JOURNAL OF THE
MISSOURI BAR
VOLUME 78
NUMBER 2

MARCH-APRIL
2022

Arbitration or Litigation? The battle continues
PG. 60

International Child Abduction and the Hague Abduction Convention
PG.66

Chief Justice Paul Wilson Delivers State of the Judiciary
PG. 75

MoBar.org

LEX
THE MISSOURI BAR

/MissouriBar
/The-Missouri-Bar
@MoBarNews
/MissouriBar
@MoBarNews
@MoBarNews

MoBar.org

JOURNAL OF THE
MISSOURI BAR

Editorial Policy

The JOURNAL OF THE MISSOURI BAR helps Missouri Bar members keep abreast of changes in legal developments as they meet their professional obligations. The JOURNAL welcomes submissions of articles concerning legal topics of interest to Missouri lawyers. Criteria for publication include the article's quality, its substantive value, its interest to Missouri lawyers, and the originality of its subject matter. Submissions that relate to cases pending before any court or agency, and submissions previously published wholly or substantially in another publication will not be accepted. Consistent with the JOURNAL'S format, the language of submissions should be gender-neutral.

The JOURNAL OF THE MISSOURI BAR encourages all Missouri Bar members to contribute articles for publication.

Opinions and positions stated in signed material are those of the authors and not necessarily those of The Missouri Bar or the JOURNAL. The material within this publication is presented as information for lawyers to use, in conjunction with other research they deem necessary, in the exercise of their independent judgment. The Missouri Bar does not provide legal or professional advice. The Editorial Board does not perform independent research on submitted articles.

Publication of advertising material is not an endorsement by The Missouri Bar or the JOURNAL of the advertised product or service. The JOURNAL OF THE MISSOURI BAR does not accept advertising in the form of an insert.

Articles must conform to the JOURNAL'S Instructions for Authors, Conventions for Citations, and Style Guide, which the editor will provide on request before submission.

Address all correspondence to: Hannah Kiddoo Frevert, Editor, JOURNAL OF THE MISSOURI BAR, 326 Monroe Street, P.O. Box 119, Jefferson City, MO 65102-0119, hkiddoo@mobar.org.

The Journal of The Missouri Bar (ISSN 0026-6485) is published bimonthly (Jan.-Feb., March-April, May-June, July-Aug., Sep.-Oct., Nov.-Dec.) by The Missouri Bar, 326 Monroe Street, Jefferson City, Missouri 65101 (telephone 573-635-4128, fax 573-635-2811). Editor, Hannah Kiddoo Frevert. Subscription price is $24 per year ($6 for members, paid as a part of enrollment fee). Single copies $6. Office of publication, 326 Monroe Street, Jefferson City, Missouri 65101, periodicals postage paid at Jefferson City, Missouri. POSTMASTER: Send address changes to: Journal of The Missouri Bar, P.O. Box 119, Jefferson City, Missouri 65102.

CALLED TO HELP OUR COMMUNITIES

JOHN GRIMM

"Public service is a noble calling, and we need men and women of character to believe in their communities, in their states, and in their country." - President George H.W. Bush.

The 56 men who signed the Declaration of Independence might be considered our country's original public servants. Nearly half of the group, 25 to be exact, were lawyers. But there were also physicians, merchants, plantation owners, and ministers who signed this historic document in the summer of 1776.

In the 246 years since, our country has been blessed to have countless men and women from all walks of life who have devoted their time and talents to benefit the public, and they've done so in a range of ways.

John Grimm

Throughout my professional career, I have been fortunate to have met many such public servants. That has been especially true during the past few years while serving as an officer of The Missouri Bar, in which I have made a special effort to connect with members of the General Assembly to discuss matters that are of interest to Missouri lawyers. **Without question, we owe a debt of gratitude to the 197 members of the legislature – including 26 lawyers – who spend vast amounts of time away from their families and professions to serve Missouri citizens.**

While serving in the General Assembly is an outstanding accomplishment, it is only the tip of the iceberg when it comes to service opportunities. For example, the governor appoints thousands of citizens to serve on roughly 200 boards and commissions. And there are tens of thousands of opportunities to serve on the local level. Missouri has 944 municipal governmental bodies, all of which need citizens to serve on the city council or board of alderman. Each of those cities and townships need volunteers for the park board, library board, or planning and zoning commission. School boards, volunteer fire departments, and water districts provide even more opportunities for service.

