is amended to read as follows:

(1) When a parent presents himself to the cabinet for the voluntary establishment of paternity and clear evidence of parentage is not present, the cabinet shall pay when administratively ordered the cost of genetic testing to establish paternity, subject to recoupment from the alleged father when paternity is established.

(2) The cabinet shall obtain additional testing in any case if an original test is contested, upon request and advance payment by the contestant.

(3) In a contested paternity case, the child, the mother, and the putative father shall submit to genetic testing upon a request of any of the parties, unless the person or guardian of the person who is requested to submit to genetic testing shows good cause, taking into account the best interests of the child, why the genetic tests cannot be performed. The request shall be supported by a sworn statement of the party, requesting that the test be performed, which shall include the information required by 42 U.S.C. sec. 666(a)(5)(B)(i) or (ii).

(4) When a parent who fails to support a child is not obligated to provide child support by court order, the cabinet may administratively establish a child support obligation based upon a voluntary acknowledgment of paternity as set forth in KRS Chapter 406, the parent's minimum monthly child support obligation and proportionate share of child care costs incurred due to employment or job search of either parent, or incurred while receiving elementary or secondary education, or higher education

or vocational training which will lead to employment. The monthly child support obligation shall be determined pursuant to the Kentucky child support guidelines set forth in KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~. The actual cost of child care shall be reasonable and shall be allocated between the parents in the same proportion as each parent's gross income, as determined under the guidelines, bears to the total family gross income.

(5) The cabinet shall recognize a voluntary acknowledgment of paternity as a basis for seeking a support order, irrespective of the alleged father's willingness to consent to a support order.

(6) When in the best interest of the child, the cabinet may review and adjust a parent's child support obligation or child care obligation as established by the cabinet, upon a request of the cabinet when an assignment has been made, or upon either parent's petition if the amount of the child support awarded under the order differs from the amount that would be awarded in accordance with KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~. The cabinet shall notify parents at least once every three (3) years of the right to a review.

(7) In establishing or modifying a parent's monthly child support obligation, the cabinet may use automated methods to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the adjustment to eligible orders in accordance with KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~. The cabinet shall utilize information, including financial records, about the parent and child which it has good reason to believe is reliable and may require the parents to provide income verification.

(8) In cases in which past-due support is owed for a child receiving public assistance under Title IV-A of the Federal Social Security Act, the cabinet shall issue an administrative order, or seek a judicial order, requiring the obligated parent to participate in work activities, or educational or vocational training activities for at

least twenty (20) hours per week, unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.

(9) The cabinet may disclose financial records only for the purpose of establishing, modifying, or enforcing a child support obligation of an individual. A financial institution shall not be liable to any individual for disclosing any financial record of the individual to the cabinet attempting to establish, modify, or enforce a child support obligation.

(10) The cabinet may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. secs. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.

(11) In any case where a person or entity fails to respond to a subpoena within the specified time frame, the cabinet shall impose a penalty.

(12) No person shall knowingly make, present, or cause to be made or presented to an employee or officer of the cabinet any false, fictitious, or fraudulent statement, representation, or entry in any application, report, document, or financial record used in determining child support or child care obligations.

(13) If a person knowingly or by reason of negligence discloses a financial record of an individual, that individual may pursue civil action for damages in a federal District Court or appropriate state court. No liability shall arise with respect to any disclosure which results from a good faith, but erroneous, interpretation. In any civil action brought for reason of negligence of disclosure of financial records, upon finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to:

(a) The sum of the greater of one thousand dollars ($1,000) for each act of unauthorized disclosure of financial records; or

(b) The sum of the actual damages sustained by the plaintiff resulting from the unauthorized disclosure; plus

(c) If willful disclosure or disclosure was a result of gross negligence, punitive damages, plus the costs, including attorney fees, of the action.

(14) The cabinet shall issue an administrative order or seek a judicial order requiring a parent with a delinquent child support obligation, as defined by administrative regulation promulgated under KRS 15.055, to participate in the program described in KRS 205.732 to help low-income, noncustodial parents find and keep employment unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.

➔Section 9. KRS 405.430 (Effective July 1, 2025) is amended to read as follows:

(1) When a parent presents himself to the Office of the Attorney General for the voluntary establishment of paternity and clear evidence of parentage is not present, the office shall pay when administratively ordered the cost of genetic testing to establish paternity, subject to recoupment from the alleged father when paternity is established.

(2) The Office of the Attorney General shall obtain additional testing in any case if an original test is contested, upon request and advance payment by the contestant.

(3) In a contested paternity case, the child, the mother, and the putative father shall submit to genetic testing upon a request of any of the parties, unless the person or guardian of the person who is requested to submit to genetic testing shows good cause, taking into account the best interests of the child, why the genetic tests cannot be performed. The request shall be supported by a sworn statement of the party, requesting that the test be performed, which shall include the information required by 42 U.S.C. sec. 666(a)(5)(B)(i) or (ii).

(4) When a parent who fails to support a child is not obligated to provide child support

by court order, the Office of the Attorney General may administratively establish a child support obligation based upon a voluntary acknowledgment of paternity as set forth in KRS Chapter 406, the parent's minimum monthly child support obligation and proportionate share of child care costs incurred due to employment or job search of either parent, or incurred while receiving elementary or secondary education, or higher education or vocational training which will lead to employment. The monthly child support obligation shall be determined pursuant to the Kentucky child support guidelines set forth in KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~. The actual cost of child care shall be reasonable and shall be allocated between the parents in the same proportion as each parent's gross income, as determined under the guidelines, bears to the total family gross income.

