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

26th Annual Family Law Seminar

This program has been approved in Kentucky for 12 CLE credits including 2.5 ethics credits.

Compiled and Edited by:
The Kentucky Bar Association
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for
Kentucky Bar Association
Family Law Section

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26th Annual Family Law Seminar

Table of Contents

AAML/KBA 26th Annual Family Law Seminar
The Future of Family Law: Complex Case Strategies and Settlement Solutions
April 23-24, 2025
Louisville, Kentucky

Wednesday, April 23, 2025

8:00-8:45 a.m.	**Breakfast**
8:45-9:00 a.m.	**Welcome & Speaker Introduction**
9:00-10:30 a.m.	**Best Practice Child Custody [Parenting Plan] Evaluations** (1.5 CLE credits) Dr. Kelli Marvin, Ph.D. Dr. Kristen McCrary, Psy.D.
10:30-10:45 a.m.	**Break**
10:45-11:45 a.m.	**Healthy and Ethical Attorney Client Boundaries** (1 Ethics credit) Dr. Kathryn Berlá, Ed.D. Melanie Straw-Boone
11:45 a.m.-12:15 p.m.	**Ethics Jeopardy** **Beyond the Rules – Leading Professional Conduct Forward** (0.5 Ethics credit) Suzanne Baumgardner Laura C. Belleau Timothy B. Theissen
12:15-12:45 p.m.	**Lunch (provided)**
12:45-1:00 p.m.	**Afternoon Welcome & Remarks from AAML President**
1:00-2:00 p.m.	**Case Closed – Cracking the Code to Mediation Success** (1 CLE credit) Valerie Schroeder Kershaw Mark Ogle
2:00-2:30 p.m.	**Settlement Agreements: Items You Can't Afford to Miss** (0.5 CLE credit) Jeffery P. Alford Hillary A. Hunt
2:30-2:45 p.m.	**Break**

2:45-3:15 p.m.	**Legislative Process in Kentucky: How a Bill Becomes a Law** (0.5 CLE credit) Representative Stephanie Dietz
3:15-3:45 p.m.	**2025 Appellate Court Update** (0.5 CLE credit) Thomas E. Banks II
3:45-4:45 p.m.	**A View from the Bench: Best Practices for Lawyers in the Courtroom** (1 CLE credit) Judge Traci H. Boyd Brislin Judge Deanna Wise Henschel Judge Shelley Santry Steven Kriegshaber, Moderator

Thursday, April 24, 2025

8:00-8:45 a.m.	**Breakfast**
8:45-9:00 a.m.	**Welcome & Speaker Introduction**
9:00-10:00 a.m.	**Non-Marital Asset Tracing: Litigation Tactics for Discovering Hidden Assets** (1 CLE credit) Dorothy Haraminac, MBA, CFE, MAFF, LPI, CCI
10:00-10:15 a.m.	**Break**
10:15-11:15 a.m.	**Generative AI in Legal Practice** (1 Ethics credit) Victor J. Medina, CELA, CFP, RICP
11:15 a.m.-12:00 p.m.	**QDRO Quagmires, Pension Predicaments, and the Social Security Fairness Act** (0.75 CLE credit) Lance S. Melin, CEBS
12:00-12:30 p.m.	**Lunch (provided)**
12:30-12:35 p.m.	**Afternoon Welcome & Speaker Introduction**
12:35-1:35 p.m.	**Tax Considerations in Divorce in 2025** (1 CLE credit) Faith Crump, CPA, CSEP Missy DeArk, CPA, CFF, MBA, CVA, MAFF
1:35-1:45 p.m.	**Break**

1:45-2:45 p.m.	**Why Can't We All Get Along? Family Law and Bankruptcy from Both Sides of the Bench** (1 CLE credit) Kent Barber Kami C. Brumley Judge Ross Ewing
2:45-3:15 p.m.	**Writs of Prohibition and Mandamus – When and How?** (0.75 CLE credit) Lori B. Shelburne

PRESENTER BIOGRAPHIES

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 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.

Thomas E. Banks II
Straw-Boone Doheny Banks Mudd Catalano & McKinney PLLC
Louisville, KY

Tom Banks is a partner with Straw-Boone Doheny Banks & Mudd PLLC in Louisville, where he focuses his practice on high net worth divorce litigation, high conflict child custody litigation, child abuse and neglect litigation, domestic violence, property settlement, mediation, and conflict resolution. Mr. Banks is a Fellow of the American Academy of Matrimonial Lawyers and was selected to Kentucky *Super Lawyers*® 2021-2025. He received his B.A. from the University of Louisville and his J.D. from the University of Louisville Louis D. Brandeis School of Law. He is a member of the Louis D. Brandeis American Inn of Court, Kentucky Justice Association, and the American, Kentucky, Indiana, and Louisville Bar Associations.

T. Kent Barber
Embry Merritt Womack Nance, PLLC
Lexington, KY

Kent Barber (Kent.Barber@EMWNLaw.com) practices bankruptcy, litigation, and transactions with Embry Merritt Womack Nance's Lexington, Kentucky office. Kent holds a distinguished rating from Martindale-Hubbell with a Very High Rating in both Legal Ability and Ethical Standards and has been

selected as a Super Lawyer from 2020-2025 and was a Super Lawyer Rising Star from 2013-2018. Prior to EMWN, Kent served as a judicial law clerk to the Honorable Joseph M. Scott, Jr., Bankruptcy Judge, Eastern District of Kentucky and practiced at DelCotto Law Group PLLC (f/k/a Wise DelCotto PLLC) and then founded Barber Law PLLC where he focused on business and litigation matters, specifically, commercial real estate, bankruptcy, bankruptcy litigation, insolvency-related transactions, creditors' rights, and general business law. His clients range from individual and single-member LLCs to global publicly traded companies. Kent has experience representing both individuals and businesses in the context of consumer and commercial bankruptcy, debt restructuring, debtor and creditor relations, and commercial litigation including debtors-in-possession, creditors' committees, secured and unsecured creditors, lessors, contract parties and trustees in all chapters of bankruptcy. He has represented Chapter 7 panel trustees, Chapter 11 liquidating trustees, and state court appointed receivers and has represented both plaintiffs and defendants in bankruptcy litigation including, but not limited to, nondischargeability proceedings and lien avoidance and has filed hundreds of preferential and fraudulent transfer cases. Kent has also written numerous bankruptcy related articles and spoken on the topic of bankruptcy.

Suzanne Baumgardner
Kershaw & Baumgardner, LLP
Lexington, KY

Suzanne Baumgardner is a partner in Kershaw & Baumgardner, LLP. She is the immediate past president of the Kentucky Chapter of the American Academy of Matrimonial Lawyers. She has practiced family law in Lexington, Kentucky since 1996. With a background and education in accounting, Suzanne likes to focus her practice on complex financial issues in divorce. Suzanne has been a speaker at continuing education seminars including recent presentations to ACTEC, the UK Bankruptcy Conference, and the Bagby/Bondurant Estate Planning Institute. Suzanne has co-authored two chapters, Contested Divorce and Separation Agreements in *Kentucky Domestic Relations Practice* published by the University of Kentucky Office of Continuing Legal Education. Suzanne is trained in collaborative law and is an AAML certified arbitrator. As an AAML fellow, Suzanne is a long-standing member of the Finance and Budget Committee as well as the Admissions Standards Committee of the national organization. She is a member of the Kentucky Bar Association, the Iowa Bar Association, and the Fayette County Bar Association. Suzanne is an active member of the Family Law Sections of both the Kentucky Bar Association and Fayette County Bar Association, having served as past chair. She is admitted to practice before all state courts of Iowa, Kentucky, and the U.S. Sixth Circuit Court of Appeals.

Laura C. Belleau
Belleau Family Law Group, PLC
Tuscon, AZ

Laura Belleau is the owner of Belleau Family Law Group, where she limits her practice to family law cases, concentrating on those involving complex issues. She is a Fellow of the American Academy of Matrimonial Lawyers and the current national president. She is a past president of Arizona's chapter of AAML and has previously served as the both the national and Arizona chapter treasurer. She is a diplomate in the American College of Family Trial Lawyers, a select group of the top 100 family trial lawyers from across the country known for excellence in family law trial practice. She is certified as a family law specialist by the State of Arizona's Board of Legal Specialization. She serves on the State Bar's Family Law Executive Council, served on both the Supreme Court's Child Support

Guidelines Review Committee and currently serves on the Supreme Court's Spousal Maintenance Guidelines Committee and Parenting Time Guide Workgroup. She is a current member of the Association of Family and Conciliation Courts (AFCC), and a past president of Arizona's chapter. She is a judge *pro tempore* for the Arizona Superior Court, Pima County, volunteers as child's counsel/court appointed advisor in complex parenting time cases, and frequently speaks and writes on family law topics.

Dr. Kathryn Berlá, Ed.D.
Kathryn Berlá, Ed.D., PLLC
Louisville, KY

Dr. Kathryn Berlá earned her undergraduate degree at Wesleyan University in Middletown, CT, and her masters and doctorate in counseling psychology from the University of Louisville. She completed her predoctoral internship at Madison State Hospital in Madison, IN, and subsequently her post-doctoral training in a Louisville private practice. Dr. Berlá's dissertation topic was "Children's Adjustment to Divorce," using data from the Families in Transition Program in Jefferson County, KY. Dr. Berlá is a licensed psychologist, and is a member of the Graduate Faculty of the University of Louisville. She is also on the board of directors of the Kentucky Psychoanalytic Institute. Dr. Berlá has authored the column "Family Matters," appearing monthly or bi-monthly in *Kentuckiana Health Fitness Magazine* since February 2005. In private practice since 1997, Dr. Berlá has extensive experience with children, adolescents and adults. Her expertise is in the areas of depression, anxiety, sexual dysfunction, personality disorders, occupational distress, bereavement, and marital or other relational problems. Dr. Berlá works primarily from a developmental, dynamic and attachment perspective and offers a range of clinical services including individual, couple and family psychotherapy. Additionally, she offers services related to child and family custody matters, including consultation and custody evaluations. Dr. Berlá also provides expert witness testimony in matters of custody, parent/child relationships, and other psychological issues.

Judge Traci H. Boyd Brislin
Family Court, 22nd Judicial Circuit, Division 2
Lexington, KY

Judge Traci Brislin serves as family court judge for the 22nd Judicial Circuit, Division 2, in Lexington. She received her undergraduate degree from Murray State University and her J.D. from the University of Kentucky J. David Rosenberg College of Law. Prior to her judicial election in 2014, she ran her own firm in Lexington focusing on family law. She also previously worked with the firms McCoy, West, Frankin & Beal and Boyd & Boyd, PLLC. Judge Brislin is a member of the Kentucky Bar Association.

Kami C. Brumley
Kershaw & Baumgardner, LLP
Lexington, KY

Kami C. Brumley is a partner at Kershaw & Baumgardner, LLP. Kami has been practicing family law ever since she first joined Kershaw & Baumgardner in 2008 after graduating from the University of Kentucky J. David Rosenberg College of Law. In her practice, Kami focuses on all areas of complex family law litigation, including high conflict custody cases, dependency, neglect, and abuse cases, and high net worth cases, for which she finds her Bachelors of Business Administration particularly helpful. Kami has presented at several continuing legal education seminars including the Kentucky

Bar Association Legal Aid University and the UK Bankruptcy Conference. She has previously volunteered with the Grandparents as Parents Conference, served as president of the Fayette County Bar Association Family Law Section, and acted as member of the Fayette County Local Rules Committee. She currently serves as the treasurer for the Kentucky Chapter of the American Academy of Matrimonial Lawyers, a position she has held for four years.

Faith Crump, CPA, CSEP
Dean Dorton
Louisville, KY

Faith Crump is a certified public accountant and tax director at Dean Dorton in Louisville, where she works primarily with privately owned businesses and high net worth family groups. She provides tax compliance and planning services in a variety of areas, including estate, gifts and trust planning, real estate, and nonprofits. Ms. Crump leads the firm's real estate industry group and is also the Louisville leader of the wealth and estate planning service group. She spends most of her time working with high net worth clients and their related entities (operating companies, real estate holdings, investments, trusts, and foundations). She also assists the litigation consulting group with various tax analyses. Ms. Crump is a member of the American Institute of Certified Public Accountants, Kentucky Society of Certified Public Accountants, Estate Planning Council of Metro Louisville, and Women in Commercial Real Estate (WCRE) – Louisville. She is a certified specialist in estate planning (CSEP) by the National Institute for Excellence in Professional Education and holds a special events professional certification. Ms. Crump received her B.A. from Transylvania University. She is a member of Focus Louisville, 2010, and Leadership Louisville, 2014.

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 specializes in helping attorneys and their clients understand the financial and tax issues specific to the divorce process through a variety of services. She performs business valuations in a variety of contexts, including estate, gift, and income tax planning and reporting, marital dissolutions, shareholder transactions, and mergers and acquisitions. Missy is a member of the American Institute of Certified Public Accountants, National Association of Certified Valuation Analysts, and serves as president of the Kentucky Collaborative Family Network. She received her B.A., *magna cum laude*, from Bellarmine University and her M.B.A. from Indiana University Bloomington.

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

Stephanie A. Dietz represents parties in divorce actions including division of business interests, retirement accounts, and other property as well as child custody issues. Her experience allows her to handle these cases both inside and outside the courtroom. Stephanie also handles all forms of adoption cases. She is a trained family law mediator and has been trained in collaborative divorce. Stephanie received her B.A. from the University of Kentucky and her J.D. from the Salmon P. Chase College of Law. She is admitted to practice in Kentucky, Ohio, Indiana, and the U.S. District Court for the Eastern District of Kentucky. Stephanie is a member of the American Bar Association (Family Law Section), Kentucky Bar Association (Family Law Section), International Association of Collaborative Professionals, Northern Kentucky Bar Association (Family Law Section, Chair 2004-2008), and currently serves as Secretary for Northern Kentucky Collaborative Professionals, Inc. Ms. Dietz also serves as Kentucky State Representative for the 65th District, Kenton (part).

Judge Ross Ewing
Family Court, 22nd Judicial Circuit, Division 5
Lexington, KY

Hon. Ross Ewing is currently a family court judge in Lexington, Kentucky. He is also an adjunct professor at the University of Kentucky J. David Rosenberg College of Law, teaching in the area of family law. Prior to his election in 2022, he was a family law attorney and mediator in private practice and held many leadership positions in the Kentucky bar and his local community. Judge Ewing was founding president of the Kentucky Bar Association's LGBT Law Section and is a long-time volunteer with the Kentucky Lawyers Assistance Program. In 2024, he was awarded the Raising the Bar Award by the Kentucky Chapter of the American Academy of Matrimonial Lawyers and honored by Legal Aid of the Bluegrass with its Access to Justice award. When not in court or the classroom, Judge Ewing can usually be found outdoors – hiking, gardening, or reading a book in the shade.

Dorothy Haraminac, MBA, CFE, MAFF, LPI, CCI
YBR Consulting
Houston, TX

Dorothy Haraminac is the founder of YBR Consulting in Houston, Texas. Ms. Haraminac provides consulting and expert witness testimony, builds damage models for complex commercial disputes, and provides tracing and valuation for high net worth, tech-centric matrimonial cases. She conducts fraud investigations, performs risk assessments, and volunteers her time to train other professionals on emerging trends in blockchain, cybersecurity, and crypto tracing. Her forensic accounting engagements, including those with cryptocurrency at issue, occur nationwide in both equitable distribution and community property states; she has provided expertise in federal court as well as state courts in California, Hawai'i, Maryland, Texas, and others. Ms. Haraminac serves on the Advisory Board for the College of Science and Engineering at Houston Christian University (HCU), the Editorial Board for *The Value Examiner*, and the Editorial Board for NACVA's *QuickRead*. She volunteers her time to develop and present training programs for law enforcement, attorneys, and accountants on cybercrime risk, blockchain compliance, and cryptocurrency investigations (now becoming known as blockchain forensics), and is a professor of Cyber Engineering. She also served as Chairman of the Litigation Forensics Board for NACVA, where she spearheaded the direct

acknowledgement of military experience in lieu of a degree for MAFF credential qualifications, making it one of the first NASBA-accredited financial credentials to directly accept military experience without a separate degree.

Chief Circuit Judge Deanna Wise Henschel
Family Court, 2nd Judicial Circuit, Division 3
Paducah, KY

Chief Circuit Judge Deanna Wise Henschel serves as family court judge for the 2nd Judicial Circuit, Division 3 in Paducah. Prior to her appointment to the bench, Judge Henschel served as assistant county attorney and practiced with McMurry & Livingston, PLLC. She received her B.A. from Millsaps College and her J.D. from the University of Kentucky J. David Rosenberg College of Law. She is a member of the Kentucky Bar Association.

Hillary A. Hunt
Bricker Graydon
Ft. Mitchell, KY

Hillar Hunt is a member of Bricker Graydon's family law group, where her practice focuses on a wide range of family law problems, including contested and uncontested divorces, complex child custody arrangements, and family law appeals. She is a graduate of NKU Chase College of Law and earned her B.A. in political science from NKU in three years. In college, she was a member of the track & field team, a member of Gamma Phi Beta sorority, and Pi Sigma Alpha Honor Society. In law school, she was a member of the negotiation team, mentor/mentee program, and participated in the Children's Law Clinic based in Covington. Prior to joining Bricker Graydon, Ms. Hunt worked as a staff attorney to family law Judge Lisa Hart Morgan in Scott, Bourbon, and Woodford Counties. After working with Judge Morgan, she was offered a position with Judge Glenn Acree at the Kentucky Court of Appeals. Ms. Hunt was named a 2024 Kentucky *Super Lawyers*® Rising Star in family law. She is a member of the Federalist Society, Scott County Republican Women, and serves as Youth Chair of the Scott County Republican Party. Ms. Hunt is also a member of the Kentucky and Ohio Bar Associations.

Valerie Schroeder Kershaw
Kershaw & Baumgardner, LLP
Lexington, KY

Valerie Kershaw attended Sullins College in Virginia prior to receiving her B.S. from the University of Kentucky where she graduated Phi Beta Kappa and with high distinction. Ms. Kershaw graduated *cum laude* from the University of Louisville Louis D. Brandeis School of Law and was the recipient of the Samuel Greenebaum Public Service Award. Ms. Kershaw is the senior partner of Kershaw & Baumgardner, LLP, which was originally founded in 2003. Ms. Kershaw is a Fellow of the American Academy of Matrimonial Lawyers, and a member of the American and Kentucky Bar Associations. She has served as the president of the Kentucky Chapter of the AAML and has acted as the chair of Family Law Section of the Fayette County Bar Association. She has won numerous awards for outstanding legal performance throughout her career. She is trained as a family mediator by the Kentucky Administrative Office of the Courts and trained as an arbitrator by the American Academy of Matrimonial Lawyers. She is a frequent lecturer on various topics of family law at educational programs for lawyers and other professionals. Ms. Kershaw is admitted to practice in the

Commonwealth of Kentucky, the Eastern and Western Districts of Kentucky, and the U.S. Sixth Circuit Court of Appeals.

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 2022-2015. 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.

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

Dr. Kelli Marvin 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 Court. After relocating to Louisville in 2007, Dr. Marvin was employed by the University of Louisville's Weisskopf Child Evaluation Center in the capacity of a developmental psychologist and evaluator. In 2009, Dr. Marvin received the support of the Department of Pediatrics at the University of Louisville to develop a university-based forensic mental health assessment service specific to child abuse and neglect within the Division of Pediatric Forensic Medicine. In 2014, Dr. Marvin transitioned into private practice with Dr. Kristen McCrary. Dr. Marvin's specialties include child custody evaluations, parental capacity evaluations, and evaluations of parents and children in court-involved cases specific to allegations of child sexual, physical, and emotional abuse. Dr. Marvin has served on the Louisville Mental Health Diversion Board, has sat on the board of the Kentucky Psychological Association, and served as the elected Forensic Interest Section representative. She has performed thousands of family law evaluations and often testifies in rural, suburban, and urban counties in Kentucky.

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, 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. In addition to her clinical work, Dr. McCrary has served as adjunct faculty at Spalding University and currently provides training and supervision to doctoral students in the area of cognitive and forensic assessment. She currently serves on the Kentucky Psychological Association Continuing Education Committee, and has previously served as the KPA Forensic Interest Section representative.

Victor J. Medina, CELA, CFP, RICP
Palante Wealth Advisors
Pennington, NJ

Victor Medina is founder and chief executive officer of Palante Wealth Advisors and the founder of Medina Law Group in Pennington, New Jersey. He is a practicing estate planning and Certified Elder Law Attorney (CELA®), as well as a certified financial planner professional and registered investment advisor. He is the host of the "Make It Last" radio show and podcast and is the author of three books on retirement planning under his acclaimed *Make It Last* series. Mr. Medina is a nationally recognized estate planning and elder law attorney in New Jersey, focusing on traditional estate planning, asset protection, retirement distribution and proactive income tax planning. He has been featured on national television, *The Wall Street Journal*, *The Huffington Post*, and *U.S. News & World Report*. Mr. Medina is the past president of the American Association of Trust, Estate and Elder Law Attorneys and a frequent speaker to public and private groups on issues of estate planning, elder law, asset protection, and retirement planning. He received his B.A. from Tufts University and his J.D. from Northeastern University School of Law.

Lance S. Melin, CEBS
QDRO Group, LLC
Avon Lake, OH

Lance Melin is a certified employee benefit specialist and managing director at QDRO Group with extensive experience in pension and employee benefit plan design, administration, consulting, valuation, and actuarial funding. Mr. Melin was a Fellow of the International Society of Certified Employee Benefit Specialists through the 2022 program end. Prior to joining QDRO Group, he was in private practice providing present value calculations for domestic relations attorneys. Mr. Melin is qualified and testified as an expert witness on the valuation and division of retirement benefits in domestic relations courts of Ohio, Pennsylvania, North Carolina, and Indiana. He received his B.A. from Northwestern University.

Mark A. Ogle
Bricker Graydon
Ft. Mitchell, KY

Mark Ogle is Of Counsel with Bricker Graydon in Ft. Mitchell where his practice focuses on family law. He handles all types of issues related to divorce, such as difficult custody matters, child support, business evaluations, division of retirement accounts, and spousal maintenance issues. Since 2006, Mr. Ogle has been a Fellow of the American Academy of Matrimonial Lawyers and currently serves as the Kentucky Chapter's delegate to the AAML National Board of Governors. He is

a past president of the Kentucky Chapter of AAML and is also a member of the Family Law Sections of the American Bar Association, Kentucky Bar Association, and the Northern Kentucky Bar Association. Mr. Ogle received his B.A. from Centre College and his J.D. from Northern Kentucky University Salmon P. Chase College of Law. Prior to joining Bricker Graydon, he was a partner at Cors & Bassett before launching his own practice, Mark A. Ogle Family Law which he operated for 15 years.

Judge Shelley Santry
Jefferson County Family Court, Division 2
Louisville, KY

Judge Shelley Santry serves as family court judge for Division 2 of the Jefferson County Family Court. Judge Santry was appointed by Governor Andy Beshear in April 2021 and elected the following year for an eight-year term. Recently, she has taken over the special docket in Family Recovery Court and enjoys being the Co-Chair of the Fatality Review Board. Judge Santry came to the Bench with over 30 years of experience in family law. She started her career at the Legal Aid Society as Associate Director focused on the family law unit and then moved on to become a domestic violence, sexual assault and child abuse prosecutor for the Jefferson County Attorney's Office. Prior to her judicial appointment, she was a tenure professor at the University of Louisville Brandeis School of Law for 10 years and Clinical Director of the Ackerson Law Clinic in which third year law students gained trial experience as they practiced law, under her supervision, in family court.

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

Lori B. Shelburne is a member with Gess, Mattingly & Atchinson, PSC in Lexington, Kentucky. Her principal areas of practice include domestic relations, divorce, and litigation. 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. She has been recognized as one of Kentucky's *Best Lawyers*® since 2012.

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

Melanie Straw-Boone is a partner with Straw-Boone Doheny Banks Mudd Catalano & McKinney PLLC in Louisville where she focuses on family law, including high-asset and complex financial divorce matters, custody, parenting coordination, and QDROs. She received her B.S. from Indiana University and her J.D.*, cum laude*, from the University of Louisville. She has been practicing for over 30 years. Ms. Straw-Boone is a Fellow of the American Academy of Matrimonial Lawyers (President, Kentucky Chapter, 2011-2012) and was awarded the "Raising the Bar" Award from the Kentucky Chapter (2012). Ms. Straw-Boone has also received the Judge Richard A. Revell Family Practitioner of the Year Award (Louisville Bar Association, 2007) and the Jefferson County Women Lawyers Association Achievement in Excellence Award (2010). Ms. Straw-Boone has been selected to *Super Lawyers*®,

and was named as Top Lawyer, Divorce Law, *Louisville Magazine*. 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.

Timothy B. Theissen
Fort Wright, KY

Tim Theissen is a licensed attorney in Kentucky and Ohio, having practiced in Covington, Kentucky and Cincinnati, Ohio beginning in 1980. His primary practice area has been family law. Tim has been an AAML Fellow since 2008. He has participated in many collaborative cases since 2002 and is a devoted advocate for collaborative divorce practice.

BEST PRACTICE CHILD CUSTODY [PARENTING PLAN] EVALUATIONS

Dr. Kelli Marvin and Dr. Kristen McCrary

I. INTRODUCTION

A. Of counsel in the audience, how many have seen a problematic CCE? Share with us some of the underlying concerns.

B. Are there problems that you consistently see across evaluators?

C. What have attorneys seen with regard to the overall quality of CCEs?

D. How many have seen a report about a very complex case that is far too brief and does not contain important information?

E. How many have seen reports that are so long and detailed that it's difficult to get through them and read them? Where does counsel fall on this issue regarding length of reports?

F. Does anyone want to offer how they define a best practice evaluation?

G. What kind of problems can arise if an evaluator does not adhere to best practice standards?

II. BEST PRACTICE CHILD CUSTODY [PARENTING PLAN] EVALUATIONS

A. Review of the components of a best practice child custody evaluation – with emphasis on how attorneys can discern what is or is not a best practice evaluation.

1. Competency/training.

2. Evaluation components.

3. Psychometric testing.

4. Written report components.

B. Resources

1. Drozd, L., Saini, M., Olsen, N. *Parenting Plan Evaluations: Applied Research for Family Court,* Oxford University Press (2016).

2. Martindale, D. & Gould, J., "Deconstructing Custody Evaluation Reports," *Journal of the American Academy of Matrimonial Lawyers*, Vol. 25(2) (2013), pp. 357-374.[1]

[1] *Available at* https://aaml.org/wp-content/uploads/MAT210_2.pdf.

3. Martindale, D. & Shear, L., "Best Practices for Structuring a Family Court Parenting Plan Evaluation under the 2022 AFCC Guidelines," *Family Court Review* (2013).[2]

4. Stahl, P. & Simon, R., *Forensic Psychology Consultation in Child Custody Litigation: A Handbook for Work Product Review, Case Preparation, and Expert Testimony*, 2nd Ed. (2020 ABA Section of Family Law).

5. Grisso, T, "Guidance for Improving Forensic Reports: A Review of Common Errors," *Open Access Journal of Forensic Psychology* 2 (2010), pp. 102-115.[3]

III. THE CURRENT DEBATES IN THE FIELD REGARDING EVALUATIONS

A. Hybrid Models

B. Evaluation Feedback

C. Report Length

D. How to Make Evaluations Shorter – IFAs v. Full CCEs

E. Resources

1. Simon, R. & Shienvold, A., "Hybrid Processes within Parenting Plan Assessments: Rationale and an Illustrative Model," *Family Court Review* (2013).[4]

2. Lund, M.E., "The Place for Custody Evaluations in Family Peacemaking," *Family Court Review* (2015).[5]

IV. REVIEW OF CURRENT AFCC PARENTING PLAN GUIDELINES

Summary of the updated guidelines and relevant changes from the prior Model Standards:

Association of Family and Conciliation Courts, *Guidelines for Parenting Plan Evaluations in Family Law Cases* [Prepared by the AFCC Task Force for Revision of the Model Standards for the Practice of Child Custody Evaluation], May 2022.[6]

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[2] *Available at* http://doi.org/10.1111/fcre.12753.

[3] *Available at* https://www.oajfp.com/_files/ugd/166e3f_0a353867dac34131a84d5a746ed9139f.pdf.

[4] *Available at* https://doi.org/10.1111/fcre.12750.

[5] *Available at* https://doi.org/10.1111/fcre.12162.

[6] *Available at* https://www.afccnet.org/Portals/0/PDF/Guidelines%20for%20Parenting%20Plan%20Evaluations%20in%20Family%20Law.pdf?ver=TdRIBVhq6scPHg4WC8ZQSg%3d%3d.

Family law is an emotionally charged field where attorneys frequently interact with clients experiencing intense personal struggles, including divorce, child custody disputes, and domestic violence cases. The nature of these cases makes it imperative for family law practitioners to maintain clear ethical and healthy boundaries with their clients. Proper boundaries ensure that attorneys remain effective advocates while safeguarding their own well-being and upholding the integrity of the legal profession.

I. ATTORNEY WELL-BEING: CHALLENGES AND SOLUTIONS

The legal profession faces increasing pressure regarding mental health and well-being. While attorneys place a high value on personal well-being, systemic and organizational challenges continue to hinder effective support. Addressing these concerns requires both individual efforts and broader industry changes to create a more sustainable and healthy work environment.

Attorneys generally rate their personal well-being at 8.7 out of 10, yet they perceive the well-being of the profession as a whole at a lower 7.7. This discrepancy suggests that while many attorneys prioritize their health, they recognize that the industry does not always foster a supportive environment. The fact that 85 percent of attorneys rank well-being as a high priority reinforces the importance of this issue within the profession.

Despite this recognition, self-assessment scores for well-being remain modest, averaging only 6.5 out of 10. Younger attorneys, particularly those between the ages of 25 and 34, tend to report lower well-being scores compared to their older colleagues. Additionally, nearly half of attorneys report experiencing burnout frequently, underscoring the urgent need to address workload management and work-life balance within the field.

Several key challenges contribute to declining well-being, including disrupted sleep, anxiety, low energy levels, and the difficulty of disconnecting from work. These issues not only affect personal health but also professional performance. When widespread among legal professionals, they indicate that the current work environment and expectations may not be sustainable in the long run.

To counteract these challenges, many attorneys engage in self-care practices. Common strategies include participating in hobbies such as hiking, reading, gaming, and watching television, as well as exercising, spending time with family, and practicing meditation or spiritual reflection. On average, attorneys dedicate approximately 6.9 hours per week to self-care. While these practices are beneficial, they may not be sufficient to counteract the profession's high stress levels.

One concerning issue affecting attorney well-being is alcohol consumption. According to the report, 87 percent of attorneys have consumed alcohol since early 2024. While most limit their intake to one or two drinks, approximately 25 percent report drinking beyond moderate

levels. The motivations behind alcohol use vary, ranging from socializing and celebrating to using alcohol as a means of relaxation or emotional numbing. Furthermore, alcohol is a common presence at professional events, with 77 percent of attorneys acknowledging its role in workplace gatherings. This cultural norm may contribute to unhealthy coping mechanisms, exacerbating stress and burnout within the profession.

Although attorneys are increasingly aware of mental health challenges, more than 40 percent delay or avoid seeking treatment. The primary barriers to accessing mental health support include a lack of time and the belief that personal struggles can be managed independently. While stigma has historically been a significant obstacle, practical constraints now play a greater role in discouraging attorneys from seeking care. This shift suggests that legal organizations must rethink how mental health services are offered, ensuring they are both accessible and effective in addressing the unique challenges attorneys face.

The effects of these well-being challenges extend beyond individual attorneys and have a profound impact on the legal profession as a whole. Burnout, poor sleep, and alcohol misuse can negatively influence client service, ethical decision-making, and overall productivity. More than 60 percent of attorneys report encountering colleagues whose well-being struggles interfere with their work, raising serious concerns about professional standards and the overall health of the industry.

Recognizing the signs of compromised personal and professional boundaries is an essential aspect of maintaining well-being. Chronic exhaustion, irritability, and difficulty concentrating are classic indicators of burnout. In the legal profession, blurred boundaries often arise when personal time becomes indistinguishable from client demands. For example, responding to client communications late into the night or feeling emotionally drained after interactions may signal the need for boundary reassessment. Neglecting self-care, whether physical, emotional, or cognitive, is another indication that adjustments may be necessary. Ensuring that personal well-being remains a priority is not a luxury but a fundamental requirement for effective legal advocacy.

Establishing clear boundaries with clients from the outset is a critical step in maintaining well-being. Informed consent serves not only as a legal formality but also as an opportunity to set mutual expectations early in the attorney-client relationship. Clearly outlining roles, the scope of services, and any limitations of representation helps prevent misunderstandings and fosters trust. Defining confidentiality parameters, discussing potential conflicts of interest, and setting realistic expectations for client outcomes further support healthy professional boundaries. When these boundaries are clearly communicated at the beginning of a professional relationship, both attorneys and clients benefit from a framework that reduces potential conflicts and emotional strain.

The data presented in this report underscores a significant disconnect: attorneys overwhelmingly value well-being, yet many struggle to achieve it due to systemic pressures, heavy workloads, and inadequate self-care practices. Addressing this issue requires both individual and organizational change. Stronger well-being programs, better resource utilization, and a cultural shift toward sustainable work practices are necessary to improve the mental and physical health of attorneys. Moving forward, legal organizations must work

collaboratively with professionals to develop policies that truly support well-being, mental health, and work-life balance.

For those seeking additional resources on attorney well-being, *Bloomberg Law*'s Well-Being pages, the American Bar Association's well-being initiatives, and local lawyer assistance programs provide valuable guidance and support. By leveraging these resources and advocating for systemic change, attorneys can work toward a profession that prioritizes both personal and professional well-being.

II. ETHICAL CONSIDERATIONS IN ATTORNEY-CLIENT RELATIONSHIPS

Attorneys are bound by professional ethical rules that dictate the scope and nature of their relationships with clients. The Rules of Professional Conduct place certain obligations on the attorney which can make the creation of boundaries difficult. Often, these ethical rules require a close professional relationship between the attorney and client, and the attorney must work to maintain a healthy professional distance at the same time.

Rule 1.2 establishes the scope of the relationship and allocation of authority between the client and lawyer. Rule 1.2 requires an attorney to abide by the client's wishes, unless that course of action is a violation of the ethical rules, court rules, fraud, or is illegal. The client controls the objectives of the representation. It is important in the screening process to listen closely to the client's objectives and establish reasonable expectations. Honest communication about case outcomes prevents misunderstandings and helps maintain trust in the attorney-client relationship. If the attorney does not agree with the client's objectives, then continuing to represent the client is likely to lead to conflict in the attorney client relationship and cause the attorney stress.

Rule 1.4 requires the attorney to keep the client "reasonably informed" about the case, "promptly comply" with reasonable requests for information, and reasonably consult with the client about accomplishing the client's objectives in the case. It is the lawyer's job to explain the matter in a way to allow the client to make informed decisions. At the outset of the engagement, the attorney should explain their methods of communication and what the client can expect. The requirement of communication with the client means that boundaries have to be pliable.

Rule 1.6 prohibits a lawyer from revealing any information relating to the representation of the client unless the client gives informed consent or impliedly authorized in order to represent the client. There are also other exceptions to prevent death or substantial bodily injury, for the lawyer to obtain ethics/legal advice, for the lawyer to defend against a claim by the attorney, or to comply with other laws or court order. So, how does the lawyer discuss a difficult client, complex issue, annoying opposing counsel, and/or perplexing judicial conduct without violating Rule 1.6? Comment 4 to Rule 1.6 allows for "hypothetical" discussions: A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client, or the situation involved. Further, a lawyer's conversation with attorneys and staff in his or her own law firm is allowed as those persons are also bound by Rule 1.6 in connection with the representation of the client. This rule can be especially tricky for solo practitioners and for the attorney's own therapeutic relationships.

Rule 1.7(a)(2) discusses personal conflicts of interest. A conflict exists, prohibiting representation of a client, if there is a significant risk that the representation will be materially limited by the personal interest of the lawyer. Comments 10, 11, and 12 address interrelated business or employment issues, attorneys who are "closely related by blood or marriage" representing different clients in the same matter, and, again, no sexual relationship. These conflicts do not preclude representation if the lawyer believes that he can provide competent representation despite the lawyer's personal interest and the client gives written, informed consent. Even if the client consents, these relationships would make boundary building more difficult for the attorney.

Rule 1.8 addresses, and prohibits, many boundary-related conflict of interest issues. Do not go into business with a client, unless terms are fair and reasonable, the client is instructed to seek independent counsel, and the client gives informed consent in writing. Do not solicit a gift from a client for yourself or a relative (especially estate planning). Do not negotiate media or literary rights for yourself during the matter. Do not provide financial assistance to a client. No sexual relationship with a client.

While not directly addressed by the Rules of Professional Conduct, one of the most crucial ethical considerations in family law is avoiding dual relationships or conflicts of interest. Given the deep personal nature of family law cases, attorneys may be tempted to blur professional lines by becoming personally involved in their clients' struggles. This can lead to impaired judgment, loss of objectivity, and potential violations of ethical guidelines. None of those things will serve the client or the attorney well.

III. THE IMPORTANCE OF HEALTHY BOUNDARIES FOR ATTORNEY WELL-BEING

Beyond ethical obligations, maintaining healthy boundaries is crucial for an attorney's mental and emotional well-being. Family law cases often involve highly distressed clients who may become overly reliant on their attorneys for emotional support. While empathy and compassion are essential qualities in legal representation, attorneys must recognize the limits of their role and direct clients to appropriate mental health professionals when necessary.

Attorneys who fail to establish boundaries risk experiencing burnout, compassion fatigue, and even secondary trauma. Over-involvement in a client's personal issues can also lead to emotional exhaustion, reducing an attorney's ability to provide effective legal counsel. Implementing strategies such as setting communication limits, using professional language, and maintaining work-life balance can help mitigate these risks.

IV. STRATEGIES FOR MAINTAINING ETHICAL AND HEALTHY BOUNDARIES

Several techniques can help attorneys build and maintain boundaries from a mental health perspective. Regular self-reflection and mindfulness practices, such as brief meditation sessions or periodic self-assessments, can help attorneys recognize when they are overextending themselves. Structured time management is also crucial, with attorneys encouraged to block out specific work hours and personal time using scheduling tools. Learning to communicate needs assertively is another key strategy, enabling attorneys to say no to excessive work and clarify the limits of their availability without feeling guilty or

unprofessional. Seeking peer consultation and professional support can also provide perspective and practical solutions, whether through formal counseling, professional groups, or informal networks. Cognitive-behavioral strategies, which focus on reframing stressful situations and challenging negative thought patterns, can further support attorneys in preserving their well-being and maintaining healthy boundaries.

In the professional setting, law professionals can address the following:

1. **Clear Communication of Professional Role**: Attorneys should define their role early in the attorney-client relationship, clarifying that they provide legal – not therapeutic – advice.

2. **Establishing Communication Guidelines**: Setting clear policies regarding response times, preferred methods of communication, and after-hours contact can help manage client expectations.

3. **Avoiding Over-Personalization**: While it is natural to empathize with clients, attorneys must resist the urge to become personally entangled in their disputes.

4. **Referring Clients to Appropriate Professionals**: Family law clients often require emotional support beyond what an attorney can provide. Referring them to therapists or support groups can be beneficial.

