

# Inter Alia

*Among Other Things*

Summer 2018

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## Letter from the Chair



Syeda Davidson

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To my fellow young lawyers:

First, if you are new to the section, **congratulations** on passing the bar exam! I do hope you will consider coming to some events hosted by the YLS.

There is still time to register for the 11<sup>th</sup> Annual Summit, and I am so very excited about it. It is always a time for excellent CLE, fun networking events, and the chance to become more involved with the section. This year, our keynote speaker is Justice Bridget Mary McCormack, whose work I admire greatly. My friend Kaitlin Brown will be honored with the Regeana Myrick Outstanding Young Lawyer Award. I could not be more proud of her. Check out the YLS Facebook page or the section page on SBM's website for more details!

This year's summit will be a little bittersweet for me, too. After it's over, my year as chair will have flown by. I will join the ranks of past YLS chairs who try to keep in touch, but can't always do so as much as they'd like. But...it's not time to say goodbye yet.

If you've thought about being more involved with the YLS, the summit is a great chance to get a little sample of what you can expect. You can come meet almost the entire council and talk with any of us about what the experience is like. Additionally, keep your eye out for "Meet Your Council Member" events, which are new this year. These events are your chance to meet representatives from your district, and maybe even talk about coordinating projects that are important to you.

I hope to see many of you at Boyne for the summit next weekend, and I'm looking forward to meeting so many of our new members.

Very truly yours,

Syeda Davidson

# Taking Your Professional and Personal Self to Higher Ground

By Kristina Bilowus

*“The secret to happiness is freedom...And the secret to freedom is courage” – Thucydides*

As law students and as young attorneys, it is often *easy* to become overwhelmed with work, responsibilities, and uncertainties of a new career. We seek opportunities for professional growth with the understanding that stakes may be high with stiff competition. Yet, while securing our professional identity, our sense of happiness and personal development can be easily overlooked. April McKie’s goal? She wants young attorneys to pursue both personal and professional satisfaction as they navigate their futures.



On April 12, 2018, YLS sponsored the interactive event, “Taking Your Professional and Personal Self to Higher Ground” at the University of Detroit Mercy School of Law (“UDM”). The presentation began

with a brief overview of YLS, highlighting the structure and opportunities of the organization. Programs such as this offer members of the State Bar Michigan an opportunity to learn about relevant and interesting topics in the legal field.

Attorney and entrepreneur April McKie was the featured speaker. She encouraged the audience to create goals for professional and personal success, while challenging them to highlight specifics of what they want to accomplish. She provided

tips to finding professional satisfaction and personal happiness.



Using a handout that served as a roadmap, each participant was encouraged to write his or her own narrative, identify individual strengths, create specific goals to a dream life, outline obstacles to achieving those goals, and ways of overcoming the obstacles. A mother of six children, April provided unique insight into balancing a career and personal life.

UDM Law Career Services & Outreach Director Tanya Lundberg; Women Bar Association WLAM Representative–Elect Stephanie Martin; and Liza Esqueda, founder of Esqueda Law, PLLC, were some of the attorneys in attendance. Additionally, law students of various levels from UDM participated. The goal of the presentation was to bring together law students and young lawyers to encourage them to dream big while creating attainable goals.

April’s message was clear. As young professionals in the legal world, we need to pursue opportunities that bring us happiness as individuals. We need to be courageous in defining who we want to be and to explore our talents. By purposefully choosing our goals, both professionally and personally, we allow ourselves to live fuller and richer lives.



**YLS Summit**  
June 15-16, 2018  
Boyne Highlands Resort

For more details visit  
<http://connect.michbar.org/yls/home>



# MIDC's First Set of Standards

By Elisha Oakes

On May 22, 2017, the first set of standards for Michigan Indigent Defense Commission (“MIDC”) were approved by the Department of Licensing and Regulatory Affairs (the “Department”). The standards that were approved are as follows:

- Education and training for defense counsel
- Initial interview
- Investigation and experts
- Counsel at first appearance and other critical stages