(5) The Office of the Attorney General shall recognize a voluntary acknowledgment of paternity as a basis for seeking a support order, irrespective of the alleged father's willingness to consent to a support order.

(6) When in the best interest of the child, the Office of the Attorney General may review and adjust a parent's child support obligation or child care obligation as established by the office, upon a request of the office when an assignment has been made, or upon either parent's petition if the amount of the child support awarded under the order differs from the amount that would be awarded in accordance with KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~. The Office of the Attorney General shall notify parents at least once every three (3) years of the right to a review.

(7) In establishing or modifying a parent's monthly child support obligation, the Office of the Attorney General may use automated methods to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the adjustment to eligible orders in accordance with KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~. The office shall utilize information, including financial records,

about the parent and child which it has good reason to believe is reliable and may require the parents to provide income verification.

(8) In cases in which past-due support is owed for a child receiving public assistance under Title IV-A of the Federal Social Security Act, the Office of the Attorney General shall issue an administrative order, or seek a judicial order, requiring the obligated parent to participate in work activities, or educational or vocational training activities for at least twenty (20) hours per week, unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.

(9) The Office of the Attorney General may disclose financial records only for the purpose of establishing, modifying, or enforcing a child support obligation of an individual. A financial institution shall not be liable to any individual for disclosing any financial record of the individual to the office attempting to establish, modify, or enforce a child support obligation.

(10) The Office of the Attorney General may issue both intrastate and interstate administrative subpoenas to any individual or entity for financial or other information or documents which are needed to establish, modify, or enforce a child support obligation pursuant to Title IV-D of the Social Security Act, 42 U.S.C. sec. 651 et seq. An administrative subpoena lawfully issued in another state to an individual or entity residing in this state shall be honored and enforced in the Circuit Court of the county in which the individual or entity resides.

(11) In any case where a person or entity fails to respond to a subpoena within the specified time frame, the cabinet shall impose a penalty.

(12) No person shall knowingly make, present, or cause to be made or presented to an employee or officer of the cabinet any false, fictitious, or fraudulent statement, representation, or entry in any application, report, document, or financial record used in determining child support or child care obligations.

(13) If a person knowingly or by reason of negligence discloses a financial record of an

individual, that individual may pursue civil action for damages in a federal District Court or appropriate state court. No liability shall arise with respect to any disclosure which results from a good faith, but erroneous, interpretation. In any civil action brought for reason of negligence of disclosure of financial records, upon finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to:

(a) The sum of the greater of one thousand dollars ($1,000) for each act of unauthorized disclosure of financial records; or

(b) The sum of the actual damages sustained by the plaintiff resulting from the unauthorized disclosure; plus

(c) If willful disclosure or disclosure was a result of gross negligence, punitive damages, plus the costs, including attorney fees, of the action.

(14) The Office of the Attorney General shall issue an administrative order or seek a judicial order requiring a parent with a delinquent child support obligation, as defined by administrative regulation promulgated under KRS 15.055, to participate in the program described in KRS 15.816 to help low-income, noncustodial parents find and keep employment unless the parent is incapacitated as defined by 42 U.S.C. sec. 607.

➔Section 10. KRS 406.025 is amended to read as follows:

(1) Upon completion of a signed, notarized, voluntary acknowledgment-of-paternity affidavit by the mother and alleged father, obtained through the hospital-based paternity program, and submitted to the state registrar of vital statistics, paternity shall be rebuttably presumed for the earlier of sixty (60) days or the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a child support order.

(2) Upon completion of a signed, notarized, voluntary acknowledgment-of-paternity affidavit by the mother and alleged father obtained outside of the hospital and

submitted to the state registrar of vital statistics, paternity shall be rebuttably presumed for the earlier of sixty (60) days or the date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a child support order following the date of signatures on the notarized affidavit.

(3) Pending an administrative or judicial determination of parentage, or upon a signed, notarized, voluntary acknowledgment-of-paternity form having been transmitted by the local registrar and received by the Vital Statistics Branch, a temporary support order shall be issued upon motion of any party if paternity is indicated by genetic testing or other clear and convincing evidence.

(4) The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(5) The court shall, within fourteen (14) days from the filing of the motion, order an amount of temporary child support based upon the child support guidelines as provided by KRS 403.212 or ***Section 1 of this Act***~~[403.2121]~~. The ordered child support shall be retroactive to the date of the filing of the motion to move the court to enter an order for temporary child support without written or oral notice to the adverse party. The order shall provide that the order becomes effective seven (7) days following service of the order and movant's affidavit upon the adverse party unless the adverse party, within the seven (7) day period, files a motion for a hearing before the court. The motion for hearing shall be accompanied by the affidavit required by KRS 403.160(2)(a). Pending the hearing, the adverse party shall pay child support in an amount based upon the guidelines and the adverse party's affidavit. The child support order entered following the hearing shall be retroactive to the date of the filing of the motion for temporary support unless otherwise ordered by the court.