5. **Practicing Self-Care**: Attorneys should engage in regular self-care activities, seek peer support, and set personal limits to prevent emotional exhaustion.

V. RESOURCES

Many legal organizations have begun offering well-being resources, such as mental health coverage, mindfulness applications, and wellness days. However, participation in these programs remains relatively low, suggesting that while resources are available, they need to be more effectively integrated into daily legal practice. A supportive workplace culture and flexible policies are essential to ensuring these resources are fully utilized.

Lawyer assistance programs (LAPs) serve as an additional resource for attorneys, providing counseling, peer support, and mental health assistance tailored to legal professionals. Awareness of these programs is relatively high, with approximately 73 percent of attorneys familiar with their local LAPs. However, usage remains low, with only about 10 percent of attorneys taking advantage of these services. This under-utilization suggests potential challenges related to accessibility, lack of awareness regarding benefits, or lingering misconceptions about seeking help.

VI. CONCLUSION

Maintaining ethical and healthy boundaries in family law is vital for both attorneys and their clients. Clear professional lines enhance legal advocacy, protect attorney well-being, and uphold the dignity of the legal profession. By implementing proactive boundary-setting

strategies, family law practitioners can navigate the emotional complexities of their work while maintaining professionalism and ethical integrity.

I. INTRODUCTION

This presentation will focus on the goal of raising the level of professional conduct in family law practice in Kentucky above the standards set forth in the Supreme Court Rules and the American Bar Association Rules. The mode, method and means of practice continue to evolve and change and as family lawyers, we must be on the cutting edge of the practice and the ethical quandaries that it brings. In an area of law fraught with emotion and complex legal issues, the baseline for conduct and courtesy does not extend far enough. This presentation sets forth a goal to practice in a manner that reminds us of our ethical duties while encouraging us to raise the bar.

II. SUPREME COURT RULES OF PRACTICE, RULES OF PROFESSIONAL CONDUCT

Most practicing attorneys do not regularly review the Rules of Professional Conduct. We do not often cite them to the court. We all know the generalities – zealous representation, candor to the court, diligence, professionalism and accounting for the client's money. We abide by these basic rules, but what do we do to build on those basic tenants of practice, to elevate professionalism? We all know the warning stories and read the disciplinary reports in the law summary. There is a point where just knowing and abiding by the Rules is not enough.

SCR 3.130(VII) charges attorneys in Kentucky to "seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession." The Rules urge us to further the public's confidence in the law. SCR 3.130(VII). Applying this directive to daily practice is easy in theory, but more difficult in reality.

The mandate to improve the practice is complicated, especially when opposing counsel's idea of improvement differs widely in form and practice than your own. SCR 3.130(X) states "difficult issues of professional discretion can arise" and that "such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules." The Rules also recognize the personal conflict of "remaining an ethical person while earning a satisfactory living." SCR 3.130(X).

Professional and moral judgment differ from person to person. These differences are not always small; at times the distance between the morals of opposing counsel feels a hemisphere apart. One attorney choosing to exercise their sound professional and moral judgment may not move the barometer for the other attorney. When you practice against counsel with an "interesting moral code" do you maintain your own or bow to the lowest common denominator?

Everyone has gone toe-to-toe in court and allowed themselves to sink to that lowest common denominator. We all know the feeling, when you return to your office and want to call the court to apologize, knowing you left the law and deviated into unprofessional territory or even

personal attacks. No one is immune, but you can pick up the Rules and do better the next time!

The Rules of Professional Conduct presume that we, as attorneys, are leaders in our society, and have a "special responsibility for the quality of justice." SCR 3.130(II). Aside from the jokes, memes, and satire we face daily, we have a mandate to do just that, lead and improve our profession, protecting justice. We should all follow the Rules to avoid disciplinary action, but we need to do more. The American Academy of Matrimonial Lawyer's Bounds of Advocacy (hereinafter "BoA") has a primary purpose to guide family lawyers confronting these moral and ethical problems.

Below, we have chosen several rules that warrant discussion – the list is in no way exhaustive. We suggest every once and a while to read the Rules and the Bounds as together they provide guidance to improve our behavior to the leadership we should provide to our colleagues, peers, and profession as a whole.

A. Duty of Competence

We all believe we are competent. We know the law. We all passed the same bar exam. In daily practice we have all encountered many issues not covered in law school, a bar exam or sometimes even in CLE. The law has changed in the years the authors of this paper have practiced including presumptions on custody and timeshare; how to calculate child support; taxation of maintenance; and even to the establishment of Family Court. The truth is that family law encompasses so much more than "just" divorce. On a daily basis, we go between arguing complex business valuations to explaining intricate tax planning to arguing the best timeshare for a special needs child to determining how to value and divide defined benefits versus defined contribution retirement assets. And that is in one day, perhaps in one afternoon, all in one case.

SCR 3.130(1.1) simply directs attorneys to have the knowledge, skill and be thoroughly prepared. That is easier said than done, especially when all issues are not known from the onset of representation. The BoA at 1.1 are similar in advice. If you do not possess the knowledge, get it from research, outside experts or a more experienced lawyer. Further, if you do not have the knowledge, get out of the case or associate with someone. Recognize that not only are the needs and interests of the client not met but professional standards are let down if you insist on staying in a case above your skill set. The BoA go a bit further after emphasizing general competence. They explain that an attorney must do the following: 1) advise a client about the "emotional and economic impact of divorce"; 2) "lower the emotional level of a family law dispute"; 3) "be knowledgeable about different ways to resolve marital disputes"; and 4) "attempt to resolve matrimonial disputes by agreement."

But wait – there's more!! The ABA has issued a couple of Formal Opinions regarding technology. The ABA formally approved a change to its Model Rules of Professional Conduct in 2012 to provide that competent representation requires keeping abreast of changes in the law, including the benefits and risks associated with technology. Kentucky adopted this position at Comment 6, Rule 3.130(1.1) on January 1, 2018

(Order 2017-18). In July of last year, the ABA issued its Formal Opinion 512 regarding Artificial Intelligence Tools, requiring lawyers to have a reasonable understanding of AI. *See also*, Ethics Opinion KBA E-457 (2024).

B. Scope of Representation

Our obligations to a client do not end at knowledge and ability. Applying our knowledge and arguing before the court does not fulfill the scope of our representation under SCR 3.130(1.2). We are also obliged to abide by our client's decisions concerning the objectives of representation, which means we must counsel our clients accordingly. Divorce is hard on everyone in the family, the parties, and the children. There are significant emotional and financial ramifications involved in a dissolution. We need to be upfront to clients about the difficult road ahead. Attorneys need to ensure the client fully comprehends the full impact the divorce, the litigation, and the post-divorce issues may have on the family, as to allow the client to make informed decisions regarding the objectives of the case. An attorney must set realistic expectations for the client at the commencement of the case.

BoA 2.4 states decision making may be with the client, counsel or both. This tenant goes far beyond the basics in the Rules. The BoA tells us to reign in those clients who want to utilize scorched earth tactics. That as counsel, we have decision-making ability as well and that it is incumbent upon attorneys to use this decision-making to ensure the client's goals are not harmful or unrealistic. This higher level of professional obligation is impactful in raising the level of practice in family law. Do not allow your client to claim abuse if it did not occur. Do not assist in keeping a parent away from a child solely due to lack of dates on a judge's calendar. Do not ignore your client's behavior when they admit they involve the child in the dissolution or coach them against the other parent. As counsel it is our job, our mandate to improve our practice by advising these clients when they go too far and further by making the decision to not enable their bad behavior.

The BoA advocate exploring the feasibility of reunification to ensure all aspects of representation are clearly met, to include acting as a counselor and advisor as well as an advocate. BoA 1.2. More important, the BoA directs that a family lawyer refuse to assist a client in "vindictive conduct" or "discourteous and retaliatory conduct." Family does not end in a divorce; it just changes the form. It is our obligation to ensure our clients comprehend this dynamic and its life-long impact, and to set the stage during the representation by lowering the emotion and maintaining the highest level of professionalism.

C. Communication and Diligence

These two rules are intertwined. SCR 3.130(1.3) commands attorneys to be diligent in representation while SCR 3.130(1.4) provides an outline on how to communicate with a client. In family law, an attorney must be a diligent communicator, especially as it relates to the scope of the litigation.

The Commentary to SCR 3.130(1.3) includes zealous advocacy while cautioning the attorney to control their work load and avoid procrastination. The Commentary also instructs that a lawyer does not need to "press for every advantage that naught be realized for a client." The BoA comment on zealous advocacy and warn of the "lack of fit" between "overzealous advocacy" and "constructive advocacy." *See* Preface to Bounds. The BoA encourage counsel to look at alternative methods of dispute resolution like mediation and negotiation, noting the expensive and emotionally draining aspect of litigation. BoA 1.4 and 1.5. Further, agreements reached between parties in a family law dispute may establish a positive tone for the family moving forward. Collaborative law also falls squarely in this section.

No attorney will admit they are not diligent, but matters can fall off of our radar. Deadlines can get missed; court dates can be difficult to manage if you have overlapping motion hours. While a great paralegal or office manager is key for many attorneys, the responsibility to manage our time, our practice, and our responsibilities to the clients and the court is ours and ours alone. These responsibilities are more difficult when life intervenes. Managing work can be easy with the right system, but managing it while under stress from home, health, family, or other personal factors generally leads to a tipping point not in our favor. It is incumbent on all of us to ensure we keep up with our obligations but also necessary to keep those obligations in line with our personal lives.

SCR 3.130(1.4) lays out the bare bones of communication that is required. We all know the client is driving the car; we lay out the roads they may take to get to their desired destination. They need to be advised that their road may not be easy, or it may even be blocked and the destination unreachable. While we all want to guide the client to a correct decision, our job is to get them the information and to stand back while they make the call on how to proceed. Frequent communication allows a client to make informed decisions, especially about the scope of the litigation including the hiring of experts and generally understanding the nature of the work being done, changes in the law affecting the proceedings, settlement negotiations and the like. Again, because the BoA provide that the decision-making process is shared, frequent communication with a client is critical to achieve a client's objectives.

D. Client's Capacity and Third Parties

The BoA at 2.5-2.6 address when bad behavior is influenced by an incapacitated client or by outsiders. Incapacity is addressed in SCR 3.130(1.14) and provides that when capacity is diminished, the lawyer shall try to maintain a normal client-lawyer relationship. However, a lawyer may seek a guardianship if a client "has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken, and cannot adequately act" in their own interests. The Commentary provides a balancing test to determine whether a client's capacity is diminished and the protective measures a lawyer may take. *See also*, Ethics Opinion KBA E-454 (2021).

Often in our world, the issue is when they are not incapacitated to the degree requiring a guardianship but only impaired by drugs, alcohol, or refusing to treat a mental health condition. In those circumstances, if you continue representation,

documentation is key. You should obtain the opinion of the client's treating physician as to their capacity to comprehend and sign a legal document. Place your advice in writing and ensure you have sought all assistance from others to aid before, likely, withdrawing from representation. If the client is impaired and cannot communicate or comprehend your communication, you have no choice but to withdraw.

If your client cannot hear your communication and advice because of the influence of others, perhaps even the person paying your bill (*see* SCR 3.130(1.7)), Commentary at 13), you face another ethical dilemma especially because some of the Commentary's protective measures include consulting with family members. SCR 3.130(1.14), Commentary at 5. We have all had to lay down ground rules with an overly involved parent, sibling, or new spouse. While it is the right of your client to allow them into your meetings and communications, the role of the client must remain clear and warnings regarding the waiver of an attorney client privilege must be given. BoA 2.6. If the communication gets cloudy from too many outside opinions, the role must be distilled back down to one attorney and one client.

E. Duty of Confidentiality

We all know our attorney client relationship is confidential. For many of us it is difficult to go to dinner in public without running into a client, or worse, the other party in a case. Representation is public knowledge in unsealed matters. But what is said, what occurs, what is available to be known to the public in a case, must be consented to by the client. SCR 3.130(1.6) allows counsel to reveal information to comply with ethical rules, to secure legal advice to comply with ethical rules, to defend in action with a client or to comply with a court order or the law. In family law we are often called upon to defend motions that involve intimate and personal details of our client's lives. We can reveal that information only with their consent. Ensure your client reads the document when they sign a verification. Your client must be aware and consent prior to personal information being revealed and you must have their consent prior to revealing information in argument or written form. Best practice is to place such an acknowledgement in writing.

Confidentiality is also important because we have the best war stories in family law. Seriously, we cannot make up the bizarre fact patterns with which we are presented; they read better than most novels available. No matter how famous a client, we should stay out of the media. BoA 2.9. When we vent to our friends and family about stressful days, we cannot use names or specifics. Be careful when posting to blogs or to listservs. *See* ABA Formal Opinion 511 and Ethics Opinion KBA E-447 (2019). No matter how salacious or hilarious the story may be, our duty of confidentiality means we maintain strict confidence. However, after the death of a client, an attorney may reveal information if necessary to accomplish a purpose of the representation. *See* Ethics Opinion, KBA E-451 (2020).

Social interactions with our clients, whether in public or on social media, only complicate this duty further. What do we do when we see a client drinking in public when we know they are under a court order for sobriety? Is it a violation of confidentiality to stop the behavior if the order is not open to the public? How do we

temper confidentiality to the client, our knowledge of their violation of an order, with our duty as an officer of the court and candor to the court? What if a client moves or transfers money from a bank account and you are able to see the transfers in statements? Should you ask the client about it? Do you want to know the answers? To these questions, raising the bar requires that we enforce the orders of the court and never condone the transfer of assets to defeat a spouse's claim. BoA at 5.1. We require our client to admit to the behavior, show up with the financial documents – do the right thing – or we withdraw from the case.

F. Duty to Avoid Conflicts

We are all aware that we cannot represent both parties to a divorce. SCR 3.130(1.7) and BoA 3.1. When opposing party is *pro se*, there should be a bright line we do not cross about providing advice in any form. SCR 3.130(4.3) and BoA 3.2. We are not disinterested when we deal with *pro se* individuals, and we should never try to portray ourselves as "neutral" in that situation. Simply put, we are never able to provide advice to an unrepresented person. SCR 3.130(4.3), Commentary at 1. However, there is a difference between advice and information. *See*, Ethics Opinion KBA E-450 (2020). You may want the unrepresented person to acknowledge this in writing. *Id.*, KBA E-450. You also need to be careful when advising your own client when they want to talk about the case with the opposing party, whether that party is represented or not. *See* DC Ethics Opinion 385 (March 2023).

We should also not advocate for our client to conflict out all of the "good attorneys" in town. BoA 2.8. BoA 3.3 advises not to represent a client and the party with whom the client is sexually involved. BoA 3.4 prohibits an attorney from having an intimate relationship with a client, opposing counsel or a judicial officer. *See also* SCR 3.130(1.8)(j).

SCR 3.130(1.7)(a)(2) states there is a conflict if a client's representation will be materially limited by a third person or by a personal interest of the lawyer. ABA Formal Opinion 494 also cautions about conflicts that arise when lawyers are closely related by blood or marriage and represent different clients in substantially related matters. The risks of being limited to the extent a conflict arises not only exist with intimate relationships, but may exist with friendships as well. The analysis turns on the closeness of the friendship, but it may warrant disclosure to a potential client.

SCR 3.130(1.9) enumerates obligations to former clients. The problem is the intersect of knowing when representation ended for a prior client when determining whether a conflict exists with a new client. Does the conflict exist until all children have emancipated and obligations under the decree/agreement have been fulfilled? With the proliferation of minors obtaining IPOs, our client conflict checks should be expanded to include the names of the children of our clients. To improve our profession, we need to turn down more of the cases involving loose threads with possible conflicts. Knowing the parties and facts does not make you the optimal choice for counsel, it makes you the counsel with an impossible conflict on all sides when those threads end up in a knot.

SCR 3.130(1.18) enumerates duties to prospective clients. *See also*, Ethics Opinion KBA E-455 (2022). This rule puts another layer of conflict checking on lawyers and requires us to distinguish when a potential client becomes a prospective client and when a discussion is really a consultation. This issue becomes especially tricky when lawyers move law firms and imputation applies. ABA Formal Opinions 492 and 510.

G. Termination of Representation

All family law representation should have an engagement letter and a written fee agreement. BoA 4.1. SCR 3.130(1.5) advises that the basis or rate of the fee shall be communicated, preferably in writing. The BoA stresses that sending out monthly statements is part of the communication standard as it keeps the client apprised of the work being done on the case. Withdrawal for non-payment of fees is not greedy; it is proactive. Collection is not unethical; it is enforcement of a contract. BoA 4.6-4.7.

Beyond the terms of payment, the engagement letter should clearly state additional grounds for terminating representation. Those terms should include lying to you, violating a court order (such as a non-dissipation order), and lying to the court. BoA 5.1. It is wise to include references to the "allowed" grounds for termination listed in SCR 3.130(1.16) in your engagement letter. *See also* ABA Formal Opinion 516.

Above all else, if continuing representation would cause you to violate any part of the Rules of Professional Conduct you must terminate representation. Do not attempt to excuse bad behavior because of the other side or the opposing counsel's awful conduct. That rationale blurs personal bias against known rules of conduct. The Commentary to Rule 3.130(1.16), at 2 suggests that withdrawal is required if a client demands a lawyer engage in conduct that violates the Rules or other law. Further, we may have a duty to investigate facts and circumstances during litigation to ensure we are not violating the Rules. ABA Ethics Opinion 513 (August 2024).

H. Solicitation of Clients

Online chats and social media have changed the game with how family law attorneys obtain clients. The "word of mouth" era is gone. What is left are people asking for online referrals, websites offering "reviews," and everyone paying to have the online search engines optimize their website. SCR 3.130(4.5) may be in need of an overhaul to adjust to the new manner in which clients are obtained.

What we know is that SCR 3.130(4.5)(3) is very clear: "every written, recorded, or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words 'advertising material.'" Be very careful of chiming in on a Facebook post with "I do family law."

The lack of oversight on social media is an issue. Opposing parties can leave negative reviews. A disgruntled client you fired for lying to you can write a smear campaign while you are bound by confidentiality to not reveal the truth of the situation. Online

media organizations can be employed to optimize an attorney's rating or lower those of others in the same field. Confidentiality rules govern that we are not able to defend ourselves against internet criticism. *See* Ethics Opinion KBA E-448 (2019).

I. Respect

The lack of respect is contributing to the decay of our profession. We should all strive to lower the emotions in the litigation and treat opposing counsel and parties with compassion and civility. BoA 7.1. We must not react when treated with a lack of respect but take a moment to compose yourself and respond. Avoid the emotional or visceral reaction. Do not stoop to their level. Instead rise above the noise and be your best self.

This also involves being respectful of the court and judicial resources. Do not make the court sit through tedious hours of entry of bank statements to verify assets if you acknowledge the asset exists and the value of same. BoA 7.2. Do not deceive or mislead the court or opposing counsel. BoA 7.3. If you make an incorrect statement, it is incumbent upon you to correct same, in a pleading or in open court, when the matter is next heard. If opposing counsel is mistaken, you should correct them as well. Do not allow anyone to rely upon incorrect information. BoA 7.3 and 7.5.

The do unto others mantra applies to the practice of law. Show respect to opposing counsel. Stipulate to unopposed facts. BoA 7.2. Cooperate with the exchange of information and documents. BoA 7.8. If you receive an email by accident, return it without reviewing the contents. BoA 7.6. Be cooperative in scheduling depositions, and hearings; grant extensions if you are able. BoA 7.9 and 7.10. In sum, be the kind of attorney you would want to have on the other side. We need to hold ourselves to the highest levels of ethics and professionalism.

III. CONCLUSION

Practicing family law is no picnic; it demands the highest level of professionalism by its practitioners. A family law practice requires a high level of compassion and knowledge. The good news is that family law may be the most rewarding practice area of all; clients trust us with their most compelling, intimate secrets, and we are able to guide them through one of the most difficult times of their lives. The practice becomes better when we all strive to be better, following the Rules and aspiring to the Bounds.

CASE CLOSED: CRACKING THE CODE TO MEDIATION SUCCESS

Mark A. Ogle* & Valerie S. Kershaw**

I. INTRODUCTION

The value of mediation:

A. Mediation offers a cost-effective, tailored, and less adversarial approach to resolving family law disputes.

B. Mediation is a structured process where a neutral third party facilitates discussions to help disputing parties reach a mutually acceptable resolution.

C. There is increasing reliance on mediation in family law to reduce litigation burdens, including financial and emotional. Mediation creates a better outcome for the family if the parents can agree on a resolution.

D. Final settlements reached in mediation are final, and the parties can move on with their lives.

E. Mediation can often resolve a case in a shorter time frame than waiting to get on the court's docket.

F. Statistics show high success rates for mediated settlements in family law cases.

G. If successful, mediation will result in a legally binding agreement resolving disputes without proceeding to trial.

H. In fact, KRS 454.011 encourages parties to seek mediation.

II. PREPARING FOR MEDIATION

A. Role of Attorneys

1. Deciding when in the litigation process to attend mediation.

a. Do you need preliminary and temporary issues resolved?

b. Is it beneficial to attend mediation prior to all the discovery and reports being completed, or should you wait until all discovery is complete? Sometimes you need both.

* Bricker Graydon, 909 Wright's Summit Parkway, Suite 300, Ft. Wright, KY 41011, (859) 578-2423, mogle@brickergraydon.com.

** Kershaw & Baumgardner, LLP, 250 West Main Street, Suite 1850, Lexington, KY 40507, (859) 381-1145, vkershaw@kbfamilylaw.com.

2. Client preparation.

    a. Consultations: Initial meetings to gather information, assess goals, and strategize for mediation.

    b. Conduct detailed consultations to understand the client's goals and set realistic expectations.

    c. Coach clients on emotional readiness, effective communication, and managing expectations. You are the person who knows the law and your judge. Advise your client what a court is likely to do, what it is unlikely to do, and what is not allowed to be done under the law.

    d. Ensure your client has emotional readiness, which is the state of being mentally and emotionally prepared to engage constructively in discussions. You will need to gauge when your client is "shutting down" during the mediation and assist them in either working through it or taking a break.

    e. Ensure your client is willing to resolve the outstanding issues. If there are issues they are not ready to resolve, find out why and try to obtain what they need to resolve the outstanding issues.

    f. Tip: Use hypothetical scenarios to prepare clients for potential compromises.

    g. Tip: Try to give your client their "worst day" and their "best day." Explain that they will likely get neither, but somewhere in between.

3. Document readiness.

    a. Ensure financial disclosures, custody evaluations, and other relevant documents are organized and exchanged beforehand.

    b. Ensure financial disclosures have been exchanged and any requested follow up documents have been exchanged.

    c. Draft concise mediation statements outlining positions and key issues to streamline discussions. That will focus the attorney and client on the issues at hand and will assist the mediator.

    d. Consider circulating a draft property and custody agreement with the opposing side incorporating the terms that are agreed upon and leaving the remaining terms blank for the mediation.

    e. Tip: Create a checklist for all required documents to avoid delays.

f. Tip: Even if you do not circulate a draft agreement prior to the mediation, you may wish to come to mediation with a draft agreement or send to the mediator. Realize that if the mediator is going to draft an agreement, that will take quite a bit of time while in mediation.

g. Tip: Always prepare a mediation statement or mediation summary for the mediator and get it to the mediator at least two days prior to the mediation. (*See* sample Mediation Summary Form attached.) At the very least, send an asset/debt spreadsheet.

4. Experts on the call.

Do you want/need to have your experts on call or at mediation? If so, be sure they are available.

B. Mediator Selection

1. Role of the mediator.

a. All mediators are to be neutral, impartial, and balanced facilitators of discussions.

b. Your mediator should avoid favoritism or bias toward either party.

c. Good mediators will encourage collaboration, creative problem-solving, and interest-based negotiation to reach mutually beneficial outcomes. The mediator should focus the parties on the underlying interest, not entrench the parties on rigid positions. The mediator might suggest ways to look at the issues from a different perspective.

2. Choosing your mediator.

a. Your mediator should be experienced in family law with a style suitable for the clients' dynamics. You know your mediators and your clients. Keep that in mind when choosing a mediator.

b. Assess the mediator's expertise based on major issues (*e.g.,* custody or financial matters).

c. Remember that Civil Rules 99 and 100 govern mediations that are ordered by the trial court and encouraged in mediations not ordered by the trial court. However, since the Civil Rules apply to attorneys, they may not be enforceable upon mediators who are not attorneys.

III. CIVIL RULES 99 AND 100

A. Follow guidelines under CR 99.

1. Courts may refer cases to mediation but cannot mandate it as a blanket precondition for trial.

2. Mediators must have completed 40 hours of basic mediation training, be in good standing with the Kentucky Bar Association, and have experience with relevant case types. CR 99.05 now states that if the court appoints a mediator, the court will select a mediator who is recognized as a trained or experienced mediator in civil actions.

3. CR 99.09 Reporting to the court.

   The attorneys and/or mediator are to report to the court if the mediation was successful. No other communication regarding the mediation is to be made to the court from the mediator.

4. CR 99.10.

   A written agreement is the responsibility of the parties; even if the mediator assists in drafting the agreement, it is only with the consent and direction of the parties.

B. Ensure compliance with CR 100:

1. CR 100.03.

   Mediators must adhere to neutrality, impartiality, and professionalism.

2. CR 100.08.

   Mediator may not have a conflict of interest. When appointed by courts, mediators must only accept cases where they meet the required criteria or if both parties explicitly agree to alternative terms.

IV. STRATEGIES FOR MEDIATION SUCCESS

A. Communication Techniques

1. Mediators and attorneys should employ active listening and reflexive dialogue to acknowledge and validate client concerns.

2. Mediators and attorneys manage emotional flooding using calming techniques such as pausing discussions when needed.

3. Tip: Use the SOLER method – Square, Open, Leaning, Eye Contact, Relaxed.

B. Leveraging and Using Your Mediators

1. Your clients may need to do some venting. This is probably the only time a neutral party is going to hear their case. However, the mediator should keep it safe, non-threatening, and not allow it to take over the mediation. After some venting, get the mediation back on track of solving the parties' concerns.

2. You may need your mediator to enforce what the attorney has been telling the client, such as, "yes, your retirement earned during the marriage is marital property." Let your mediator know if you need some help with your client.

3. Use visual aids like timelines, financial summaries, or parenting plans to clarify positions.

C. Addressing High-Conflict Cases

1. Know when you need to use shuttle diplomacy or separate-room mediations to reduce direct confrontations. Know when it is beneficial for the parties to be together to hear the concerns of the other party.

2. Tip: Be honest with the mediator ahead of the mediation regarding the parties' ability to be in the same room. Being "uncomfortable" is not a good reason to use separate room mediation.

V. NAVIGATING CHALLENGES

A. Overcoming Impasses

1. Start with areas of agreement to build momentum. Once you have some agreements, you may be able to get the rest of the issues resolved.

2. Explore BATNA (Best Alternative to a Negotiated Agreement) and focus on mutual benefits.

B. Maintaining Focus

Redirect discussions from grievances to shared goals and future-oriented solutions.

VI. CLOSING THE DEAL

A. Drafting Agreements

1. Ensure terms are clear, enforceable, and comprehensive to avoid future disputes.

2. Incorporate contingencies for potential changes (*e.g.,* future parenting modifications, known relocations, and in some cases, the new Social Security Fairness Act).

3. Try to get the document prepared and signed before everyone leaves mediation.

4. This could be a memorandum of understanding with binding language and have all parties sign it.

5. Better is a mediated agreement, agreed order, or separation agreement.

6. Understand your mediator may simply be the scribe. It is the attorneys and/or parties who are responsible for the contents of any drafted document.

7. Kentucky CR 100 stipulates that mediators draft agreements that align with legal enforceability while maintaining neutrality.

B. Final Documents

Bring the documents necessary to submit the mediated property settlement and custody agreement to the court. Do not let anyone leave without signing all the necessary documents.

VII. CONCLUSION

A. Summarize key principles for effective mediation: preparation, communication, and adaptability.

B. Reinforce the importance of mediation in reducing costs, stress, and conflict in family law cases.

C. Encourage family law practitioners to embrace mediation as a primary tool for resolution and to continually refine their approach through ongoing education and collaboration.

KRS 454.011 Declaration of public policy on encouragement of dispute resolution through negotiation and settlement.

It is the policy of this Commonwealth to encourage the peaceable resolution of disputes and the early, voluntary settlement of litigation through negotiation and mediation. To the extent it is consistent with other laws, the courts and state governmental agencies are authorized and encouraged to refer disputing parties to mediation before trial or hearing.

Effective: July 15, 1998
History: Created 1998 Ky. Acts ch. 261, sec. 3, effective July 15, 1998.

KRS 403.036 Mediation not to be ordered unless conditions are met.

In any court proceeding conducted pursuant to KRS 403.010 to 403.350, if there is a finding of domestic violence and abuse, as defined in KRS 403.720, the court shall not order mediation unless requested by the victim of the alleged domestic violence and abuse, and the court finds that:

(1) The victim's request is voluntary and not the result of coercion; and

(2) Mediation is a realistic and viable alternative to or adjunct to the issuance of an order sought by the victim of the alleged domestic violence and abuse.

Effective: July 15, 1996
History: Created 1996 Ky. Acts ch. 99, sec. 15, effective July 15, 1996.

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1. Case Information

Case Number: _____
Date of Mediation: _____
Mediator's Name: _____

---

2. Parties Involved

Party 1:

- **Full Name:** _____
- **Relationship to Case:** _____
- **Represented by Attorney?**
  - Yes (Attorney's Name: _____)
  - No
- **Contact Information (for mediator's use only):**
  - Phone: _____
  - Email: _____

Party 2:

- **Full Name:** _____
- **Relationship to Case:** _____
- **Represented by Attorney?**
  - Yes (Attorney's Name: _____)
  - No
- **Contact Information (for mediator's use only):**
  - Phone: _____
  - Email: _____

---

3. Nature of the Dispute

- Divorce/Separation
- Child Custody and Parenting Time
- Child Support
- Spousal Support
- Property Division
- Debt Division
- Modification of Existing Orders
- Other (Specify): _____

Brief Description of the Dispute:

_____
_____
_____
_____

4. Children Involved

Are there children involved in this case?

- Yes
- No

If yes, provide details:

Child's Full Name Date of Birth Age Current Custody Arrangement

Primary Issues Related to Children:

- Custody
- Parenting Time/Visitation
- Child Support
- Educational Decisions
- Medical Decisions
- Other (Specify): _____

---

5. Current Status of Legal Proceedings

Are there ongoing legal proceedings related to this matter?

- Yes
- No

If yes, provide details:

- **Court Location:** _____
- **Next Court Date (if known):** _____
- **Judge Assigned (if known):** _____

Existing Court Orders:

- Temporary Custody Order
- Temporary Child Support Order
- Temporary Spousal Support Order
- Restraining Order
- Other (Specify): _____

6. Previous Attempts at Resolution

Have the parties previously attempted resolution through any of the following?

- Mediation
- Collaborative Law
- Counseling
- Court Settlement Conferences
- Informal Negotiations
- Other (Specify): _____

Outcome of Previous Attempts:

_____
_____
_____

7. Safety Concerns and Special Considerations

Are there any safety concerns related to the mediation process?

- Yes
- No

If yes, please explain: _____

Are there any active restraining orders or protective orders?

- Yes
- No

If yes, please explain: _____

Special Considerations for Mediation (*e.g.*, separate sessions, language needs, etc.):

_____
_____

8. Issues to be Addressed in Mediation

(Select all that apply)

- Child Custody and Parenting Plan
- Child Support
- Spousal Support

- Property Division
- Debt Division
- Modification of Existing Orders
- Other (Specify): _____

Summary of Each Issue:

1. **Issue:** _____
   Party 1's Position: _____
   Party 2's Position: _____
2. **Issue:** _____
   Party 1's Position: _____
   Party 2's Position: _____
3. **Issue:**
   Party 1's Position: _____
   Party 2's Position: _____

---

9. Assets and Debts

9.1 Assets
(Include all assets, whether jointly or individually owned. Attach additional pages if necessary.)

Asset Type	Description/Details	Estimated Value	Owned By
Real Estate	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Vehicles	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Bank Accounts	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Retirement Accounts	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Investments	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Personal Property	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Other (Specify)	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint

9.2 Debts
(Include all debts, whether jointly or individually owed. Attach additional pages if necessary.)

Debt Type	Description/Details	Amount Owed	Owned By
Mortgage	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Credit Card	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Auto Loan	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Personal Loan	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Student Loan	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint
Other (Specify)	_____	$_____	[ ] Party 1 [ ] Party 2 [ ] Joint

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10. Goals and Expectations for Mediation

Party 1's Goals:

_____
_____

Party 2's Goals:

_____
_____

Are both parties open to compromise?

- Party 1:
  - Yes
  - No
  - Maybe
- Party 2:
  - Yes
  - No
  - Maybe

11. Additional Information for the Mediator

Relevant Background Information:

_____
_____

Any other details or concerns the mediator should be aware of:

_____
_____

12. Submitted By

- Party 1
- Party 2
- Attorney for Party 1
- Attorney for Party 2

Name: _____
Signature: _____
Date: _____

This form is intended to provide a comprehensive summary of relevant details for the mediation process. All information is kept confidential.

I. INTRODUCTION

Overview of property settlement agreements:

A. Common provisions: marital residence, bank accounts, retirement accounts, cars, stocks, debt, spousal support, child provisions.

B. But what about commonly forgotten items?

II. COMMONLY FORGOTTEN ITEMS

A. Frequent Flyer Miles and Travel Rewards Points

1. These are considered intangible assets and can have significant value attached to them if the couple traveled frequently.

2. *Flyer miles*: Can accumulate through flying, credit cards, promotions, partner programs.

3. *Hotel points*: Can accumulate through stays, credit cards, promotions, partner programs.

4. To divide:

a. Need to determine value.

i. Consider the current market value, price per mile for flights/stays (usually 1.3-1.6 cents per mile).

How much are credit card rewards, airline miles, and hotel points worth? "*Business Insider's* 2025 Valuations," Jasmin Baron and Peter Rothbart, *Business Insider*, July 22, 2024. www.businessinsider.com/personal-finance/credit-cards/what-are-points-miles-worth-value

ii. Can be appraised.

b. Options for division.

i. Redeem/split.

ii. Offset.

iii. Future travel needs?

iv. Give up for good will.

c. Understand transfer limitations.

Each airline/hotel has different fees associated with a transfer.

d. Gather account statements.

e. Check expiration of points.

f. Tax implications?

i. Are you redeeming for cash?

ii. Will there be tax implications?

5. Common airlines.

a. Delta.

i. Can transfer miles in 1,000-mile increments with a maximum of 30,000 per transaction.

ii. Transfers can only be made between SkyMiles members.

iii. Transfer fees are .01 cents per mile and a $30 transaction fee plus tax.

https://www.delta.com/buygftxfer/displayTransferMiles.action

b. American Airlines.

No longer transferable as of 2025.

> Accrued AAdvantage Rewards and Benefits do not constitute property of the member, do not have any residual property rights value, and are not transferable (i) upon termination, (ii) upon cancelation, (iii) as part of a domestic relations matter, or (iv) otherwise by operation of law. However, American Airlines, in its sole discretion, may, on a one-time basis, credit accrued AAdvantage Rewards and Benefits to persons specifically identified in a court order or final settle-ment upon receipt of documentation satisfactory to American Airlines and upon payment of any appli-cable fees, or upon death of an AAdvantage member"

https://www.aa.com/i18n/aadvantage-program/aadvantage-terms-and-conditions.jsp?locale=en_US

c. Southwest.

i. Transfers are done in 500-mile blocks (1,000 during promotional period), minimum transfer of 2,000 and a maximum of 60,000 points per transaction.

ii. Fee of $0.01 per point plus tax.

https://support.southwest.com/helpcenter/s/article/rapid-rewards-rules-and-regulations

d. JetBlue.

i. Family and friends can pool points and share at no cost.

ii. Both you and your spouse can use accumulated miles.

https://trueblue.jetblue.com/points-pooling-terms-and-conditions

6. Common hotels.

a. Hilton: Free point transfer to Hilton Honors members.

b. Marriott Bonvoy:

i. Must be between members.

ii. Maximum of 100,000 points per year.

7. *Practice pointers*:

a. If points are not transferable or a hassle to transfer, consider using them for visitation purposes for the children or allowing the children to use the points.

b. Use it as an offset for another asset.

B. Accumulated PTO, Vacation Days, Sick Leave

1. Although this asset can be tricky to define if not yet accrued, the Kentucky Court of Appeals held that this is marital property subject to division.

Under *Overstreet v. Overstreet*, the Kentucky Court of Appeals held that there is a "marital interest in the annual leave and compensatory time accumulated

. . . during the marriage [and] should be divided as a party of the trial court's division of the marital property." 144 S.W.3d 834, 841 (Ky. App. 2003).

2. *Practice pointer*:

a. Sample language:

"The parties acknowledge that as of the date of this Agreement, [Spouse's Name] accrued paid time off (PTO), vacation days, and/or sick leave through their employment with [Employer's Name]. The parties agree that accumulated PTO and vacation leave shall be considered a marital asset to the extent that it was accrued during the marriage and has a determinable monetary value. [Spouse's Name] shall retain all rights, title, and interest in the accrued PTO and vacation leave in their name and employment record."

OR

"[Spouse's Name] shall pay [Other Spouse's Name] the sum of $[Amount], representing [Percentage]% of the marital portion of accrued PTO and vacation leave, within [Timeframe] of executing this Agreement."

b. "The parties acknowledge that accrued sick leave is not a vested benefit and is therefore not subject to division. [Spouse's Name] shall retain all accrued sick leave associated with their employment."

c. "If requested, [Spouse's Name] shall provide reasonable documentation, such as an employer-provided benefits statement, confirming the balance of accrued PTO and vacation leave as of [Date]."

d. "The parties acknowledge that the allocation of PTO and vacation leave may be subject to the employer's policies and any applicable tax implications. Each party shall be responsible for any tax consequences arising from their receipt or retention of such benefits."

C. HSAs

1. HSAs are often handled like an IRA. Because of that, you will need a QDRO or other letter of instruction to divide.

2. It is not considered a taxable transfer, and the interest that is transferred keeps its identity as an HSA for the receiving spouse.

3. *Practice pointer*:

Sample language:

a. "The parties acknowledge that as of the date of this Agreement, a Health Savings Account (HSA) exists in the name of [Spouse's Name] with [Financial Institution Name], with an approximate balance of $[Amount] as of [Date]. The parties agree that the funds in the HSA are considered: (a) A marital asset to the extent that contributions were made during the marriage **OR** (b) The separate property of [Spouse's Name] to the extent that contributions were made before the marriage or after the date of separation."

1. [Option 1 – Equal division].

"The marital portion of the HSA shall be divided equally, with [Spouse's Name] transferring [Percentage]% or $[Amount] to a new or existing HSA in the name of [Other Spouse's Name] within [Timeframe] of executing this Agreement. [Spouse] shall be responsible for preparing the required documentation for transfer."

2. [Option 2 – Offset with other assets].

"In lieu of dividing the HSA, [Spouse's Name] shall retain full ownership of the account, and [Other Spouse's Name] shall receive a compensatory payment of $[Amount] or an equivalent marital asset."

3. [Option 3 – Sole retention].