## Education and training for defense counsel

The standard for education and training of defense counsel is crucial. Currently, most jurisdictions in Michigan do not require continuing legal education. Standard 1 requires defense counsel to attend continuing legal education relevant to counsel’s indigent defense clients. The MIDC proposed a minimum standard for the education and training of defense counsel. The version conditionally approved by the court, submitted by the MIDC, and approved by the Department is as follows:

**A. Knowledge of the law.** Counsel shall have reasonable knowledge of substantive Michigan and federal law, constitutional law, criminal law, criminal procedure, rules of evidence, ethical rules and local practices. Counsel has a continuing obligation to have reasonable knowledge of the changes and developments in the law. “Reasonable knowledge” as used in this standard means knowledge of which a lawyer competent under MRPC 1.1 would be aware.

**B. Knowledge of scientific evidence and applicable defenses.** Counsel shall have reasonable knowledge of the forensic and scientific issues that can arise in a criminal case, the legal issues concerning defenses to a crime, and be reasonably able to effectively litigate those issues.

**C. Knowledge of technology.** Counsel shall be reasonably able to use office technology commonly used in the legal community, and technology used within the applicable court system. Counsel shall be reasonably able to thoroughly review materials that are provided in an electronic format.

**D. Continuing education.** Counsel shall annually complete continuing legal education courses relevant to the representation of the criminally accused. Counsel shall participate in skills training and educational programs in order to maintain and enhance overall preparation, oral and written

advocacy, and litigation and negotiation skills. Lawyers can discharge this obligation for annual continuing legal education by attending local trainings or statewide conferences. Attorneys with less than two years of experience practicing criminal defense in Michigan shall participate in one basic skills acquisition class. All attorneys shall annually complete at least 12 hours of continuing legal education. Training shall be funded through compliance plans submitted by the local delivery system or other mechanism that does not place a financial burden on assigned counsel. The MIDC shall collect or direct the collection of data regarding the number of hours of continuing legal education offered to and attended by assigned counsel, shall analyze the quality of the training, and shall ensure that the effectiveness of the training be measurable and validated. A report regarding these data shall be submitted to the court annually by April 1 for the previous calendar year.

## Initial interview

The initial interview is a crucial part of representation. However, across the state of Michigan, indigent defense attorneys are meeting their clients for the first time in court. In several courts, including the 37<sup>th</sup> District Court located in Warren, there is no private place to speak with clients. In some cases defense attorneys do not find out about their representation until the last minute. These are some of the reasons why this standard is crucial to effectuating change in our indigent defense here in Michigan.

The MIDC Act requires adherence to the principle that defense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel’s client. The MIDC proposed a minimum standard for the initial client interview. The version conditionally approved by the court, submitted by the MIDC, and approved by the Department is as follows:

**A. Timing and Purpose of the Interview.** Counsel shall conduct a client interview as soon as practicable after appointment to represent the defendant in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel’s representation and the case proceedings. The goals of the initial interview are to: (1) establish the best possible relationship with the indigent client; (2) review charges; (3) determine whether a motion for pretrial release is appropriate; (4) determine the need to start any immediate investigations; (5) determine any immediate mental or



physical health needs or need for foreign language interpreter assistance; and (6) advise that clients should not discuss the circumstances of the arrest or allegations with cellmates, law enforcement, family or anybody else without counsel present. Counsel shall conduct subsequent client interviews as needed. Following appointment, counsel shall conduct the initial interview with the client sufficiently before any subsequent court proceeding so as to be prepared for that proceeding. When a client is in local custody, counsel shall conduct an initial client intake interview within three business days after appointment. When a client is not in custody, counsel shall promptly deliver an introductory communication so that the client may follow up and schedule a meeting. If confidential videoconference facilities are made available for trial attorneys, visits should be scheduled within three business days. If an indigent defendant is in the custody of the Michigan Department of Corrections (“MDOC”) or detained in a different county from where he is charged, counsel should arrange for a confidential client visit in advance of the first pretrial hearing.

**B. Setting of the interview.** All client interviews shall be conducted in a private and confidential setting to the extent reasonably possible. The indigent criminal defense system shall ensure the necessary accommodations for private discussions between counsel and clients in courthouses, lock-ups, jails, prisons, detention centers, and other places where clients must confer with counsel.