(6) Unless good cause is shown, court or administratively ordered child support shall continue until final judicial or administrative determination of paternity.

➔Section 11. KRS 401.020 is amended to read as follows:

(1) Both parents, provided both are living, or one (1) parent if one (1) is deceased, or if no parent is living, the guardian, may have the name of a child under the age of eighteen (18) changed by the District Court, or if the Family Court or Circuit Court has a case before it involving the family, the Family Court of a county with a Family Court, or the Circuit Court of a county without a Family Court of the county in which the child resides.

(2) ~~[However,]~~If one (1) parent refuses or is unavailable to execute the petition ***for a name change***, proper notice of filing the petition shall be served in accordance with the Rules of Civil Procedure. ***The court shall conduct a hearing on the petition no later than sixty (60) days from the date of service and make findings of fact and conclusions of law based on the best interests of the child. The court shall consider all relevant factors, including:***

(a) The wishes of the child's parent or parents;

(b) The wishes of the child as to the name change, with due consideration given to the influence a parent may have over the child's wishes;

(c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;

(d) The motivation of the adults participating in the proceeding; and

(e) The mental and physical health of all individuals involved.

(3) If the child resides on a United States Army post, military reservation, or fort, his or her name may be changed by the District Court, or the Family Court of a county with a Family Court, or the Circuit Court of a county without a Family Court of any county adjacent thereto.

➔Section 12. The following KRS section is repealed:

403.2121 "Day" defined – Minimum requirement for shared parenting time credit --

Establishment of adjustment to child support obligations based upon parenting time -- Modification of child support -- Children receiving public assistance.

The Personal Goodwill Conundrum

In the realm of business valuation in family law, conflicts often arise due to varying contextual viewpoints of information and methodologies employed by professionals. Valuing a business accurately is crucial for making informed decisions. However, variation in inputs and their contextual significance result in users of business valuation reports being faced with differing conclusions of value. Further complicating this is the subjective approach to Personal Goodwill and the varying factors and opinions of those factors.

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Objectives

1. Help attorneys gain an understanding of applications and methods of goodwill determination and calculations.
2. Assist attorneys on how to conduct goodwill analysis in a formal method (determination) that is supportable and defensible.
3. Provide case-study examples of various business types (*e.g.* professional services, manufacturing, etc.) and provide step by step analysis to determine if goodwill is applicable in the divorce litigation and what next steps an attorney should take.

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Goodwill 3-Stage Determination

- Identification
- Evaluation
- Appraisal

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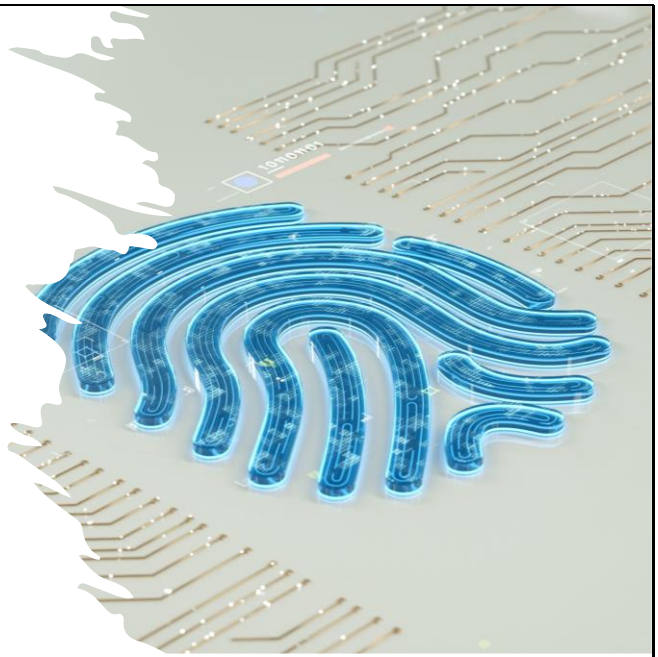
Identification



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Identification Methods

- Current Discovery Methods
  - Document Review
  - Depositions, Inquiries
  - Observations
  - Testing
- Applying Discovery Methods to Scope
  - Document Review – which documents evidence personal goodwill in lieu of financial statements?
  - Depositions, Inquiries – what questions are utilized to identify GW? Is open inquiry available for questioning more individuals (*i.e.*, other employees)?
  - Observations – does the budget and/or assignment allow for observation?
  - Testing – what tests did the appraiser (*e.g.*, auditor) use to identify GW?

