

HEINONLINE

Citation: 103 Ky. L.J. i 2014-2015



Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Fri Sep 18 16:47:51 2015

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0023-026X](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0023-026X)

Kentucky Law Journal

VOLUME 103

2014-2015

NUMBER I

Editor-in-Chief
BENJAMIN L. MONARCH

Managing Editor
KATHERINE ELIZABETH BEYER

Managing Articles Editor
CHRISTOPHER R. HELD

Articles Editors
SHANNON H. CHURCH
SARAH M. HOUSEMAN
ASHLEY M. WINKLER

Special Features Editor
JEFFREY A. KAPLAN, JR.

Operations Manager
CHELSEA L. GRANVILLE

Production Editors
NICOLE L. ANTOLIC
MATTHEW J. HLINKA
JENNIFER PEKMAN

Notes Editors
KATHARINE M. SAGAN
KATHARINE E. SMITH

Online Content Manager
CAITLIN E. HOUSLEY

Online Content Editor
TODD J. WEATHERHOLT

Sixth Circuit Blogger
CHARLES KREBS

Senior Staff

CHRISTOPHER B. CARSON
ELIZABETH C. CHAMBERS
SEAN P. O'DONNELL
KEVIN C. HAVELDA
CHELSEA N. HAYES
MICHAEL HILL

MORGAN BLAIR JAMES
HANNAH R. JAMISON
STACI J. MILLER
JACOB MOAK
ZACHARY W. PEFFER
MITCHELL J. RHEIN

WILLIAM M. ROWE
SEAN PATRICK RYAN
JORDAN DAVID SMART
CASSANDRA J. TACKETT
STEPHEN WILSON

Staff

ZACHARY ANDERSON
JULIE A. BARR
GARDNER B. BELL
MEREDITH BERGE
HILLARY R. CHAMBERS
MOLLY K. COFFEY
MATT DEARMOND
KIERSTON J. EASTHAM
KEVIN NATHANIEL TROY FOWLER
JONATHON M. FULLER
M. CAITLIN GALLAHER
DAVID RICHARD GARNER

COLTON W. GIVENS
JOSEPH S. GUTHRIE
SARAH E. HINES
NOLAN M. JACKSON
MARY KATHERINE KINGTON
JOSEPH M. KRAMER
JAMES P. LANDRY
TATIANA F. LIPSEY
GRAHAM T. MARKS
DYLAN S. MERRILL
KATHRYN E. MEYER
ELAINE C. NAUGHTON
JONATHON P. NUNLEY

JOHN S. OSBORN IV
TAYLOR DANIELLE POSTON
ANDREA L. REED
MARK E. ROTH
BARDIA SANJABI
JOSEPH J. SHERMAN
K. KIRBY STEPHENS
CHRISTOPHER K. STEWART
MISTY M. STONE
SARAH E. TIPTON
MICHAEL J. TREMOULIS
MARY ELLEN WIMBERLY

Faculty Advisor
NICOLE HUBERFELD

Staff Assistant
APRIL BROOKS

Since 1913, the KENTUCKY LAW JOURNAL has published scholarly works of general interest to the legal community. The JOURNAL is produced by students of the University of Kentucky College of Law under the direction of a fifteen-person editorial board and with the advice of a faculty member.

We welcome unsolicited submissions. Submissions must be typed double spaced with footnotes. Citations should generally conform to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (19th ed. 2010); the CHICAGO MANUAL OF STYLE (16th ed. 2010) is recommended for non-citation stylistic guidance. The author's résumé or a brief biographical statement should accompany the manuscript. Manuscripts will not be returned unless accompanied by a return envelope and postage. Send all submissions to:

editors@kentuckylawjournal.org

or

Articles Editor
KENTUCKY LAW JOURNAL
University of Kentucky
College of Law
Lexington, KY 40506-0048

Electronic submissions are also accepted through the ExpressO online service.

The editing process will be facilitated by sending articles in Microsoft Word format. Any required graphics should consist of high-resolution black-and-white line art provided as separate eps or TIFF files.

Except as otherwise provided, the author of each article in this issue has granted to the JOURNAL a nonexclusive license to publish, reproduce, distribute, and use the article in print or electronic form. The JOURNAL hereby authorizes the reproduction of article(s) to be made for classroom use in a nationally accredited law school, provided that (1) author and journal are identified, and (2) proper notice of copyright is affixed to each copy. The views expressed in the articles, etc., do not necessarily represent the views of the JOURNAL.