As lawyers, we have the knowledge, understanding, and critical thinking to provide valuable guidance and advice to all types of organizations. Without question, many of our colleagues have volunteered their time and talents to public service. In fact, a 2018 survey found that nearly nine in 10 Missouri lawyers volunteer in their communities. For those of you who are part of or have been part of boards or commissions, thank you. For those of you who work in our court system as judges, prosecutors, or public defenders, I appreciate your service. And for those of you who have provided pro bono legal work without expectation of renumeration, your contributions are invaluable.

But I believe we can do even more. Most of us have the ability to devote two or three extra hours a month to something beyond our regular work obligations. I encourage you to do so.

I want to particularly challenge newer lawyers to consider the ways in which you can serve your communities. I understand that some of you may be hesitant to get involved because of the level of commitment or financial sacrifice. Without question, establishing a new law practice is time consuming, and many of you are also building families. Still, I have no doubt that the personal enrichment from taking on a new role will be worth every shared minute. Time and time again, I have heard volunteers share that they get more out of their work than those they are assisting. Based on my own experiences, I believe that to be true.

If you need ideas for how to help, talk with your colleagues. I think you will find countless examples of work that others have done and places where your services are desperately needed.

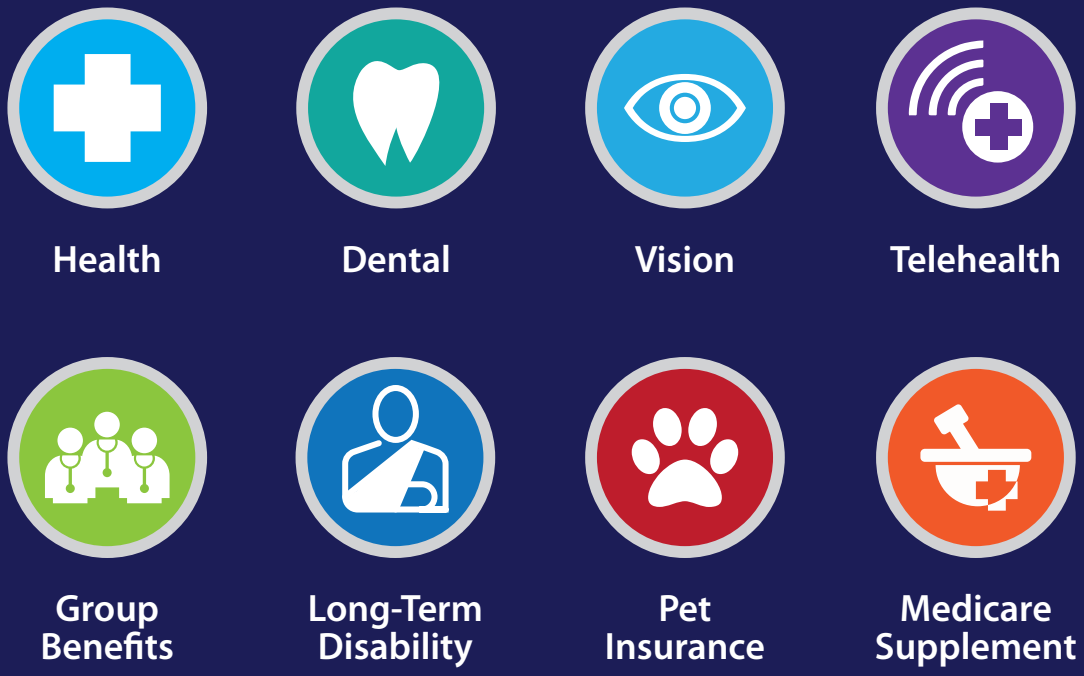
Your service truly makes a difference. Thank you for considering my request.

Finally, know that The Missouri Bar is excited to learn about your personal and firm efforts in the community. Please don't hesitate to reach out and tell us about your work – you can even notify us on social media by using #MOLawyersHelp.

THE MISSOURI BAR
INSURANCE MARKETPLACE

Are you reaping all the benefits of your membership?

The Missouri Bar Insurance Marketplace offers a broad level of benefits choices, from **Health** and **Dental** to **Disability** and **Group Insurance**. You and your firm have access to concierge-level support, unique cost-savings opportunities, and convenient enrollment technology designed exclusively for MOBAR members, and their staff and eligible dependents.



Start shopping the Insurance Marketplace today:

memberbenefits.com/mobar
800-282-8626

ADMINISTERED BY:
MB | MemberBenefits

Products sold and serviced by Member Benefits, the administrator of The Missouri Bar Insurance Marketplace.
The Missouri Bar is not a licensed insurance entity and does not sell insurance.

EXECUTIVE SUMMARY

SPRING FORWARD

MISCHA BUFORD EPPS

THIS TIME OF YEAR ALWAYS MAKES ME SMILE AS BRIGHT DAFFODILS AND COLORFUL TULIPS AWAKEN MY SENSES AND REMIND ME HOW MUCH WE HAVE TO BE GRATEFUL FOR.