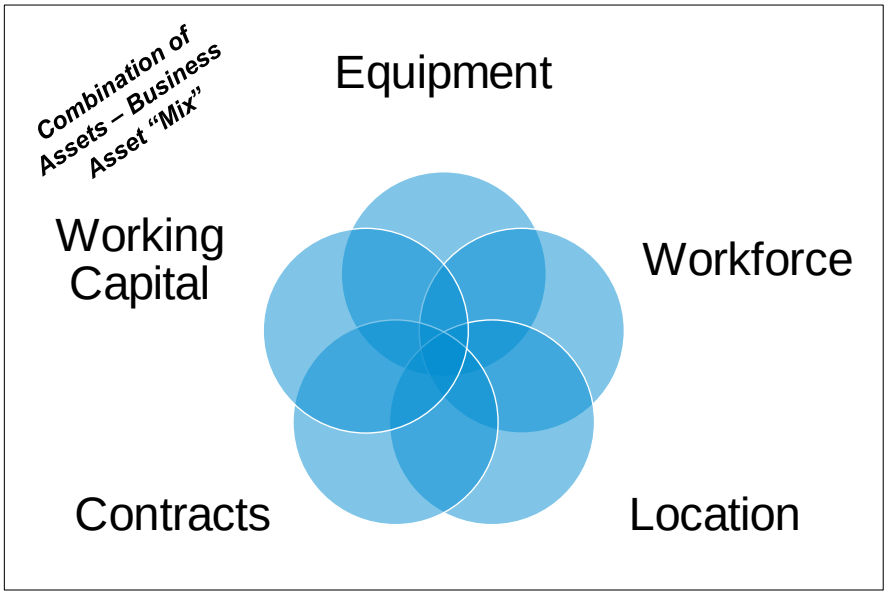
What intangibles may exist…

Marketing-related:
- Trademarks, trade names, service marks, collective marks, certification marks
- Trade dress (unique color, shape, package design)
- Newspaper mastheads
- Internet domain names
- Noncompetition agreements

Customer-related:
- Customer lists
- Order or production backlog
- Customer contracts and related customer relationships
- Noncontractual customer relationships

Artistic-related:
- Plays, operas, ballets
- Books, magazines, newspapers, or other literary works
- Musical works (e.g., compositions, song lyrics, advertising jingles)
- Pictures and photographs
- Video and audiovisual material (e.g., motion pictures, music videos, television programs)

Contract-based:
- Licensing, royalty, standstill agreements
- Advertising, construction, management, service or supply contracts
- Lease agreements (whether the acquiree is lessee or lessor)
- Construction permits
- Franchise agreements
- Operating and broadcast rights
- Servicing contracts (e.g., mortgage servicing contracts)
- Employment contracts



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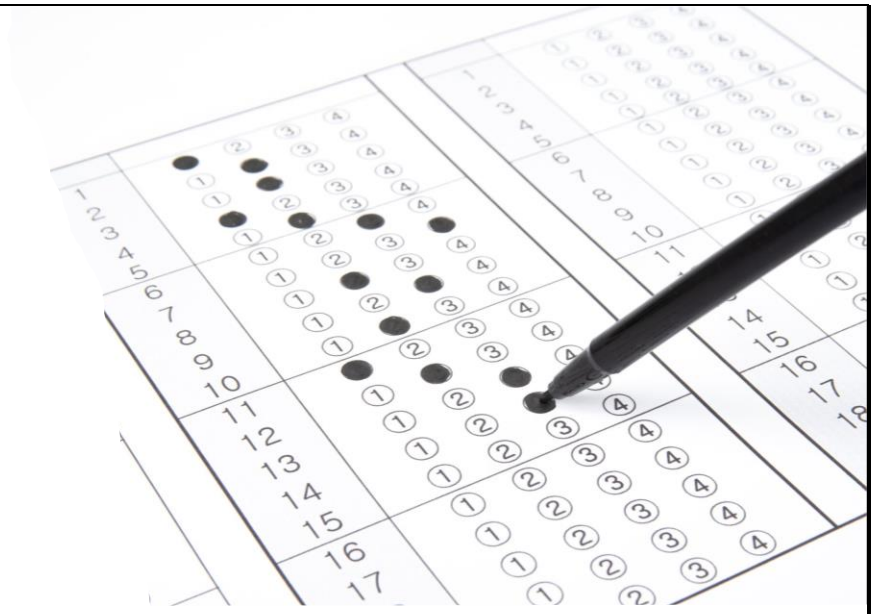
Evaluation



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Separating Personal and Business Goodwill of Operating Companies

Factors To Consider	P	B
1) Type of Service		
Labor intensive vs. machine intensive manufacturing process		
Personal vs. automated ordering service		
Closeness of customer contact with owner or business		
Association of quality and cost with owner or business		
Reputation for honesty and fair dealing with owner or business		
2) Customers		
Customers referred to owner or business		
Customers referred by customers or other means		
Customers speak well of owner or business		
Number of customers		
Amount of retained/repeat business		
3) The Company		
Start-up or mature business		
Trade name, d/b/a, or named after owner		
Number of owners		
Development of middle management team		
Trained and assembled workforce		
In-place systems, operating procedures, etc.		
4) The Owner		
Personal reputation		
Community visibility		
Age and health		
Work habits and hours worked		
Knowledge, judgment, ability, and skills required for the business		
5) Other		
Size of buyer market and power over the owner or business		
Financing secured by personal guarantees of owner or business assets		
Earlier sale of ownership interest precedent with or without covenant		
Ownership interest can be sold without restrictive covenants		
Business can generate revenue from continued patronage without owner		
Totals		

P = Personal Goodwill (not transferable/not valued) **B** = Business Goodwill (transferable/valued)

"Separating Personal and Business Goodwill of Operating Companies in Divorce Valuations." Burkert, Rod. 2011. Derived from BVR's Valuing Goodwill in Divorce: A BVR Special Report.