Communications of an editorial or business nature may be addressed to KENTUCKY LAW JOURNAL, University of Kentucky, College of Law, Lexington, KY 40506-0048. All notifications of change of address should include old address and new address, including zip code. Please inform us one month in advance to ensure prompt delivery.

Subscription price: \$44.00 per year, \$11.00 per number. Subscriptions are accepted only on a volume basis, starting with the first issue of the current volume. If subscription is to be discontinued at expiration, notice to that effect should be sent before the receipt of the first issue of the next volume; otherwise, subscriptions will be renewed and sent as usual. Claims for issues not received must be made within one year of publication. Back issues and volumes are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209-1987.

The KENTUCKY LAW JOURNAL is published quarterly by the College of Law, University of Kentucky, Lexington. Periodicals postage paid at Lexington, Kentucky 40506 and additional offices. POSTMASTER: send address changes to KENTUCKY LAW JOURNAL, University of Kentucky, College of Law, Lexington, KY 40506-0048. ISSN 0023-026X.

Copyright 2015 by University of Kentucky College of Law

UNIVERSITY OF KENTUCKY COLLEGE OF LAW

ELI CAPILOUTO, President of the University. BS 1971, University of Alabama; DMD 1975, MPH 1985, University of Alabama at Birmingham

CHRISTINE M. RIORDAN, Provost. BTE 1987, Georgia Institute of Technology; MBA 1989, PhD 1995, Georgia State University

DAVID A. BRENNEN, Dean and Professor of Law. BA 1988, Florida Atlantic University; JD 1991, LLM 1994, University of Florida

ADMINISTRATION

KEVIN P. BUCKNAM, Director of Continuing Legal Education. BS 1987, Eastern Kentucky University; JD 1992, California Western School of Law

MELISSA N. HENKE, Director of Legal Research and Writing, Assistant Professor of Legal Research and Writing. BA 1998 University of Kentucky; JD 2001, George Washington University

DIANE KRAFT, Assistant Director of Legal Writing and Director of Academic Success. BA 1986, University of Wisconsin; MA 1996, Indiana University; MA 1998, Indiana University; JD 2006, University of Wisconsin

DOUGLAS C. MICHAEL, Associate Dean of Academic Affairs and Gallion & Baker Professor of Law. AB 1979, Stanford University; MBA 1982, JD 1983, University of California

DANIEL P. MURPHY, Assistant Dean for Administration and Community Engagement. BA 1993. JD 1998, University of Kentucky

SUSAN BYBEE STEELE, Associate Dean of Career Services. BS 1985, JD 1988, University of Kentucky

EMERITUS FACULTY

CAROLYN S. BRATT, Professor of Law (Emeritus 2008). BA 1965, State University of New York at Albany; JD 1974, Syracuse University

ALVIN L. GOLDMAN, Professor of Law (Emeritus 2008). AB 1959, Columbia University; LLB 1962, New York University

THOMAS P. LEWIS, Professor of Law (Emeritus 1997). BA 1954, LLB 1959, University of Kentucky; SJD 1964, Harvard University

JOHN M. ROGERS, Judge, US Court of Appeals for the Sixth Circuit, Thomas P. Lewis Professor of Law (Emeritus 2002). BA 1970, Stanford University; JD 1974, University of Michigan

STEPHEN J. VASEK, JR., Associate Professor of Law (Emeritus 2012). BS, BA 1961, JD 1966, Northwestern University; LLM 1969, Harvard University

FACULTY

ALBERTINA ANTOGNINI, Visiting Assistant Professor of Law. BA 2004, Stanford University; JD 2008, Harvard University

RICHARD C. AUSNESS, Everett H. Metcalf, Jr. Professor of Law. BA 1966, JD 1968, University of Florida; LLM 1973, Yale University

SCOTT BAURIES, Robert G. Lawson Associate Professor of Law. BA 1995, University of West Florida; MEd 2001, University of South Florida; JD 2005, PhD 2008, University of Florida

JENNIFER BIRD-POLAN, James and Mary Lassiter Associate Professor of Law. BA 1999, Penn State University; JD 2007, Harvard University

TINA BROOKS, Electronic Services Librarian. BA 2005, UNIVERSITY OF NORTHERN IOWA; JD 2009, UNIVERSITY OF NEBRASKA COLLEGE OF LAW; MS 2011, UNIVERSITY OF TEXAS

RUTHEFORD B CAMPBELL, JR., Spears-Gilbert Professor of Law. BA 1966, Centre College; JD 1969, University of Kentucky; LLM 1971, Harvard University

MARIANNA JACKSON CLAY, Visiting Assistant Professor of Law. JD 1978, University of Kentucky