**C. Preparation.** Counsel shall obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports concerning pretrial release, and discoverable material.

**D. Client status**

1. Counsel shall evaluate whether the client is capable of participation in his/her representation, understands the charges, and has some basic comprehension of criminal procedure. Counsel has a continuing responsibility to evaluate, and, where appropriate, raise as an issue for the court the client’s capacity to stand trial or to enter a plea pursuant to MCR 6.125 and MCL 330.2020. Counsel shall take appropriate action where there are any questions about a client’s competency.
2. Where counsel is unable to communicate with the client because of language or communication differences, counsel shall take whatever steps are necessary to fully explain the proceedings in a language or form of communication the client can understand. Steps include seeking the appointment of an interpreter to assist with pretrial preparation, interviews, investigation, and in-court proceedings, or other accommodations pursuant to MCR. 1.111.



**Investigation and Experts**

It is crucial to many defendants that counsel have the opportunity to make investigations. Prosecutors have a team of experts and funding for those experts. In some cases there may be a need for expert witnesses by defense counsel. What happens when your client is indigent? How do you get the expert? The MIDC proposed a minimum standard for investigations and experts. The version conditionally approved by the court and submitted by the MIDC and approved by the Department is as follows:

A. Counsel shall conduct an independent investigation of the charges and offense as promptly as practicable.

B. When appropriate, counsel shall request funds to retain an investigator to assist with the client’s defense. Reasonable requests must be funded.

C. Counsel shall request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution’s case. Reasonable requests must be funded as required by law.

D. Counsel has a continuing duty to evaluate a case for appropriate defense investigations or expert assistance. Decisions to limit investigation must take into consideration the client’s wishes and version of the facts.

If you represent indigent defendants, file a motion requesting funds if you believe an expert will aid in your defense or aid the jury. Even if you are retained, your client may be considered indigent and able to get court funds for expert witnesses.

**Counsel at first appearance and other critical stages**

Often times in felony cases, counsel’s first appearance is at the probable cause conference, meaning at arraignment the client is unrepresented. Arraignments are a critical part of proceedings and are where bond is set. Most defendants do not know the factors in addressing bond before the court.

The MIDC proposed a minimum standard on counsel at first appearance and other critical stages. The version conditionally approved by the court, submitted by the MIDC, and approved by the Department is as follows:

A. Counsel shall be assigned as soon as the defendant is determined to be eligible for indigent criminal defense services. The indigency determination shall be made and counsel appointed to provide assistance to the defendant as soon as the defendant's liberty is subject to restriction by a magistrate or judge. Representation includes but is not limited to the arraignment on the complaint and warrant. Where there are case-specific interim bonds set, counsel at arraignment shall be prepared to make a de novo argument regarding an appropri-

ate bond regardless of and, indeed, in the face of, an interim bond set prior to arraignment which has no precedential effect on bond-setting at arraignment. Nothing in this paragraph shall prevent the defendant from making an informed waiver of counsel.

B. All persons determined to be eligible for indigent criminal defense services shall also have appointed counsel at pre-trial proceedings, during plea negotiations and at other critical stages, whether in court or out of court.

Stay tuned for more information when the next set of standards are approved. For more information on the MIDC visit <http://michiganidc.gov>.

## New Limited Scope Representation Rules Benefit Young/New Lawyers!<sup>1</sup>

Attorneys looking to expand their practices, courts looking for improved efficiencies, and pro se civil litigants simply looking for help should look to the new limited scope representation (“LSR”) rules that became effective January 1, 2018.<sup>2</sup>

Today, LSR usually involves an attorney providing a self-represented party with advice and coaching, mapping out an overall legal strategy to resolve the entire matter, and performing one or more discrete tasks. These often include preparing pleadings, conducting discovery, attending a hearing, or negotiating settlement. Not every type of legal matter nor every client is a good fit. LSR, also known as unbundling, has proven most effective in settings such as landlord-tenant disputes, simple divorces and other family law concerns, expungements, and noncomplex consumer or tax matters.<sup>3</sup> In all cases, unbundling requires education and training—of lawyers, clients,

judges, and court staff. It also requires quality control mechanisms and deliberate attention to ethical questions.