#	Characteristic	Enterprise	Personal
1	Customer loyalty	Patronage is based on company-specific factors such as pricing, value, reputation, quality, location, convenience, and unique product or service offerings; relationships may be contractual	Patronage is based on personal relationships with owners or key employees; few or no contracts with key customers; customers may have many other options for similar goods or services
2	Employment agreements	Owners and key employees have signed non-compete or other employment agreements with the business	No non-compete or other employment agreements exist between the business and its owners or key employees
3	Location	Location can be a significant factor in attracting customers	Not a significant factor in obtaining customers/patients
4	Management structure	Professional management that does not rely heavily on the existing ownership	Existing owners or key employees are crucial to the continued functioning of the business
5	Marketing	Based on factors integral to the business and individuals are not specifically identified; the business name is separate from its owners; strong brand recognition with the logo prominently featured	Focuses on the owner or a key employee's reputation, skills, knowledge, contacts or relationships; business name same as the owner(s); marketing features individual's names and/or photos
6	Profit allocation	Based on an equitable division of profits or losses	Based on each individual's production of business income
7	Reputation and referrals	Reputation is based on the business as a whole; referrals are to the business and not specific individuals; formal referral arrangements may exist	Reputation is based on the owner's or employee's personal reputation and not that of the business; referrals are to a specific individual rather than to the business
8	Sales	Sales are generated by multiple individuals; sales would not drop significantly if any one individual left the business	Highly reliant on the efforts and relationships of an individual; revenue would drop significantly if this individual left the business
9	Size of the business	Tends to be larger with professional and diverse management; knowledge is institutionalized; there are written policies and procedures	Tends to be smaller with the owner or key individual being integral to the management of the business; knowledge largely resides with a key individual; no or few written policies and procedures
10	Suppliers	No significant reliance on any one supplier; no one individual handles all transactions with any supplier; relationships may be contractual	Limited number of suppliers and the owner or key employee has personal relationships with the suppliers

Link to (1) Identification and than onto (3) appraisal

#	Characteristic	Enterprise	Personal
1	Customer loyalty	Patronage is based on company-specific factors such as pricing, value, reputation, quality, location, convenience, and unique product or service offerings; relationships may be contractual	Patronage is based on personal relationships with owners or key employees; few or no contracts with key customers; customers may have many other options for similar goods or services
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5	Marketing	Based on factors integral to the business and individuals are not specifically identified; the business name is separate from its owners; strong brand recognition with the logo prominently featured	Focuses on the owner or a key employee's reputation, skills, knowledge, contacts or relationships; business name same as the owner(s); marketing features individual's names and/or photos
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Appraisal

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Qualitative Analysis

- Steps 1 and 2 have completed this analysis
- Step 3 is the performance of approaches
  - Along with the "reconciliation" of findings from 1, 2 and 3

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Quantitative Analysis

	Purchase Price	Personal Goodwill	Taxable Corporate Value	Value of Tangible Assets	Taxable Income / Goodwill
Without Personal Goodwill	$1,000,000	$0	$1,000,000	$200,000	$800,000
With Personal Goodwill	$1,000,000	$300,000	$700,000	$250,000	$450,000

	Corporate Tax Rate	Corporate Tax	After Tax Value
Without Personal Goodwill	20.0%	$200,000	$800,000
With Personal Goodwill	20.0%	$140,000	$860,000

	Individual Tax Rate	Individual Tax	Value	Effective Tax Rate
Without Personal Goodwill	30.0%	$240,000	$560,000	44.0%
With Personal Goodwill	30.0%	$258,000	$602,000	39.8%

Savings	$42,000
Savings as % of the Deal	4.2%

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Quantitative Analysis

Exhibit V
Valuation of the Customer Relationship Under MPEE Method

		2018	2019	2020	2021	2022
Revenue from Current Customers	3.0%	$5,000,000	$5,150,000	$5,304,500	$5,463,635	$5,627,544
After-Tax Margin	5.5%	$275,000	$283,250	$291,748	$300,500	$309,515
Retention Factor		100%	80.0%	60.0%	40.0%	20.0%
Expected Income		$275,000	$226,600	$175,049	$120,200	$61,903
Less: Required Return on:						
Net Working Capital	5.0%	$18,750	$15,450	$11,935	$8,195	$4,221
Fixed Assets	7.0%	$7,000	$5,600	$4,200	$2,800	$1,400
Assembled Workforce	17.0%	$49,300	$40,623	$31,381	$21,549	$11,098
Total Contributory Asset Charge		$75,050	$61,673	$47,517	$32,544	$16,718
Earnings attributed to Customer Relationship		$199,950	$164,927	$127,532	$87,656	$45,185
Present Value Factor	15.0%	0.933	0.811	0.705	0.613	0.533
PV of Earning attributed to Customer Relationship		$186,454	$133,735	$89,924	$53,745	$24,091
Fair Market Value of an Customer Relationship (Round)			$490,000			