ALLISON CONNELLY, Director of the UK Legal Clinic and James and Mary Lassiter Professor of Law. BA 1980, JD 1983, University of Kentucky

MARY J. DAVIS, Stites & Harbison Professor of Law. BA 1979, University of Virginia; JD 1985, Wake Forest University

JAMES M. DONOVAN, Law Library Director and James and Mary Lassiter Associate Professor of Law. BA 1981, University of Tennessee at Chattanooga; MLIS 1989, Louisiana State University; PhD 1994, Tulane University; MA 2000, Louisiana State University; JD 2003, Loyola New Orleans School of Law

JOSHUA A. DOUGLAS, Robert G. Lawson & William H. Fortune Associate Professor of Law. BA 2002; JD 2007, George Washington University

WILLIAM H. FORTUNE, Robert G. Lawson Professor of Law. AB 1961, JD 1964, University of Kentucky

CHRISTOPHER W. FROST, Thomas P. Lewis Professor of Law. BBA 1983, JD 1986, University of Kentucky

EUGENE R. GAETKE, Edward T. Breathitt Professor of Law. BA 1971, JD, University of Minnesota

MARY LOUISE EVERETT GRAHAM, Senator Wendell H. Ford Professor of Law. BA 1965, JD 1977, University of Texas

Jane GRISÉ, Director of Academic Success, Professor of Legal Writing. BA, JD, UNIVERSITY OF WISCONSIN

ROBERTA M. HARDING, Judge William T. Lafferty Professor of Law. BS 1981, University of San Francisco; JD 1986, Harvard University

KRISTIN J. HAZELWOOD, Assistant Professor of Legal Research and Writing. BA 1996, University of Louisville; JD 1999, Washington and Lee University

MICHAEL P. HEALY, Senator Wendell H. Ford Professor of Law. BA 1978, Williams College; JD 1984, University of Pennsylvania

NICOLE HUBERFELD, H. Wendell Cherry Professor of Law. BA 1995, University of Pennsylvania; JD 1998, Seton Hall Law School

MARK F. KIGHTLINGER, Edward T. Breathitt Associate Professor of Law. BA 1981, Williams College; JD 1988, Yale Law School

ROBERT G. LAWSON, Frost, Brown & Todd Professor of Law. BS 1960, Berea College; JD 1963, University of Kentucky

CORTNEY E. LOLLAR, Assistant Professor of Law. BA 1997, Brown University; JD 2002 New York University

KATHYRN L. MOORE, Ashland-Spears Distinguished Professor of Law. AB 1983, University of Michigan; JD 1988, Cornell University

MELYNDA J. PRICE, Robert E. Harding, Jr. Associate Professor of Law. BS 1995, Prairie View A & M University; JD 2002, University of Texas

FRANKLIN RUNGE, Faculty Services Librarian. BA 2000, Hiram College; JD 2003, Northeastern University of Law; MLS 2010, Indiana University

PAUL E. SALAMANCA, Wyatt, Tarrant & Combs Professor of Law. AB 1983, Dartmouth College; JD 1989, Boston College

ROBERT G. SCHWEMM, William L. Matthews, Jr. Professor of Law. BA 1967, Amherst College; JD 1970, Harvard University

BEAU STEENKEN, Instructional Services Librarian. BA University of Texas at Austin; MA, Texas State University-San Marcos; JD, University of Texas School of Law; MS, University of Texas School of Information; LLM, University of Nottingham, United Kingdom

RICHARD H. UNDERWOOD, William L. Matthews, Jr. Professor of Law. BA 1969, JD 1976, The Ohio State University

RYAN VALENTIN, Head of Public Services. JD 2004, University of Oregon; MLIS 2007, Florida State University

HAROLD R. WEINBERG, Everett H. Metcalf, Jr. Professor of Law. AB 1966, JD 1969, Case Western Reserve University; LLM 1975, University of Illinois

SARAH N. WELLING, Ashland-Spears Distinguished Research Professor of Law. BA 1974, University of Wisconsin; JD 1978, University of Kentucky

RICHARD A. WESTIN, Professor of Law. BA 1967, MBA 1968, Columbia University; JD 1972, University of Pennsylvania

ANDREW K. WOODS, Assistant Professor of Law. BA 2002, Brown University; JD 2007, Harvard University; PhD 2012, University of Cambridge

ADJUNCT FACULTY

GLEN S. BAGBY, Adjunct Professor of Law. BA 1966, Transylvania University; JD 1969, University of Kentucky. Firm: Dinsmore & Shohl

FRANK T. BECKER, Adjunct Professor of Law. JD 1979, University of Kentucky. Equine and Commercial Law and Litigation Practitioner