That's especially true as we've entered our third year of the COVID-19 pandemic; been horrified by the needless death and destruction from Russia's unprovoked invasion of Ukraine; and seen many Americans struggle with the day-to-day realities of economic insecurity. **Yet, spring is the season of hope. It compels us to focus on the beauty and the good around us.** There are things to celebrate.

One cause for celebration is the privilege that we have living in the United States of America and the freedoms we enjoy here. As Ukrainian residents endure unimaginable losses and fight for their democracy, we are reminded not to take our privileges for granted. In his State of the Judiciary address last month to a joint session of the Missouri General Assembly, Chief Justice Paul Wilson emphasized that government is people – well-meaning, hard-working people who may do different jobs and serve in different ways but who "are united in the spirit and goal of service." He also stressed the importance of continued communication and collaboration among our three branches of government to best serve Missourians. I encourage you to read the full text of the State of the Judiciary address included in this issue.

Mischa Buford Epps

For me, another cause for celebration is the historic nomination of Judge Ketanji Brown Jackson for associate justice of the U.S. Supreme Court to fill the upcoming vacancy due to the retirement of Associate Justice Stephen Breyer. **I am inspired that for the first time in my life and the Court's 232-year history, a working mom who looks like me may serve on the highest court of our land.**

This spring at The Missouri Bar, we continue to strive daily to help you even better serve your clients. If you haven't visited The Missouri Bar's 2021 Annual Report on MoBar.org, take a look when you have a few minutes. You will gain a better understanding of the range of services provided to lawyers at no additional cost and the ways our bar is serving the public. We think you'll see things to celebrate and even more to help us look ahead to the challenges yet to be met.

In May, as part of Juror Appreciation Week, The Missouri Bar will join with judges, court personnel, and legal professionals across our state to celebrate and thank all Missourians who reported for jury duty in state courts in 2021 and 2022. **Each year, thousands of Missourians perform one of the most significant civic duties granted to citizens – they serve as fair and impartial jurors in communities**. Missouri is one of only a few states that hold a statewide Juror Appreciation Week, with more than 50 courts participating annually. This year's statewide Juror Appreciation Week will be May 1-7. Contact us or your local court if you are interested in joining as we thank jurors.

We also look forward to seeing you at the virtual Missouri Bar Spring Committee meetings to be held May 2-6. More than 23 committees are expected to hold business meetings and/or offer CLE programs at no charge that week. Check MoBar.org for the tentative schedule.

Noticing and celebrating what is happening with the weather, temperature, plants and flora, and general vibe can help us be more centered and connected. The rapid changes in our personal and professional lives over the last year have laid bare the importance of lawyer well-being. Members of the bar's Lawyers Living Well Special Committee have worked tirelessly to identify and recommend programs and initiatives aimed at improving lawyer well-being. Several special activities are planned for national Well-Being Week in Law (WWIL), also May 2-6. WWIL seeks to raise awareness about mental health and encourage action and innovation across the profession to improve lawyer well-being.

Your well-being has many dimensions – your physical, mental, and social wellness are critical to the health of your practice. Diet, exercise, and mindfulness improve your physical and mental health and support your social well-being. With spring's arrival, open those windows, get outside, plant something, ride a bike, have a picnic, or cook with family or friends. When engaging in activities, try to be mindful and fully in the moment. If you enjoy the time without worrying about your to-do list or deadlines, you will be more refreshed, fulfilled, and optimistic. Who wouldn't want that?

Let's spring forward together with appreciation and optimism.

Best regards,
Mischa

REMEMBERING WELLNESS

Stuck on the worry mill? Try writing down all your concerns, then walk away and leave them behind for a while. Try a different activity that engages your mind or body in a different way to help shift your focus.

JUROR APPRECIATION WEEK

The bar and courts from across the state will celebrate Missourians who perform their civic duty of serving as jurors as part of Juror Appreciation Week May 1-7. Judges and lawyers are encouraged to show their gratitude toward jurors and find ways to thank them for their service, including posting on social media with #ThankAJuror; providing snacks and special treats in the juror room; and hanging up a celebratory poster created by The Missouri Bar. Learn more about Juror Appreciation Week and how to get involved at MissouriLawyersHelp.org.

Save the Date

The Spring Enrollment Ceremonies will take place April 22 in Jefferson City.

The 2022 Annual Real Estate Institute will be held as a webinar and self-study April 29 and June 3.

The 2022 Spring Committee Meetings will be held virtually May 2-6.