[Spouse's Name] shall retain full ownership of the HSA, free and clear of any claim by [Other Spouse's Name].

b. "The parties acknowledge that the transfer of HSA funds is subject to federal tax laws and IRS regulations. Each party shall be responsible for any tax consequences or penalties resulting from their receipt or use of HSA funds. The parties agree to take all necessary steps, including signing any required documents, to effectuate the division of the HSA in accordance with applicable law."

c. "If applicable, both parties agree to cooperate in executing any forms or documents required by the HSA custodian or financial institution to facilitate the division or transfer of funds."

D. Intellectual Property

1. Types of IP:

   a. Copyrights (books, art, music, software) created during marriage.

   b. Trademarks (logos, brands) – may have disputed ownership.

   c. Trade secrets (confidential business information).

   d. Patents (protection of inventions).

2. Valuation methods:

   a. Income method: Evaluates revenue generation.

   b. Market method: Compares similar assets on the market.

   c. Cost method: Assesses cost to reproduce the asset.

3. Division options: One spouse retains ownership with revenue-sharing provisions.

4. *Practice pointers*:

   Sample language:

   a. "The parties acknowledge that during the marriage, [Spouse's Name] has created, acquired, or otherwise holds interests in certain intellectual property, including but not limited to patents, copyrights, trademarks, trade secrets, domain names, business names, proprietary software, inventions, artistic works, and other intangible assets (collectively, "Intellectual Property")."

      i. **Sole retention** – "[Spouse's Name] shall retain all rights, title, and interest in and to the Intellectual Property, free and clear of any claim by [Other Spouse's Name]. [Other Spouse's Name] waives any present or future rights, including but not limited to royalties, licensing fees, or other financial benefits derived from the Intellectual Property."

      OR

      ii. **Revenue sharing** – "[Spouse's Name] shall retain all rights to the Intellectual Property but shall pay [Other Spouse's Name] [Percentage]% of all future royalties, licensing income, or other financial benefits derived from the Intellectual Property

for a period of [Number] years. Payments shall be made on a [Monthly/Quarterly/Annual] basis."

OR

iii. **Transfer of ownership** – "[Spouse's Name] agrees to transfer all rights, title, and interest in the Intellectual Property known as [Description of IP] to [Other Spouse's Name] via a written assignment within [Timeframe] of executing this Agreement."

b. "Each party waives any claim to any Intellectual Property created by the other party after the date of this Agreement."

c. "The parties agree to execute any necessary assignments, waivers, or other documents required to effectuate the terms of this Agreement and to facilitate the proper recording of any Intellectual Property rights with the U.S. Patent and Trademark Office, the U.S. Copyright Office, or any other relevant authority."

d. **Confidentiality and non-compete** (*Optional – if necessary*).

"Each party agrees to maintain the confidentiality of any proprietary or trade secret information obtained during the marriage and shall not disclose, use, or profit from such information except as expressly permitted in this Agreement."

[Optional: If applicable] "[Spouse's Name] agrees not to compete in the field of [Industry] for a period of [Number] years within [Geographic Scope], provided such restriction is reasonable and enforceable under Kentucky law."

e. "The parties acknowledge that the transfer or assignment of Intellectual Property may have tax consequences, and each party is advised to consult with a tax professional regarding their individual obligations. Each party shall be solely responsible for any tax liabilities arising from the transfer, retention, or licensing of Intellectual Property."

E. Memberships, Club Fees, Season Tickets

1. Season tickets to sporting events, concerts, or theater performances, exclusive memberships to clubs, golf courses, or other recreational facilities.

2. Considerations:

a. Transferability restrictions.

b. Buyout options or offset against other assets.

3. *Practice pointers*:

a. Sample language:

i. "Memberships or season tickets that are non-transferable under the terms of the issuing organization shall remain with the named member."

ii. "[Spouse's Name] shall retain full ownership of the [Name of Club] membership and be solely responsible for all future dues, fees, and obligations. [Other Spouse's Name] shall have no further rights or obligations related to the membership."

OR

iii. "The [Name of Club] membership shall be transferred to [Other Spouse's Name] if permitted by the club's rules, and [Other Spouse's Name] shall be responsible for all future dues and fees."

iv. "[Spouse's Name] shall retain ownership of the season tickets for [Team/Event] and assume all renewal costs and obligations."

OR

v. "The parties agree to share the season tickets as follows: [Define allocation of games/events, *e.g.*, alternating games, specific events assigned to each spouse]."

OR

vi. "The season tickets shall be sold, and the proceeds divided equally (or in another agreed-upon percentage) between the parties."

b. "The party retaining a membership or season tickets shall be solely responsible for any future dues, renewal fees, assessments, or obligations related to the asset. The non-owning spouse shall have no further financial obligations or rights to the membership or tickets."

c. "The parties acknowledge that certain memberships and tickets may be subject to the issuing organization's rules regarding transferability. If a membership or ticket package cannot be transferred or sold, the party who holds the membership or account shall retain ownership, free and clear of any claim by the other spouse."

d. **Cooperation in transfer** (*if applicable*).

"If any membership or season ticket is to be transferred, both parties agree to cooperate in signing any necessary documents required by the issuing organization to facilitate the transfer."

F. Digital Assets/Crypto

1. Has the other party ever mentioned being involved in cryptocurrency?

2. Terms to know:

a. Exchange: A third-party provider that allows an account holder to access markets for buying and selling multiple cryptocurrencies.

b. Wallet: A group of addresses accessed with a single key.

c. Address: A location on a blockchain that stores an amount of cryptocurrency or executable code, such as a smart contract. Addresses are generally visible on public blockchains

3. Ways users engage with cryptocurrency.

a. Mining.

Miners earn cryptocurrency for participation in a blockchain system. For example, bitcoin miners receive bitcoin fees from transactions and newly minted bitcoins. Fees are earned by miners for their participation and are not generally purchased with cash or another asset.

Clues to look for:

i. A very "techy" party.

ii. Purchases of specialized equipment. Mining computers take a lot of horsepower and require a lot of cooling and electricity.

iii. Purchases from retailers who actually accept bitcoin or other cryptocurrency.

b. Wallets.

Wallets enable peer-to-peer transfers and allow users to send and receive cryptocurrency from other addresses. All wallets, associated user names, and all associated addresses should be requested in discovery.

c. Third party exchanges.

Third party exchanges allow users to send, receive, buy, and sell cryptocurrency but they do not always provide users with all of the addresses used in their transactions.

i. Examples are Coinbase, Kraken, and, to a lesser extent, Robinhood. Usually, there are initial investments into these third party exchanges that come from bank accounts or other accounts.

ii. Review the transaction histories of those accounts carefully for clues that someone is using a third party exchange. Also look for transfers from online services such as Venmo, CashApp, Paypal, Robinhood, etc.

G. Carry-forward Capital Losses and Net Operating Losses (NOL)

1. If you see substantial losses reported on tax returns or P&Ls, you are encouraged to engage a financial expert to review your case.

2. Seems odd to talk about income tax carry-forwards and NOLs as "assets" but they do offer a reliable guarantee of future tax savings.

3. If NOLs and carry-forwards are not treated as assets, then they are allocated under federal tax law according to legal title, and the entire point of equitable distribution is to avoid that form of division. *Income Taxes and Divorce – Carry-Forwards*, National Legal Research Group, Inc., www.divorcesource.com, 2012.

4. Carry-forward capital losses.

a. A capital loss results when a capital asset is sold for less than its purchase price.

b. If net capital losses exceed net capital gains, up to $3,000 of the excess loss may be deducted from other income reported on Form 1040.

5. Net operating losses (NOLs).

If your deductions for the year are more than your income, you may have a net operating loss.

a. Must be from your trade or business.

b. Not a hobby loss (claiming a hobby loss could result in a significant, potential IRS debt as opposed to talking about whether there is an asset there).

c. NOLs can be carried forward indefinitely, but they are limited to 80 percent of taxable income under the tax code changes from 2017. Previously, they were limited to 18 years.

d. Generally, under IRS rules, NOLs belong to the taxpayer who generated the loss. If it was reported on a joint return, it is treated as a joint asset.

e. Might consider having an expert conduct a valuation to determine who would benefit the most.

f. IRS will generally follow a court order on division of an NOL. Alternatively, you can seek guidance from the IRS and seek an IRS Private Letter Ruling, but those can often take several months.

6. Often seen with self-employed, small businesses, and farms.

7. Consult with a tax professional on the most equitable way to deal with NOLs as part of the final settlement agreement or have an expert prepared to testify at your final hearing.

H. Tax Refunds for Improper Over-Withholding during Marriage

III. CONCLUSION

A. Recap of Key Points

1. Settlement agreements must account for often-overlooked assets.

2. Proper valuation and division strategies prevent future disputes.

B. Call to Action

1. Encourage legal practitioners to be thorough in property settlements.

2. Stay updated on evolving asset classes (*e.g.*, digital assets, IP).

3. Consider professional appraisals and tax implications in division decisions.

I. INTRODUCTION

A. Welcome and Introduction of the Speaker

B. Objectives of the Session

C. Importance of Understanding the Legislative Process for Family Law Attorneys

II. OVERVIEW OF THE KENTUCKY GENERAL ASSEMBLY

A. Structure: House (100) and Senate (38)

B. Sessions: 30 Day and 60 Day

C. What Happens in the Interim (June-December)

D. Role of Legislators in Policymaking

E. The Importance of Leadership in Both Chambers

F. Assignment of Members to Committees

G. Adopting the Rules

III. DRAFTING AND FILING A BILL

A. Identifying an Issue and Working with Stakeholders

B. Legal Considerations in Drafting Legislation

C. Sponsorship and Pre-filing

D. The Role of the LRC Staff

E. Why It is Important to Hear Bills in the Interim

IV. COMMITTEE PROCESS

A. Assignment to Committee: Standing Committees Relevant to Family Law

B. Committee Hearings: Testimonies, Expert Witnesses, and Public Input

C. The Role of the Committee Chair and Procedural Hurdles

D. Committee Votes and Amendments

E. The Importance of Relationships!!!

V. FLOOR DEBATE AND VOTING

A. Readings (1st, 2nd, and 3rd Readings)

B. Floor Debates and Amendments

C. House and Senate Votes

VI. CONFERENCE COMMITTEES & GOVERNOR'S ACTION

A. Reconciliation of House and Senate Versions

B. Veto, Veto Override, and Implementation

VII. THE 2025 LEGISLATIVE SESSION

During the 2025 legislative session in Kentucky, several bills related to family law were enacted:

A. **Senate Bill 26 (SB 26)**: Introduced by the Kentucky Judicial Commission on Mental Health, this bill ensures that a person's disability cannot be the sole reason for denying adoption petitions or terminating parental rights. It establishes clear definitions and procedures to prevent discrimination against individuals with disabilities in family law matters.

B. **House Bill 414 (HB 414)**: This measure expands access to perinatal palliative care by requiring hospitals to provide or refer patients experiencing pregnancy loss to appropriate services. It also mandates insurance coverage for these services, offering support to families during traumatic experiences.

C. **House Bill 38 (HB 38)**: A third or subsequent conviction of a violation of an order of protection will be a Class D felony.

D. **House Bill 15 (HB 15)**: Allows 15-year-olds to apply for a driver's license.

E. **Senate Bill 120 (SB 120)**: Requires coaches and others working with children to report abuse, neglect, or other concerns, reinforcing obligations to report child abuse.

F. **House Bill 208 (HB 208)**: Requires local school boards of education to adopt a policy to, at a minimum, prohibit student use of personal telecommunications devices during the school day.

G. **House Bill 662 (HB 662)**: Protects judicial officers and their immediate family members and insurance doctors from having their personal information available to the public.

H. **Senate Bill 181 (SB 181)**: Protects students from sexual abuse by requiring public school districts to establish authorized, traceable methods of communication between students, teachers, coaches and other school-related personnel and volunteers. The bill also requires students of all ages to receive age-appropriate child sexual abuse instruction.

I. **House Bill 164 (HB 164)**: Authorizes posthumous adoption if a child dies while going through the court proceeding.

J. **House Bill 462 (HB 462)**: Allows the county clerk to make changes to a marriage license.

VIII. Q&A AND DISCUSSION

A. Open Floor for Questions

B. Discussion on How Attorneys Can Influence Policy

C. The Role of Advocacy Groups and Lobbyists

D. Practical Strategies for Attorneys Engaging in Legislative Advocacy

NOTES:

- Italicized committees are statutory.
- Per KRS 7.103(1), the interim period for meeting is June 1 - Dec 1.
- Calendar may be amended for task forces, working groups, etc.

2025 Interim Calendar
Approved 3/26/2025

JUNE 2025

MON	TUE	WED	THU	FRI
2 LRC CLE	3 8 a.m. *EAARS* 9:30 a.m. B & I 11 a.m. Education 1 p.m. Transportation	4 9 a.m. BR on Eco Dev BR on Gen Govt BR on Justice 10:30 a.m. BR on Education BR on Transp BR on Health & Family Services 1 p.m. A & R	5 9 a.m. Agriculture 11 a.m. Judiciary 1 p.m. Natural Resources 3 p.m. *Juvenile Justice*	6
9	10 9 a.m. *Govt Contracts* 1 p.m. *Admin Regs*	11 10 a.m. *Investments in IT* 1 p.m. *CPAB*	12 10:30 a.m. *Tobacco Settlement* 1 p.m. *LOIC*	13
16 LRC CLE	17 *Northern KY	18 *Northern KY	19	20
23	24 9 a.m. Local Govt 11 a.m. State Govt 1 p.m. *Capital Projects* *CRAO* 2:30 p.m. *PPOB*	25 9 a.m. Health Services 11 a.m. VMAPP 1 p.m. Families & Children	26 9 a.m. EDWI 11 a.m. Licensing, Occupations, & Admin. Regulations 1 p.m. TSBIT	27
30				

*__Northern KY:__ Committees may choose to meet in NKY. Meeting spots are placeholders if committees do not meet in NKY.

NOTES:

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2025 Interim Calendar
Approved 3/26/2025

JULY 2025

MON	TUE	WED	THU	FRI
	1	2	3	4 State Holiday Independence Day
7	8 9 a.m. *Govt Contracts* 1 p.m. *Admin Reg*	9 10 a.m. *Investments in IT* 1 p.m. *CPAB*	10 10:30 a.m. *Tobacco Settlement* 1 p.m. *LOIC*	11
14 8 a.m. *EAARS* 9:30 a.m. B & I 11 a.m. Education 1 p.m. Transportation	15 9 a.m. BR on Eco Dev BR on Gen Govt BR on Justice 10:30 a.m. BR on Education BR on Transp BR on Health & Family Services 1 p.m. A & R	16	17	18
21	22	23	24 9 a.m. Agriculture 11 a.m. Judiciary 1 p.m. Natural Resources 3 p.m. *Juvenile Justice*	25
28	29 9 a.m. Local Govt 11 a.m. State Govt 1 p.m. *Capital Projects* *CRAO* 2:30 p.m. *PPOB*	30 9 a.m. Health Services 11 a.m. VMAPP 1 p.m. Families & Children	31 9 a.m. EDWI 11 a.m. Licensing, Occupations & Admin. Regulations 1 p.m. TSBIT	

NOTES:

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- Calendar may be amended for task forces, working groups, etc.

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2025 Interim Calendar
Approved 3/26/2025

AUGUST 2025

MON	TUE	WED	THU	FRI
				1
4	5	6	7	8
11	12 9 a.m. *Govt Contracts* 1 p.m. *Admin Regs*	13 10 a.m. *Investments in IT* 1 p.m. *CPAB*	14 10:30 a.m. *Tobacco Settlement* 1 p.m. *LOIC*	15
18	19 8 a.m. *EAARS* 9:30 a.m. B & I 11 a.m. Education 1 p.m. Transportation (Unless committees choose to meet at the State Fair)	20 9 a.m. BR on Eco Dev BR on Gen Gov BR on Justice 10:30 a.m. BR on Education BR on Transp BR on Health & Family Services 1 p.m. A & R (Unless committees choose to meet at the State Fair)	21 *KFB Ham Breakfast 10 a.m. Agriculture (Unless other committees choose to meet at the State Fair)	22
25	26 9 a.m. Local Govt 11 a.m. State Govt 1 p.m. *Capital Projects* *CRAO* 2:30 p.m. *PPOB*	27 9 a.m. Health Services 11 a.m. VMAPP 1 p.m. Families & Children	28 9 a.m. EDWI 11 a.m. Licensing, Occupations, & Admin. Regulations 1 p.m. TSBIT	29 11 a.m. Judiciary 1 p.m. Natural Resources 3 p.m. *Juvenile Justice*

*__KY FARM BUREAU DAY at KY State Fair__. Committees may choose to meet at KY State Fair. Meeting spots are placeholders if committees - other than Agriculture - do not meet at the fair.

NOTES:

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- Calendar may be amended for task forces, working groups, etc.

2025 Interim Calendar
Approved 3/26/2025

September 2025

MON	TUE	WED	THU	FRI
1 State Holiday Labor Day	2	3	4	5
8	9 9 a.m. *Govt Contracts* 1 p.m. *Admin Regs*	10 10 a.m. *Investments in IT* 1 p.m. *CPAB*	11 10:30 a.m. *Tobacco Settlement* 1 p.m. *LOIC*	12
15	16 8 a.m. *EAARS* 9:30 a.m. B & I 11 a.m. Education 1 p.m. Transportation	17 9 a.m. BR on Eco Dev BR on Gen Govt BR on Justice 10:30 a.m. BR on Education BR on Transp BR on Health & Family Services 1 p.m. A & R	18 9 a.m. Agriculture 11 a.m. Judiciary 1 p.m. Natural Resources 3 p.m. *Juvenile Justice*	19
22	23 9 a.m. Local Govt 11 a.m. State Govt 1 p.m. *Capital Projects* *CRAO* 2:30 p.m. *PPOB*	24 9 a.m. Health Services 11 a.m. VMAPP 1 p.m. Families & Children	25 9 a.m. EDWI 11 a.m. Licensing, Occupations, & Admin. Regulations 1 p.m. TSBIT	26
29	30			

NOTES:

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- Calendar may be amended for task forces, working groups, etc.

2025 Interim Calendar
Approved 3/26/2025

OCTOBER 2025

MON	TUE	WED	THU	FRI
		1	2	3
6	7 9 a.m. *Govt Contracts* 1 p.m. *Admin Regs*	8 10 a.m. *Investments in IT* 1 p.m. *CPAB*	9 10:30 a.m. *Tobacco Settlement* 1 p.m. *LOIC*	10
13	14 8 a.m. *EAARS* 9:30 a.m. B & I 11 a.m. Education 1 p.m. Transportation	15 9 a.m. BR on Eco Dev BR on Gen Gov BR on Justice 10:30 a.m. BR on Education BR on Transp BR on Health & Family Services 1 p.m. A & R	16 9 a.m. Agriculture 11 a.m. Judiciary 1 p.m. Natural Resources 3 p.m. *Juvenile Justice*	17
20	21 9 a.m. Local Govt 11 a.m. State Govt 1 p.m. *Capital Projects* *CRAO* 2:30 p.m. *PPOB*	22 9 a.m. Health Services 11 a.m. VMAPP 1 p.m. Families & Children	23 9 a.m. EDWI 11 a.m. Licensing, Occupations, & Admin. Regulations 1 p.m. TSBIT	24
27	28	29	30	31

NOTES:

- Italicized committees are statutory.
- Per KRS 7.103(1), the interim period for meeting is June 1 - Dec 1.
- Calendar may be amended for task forces, working groups, etc.

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2025 Interim Calendar
Approved 3/26/2025

NOVEMBER 2025

MON	TUE	WED	THU	FRI
3	4 8 a.m. *EAARS* 9:30 a.m. B & I 11 a.m. Education 1 p.m. Transportation	5 9 a.m. BR on Eco Dev BR on Gen Govt BR on Justice 10:30 a.m. BR on Education BR on Transp BR on Health & Family Services 1 p.m. A & R	6 9 a.m. Agriculture 11 a.m. Judiciary 1 p.m. Natural Resources 3 p.m. *Juvenile Justice*	7
10 9 a.m. *Govt Contracts* 1 p.m. *Admin Regs*	11 State Holiday Veterans Day	12 10 a.m. *Investments in IT* 1 p.m. *CPAB*	13 10:30 a.m. *Tobacco Settlement* 1 p.m. *LOIC*	14
17	18 9 a.m. Local Govt 11 a.m. State Govt 1 p.m. *Capital Projects* *CRAO* 2:30 p.m. *PPOB*	19 9 a.m. Health Services 11 a.m. VMAPP 1 p.m. Families & Children	20 9 a.m. EDWI 11 a.m. Licensing, Occupations, & Admin. Regulations 1 p.m. TSBIT	21
24	25	26	27 State Holiday Thanksgiving	28 State Holiday Thanksgiving

NOTES:

- Italicized committees are statutory.
- Per KRS 7.103(1), the interim period for meeting is June 1 - Dec 1.
- Calendar may be amended for task forces, working groups, etc.

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2025 Interim Calendar
Approved 3/26/2025

DECEMBER 2025

MON	TUE	WED	THU	FRI
1	2	3	4	5
8	9 9 a.m. *Govt Contracts* 1 p.m. *Admin Regs*	10	11	12
15	16 1 p.m. *PPOB* 3 p.m. *Capital Projects*	17 1 p.m. *CPAB*	18 10:30 a.m. *Tobacco Settlement* 1 p.m. *LOIC*	19
22	23	24	25 State Holiday Christmas	26 State Holiday Christmas
29	30	31		

I. SUPREME COURT

A. *Picard v. Knight*, 701 S.W.3d 467 (Ky. 2024)

Father sought an award of attorney fees and costs in a child support modification matter under CR 68, the offer for judgment rule. The Court found that KRS 403.220 specifically preempts this rule.

Holding:

1. The Court concluded that CR 68 is preempted by KRS Chapter 403, and attorney fees and costs cannot be awarded in family court proceedings pursuant to CR 68. KRS 403.220 provides the primary basis under KRS Chapter 403 for the award of attorney fees and costs and, because CR 68 is inconsistent with it, KRS 403.220 controls over CR 68 regarding how attorney fees and costs can be awarded. *Id.* at 472.

   The Court reasoned that in typical civil actions, a plaintiff seeks to win an award of damages for some wrong committed by the defendant. In contrast, family law matters are non-adversarial, the parties are referred to as petitioner and respondent, and the goal is an equitable resolution for both parties. *Id.*

2. Various statutory schemes may exclude inconsistent rules from being applicable. This can be done in three ways: (1) by implication, when the statutory scheme is set up as "special statutory proceeding" which by its very nature excludes inconsistent rules; (2) directly by the enactment of a specific statute which preempts inconsistent rules; or (3) simply as a matter of statutory construction in which substantive statutory law must prevail over any inconsistent procedural rules. *Id.* at 474.

B. *Appleman v. Gebell*, 706 S.W.3d 223 (Ky. 2024)

The child, A.G.R., was initially placed in the temporary custody of the Applemans (Father's paternal cousins) due to issues with Mother's mental health and Father's substance abuse. After various DNA proceedings, the district court eventually granted the Applemans full permanent custody of A.G.R. Mother later filed a motion in the circuit court seeking to regain custody of A.G.R., which was denied on the basis that she had "waived her superior right to custody" by being absent and non-involved for most of the child's life. Further, the Applemans claimed that they gained equal standing to a biological parent in a custody dispute.

Holding:

1. A permanency order in a DNA proceeding that does not comply with the requirements of KRS 403.270 cannot be treated as a "custody decree" when a natural parent later seeks to regain custody from a third-party non-parent. The natural parent's superior right to custody must be given consideration. To keep the child, the Applemans were required to demonstrate the mother's unfitness or waiver because the prior permanency order did not constitute a custody decree for failure to comply with KRS 403.270.

2. A person acting as a parent under KRS 403.800(13) does not gain equal standing to a biological parent in a custody dispute. To defeat the parent's superior right, the non-parent must prove either (1) the parent is unfit by clear and convincing evidence; or (2) the parent has waived their superior right by clear and convincing evidence.

C. *Cabinet for Health and Family Services v. K.O.*, No. 2024-SC-0188-DGE, 2025 Ky. LEXIS 3, 2025 WL 555461 (Ky. Feb. 20, 2025)

The evidence showed that the father smoked marijuana while caring for the child, in an enclosed vehicle with the child, and while driving the child to school, thus endangering the child's safety. The trial court found that the father neglected the child under KRS 600.020(1). The Supreme Court reversed the Court of Appeals and reinstated the family court's order, finding that the father neglected the child.

Holding:

1. Evidence that a parent exposed a child to illicit substances and engaged in conduct that endangered the child's safety, coupled with the child's young age, can constitute creating a risk of physical injury to the child under KRS 600.020(1)(a)(2). The family court did not have to wait for actual harm to occur before finding neglect.

2. In order to find that a parent or guardian has created a risk of physical or emotional injury to the child, the mere fact that the parent or guardian suffers from substance abuse issues is not enough. Instead, the family court must also find that those issues resulted in an actual and reasonable potential for harm to the child.

   Substantial evidence that a parent or guardian has created a risk of physical or emotional injury to a child may take many forms. Thus, whether a child has been neglected or abused under KRS 600.020 is a highly fact-specific inquiry.

II. COURT OF APPEALS

A. *Rigdon v. England*, No. 2023-CA-0984-MR, 2024 Ky. App. LEXIS 58, 2024 WL 3381376 (Ky. App. July 12, 2024) (To be published)

Grandparents petitioned for *de facto* custodianship of two minor children on the basis that the children resided with them, and they functioned as the primary caregivers and financial supporters of the children "for the aggregate period of one (1) year or more... within the last two (2) years," and they paid for most of their expenses. The trial court ruled they qualified as *de facto* custodians and awarded the grandparents and parents joint legal custody. On appeal, the children's parents argued they never abdicated their role as parents and they continued to co-parent during said time periods; thus, they continued to co-parent the children and never gave the grandparents full custody required for *de facto* custodianship.

Holding:

1. The amendment to KRS 403.270(1)(a) allowing a third party to aggregate periods of time to qualify for *de facto* custodian status is substantive. It changes the burden of proof and gives past conduct new substantive legal consequences. Thus, the family court erred in considering any aggregated periods of time that occurred before the date that the statute was amended, not only as to the time that each of the children resided with the paternal grandparents but also as it pertained to the issue of whether they were primary caregivers.

2. The parents never abdicated their role as parents. Instead, while the mother was attending nursing school, the grandparents "volunteered" their assistance; thus, the statute should have never been invoked. During this time, the parents continued to be actively involved in their children's lives. The court held that parents must abdicate their role as parents; simply allowing children to stay with relatives does not suffice to vitiate the primacy of parenting maintained by the parents.

B. *Adair v. Emberton*, 694 S.W.3d 52 (Ky. App. 2024)

Grandparents were granted permanent custody of the child through a DNA action in 2018. However, that same year, they filed this separate petition for custody in the Jefferson Family Court. Each parent had significant drug abuse issues and multiple criminal convictions. Two years later, the mother filed for reasonable visitation, and the Court appointed a friend of the court (FOC). However, during the two years in between, there was a very limited record of what the FOC had done. Regardless, the Court consistently relied on the FOC's recommendations, including going against the child's psychologist and social worker's concern for expanding the mother's parenting time. Additionally, in providing the mother with more parenting time, the Court evaded statutory requirements by simply calling a hearing a "review" to make substantive changes without following procedural safeguards.

Holding:

1. The family court abused its discretion when it granted expanded parenting time to the mother without compliance with the provisions of KRS 403.320 and KRS 403.300 (which provides that the investigator's report shall be mailed to counsel and/or parties at least 10 days prior to the hearing along with the underlying information used to create the report.)

2. The FOC had not interviewed the child, did not provide a written report, and the Court relied on the FOC's unsworn statements without providing any opportunity for cross-examination. The courts must adhere to the procedural safeguards regarding the FOC, or there would be no due process protections. Further, the Court did not indicate that it had considered the best interests of the child. Accordingly, the Appeals Court concluded that the trial court had abused its discretion by granting expanded parenting time without compliance with KRS 403.320 and KRS 403.300.

C. *Van Gansbeke v. Van Gansbeke*, 700 S.W.3d 263 (Ky. App. 2024)

A year and a half after an agreed order regarding decision-making authority and parenting time was entered, the father moved the court to order the parties to mediation regarding decision-making and a parenting schedule. The court appointed an FOC to investigate and make a report. The FOC accidentally mistyped the father's counsel's email address; thus, the father didn't receive the report until the morning of the hearing. Additionally, the court held that the father could not compel the testimony of the child's therapist, whose information was vital in the creation of the FOC's report. Father filed a motion to strike the FOC's report and testimony because he did not have a meaningful opportunity to challenge the FOC's sources. The court denied that motion and this appeal followed.

Holding:

1. In a custodial case, the family court erred by denying the father's motions regarding the FOC's report and testimony because it violated the father's statutory right to a meaningful opportunity to challenge and/or cross-examine the FOC's sources and report under KRS 403.300(3). Specifically, the Supreme Court of Kentucky has held that it is "error to admit and consider statements contained within the FOC's report without giving the parties a meaningful opportunity to challenge the sources of those statements." *Greene*, 603 S.W.3d at 239.

2. Therefore, the statutory requirements for admitting the FOC's testimony and report were lacking. Vacated and remanded.

D. *A.S. v. M.R.*, 694 S.W.3d 403 (Ky. App. 2024)

After filing an initial petition, the Commonwealth moved to dismiss as it related to three of the four adults (Uncle, Father, and AS); however, the court twice denied this request, stating that it would not dismiss until it heard some testimony. Later, while the Commonwealth and Cabinet agreed that informal adjustment was an appropriate resolution for two of the adults, the GAL and family court did not agree. The family court stated the options were that the parties all stipulate to abuse or set the case for a hearing. The court then required a hearing for all parties, although the County Attorney's Office decided not to produce evidence other than the certified copy of the mother's plea agreement in the criminal action. The court found that the Commonwealth had met its burden of proof by a preponderance of the evidence for a finding of neglect as to two of the adults, Mother and AS. As filed, this appeal claimed the family court abused its discretion in finding that she neglected the children because its findings were clearly erroneous and that the court violated the separation of powers doctrine when it refused to dismiss the petition against her when the Commonwealth did not wish to pursue it.

Holding:

1. The Court of Appeals held this case is indicative of territorial posturing, which is rarely seen by the appellate court. The Cabinet and the County Attorney's Office are those invested with the power to prosecute DNA cases in family court under KRS 69.210. In this case, neither the Cabinet nor the Bullitt County Attorney's Office wanted to pursue abuse or neglect charges against any party other than mother, despite the allegations in the petition and amended petition. They reasonably based this decision on the evaluation of evidence (or lack thereof) gathered during the course of the case. The family court cannot demand that a case continue on its own terms and must give deference to the county attorney's office when they refuse to prosecute.

2. The prosecutor is presumptively the best judge of whether a pending prosecution should be terminated, and the court shall not disturb this decision unless it is clearly contrary to the manifest public interest. The decision to dismiss should be made as directed in *Hoskins*, with a hearing to evaluate such manifest public interest. Further, the family court's findings that AS had neglected the children was clearly erroneous and not based on any evidence. The court is limited to the evidence properly presented before it and may not rely on suppositions about what might have been presented. It is fully within the discretion of the prosecutor's office to present any such evidence.

3. The Court finally held that the family court proceeded without the necessary evaluation of the county attorney's motions to dismiss. The family court did not have substantial evidence on which to base its finding of neglect against A.S. Therefore, they reversed the Bullitt Family Court's orders and remanded with directions to dismiss the petitions against A.S.

E. *Lankford v. Lankford*, 688 S.W.3d 536 (Ky. App. 2024)

Instead of having a scheduled DVO hearing, the family court announced that it would be dismissing the petitions instead of conducting a hearing based on information it had received that the Cabinet was not going to take action pertaining to the allegations. No evidence was presented; rather, the court engaged in informal *ex parte* communications with the Cabinet prior to the hearing.

Holding: Nowhere do Kentucky's DVO statutes allow the lower court to engage in *ex parte* communications with the Cabinet about the underlying allegations for the purpose of determining whether to move forward with the hearing or dismiss the petition. The dismissal was reversed and remanded for a full hearing.

F. *Allgeier v. Wagner*, 704 S.W.3d 686 (Ky. App. 2025)

Jessica Allgeier filed a civil action against her former spouse in Jefferson Circuit Court, asserting claims related to Wagner's alleged mismanagement of a business, interference with child custody, and outrageous conduct. The parties had a long history of contentious custody and domestic violence in the Jefferson Family Court. The circuit court concluded that the family court was the proper forum, and Allgeier appealed.

Holding:

1. The legislature's description of a family court division of the circuit court as the "primary forum" suggests that the General Assembly did not intend for this statute to limit the jurisdictional reach of Kentucky's circuit courts. It is clear that the general jurisdiction of the family court as provided by Ky. Const. §112(6) extends broadly beyond the specific areas of jurisdiction outlined in the provisions of KRS 23A.100. Applying the statute this way ensures that the purposes underlying the creation of family courts set out in KRS 23A.110 are respected.

2. Consequently, the court held that the family court was the appropriate forum; however, the correct disposition of the matter was not dismissal but transfer.

G. *G.M.A. v. Commonwealth*, 689 S.W.3d 142 (Ky. App. 2024)

Grandparents appealed from an order of the family court holding that they (1) are not parties to the dependency/neglect/abuse ("DNA") petition concerning their grandchild; (2) are excluded from filing substantive motions or having access to evidence in the case file; and (3) are dismissed from the DNA petition without affording them notice or an opportunity to be heard.

Holding:

1. Although DNA petitions are typically filed by the Commonwealth, either through a county attorney or by the Cabinet, the statute, KRS 620.070(1), clearly allows filing by interested parties who are custodians and who have filed the instant petition. The Court noted there is no prior case law on this point. The Court concluded that, when filed by an "interested person" with proper standing, the petitioner in a DNA action is accorded the status of party-plaintiff. The Court disagreed with the Commonwealth that it has the exclusive role as party-plaintiff in all DNA proceedings. While KRS 620.100(5) does not require custodians to be made a party, it does not preclude them from being recognized as such.

2. The Court held that the grandparents, as petitioners and custodians of the grandchild, were entitled to status as parties to the proceedings and were thus entitled to notice, access to the case file, and an opportunity to be heard and to present substantive motions. However, as parties only to the informal adjustment, the grandparents were not entitled to bring motions for child support, discovery, or permanent custody during the period that the informal adjustment was in effect.

A VIEW FROM THE BENCH: BEST PRACTICES FOR LAWYERS IN THE COURTROOM

Steven Kriegshaber

The relationship between judges and lawyers is often discussed in whispered tones and not often in public. Wouldn't it be interesting and helpful to the practice of family law to know what lawyers would want to tell judges presiding over their litigated cases and likewise, what judges would like to say to attorneys practicing before the bench? To quote a line from the movie, *Cool Hand Luke*, "What we have here is a failure to communicate."

Our judicial panel is going to address some of the pet peeves lawyers have with the judiciary and likewise the pet peeves the judiciary has with the family bar in hopes of providing better communication between the two groups and thus improving the practice of family law in our courts. We are fortunate to have on our panel three family court judges representing various judicial circuits from around the Commonwealth. Judge Shelley Santry sits in Louisville which is in the 30th Judicial District; Judge Traci Beslin sits in Lexington which is in the 22nd Judicial Circuit; and Judge Deanna Henschel sits in Paducah which is in the 2nd Judicial District.

In general, judges like and respect family law counsel and recognize that they have a difficult job dealing with clients who are stressed and wrought with emotion. Sometimes, however, counsel will cross a line, and it is up to the judge to keep them in line. When that occurs, the rules of conduct as set forth by the Supreme Court of Kentucky in SCR 3.130 will provide guidelines. SCR 3.130(3.3) defines the candor attorneys must show toward the bench. Included in this rule is the canon that a lawyer shall not knowingly make a false statement to the court. It also requires that the lawyer shall inform the court of all material facts known to the lawyer that will enable the court to make an informed decision. Under section 5, the lawyer must always be "competent, prompt and diligent." Failure to comply with the rules is a basis for invoking disciplinary proceedings against the violating counsel, and it is the obligation of the presiding judge to file a report with the bar association.

Lawyers, as officers of the court, are often reluctant to sharply criticize judges and may face disciplinary action if they speak derogatorily of a judge in public. Judges are not infallible and sometimes cross the line of judicial discretion. The judiciary must maintain the perception of fairness and avoid even the appearance of impropriety. SCR 4.300 provides ethical guidelines for judges. Canon 1 of SCR 4.300 states, "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Furthermore, "A judge should actively participate in establishing, maintaining and enforcing high standards so that the integrity and independence of the judiciary will be preserved." SCR 4.310 provides for a judicial ethics committee to consider any infractions of the ethical rules governing the judiciary.

If the judges and the litigating attorneys can better understand each other and respond positively to the issues and complaints of the other, then all concerned can avoid the ethical pitfalls and provide a better environment for resolving the litigants' issues in court. Several years ago, a committee was formed in Jefferson County to provide an informal forum for family court judges and attorneys to air their complaints and respond amicably to such complaints. It was dubbed as "The Annual You Pissed Me Off Dinner." It did accomplish its goal of reducing tension between the opposite sides of the bench by fostering direct communication and understanding between bench and bar. Hopefully, today's judicial panel presentation will have a similar effect.

(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.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

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

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.

Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety

Rule 1.1. Compliance with the Law

A judge shall comply with the law,* including the Code of Judicial Conduct.

Rule 1.2. Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety.

Comment

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because the listing of all such conduct is not practicable, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law,* court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge engaged in conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

Comment

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge.* The judge may use official letterhead if the judge indicates that the reference is personal and if no likelihood exists that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and nominating commissions, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid exploitation of the judge's office in violation of this rule. A biography or description of the individual that includes office(s) currently or previously held is a communication of professional qualifications and is permitted by this rule.

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.

(1) There shall be an ethics committee of the Kentucky judiciary consisting of one judge each of the Court of Appeals, the circuit court and the district court and two members of the Kentucky Bar Association appointed by the board of governors, none of whom shall be members of the judicial retirement and removal commission. The judicial members shall be selected by the members of their courts in the manner which each court selects. Each member shall serve for a term of four years from the date of his appointment. A chairman shall be elected by the ethics committee.

(2) Opinions as to the propriety of any act or conduct and the construction or application of any canon shall be provided by the committee upon request from any justice, judge, trial commissioner or by any judicial candidate. Communications between the questioner and the Judicial Ethics Committee and its members shall be confidential. If the committee finds the question of limited significance, it shall provide an informal opinion to the questioner. If, however, it finds the question of sufficient general interest and importance, it shall render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form, without specific identification of the questioner. Likewise, the committee may issue formal opinions on its own motion under such circumstances as it finds appropriate.

(3) Both formal and informal opinions shall be advisory only; however, the commission and the Supreme Court shall consider reliance by a justice, judge, trial commissioner or by any judicial candidate upon the ethics committee opinion.

(4) Any person affected by a formal opinion of the ethics committee may obtain a review thereof by the Supreme Court by filing with the clerk of that court within thirty (30) days after the end of the month in which it was published a motion for review stating the grounds upon which the movant is dissatisfied with the opinion. The motion shall be accompanied by a copy of the opinion or synopsis as published and shall be served upon the ethics committee and, if the movant is someone other than the party who initiated the request for the opinion, upon the initiating justice, judge or commissioner. The filing fee for docketing such motion shall be as provided by Civil Rule 76.42(1) for original actions in the Supreme Court. The ethics committee may file a response to the motion for review within thirty (30) days after its receipt of the motion. Notwithstanding the provisions of this subsection of the rule, the Supreme Court on its own initiative may review a judicial ethics opinion at any time.