DON P. CETRULO, Adjunct Professor of Law. BA 1971, Morehead State University; JD 1974, University of Kentucky. Firm: Knox & Cetrulo

JENNIFER COFFMAN, Adjunct Professor of Law. BA 1969, JD 1978, University of Kentucky. Retired Chief Judge of the Eastern District of Kentucky

REBECCA DILORETO, Adjunct Professor of Law. BA 1981, Amherst College; JD 1985, University of Kentucky. Children's Law Center

ANDREW DORISIO, Adjunct Professor of Law. BS 1980, West Virginia University; JD 1996, University of Kentucky. Firm: King & Schickli

Janet Graham, Adjunct Professor of Law. Law Commissioner of the Lexington-Fayette Urban County Government

KAREN GREENWELL, Adjunct Professor of Law. BA 1976, JD 1985, University of Kentucky. Firm: Wyatt, Tarrant & Combs

PIERCE W. HAMBLIN, Adjunct Professor of Law. BBA 1973, JD 1977, University of Kentucky. Firm: Landrum & Shouse

JAMES G. HARRALSON, Adjunct Professor of Law. JD 1979, University of Kentucky. Retired Associate General Counsle for AT&T Mobility

JOHN HAYS, Adjunct Professor of Law. BA 1985, Princeton University; JD 1988, University of Kentucky. Firm: Jackson Kelly

G. EDWARD HENRY II, Adjunct Professor of Law. BA 1976, JD 1979, University of Kentucky. Firm: Henry, Watz, Raine & Marino

GAYLE W. HERNDON, Adjunct Professor of Law. JD 1982, University of Kentucky. Retired Tax Counsel for Tax Policy and Planning at the General Electric Company

PAULA HOLBROOK, Adjunct Professor of Law. BS 1990, JD 1993, University of Kentucky. UK HealthCare

GIJON JOHNSTONE, Adjunct Professor of Law. BA 2005, Transylvania University; MSW 2011, JD 2011, University of Louisville. Director of Maxwell Street Legal Clinic

EMILY JONES, Adjunct Professor of Law. JD 2011, University of Kentucky. Immigration Attorney at Kentucy Refugee Ministries

RAYMOND M. LARSON, Adjunct Professor of Law. JD 1970, University of Kentucky. Fayette County Commonwealth Attorney

JOHN T. MCGARVEY, Adjunct Professor of Law. BA 1970, JD 1973, University of Kentucky. Firm: Morgan & Pottinger

GEORGE MILLER, Adjunct Professor of Law. BA 1975, AM 1978, Brown University; Ph.D 1981, Brown University; JD 1984, University of Kentucky. Firm: Wyatt, Tarrant & Combs

MARGARET PISACANO, Adjunct Professor of Law. BSN 1980, Vanderbilt; JD 1983, University of Kentucky. Associate General Counsel and Director of Risk Management at University of Kentucky's Chandler Medical Center

DAMON PRESTON, Adjunct Professor of Law. BA 1991, Transylvania University; JD 1994, Harvard. Deputy Public Advocate

STEVEN ROUSE, Adjunct Professor of Law. AB 1999, University of Illinois; JD 2006, Northwestern University

THALETIA ROUTT, Adjunct Professor of Law. JD 2000, University of Kentucky. Associate General Counsel for University of Kentucky

THOMAS E. RUTLEDGE, Adjunct Professor of Law. BA 1985, St. Louis University; JD 1990, University of Kentucky. Firm: Stoll Keenon Ogden

LINDA SMITH, Adjunct Professor of Law. BA 1997, Transylvania University; JD 1994, Northern Kentucky Salmon P. Chase College of Law

LARRY SYKES, Adjunct Professor of Law. BA 1975, Vanderbilt University; JD 1983, University of Kentucky. Firm: Stoll Keenon Ogden

WILLIAM THRO, Adjunct Professor of Law. BA 1997, Transylvania University; JD 1990, University of Virginia School of Law

M. LEE TURPIN, Adjunct Professor of Law. BA 1997, Transylvania University; JD 1992, University of Kentucky College of Law. First Assistant County Attorney

ANDREA WELKER, Adjunct Professor of Law. BA 1997, Transylvania University; JD 2009, University of Kentucky College of Law

CHARLES WISDOM, Adjunct Professor of Law. JD 1985, University of Louisville. Chief, Appellate Section, US Attorney's Office

JEFFREY YOST, Adjunct Professor of Law. JD 1972, West Virginia University; LL.M. 1979 Georgetown University. Firm: Jackson Kelly PLLC