For more information, visit MoBar.org

MEET #MOLAWYERS – MATT DEPAZ

Matt DePaz is a partner at Shook, Hardy & Bacon LLP in Kansas City. From Detroit, MI, DePaz graduated from Northern Illinois University School of Law and joined The Missouri Bar in 2013. He serves as the Western Appellate District representative on The Missouri Bar Young Lawyers' Section Council.

What attracted you to your specific area of law? A significant part of my practice centers on representing companies in the health and life sciences industries. I had several opportunities to work for companies in this space prior to law school, and I was inspired by my colleagues' desire to improve quality of life for those with health challenges. So, I wanted to represent these companies' contributions to medicine as part of my practice.

Who is your legal mentor? Chris Kaufman was my office neighbor when I first started at Shook, and he invested a lot of time towards my development. He is a brilliant strategist, and one of the most well-rounded lawyers I know.

What do you most enjoy about serving on the YLS Council? I value the friendships most. YLS has a diverse group of members: litigators, counselors, prosecutors, in-house counsel, and defense lawyers. All bring a unique perspective on the practice of law, and many have become close friends that I look forward to working alongside for years to come.

What would you like new Missouri lawyers, or even those who have been practicing for some time, to know about The Missouri Bar? The Missouri Bar has a ton of resources to help new lawyers early in their careers, and it has a diverse group of lawyers interested in sponsoring newer generations. I encourage everyone – especially those lawyers that started during the pandemic – to become actively involved early in your career and leverage this network.

When you're driving, do you listen to music or podcasts? If it's music, what is your favorite band? If it's podcasts, what is your favorite podcast? My daughters are currently jamming to Disney's "Encanto" soundtrack … on repeat. We don't talk about Bruno.

Editor's note: These responses have been edited for clarity and brevity. Do you know someone who should be featured in Meet #MOLawyers? Let us know by emailing nroberts@mobar.org.

MOBAR MEMORY

Enrollment Ceremonies, like this one from 1984, are always a special time for new lawyers, along with their family, friends, and colleagues. Share photos from your own swearing in with us on social media! Just post and tag #NewMOLawyers.

MOSOLO SMALL FIRM CONFERENCE

Solo and small firm practitioners will want to mark their calendars for the 27th Annual MOSOLO Small Firm Conference, set for June 9-11 at Margaritaville Lake Resort and online. The conference will feature over 60 breakout and plenary sessions about technology, litigation, practice management, and more. It's the perfect opportunity to connect and network with lawyers facing similar situations in their daily practices. Learn more at MOSOLO.org.

TECH TIP

Laptops are a wonderful innovation. They allow us to take our work on the go. However, this mobility also presents an added security risk that must be mitigated. Simply having a password to log in to the laptop is not sufficient to protect your files. Luckily, Microsoft has included an encryption feature in Windows 10 and 11 called Bitlocker. This feature is usually turned off by default but is easy to enable. Once turned on, your laptop drives will be encrypted, and you can rest easier knowing that your files will be better protected should your laptop get lost or stolen. Just remember to use a strong password in addition to encryption.

OPENING A PRACTICE

For lawyers wanting to hang out their shingles, The Missouri Bar has the perfect one-stop shop. On the "Open a Practice" webpage, lawyers will find white papers on accounting and billing basics, social media, and Microsoft tools, as well as checklists for technology new firms need and requirements for merging law firms. The page also offers charts comparing products like cloud document storage options, live chat services, PDF program features, and password managers. Visit MoBar.org/Open-A-Practice to view the various practice management resources.

MEMBER BENEFIT: PRACTICE RESOURCE LIBRARY RELAUNCHES

Missouri lawyers once again have access to more than 150 publications through the bar's Practice Resource Library. Relaunched in early February, the library allows members to borrow books that cover a plethora of practice management topics like marketing and social media, office policies, how-to guides for Adobe products, and more. The Missouri Bar will loan a book for 21 days and requires members pay a $3 shipping fee per book. Learn more about the Practice Resource Library at MoBar.org/Library.

OUT OF THE OFFICE

During the peak of the COVID-19 pandemic, Kansas City lawyer Tara Moreland sought out ways to keep occupied and entertained. On a whim, she decided to try embroidery. "As it turns out, I'm not too bad at it. I've found a lot of joy in being creative in this manner and like the low-pressure challenge of learning new stitches and creating something beautiful," Moreland says. "I find this relatively new hobby of mine to be incredibly soothing and also fun."

Share your "Out of the Office" photo with us for a chance to be featured in In Brief. Email hkiddoo@mobar.org or tag us on social media using #MOLawyersLivingWell.