Credits

HISTORY: Amended by Order 2012-01, eff. 3-1-12; prior amendment eff. 1-1-04 (Order 2003-4); adopted eff. 7-1-79

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.

NON-MARITAL ASSET TRACING

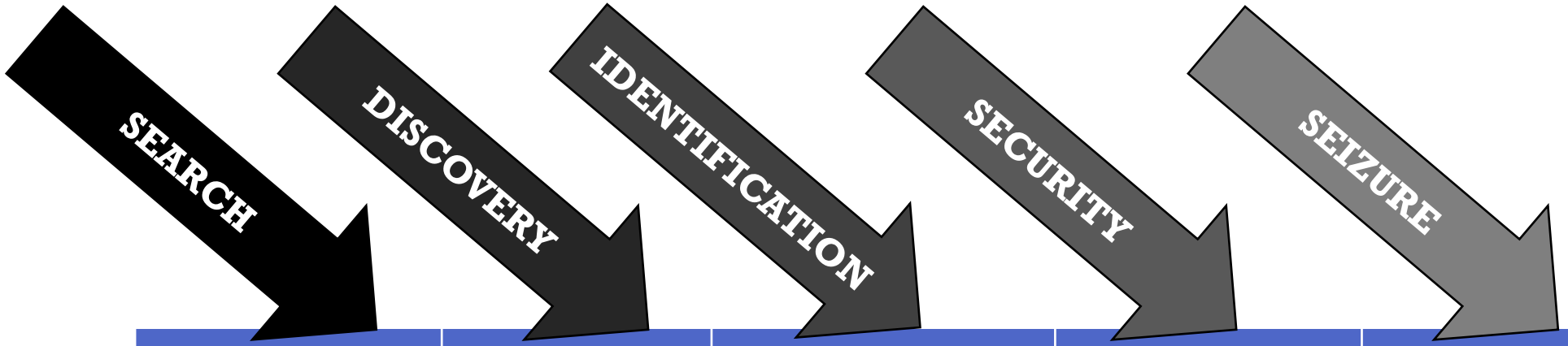
Litigation Tactics for Discovering Hidden Assets

AGENDA

1. SEARCH
2. DISCOVERY
3. IDENTIFICATION
4. SECURITY
5. SEIZURE

A NARROWING PROCESS

Everywhere Searched	Found Something	Got the Official Record	Security Possible?	Seizure Possible?
a				
b	x	x	Yes	Yes
c				
d	x	x	Yes	No
e				
f				
g	x	x	No	No
h	x			

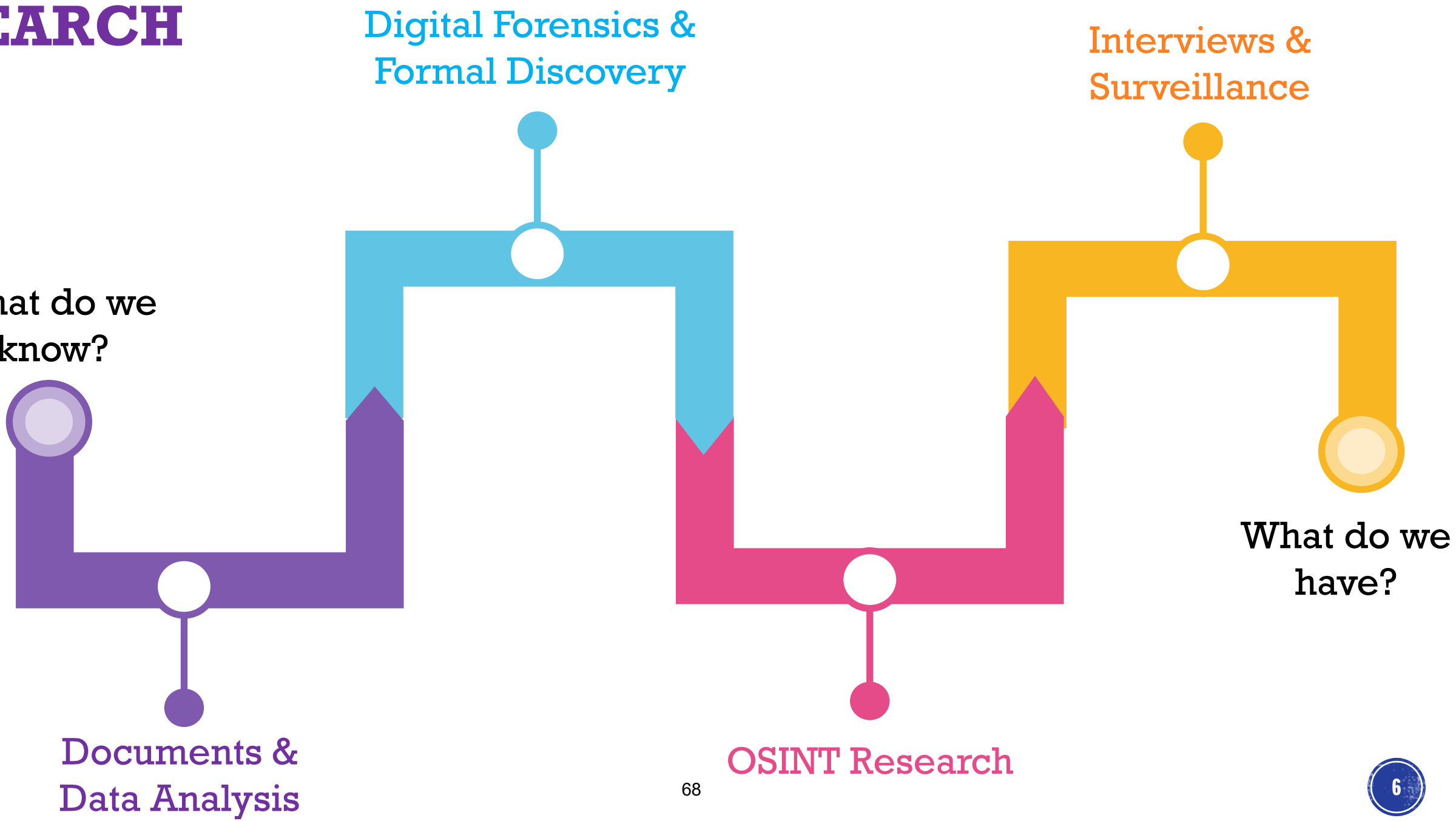


Everywhere Searched	Found Something	Got the Official Record	Security Possible?	Seizure Possible?
a				
b	x	x	Yes	Yes
c				
d	x	x	Yes	No
e				
f				
g	x	x	No	No
h	x			

SEARCH

A Gathering of Indications

SEARCH


Digital Forensics & Formal Discovery
Interviews & Surveillance
What do we know?
What do we have?
Documents & Data Analysis
OSINT Research

DOCUMENTS & DATA ANALYSIS

Withdrawals

- Identify each recipient
- Obtain records

Deposits

- Identify each funding source
- Obtain records

Transcripts

- Any other cases around town?
- Can you get the transcript?

Indirect Income

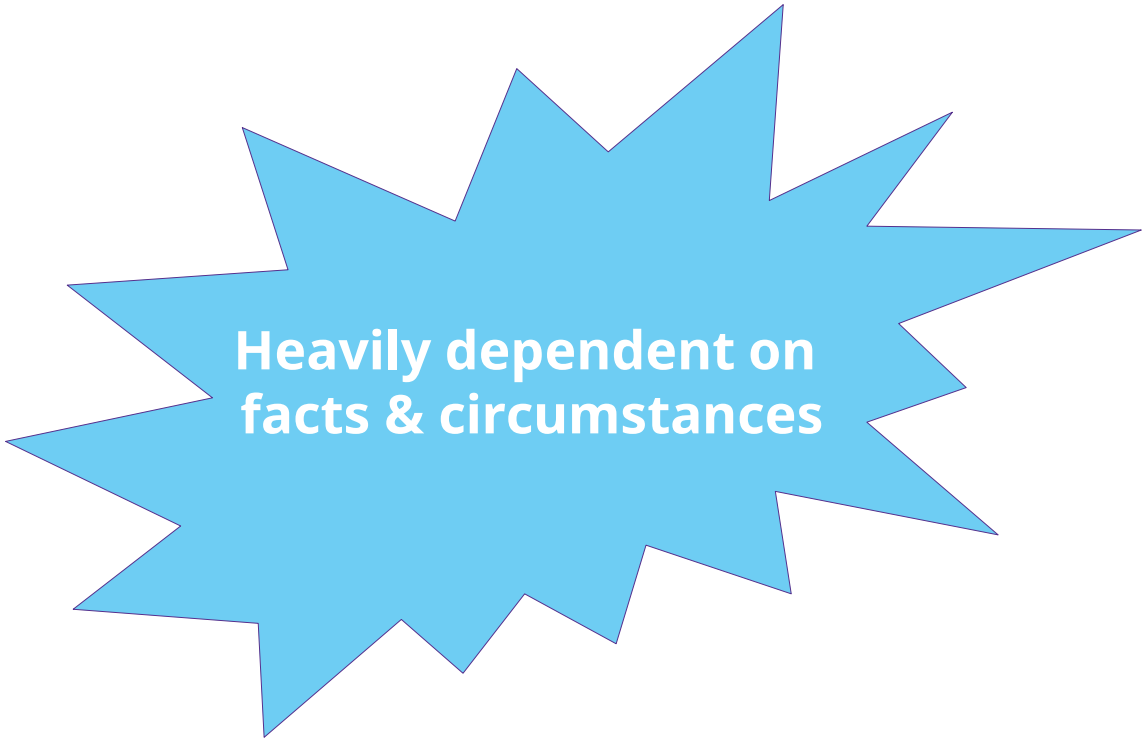
- Does the income support the Lambo?

DIGITAL FORENSICS

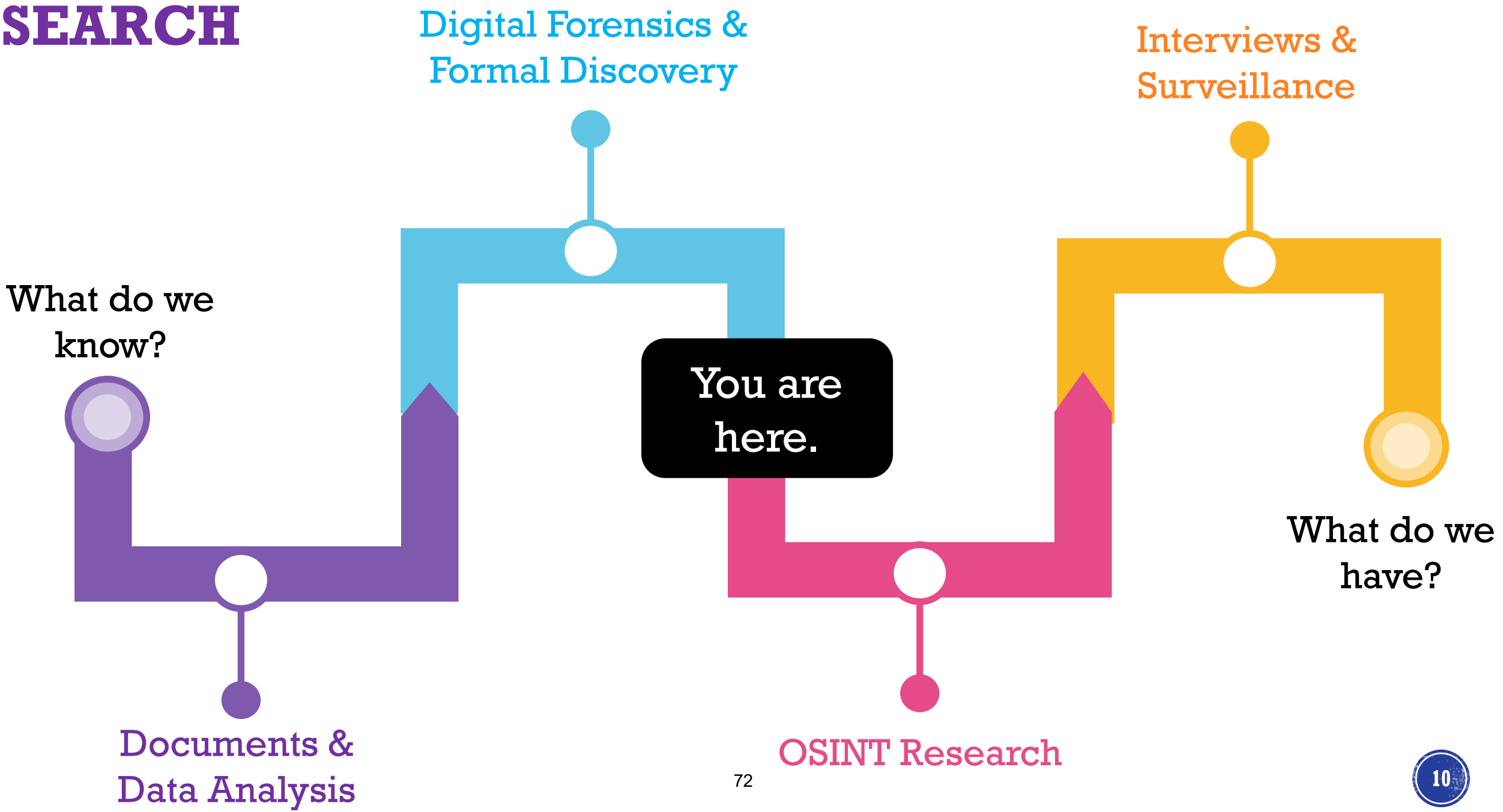
- Old devices lying around and "abandoned"
  - Were they really, though?
  - Do you have a right to access?
    - NOT CONSIDERED LIGHTLY: Are you willing to defend the analyst in criminal court against hacking allegations? If not, you may not have a right to access.
  - Have you established that right IN WRITING?
  - Does your state have statutes or regulations for a computer investigation?
    - Occupations Code for regulated activities, criminal definitions for hacking, any statutes for spousal spying… And are you and your analyst following them?
- Heavy reliance on community property assumption or "in an area of the home where we both had access" may be problematic

FORMAL DISCOVERY

- Initial Disclosures
- Requests for Documents
- Interrogatories
- Requests for Admission
- Meet & Confer Letters
- Motions to Compel
- Subpoena Power
  - Criminal Investigation may exempt consumer notice.
  - Regulatory Investigation may exempt consumer notice.



SEARCH


Digital Forensics & Formal Discovery
Interviews & Surveillance
What do we know?
You are here.
What do we have?
Documents & Data Analysis
OSINT Research

OPEN SOURCE INTELLIGENCE (OSINT)

- Local Property Records
- State Business Records
- OCC/OFAC Listings
- International Entity Search
- Social Media (public)
- Criminal Records Database
- Litigation Databases
- Bank Account Search
- Global Crypto Search
- Special databases only a **PI** and the **FBI** can access

OPEN SOURCE INTELLIGENCE (OSINT)

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- Ba **Does Not Exist**
- Global Crypto Search
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REGULATIONS FOR FINANCIAL RECORDS

Right to Financial Privacy (12 USC Ch. 35)

- https://uscode.house.gov/view.xhtml?path=/prelim@title12/chapter35&edition=prelim
- Consent or
- subpoena or
- search warrant or
- response to formal written request
- Expanded from "government" to include SEC

RIGHT TO FINANCIAL PRIVACY
12 USC CH. 35

3402. Access to financial records by Government authorities prohibited; exceptions

Except as provided by section 3403(c) or (d), 3413, or 3414 of this title, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 3404 of this title;

(2) such financial records are disclosed in response to an administrative subpoena or summons which meets the requirements of section 3405 of this title;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 3406 of this title;

(4) such financial records are disclosed in response to a judicial subpoena which meets the requirements of section 3407 of this title; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 3408 of this title.

RIGHT TO FINANCIAL PRIVACY
12 USC CH. 35

- Financial Record – an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution
- Expanded to include the Securities and Exchange Commission

REGULATIONS FOR FINANCIAL RECORDS

Financial Services Monetization Act, 1999

- https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title15-chapter94-subchapter1&saved=%7CKHRpdGxlOjE1IHNlY3Rpb246NjgwMSBlZGl0aW9uOnByZWxpbSk%3D%7C%7C%7C0%7Cfalse%7Cprelim&edition=prelim
- Introduced Financial Privacy Rule 15 USC 6801-09
- Introduced Pretexting Predication, 15 USC 6821-6827
- If **YOU** do it, or
- If you hire someone to do it, or
- If you rely on records from someone who did it

FINANCIAL SERVICES MONETIZATION ACT, 1999 (GRAMM-LEACH-BILLEY ACT)

- Repealed Glass-Steagal, and broke the wall between banks, investment institutions, insurance, etc. (blamed for leading to the 2008 financial crisis)

- Introduced **Financial Privacy Rule, 15 USC 6801-09**
- Introduced **Pretexting Protection, 15 USC 6821-6827**
  - Criminal penalty for violations

FINANCIAL SERVICES MONETIZATION ACT, 1999 FINANCIAL PRIVACY RULE, 6801-6809

6801. Protection of nonpublic personal information

(a) Privacy obligation policy

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a), each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards-

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

FINANCIAL SERVICES MONETIZATION ACT, 1999 PRETEXTING PROHIBITION, 6821-6827

- (a) Prohibition on obtaining customer information by false pretenses. It shall be a violation of this subchapter for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—
  - (1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;
  - (2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or
  - (3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.
- (b) Prohibition on solicitation of a person to obtain customer information from financial institution under false pretenses It shall be a violation of this subchapter to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

FINANCIAL SERVICES MONETIZATION ACT, 1999 CRIMINAL PENALTY FOR PRETEXTING, 6823

- (a) In general Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 6821 of this title shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.
- (b) Enhanced penalty for aggravated cases Whoever violates, or attempts to violate, section 6821 of this title while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, imprisoned for not more than 10 years, or both.

Image by Ivana Tomášková (https://pixabay.com/users/iffany-6128830/?utm_source=link-attribution&utm_medium=referral&utm_campaign=image&utm_content=8684276) from Pixabay

Just because you can hire someone to do it, doesn't make it legal!

POTENTIAL BENEFITS OF SOMEONE ELSE

- They already know the rules.
  - IF they are in your jurisdiction
  - IF they are properly licensed
- They already have the subscriptions.
  - Highly likely.
- They know where records are and how to search for them.
  - Individual data sources are fickle and disparate.
- They know what to ignore.
  - Very time-consuming to chase down obvious non-leads.

POTENTIAL PITFALLS OF SOMEONE ELSE

- They may break the rules anyway.
  - And then your evidence may not be admissible.
- They may overcharge for very basic searches.
- They may hold their findings hostage for higher fees.
  - Most often seen in digital forensics engagements.
- They may overstate the "databases" they search.
- They may overstate the reliability of their data.
  - Looking at you, crypto attribution sellers.

SEARCH: DATA AGGREGATORS

- Property Records
  - Real Estate
  - Boats
  - Planes

- Public Records+
  - TLO, Tracers, Delvepoint, IDI, IRB, and more.

- Social Media
  - Skopenow
  - Beware puppets
  - Beware free

- Entity Records
  - SOS/Comptroller
  - Offshore Leaks (icij.org)

- Entity Records+
  - Opencorporates
  - Clear (Reuters)
  - Accurint (Lexis)

- Cryptocurrency
  - Qlue, Elliptic, Breadcrumbs, Chainalsyis, Leaguewell, etc.

WHAT YOU MAY BE TOLD IS OUT THERE

- Property Records
- Business Records
- Liens (OCC)
- Sanctions (OFAC)
- Offshore Entities & Accounts
- Intangibles
- Database for Criminal Records
- Database for Civil Records
- Database for Bank Accounts
- Database for Brokerage Accounts
- Database for Crypto
- Special FBI Databases
- Special PI-Only Databases

WHAT IS ACTUALLY OUT THERE

Property Records

Business Records

Liens (OCC)

Sanctions (OFAC)

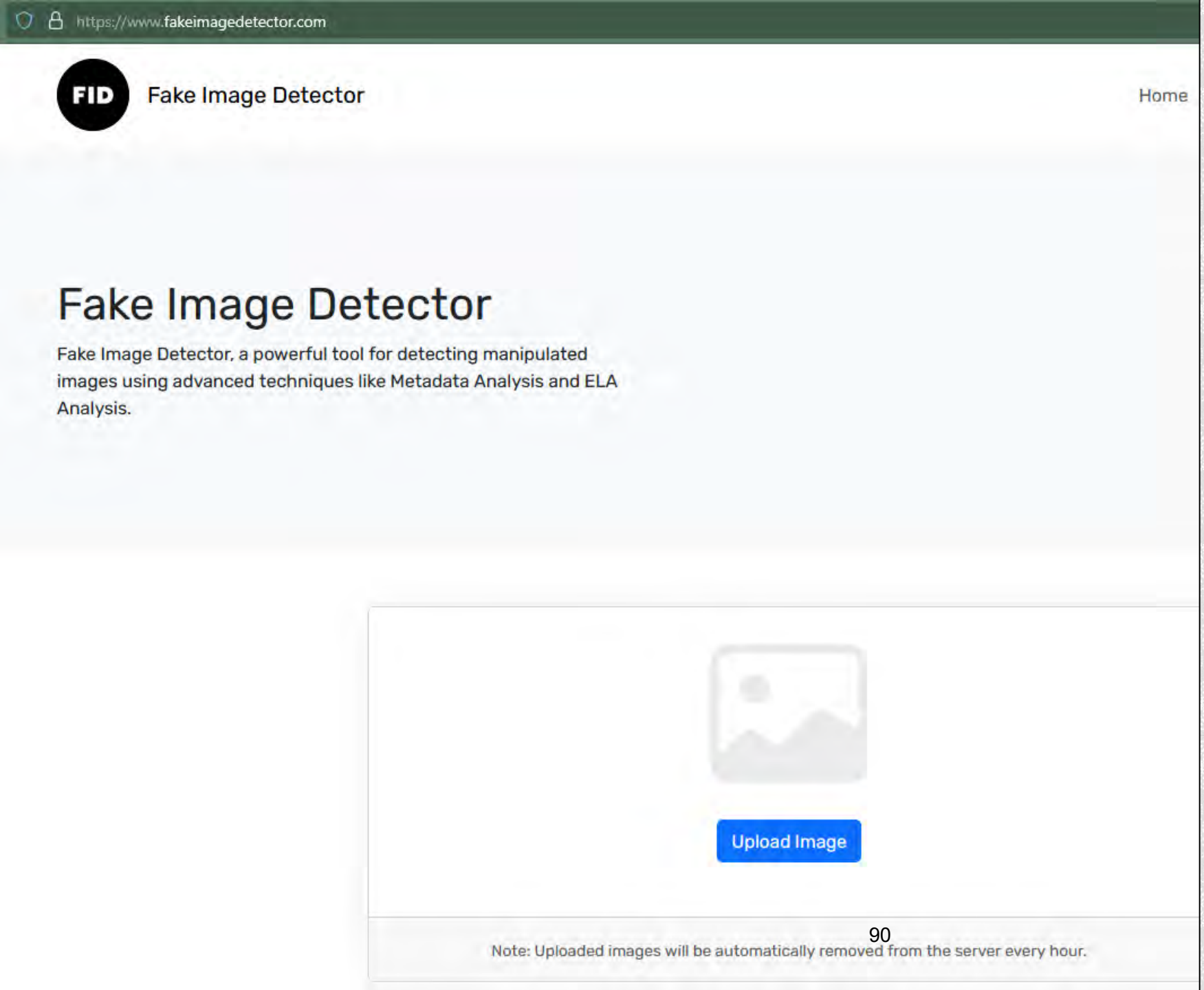
Offshore Entities & Accounts

Intangibles

Special FBI Databases

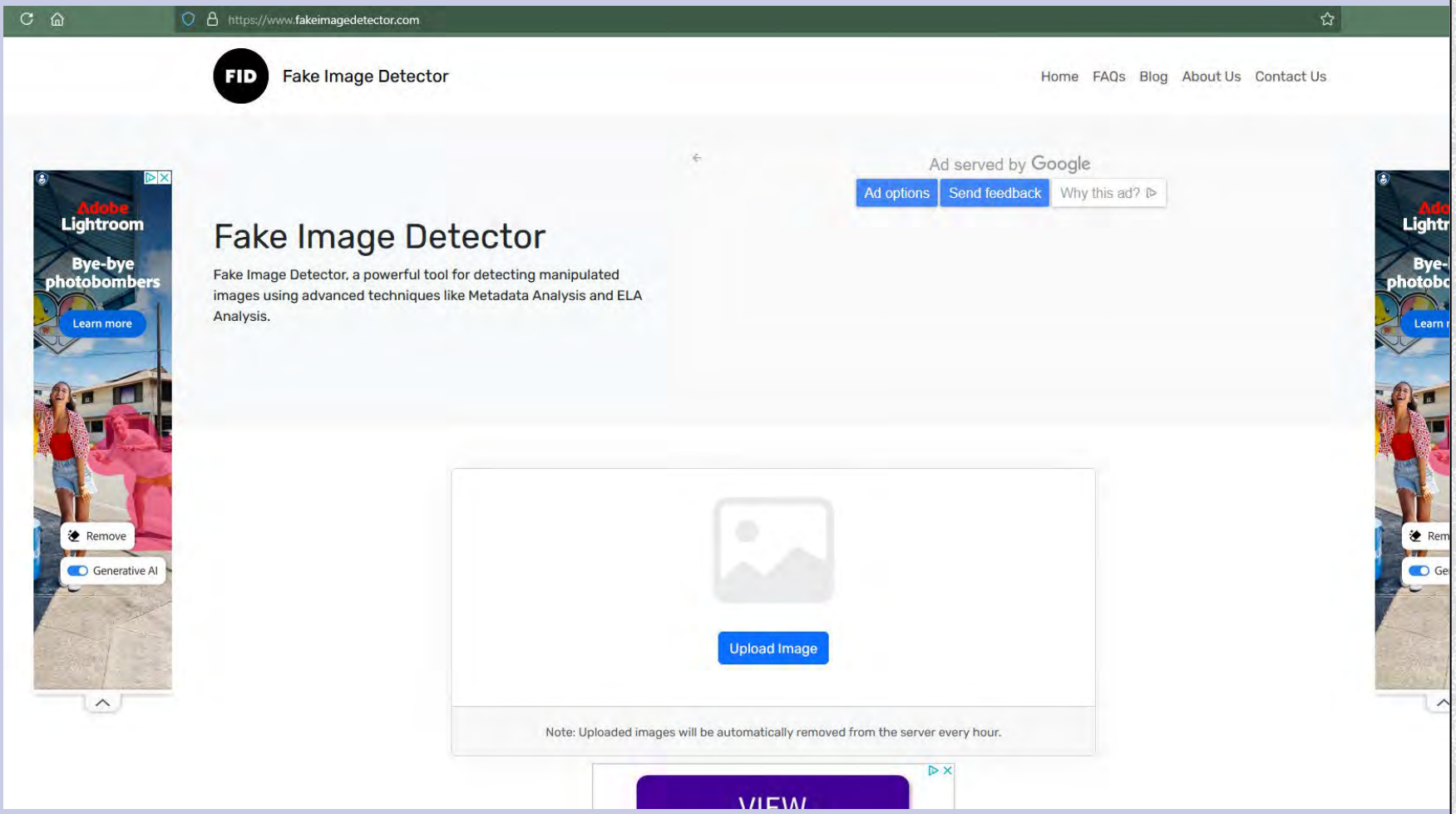
IMAGE VERIFICATION

Does this indicate an additional asset?



FAKE IMAGE DETECTOR

www.fakeimagedetector.com



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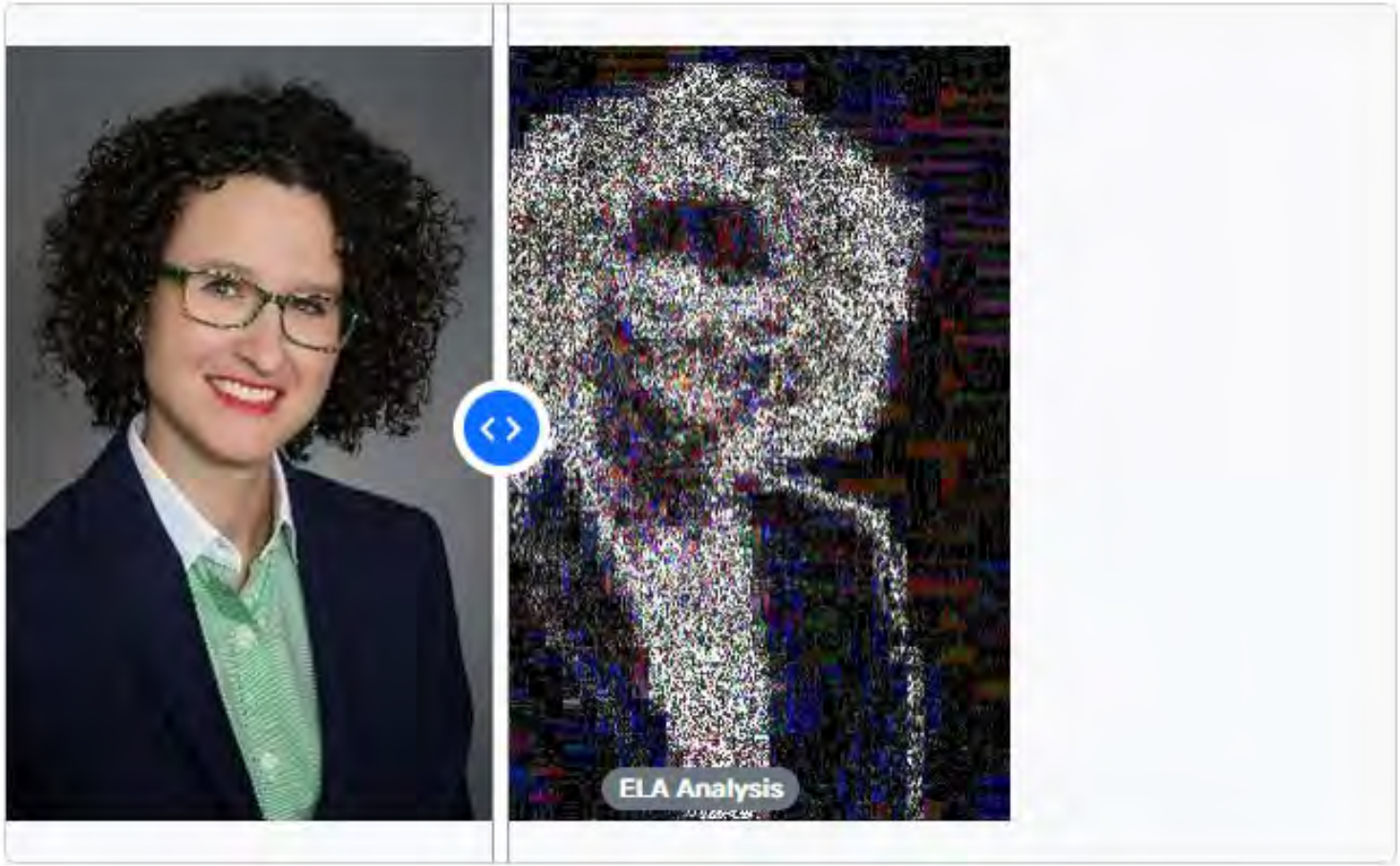

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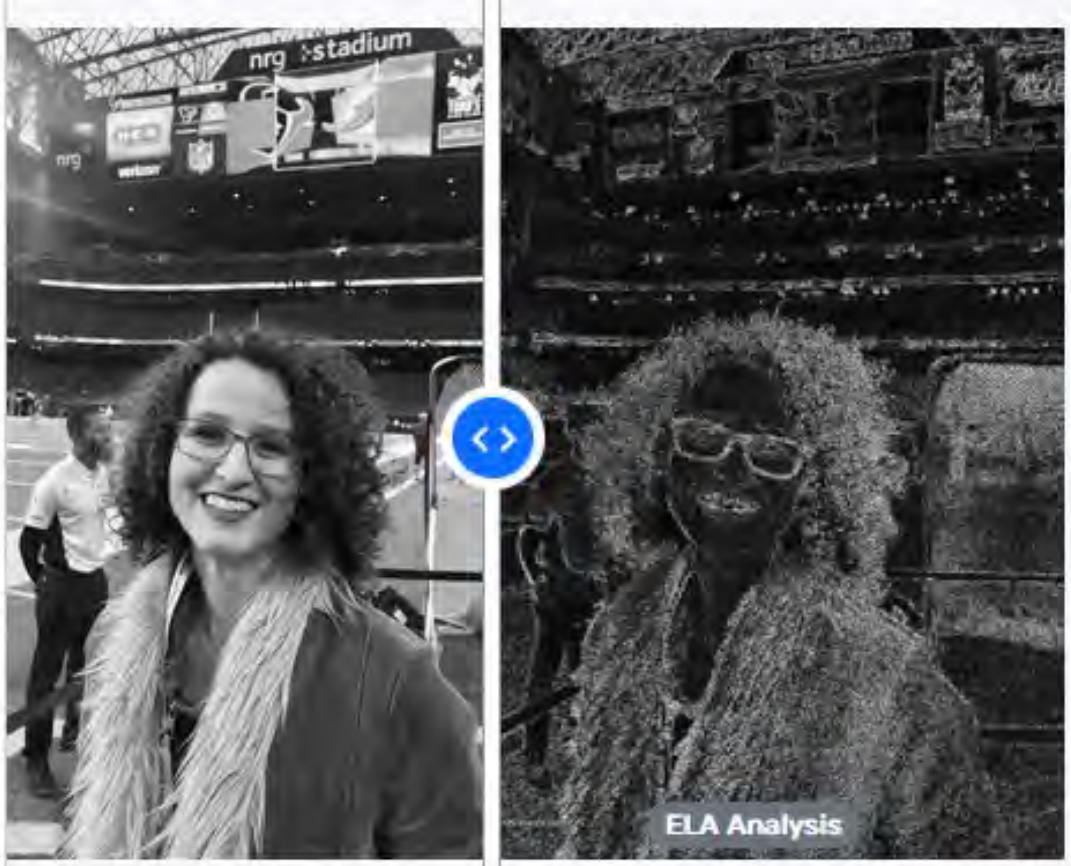
Scan another Image

Note: Uploaded images are automatically removed from the server every hour.

92

FAKE IMAGE DETECTOR TEST 1

www.fakeimagedetector.com



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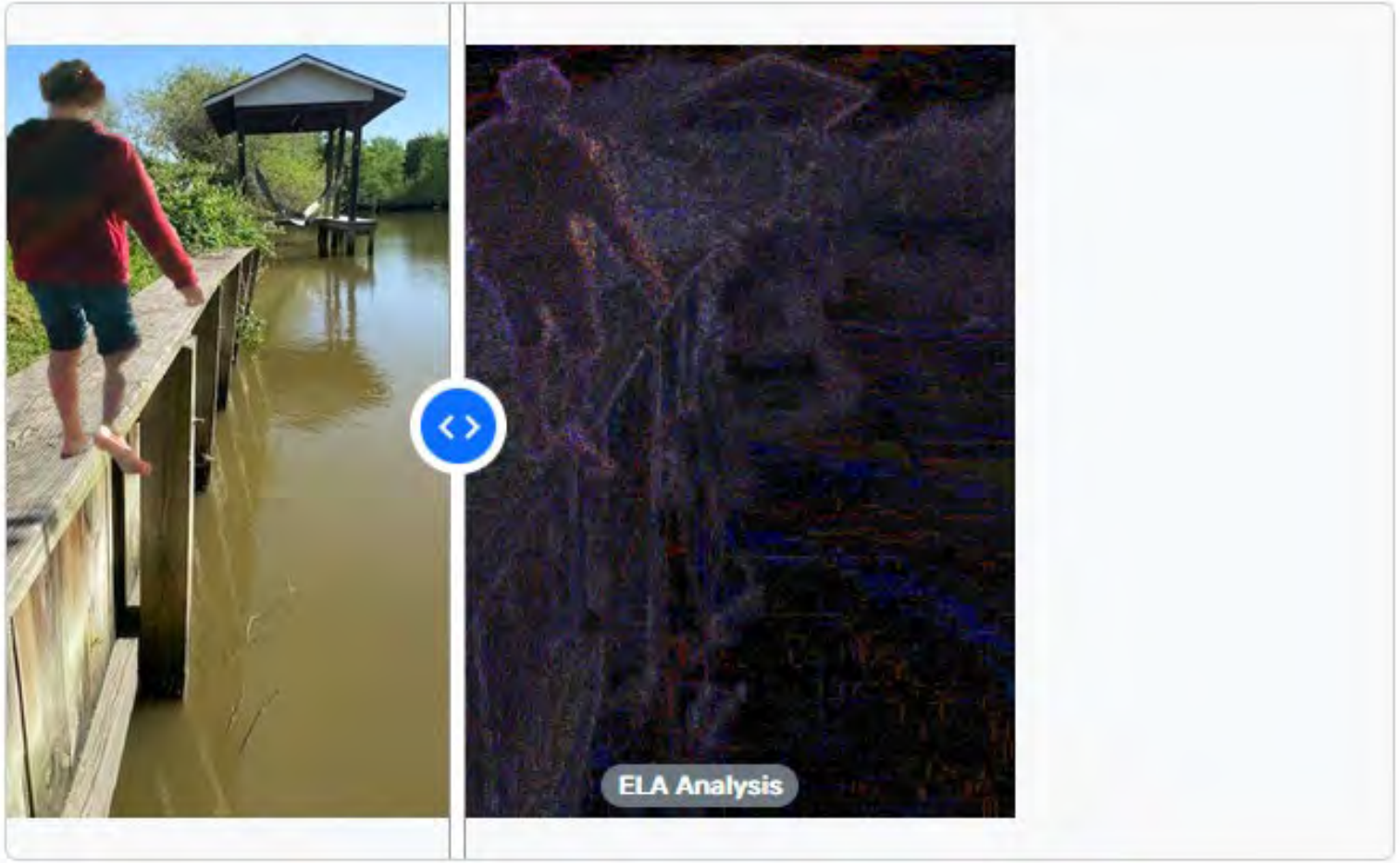
Windows Photo Editor 10.0.10011.16384

Scan another Image

93

FAKE IMAGE DETECTOR TEST 2

www.fakeimagedetector.com



Looks like **Computer Generated** or **Modified** image

Scan another Image

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94

FAKE IMAGE DETECTOR TEST 3

www.fakeimagedetector.com

Looks like **Computer Generated** or **Modified** image

Scan another Image

Note: Uploaded images are automatically removed from the server every hour.