Keep an eye out for more information about LSR training at the NEXT Conference, sponsored by the Master Lawyers and the Young Lawyers sections.

### Endnotes

- 1 [New Limited Scope Rules Benefit Underemployed Attorneys and Overburdened Courts](#). Portions of this article are reproduced here by permission of the State Bar of Michigan. All websites cited in this article were accessed May 30, 2018.
- 2 [Administrative Order 2016-41](#) (September 20, 2017).
- 3 [Limited scope representation helps lawyers expand practice](#).



**J**oin the State Bar of Michigan Young Lawyers Facebook page for information on upcoming events!

# Cyber Insurance

By James A. Johnson © 2018

What do the IRS, U.S. Office of Personnel Management, Target, Kmart, American Express, Walmart, Yahoo, and Michigan State University have in common? They all have experienced data breaches exposing personal records. On March 24, 2018, U. S. Deputy Attorney General Rod Rosenstein announced indictments of nine Iranians working on behalf of the Iranian government who hacked university computers to access scientific research.

Lawyers must understand cyber risks in order to advise their business clients and to protect their own law firms. Cyber law is a generic term that refers to all legal and regulatory aspects of the internet and the world wide web. It is a new phenomenon having emerged after the onset of the internet. In May 2016, the Ponemon Institute's Sixth Annual Benchmark Study on Privacy & Security of Healthcare Data shows the magnitude of cyber risks in the healthcare industry. Criminal attacks were up compared to the previous years. The study also found most organizations were unprepared to address new threats.<sup>1</sup>

The American Bar Association, Massachusetts Board of Bar Overseers, and the State Bar of Michigan have issued warnings to their entire membership. The warnings relate to email scams, hackers, and cybercrimes. Moreover, lawyers must be cognizant of their ethical responsibility in transmitting by email a client's privileged or confidential information and should include wording such as "The information contained herein is not legal advice or an endorsement of any company or person."

## Cyber insurance

Cyber insurance is used to protect businesses and individuals from internet-based risk. Companies that use a computer, receive, transmit electronic data, store information or connect to the internet are exposed to cyber liability. Cyber liability encompasses first- and third-party risks such as privacy issues, virus transmission, and infringement of intellectual property. Privacy exposure can also involve human error such as a lost laptop.

First-party insurance is coverage against what happens to the insured when injury and damage are caused to it. Third-party insurance protects the insured by means of indemnity or indemnification from actually having to pay all or part owed for causing injury and damages to someone else.

Traditional liability products do not address internet exposures and risks or at best only provide limited coverage. The standard commercial general liability policy has excluded data

related liability. Unlike other types of claims, cyber liability claims are unique. There is virtually no historical or actuarial data to evaluate the risk of an attack. Also, many damages resulting from an attack are intangible and hard to quantify, such as loss of goodwill. Every business is unique and has its own vulnerability. However, some core elements for which a quality cyber insurance policy should provide coverage for first-party liability are:

- Legal and forensic services to determine if a breach has occurred and to assist with regulatory compliance;
- Notification of affected customers and employees;
- Business interruption expenses;
- Crisis management and public relations to educate the company's customers; and
- Cyber extortion reimbursement

Third-party coverage should provide defense and liability costs for:

- Settlements, judgments, civil awards after a data breach;
- Employee privacy liability; and
- Infringement of copyright, trade name, domain name and service mark

Also important are consideration of items that may not be covered, such as:

- Loss of future revenue;
- Loss of value of the company's own intellectual property; and
- Loss of reputation

**First party property, expense & income** covers direct financial and consequential losses arising out of data damage, business income and extra expense, crime, extortion, and crisis management.

**Third-party liability coverage** covers defense and legal liability arising out of unauthorized access, use, disclosure or theft of private consumer information. It also covers extortion, terrorism or espionage, or misuse of the company's computer system, email, and other electronic communications resulting in harm to third parties. Coverage should also extend to civil and regulatory defense costs, compensatory and punitive damages for accidental and intentional acts of third parties.

## Insurance professionals

Experienced insurance professionals can provide advice and solutions to potential financial and reputation loss due to cyber risk. The identification of risks associated with business operations is the first step. Next is educating on prevention, risk mitigation, transfer and risk financing techniques.