THE FLAG

W. Dudley McCarter[1]

SINCE PLAINTIFF'S MEDICAL CONDITION WAS NOT AT ISSUE, HIS MEDICAL RECORDS WERE NOT DISCOVERABLE

State ex rel. Lutman v. Baker, 635 S.W.3d 548 (Mo. banc 2021).

Darin Lutman petitioned the Supreme Court of Missouri for a writ of prohibition to prevent the release of his medical records related to a vehicle accident. The Court found that Lutman's statements to police at the scene of an accident and his apology letter to the family of the other driver who was killed in the accident did not constitute implied waiver of physician-patient privilege.[2] Because Lutman "neither placed his medical conditions at issue nor (took) any action sufficient to waive the physician-patient privilege," the Court's preliminary writ was made permanent.[3]

Information a patient gives to a physician while he or she is being seen by that physician and that is "necessary to enable the physician to provide treatment is privileged."[4] Additionally, the physician-patient privilege applies to medical records.[5] "The privilege is for the benefit of the patient and belongs to the patient, not the physician."[6] A patient can waive the privilege by either express or implied waiver.[7] The most common waiver cases "involve plaintiffs who voluntarily place their medical condition in issue by filing a petition alleging that they suffered physical or mental injuries."[8] To constitute an implied waiver, the patient's act must show "a clear, unequivocal purpose to divulge confidential information."[9]

The Court ruled Lutman's statement to the investigating police officers, which did not contain privileged information, does not indicate a clear, unequivocal purpose to divulge his confidential medical information.[10] "In the same way Dubis' mention of drinking wine did not constitute a waiver in *Rodriguez* … Lutman's admission of a medical condition does not constitute a waiver here."[11]

The plaintiff also claimed Lutman's apology letter to them constituted a waiver of the physician-patient privilege because Lutman stated in the letter that he was an addict who felt like he was having a heart attack or blacking out right before the crash. "Again, however, without more, Lutman's statements in the letter do not clearly and unequivocally indicate an intent to waive the physician-patient privilege."[12]

W. Dudley McCarter

EXCEPTION TO SOVEREIGN IMMUNITY FOR DANGEROUS PROPERTY CONDITION STILL APPLIES EVEN IF THE CONDITION IS OPEN AND OBVIOUS

Allen v. State of Missouri, No SC 98929 (Mo. banc 2022).

Missouri's 32nd Judicial Circuit appealed from a judgment entered in favor of Pamela and Kelly Allen who sued the state, Cape Girardeau County, and the City of Cape Girardeau after Pamela Allen fell down a flight of stairs in the Common Pleas Courthouse in Cape Girardeau. The state asserted the circuit court misapplied the law regarding the waiver of sovereign immunity. In *Allen v. State of Missouri*,[13] the Supreme Court of Missouri found that the Allens presented a "submissible case that the stairway was dangerous condition of which the State was sufficiently aware to waive sovereign immunity."[14]

Under § 537.600, a "physical defect in the sovereign's property and injuries directly stemming from that defect will subject the sovereign to tort liability."[15] A sovereign may also be subject to liability if the plaintiff was harmed by a "physical deficiency in the state's property which constituted a 'dangerous condition.'"[16] While the state contended the stairs didn't constitute a dangerous condition because they were an "open and obvious condition" of which Pamela Allen knew and appreciated, the Court disagreed with this argument. "[W]hen the dangerous condition is so open and obvious that the invitee should reasonably be expected to discover it and realize the danger, a possessor of land does not breach the standard of care owed to invitees 'unless the possessor should anticipate the harm despite such knowledge or obviousness.'"[17]

"While the condition of the stairway may have been open and obvious, the State should have anticipated the harm that befell [Pamela] Allen," the Court stated.[18] Since there wasn't evidence to indicate Pamela Allen had an alternative way to access the files at the courthouse, the Court noted, the state should have anticipated the stairs could lead to Pamela Allen being injured.[19] The Supreme Court of Missouri found that even if the state had lacked actual notice of the staircase's condition, the Court "has previously found similar facts sufficient to establish constructive notice."[20] "The State had sufficient time and opportunity to become aware of the condition of the stairs, and it is reasonable to charge the State with constructive notice."[21]

NO WORKERS' COMPENSATION BENEFITS BECAUSE INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT

Boothe v. DISH Network, Inc., 2021 WL 6057372 (Mo. banc 2021).