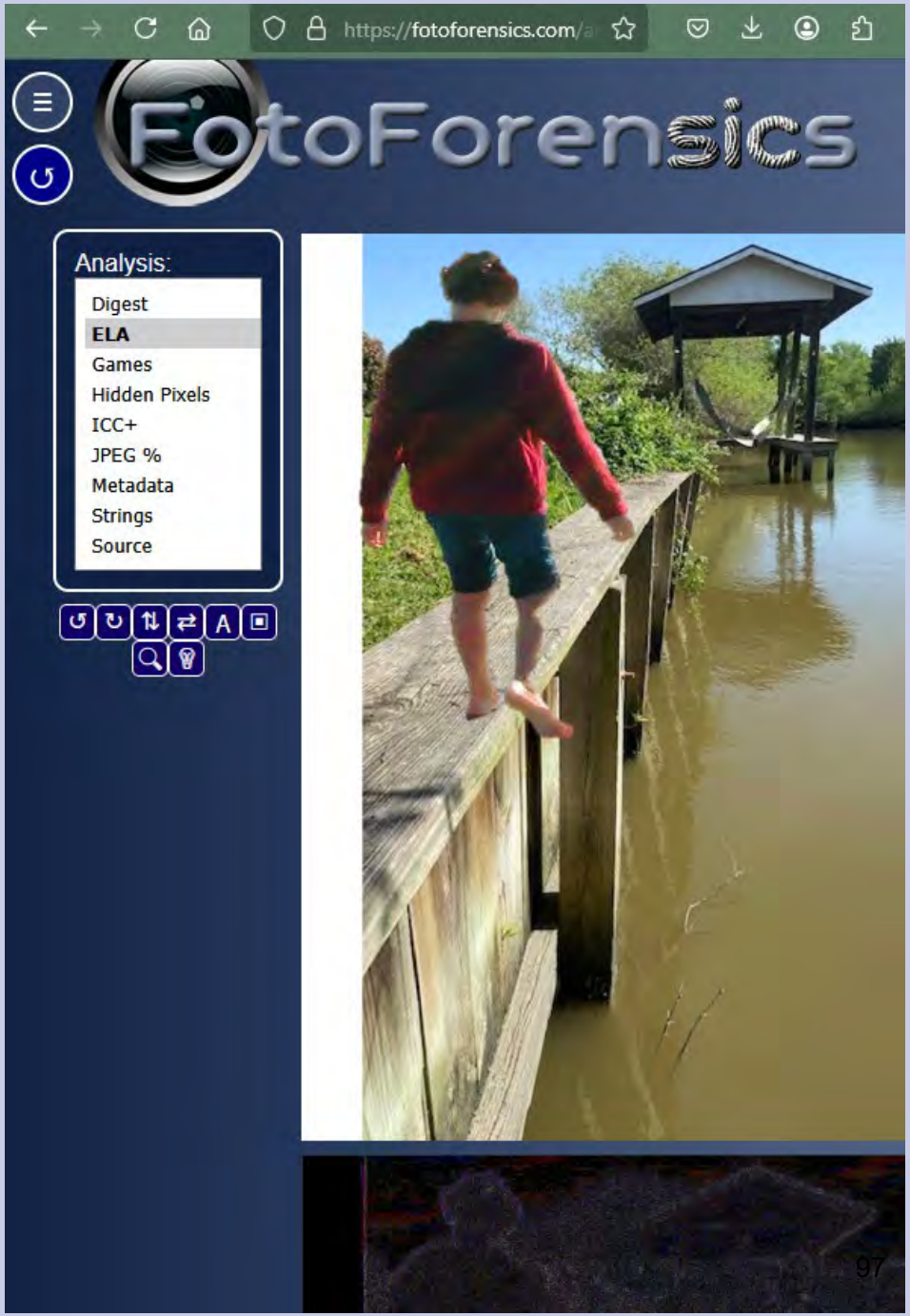
95

FAKE IMAGE DETECTOR TEST 4

www.fakeimagedetector.com

FOTOFORENSICS

www.fotoforensics.com



FOTOFORENSICS TEST 1

Add to your search

All | Products | Homework | Visual matches | Exact matches | About this image | Feedback

ⓘ Results for people are limited

LexVisio

Crypto Expert, inter alia — Dorothy Haraminac, CFE, MAF...

Association of Divorce Fin...

2023 Speaker Information - Association of Divorce Financi...

See exact matches  ›

GOOGLE IMAGE SEARCH

https://images.google.com/

2 results

Searched over **73.4 billion images** in 0.6 seconds for: **975864.JPG**

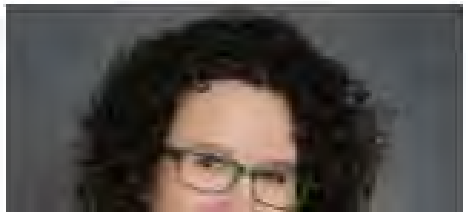
Sort by best match

Filter by website / collection

annualconsultantsconference.com

40Under402019/index.php - First found on Dec 6, 2019

Filename: Dorothy-Haraminac.JPG - (288 x 432, 22 kB)



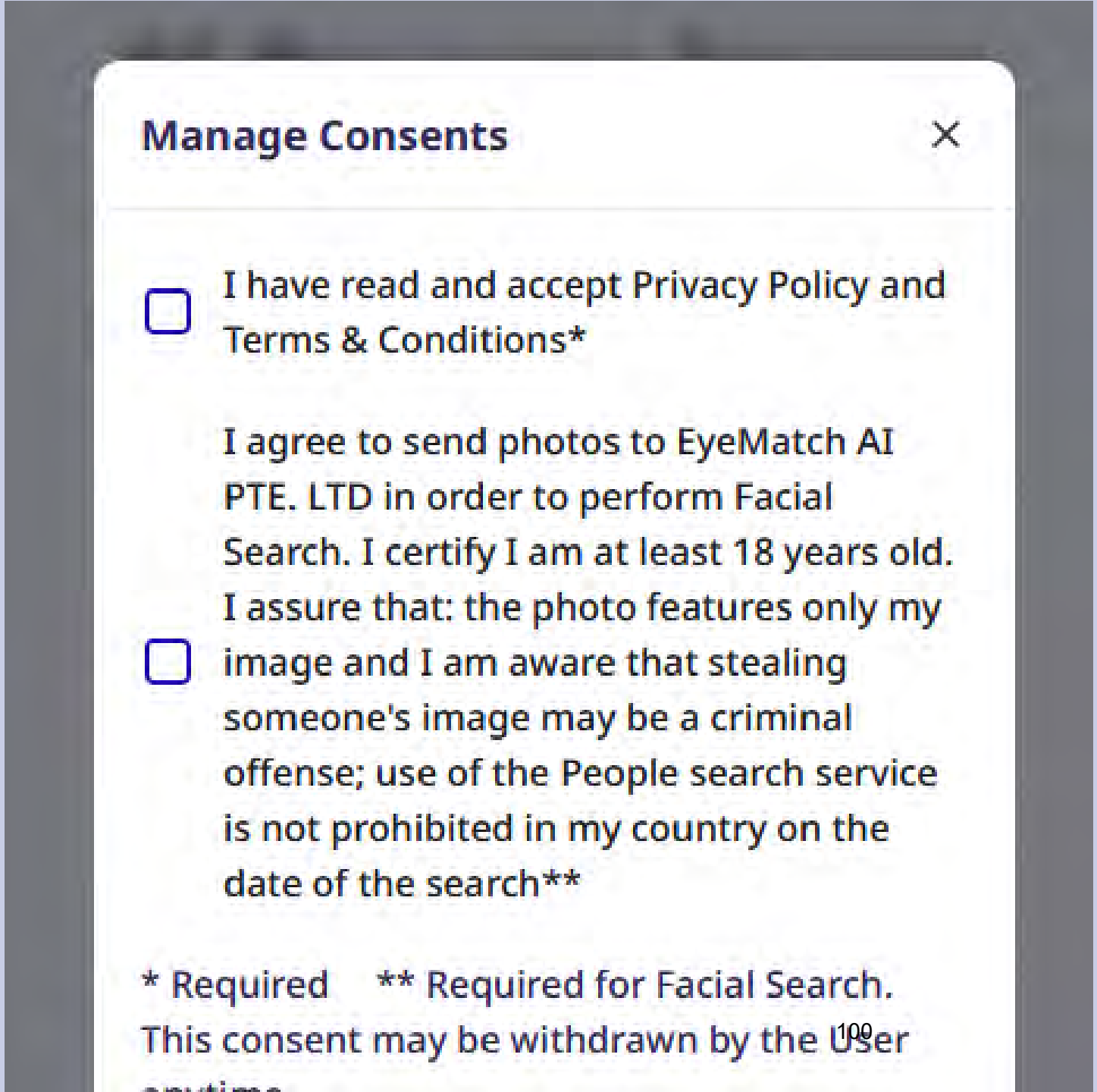
jurispro.com

expert/dorothy-haraminac-5191 - First found on Aug 29, 2019

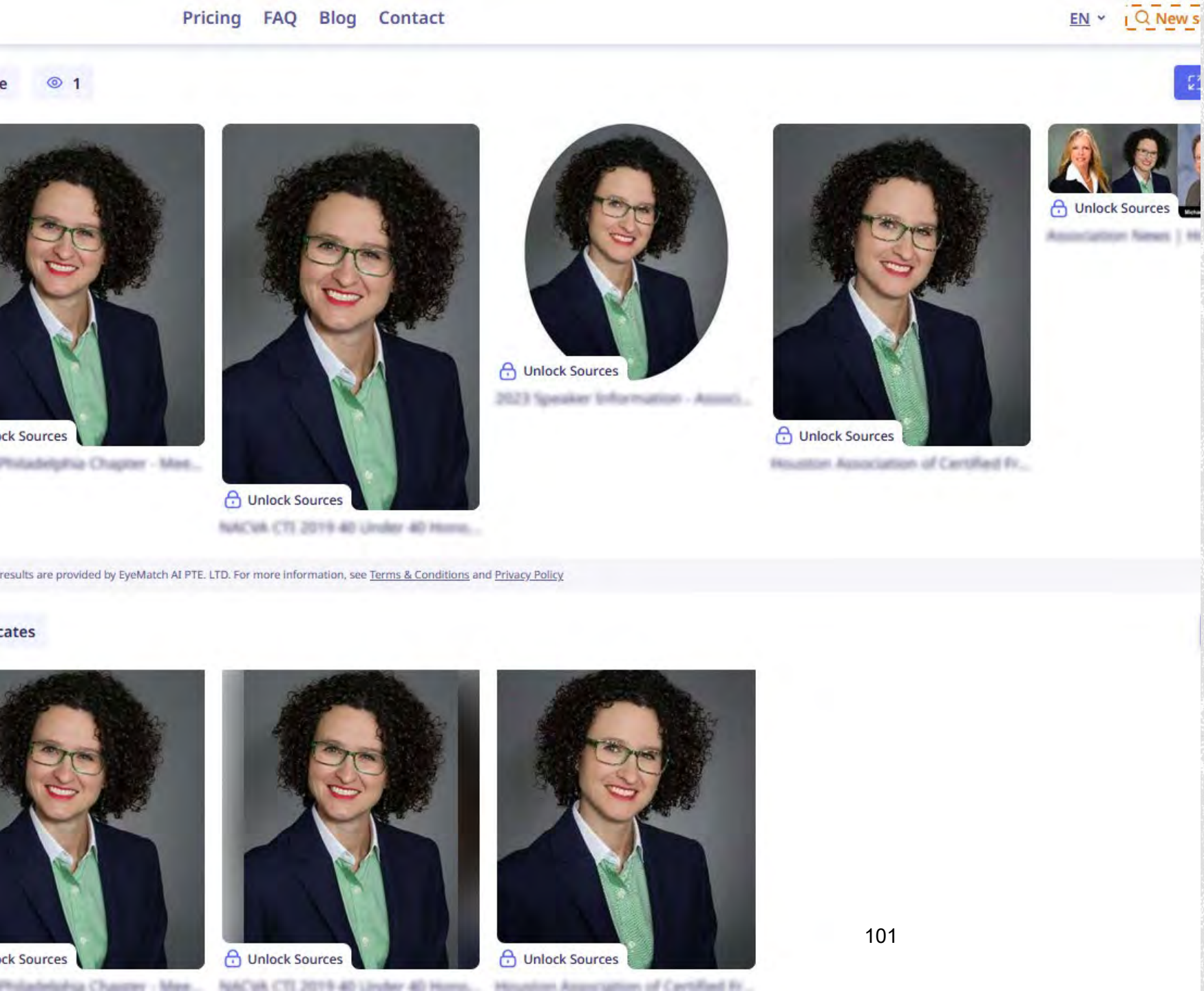
Filename: user_5191.jpg - (2400 x 2400, 896.2 kB)

TINEYE IMAGE SEARCH

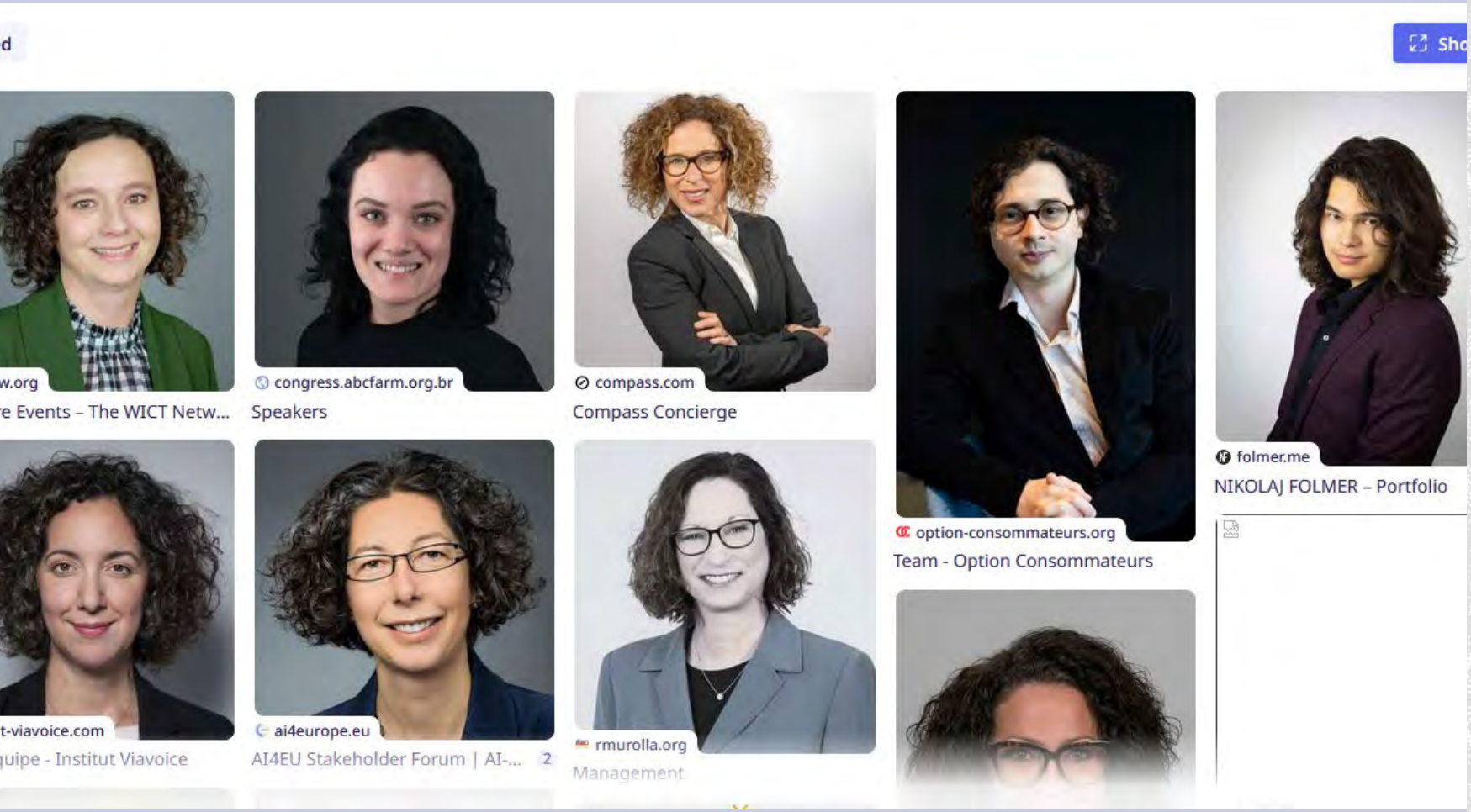
https://tineye.com/


Manage Consents
I have read and accept Privacy Policy and Terms & Conditions*
I agree to send photos to EyeMatch AI PTE. LTD in order to perform Facial Search. I certify I am at least 18 years old. I assure that: the photo features only my image and I am aware that stealing someone's image may be a criminal offense; use of the People search service is not prohibited in my country on the date of the search**
* Required ** Required for Facial Search.
This consent may be withdrawn by the User

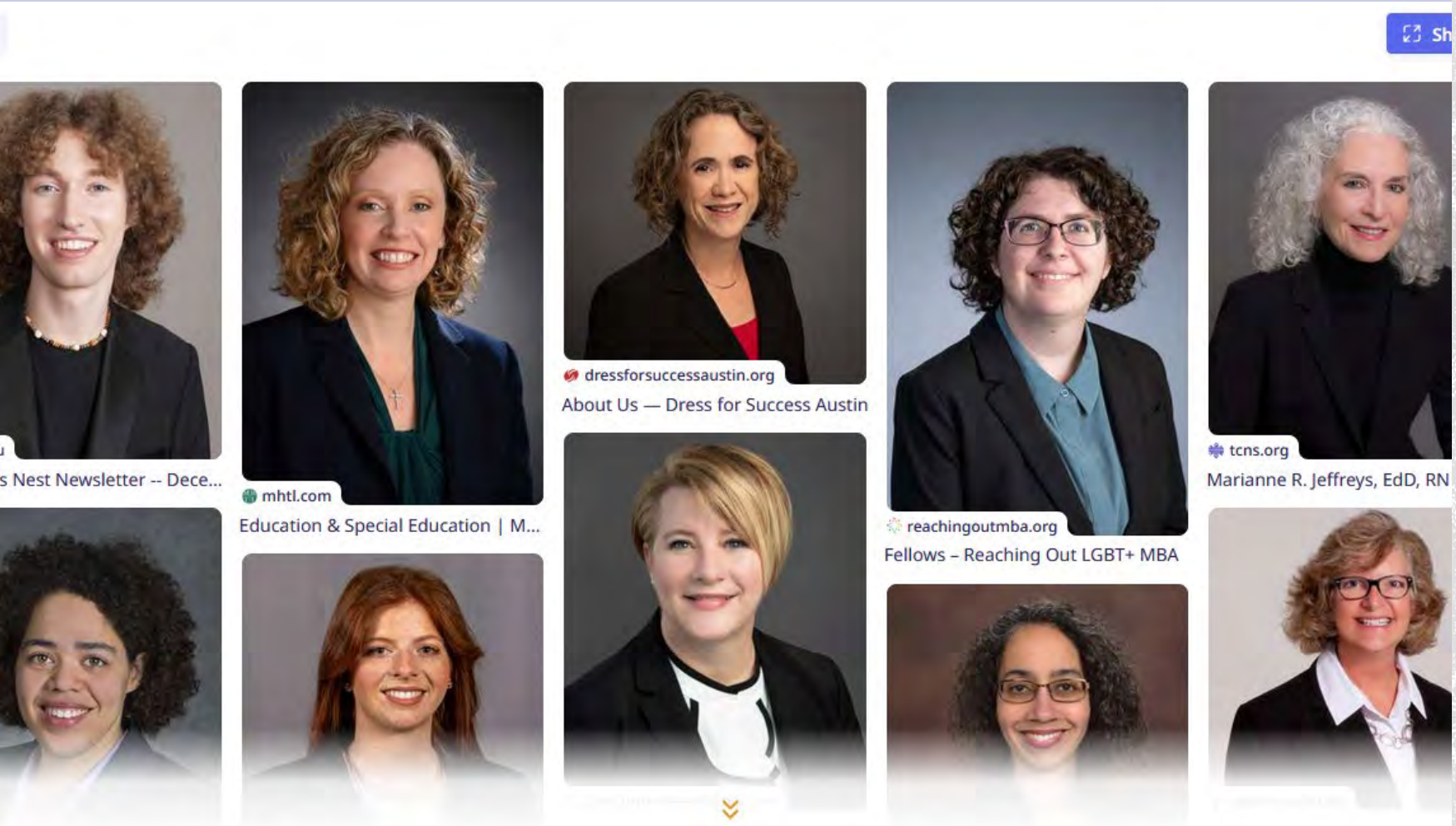
LENSO.AI



LENSO.AI TEST 1



LENSO.AI TEST 1 "RELATED"



LENSO.AI TEST 1 "SIMILAR"

WHAT A WASTE OF TIME! EXACTLY.

- "Millions of images." (*millions is not a lot*)
- "We use advanced data detection methods."
- "Powered by AI."
- "Algorithmic multi-layer fault detection."
- "Words smashed together so you buy/use."

Reliable image verification is a complex digital forensics process.

MIT ON DEEP FAKE DETECTION:

1. Pay attention to the face. High-end DeepFake manipulations are almost always facial transformations.
2. Pay attention to the cheeks and forehead. Does the skin appear too smooth or too wrinkly? Is the agedness of the skin similar to the agedness of the hair and eyes? DeepFakes may be incongruent on some dimensions.
3. Pay attention to the eyes and eyebrows. Do shadows appear in places that you would expect? DeepFakes may fail to fully represent the natural physics of a scene.
4. Pay attention to the glasses. Is there any glare? Is there too much glare? Does the angle of the glare change when the person moves? Once again, DeepFakes may fail to fully represent the natural physics of lighting.
5. Pay attention to the facial hair or lack thereof. Does this facial hair look real? DeepFakes might add or remove a mustache, sideburns, or beard. But, DeepFakes may fail to make facial hair transformations fully natural.
6. Pay attention to facial moles. Does the mole look real?
7. Pay attention to blinking. Does the person blink enough or too much?
8. Pay attention to the lip movements. Some deepfakes are based on lip syncing. Do the lip movements look natural?

https://www.media.mit.edu/projects/detect-fakes/overview/

TL;DR MIT ON DEEP FAKE DETECTION:

- Facial movement weirdness?
- Aging is inconsistent?
- Eye and eyebrow shadows make sense?
- Weird glare on the glasses?
- Facial hair weirdness?
- Facial moles stay in one place?
- Blinking too much, too little, too slow, too fast?
- Lip movements match the words?

https://www.media.mit.edu/projects/detect-fakes/overview/[106]

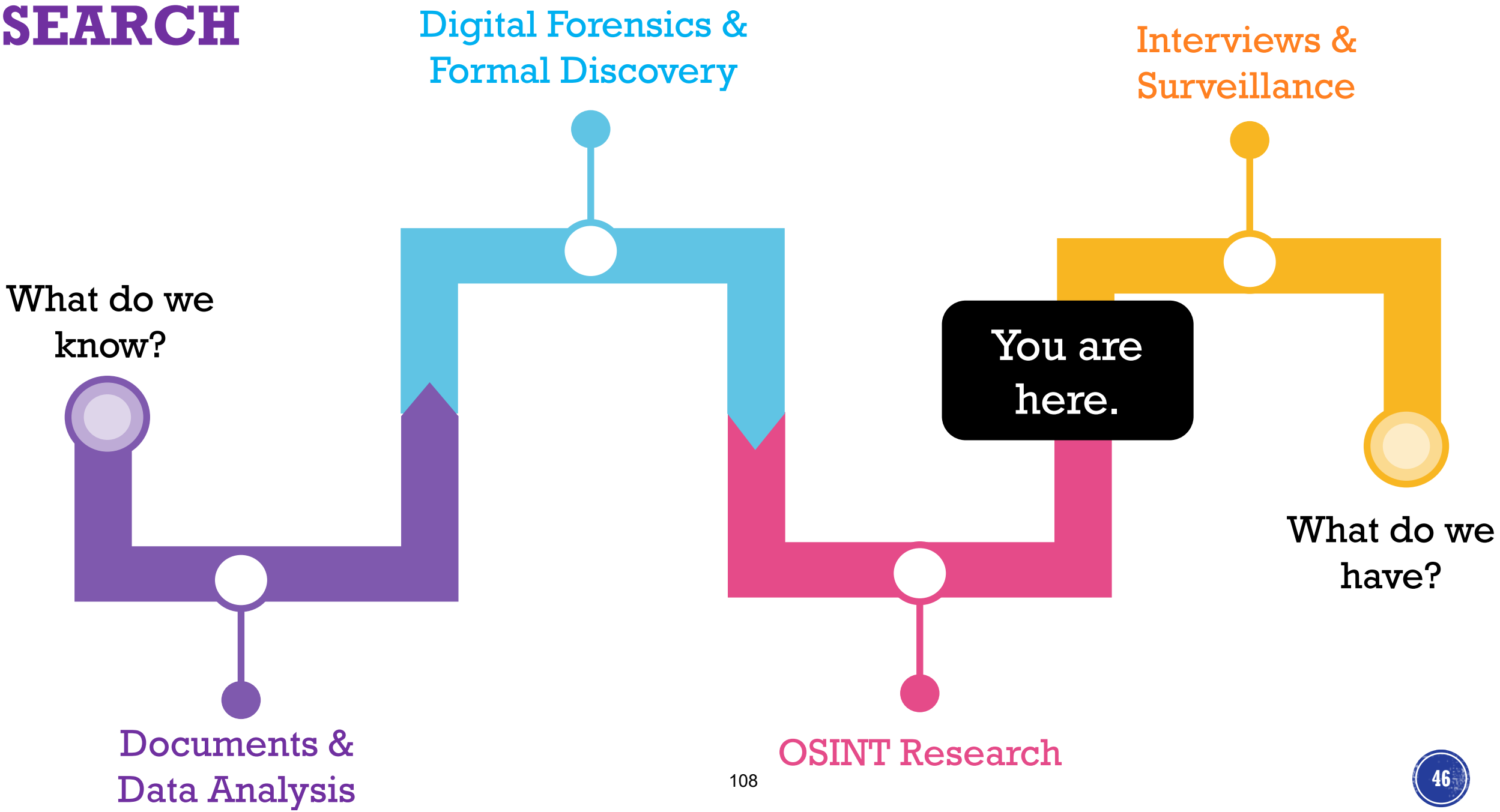
TL;DR MIT ON DEEP FAKE DETECTION:

AI doesn't recreate movement, lighting, and changes in texture very well (yet).

Detection techniques don't work well if you actually look weird.

Detection techniques don't work well on ventriloquists.

SEARCH


Digital Forensics & Formal Discovery
Interviews & Surveillance
What do we know?
You are here.
What do we have?
Documents & Data Analysis
OSINT Research

INTERVIEWS & SURVEILLANCE

- Litigation Version: Admissions & Interrogatories and Depositions
- PI Version: Stakeouts & Interviews
- Playing the match game.

OLDER STATEMENTS

- Does this match what they said before?
- Does what was posted before match what they're saying now?

Archive.org (the wayback machine)

- Good tool for business websites, not great for social media.

https://web.archive.org/web/20150330110301/http://www.vw....

http://www.vw.com/features/clean-diesel/ Go FEB MAR MAY

229 captures
29 Apr 2014 - 21 Jan 2019

2014 30 2015 2016

About this capture

Das Auto.

MODELS

FIND A MATCH

BUILD YOUR OWN

FIND A DEALER

FAVORITES

View key fuel efficiency and comparison info

TDI® Clean Diesel

A whole family of front-runners.

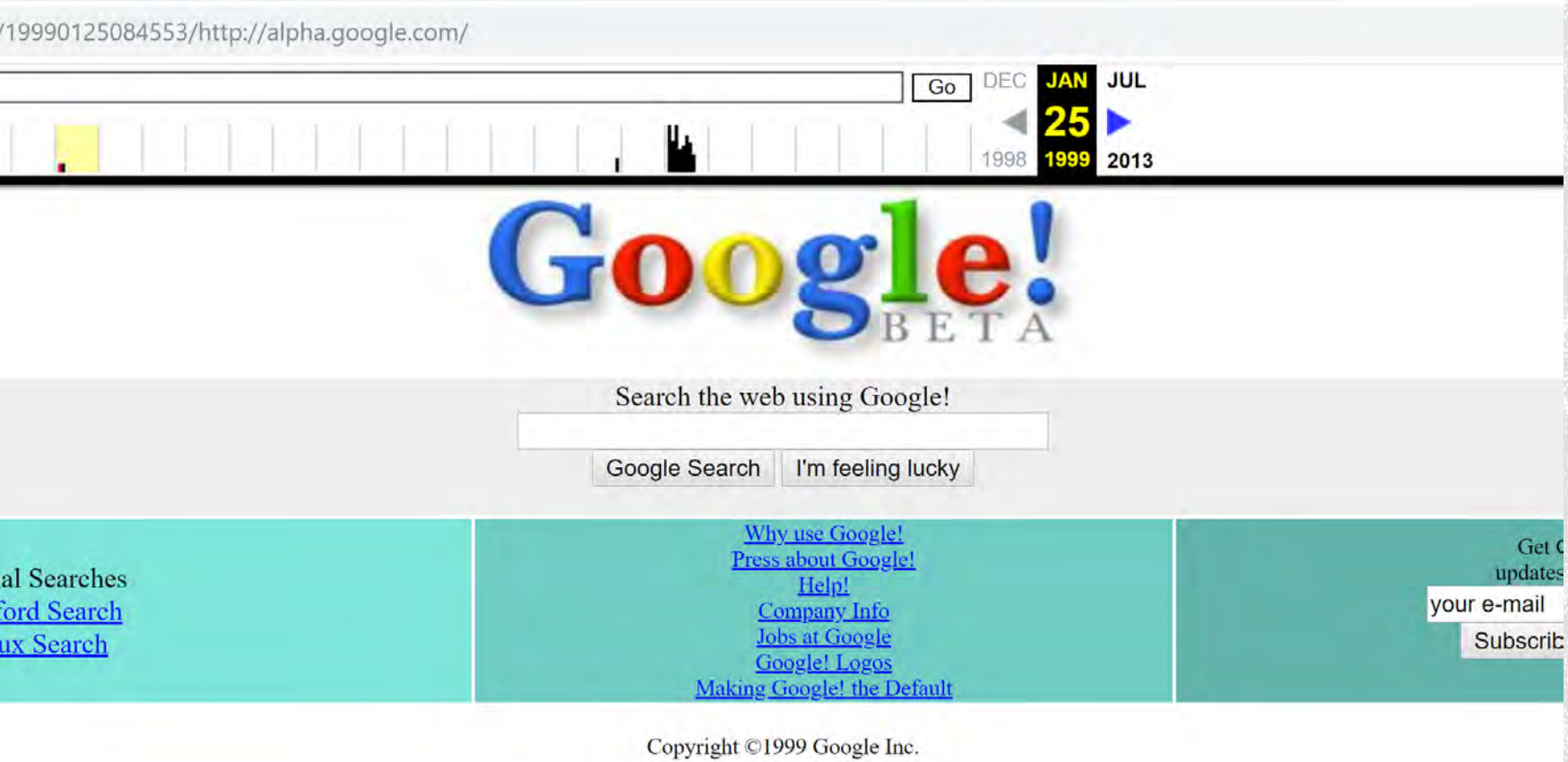
111

ARCHIVE.ORG VW.COM

The Clean Diesel advertisements and emissions reports can still be found on archive.org.

OSINT evidence was used against Volkswagen to prove they advertised it this way, to prove they knew about the emissions, and to prove they covered it up.

VW may pay about $5 Billion in fines in addition to $15 Billion in individual lawsuits and class-actions.

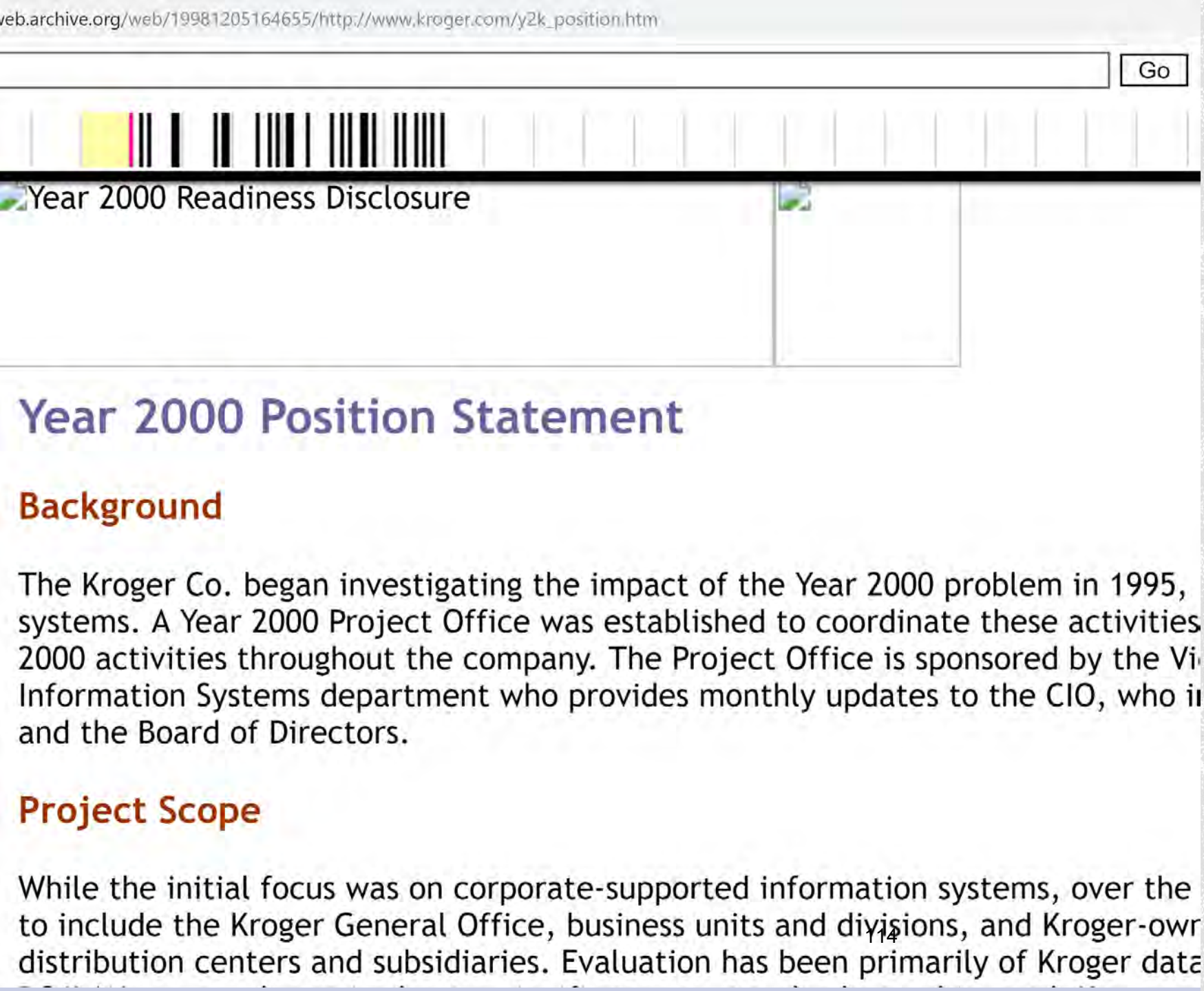


GOOGLE.COM

As of January 25, 1999

DELL.COM

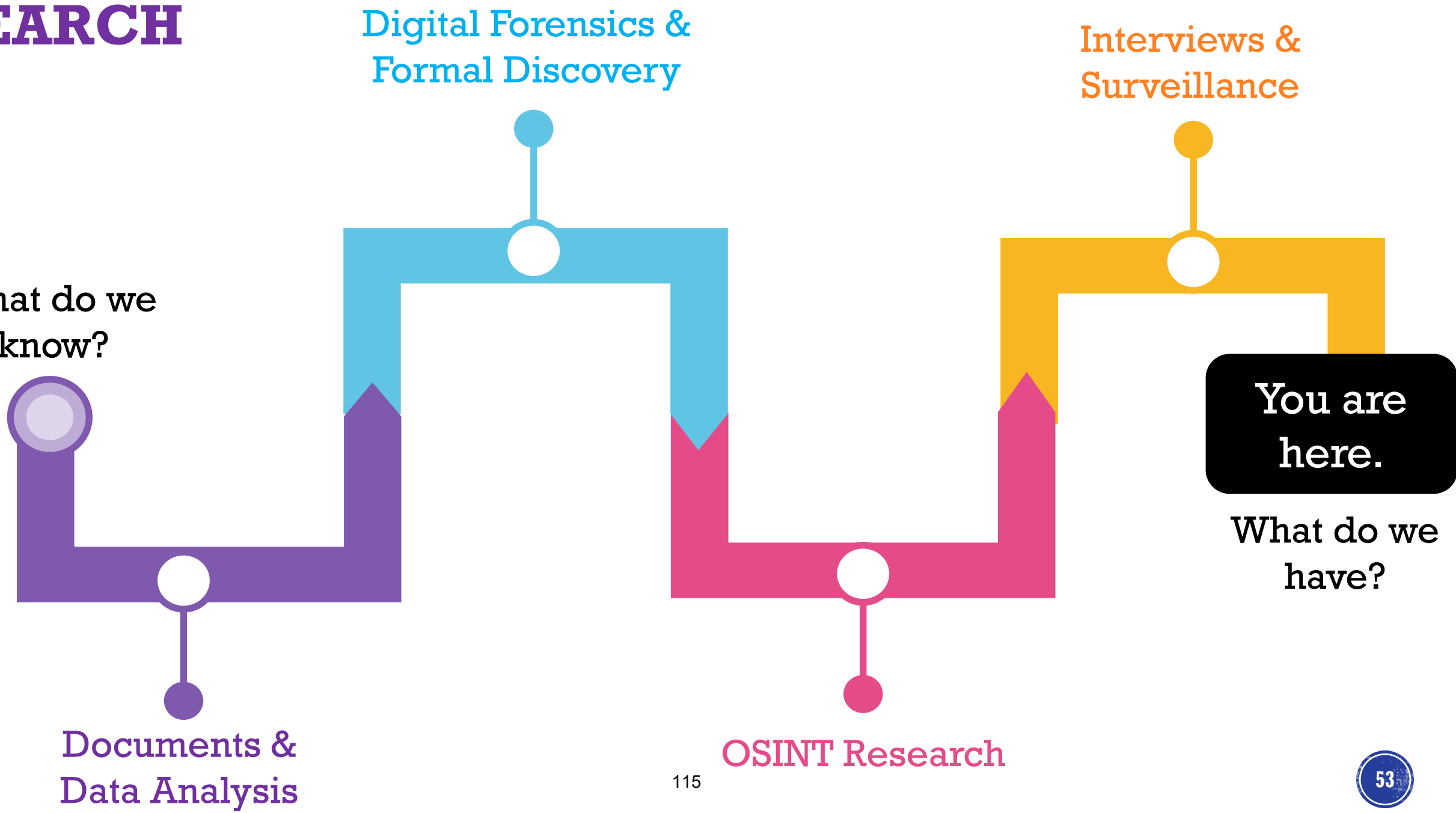
As of December 21, 1996



KROGER.COM

As of December 5, 1998

SEARCH


Digital Forensics & Formal Discovery
Interviews & Surveillance
What do we know?
You are here.
What do we have?
Documents & Data Analysis
OSINT Research

You are here.

1 SEARCH

DISCOVERY 2

3 IDENTIFICATION

SECURITY 4

5 SEIZURE

IDENTIFICATION

Obtaining the OFFICIAL record.

Existence

Transactions

Behavior

REASONS TO GATHER OSINT

Existence

- Who is it?
- What do they own?
- Who else is connected?