Cyber insurance policies differ by insurer and there is no standard cyber first-party insurance policy. Wording used by an insurer is critical to the extent of coverage provided. Wording in insuring agreements, definitions, and exclusions must be carefully reviewed to ensure that the coverage provided meets the actual exposures of the organization. Enter insurance professionals in Michigan. (View the *Insurance and Indemnity Law Section Council or Journal* at <http://connect.michbar.org/insurance/home> to find the appropriate professional.) After you retain the appropriate professional, he or she can review policy language for basic coverage, deductibles, total limits, and specific exclusions and offer advice and solutions. He may suggest purchasing additional coverage or policies to prevent gaps in coverage.

### The Hartford

Data breaches are not limited to large companies. Data privacy is a real concern in the twenty-first century. The Hartford Insurance Company's August 11-19, 2015 survey of midsize business owners and C-level executives found that 43 percent of midsize business owners experienced a data breach in the previous three years.<sup>2</sup> With more than 200 years of experience, The Hartford is a leader in property and casualty insurance.

### AIG cyber insurance

AIG is a well-known company that has protected companies against cyber risks since the late 1990s. AIG is at the forefront of the industry as cyber risk exposures continue to evolve. They offer policies designed to respond to a variety of cyber risk exposures not covered under conventional insurance policies. CyberEdge, a registered trademark, is a comprehensive risk management solution for cyber insurance offered by AIG. CyberEdge provides innovative protection to help businesses safeguard against data breaches, computer viruses, employee error, business interruption, and identity theft.

### Zurich

Zurich is a Swiss insurance carrier with over 140 years serving businesses worldwide. Its risk engineering team is dedicated to cyber related issues. They offer a security and privacy protection policy that provides state-of-the-art coverages that includes first- and third-party coverages and privacy coverage.<sup>3</sup> The Liability, Regulatory and Internet Media Liability Cover-

age sets out, in pertinent part:

1. Liability coverages  
 "The Underwriter will pay on behalf of the insured all Damages which the insured becomes legally obligated to pay and Defense Costs on account of any claim...."
2. Regulatory proceeding coverage  
 The Underwriter will reimburse the *Insured* in responding to any Regulatory Proceeding....if the
  1. Security Wrongful Act concerning a privacy event; or
  2. Privacy Wrongful Act
 provided such Security Wrongful Act or Privacy Wrongful Act first occurs....
3. Internet media liability  
 "The Underwriter will pay on behalf of the Insured all Damages which the Insured becomes legally obligated to pay and Defense Costs on account of any Claim first made against the Insured, and reported to the Underwriter during the Policy Period or an Extended Reporting Period, if applicable, for an Electronic Publishing Wrongful Act, provided...."

### Travelers

Travelers Tpolicy (CYB-3001 Ed. 07-10) is a cyber risk policy and is accessible on the internet.<sup>4</sup>

## Conclusion

A data breach is a nightmare. Lawyers need to understand cyber insurance for their clients and their own law firms. Law firms have a special exposure when hacked because of client files with personal and other sensitive information. This could trigger notification obligations on part of the law firm.

There is limited coverage for cyber liability under general commercial policies. Cyber exposures are not static and evolve as society continues to use and rely on computers. Individuals continue to find ways to invade computers for malicious purposes. The procurement process for cyber insurance policies is no different from that used to obtain any other type of insurance. The decision to choose one company over another is made by understanding the coverage differences of each policy, limits, retentions, exclusions, and actual policy language terms and conditions. Attorneys should have a basic understanding of cyber risk to guide and advise clients how they can protect their businesses. The retention of insurance professionals can greatly enhance this understanding and process. Consider joining the Insurance & Indemnity Law Section and the Information Technology Law Section of the State Bar of Michigan.



You will get to network with their members and maybe even acquire business referrals.