In July 2017, Gary Boothe Jr., was driving to a work appointment and stopped at a convenience store, where he bought, among other things, a breakfast sandwich. Running slightly behind, Boothe ate his breakfast sandwich as he drove to his appointment. Within a mile, he choked on the sandwich, attempted to slow down, and blacked out. He was injured when his vehicle collided with a pillar on the side of the road. He attempted to claim workers' compensation benefits, but the Labor and Industrial Relations Commission denied his request. The commission found Boothe was not entitled to an award because his injury did not arise out of and in the course of his employment. The Supreme Court of Missouri affirmed the commission's decision in *Boothe v. DISH Network, Inc.*[22]

To be eligible for workers' compensation benefits, an injury must "arise out of and in the course of employment."[23] "An injury will not be deemed to arise out of employment if it merely happened to occur while working but was not a prevailing factor and the risk involved … is one to which the worker would have been exposed equally in normal non-employment life."[24] More generally, an employee – who bears the burden of proof – must show there was a "causal connection between an injury and a work activity other than mere occurrence" at work.[25]

Boothe's injury's risk source was eating while driving, which created a risk of choking and led to the accident, resulting in injury. Eating while driving was not related to Boothe's employment since DISH did not require him to eat breakfast after starting work, the Court found.[26]

"In accordance with section 287.020.3(2)(b), [Boothe] did not establish the risk source – eating while driving – was related to his employment or that he was not equally exposed to that risk in nonemployment life. Boothe, therefore, failed to establish his injury arose out of and in the course of employment," the Court ruled.[27]

TWO-YEAR STATUTE OF LIMITATIONS APPLIES IF PLAINTIFF'S INJURY WAS RELATED TO HEALTH CARE

Payne v. Rehabilitation Institute of St. Louis, LLC, 2022 WL 211962 (Mo. App. E.D. 2022).

Nancy Payne appealed the Circuit Court of St. Charles County's decision granting summary judgment in favor of Rehabilitation Institute of St. Louis, LLC, after the court concluded that Payne filed her medical malpractice claim beyond the period allowed under the statute of limitations. The Missouri Court of Appeals, Eastern District, affirmed the circuit court's ruling in *Payne v. Rehabilitation Institute of St. Louis, LLC*.[28]

While the institute provided health care services to Payne, she was left unattended and fell out of her bed, allegedly sustaining a head injury. Thirty months later, she filed a three-count petition in St. Charles County circuit court, alleging improper medical care, negligence, and negligence per se. The trial court granted summary judgment in favor of the rehabilitation institute because Payne's claim was rooted in a medical malpractice claim, requiring her to file the suit within two years of the alleged incident. "[C]ourts do not rely on the label a plaintiff applies to a claim in the pleading to decide whether § 516.105 applies. Rather, what matters is whether or not the claim is in fact against a health care provider and related to health care."[29]

Payne argued § 516.105 was inapplicable to her negligence claims because she was not receiving medical services at the time she fell, which occurred after staff left her unattended in a bed without an alarm. However, the court ruled Payne's injury was connected to her medical care since the damages occurred while she was under the care and custody of the rehabilitation institution, who was providing health care services to address Payne's health care needs. "Applying the statute and the most relevant Missouri case law, [Payne's] claims are rooted in the provision of health care and medical negligence covered by § 516.105, not ordinary negligence," the Court of Appeals ruled.[30]

Endnotes

1 W. Dudley McCarter, a former president of The Missouri Bar, is a partner in the St. Louis law firm of Behr, McCarter, Potter, Neely & Hyde.
2 *State ex rel. Lutman v. Baker*, 635 S.W.3d 548 (Mo. banc 2021).
3 *Id.* at 550.
4 *State ex rel. Jones v. Syler,* 936 S.W.2d 805, 807 (Mo. banc 1997).
5 *State ex rel. Dean v. Cunningham,* 182 S.W.3d 561, 566 (Mo. banc 2006).
6 *Id.*
7 *Dean*, 182 S.W.3d at 567.
8 *Rodriguez v. Suzuki Motor Corp.*, 996 S.W.2d 47, 63 (Mo. banc 1999).
9 *Id.*
10 *Lutman*, 635 S.W.3d at 552.
11 *Id.* at 553. See also *State v. Ermatinger*, 752 S.W.2d 344, 350 (Mo. App. 1988).
12 *Id.*
13 No SC 98929 (Mo. banc 2022).
14 *Id.* at 2.
15 *State ex rel. Div. of Motor Carrier & R.R. Safety v. Russell*, 91 S.W.3d 612, 616 (Mo. banc 2002); see also *Maune ex rel. Maune v. City of Rolla*, 203 S.W.3d 802, 805 (Mo. App. 2006).
16 *Alexander v. State*, 756 S.W.2d 539, 542 (Mo. banc 1988).
17 *Harris v. Niehaus*, 857 S.W.2d 222, 226 (Mo. banc 1993) (quoting Restatement (Second) of Torts, § 343A(1)(1965)).
18 *Allen*, No. SC 98929 at 12.
19 *Id.*
20 *Id.* at 13. See also e.g., *Hensley v. Jackson Cnty.*, 227 S.W.3d 491 (Mo. banc 2007).
21 *Id.*
22 2021 WL 6057372 (Mo. banc 2021).
23 RSMo § 287.020.3(2).
24 *Miller v. Mo. Hwy. & Transp. Comm'n,* 287 S.W.3d 671, 672 (Mo. banc 2009).
25 *Id. See also Johme v. St. John's Mercy Healthcare,* 366 S.W.3d 504, 510 (Mo. banc 2012).
26 *Boothe,* 2021 WL 6057372 at 3.
27 *Id.*
28 2022 WL 211962 (Mo. App. E.D. 2022).
29 *Id.* at 3.
30 *Id.* at 4.