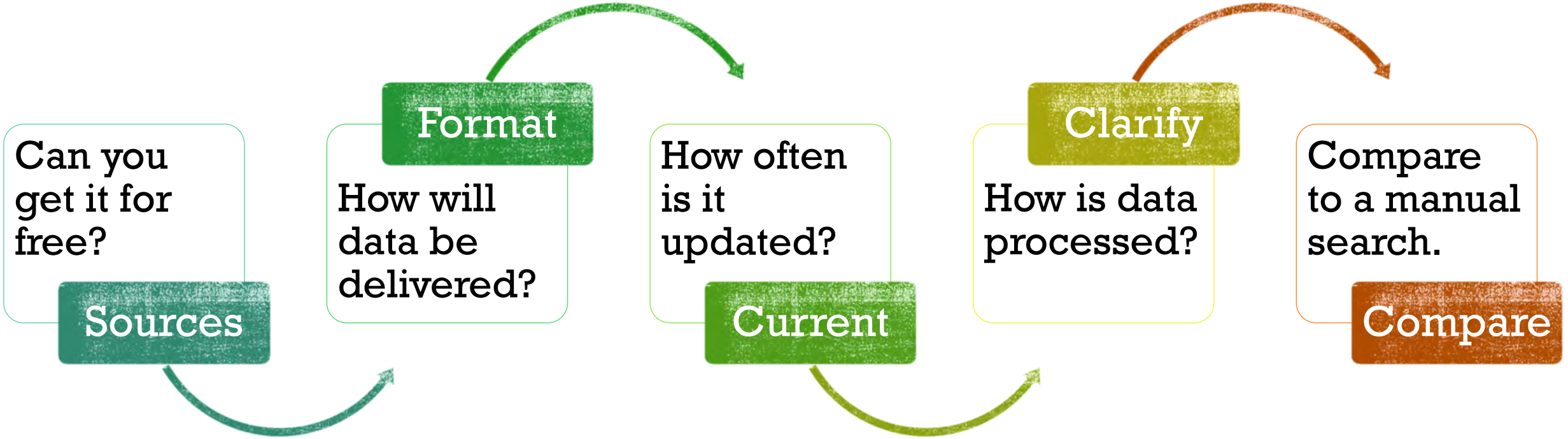
Transactions

- Do they pay bills?
- Do they cheat contracts?
- Do they pay fines?

Behavior

- Do they commit crimes?
- Do they counter-sue?
- Call an expert.

BEFORE YOU BUY



SEARCH: DATA AGGREGATORS

- Property Records
  - Real Estate
  - Boats
  - Planes

- Public Records+
  - TLO, Tracers, Delvepoint, IDI, IRB, and more.

- Social Media
  - Skopenow
  - Beware puppets
  - Beware free

- Entity Records
  - SOS/Comptroller
  - Offshore Leaks (icij.org)

- Entity Records+
  - Opencorporates
  - Clear (Reuters)
  - Accurint (Lexis)

- Cryptocurrency
  - Qlue, Elliptic, Breadcrumbs, Chainalsyis, Leaguewell, etc.

OFFICIAL RECORDS FOR EXISTENCE

Registration	SOS.state.tx.us./corp/sosda/index.shtml
International	investigativedashboard.org/databases/
Comptroller	Mycpa.cpa.state.tx.us/coa
IRS Tax-Exempt	Apps.irs.gov/app/eos/
Public Co.'s	Sec.gov/edgar.shtml

OFFICIAL RECORDS FOR CREDIT

Loan or Lien	Sos.state.tx.us/ucc/index.shtml
Bankruptcy Filings	Pacer.gov
Public Disclosures	Sec.gov/edgar.shtml

Such as stock or token issuance.

OFFICIAL RECORDS FOR CIVIL ISSUES

NOT AGGREGATED

Courts	Every county, district, and state
Property	County appraisal districts and deeds
Insurance	State Worker's Comp tdi.Texas.gov/wc/employer/ coverage.html

OFFICIAL RECORDS FOR ~~CRIMINAL~~ ISSUES

poor behavior

OFAC x3	sanctionssearch.ofac.treas.gov
Fines	Regulated Industry Databases
Actions	Certification Issuer Databases
Foreign	Uscis.gov

MORE FINES AND ACTIONS

If there's an acronym, there's a list.

REGISTRATION, FINES, & ACTIONS

Financial	• Occ.treas.gov, FinCEN.gov, Irs.gov
Banks	• federalreserve.gov, aba.com
Safety	• EPA.gov, osha.gov
Insurance	• oig.hhs.gov, tdi.Texas.gov
Marine	• apps.tpwd.state.tx.us/tora/home.faces

Note: This slide has not been updated to 2025 recent changes in the U.S. government.[127]

REGISTRATION, FINES, & ACTIONS

Trading	• cftc.gov, brokercheck.finra.gov, msrb.org
Energy	• ferc.gov, rrc.state.tx.us
Food	• fda.gov
Aviation	• faa.gov, registry.faa.gov/aircraftinquiry/
Phone, TV, Net	• fcc.gov

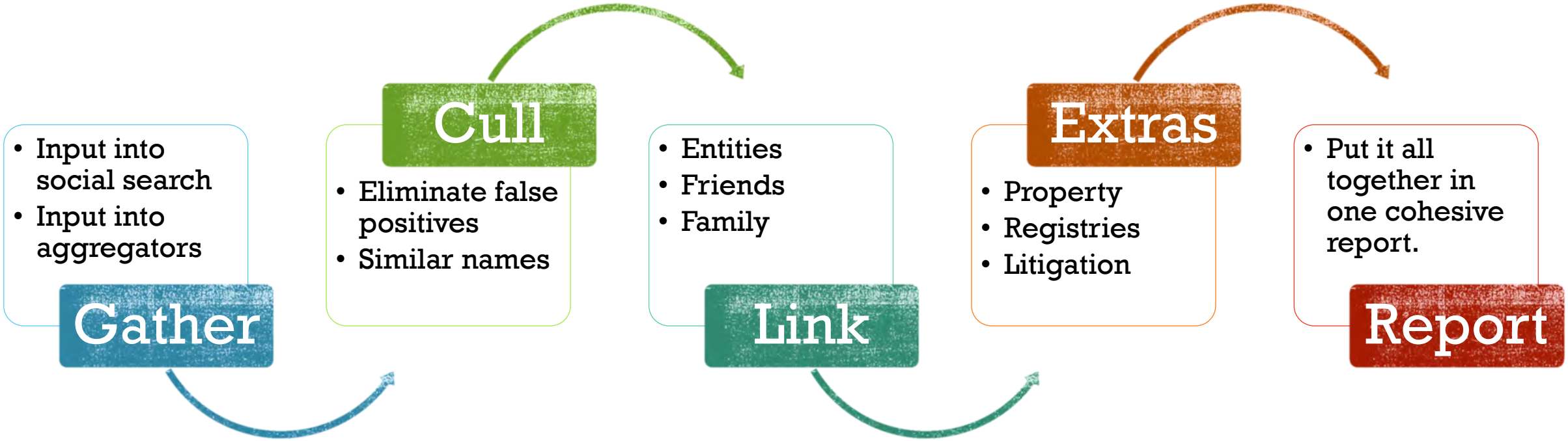
Note: This slide has not been updated to 2025 recent changes in the U.S. government.[128]

REGISTRATION, FINES, & ACTIONS

Real Estate	• Nar.realtor, individual state
Lawyers	• Americanbar.org, state, county, city bars
Doctors	• Tmb.state.tx.us
Investigators	• Dps.Texas.gov, internal affairs divisions

Note: This slide has not been updated to 2025 recent changes in the U.S. government.

ASSET TRACING WORKFLOW



SECURITY & SEIZURE

ASSET SEIZURE IS A SEPARATE ENDEAVOR AND TYPICALLY REQUIRES LICENSURE

SECURITY

- Notifications to the entity storing the assets
  - Account Providers
  - Mom's House
  - The Repair Shop
  - Employers

SEIZURE

- Loading it up.
- Taking control.
- Restricting access to others.
- May need a repo guy.

DIFFICULT TO SEIZE

Considerations for settlement to include a value and punitive clauses.

CRYPTOCURRENCY

- Held in wallets - these are controlled by an individual and are **not seizable** without the access mechanism (seed words, etc.)
- Held by exchanges not in the U.S. - not typically responsive
- Held by exchanges in the U.S. – may respond, but may also be slow to comply and may provide notice to the subject so they have time to move assets

INTANGIBLES

- How will you prove that a business earned revenue?
- What stops the business from closing and spinning up as a new entity unbridled by your claim?
- How do you seize a patent? Pursue infringement = more costs.

QUESTIONS?

Dorothy Haraminac

dh@ybr.solutions

I. INTRODUCTION

A. Overview of Generative AI

1. Definition: Generative Artificial Intelligence (AI) refers to systems capable of creating content, such as text, images, or music, by learning from existing data.

2. Relevance to the legal field: AI's ability to process and generate human-like text has significant implications for legal research, document drafting, and client communication.

B. Purpose of the Presentation

1. To explore practical applications of generative AI in the practice of law.

2. To discuss ethical considerations and compliance with professional standards.

II. THE DUAL NATURE OF AI: SYSTEMIC AND DISRUPTIVE FORCES

A. Systemic Forces

1. Enhance existing processes: AI improves efficiency in legal research and document management.

2. Client expectations: Meeting modern clients' desires for swift and accurate services.

B. Disruptive Forces

1. Changing traditional practices: AI introduces new methods for drafting wills and trusts.

2. Market dynamics: Potential to shift the competitive landscape among law firms.

III. RAPID ADOPTION AND INTEGRATION OF AI

A. Adoption Rates

ChatGPT reached 100 million users within two months, showcasing the rapid acceptance of AI technologies.

B. Implications for Legal Professionals

Necessity for continuous learning to keep pace with technological advancements.

IV. PRACTICAL APPLICATIONS OF GENERATIVE AI IN THE PRACTICE OF LAW

A. Document Drafting and Review

1. Automated generation of legal documents.

2. AI-assisted proofreading to ensure accuracy and consistency.

B. Legal Research

Efficient analysis of statutes, regulations, and case law pertinent to the practice of law.

C. Client Interaction

Developing AI-driven chatbots to answer common client inquiries.

V. ETHICAL CONSIDERATIONS AND BAR ASSOCIATION GUIDELINES

A. Competence and Supervision

Lawyers must maintain a reasonable understanding of AI tools and supervise their use to ensure compliance with ethical standards.

B. Confidentiality

Ensure AI platforms protect client information and do not inadvertently disclose sensitive data.

C. Candor and Accuracy

Verify AI-generated content for accuracy to uphold the duty of candor toward tribunals.

D. Recent Guidelines

1. Texas Bar Association.

Emphasizes the lawyer's responsibility to understand AI's impact on their practice and to ensure filings are truthful and accurate.

2. Pennsylvania and Philadelphia Bar Associations.

Highlight the importance of competence, confidentiality, and supervision when using AI tools.

VI. ENHANCING AI INTERACTIONS: THE RISEN FRAMEWORK

A. **Role**: Define the AI's role to tailor responses appropriately.

B. **Instructions**: Provide clear directives to guide AI output.

C. **Steps**: Outline specific steps for the AI to follow in generating content.

D. **End Goal**: Clarify the desired outcome to align AI responses with objectives.

E. **Narrowing**: Specify constraints to focus AI outputs effectively.

VII. PREPARING FOR THE FUTURE: RECOMMENDATIONS FOR LEGAL PRACTITIONERS

A. Continuous Education

Engage in ongoing learning about AI advancements and their implications for legal practice.

B. Risk Management

Develop protocols to assess and mitigate risks associated with AI use.

C. Client Communication

Inform clients about the use of AI in their matters and obtain consent when necessary.

VIII. CONCLUSION

A. Embracing AI Responsibly

Leverage AI to enhance legal services while adhering to ethical obligations.

B. Commitment to Excellence

Strive for a balance between technological innovation and the foundational principles of legal practice.

IX. APPENDICES

A. Mitchell, Greg, "The Role of Legal AI in Family Law," AI Lawyer, February 19, 2024, *available at* https://ailawyer.pro/blog/the-role-of-legal-ai-in-family-law.

This article discusses how AI can expedite research, enhance decision-making, and predict case outcomes in family law cases.

B. Ingram, Shelly M., "Artificial Intelligence and Family Law: A Cautionary Note," May 21, 2024, *available at* https://www.shellyingramlaw.com/artificial-intelligence-in-law/2024/05/21/artificial-intelligence-and-family-law-a-cautionary-note/.

This piece highlights the potential risks of using AI in divorce, child custody, and property division cases, emphasizing the importance of attorney oversight.

C. Jochner, Michele M., "Family Law Wrestles with Ethics While Embracing Technology," Best Lawyers, December 16, 2024, *available at* https://www.bestlawyers.com/article/family-law-wrestles-with-ethics-embracing-technology/6237.

This article explores the ethical and legal questions arising from the integration of generative AI in family law practice.

D. Smith, Rebekah, "How Artificial Intelligence Is Impacting Family Law," GBQ, October 9, 2024, *available at* https://gbq.com/how-artificial-intelligence-is-impacting-family-law/#:~:text=Human%20touch%20%E2%80%93%20AI%20lacks%20the,involved%20in%20family%20law%20matters.

This resource examines the benefits of AI in family law, including document review automation and scheduling assistance, while also addressing potential challenges.

E. Steele, Jonathan D., "The Rise of AI in Family Law: Ethical and Legal Implications," LinkedIn, March 3, 2025, *available at* https://www.linkedin.com/pulse/rise-ai-family-law-ethical-legal-implications-jonathan-steele-npkge/.

This article delves into how AI can analyze case law and statutes, aiding lawyers in identifying relevant precedents and projecting likely outcomes.

F. Harris, Rich, "A.I. & The Future of Family Law: An Exciting, Yet Dangerous Crossroads," June 29, 2023, *available at* https://www.harrisfamilylaw.com/blog/2023/june/a-i-the-future-of-family-law-an-exciting-yet-dan/.

This piece discusses how AI-powered apps facilitate various aspects of family law but also warns of potential dangers without proper attorney guidance.

G. Ho, Don, "Ethical Considerations for Attorneys Using AI in Their Practice," CEB, June 10, 2024, *available at* https://www.ceb.com/ethical-considerations-for-

attorneys-using-ai-in-their-practice/#:~:text=Any%20AI%20system%20that%20is,are%20a%20must%20as%20well.

This article outlines the ethical duties lawyers must uphold when integrating AI into their practice, including promoting fairness, accountability, confidentiality, and transparency.

H. "ABA Issues First Ethics Guidance on a Lawyer's Use of AI Tools," July 29, 2024, *available at* https://www.americanbar.org/news/abanews/aba-news-archives/2024/07/aba-issues-first-ethics-guidance-ai-tools/.

The American Bar Association's Formal Opinion 512 identifying ethical issues and offering guidance for lawyers using generative AI tools.

I. "Artificial Intelligence in Family Law Practice: Exploring the Applications, Ethical Considerations, Risk Management," Strafford, conducted February 5, 2025, *available for purchase at* https://www.straffordpub.com/products/artificial-intelligence-in-family-law-practice-exploring-the-applications-ethical-considerations-risk-management-2025-02-05.

A CLE webinar guiding counsel through recent AI innovations in family law practice, discussing legal implications and offering best practices for integration.

J. "AI and Law: What are the Ethical Considerations?" Clio, *available at* https://www.clio.com/resources/ai-for-lawyers/ethics-ai-law/.

This resource discusses the ethical considerations lawyers must account for when using AI technology, including assessing biases in algorithms.

KENTUCKY BAR ASSOCIATION

Ethics Opinion KBA E-457

Issued: March 15, 2024

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rule and comments, SCR 3.130 (available at http://www.kybar.org/237), before relying on this opinion.

Subject: **The Ethical Use of Artificial Intelligence ("AI") in the Practice of Law**

Question #1: **Like other technological advances, does an attorney have an ethical duty to keep abreast of the use of AI in the practice of law?**

Answer: **Yes.**

Question #2: **Does an attorney have an ethical duty to disclose to the client that AI is being used with respect to legal matters entrusted to the attorney by the client?**

Answer: **No, there is no ethical duty to disclose the rote use of AI generated research for a client's matter unless the work is being outsourced to a third party; the client is being charged for the cost of AI; and/or the disclosure of AI generated research is required by Court Rules.**

Question #3: **If the effect of an attorney's use of AI reduces the amount of attorney's time and effort in responding to a client matter must the lawyer consider reducing the amount of attorney's fees being charged the client when appropriate under the circumstances?**

Answer: **Yes.**

Question #4: **May an attorney charge the client for expenses related to using AI in the legal practice?**

Answer: **If the client agrees in advance to reimburse the attorney for the attorney's expense in using AI, and that agreement is confirmed in writing, then yes, the attorney may charge for those expenses. However, similar to the lawyer's cost of general overhead expenses, the costs of AI training and keeping abreast of AI developments should not be charged to clients.**

Question #5: **If an attorney utilizes AI in the practice of law, is the attorney under a continuing duty to safeguard confidential client information?**

Answer: **Yes.**

Question #6: **Does an attorney using AI have an ethical duty to review court rules and procedures as they relate to the use of AI, and to review all submissions to the Court that utilized Generative AI to confirm the accuracy of the content of those filings?**

Answer: **Yes.**

Question #7: **Does an attorney serving as a partner or manager of the law firm that uses AI, and/or supervising lawyers and/or nonlawyers in the law firm who are using AI, have an ethical responsibility of ensuring that policies and procedures regarding AI are in place, and that training has taken place to assure compliance with those policies?**

Answer: **Yes.**

REFERENCES

SCR 3.130 [Kentucky Rules of Professional Conduct] 3.130(1.1) & cmt. (2) & (6); (1.4); (1.5(a) & (b)); (1.6); (1.8); (1.9(c)(l)); (3.1); (3.3); (4.1); (5.1(b)); (5.8); and (8.4).

Cases:

In re Burghoff, 374 B.R. 681 (Bankr. S.D. Iowa 2007) 374 B.R. 681; *Mata vs. Avianca, Inc.*, 2023 U.S. Dist. LEXIS 108263, 2023 WL 4114965 (S.D.N.Y. June 22, 2023).

Ethics Opinions

KBA E-446 (2018); KBA E-403 (1998); KBA E-427 (2007); KBA E-437 (2014); and KBA E-442 (2017); ABA Formal Ethics Op. 08-451 (2008); ABA Formal Opinion 93-370 (1993); N.C. Ethics Op. 2007-12 (2008); Ohio Ethics Op. 2009-6 (2009); Va. Ethics Op. 1850 (2010); Florida Bar Ethics Opinion 24-1 (2024).

Miscellaneous

"2023 Year-End Report of the Federal Judiciary" by John G. Roberts, Jr., Chief Justice of the U.S. Supreme Court; American Bar Association, *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013*; President Joe Biden's Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence dated October 22, 2023.

INTRODUCTION

Artificial intelligence ("AI") is defined as "... the use... of computer systems or machines that have some of the qualities that the human brain has, such as the ability to interpret and produce language in a way that seems human, recognize or create images, solve problems, and learn from data supplied to them...."[1] AI is now the latest form of technology that may revolutionize the practice of law. Whether AI is utilized by machine learning such as Google search, by deep learning with voice

[1] *Cambridge English Dictionary* at "artificial intelligence."

recognition systems named Siri or Alexa, or Generative AI[2] ("GAI") in applications known as ChatGPT, Google Bard or Microsoft Bing, the potential use of AI in the practice of law is unlimited.[3]

As with all technological advances, attorneys are challenged to meet lawyer ethical responsibilities when utilizing a new product and this applies to AI. Whether the attorney is researching relevant case law, reviewing documents, or drafting court pleadings, care must be taken that the attorney understands how AI works, how it may be used responsibly and in conjunction with the Supreme Court Rules of Professional Conduct.[4] As U.S. Supreme Court Chief Justice John G. Roberts, Jr., explained, "(A)ny use of AI requires caution and humility."[5]

The current Rules of Professional Conduct do not specifically address AI, but they do require an attorney to "…keep abreast of the changes in the law and its practice, including the benefits and risks associated with relevant technology."[6] While the use of AI continues to evolve, some of the suggested benefits of AI for lawyers are:

- Streamlining legal research to find relevant case law, statutes, and precedents more quickly;
- Reviewing and analyzing large volumes of documents and summarizing them;
- Automating repetitive tasks to reduce the requirement for extensive manual labor;
- Detecting deception in emails or documents;
- Predicting case outcomes and legal trends based upon historical data;

---

[2] The term "generative" has been found to have two neural networks, a generator, and a discriminator, which are trained simultaneously through a competitive process. The generator creates new data, while the discriminator evaluates whether the generated data is authentic or not. This adversarial training process helps the generator improve over time, creating more realistic and convincing content. However, potential misuse comes into play because generative AI can be used to create deepfakes or other deceptive content.

[3] When ChatGPT was asked to explain how it functions and compares to other AI providers, ChatGPT answered, in general, as follows:
ChatGPT is based on Generative Pre-trained Transformer architecture and is trained using a diverse range of internet text but does not have specific knowledge about the details of individual documents or sources. Other AI providers use different architectures, training datasets, and methods. For example, Google's BERT (Bidirectional Encoder Representations from Transformers) focuses on bidirectional context understanding. Further, ChatGPT is designed for natural language understanding, making it suitable for conversational applications, and content generation. Other AI providers may offer a broader range of services, including image recognition, speech processing, and domain-specific applications. Finally, ChatGPT advises that it has options for users to fine-tune models for specific tasks, while other providers may offer more customization options, allowing developers to fine-tune models for specific use cases.

[4] SCR 3.130 *et seq.*

[5] "2023 Year-End Report of the Federal Judiciary" by John G. Roberts, Jr., Chief Justice.

[6] SCR 3.130(1.1), Comment (6).

- Expediting responses to client inquiries;
- Providing around-the-clock access to legal information and resources;
- Reducing legal expenses to the client due to accelerated research and document preparation.

Although the use of AI in the practice of law is relatively new, certain risks have already become apparent, including but not limited to:

- AI may struggle to grasp complex legal concepts which can produce inaccuracies and misinterpretations;
- AI models trained on biased data may perpetuate biases in the legal decision-making process;
- AI lacks transparency because of its use of AI algorithms which operate as "black boxes" making it difficult to understand how AI arrived at its conclusions;.
- AI's generative training may result in the disclosure of confidential client information;
- AI may provide false information including citations to nonexistent legal "authorities;" and,
- AI may provide duplicative and/or irrelevant materials which may increase discovery production expenses.

The Ethics Committee has issued Ethics Opinions discussing the ever-changing environment of technology and its application to the Rules, and many of these Opinions are applicable to AI.[7] In addition to the guidance provided by these Opinions, we caution lawyers that before using an AI product they review the provider's privacy policies and its disclaimers in handling client and attorney information.

Due to the many concerns surrounding the impact AI has to the ethical requirements of lawyers, the Kentucky Bar Association formed a Task Force on Artificial Intelligence and the Task Force is considering a lawyer's responsible use of AI. Until the Task Force's work is completed, and years of usage have passed, lawyers should be mindful that it may be difficult or impossible to answer many questions regarding the ethical use of AI. Further, we do not address Kentucky's Advertising Rules which may come into play if a lawyer intends to advertise the use of AI because the Advertising Rules raise issues beyond the scope of this Committee's authority.

[7] *See*, KBA E-446; KBA E-403; KBA E-427; KBA E-437; and KBA E-442. For example, in E-437 the Committee considered a new development in technology (cloud computing) and while the Opinion is not directly applicable to the use of AI, many of the Committee's comments would apply when a lawyer uses AI. The Committee opined that lawyers may use cloud computing but must follow the Rules with regard to safeguarding client confidential information, act competently in using cloud computing, properly supervise the provider of the cloud service, and communicate with the client about cloud computing.

In the interim it is intended that this Opinion will provide some practical guidance while the Task Force explores multiple AI issues and whether amendments to the Rules of Professional Conduct are appropriate to address the unique applications a lawyer faces in the use of AI. The following commentary is a review of what we today consider the most crucial ethical issues when using an AI tool; however, lawyers must be mindful to the future implications of using AI services and the Rules governing lawyer conduct.[8]

COMPETENCE

SCR 3.130(1.1) mandates that "(a) lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Two of the Supreme Court's Comments to the Rules elaborate on the scope of the competency requirement. The first point is Comment 2, as follows:

> A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. ... Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

The second point is Comment 6, as follows:

> 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.

Therefore, attorneys have a continuing ethical responsibility to maintain competence in their law practice, and reliance upon technology to do so is just another aspect of the competency requirement.

Indeed, for many years lawyers have used technology to not only attain competency in the practice of law, but also to maintain their competence by utilizing computer research resources, including Westlaw, LexisNexis, and Decisis, all of which are readily available. Internet research also provides an additional level of resources for an attorney to best serve their clients' needs. In addition, many lawyers are now required to take training in, and become competent in, the use of electronic filing in state and federal courts, as well as in most administrative proceedings.

[8] We remind lawyers that the ethical implications of using AI also apply to all of a lawyer's non-lawyer activities; specifically, "a lawyer is a lawyer is a lawyer" and the Rules of Professional Conduct apply to all of a lawyer's actions. SCR 3.130(5.8) ("Responsibilities regarding law-related services").

Attorneys have already been using AI whether they realize it or not. "Spell check," "grammar search," and the auto correcting function on most emails employ AI, as do the Shephardizing functions of legal research tools. We are told that these functionalities only scratch the surface of what AI may be able to do for the practice of law in this ever-changing dynamic of the technological revolution. As with any new advance in technology, lawyers are expected to know how to use AI to maintain competence because, it is argued, it will allow lawyers to provide better, faster, and more efficient legal services, and at a reduced cost to the client. In the near future, using AI may become as commonplace as an attorney's current use of other technological systems which have now become an indispensable part of the practice of law.

There are many AI resources now available to lawyers, and there is much discussion about what AI resources are on the horizon, therefore, as AI tools become more refined, and their use in the legal profession becomes more widespread, lawyers need to be aware that not using an available AI tool may constitute a failure to meet the lawyer's duty of attaining and maintaining competence under Rule 1.1. For example, legal research may be more comprehensive using an AI-generated function of computer research programs. At the same time, understanding how AI works, (a) may enable an attorney to better respond to an opponent's arguments or theories, or (b) better analyze the evidence presented by the attorney's adversary. In essence, the rapid development of AI poses challenges for attorneys to continuously update their knowledge base in order to maintain their competence.

COMMUNICATION

Consideration should be given to whether a lawyer has an ethical duty to advise the client that AI is being utilized in respect to their matters. SCR 3.130(1.4)[9] requires that a lawyer keep the client reasonably informed about the status of their matter, to promptly inform the client of any decision or circumstance which requires the client's informed consent, and to obtain the client's informed consent of such decision or circumstance. Further, the attorney is required to "reasonably consult" with the client about the means by which the client's objectives are to be accomplished.[10] The word "reasonably" is intended to preclude an interpretation that the lawyer would always be required to consult with the client when a particular act is impliedly authorized.[11] The Rule's Comments explain that the lawyer is to provide the client with sufficient information to participate intelligently in

[9] (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.

[10] *See* SCR 3.130(1.4(a)(2)).

[11] *See* American Bar Association, *A Legislative History: The Development of the ABA Model Rules of Professional Conduct, 1982-2013*, at 77 (2013).

decisions concerning the means by which the client's objectives are to be pursued.[12] Thus, routine use of AI generated research in a client's matter does not in and of itself require specific communication to the client, unless the client is being charged for the cost of the research,[13] a third party service is being utilized to provide the AI research, or if the disclosure of the use of AI generated research is required by Court or other rules.[14]

Moreover, it is clear from prior opinions that when an attorney employs third party providers, or outsources a client's work, that communication of the "means" by which a representation is to be accomplished requires that clients should be informed of such outsourcing.[15] If an outside AI service will be receiving information protected by the lawyer's duty of confidentiality under SCR 3.130(1.6), then obtaining client consent is required. Further, as discussed below, the attorney should also have an agreement with the client about who is responsible for paying the cost of such outsourced services.

LAWYER'S CHARGES FOR FEES & EXPENSES

As with other uses of technology, the lawyer's charging of fees and expenses to a client remains subject to the reasonableness standards of SCR 3.130(1.5(a) and (b)).[16] These standards provide the following two primary points in charging a client when the lawyer has used AI. First, a reduced fee may be appropriate when a lawyer obtains an expeditious on point response to the client's matter because in all cases a lawyer's fee must be reasonable. Accordingly, the attorney's charge for legal services must be adjusted to recognize the reduced legal work devoted to a client's matter when

[12] SCR 3.130(1.4) Supreme Court Commentary at (3) and (4).

[13] *See* the portion of this opinion regarding "Lawyers' Charges for Fees & Expenses."

[14] *See* the portion of this opinion regarding "Duty to Comply with Court Rules When Using AI."

[15] *See* ABA Formal Ethics Op. 08-451 (2008); N.C. Ethics Op. 2007-12 (2008); Ohio Ethics Op. 2009-6 (2009); Va. Ethics Op. 1850 (2010).

[16] (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

there is a successful result by virtue of using AI. Second, if there are expenses associated with the use of AI, then who will bear the cost of implementing AI services, such as paying for online usage, and/or reimbursing a third-party provider? If the client is to bear these expenses, then before the charge can be made, the client's written consent must first be obtained.

Regarding the attorney's billings for client services and expenses, the essence of Rule 1.5 and the Supreme Court's Comments to the Rule, require that a lawyer provide the client with information about the lawyer's fees and expenses, and then render billing statements that adequately apprise the client as to the basis for the attorney's billing and how it has been determined. Advanced discussion with the client as to how AI expenses are to be paid are as necessary as the agreement with the client as to the basis or rate of the lawyer's fees. Ethics rules suggest that a written statement that confirms the terms of the engagement with the client "... reduces the possibility of misunderstanding."[17] If the lawyer intends to charge the client for AI expenses and the client agrees to pay these expenses, then the lawyer should explain, in writing and in advance, the anticipated cost of those expenses, the basis for the cost being billed, and the terms of payment.[18] There is an exception when the lawyer has regularly represented the client on an already existing basis, but with any changes in the billing procedure being communicated to the client.[19]

With regards to the time savings that an attorney using AI services may generate, an earlier ABA Formal Opinion[20] provided guidance which the attorney will continue to find helpful in determining the propriety of the lawyer's billing methods. The ABA Opinion explains that a lawyer is obliged to pass the benefits of economies on to the client. Thus, the use of AI programs may make a lawyer's work more efficient, and this increase in efficiency must not result in falsely inflated claims of time.

It should be obvious that lawyers may not charge a client for hours not actually spent on a client's matter. In the case of *In re Burghoff*,[21] the court found that the attorney's brief contained an extraordinary amount of research, and the attorney was directed to certify to the Court the author of two submitted briefs. The Court found that 17 of the 19 pages of one brief were verbatim excerpts from an article the lawyer found on the internet which had not been attributed to the article's author. The Court held, first, that it was a violation of the ethics Rules for an attorney to "...engage in conduct

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[17] *See* Comment (2) When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. It is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate, or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[18] *See*, SCR 3.130(1.5), Comments 2 and 3.

[19] *See*, SCR 3.130(1.5(a)&(b)).

[20] ABA Formal Opinion 93-370 (February 5, 1993).

[21] 374 B.R. 681 (Bankr. S.D. Iowa 2007) 374 B.R. 681.

involving dishonesty, fraud, deceit, or misrepresentation ... by committing plagiarism, ..."[22] Further, the Court found that the attorney violated the ethics Rules by charging his client for 25.5 hours of legal work in preparing the briefs which was unreasonable given the actual labor invested in copying the article from the internet. Charging an unreasonable fee for "legal work" was also considered a form of attorney misconduct.[23]

While the total impact and costs for AI remain unknown, lawyers must consider the ethical requirements of SCR 3.130(1.5); specifically, including the following:

- Costs incurred in learning about AI, in maintaining AI provided services, and keeping up to date with changes in its use, should be considered like any other continuing legal education expense, and a part of the lawyer's overhead.

- Lawyers charging their clients on an hourly basis cannot submit inflated bills for hours not actually spent on their case, and savings generated by using AI, like other technologies, should be passed on to the client.

- Lawyers may request that their client reimburse them for the costs incurred in using AI services, but only after first explaining the anticipated cost, and also obtaining the client's agreement to reimburse the attorney for the expense.

CONFIDENTIALITY OF CLIENT INFORMATION

There is no ethical duty more sacrosanct than the requirement that an attorney not reveal information relating to a client, or the fact of the attorney's representation of that client, without the client's informed consent. SCR 3.130(1.6) is clear: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted..." under a specific exception to the Rule.[24] Additional Rules extend this nondisclosure duty to information provided to an attorney by a prospective client,[25] as well as to information obtained by the attorney in the representation of a former client.[26] The nondisclosure duty is broad, inasmuch as "(t)he confidentiality rule, for example, applies not only to matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source."[27]

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[22] *Ibid*, at page 683.

[23] *Id.*

[24] Paragraph (b) to SCR 3.130(1.6) creates exceptions to the disclosure prohibition in those circumstances where the "... lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; (2) to secure legal advice about a lawyer's compliance with these Rules..." or (3) to establish a claim or defense on behalf of a lawyer and the client, or in defense of a criminal or civil charge made by the client against the lawyer, or "(4) to comply with another law or a court order."

[25] *See*, SCR 3.130(1.8).

[26] *See*, SCR 3.130(1.8(b)) and (1.9(c)(l)).

[27] *See*, SCR 3.130(1.6), Comment (3).

It is well known that "AI is making it easier to extract, re-identify, link, infer, and act on sensitive information about people's identities, locations, habits, and desires. AI's capabilities in these areas can increase the risk that a client's personal data could be exploited and exposed."[28] To prevent or reduce this risk of disclosure, the attorney must ensure that the use and the retention of confidential client information by an AI provider is secure and avoids confidentiality risks. In order to confirm the confidentiality of client information, the attorney should understand how generative AI products are being used and then not input any client information that lacks reasonable and adequate security protections unless, of course, client consent is first obtained. Some generative AI products utilize inputted information or uploaded documents such as pleadings or contracts to train itself, or to share that information with third parties. Therefore, the attorney should review the "terms of use" of any AI product and the provider's disclaimers in order to understand whether the AI provider shares inputted information with a third party or will utilize the lawyer's inputted information for its own purposes.

Hence, an attorney should take care that any information inputted into a generative AI product does not identify the client or the nature of the representation. Historically, attorneys have relied upon hypotheticals to discuss legal or factual issues relating to a client's representation; however, the use of hypotheticals is only permissible as long as there is no reasonable likelihood that anyone will be able to determine who the client is or what the client matter involves.[29] The sophistication of generative AI which allows the attorney to have near-human conversations by asking questions with AI responding calls into question whether the use of a hypothetical can be disguised sufficiently to avoid confidential client information from being disclosed.

There are GAI systems that promise that the provider will not send a client's information off-site, or host or share third party content. If that promise is confirmed in writing, then it may be allowable to input the client's confidential information with that provider. However, it still may be difficult, or even impossible to determine whether client information has been kept confidential and once the information has been disclosed it has not yet been judicially determined whether sharing information with an AI program would render that information discoverable, and/or result in waiving claims of attorney-client privilege. Because these questions are currently unanswered, lawyers are advised to maintain a healthy dose of skepticism of AI programs and should proceed with caution.[30]

Two final points on this issue: first, if the attorney intends to utilize AI and is concerned that despite taking appropriate preventative measures confidential client information will be inadvertently disclosed, then SCR 3.130(1.6) allows disclosure of client information if the client gives "informed consent."[31] The attorney should discuss with the client the proposed use of AI, the applications of AI to be utilized, the risks and benefits of the AI product, and fully explain privacy concerns. With the

[28] President Joe Biden's Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence dated October 22, 2023.

[29] *See*, SCR 3.130(1.6), Comment (5).

[30] The words of President Reagan: "trust but verify" come to mind – this is what we need to do.

[31] *See,* SCR 3.130(1.0(e)) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

informed consent of the client, the attorney should be able to meet this Rule's ethical obligations. We recognize there are some states that are considering ethics rules requiring clients to give advance permission before an attorney may use AI on their legal matters, but at this time Kentucky does not have any similar pending rules.

Second, using AI may expose a host of cybersecurity threats to the law firm, including phishing, social engineering, and malware. "We use ChatGPT differently than the way we use other types of searches, and therefore any vulnerabilities in ChatGPT become exacerbated and are much more likely to lead to the exposure of privileged information."[32]

DUTY TO COMPLY WITH COURT RULES WHEN USING AI

"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; (or) (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…"[33] Accordingly, attorneys have an ethical duty to ensure that legal authorities presented to the Court are accurate. GAI tools are known to sometimes produce erroneous and often fictitious responses to inquiries that may seem credible, called "hallucinations." Attorneys who use AI provider services like ChatGPT have a responsibility to check their pleadings for accuracy in their references to both facts and legal citations. Citing non-existent judicial opinions, false quotes and fake citations in filings with the court have caused the judiciary to take notice, and in some instances the attorneys have been sanctioned for their inaccuracy and misleading pleadings. Two New York lawyers were recently sanctioned after the Court found they filed a brief that contained numerous fake, GAI case law citations, when they later failed to "come clean" with the Court about their use.[34] Since then several federal and specialty courts, and at least one state court, have adopted rules requiring attorneys using AI programs to review, and verify any computer-generated content, and then certify that fact to the courts with their filings.[35]

In light of the everchanging nature of AI and the adoption of different court practice rules,[36] attorneys are reminded that they are responsible to understand the court rules and procedures to competently

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[32] Mark D. Rasch, lawyer, cybersecurity, and data privacy expert, quoted in "What cybersecurity threats do generative AI chatbots like ChatGPT pose to lawyers?," *American Bar Association Journal* (June, 2023).

[33] SCR 3.130(3.3(a)).

[34] *Mata vs. Avianca, Inc.*, 2023 U.S. Dist. LEXIS 108263, 2023 WL 4114965 (S.D.N.Y. June 22, 2023).

[35] U.S. District Court for the Eastern District of Texas. U.S. District Judge Brantley Starr of the Northern District of Texas is one of the first U.S. Judges to require lawyers to certify that they did not use AI to draft their filings without a human checking their accuracy. In addition, the United States Court of Appeals for the Fifth Circuit has pending a similar certification requirement, and notes that lawyers who misrepresent their compliance with this certification could be sanctioned and have their filings stricken of record.

[36] Utah has established rules concerning the use of GAI and restricts judicial officers and court employees to using ChatGPT(version 3 or 4); Claude.ai (Beta); and Bard (Experiment) for all court-related work.

represent a client in those courts in which they are practicing, including those rules related to AI.[37] The attorney should check, and keep abreast of any rules, orders or other court procedures implemented in the jurisdiction in which the attorney is practicing that may require additional certifications as it relates to filings prepared by utilizing GAI products.