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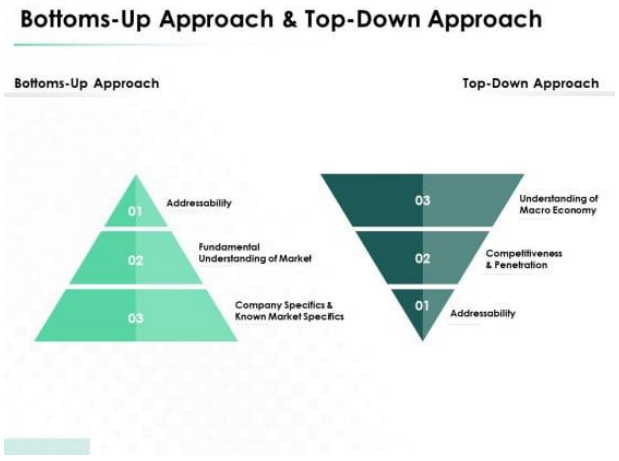
Quantitative Analysis



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Selection of Appraisal Methods

MARKET

COST

INCOME

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Quantification Assessment

With and Without

Top- Down

Bottom-Up

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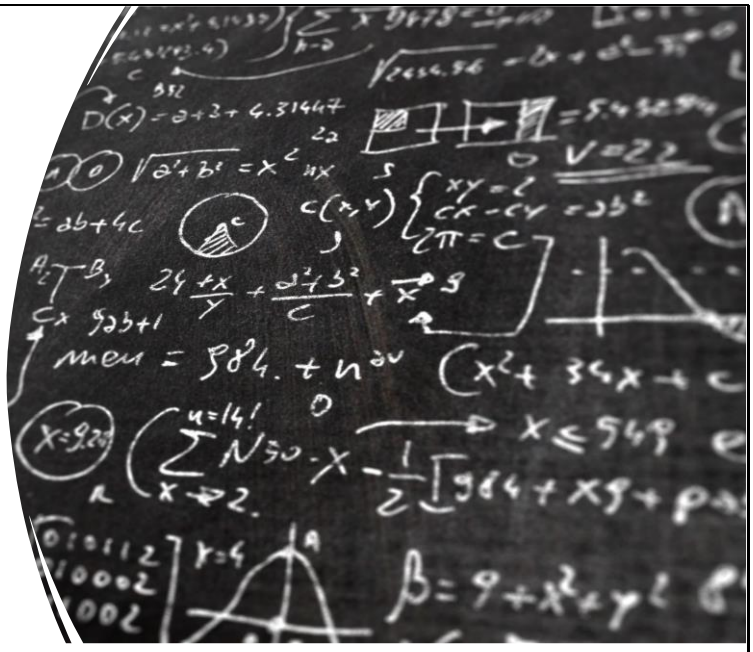
Reconciling observations and findings…



Qualitative and Quantifiable Data reconciliations

- How do you show this
- Formal process

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Key Concepts

Value to Holder Premise vs. Value in Exchange Premise

Personal vs. Professional Goodwill

Institutionalized Goodwill

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Gaskill v Robbins, 282 S.W.3d 306 (Ky. 2009)

- First case in Kentucky to recognize distinction between personal and enterprise goodwill
- Finding personal goodwill is non-marital, enterprise goodwill is marital
- In its opinion, the Court noted that "the skill, personality, work ethic, reputation, and relationships developed by Ms. Gaskill are hers alone and cannot be sold to a subsequent practitioner. In this manner, these attributes constitute nonmarital property that will continue with her regardless of the presence of any spouse. To consider this highly personal value as marital would effectively attach her future earnings, to which Robbins has no claim."

ETHICALLY BUILDING YOUR CASE: THE INTERSECTION OF LEGAL ETHICS AND THE ETHICS OF MENTAL HEALTH PROFESSIONALS

Courtney Risk and Heather Risk, Psy.D.

Family law practitioners commonly rely on the testimony of mental health professionals (MHPs) to build their case. Lawyers' ethical obligations – including competence (1.1), diligence (1.3), and candor to the court (3.3) – require an understanding of the MHP's own ethical guideposts. Attendees will gain a better understanding of what the MHP can or cannot testify about – either as fact witnesses or as expert witnesses. Attendees will also be provided tools for spotting red flags when choosing MHP witnesses in order to more competently represent their clients.

This session will explore the ethical obligations of lawyers and mental health providers (MHPs) and how those obligations impact lawyers, clients, and others involved in family law cases. The written materials provide an overview of when MHPs are utilized by lawyers and the ethical obligations at play. The Appendix provides additional details on types of assessments and treatments commonly involved in family law cases as well as MHP ethical guidelines. The presentation will then provide discussion of real-world scenarios and practical tips – equipping attendees with the best questions to ask and tools to use for screening to find the right MHP for the case.

I. WHEN TO CONSIDER UTILIZING A MENTAL HEALTH PROFESSIONAL

MHPs are utilized in a variety of ways in family law cases. In reality, it may be easier to say when you will not need an MHP: uncontested divorces with no children involved likely will not need an MHP. However, in many other cases, an MHP may need to be considered. To determine whether an MHP should be involved, consider:

- Does an involved party need therapy or is currently receiving therapy?
- Are there allegations of child abuse?
- Are assessments needed to formulate an appropriate parenting plan?
    - Before diving into assessment requests, discuss with the MHP to determine the best questions to ask.

Note, even if a therapist is providing treatment, they may not need to be brought into the court case. However, recommending clients seek therapy, when appropriate, can not only help the client get to a better place but can also make them an easier client to work with.

We have included an outline of the types of assessments and types of treatment generally available in Appendix A.