Arbitration or Litigation: The Battle Continues

Cameron A. Roark[1]

Arbitration is on the rise throughout Missouri and the nation, and many continue to battle with whether a dispute should go to arbitration or proceed in the courts.

There are two possibilities that could happen in this context: (1) one party files a lawsuit and the other party files a motion to compel arbitration, or (2) a party files for arbitration and the other party files a lawsuit to stay arbitration.

This article explores the law revolving around arbitration in general and the most recent case law dealing with motions to compel or to stay arbitration. Additionally, this article hopes to clarify the case law when a motion to compel or stay arbitration is filed and the steps that follow.

What is arbitration?

Arbitration is a method of resolving disputes amongst different parties.[2] It is an alternative and private dispute resolution procedure by which the parties agree to present their dispute to a private forum consisting of an arbitrator, or sometimes several, sitting in a panel, which decides the claims after hearing testimony and evaluating evidence.[3] A party then will file an application to confirm the award from the arbitration which the court shall confirm, unless another party has requested to vacate or modify the arbitration award.[4]

An arbitration decision that is binding can only be vacated on very narrow grounds in Missouri.[5] These grounds include *inter alia*: (1) "[t]he award was procured by corruption, fraud or other undue means;" (2) "[t]here was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;" (3) "[t]he arbitrators exceeded their powers;" (4) "[t]he arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provision of section 435.370, as to prejudice substantially the rights of a party;" or (5) "[t]here was no arbitration agreement and the issue was not adversely determined in proceedings pursuant to section 435.355 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award."[6] An arbitration decision is extremely difficult to overturn on appeal.[7]

Arbitration proceedings are favored under the law and encouraged without resorting to the courts.[8] Because of the differences between litigation and arbitration, a party may prefer one over the other depending on the facts or law governing the case. "A motion to compel arbitration is a separate but ancillary proceeding, seeking an equitable remedy: specific performance of a term in a contract."[9] It determines whether the original lawsuit filed in a court will be sent to arbitration instead.[10]

Procedural steps of filing motions to compel

Normally, a motion to compel arbitration follows a lawsuit filed in the circuit courts. The defendant(s) will then file the motion alleging the case should go to arbitration rather than proceed in the circuit court. The party seeking to compel arbitration has the burden of proof to show a valid arbitration agreement exists.[11] If both parties agree that there is an agreement to arbitrate, the circuit court should compel arbitration.[12] However, if the plaintiff contests whether there is an agreement to arbitrate, the circuit court shall hold a hearing to determine the existence of the alleged arbitration agreement.[13] The circuit court will then make factual findings on whether there is an agreement to arbitrate.[14] If there isn't one, the judge will deny the motion and the case will proceed with the circuit court.[15] If the circuit court finds there is an agreement to arbitrate, then the court will grant the defendant's motion and the case will proceed with a private arbitrator if there is no other dispute.[16] If either party appeals the circuit court's order regarding whether there is an agreement to arbitrate, those findings are reviewed under the *Murphy v. Carron* standard.[17]

What law governs arbitration?