If an attorney later discovers an inaccuracy, then the attorney is required to correct the inaccuracy, and to notify the Court of any misleading statements. Without a doubt, if the Court questions the attorney's filings that include fake cases, the attorney must be candid with the Court and explain the error. Failure to do so not only subjects the attorney to potential sanctions by the Court but may also result in disciplinary action for the attorney for noncompliance with the Rules.[38]

SUPERVISING ATTORNEYS' RESPONSIBILITIES WHEN USING AI

SCR 3.130(5.1) requires a partner in a law firm, as well as an individual lawyer who exercises managerial authority over others, to make "reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules." Lawyers who have direct supervisory authority over another lawyer are similarly responsible to ensure the other lawyer complies with the Rules.[39] Having policies and procedures relating to the use of AI in the law firm may reduce potential disclosure of confidential client information and ensure that generative AI is being used appropriately. "AI systems keep challenging old conceptions of things like security, privacy, and fairness. But at another level, they just reinforce existing best practices."[40] These issues were discussed in KBA E-446 relating to cybersecurity and confirmed that law firm partners, managers of attorneys, and any attorneys supervising other attorneys are required to ensure that all of the firm's attorneys, as well as nonlawyer assistants, employees, or independent contractors who are under their supervision, comply with the Rules of Professional Conduct. This requirement places an enhanced responsibility upon those managerial attorneys to prescribe policies and procedures to reduce the risk of disclosure of confidential information when using AI, as well as to explain the permissible uses, as well as the known risks of AI.

The following comments of Florida Bar Ethics Opinion 24-1 are appropriate to this topic:

> (A) lawyer must review the work product of a generative AI in situations similar to those requiring review of the work of nonlawyer assistants such as paralegals. Lawyers are ultimately responsible for the work product that they create regardless of whether that work product was originally drafted or researched by a nonlawyer or generative AI.
>
> Functionally, this means a lawyer must verify the accuracy and sufficiency of all research performed by generative AI. The failure to do so can lead to violations of the

[37] *See*, SCR 3.130(1.1).

[38] *See*, SCR 3.130(8.4).

[39] *See,* SCR 3.130(5.1(b)).

[40] "What cybersecurity threats do generative AI chatbots like ChatGPT pose to lawyers" by Matt Reynolds, *American Bar Association Journal* (June, 2023).

> lawyer's duties of competence [Kentucky SCR 3.130(1.1)], avoidance of frivolous claims and contentions [Kentucky SCR 3.130(3.1)], candor to the tribunal [Kentucky SCR 3.130(3.3)], and truthfulness to others [Kentucky SCR 3.130(4.1)], in addition to sanctions that may be imposed by a tribunal against the lawyer and the lawyer's client.

The Committee does not intend to specify what AI policy an attorney should follow because it is the responsibility of each attorney to best determine how AI will be used within their law firm and then to establish an AI policy that addresses the benefits and risks associated with AI products. The fact is that the speed of change in this area means that any specific recommendation will likely be obsolete from the moment of publication. At the very least lawyers must take care to address the use of any form of AI, what risk is associated with it, and what steps can be taken to avoid release of client information. As a part of this process, it is appropriate to review the law firm's existing cybersecurity policies so as to take AI into consideration.

The establishment of policies and procedures to deal with AI is an important step in meeting a lawyer's ethical obligations but it is not the end of the lawyer's duties. "All lawyers must make sure that subordinate attorneys, interns, paralegals, case managers, administrative assistants, and external business partners all understand necessary data and security practices and the critical role that all parties play in ensuring the protection of client information."[41] Creating a culture of security and privacy of client information may be best attained through training everyone on the law firm's AI policies and focusing on human error and behavior. "Humans are … involved in more than 80% of data breaches, whether they've clicked on a phishing email or they've just done something stupid."[42]

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530. This Rule provides that formal opinions are advisory only.

[41] KBA Ethics Opinion E-446, *quoting* Drew T. Simshaw in the *American Journal of Trial Advocacy*.

[42] Sharon Nelson, president of Sensei Enterprises, as quoted in *ABA Journal*, *supra* at 4.

QDRO QUAGMIRES, PENSION PITFALLS, AND THE SOCIAL SECURITY FAIRNESS ACT

Lance S. Melin,* CEBS, QDRO Group LLC

I. THE SOCIAL SECURITY FAIRNESS ACT – ARE OFFSETS DEAD?

A. Background of Social Security Offsets in Divorce

1. Social Security offsets came into being with *Cornbleth v. Cornbleth*.[1] One spouse's entire Civil Service Retirement System benefit was put into the marital pot *including* the component in lieu of Social Security. The court agreed that the amount of the CSRS that would have been Social Security under covered compensation should be excluded from the marital pot just as the other spouse's Social Security was.

2. Hypothetical Social Security offsets were born with a portion of the government pension excluded from division as a marital asset. The logic of *Cornbleth* quickly moved to other states. In *Shown v. Shown*,[2] the Kentucky Court of Appeals also adopted a hypothetical Social Security offset approach. The Court recognized that part of the teacher's pension was earned in lieu of Social Security and explained its logic in light of the Social Security Act.

B. What Did the SSFA Do?

1. The Social Security Fairness Act eliminated the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO). These are provisions of the Act [202(k) for the GPO and 215 for the WEP[3]] which had reduced or eliminated the potential Social Security benefits for some government employees.

2. The WEP was specifically designed to reduce the amount of Social Security a person would receive if eligible for a government pension not coordinated with Social Security, (*e.g.* the Civil Service Retirement System or many state government plans) but also earned a benefit under Social Security covered employment.

3. The GPO reduced the **spousal** Social Security by two dollars for every three dollars received from the government pension. As a result, few government

* lmelin@qdrogroup.com.

[1] *Cornbleth v. Cornbleth*, 580 A.2d 369 (Pa. 1990).

[2] *Shown v. Shown*, 479 S.W.3d 611 (Ky. App. 2015).

[3] 42 U.S.C. §§402(k), 402(b)(2), 402(c)(2), 402(e)(2)(A), 402(f)(2)(A) for the GPO and 42 U.S.C. §415 for the WEP.

employees with full work careers ever shared the Social Security their spouse earned.

C. The Implications for Social Security Offsets – Property

1. The issue of the GPO was implicit in *Cornbleth* and *Shown* – marital money went into acquiring the Social Security benefit of one party which the other party would not share in.

2. Eliminating the GPO means that the non-SS covered spouse may receive spousal benefits – but there are many caveats.

3. A person who has been married to someone for at least 10 years is eligible at age 62 for an independent spousal benefit equaling 50 percent of the final benefit the covered employee earns. (This does not reduce the benefit of the Social Security covered participant).

4. Former spouses are also eligible to receive the benefit based on the Social Security earnings of their ex-spouse *if unmarried or later divorced from a new spouse*. None of the Social Security need be earned during the marriage and the independent 50 percent benefit is based on the total Social Security benefit earned by the covered participant, not just the benefit earned during the marriage.

5. Based on the facts and circumstances of each case, full or partial offsets may still be appropriate.

6. Most clear is the less than 10-year marriage – the government pension participant will most likely not be eligible for the spousal or survivor benefit.

7. Beyond 10 years – there is still the fact that the spousal benefit is only 50 percent of the covered person's benefit.

8. The rate of remarriage is high. Does this constitute voluntarily ceding the divorced spouse benefit? Re-divorce could reinstate eligibility.

D. Spousal and Child Support Claims

1. Formerly WEP-reduced benefits could increase by as much as $613 per month in 2025. Those now eligible for a 50 percent spousal benefit due to the GPO elimination could qualify for up to $1,355 per month at 62. Only the greater will apply.

2. The SSFA is retroactive to January 1, 2024. Lump sum payments will be going out in the next few months, which could be as high as $7,044 (WEP) or $16,260 (GPO), but not both.

E. Survivor Benefits

1. General rules for Social Security survivorship – age 60 or older, or age 50-59 if disabled, married for at least nine months before spouse's death, and did not remarry before age 60 (age 50 if disabled).

2. Ex-spouses who were married for at least 10 years, as well as some valid non-marital legal relationships, may be eligible.

3. May be eligible regardless of age and how long married, for example if caring for a child of the person who died.

4. The former spouse can only collect the full benefit at full retirement age (FRA) and may not postpone receipt to a later age to increase benefits. Survivor benefits also exist for children, adult children with a disability, and dependent parents.

5. In 2025 this benefit could be as high as $4,018 per month – $48,216 per year – for life.

6. Government plan participants with a deceased spouse or former spouse eligible for Social Security may have investigated survivor benefits in the past, but due to the GPO, their benefit was zeroed out. With the end of the GPO, they may now be eligible. It is important that they contact Social Security to file an application as soon as possible as Social Security notes: "The date of your application might affect when your benefits begin. Filing sooner might help you get a higher benefit amount."

F. An Avalanche of Rule 60(B) Motions?

1. The *Fairness Act* could create an avalanche of motions based on the Federal Rule of Civil Procedure 60(B)[4] as incorporated into state statutes.

2. Sections 4 and 5 of Federal Rule 60(B) call for relief from judgments if it is "no longer equitable that the judgment should have prospective application."[5] Note the "prospective application" refers logically to orders dividing the state pensions which have not been implemented yet. Section 5 of the Federal Rule offers an expansive reason for the relief: "any other reason justifying relief from judgment."

[4] United States Code: 28 U.S.C. Appendix, Rule 60(B); Title VII of FRCP.

[5] Number 4 under Federal Rule of Civil Procedure 60(B).

G. Practice Considerations

1. Divorce attorneys should always look at all current and potential Social Security benefits of the parties, especially with the elimination of the two penalties on many government employees.

2. The separation agreement language dividing the retirement benefits with QDROs or QDRO-cousins for government plans will need to be far more expansive and clear to take into account future variables that can't be foreseen at the time of the divorce.

The many implications of the Social Security Fairness Act in divorce and beyond will evolve in the courts and legislatures for years to come. We will continue to research this vital issue. Our website qdrogroup.com offers detailed articles and updates.

II. QDROS: SEVEN DEADLY SINS

A. #1: Misunderstanding the Plan – Defined Benefit

1. Assigning a lump sum from a Defined Benefit Plan.

a. Very few DB plans allow for a lump sum distribution. When they do, there is a significant reduction if taken early.

b. If the decree assigns a dollar amount this will have to be converted to a percentage paid at the participant's retirement. This requires a present value to be calculated.

2. Immediate assignment from a Defined Benefit Plan.

a. The vast majority of DB plans require waiting to retirement age.

b. Now clients expect to receive a lump sum immediately, but this is not possible, and they must wait until retirement age and receive monthly payments.

3. Traditional coverture vs. frozen vs. total benefit.

- COLAS, supplements, subsidies

B. #2: Marital Portion Language for Defined Contribution Plans

Decree calls for an assignment on the "marital portion," but does not specify the means.

1. Most plans will not make this calculation and may reject an order requiring it.

2. Subtraction method – treats only the balance on the date of marriage as the separate property, with no credit for investment experience during the marriage.

3. Passive growth analysis ("tracing") – pre-marital balance is traced throughout the marriage for proportional investment gains or losses – requires a statement history.

4. Coverture – when premarital balance is not available, applying elapsed time coverture (analogous to defined benefit approach) can serve as an approximation.

5. Hypothetical – when records are not available, a calculation of the separate property interest can be made based upon agreed upon assumptions – best reserved for negotiation and stipulation.

C. #3: Waiting Too Long after the Divorce

1. Death of participant.

   a. DC plans may be distributed directly to a beneficiary.

   b. DB plans – the benefit ends.

2. Retirement of participant.

   a. DB plans in payout status vastly limit options/survivor elections are locked in.

   b. DC plan funds may have been moved or spent.

   c. Why wait until after the divorce to complete the DRO? ERISA does not require a divorce.

D. #4: Actuarial Adjustments

Applicable to Defined Benefit Plans.

1. Awarding a monthly dollar amount from a pension may not result in the expected dollar amount being paid.

2. Large age differences.

3. Separate interest vs. shared payment.

E. #5: Survivorship Issues

Applicable to Defined Benefit Plans.

1. Securing post and pre-retirement survivorship.

2. Understanding joint and survivor annuity when separate interest is used.

3. Who bears the cost of survivorship?

F. #6: Non-Divisible Plans

Plans that may not accept a DRO – Direct payment as alternative.

1. Executive compensation ("nonqualified") plans.

2. Church plans.

3. Social Security.

4. Government plans.

5. Military (10/10 rule).

G. #7: Ambiguous Decree Language

Mistakes can be very costly.

1. DBs – frozen or coverture?

2. DB post-retirement enhancements.

3. DCs – treatment of separate property, gains and losses.

III. VALUATIONS: NUMBERS DON'T LIE (DO THEY?)

A. Defined Benefit Plans – Present Values

1. Which benefit to use? Accrued benefit vs. matured full vested – Accrued benefit is in evidence and the standard – but with continued service the portion of the benefit attributable to marital service may be many times more valuable. Pay increases, eligibility for unreduced early employment, and formula enhancements come into play.

2. What assumptions to use? Mortality and interest discounts are employed to determine the present value of future payments. This opens the door for advocacy. The Pension Benefit Guaranty Corporation (PBGC) rates, revised in

2024, offer an expert and impartial means to value the cost of a replacement annuity.

3. What are the weaknesses? When the party or parties are disabled or in ill health, or significantly different ages, present values may not be truly representative. They are a snapshot in time, subject to change as interest rates vary. "Distressed" plans that are seriously underfunded may not pay out full benefits, even with PBGC guarantees.

4. Are they necessary if the plan provides a lump sum or refund value? Most likely yes – refundable contribution values often understate the true value. Lump sum options are usually calculated under the plan's actuarial assumptions which may not reflect the replacement cost.

B. Defined Contribution Plans – Account Balances

1. Account balances in plans such as 401(k)s are generally straightforward – but should be reviewed for issues such as vesting and outstanding loans.

2. "Cash balance" plans look like DCs but are DBs, with annuity options.

3. Keep in mind the tax implications of Roth vs. traditional balances.

C. Offsetting Accounts, Offsetting Assets

1. It can often be convenient to offset DC plans against one another to reduce the number of orders. But be aware of the possible differences in investments, tax treatment, and accessibility.

2. It can be tempting to offset DB present values vs. DC account balances. This is a risky business that unavoidably assigns winners and losers. The characteristics of the two plan types are very different, and the limitations of DB present values add to the layers of uncertainty.

3. Offsetting retirement accounts against real property raises yet more questions. A DB pension in payout status is a diminishing asset, while real property may endure.

Tax Considerations in Divorce in 2025

Faith Crump, CPA | Director of Tax Services

Missy DeArk, CPA/CFF, MBA, CVA/MAFF | Associate Director of Litigation Support & Valuation Services

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Agenda

1. Introduction
2. Filing issues
3. Payment to former spouses
4. Individual related provisions
5. Estate, gift, and GST
6. What's next?
7. Retirement – Reference Guides

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Introduction

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Filing Issues

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Filing Issues-Filing Status

- Filing status: marital status for tax purposes is determined as of December 31 of the tax year in question
  - If divorce is not final prior to year-end, the couple is required to file as married (either jointly or separately) under most circumstances
    - Married filing jointly (MFJ)
    - Married filing separately (MFS)
    - Head of Household (HOH)

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Filing Issues-Filing Status

- An abandoned spouse may be treated as unmarried for tax purposes if **all** of the following apply (IRC Sec. 7703(b)):
  - The taxpayer pays more than half of the cost of maintaining his or her household for the taxable year;
  - The taxpayer files a separate tax return;
  - The taxpayer's household is the primary home of a dependent child for more than six months of the taxable year; and
  - The taxpayer lives apart from his or her spouse for the last six months of the year (in separate households)

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Filing Issues – Filing Status (Head of Household)

- Head of Household
  - Advantages
    - Can claim higher standard deduction even if spouse files separately and itemizes
    - MFS standard deduction (2025) = $15,000; HOH standard deduction (2025) = $22,500
    - May be able to claim certain credits unavailable if MFS (dependent care)
    - Income limits that reduce child tax credit and retirement savings contribution credit are higher than if MFS

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Filing Issues – Filing Status (Head of Household)

- Head of Household
  - Requirements
    - You are unmarried or "considered unmarried"
      - *See* abandoned spouse rules under (IRC Sec. 7703(b))
    - You paid more than half the cost of keeping up a home for year
      - Rent, mortgage, real estate, utilities, home, repairs, etc.
      - Child support has no effect (for child's needs)
    - A "qualifying person" lived with you more than half the year

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Filing Issues – Filing Status

- Extensions?
  - Per IRS instructions for Form 4868
    - If you and your spouse each filed a separate Form 4868 but later file a joint return for 2024, enter the total paid with both Forms 4868 on the appropriate line of your joint return.
    - If you and your spouse jointly file Form 4868 but later file separate returns for 2024, you can enter the total amount paid with Form 4868 on either of your separate returns. Or you and your spouse can divide the payment in any agreed amounts.

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Filing Issues

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Filing Issues – Dependents & Exemptions

- Exemptions
  - Final year of no exemption deduction for dependents (under current law)
  - Qualifying child
    - Relationship
    - Residency
    - Age
    - Support
    - Can't file joint return themselves
  - Tie-breakers (if child qualifies for more than one person)
    - Parent; then
    - Custody (where child resides); then
    - Adjusted gross income

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Filing Issues – Dependents & Exemptions

- Child Tax Credit
  - Credit is increased to $2,000 per qualifying child under age 17
    - Refundable portion of credit is limited to $1,400
  - $500 nonrefundable credit added for other qualifying dependents
    - $500 per child age 17 to 19 or 17 to 24, if the child is in college
  - Additional child tax credit now equal to 15% of earned income in excess of $2,500
  - AGI phase-out $400k for MFJ and $200K for all others

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Filing Issues – Dependents & Exemptions

- Child related deductions and credits
  - Noncustodial Parent Rule: gives qualifying child status to noncustodial parent by agreement of the parents (Form 8332 or written agreement pre-2008)
    - Tax benefits available to either custodial or noncustodial:
      - Child tax credit
      - Education tax credits and deductions
    - Benefits available to only custodial parent (regardless of agreement):
      - Head of household status
      - Child and dependent care tax credit
      - Earned income tax credit
      - Tax-free dependent care assistance benefits
    - *Consider phase-outs and availability of above benefits*

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Filing Issues – Income & Deduction Division

- Dividing income and deductions in the year marriage ends (equitable distribution states)
  - Dividing current deductions/credits:
    - The new higher standard deduction and the $10,000 limit on deduction for taxes paid may make taking itemized deductions less advantageous
    - The person who pays the deductions with separate (for tax purposes – meaning, not joint) funds (even if the funds are marital property) gets the deduction
    - Deductions paid from joint accounts are presumed 50% deductible by each spouse, subject to rebuttal by either spouse. Note opportunity for division of deductions if paid from a joint account.

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Filing Issues – Income & Deduction Division

- Dividing income and deductions in the year marriage ends (equitable distribution states)
  - Estimated tax payments or prior year overpayment: may be allocated by agreement of the parties. In the absence of an agreement, will be allocated based on each spouse's separate tax liability.

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Payments to Former Spouse

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Payments to former spouses

- Nonrecognition of gain/loss
  - Any property transferred between spouses/former spouses incident to divorce
    - Includes Health Savings Accounts, IRAs, Archer Medical Savings Accounts
    - Considered a gift to spouse
      - Under marital deduction for gift tax purposes
      - Recipient gets carryover basis from former spouse
      - Doesn't qualify if spouse is not a U.S. citizen
        - Gift tax marital deduction for gift to non-U.S. citizen spouse is $190,000 in 2025
    - What would not qualify for nonrecognition?
      - Certain stock redemption agreements
      - Certain transactions made in trust
        - Installment notes
        - Transfers subject to liabilities (if in excess of fair value)

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Payments to former spouses

- Sale of personal residence (exclude up to $250K MFS/$500K MFJ)
  - Eligibility test
    - Must be primary residence
    - Owned home 2 years out of the last 5 years (if MFJ, only one taxpayer has to qualify)
    - Used it as primary residence 2 of last 5 years (doesn't have to be cumulative, just total)
    - If you sold another home during the 2-year period may have to 'look back'
    - EXCEPTIONS for separated or divorced taxpayers
      - For ownership test:
        - If you were separated or divorced prior to sale of the home and the home was transferred to you by spouse or ex-spouse you can include time spouse owned it toward ownership test.
        - You must meet residence test on your own.

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Payments to former spouses

- Taxability/deductibility
  - Child support: neither taxable nor deductible
  - The alimony deduction and income inclusion was eliminated for agreements signed January 1, 2019 and thereafter
    - NOTE: Modifications after January 1, 2019 will remain under the old law – tax deductible and includable in income. Must be stated in the modification!
  - *See* Publication 504

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Payments to former spouses (property transfers)

- Tax treatment of certain transfers
  - Income producing property
    - Must split between spouses as of date of transfer or agreement
      - Rental property, investment income, interest in a business
  - Passive activities
    - Transferor cannot deduct accumulated passive loss carryforwards
    - Recipient increases their basis by unused losses
  - Interest in non-statutory stock options or nonqualified deferred compensation
    - Transferor does not include any amount in gross income upon transfer
    - Recipient may have to include an amount when they exercise option or receive deferred compensation

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Individual tax related provisions

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Individual tax provision – sunset 1/1/26

- The following provisions are set to expire at the end of 2025
  - Overall limitation on itemized deduction repeal ("Pease" limitation repeal)
  - Tax bracket changes
  - Capital gains rates tied to statutory dollar amounts (not income tax brackets)
  - AMT exemption increases
  - Increased child tax credit and AGI phase-out increase
  - Increased estate, gift, and GST lifetime exemption
  - The deduction for personal and dependency exemptions is repealed for tax years 2018 through 2025
    - Filing threshold: The rules for determining who will be required to file a tax return are modified so that if gross income exceeds the standard deduction the taxpayer is required to file

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Individual tax provision – itemized deductions

- The following provisions are set to expire at the end of 2025
  - State and local tax deduction limited to $10,000 MFJ/HOH; $5,000 MFS
  - Charitable contributions
    - The new law extends the limit for cash contributions from 50% to 60% of the contribution base for years beginning after 12/31/17 and before 1/1/26 (Act Sec 11023)
    - Charitable deductions are no longer allowed for any payment to a college or university in exchange for which the payer receives the right to purchase tickets or seating at an athletic event (Sec170(l))
    - Qualified charitable distributions from IRAs up to $100,000 per year to eligible organizations was retained (Sec 408(d)(8)(A))

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Individual tax provision – mortgage interest

- Mortgage interest deduction: The itemized deduction for home mortgage interest is temporarily limited to interest on **acquisition debt** for tax years beginning after 12/31/17 and before 1/1/26 (Act Sec 11043)
  - The limitation is reduced from $1,000,000 to $750,000 ($375,000 MFS) for any acquisition debt incurred after 12/15/17
  - Acquisition indebtedness: Debt incurred in acquiring, constructing, or substantially improving any qualified residence of the taxpayer and is secured by that qualified residence; or refinanced debt that meets these requirements
- Refinancing: Generally, the refinancing of debt will be treated as incurred on the date the original debt was incurred, providing the new refinanced debt does not exceed the amount of debt refinanced (there are a couple of exceptions)
- Home equity loan: Deductible if mortgage is properly secured and collateralized
  - Cannot exceed FMV of qualified residence less acquisition indebtedness
- Second home: The final version of the law retains the acquisition indebtedness for a second home
  - If a taxpayer owns more than two residences, he/she must select only one second home each year for the deduction

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Individual tax provision – Income tax rates

- Capital Gains Rates – 0%, 15%, 20% (consistent since pre-TCJA)
  - Follow statutory dollar amount limits that will sunset in 2025 and revert to income tax bracket levels
- Income Tax Tables

Tax Rate	For Single Filers	For Married Individuals Filing Joint Returns	For Heads of Households
10%	$0 to $11,925	$0 to $23,850	$0 to $17,000
12%	$11,925 to $48,475	$23,850 to $96,950	$17,000 to $64,850
22%	$48,475 to $103,350	$96,950 to $206,700	$64,850 to $103,350
24%	$103,350 to $197,300	$206,700 to $394,600	$103,350 to $197,300
32%	$197,300 to $250,525	$394,600 to $501,050	$197,300 to $250,500
35%	$250,525 to $626,350	$501,050 to $751,600	$250,500 to $626,350
37%	$626,350 or more	$751,600 or more	$626,350 or more

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Estate, gift, & GST taxes

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Estate, Gift & Generation-skipping Transfer (GST) Taxes

- 2025 exemption = $13.99 million per taxpayer
- 2025 annual gift exclusion is $19,000
- Projected exemption in 2026 (without law change) = $7 million per taxpayer
    - Lifetime exemptions
        - Estate and gift taxes under same tax regime
            - GST another level of tax under estate
        - Increased under TCJA and has been indexed for inflation annually
        - Sunsets at the end of 2025

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What's next?

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Possibility of law change (sunsetting provisions)

- Amended budget resolution passed by Senate 4/5/25 and House passed on 4/10/25
  - Clears way for tax and budget bill (will start 4/28 when they return)
  - One of stated goals
    - Permanent extension of 2017 Tax Cuts & Jobs Act
  - Other expected items:
    - R&D expense
    - Capital investments (bonus depreciation)
    - Business interest expense

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Items to remember after divorce

- Check beneficiary allocations
- Check withholding on wages
- Change of address
- Change name
- If used Healthcare Marketplace, must report changes
- Check for unclaimed property
- Prior tax liabilities/refunds

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Retirement – Reference Guides

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Retirement contribution limits

Maximum workplace retirement plan contribution amounts	2024	2025
401(k), 403(b), most 457 plans and federal Thrift Savings Plan	$23,000	$23,500
Catch-up contributions in these plans for people 50 and older	$7,500	$7,500
Catch-up contributions in these plans for people 60-63		$11,250
IRA contribution limits	**2024**	**2025**
Traditional and Roth IRAs for people younger than 50	$7,000	$7,000
Catch-up IRA contributions for people 50 and older	$1,000	$1,000
Defined benefit pension plan annual benefit limits	$275,000	$280,000
Annual employer limit for 40(k)-type, SEP IRAs, and solo 401(k)s	$69,000	$70,000
Annual contribution limit for SIMPLE plans	$16,000	$16,500
Catch-up contributions in these plans for people 50 and older	$3,500	$3,500
Catch-up contributions in these plans for people 60-63		$5,250
Roth IRA AGI limits	**2024**	**2025**
Modified Adjusted Gross Income limits for Roth IRA (single)	$146,000	$150,000
Full phase out (single)	$161,000	$165,000
Modified Adjusted Gross Income limits for Roth IRA (married filing jointly)	$230,000	$236,000
Full phase out (married filing jointly)	$240,000	$246,000

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Exceptions to tax on early distributions

- Most retirement plan distributions are subject to income tax and may be subject to additional 10% tax
- Generally, the amounts an individual withdraws from an IRA or retirement plan before reaching age 59½ are called ”early” or ”premature” distributions. Individuals must pay an additional 10% early withdrawal tax unless an exception applies

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Exceptions to tax on early distributions (reference only)

Exceptions to the 10% additional tax	The distribution will NOT be subject to the 10% additional early distribution tax in the following circumstances:	Qualified plans (401(k), etc.)	IRA, SEP, SIMPLE IRA* and SARSEP plans
Age	after participant/IRA owner reaches age 59½	yes	yes
Automatic enrollment	permissive withdrawals from a plan with auto enrollment features	yes	yes
Birth or adoption	distributions up to $5,000 per child for qualified birth or adoption expenses	yes	yes
Corrective distributions	corrective distributions (and associated earnings) of excess contributions, excess aggregate contributions and excess deferrals, made timely	yes	n/a
Death	after death of the participant/IRA owner	yes	yes
Disability	total and permanent disability of the participant/IRA owner	yes	yes
Disaster recovery distribution	up to $22,000 to qualified individuals who sustain an economic loss by reason of a federally declared disaster where they live	yes	yes
Domestic abuse victim distribution	to a victim of domestic abuse by a spouse or domestic partner, up to the lesser of $10,000 or 50% of account (distributions made after 12/31/2023)	yes	yes
Domestic relations	to an alternate payee under a Qualified Domestic Relations Order	yes	n/a
Education	qualified higher education expenses	no	yes
Emergency personal expense	one distribution per calendar year for personal or family emergency expenses, up to the lesser of $1,000 or vested account balance over $1,000 (made after 12/31/2023)	yes	yes
Emergency savings account	distributions from a pension-linked emergency savings account (made after 12/31/2023)	yes	n/a
Equal payments	series of substantially equal payments	yes	yes
ESOP	dividend pass through from an ESOP	yes	n/a
Homebuyers	qualified first-time homebuyers, up to $10,000	no	yes
Levy	because of an IRS levy of the plan	yes	yes
Medical	amount of unreimbursed medical expenses (>7.5% AGI)	yes	yes
Medical	health insurance premiums paid while unemployed	no	yes
Military	certain distributions to qualified military reservists called to active duty	yes	yes
Returned IRA contributions	if withdrawn by extended due date of return, not including earnings on these returned contributions	n/a	yes
Rollovers	in-plan Roth rollovers or eligible distributions contributed to another retirement plan or IRA within 60 days (also see FAQs: Waivers of the 60-day rollover requirement)	yes	yes
Separation from service	the employee separates from service during or after the year the employee reaches age 55 (age 50 for public safety employees of a state, or political	yes	no
Terminal illness	distributions made to a terminally ill employee, on or after the date the employee has been certified by a physician as having a terminal illness	yes	n/a
Unemployed health insurance	distributions equal to the amount paid for family health insurance by an individual who was unemployed for 12 weeks and received unemployment compensation in the year of the distribution or the subsequent year	n/a	yes

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h Crump, CPA | Director of Tax Services
ump@deandorton.com 502-566-1025

sy DeArk, CPA/CFF, MBA, CVA/MAFF |
ociate Director of Litigation Support &
uation Services
eark@deandorton.com 502-566-1017

Thank You!

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WHY CAN'T WE ALL GET ALONG?
FAMILY LAW AND BANKRUPTCY FROM BOTH SIDES OF THE BENCH

Hon. Ross Ewing,* Kami Brumley, Esq.,** T. Kent Barber, Esq., and Jay Phillips, Esq.***

I. INTRODUCTION AND RESOURCES

The relationship between bankruptcy and family law is often described as a dance. One keen observer has described it as follows:

> Bankruptcy law ought to be a predictable, balanced dance between federal bankruptcy and state property laws. Sometimes federal law should lead, and sometimes it should follow state law. Often, however, no body of law is leading and federal and state laws dance in an ever-changing, awkward, messy, ugly parody of the dance it should be. After reading this article discussing the intersection of federal bankruptcy law and state domestic relations law in divorce or dissolution, the reader will probably be left as confused as before reading it. Such is the nature of the marital property-bankruptcy law tango.

Anna S. Welling-Arnold, "You're Not Getting my Property, Dear!," 27 No. 6 *J. Bankr. L. & Prac.* NL Art. 4 (2018).

These materials and the accompanying presentation are not intended to cover every issue or situation which may arise involving family law and consumer bankruptcy. Rather, the authors will address the issues they most commonly see from their perspectives as bankruptcy practitioners, family law practitioners, and a state family court judge. The accompanying presentation places special emphasis on the use of bankruptcy as a helpful planning and/or settlement tool in various family law situations.

II. IS BANKRUPTCY ALWAYS A BAD THING DURING DIVORCE? NO!

Divorce is never easy, and it is never cheap. With thoughtful planning, however, attorneys and parties can use bankruptcy as a tool to relieve financial strain on the parties, free up cash flow, reduce the overall debt and tax burdens of the family, and generally "grow the pie" the parties are dividing in their divorce.

In situations where the parties have a great deal of debt all in one party's name, the parties may discuss and agree for that party to file bankruptcy and reduce the overall debt load of

* Fayette Family Court, Division 5, 120 North Limestone, Lexington, KY 40507, (859) 246-2212.

** Kershaw & Baumgardner, LLP, 250 West Main Street, Suite 1850, Lexington, KY 40507, (859) 381-1145.

*** Embry Merritt Womack Nance PLLC, Chase Tower, 201 E. Main Street, Suite 1402, Lexington, KY 40507, (859) 543-0453.

the marital estate. This frees up income that can be allocated to child support, payment of expenses for the children, and/or spousal maintenance. If planned for and addressed in a valid settlement agreement prior to the filing of bankruptcy, this can also protect both parties and the assets awarded to them under a valid agreement. The spouse filing bankruptcy may be awarded more retirement assets or other protected/exempt assets. The parties may transfer the marital residence or other assets that would otherwise be part of the bankruptcy estate to the non-filing spouse. If the parties can confidently plan on a discharge of most of the debt, they will ultimately have more assets to divide between them. The parties may also assign joint debts to the non-filing spouse, along with sufficient assets to pay off those debts, ultimately maximizing the amount to be discharged by the spouse who files bankruptcy.

Advanced planning may also be used to avoid bankruptcy. For example, the parties could transfer all or nearly all of their retirement assets to one spouse via qualified domestic relations order, have that spouse make a one-time penalty-free (but not tax-free) withdrawal, and use the proceeds to pay debt and avoid bankruptcy. On the other hand, if both parties jointly file for bankruptcy, they may be able to maximize the funds available for child support and spousal maintenance and jointly plan what will go to creditors and what debts will be discharged.

This type of planning poses myriad risks, and it can only be successfully used in cases where the parties and their lawyers maintain some degree of trust and good faith. The sections below will address commonly contested issues that can arise regardless of whether the bankruptcy was pre-planned. For bankruptcy practitioners, joint representation of spouses may pose special ethical issues. Should counsel represent a couple who are physically separated or contemplating divorce? Should counsel inquire about this at an initial consultation? Does the answer depend on whether the couple plans to file under Chapter 7 or Chapter 13, due to the discharge rules discussed below?

III. SO, BANKRUPTCY IS HAPPENING, WHAT NOW?

A. The Automatic Stay

The automatic stay enjoins the commencement or continuance of a judicial, administrative, or other action against the debtor that was or could have commenced before the commencement of the bankruptcy case. 11 U.S.C. §362(a). There is no general exception to the automatic stay for dissolution of marriage cases. However, there are several important family-law related exceptions to the automatic stay. They include:

1. Establishment of paternity;

2. Establishment or modification of an order for a domestic support obligation;

3. Concerning child custody or visitation;

4. For dissolution of marriage, except to the extent that such a proceeding seeks to determine division of property of the bankruptcy estate;

5. Regarding collection of a domestic support obligation from property that is not property of the bankruptcy estate;

6. With respect to withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or statute;

7. Regarding domestic violence.

11. U.S.C. §362(b). In many cases, a state court's power to act under an exception to the automatic stay will be clear. Most close cases hinge again on the concept of a domestic support obligation ("DSO"), discussed below. The concept of "property of the bankruptcy estate" is also key to many automatic stay questions. For a full, detailed analysis of that concept, *see* Randall B. Wilhite, *The Intersection of Bankruptcy and Family Law* (2016).

The stay continues until property is no longer property of the estate, until the case is closed or dismissed, or the debtor is discharged. 11 U.S.C. §362(c). For the divorce practitioner, the effects of the automatic stay vary depending on whether the divorce is (a) in pretrial litigation or (b) in post-decree enforcement litigation.

Exceptions to the automatic stay should be read narrowly. However, it would be an absurd result to read 11 U.S.C. §362(b)(2)(A)(ii) so narrowly that it does not permit a family court to determine or "establish" the amount of a debtor's domestic support obligation arrearage. To hold otherwise would be to nullify that exception in all situations where a parent/debtor is ordered to pay child support expenses within certain categories, rather than to pay a set dollar amount, and a family court's categorization of pre-petition, disputed expenses is needed while the debtor is in bankruptcy. The Bankruptcy Code defines "domestic support obligations" broadly to include debts that accrue before, on, or after the date of the order for relief. 11 U.S.C. §101(14A). The plain language of 11 U.S.C. §362(b)(2)(A)(ii) allows family courts to review pre-petition domestic support obligation arrearages and establish the amount due post-petition.

11 U.S.C. §362(b)(2)(C) specifically excepts withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial order from the automatic stay. Collection of a domestic support obligation outside the wage withholding process, however, is stayed except where it is from property that is not property of the estate. §362(b)(2)(B). Read together, the two exceptions make clear that the collection of a domestic support obligation from property of a debtor's estate may only be accomplished through a wage garnishment order; otherwise, it violates the automatic stay.

There is a distinction between (i) holding a hearing on a pre-petition request to establish, modify, or otherwise order permissible domestic support obligation collections, even if cast as a civil contempt motion; and (ii) a ruling holding a debtor in contempt that yields the possibility of incarceration. The former is permissible. The latter violates the stay; there is no exception for the continuation of a judicial

proceeding for incarceration or other impermissible collection activities as a result of a finding of civil contempt – even if it relates to a domestic support obligation exception. It is in this regard that the exceptions to the automatic stay should be narrowly drawn.

In pretrial litigation, if a temporary order has been entered prior to the filing of a bankruptcy, the state court does not violate the automatic stay by enforcing the order, so long as it constitutes a domestic support obligation. As discussed above, the definition has been interpreted broadly. Most of those cases involve orders requiring the debtor to take affirmative action by paying an obligation. The more interesting question is whether enforcement of a *status quo* order in the divorce constitutes a violation of the automatic stay. The entry of such orders in divorce is very common. In Kentucky, there is even a standard AOC form order. The language from that order directs:

> Except as shall be necessary to pay reasonable living expenses, neither party shall sell, encumber, gift, bequeath or in any manner transfer, convey or dissipate any property, cash, stocks or other assets currently in their possession or control of another person, company, legal entity or family member without an order of the Court or an agreed order signed by both parties or their attorneys.
>
> Neither party shall cancel any health, life, automobile, casualty or disability insurance currently covering themselves or a family member or change the named beneficiaries on such policies prior to receiving permission of the court to do so or filing an agreed order signed by both parties or their attorneys.

Commonwealth of Kentucky, Form AOC-237.

Experience teaches that careful practitioners will likely draft a more detailed order. It is possible that the filing of a bankruptcy petition could itself constitute a violation of a more carefully worded order.

These orders raise numerous questions and hazards. If a debtor spouse fails to pay insurance premiums, does that constitute a violation of the standard form order quoted above? Does it depend on whether coverage actually lapses? May the state court use its contempt power to enforce the debtor spouse's payment of these obligations during the automatic stay? What if the order has been requested prior to the filing of bankruptcy petition but wasn't entered by the state court until after the filing of the petition? Does that make a difference? Similarly, does it make a difference that the obligation under the *status quo* order is for current, ongoing issues rather than for past-due debt? Many of these questions have not been fully litigated to citable authority in the Commonwealth.

The post-divorce filing of a bankruptcy petition by one spouse is a recipe for litigation. Much of that litigation hinges on the dischargeability of that spouse's obligations, discussed at length below. The bankruptcy code clearly contemplates that the family

court may modify child support or maintenance during an automatic stay. If the bankruptcy results in the non-debtor spouse having to pay new (to them) obligations to support themselves or their children, that will likely constitute a substantial and continuing change in material circumstances sufficient to modify child support or maintenance. *See* KRS 403.213; KRS 403.250. Again, many important questions remain unanswered by current published case law. For example, what if a spouse waives or was not awarded maintenance in contemplation of the debtor spouse paying certain obligations? Can the court "modify" an award of $0 to create a new maintenance obligation based on this change in circumstance? Does the answer change if the parties specifically reserve that issue in a settlement agreement? If that waiver calls for a *de novo* review of spousal maintenance and/or child support? Does the standard "debts become domestic support obligations" provision discussed above mean that these payments have always been in lieu of maintenance and therefore can be converted to a direct payment of maintenance? Again, the authors' experience is that state trial courts have a much more difficult time with these questions when they involve spousal maintenance as opposed to child support.