### About the Author

*James A. Johnson is an accomplished trial lawyer based in Southfield, Michigan. Mr. Johnson is a member of the Insurance & Indemnity Law Section. He concentrates on serious personal injury, insurance coverage, sports & entertainment law, and federal crimes. He is an active member of the Michigan, Massachusetts, Texas and federal court bars and can be reached at [www.JamesA-JohnsonEsq.com](http://www.JamesA-JohnsonEsq.com)*

### Endnotes

- 1 Ponemon Institute's Sixth Annual Benchmark Study on Privacy & Security of Healthcare Data. <https://ponemon.org/library/sixth-annual-benchmark-study-on-privacy-security-of-healthcare-data-1>
- 2 [www.insurancejournal.com/news/national/2015/06/26/373176.htm](http://www.insurancejournal.com/news/national/2015/06/26/373176.htm) (last visited 4-3-18).
- 3 [www.zurichna.com/securityandprivacy](http://www.zurichna.com/securityandprivacy) (last visit 4-3-18).
- 4 <https://www.travelers.com/cyber-insurance/cyberberrisk> (last visited 4-3-18).

## Spring for Louisville

By Shenique Moss

The American Bar Association Young Lawyers Division (“ABA YLD”) held its 2018 Spring Conference on May 10-12 at the historic Brown Hotel in the heart of downtown Louisville, Kentucky. More than 200 young attorneys, including some of our international young lawyer friends from as far away as London, India, and Hong Kong participated in the conference.

### Thursday

The complimentary one-on-one executive coaching sessions with Debra Forman offered during the conference started early Thursday morning. I finally had the opportunity to attend one of her sessions and it was definitely worth it. The conference officially kicked off on Thursday afternoon with the Affiliates Leadership Training which is a practical workshop forum designed to assist YLD leaders to have a successful bar year. The training included presentations on budgeting and financial tips, increasing and retaining membership, integrat-

ing with the big bar and other sections/divisions, and succession planning. The ABA YLD Cabinet and Council meetings were also held on Thursday afternoon. Highlights from the meeting included remarks by ABA President-Elect Bob Carlson and a robust discussion on Redistricting Taskforce efforts and proposed course of action. After the training and meetings concluded, attendees had the opportunity to design their very own Kentucky Derby hat (which would come in quite handy at Friday's dinner dance) at the welcome reception. The ABA YLD then hosted a dine-around at some of Louisville's best restaurants. After dinner, attendees headed over to Tavern on the Fourth Street Live for a division-hosted meet-up.

### Friday

Friday's scheduled events started fairly early with a networking breakfast then a plenary on “Advancing Your Career with Emotional Intelligence.” The early morning events were followed by a candidates' forum with the two candidates run-





ning for YLD secretary, followed by informative seminars on topics such as “Confronting Cyber Threats and the Mission of the Department of Justice,” “Cryptocurrency and Blockchain Technology: How Does It Work and What Are the Implications on the Law,” “Beyond the School Yard: Harassment and Bullying in the Workplace,” “Intimate Partner Violence During Pregnancy: Prevalence, Prevention & Practice,” “Pro Bono in the 21st Century: Using Tech to Advance Pro Bono,” “Child Abuse, Elder Abuse and Mandatory Reporting Laws,” and “Net Neutrality: Free Competition or Chaos.” After the CLE seminars, attendees had the opportunity to explore Louisville and grab some delicious Louisville cuisine during lunch. The YLD Public Service Team and the Diversity Team held a toiletries drive to provide Home Safe Home toiletry packs to the Center for Women and Families in Louisville, a rape crisis center and domestic violence shelter, after lunch. The Annual International Oratory Competition and Reception was held at the conclusion of the scheduled CLE seminars. Young attorneys from across the country competed against our international colleagues in what can only be described as very spirited and entertaining debates centered around Kentuckian

pop culture. Later that evening, the dinner dance was held at the Kentucky Derby Museum on the grounds of Churchill Downs. Attendees feasted on a wonderful meal and dessert bar before dancing the night away.

### Saturday

Saturday morning began with breakfast and an Affiliate Showcase, where affiliates from across the nation promoted their most successful programs and projects. The remainder of the day featured CLE seminars and other informative programs on topics including “Cardinal Sins,”

“The Intersection of Domestic Violence and the Black Lives Matter Movement—How to Best Advise Victims in Fear of the Consequences of Police Contact,” “Of Sound Mind and Practice: Mental Well-Being for Lawyers,” and “Whiskey Tango Foxtrot.” The winners of the 2018 Embracing Diversity Challenge were announced before the conference concluded. Since it was Mother’s Day weekend, many of the attendees headed back home to be with their families. For those who didn’t, there were a few more meet-ups.