II. LAWYERS' ETHICAL OBLIGATIONS

A. SCR 3.130(1.1) Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Supreme Court Commentary

...

Thoroughness and Preparation

(5) Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

(6) To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

B. SCR 3.130(1.2) Scope of Representation and Allocation of Authority between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

...

Supreme Court Commentary

Allocation of Authority between Client and Lawyer

(1) Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

(2) On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to

accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

...

C. SCR 3.130(1.3) Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Supreme Court Commentary

(1) A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

...

D. SCR 3.130(1.4) Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

...

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Supreme Court Commentary

...

Withholding Information

(7) In some very unusual circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

E. SCR 3.130(3.1) Meritorious Claims and Contentions

A lawyer shall not knowingly bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law...

Supreme Court Commentary

(1) The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure....

(2) The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves sufficiently about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

...

F. SCR 3.130(3.3) Candor toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal published legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

…

Supreme Court Commentary

...

(2) This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

...

(5) Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

...

(8) The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

...

III. THE MENTAL HEALTH PROFESSIONALS' ETHICAL OBLIGATIONS

Keep in mind, MHPs have a variety of educational degrees or licenses which impact what assessments they can provide and certain other ethical guidelines. MHPs also can obtain additional trainings on various modalities while other activities are restricted (*e.g.*, only practitioners licensed by the Kentucky Board of Examiners of Psychology can perform personality testing). Lawyers should take care to discuss the MHP's credentials before moving forward with assessments, reviews, or testimony.

For more information about the practical application of the MHP's ethical obligations when performing various evaluations and assessments, see Appendix B.

IV. MHP TESTIMONY: FACT OR OPINION?

Lawyers should be clear on what type of testimony they need to support their case when seeking to engage an MHP. For example, an MHP providing treatment to one party will likely be limited to their knowledge of that party and of the facts related to that party. A treating MHP is limited in their ability to opine on overall recommendations, particularly when they have not had the opportunity to directly evaluate the other involved parties.

At times, overall recommendations are needed for the case regarding the likelihood of future events, the effects of past events, recommendations on plans, and opinions on what is in the best interest of the child. In these instances, engaging an MHP to provide an appropriate assessment or evaluation can be critical. This allows for a blend of fact and opinion testimony. At other times, engaging an MHP to review a case and provide expert testimony may be the best option.

Whenever a lawyer seeks an opinion from an MHP, it is important to ensure the opinion or prediction is based on the science of the discipline, peer-reviewed behavioral science literature, and sound scientific evidence. A professional's educational background, experience, reputation, and ability to communicate should be considered when selecting them for a role as an expert witness. Also consider the various roles an expert witness may play, such as a consultant (they may or may not also be considered a "nontestimonial expert"), educator of the court, or even a fact-opinion expert. (*See Barsky*, 2012)

V. PROPOSED AMENDMENT: KRE 702

The Court is considering a proposed amendment to Kentucky Rule of Evidence 702. Comments were accepted through April 15, 2024. The proposed amendment read as follows:

> **KRE 702 Testimony by experts**
>
> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if ***the proponent demonstrates to the court that it is more likely than not that***:
>
> (1) The testimony is based upon sufficient facts or data;
>
> (2) The testimony is the product of reliable principles and methods; and
>
> (3) The ***witness' opinion reflects a reliable application of*** [witness has applied] the principles and methods [reliably] to the facts of the case.

The amendment mirrors the change in the federal rules effective December 1, 2023. The authors of the federal amendment contended the language of the rule is meant to bring conformity to the courts' application of case law. There is an argument to be made that the changes could increase the burden of the party seeking to introduce the testimony. It does also seem to emphasize the need for understanding the basis of the expert testimony to meet the lawyer's duties of competence (1.1) and diligence (1.3). We have included a

few resources to assist in evaluating the validity of an intervention in Appendix B. Stay tuned to see if the proposed amendment to the rule is adopted by the Kentucky courts.

VI. COMMON SCENARIOS

The presentation will review a handful of scenarios focused on questions lawyers will often ask an MHP, some of which are included below. This is not meant to be an exhaustive list. Attendees will be equipped with best questions to ask the MHP and will be better able to screen the MHP for the appropriate fit for the case.

A. Review of an Assessment Performed by Another MHP

B. Requests for Family Therapy (or "Reunification Therapy")

C. Child Placement Recommendations

D. Addressing Abuse Allegations

E. Obtaining Records

VII. CHOOSING THE RIGHT MHP: GREEN FLAGS

Choosing the right MHP for your client's case is important. The following is a list of "green flags" or things to look for in qualified MHPs:

A. Follows Ethical and Professional Practice Guidelines

B. Clear Communication

C. Protects the Rights of the Clients

D. Protects Client Confidentiality while also Working to Protect the Child's Safety

E. Focused on What is in the Best Interest of the Child/Adolescent

F. Helps to Clarify the Referral Question

G. Clear Consent Forms regarding the Purpose of the Assessment, What the Assessment Will or Will Not Be Able to Answer, and the Risks of Completing the Assessment/Intervention

H. Clarity Regarding the Fees

I. Conducts a Thorough Assessment before Intervention

J. Avoids Dual Roles and Addresses Appropriately if They Cannot Be Avoided

K. Implements Evidence-based Practices rather than Outdated, Debunked, Pseudoscience

L. Professional Conduct and Boundaries with Other Professionals on the Team

M. Clear regarding What They Can/Cannot Say on the Stand

N. Speaks Only regarding Topics They Have Training and Expertise in and Acknowledges When Information May Be beyond Their Scope of Practice or Their Role in the Particular Case

O. Does not Blindly Implement Any Intervention that is Requested by Others, but Instead Makes Recommendations that are in the Best Interest of the Client Based on the Results of Assessment and Research

Attendees will have the opportunity to discuss these “green flags” in the context of real-life scenarios and be better equipped to identify them in practice.