B. Discharge

The manner and availability of a discharge of the debtor's debts is a key distinction between Chapter 7 and Chapter 13 bankruptcies. This distinction is particularly acute in the area of divorce. When a debtor files for protection under Chapter 7, any debt owed to a spouse, former spouse, or child of the debtor that is incurred in the course of a divorce or separation or in connection with a separation agreement, divorce decree, or other court order is *non-dischargeable*. 11 U.S.C. §523(a)(15). This includes domestic support obligations but casts an even wider net. This exception to discharge is broad and powerful. It is also automatic. By contrast, when a debtor files for protection under Chapter 13, only domestic support obligations are non-dischargeable. 11 U.S.C. §523(a)(5). Domestic support obligations are priority claims that must be paid in full through the Chapter 13 plan, and interest on those claims continues to accrue. They are again automatically exempt from discharge. However, other divorce-related debts, including obligations to a spouse or former spouse under a property settlement agreement, *remain dischargeable* if the debtor completes the Chapter 13 repayment plan. *See* 11 U.S.C. §1328.

In contrast, settlements that are not in the nature of support, such as property divisions in a divorce decree, may be dischargeable. For instance, lump sum payments awarded in a divorce decree that are treated as divisions of marital property, separate from express maintenance obligations, are not considered DSOs and thus may be dischargeable under §523(a). This distinction is crucial as it determines whether the debtor can be relieved of the obligation through bankruptcy.

Here again we see the crucial question of whether an obligation is found to be a domestic support obligation. Much of the case law defining a domestic support obligation arises from this context. *See e.g., Mattingly, supra*. All of the unanswered questions discussed above apply equally when they arise in the context of a question of dischargeability.

The automatic stay and dischargeability of debts combine to create particular issues when the parties wish to enter a divorce decree while the bankruptcy is pending. Again, nothing in the automatic stay prevents the state court from dissolving the marriage of a debtor. State courts should take into consideration payments owed under a Chapter 13 plan and assign them as they would any other marital debt. *See Neidlinger v. Neidlinger*, 52 S.W.3d 513 (Ky. 2001) (*overruled on other grounds, Smith v. McGill*, 556 S.W.3d 552 (Ky. 2018)). *See also, Viens v. Viens*, 2011 WL 1598709 (Ky. App. Apr. 29, 2011) (not reported in S.W.3d) (specifically addressing Chapter 13 bankruptcy payments). Practitioners and courts should be cognizant of the possibility that a Chapter 13 bankruptcy may fail and make plans to address any unsecured claims. If a divorce is granted while a Chapter 7 is pending, should courts reserve jurisdiction in case a full discharge is not granted? In Kentucky, courts have an inherent power to delay distribution and division of marital property.

> In the delayed division method, a formula is used to determine the division at the time of the decree, but the actual distribution of monies is delayed until payments ... are received. Each party then receives the appropriate percentage of the ... payments as they are paid out in accordance with the formula. The use of this method has long been approved in the Commonwealth.

Grasch v. Grasch, 536 S.W.3d 191, 195 (Ky. 2017) (*citations omitted*). Is this always the most cautious and appropriate route when a bankruptcy is pending, under either chapter? Can this method be an effective tool to allow the parties to proceed in their divorce and separation while still observing the automatic stay and navigating the potential discharge of a party's debts?

IV. WHAT IS A DOMESTIC SUPPORT OBLIGATION, AGAIN?

The dance between state family law and federal bankruptcy law is perhaps most exemplified by the concept of a domestic support obligation. Domestic support obligations (DSOs) are defined and treated with specific priority and dischargeability rules under the Bankruptcy Code, 11 U.S.C. §101(14A). A DSO is a debt that accrues before, on, or after the date of the order for relief in a bankruptcy case, including interest, and is owed to or recoverable by a spouse, former spouse, or child of the debtor, or a governmental unit. It is in the nature of alimony, maintenance, or support, regardless of its designation, and must be established by a separation agreement, divorce decree, property settlement agreement, court order, or applicable non-bankruptcy law.

A debt that is a "domestic support obligation" is not dischargeable in bankruptcy under §523(a)(5). One court summarized the elements of this claim as follows:

> A "domestic support obligation" is a debt that "accrues before, on, or after the date of the order for relief" that is "owed to or recoverable by a spouse, former spouse or child of the debtor or such child's parent, legal guardian, or responsible relative." 11 U.S.C. §101(14A)(A) [ ]. Section 523(a)(5) provides four elements that must be satisfied to establish a domestic support obligation claim: 1) the debt must be "owed to or recoverable by" a

> governmental unit or a person with a specific relationship to the debtor; 2) the underlying obligation must be in the nature of support; 3) the obligation must arise from an agreement, court order, or as otherwise defined; and 4) the debt must not be assigned to a nongovernmental entity unless voluntarily done. 11 U.S.C. §101(14A).

Bailey v. Bailey (In re Bailey), 665 B.R. 297, 314-15 (E.D. Ky. Bankr. 2024). In *Bailey,* the sole disputed element was whether the lump sum obligations in the divorce decree were "in the nature of support, or whether [they were] in actuality a division of marital property." *Sorah v. Sorah (In re Sorah)*, 163 F.3d 397, 400 (6th Cir. 1998) (*citing In re Calhoun*, 715 F.2d 1103, 1109 (6th Cir. 1983)).

> "Domestic support obligations include debts established by a court order that are 'in the nature of' maintenance or support, 'without regard to whether such debt is expressly so designated.'" *Dougherty-Kelsay v. Kelsay (In re Dougherty-Kelsay)*, Case No. 22-5270, 2022 U.S. App. LEXIS 28783, at *5 (6th Cir. Oct. 17, 2022) (*citations omitted*). "The non-debtor seeking a determination of nondischargeability under §523(a)(5) bears the burden of proving all elements by a preponderance of the evidence ... including '[t]he burden of demonstrating that an obligation is in the nature of support.'" *Bailey*, 2024 Bankr. LEXIS 866, at *27 (*citations omitted*). An obligation not specifically designated as maintenance may be deemed to be "in the nature of support" in the following circumstances:
>
> > First, the obligation constitutes support only if the state court or parties intended to create a support obligation. Second, the obligation must have the actual effect of providing necessary support. Third, if the first two conditions are satisfied, the court must determine if the obligation is so excessive as to be unreasonable under traditional concepts of support. Fourth, if the amount is unreasonable, the obligation is dischargeable to the extent necessary to serve the purposes of federal bankruptcy law.

Fitzgerald v. Fitzgerald (In re Fitzgerald), 9 F.3d 517, 520 (6th Cir. 1993) (*citation omitted*).

The BAP opinion explains:

> "[T]he bankruptcy court may consider any relevant evidence including those factors utilized by state courts to make a factual determination of intent to create support." *In re Calhoun*, 715 F.2d at 1109. Such factors might include "(1) the disparity of earning power between the parties; (2) the need for economic support and stability; (3) the presence of minor children; and (4) marital fault." *Bailey v. Bailey (In re Bailey)*, 254 B.R. 901, 906 (B.A.P. 6th Cir. 2000). Other indicia might include the nature of the obligation assumed, the structure and language of the court's decree, the provision of other lump sum or periodic payments, the duration of the marriage, and the work skills and

> abilities of the parties. *See Luman v. Luman (In re Luman)*, 238 B.R. 697, 706 (Bankr. N.D. Ohio 1999), *cited with approval in In re Bailey*, 254 B.R. at 906.

Bailey, 2024 Bankr. LEXIS 866, at *30-31.

DSOs are given first priority in bankruptcy proceedings, meaning they must be paid before most other types of claims. Specifically, allowed unsecured claims for DSOs owed to a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative, are prioritized without regard to whether the claim is filed by such person or by a governmental unit on their behalf. 11 U.S.C. §507.

State and federal courts exercise concurrent jurisdiction on the question of whether a debt is a domestic support obligation. 11 U.S.C. §523(a)(5); *Howard v. Howard*, 336 S.W.3d 433 (Ky. 2011); *Trimble v. Trimble*, 511 S.W.3d 392 (Ky. App. 2016).

The Sixth Circuit in *Calhoun* held that whether a debt is a DSO is determined by federal law. *Calhoun*, 715 F.2d at 1107 ("The issue of when an assumption of joint debts is 'in the nature of alimony, maintenance, or support' as opposed to a division of communal property is to be determined by federal bankruptcy law."). Another court provided: "[A] debt could be in the 'nature of support' under section 523(a)(5) even though it would not legally qualify as alimony or support under state law." *Gianakas v. Gianakas (In re Gianakas)*, 917 F.2d 759, 762 (3d Cir. 1990).

Both state and federal courts have long held that monies owed by one spouse to a third party may nonetheless qualify as domestic support obligations if they are in the nature of support. *See Trimble, supra*; *See also In re Fields*, 2020 WL 2790061 (E.D. Ky. Bankr. May 28, 2020) (not reported in B.R. Rptr).

Some debts, such as court-ordered child support or spousal maintenance, are obvious. Others turn on the question of whether the debt is "in the nature of support." Kentucky's test for "in the nature of support" is set forth in *Mattingly v. Mattingly*, 164 S.W.3d 518 (Ky. App. 2005). *Mattingly* addressed the issue of post-majority college expenses for the parties' children, which had been agreed to in a valid separation agreement incorporated into a divorce decree. Ultimately,

> The family court found the language and structure of the property settlement agreement indicative of an intent by the parties to create an additional child support obligation. The court noted that the section containing the college expense provision fell within the "Child Support" section of the agreement. Further, that obligation was included with other items that fell within the nature of child support, such as weekly support payments per child, medical expenses, life insurance expenses, and special education expenses. Because there was substantial evidence to support the court's finding that the college expense obligation was in the nature of child support, we conclude that the court did not clearly err in making such determination. *See also In re Prager*, 181 B.R. at 920 ("where an obligation is labeled as alimony, maintenance, or support and the parties intended to create a support obligation, the

> bankruptcy court's inquiry should end." *Id., citing In re Fitzgerald*, 9 F.3d 517, 521 (6th Cir.1993)).

Mattingly v. Mattingly, 164 S.W.3d 518, 522 (Ky. App. 2005). Other cases have found that paying the mortgage owed on a former spouse's residence constitutes a domestic support obligation. *See Deaton v. Elliott*, 2008 WL 4952071 (Ky. App. Nov. 21, 2008). Even payment of a former spouse's attorney fees has been found to be in the nature of support. *McKee v. Mills*, 2018 WL 2174377 (Ky. App. May 11, 2018). Family court practitioners should note that courts have explicitly held that a finding that a debt is a domestic support obligation does not mean that obligation can be collected as child support or maintenance pursuant to the Uniform Interstate Family Support Act (UIFSA). *Lichtenstein v. Barbanel*, 322 S.W.3d 27 (Ky. 2010).

Obviously, each case will have its own unique facts. However, the authors offer two observations from their review of the case law. First, both state and federal courts seem ready to define the support of children more broadly than the support of former spouses. The reason for this may be intuitive. Minor children are wholly dependent on their parents, and nearly every payment a parent makes for that child is in the nature of their support. Young children have no other way to meet their needs. It bears remembering, though, that if a Kentucky trial court has awarded spousal maintenance, the court has necessarily found that the recipient is unable to meet his/her reasonable needs through property and appropriate employment, *i.e.,* the court has found that the recipient is to some extent dependent on the payor. *See* KRS 403.200.

Second, a written agreement of both parties incorporated into a divorce decree years before the contested litigation is the gold standard. If the obligation is labeled as child support or maintenance, this may in fact end the reviewing court's inquiry under *Prager* and *Fitzgerald, supra*. The more difficult question is what to make of a provision in a property settlement agreement which purports to convert debts to third parties into domestic support obligations in the event that the payor files for bankruptcy. Many family law practitioners include such language in every divorce agreement as a matter of course. For example, the following language appears in a divorce agreement randomly selected from those currently being reviewed by Judge Ewing:

> The parties understand and agree that the assumption of any indebtedness by one party as part of the agreement herein (whether referenced specifically or not) shall be considered an obligation directly related to the support and maintenance of the other party, although payment of said debt shall not be considered deductible or taxable as maintenance for income purposes. The parties further stipulate that they intend these debts and liabilities to be non-dischargeable under Section 523(a)(5) of the Bankruptcy Code.

Even if these provisions are effective in causing a court to later find that the debt is a domestic support obligation, that may not entirely protect the party on whose behalf the debt is paid. For example, in *Deaton v. Elliott, supra*, the Kentucky Court of Appeals found that a former husband's obligation to pay the mortgage on his former wife's residence was a domestic support obligation. However, because that payment was "in lieu of maintenance," that obligation terminated when the obligation to pay maintenance terminates by statute – upon the death of either party or the remarriage of the recipient. *See* KRS 403.250. The authors'

experience strongly suggests that catch-all provisions such as the one above should be considered carefully on a case-by-case basis rather than blindly included in every divorce settlement.

I. WRITS – WHEN?

Writs of prohibition restrain the trial court from acting and writs of mandamus require the trial court to perform an affirmative act. *University of Louisville v. Eckerle*, 580 S.W.3d 546, 549 (Ky. 2019). The standard for granting a writ of prohibition or mandamus is the same, so don't get too caught up in those semantics.

The seminal case setting out the modern standards for the issuance of writs is *Hoskins v. Maricle*, 150 S.W.3d 1 (Ky. 2004).

The standard:

> A writ of prohibition *may* be granted upon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted. *Hoskins* at 10.

A. Outside Its Jurisdiction Grounds/Also Referred to as a "First Class Writ"

The lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court.

Hoskins overruled prior case law which required a showing that the petitioner lacked an adequate remedy by appeal before a writ could be obtained when a trial court is acting outside its jurisdiction. After *Hoskins*, and only on the grounds of "proceeding outside its jurisdiction," a writ may be obtained without the additional showing that there is no adequate remedy on appeal.

Don't get the phrase "there is no remedy through an application to an intermediate court" confused with "no adequate remedy by appeal." The phrase "no remedy through an application to an intermediate court" simply means a petitioner aggrieved by a trial court acting outside its jurisdiction must first go to the next reviewing court. In other words, a petitioner aggrieved by the actions of a district court must seek a writ from the reviewing circuit court before proceeding to the Court of Appeals, and one aggrieved at the circuit court level must first seek a writ from the Court of Appeals before proceeding to the Supreme Court.

B. Acting Erroneously Grounds/Also Referred to as a "Second Class Writ"

The lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted.

This "acting erroneously" test is more nuanced, but it is the most frequent grounds on which writs are sought because trial courts act erroneously more frequently than they act outside their jurisdiction.

If you're seeking a writ on the acting erroneously grounds then it is safe to say that you have already determined the trial court is in fact acting erroneously and you probably can easily set that argument up in your writ petition. The challenge usually lies with demonstrating that your client's right to appeal does not provide an adequate remedy for that error and/or that irreparable injury will result to your client if no writ is issued.

You will be relieved to learn that the case law has evolved to afford a number of end-runs around these pesky "required" showings.

"Whether the right of appeal is an adequate remedy [precluding issuance of a writ] is an issue necessarily determined on a case-by-case basis." *Hoskins* at 19. In other words, the appellate court has wide discretion to determine whether there is an adequate remedy on appeal.

It is worth noting that our courts have held that there is rarely an adequate remedy on appeal when the alleged error is an order compelling discovery because once information is furnished, it cannot be recalled. *Grange Mutual Ins. Co. v. Trude*, 151 S.W.3d 803, 810-811 (Ky. 2004). *See also Norsworthy v. Castlen*, 323 S.W.3d 764, 768 (Ky. App. 2010). This could be true for cases in which a party is ordered to produce privileged material or divulge a trade secret.

Assuming you can cross the "inadequate remedy on appeal" hurdle, you next must show that your client will suffer "great injustice and irreparable injury" if the writ is not issued.

Great injustice and irreparable injury is defined as "incalculable damage to the applicant ... either to the liberty of his person, or to his property rights, or other far-reaching and conjectural consequences" (*Hoskins* at 19); something of a "ruinous nature" *Grange Mutual Ins. Co* at 808.

> Great and irreparable injury ... [is] not such an injury as is usually suffered and sustained by a losing litigant upon a trial of his case in a court having jurisdiction thereof, *i.e.,* a mere failure to succeed in that litigation, followed by the loss of that which success might have brought him ... but great and ruinous loss ... for which there was no remedy.

Hoskins at 19-20.

However, fear not! A finding of "great injustice and irreparable injury" is not an absolute prerequisite to considering the merits of a claim of error under the acting erroneously grounds. Our courts have carved out a "special cases" subset under the "acting erroneously" grounds which bypasses the showing of great injustice and irreparable injury.

> Thus we find that in certain special cases this Court will entertain a petition for prohibition in the absence of a showing of specific great and irreparable injury to the petitioner, provided a substantial miscarriage of justice will result if the lower court is proceeding erroneously, *and* correction of the error is necessary and appropriate in the interest of orderly judicial administration. It may be observed that in such a situation the court is recognizing that if it fails to act the administration of justice generally will suffer the great and irreparable injury.

Hoskins at 20.

> But these "certain special cases" are exactly that – they are rare exceptions and tend to be limited to situations where the action for which the writ is sought would violate the law, *e.g.* by breaching a tightly guarded privilege or by contradicting the requirements of a civil rule. In those rare cases, a court may peek behind the curtain, *i.e.*, beyond the petitioner's failure to meet the great and irreparable harm test, at the merits of the petitioner's claim of error by the lower court.

Grange Mutual Ins. Co. at 808.

Note – even "acting erroneously" petitions which fall into the "special cases" subset must still make a showing that petitioner lacks an adequate remedy on appeal. But remember, per *Hoskins*, the appellate court makes that determination on a "case-by-case" basis.

C. Miscellaneous

Even when grounds for issuance of a writ are established, whether to grant or deny a writ is discretionary. *Hoskins* at 5; *Grange Mutual Ins. Co.* at 810.

The issuance of a writ of prohibition or mandamus is an extraordinary remedy that is disfavored. *Caldwell v. Chauvin*, 464 S.W.3d 139, 144 (Ky. 2015). Obviously, the appellate courts cannot entertain writs for all claims of interlocutory error. They would effectively render themselves referees rather than reviewing courts.

D. Certain Family Law Cases

1. *Lawson v. Woeste*, 603 S.W.3d 266 (Ky. 2020).

Trial court's determination of particular-case jurisdiction for exclusive, continuing jurisdiction over child custody matter was reviewable by appeal and thus was not a proper matter for consideration on ex-wife's petition for writ of prohibition, following trial court's determination declining to cede jurisdiction over custody case to other state.

2. *Qutiefan v. Garber*, 2012 WL 3637015 (Ky. Aug. 23, 2012).

Husband petitioned for writ of prohibition seeking order prohibiting Family Court, Jefferson County, from proceeding with a divorce action, alleging the marriage was incestuous according to state law. The Supreme Court held that husband had an adequate remedy by appeal to contest validity of his marriage.

3. *Howell v. Nance*, 2007 WL 3226301 (Ky. Nov. 1, 2007).

After decree was entered dissolving parties' marriage and reserving spousal maintenance and property division for later determination, the Family Court, Barren County, Mitchell Nance, J., entered orders requiring former husband to purchase a new automobile for former wife, and to disclose post-dissolution financial information. The Supreme Court held that: (1) trial court had jurisdiction to order former husband to purchase new automobile for former wife; and (2) special case exception did not apply such as to exempt former husband from making showing of great and irreparable injury.

II. WRITS – HOW?

A writ is an original action filed in an appellate or reviewing court. The procedure to be followed is clearly set out in RAP 60, reprinted below. Note – if you lose in an original action for a writ in the Court of Appeals, you have a ***matter of right*** appeal to the Supreme Court. No need to seek discretionary review.

RAP 60 **Original proceedings in appellate courts**

(A) Applicability. Original proceedings in an appellate court may be prosecuted only against a judge or agency whose decisions may be reviewed as a matter of right by that appellate court. All other actions must be prosecuted in accordance with applicable law.

(B) Commencement. Original actions brought under this rule may be prosecuted upon payment of the filing fee required by RAP 13 and the filing of a petition in the format prescribed by this rule, RAP 5, and RAP 7. Five copies (4 bound and 1 unbound) shall be filed.

(C) Content of the Petition. The petition must set forth:

(1) The name of each respondent against whom relief is sought;

(2) The name of each real party in interest and that party's counsel. A real party in interest for purpose of this rule, RAP 60, is any party in the circuit court action from which the original action arises who may be adversely affected by the grant or denial of the relief sought in the petition;

(3) The style and case number of any underlying action pending in a circuit court or in the Court of Appeals;
(4) An explicit statement of the relief sought;

(5) A clear and concise statement of (a) the material facts of the action, with express reference to any order sought to be reviewed and the ground on which jurisdiction is alleged; (b) the questions of law involved with citations to authority pertinent to each question; and (c) the reasons why relief should be granted;

(6) An appendix containing any items permitted by paragraph (E) of this rule, and copies of any orders or other papers relevant to the action; and

(7) Proof of service on all respondents and real parties in interest as required by RAP 5(A).

(D) Response. The party against whom relief is sought and any real party in interest may, within 20 days after the date on which the petition was filed, file a response that conforms to RAP 5 and RAP 7. A responding party may submit evidence as permitted by paragraph (E) of this rule.

(E) Evidence. Parties may submit evidence with the petition or response in the form of exhibits, affidavits, counter-affidavits, depositions, documents filed in the underlying case, and the electronic record of any relevant proceedings.

(F) Length. Except by the court's permission, and excluding the accompanying documents permitted by paragraph (C)(6), petitions and responses filed under sections (C) and (D) shall be limited to 14,000 words or 30 pages if computer generated and limited to 40 pages if handwritten or typewritten. If a computer-generated document exceeds the page limit but is within the word limit, a word-count certificate in conformity with RAP 15 is required.

(G) Submission and Disposition. Original actions will be submitted for decision when the response is filed or the time for filing has expired,

whichever is sooner, unless otherwise ordered by the court. Replies are not permitted.

(H) Emergency Relief

(1) If any party requires relief prior to a ruling on the petition, the party may, upon a showing that immediate and irreparable harm will occur, move in conformity with RAP 7 for a temporary order in the court in which the original action is filed.

(2) No appeal to the Supreme Court may be sought of an order disposing of a motion for emergency relief brought under this rule.

(3) A party adversely affected by an order of a circuit court acting as an appellate court and disposing of a motion for emergency relief brought under this rule may seek relief in the Court of Appeals utilizing the provisions of RAP 20(C)(2) and RAP 20(D). The filing of a motion under RAP 20 does not stay proceedings in the circuit court.

(I) Appeals to the Supreme Court.

(1) An appeal may be taken to the Supreme Court as a matter of right from a final order disposing of an original action prosecuted in the Court of Appeals. The Rules of Appellate Procedure shall apply except as set forth in this paragraph RAP 60(I).

(2) The notice of appeal and filing fee as set forth in RAP 2 and 13 shall be filed with the Clerk of the Court of Appeals no later than 30 days after the date the judgment or order appealed from was entered. A cross-appeal may be taken in the time and manner specified in RAP 4, except that the notice of cross-appeal and filing fee shall be timely filed with the Clerk of the Court of Appeals.

(3) An appellant's brief shall be filed within 30 days of the date of the notice of certification, and further briefing shall proceed as in expedited appeals, RAP 30(E), except that in workers' compensation cases, briefing shall proceed in accordance with RAP 30(C). An appellant's brief and an appellee's combined response brief/cross-appellant's brief, if any, shall set forth arguments for reversal or modification of the judgment or order from which the appeal and cross-appeal, if any, are taken. Briefing shall comply with RAP 31 and 32.

(4) Briefs in response to an appeal or cross-appeal shall be required. Where an appeal is taken against a judge in the Court of Justice and concerns performance of an official act, the party appealing shall serve notice on the real party in interest, who shall be required to file a brief on behalf of the judge against whom the appeal or cross-

appeal is taken. No attorney shall, however, be required or permitted to file such a brief where to do so would conflict with the interest of the attorney's client.

(5) The Clerk of the Court of Appeals shall transmit all or any portion of the original record of the proceedings to the Supreme Court when so requested by the clerk of that court.

(J) Appeals to the Court of Appeals when Circuit Court Sits as Appellate Court in Original Actions.

(1) An appeal may be taken to the Court of Appeals as a matter of right from a final order disposing of an original action prosecuted in the circuit court. The Rules of Appellate Procedure shall apply except as set forth in this paragraph, RAP 40(J).

(2) The notice of appeal and filing fee as set forth in RAP 2 and 13 shall be filed with the circuit court clerk no later than 30 days after the date the judgment or order appealed from was entered. A cross-appeal may be taken in the time and manner specified in RAP 4. Briefing shall proceed as in expedited appeals, RAP 30(E), and shall comply with RAP 31 and 32. Briefs shall be required as set forth in RAP 60(I)(4) above.

(3) The circuit court clerk shall transmit all or any portion of the original record of the original proceedings to the Court of Appeals when so requested by the clerk of that court.

(4) Further relief, if any, from a Court of Appeals judgment or order ruling on a matter of right appeal from an original action prosecuted in the circuit court may be sought in the Supreme Court pursuant to RAP 44, motions for discretionary review.

Attached is an excellent example of a Petition for Writ and accompanying Motion for Emergency Relief. Printed with permission of the author (attorney for the Petitioner).

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
ACTION NO. _____

ORIGINAL PROCEEDING FOR EMERGENCY WRIT OF MANDAMUS AND/OR PROHIBITION PURSUANT TO CR 76.36(1) DIRECTED TO HON. [redacted], JUDGE, [redacted] CIRCUIT COURT, FAMILY DIVISION [redacted], CASE NO. 24-CI-[redacted] & REQUEST FOR INTERMEDIATE RELIEF

ANTHONY [redacted] PETITIONER

vs.

JUDGE [redacted]

-and-

DESTINY [redacted] RESPONDENTS

* * * * *

PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

*** *** *** ***

Comes now Petitioner, ANTHONY [redacted] (hereinafter "Anthony"), by and through counsel, and pursuant to CR 76.26, CR 81 and KRS 23A.080 respectfully files this original action in the Kentucky Court of Appeals seeking a writ directing that the written Order of the [redacted] Circuit Court, Family [redacted] of October 8, 2024 and subsequent oral Orders occurring at motion hour on October 14, 2024 be vacated. All of these Orders improperly vacated a prior permanent Agreed Custody Decree without proper jurisdiction, motion or hearing. The Court Orders further required the Petitioner to relinquish sole custody of an infant child without proper jurisdiction, motion or hearing. The actual result of the Court improperly vacating the prior permanent Agreed Custody Decree is that the infant child may be in the physical custody of a third party.

A. NAME OF PETITIONER

The Petitioner is Anthony [redacted] (hereinafter "Anthony"). Anthony is represented by Hon. Bryan Gowin.

B. NAME OF RESPONDENTS

The Respondent against whom relief is sought is the Honorable [redacted], [redacted] Circuit Court, Family Division [redacted], [redacted] This original action is bought against Judge [redacted] solely in her capacity as the Judge of the [redacted] Circuit Court, Family Division [redacted].

The Real Party in Interest and original Respondent in [redacted] Circuit Court, Family [redacted], Case No. 24-CI-[redacted] is Destiny [redacted](hereinafter "Destiny"). Destiny has not been represented by counsel at any time concerning these matters.

C. TYPE OF ACTION

This original action comes before the Court of Appeals as an Agreed Custody Decree entered as a final Court Order on August 9, 2024 awarding Anthony sole custody with no visits to Destiny. As a result of a written October 8, 2024 Order by Judge [redacted] she vacated said Agreed Custody Decree pursuant to CR 60.01. Thereafter, at motion hour on October 14, 2024, she orally directed that the minor child shall reside with Destiny and Anthony could file a motion at a later motion hour for visits. The underlying action is styled as Anthony [redacted] v. Destiny [redacted], [redacted] Circuit Court, Family Division [redacted], Case No. 24-CI-[redacted].

D. FACTUAL BACKGROUND

The underlying matter is a child custody action initiated by Anthony pursuant to KRS 403.270 *et seq*. Anthony and Destiny have one (1) infant child in common.

In May 2024, Anthony learned Destiny was pregnant with his first child. Anthony also learned that Destiny wanted to place the child for adoption. Anthony prepared and filed a putative father registration form with the Commonwealth of Kentucky and a Petition for Custody was filed with the [redacted] Circuit Court, Family Division on May 10, 2024 (the child had not been born at this time). (Appendix A). Destiny was served with the Petition on May 22, 2024. (Appendix B). Destiny signed a Custody Decree by agreement on May 28, 2024 that stated Anthony would have sole custody of the infant child when born and Destiny did not want visitation with the infant child after born. (Appendix C).

Anthony and Destiny's child was born on June 2, 2024. Anthony, at Destiny's request, took physical custody of the child from the hospital on the second day after birth. Anthony preapred an Amended Petition for Custody naming the child and date of birth of the child. (Appendix D). On July 16, 2024, Destiny signed an Entry of Appearance and Waiver stating that she had received a copy of Anthony's Amended Petition, that she agreed the Agreed Custody Decree was in the best interests of the infant child, and that she waived any future hearing. (Appendix E). On July 16, 2024, Destiny signed an Agreed Custody Decree that awarded sole custody of the infant child to Anthony. (Appendix F). This agreement also provided that Destony did not want any visits with the infant child. This agreement also changed the child's name.

Anthony's counsel filed motions for the July 29, 2024 motion hour asking the Court to amend Anthony's Petition for Custody and enter the Agreed Custody Decree. Judge [redacted] entered an Order amending Anthony's Petition on August 2, 2024 as agreed by both parties. (Appendix G).

Judge [redacted] entered the Agreed Custody Decree on August 9, 2024 awarding Anthony sole custody of the infant child with no visitation awarded to Destiny, as signed by Anthony, Anthony's counsel and Destiny. (Appendix F).

Judge [redacted] entered a Hearing Order on August 9, 2024 setting the action for a hearing on October 7, 2024 at 9:00 a.m. (Appendix H).

On October 2, 2024, Judge [redacted] staff attorney, [redacted], as copied to her Adminsitrative Assistant, [redacted], emailed Anthony's counsel about the October 7, 2024 hearing inquiring if there were any issues for the hearing since Judge [redacted] had already entered the Agreed Custody Decree, or if the hearing could be remanded. The e-mail set forth a basis for the hearing being scheduled. The response received from Judge [redacted] staff was that the hearing was remanded. (Appendix I).

On October 7, 2024 at about 9:15 a.m. Anthony's counsel received a telephone call from Judge [redacted] that testimony was going to be taken from Destiny and Anthony's mother as they were present in Court that morning. Testimony was taken over counsel's numerous objections, including but not limited to that counsel could not hear the testimony, that Anthony was not present, that the hearing had been remanded, and that any testimony included parol evidence that was not admissible. Anthony has requested the tape of this proceeding, however, it has not been made available to date.

From two (2) days after the child's birth until October 7, 2024, Destiny had no contact with Anthony nor the infant child.

Anthony moved to Dickson, Tennessee on 10/5/2024. Anthony filed a notice of relocation on 10/7/2024 at 11:25 a.m. that was mailed to Destiny. As Destiny had no parenting time since the child was born and Anthony had sole custody, no modification of custody or parenting time would be necessary.

On October 8, 2024, Judge [redacted] entered an Order that made erroneous findings about who cared for the child (including false testimony that Anthony's mother had been the primary care taker of the infant child) and the behavior of Anthony (including false testimony that Anthony acted erratic the week before), that vacated the Agreed Custody Decree pursuant to CR 60.01 as it was entered in error, and that Ordered Anthony and the child to return to Kentucky at motion hour on October 14, 2024, all under the threat of arrest. (Appendix J).

On October 8, 2024, Anthony filed various post judgment motions, including a CR 59.05 motion, to vacate Judge [redacted] Order of October 8, 2024, scheduled to be heard at motion hour on October 14, 2024.

At motion hour on October 14, 2024, Anthony and the infant child were present. Judge [redacted] orally denied all of Anthony's motions and orally Ordered the child would reside with Destiny and that Anthony could file a motion with the Court if he wanted parenting time with the child. Destiny told Judge [redacted] that Destiny and Anthony had agreed to give physical and legal custody to Anthony's mother, which was not true. (Destiny was not aware Anthony was physically present in Court at that time). When counsel objected based on standing and said this was not true, Judge [redacted] stated that Anthony's

parents may have a basis for custody and can get an attorney to make those claims. Anthony has requested the tape of this proceeding, however, it has not been provided to date. No subsequent written Order from the October 14, 2024 motion hour has been received.

This Petition follows.

E. RELIEF REQUESTED

Anthony requests an extraordinary writ that vacates all findings and Orders set forth in the October 8, 2024 written Order of the Court and all oral Orders that occured at motion hour on October 14, 2024.

Anthony specifically requests by separate motion for immediate relief that an Order for immediate sole legal and physical custody of the infant minor child be granted to Anthony, as to the best of Anthony's knowledge the infant child is not in the physical custody of Destiny and based on all of the reasons set forth herein. (Appendix K).

F. MEMORANDUM OF AUTHORITIES AND ARGUMENT

A writ of prohibition may be granted upon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted. Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004). Courts have also recognized writs as appropriate in certain special cases when there is a showing of great and irreparable harm and

where “a substantial miscarriage of justice will result if the lower court is proceeding erroneously, and correction of the error is necessary and appropriate in the interest of orderly judicial administration.” Grange c. Mut. Ins. Co. v. Trude, 151 S.W.3d 803,808 (Ky. 2005).

COURT ACTING OUTSIDE JURSIDICTION

Anthony argues that the Court is proceeding outside its jurisdiction. While family court generally has jurisdiction to modify parenting time/visitation and custody, Judge [redacted] did not modify custody or visitation in this case, but vacated a valid prior agreement and permanent and final custody and visitation Decree. In support of this argument, (1) Anthony had been operating since August 9, 2024 pursuant to the Court's Agreed Custody Decree as sole custodian with Destiny having no visits of the minor child (although practically Anthony had been operating in this manner since two days after the child was born). There was no motion before the Court to modify the permanent custody and visitation Decree; (2) Even if there had been a motion to modify custody or visitation, KRS 403.340 prevents same from being modified within two (2) years of a custody decree unless there is reason to believe the child's current environment seriously endangers his/her phyiscal, mental, moral or emotional health based on two affidavits, and a hearing is held. Finally, Judge [redacted] vacated the prior Decree pursuant to CR 60.01, however CR 60.01 does not confer jurisidiction on a Court to make substantive changes to Court Orders, but only clerical, ministerial errors. Cardwell v. Commonwealth, 12 S.W.3d 672, 674 (Ky. 2000), Potter v. Eli Lilly and Company, 926 S.W.2d 449 (Ky. 1996).

In support of the proposition that the Court did not have jurisdiction to proceed to vacate the Agreed Custody Decree and this writ is appropriate, in Cabinet for Human Resources v. McKeehan, 672 S.W.2 934 (Ky. Ct. App. 1984), the Cabinet for Human Resources petitioned the

Court of Appeals for writs of mandamus and prohibition for alleged actions outside a court's jurisdiction. During a divorce in Michigan, a child was brought to Kentucky by the mother. The child's mother was granted custody in Michigan in July 1983 but was prohibited by decree from changing the child's domicile from Michigan. The child was removed from the mother's care by a Kentucky district court due to abuse and neglect. Custody of the child was transferred to the Cabinet, which placed the child with a foster family. Whiel this was proceeding, the State of Michigan worked toward having the child returned to the father in Michigan. The Kentucky district court ordered the return of the child to the father in Michigan in November 1983. The next day, the foster parents of the child filed a petition for adoption in the Kentucky circuit court. The Kentucky circuit court entered various restraining orders and injunctions preventing the child from being returned to the father. The Cabinet filed a writ alleging the circuit court was acting outside its jurisdiction. The Court of Appeals granted the writ finding that the Kentucky circuit court lacked jurisdiction for the pending adoption case as the child was not available for adoption as Kentucky had never been the home state of the child.

NO ADEQUATE REMEDY, IRRPARABLE HARM

Even if the Court were acting within its jurisdiction, Anthony argues that this writ is appropriate as there is no adequate remedy by appeal and he will be irreprably harmed. The Court is vacating valid prior Orders of the Court and modifying custody and visitation without motion or hearing, all to Anthony's detriment based on his prior valid sole custody Agreed Decree. Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004).

Anthony also asserts that the adminstration of justice would suffer great and irreparable injury and a substantial miscarriage of justice would occur if this matter is not addressed now. A

Court should not be pemitted to simply vacate an Order when it chooses. Wal-Mart Stores, Inc. v. Dickinson, 29 S.W.3d 796, 801 (Ky. 2000).

The irreparable harm to Anthony and the administration of justice is clear in either of the above cases. The sole custody that Anthony has enjoyed for the last several months has been ripped away from him and the irreparable harm has started to occur as Anthony is not able to raise the infant child in the religion he chooses, send the child to a daycare or preschool he chooses (or start to home school the child at an age he chooses), provide the infant child the medical care he chooses (including what vaccinations and other medical care to give or not give the child), chose whom the child associates (friends and family), and, in this case, decide where the child resides.

WHEREFORE, the Petitioner, ANTHONY [redacted], respectfully requests that this Honorable Court grant Petitioner's Petition for a Writ of Prohibition and/or Mandamus and compel Honorable Judge [redacted] to vacate the October 8, 2024 Order and all subsequent Orders of the October 14, 2024 motion hour.

Respectfully submitted,

/s BRYAN GOWIN
BRYAN GOWIN
KBA #86699
1300 Gardiner Lane, Suite 6
Louisville, KY 40213
(502) 708-2332
bryangowin@aol.com
mediationinkentucky@gmail.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion was served via U.S. Mail, postage prepaid on the 21st day of October 2024 to the following:

HON. JUDGE [redacted]

Respondent

Destiny [redacted]

/s/ BRYAN GOWIN
Counsel for Petitioner
KBA #86699

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
ACTION NO. _____

ANTHONY [redacted] PETITIONER

vs.

JUDGE [redacted]

-and-

DESTINY [redacted] RESPONDENTS

* * * * *

MOTION FOR EMERGENCY RELIEF

*** *** *** ***

Comes now Petitioner, ANTHONY [redacted] (hereinafter "Anthony"), by and through counsel, and pursuant to CR 76.36(4), petitions this Court for immediate relief in the form of an order staying the Court's written Orders of October 8, 2024 and oral Orders of October 14, 2024 and maintaining the prior status quo of the infant child being in the sole custody of the Petitioner, Anthony J[redacted] with no visitation to the Respondent, Destiny [redacted]. Without an order granting immediate relief, Anthony will suffer immediate, irreparable injury before his Petition for Writ of Prohibition will be heard.

Anthony will be irreparably harmed if the Respondent's Order vacating the prior Agreed Custody Decree granting him sole custody is not set aside now as he is being deprived of making decisions for the infant child on a daily basis in the formative years of the infant and is being deprived of time with the child to the exclusion of the Respondent mother who did not seek any visits with the child, and apparently still does not maintain visits with the infant child. Anthony requests a reversion to the status quo that existed since two days after the infant child was born

(and by Decree signed by the Judge [redacted] on August 9, 2024), namely an immediate return of the infant child to Anthony's sole legal and physical care, pending full adjudication of the underlying Writ.

Respectfully submitted,

_/s BRYAN GOWIN_____
BRYAN GOWIN
KBA #86699
1300 Gardiner Lane, Suite 6
Louisville, KY 40213
(502) 708-2332
bryangowin@aol.com
mediationinkentucky@gmail.com
Counsel for Petitioner

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