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## Bourbonism & the Commonwealth

By Ryan Zemke

Normally at ABA conferences, a session will revolve around the dangers of work-life balance and a warning involving the high rate of alcoholism among attorneys due to the highly stressful nature of the occupation. Kentucky, however, looks at the industry from a much different perspective—while still recognizing the need to exercise responsibility. From the moment you land in Louisville, you get an immediate feel for “bourbonism” and the effect it has on the Commonwealth.

Bourbon has experienced a major renaissance over the last few years. It brings \$8.5 billion to Kentucky’s economic system and accounts for over 17,000 jobs. Over \$800 million in annual payroll comes from the bourbon industry, and 95 percent of the world’s bourbon is made in Kentucky. The distillers are betting on the future, and over \$1.2 billion in local development is currently underway. Kentucky is where the stills are made, grains are grown, barrels are aged, and its natural weather conditions make the state the premier location to distill whiskey. Interestingly, the water in Kentucky (which sits on a natural bed of limestone to assist in filtering the water) seems to be the main reason that distilleries have been unable to leave for other states who are offering major incentives to bring their business to a new state. Not only have these indus-

tries created great beverage options, but they have also helped create multiple career paths for those with law degrees.

Whether representing distilleries of all sizes, working for the beverage control commission, or even lobbying legislators, legal opportunities are growing rapidly in this industry. While the process of creating bourbon is not patent protected, famous recipes and trade secrets have kept many lawyers busy drafting documents to protect the companies they represent. Trademark and intellectual property attorneys are helping to protect brands as they grow nationally and internationally. Attorneys are being employed to represent microbreweries as craft bourbons continue to grow, and the larger, more established distillers continue to employ large teams of attorneys to protect their brand as competition grows. The small and large distilleries each have their own needs (and budgets) and are constantly looking for competent and innovative legal representation to serve their particular interests. Much as you would expect, there is also the related need for criminal defense attorneys and prosecutors as a byproduct of the strong bourbon presence. As distillers of bourbon (as well as creators of other spirits, beers, and/or wines) continue to expand across the nation, the need for attorneys is more present than even in this field.

Aside from representation in the courtroom, opportunities within the legislative and regulatory field are growing as well. Lobbyists are pushing to protect the interests of the distilleries, manufacturers, and distributors of bourbon. The Kentucky legislature recently passed (and now strongly enforces) legislation designating exactly what qualifies as “Kentucky bourbon” to prevent others from trying to improperly claim such a title. The lawmakers are constantly reviewing their laws and taxes to prevent nearby states from attempting to recruit companies to bring part of the industry to their state. They are also looking at things such as regulating advertisements and setting up shipping reciprocity with other states, and on a federal level they are on the edge of their seats as the current administration changes trade agreements and tariffs. Much of the growth of this industry depends on being able to get the product overseas without having to deal with too much “red tape.” On a smaller scale, there are still “dry” counties that exist despite the economic dependence that is so prevalent. From a regulatory standpoint, commissions exist to help maintain a fair playing field and compliance but also to help the industry as a whole

move forward. They have had recent success holding town hall style meetings that bring all the players to the table to help them understand recent policy changes and also to get feedback on ones under consideration. The commission recognizes and respects their duty to maintain an environment that fosters growth but also focuses on encouraging responsible enjoyment of the industry for both locals and tourists.

In the end, bourbon is an absolute game changer for the people of Kentucky. The industry is growing so fast that even Disney has tried to create its version of a bourbon trail, only to have Kentucky lawyers step in to assert that a bourbon trail could only exist in their home state, and in the end even the mighty mouse had to stand down and revise its plans to abide by the strong protections that lawyers worked hard to create in favor of their hometown bourbon industry. This industry will continue to expand and as a result lawyers will continue to see both their practices and their opportunities grow as well. Next time you travel through Kentucky, be sure to stop and experience the ripple effect that is created by a simple drink.