For questions or additional information, please contact Courtney (risk@lmick.com) or Heather (risk@heatherriskandassociates.com).

HEATHER RISK, PSYD & ASSOCIATES, PLLC

APPENDIX A: COURT RELATED ASSESSMENTS PROVIDED BY HEATHER RISK, PSYD & ASSOCIATES, PLLC

All forms of assessment include evidence-based assessment methods and state-of-the-science data collection tools.

Psychological Evaluations/Trauma-Informed Psychological Evaluations/ Mental Health Assessments/ Treatment Assessments	**Family Therapy Readiness Evaluations**	**Parenting Risk Assessments/Child Welfare Parenting Risk Assessments**	**Parenting Plan Evaluations (Formerly Known as Custody Evaluations)**	**Trauma-Informed Parenting Plan Evaluations**
• These are focused on an individual. • Designed to clarify their psychological diagnosis, cognitive functioning, and/or treatment needs. • Can be conducted with individuals of all ages. • Can help to clarify the impact traumatic experiences have had on an individual. • Only the individual is evaluated. Others may be interviewed as collateral sources of data.	• Is family therapy appropriate? • If so, what particular evidence-based family therapy is indicated? • If family therapy is contraindicated, information regarding other treatment recommendations for the individuals to consider will be outlined. These recommendations may lead to improvements and possible family therapy in the future. • Includes an evaluation of each relevant family member.	• An assessment of caregiver(s) parenting capacity, parenting risks, and treatment recommendations. • This can be helpful for families with a history of reported, documented, or suspected child maltreatment. • When wanting a psychological evaluation of a parent in order to determine how their psychological functioning may be impacting their parenting, this is the type of evaluation that is needed. • Includes an evaluation of each relevant family member.	• This type of evaluation is for families where there is no suspected child maltreatment (*see* Parenting Risk Assessment for others). • Designed to help provide guidance regarding parenting time, parental decision making, residential custody, visitation, and parenting plans. • Focuses on the best psychological interest of the child. • Includes an evaluation of each relevant family member.	• This is a combination of the Parenting Risk Assessment and Parenting Plan Evaluation.

HEATHER RISK, PSYD
& ASSOCIATES, PLLC

Selected Treatments Provided by Heather Risk, PsyD & Associates, PLLC

Treatments for Children and Adolescents:

- Trauma Focused Cognitive Behavioral Therapy
- Cognitive Behavioral Therapies
- Parent Child Interaction Therapy
- PC-Care
- TF-CBT for Traumatic Grief
- Combined Parent Child Cognitive Behavioral Therapy
- Child and Family Traumatic Stress Intervention
- Functional Family Therapy
- CBT for OCD and Exposure and Response Prevention

Treatments for Adults:

- Cognitive Processing Therapy
- Prolonged Exposure Therapy
- Cognitive Behavioral Therapy
- Cognitive Therapy
- Exposure Response Therapy
- Unified Protocol for Transdiagnostic Treatment for Emotional Disorders
- Dialectal Behavioral Therapy
- Treatment for Traumatic Grief
- Supportive Psychotherapy for Life Stressors (work, life transitions, personal development)
- Consultation and Treatment Guidance

I. PRACTICE GUIDELINES AND HELPFUL RESOURCES

The Practice Guidelines, below, provide an overview and practical application of the ethical obligations of an MHP.

A. American Psychological Association's (APA) List of Practice Guidelines

B. APA Guidelines for Psychological Assessment and Evaluation

C. APA Guidelines for Psychological Evaluations in Child Protection Matters

D. APA Guidelines for Psychological Evaluations in Child Custody Evaluations In Family Law Proceedings (2002)

E. APA Guidelines for Practice of Parenting Coordination

F. Specialty Guidelines for Forensic Psychology

II. ADDITIONAL HELPFUL RESOURCES

A. Association of Family and Conciliation Courts' (AFCC) Guidelines for Parenting Plan Evaluations in Family Law Cases

B. American Professional Society on Abused Children's Position Paper on Allegations of Child Maltreatment and Intimate Partner Violence in Divorce/Parental Relationship Dissolution

III. RESOURCES TO CHECK THE VALIDITY OF AN INTERVENTION

While lawyers are not required to be an expert on treatment modalities, there are some easy tools available for understanding the validity of an intervention. The below resources can assist lawyers in that evaluation:

A. Information on Treatments for Adults

B. Information on Treatments for Children and Adolescents

C. Information on Treatments for Children and Adolescents Who Have Experienced Trauma:

1. National Child Traumatic Stress Network.

2. NCTSN's Position Statement: Prerequisite Clinical Competencies for Implementing Effective, Trauma-Informed Intervention.