Arbitration is governed by §§ 435.350 to 435.470 of the Missouri Uniform Arbitration Act (MUAA) and the Federal Arbitration Act (FAA) under 9 U.S.C. §§ 1 to 9. The FAA governs enforceability of "all contracts involving interstate

commerce."[18] However, both the FAA and MUAA establish that arbitration agreements are enforceable except "upon such grounds as exist at law or in equity for the revocation of any contract."[19] The courts apply state-law contract defenses in connection with the FAA's savings clause.[20] Additionally, state courts have concurrent jurisdiction over actions brought under the FAA.[21] In Missouri, insurance contracts and contracts of adhesion are not entitled to have enforceable arbitration agreements.[22]

Additionally, § 435.460 of the Revised Statutes of Missouri mandates that each contract containing an arbitration clause have a specific notice in the contract.[23] Specifically, "[e]ach contract subject to the provisions of sections 435.350 to 435.470 shall include adjacent to, or above, the space provided for signatures a statement, in ten point capital letters, which read substantially as follows: 'THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.'"[24] Missouri courts have interpreted the logical purpose of § 435.460 as notifying parties that their contractual agreement includes a provision for arbitration.[25] However, if the contract is simply an agreement to arbitrate, the notice under § 435.460 RSMo is not required.[26]

IN MISSOURI, INSURANCE CONTRACTS AND CONTRACTS OF ADHESION ARE NOT ENTITLED TO HAVE ENFORCEABLE ARBITRATION AGREEMENTS.

"Existence of the agreement to arbitrate is a prerequisite to compelling arbitration"[27]

The law on arbitration continues to be a pendulum. In January 2020, the Supreme Court of Missouri decided in *Theroff v. Dollar Tree Stores, Inc*.[28] that the "[e]xistence of the agreement to arbitrate is a prerequisite to compelling arbitration."[29] The case presented "the question of whether there was, in the first instance, assent to the arbitration agreement."[30] There was a challenge to the *agreement's existence*, the Court noted.[31]

Prior to the Court's opinion in *Theroff*, it was understood that "[d]isputes over the **formation** of the parties' arbitration agreement … have been considered threshold issues of arbitrability."[32] When there is a delegation clause in an agreement, it delegates threshold issues of arbitrability to the arbitrator.[33] The arbitrator assigned to the case would then have the responsibility to determine whether there was a formation of contract – not a circuit court.[34] *Theroff* clarified there must be a valid actual agreement before sending the case to arbitration.[35]

Facts of Theroff

Nina Theroff applied for employment with Dollar Tree and informed the assistant manager during her interview that she was legally blind and needed assistive devices.[36] A couple days later, Theroff returned to Dollar Tree to complete the hiring paperwork electronically, and one of those forms was a mutual agreement to arbitrate claims, which ultimately Theroff electronically signed.[37] Theroff later sued Dollar Tree for constructively discharging her because the company refused Theroff's reasonable accommodation request for a service dog to accompany her at work.[38] Dollar Tree filed a motion to compel arbitration and stay proceedings.[39] Theroff argued there was no assent to the arbitration agreement, while Dollar Tree argued there was assent.[40] The circuit court held an evidentiary hearing on the motion to compel to determine whether there was assent.[41]

The evidentiary hearing produced "conflicting evidence about Theroff's knowledge of the existence of the mutual agreement and her electronic signature on it."[42] Theroff's evidence showed: (1) when she returned to Dollar Tree to complete the hiring paperwork, she did not have knowledge the hiring paperwork would occur on a computer; (2) she only brought a small magnifier; (3) Theroff informed the manager it would take a significant amount of time for her to complete the forms; (4) the manager offered to assist Theroff with the forms; (5) she was unable to see the content on the screens, and the manager would orally state what the forms were; (6) Theroff stated the manager never mentioned arbitration, waiver of a jury trial, or JAMS rules; and (7) the manager would simply state specific information needed and Theroff would orally tell her.[43]

The Dollar Tree manager: (1) stated she did not help Theroff navigate the documents online; (2) disputed that Theroff was legally blind or that Theroff stated she had any vision issues requiring assistive devices; (3) denied electronically signing the mutual agreement for Theroff; and (4) denied fielding any questions from Theroff concerning the mutual agreement.[44]

The circuit court overruled the motion to compel arbitration and stay proceedings.[45] The defendants appealed the circuit court's order overruling their motion to compel arbitration of Theroff's claim of disability discrimination.[46] The Supreme Court of Missouri affirmed the circuit court's order.[47]

Law of Theroff

When a party disputes signing an arbitration provision, the court – not the arbitrator acting under a delegation clause – must first decide the existence of an agreement to arbitrate.[48] The trial court *shall* hold an evidentiary hearing to determine whether there was a valid agreement to arbitrate once a disagreement about the existence of an agreement to arbitrate is raised.[49] "Even in the absence of live testimony, the requirements of an evidentiary hearing are met if, (1) the trial court is provided with adequate materials and evidence with which to resolve any factual disputes; and (2) there is no allegation the parties were limited in [their] submission of the evidence by the trial court or that the trial court failed to consider any evidence presented by the parties."[50] The party seeking to compel arbitration has the burden of proof to show a valid arbitration agreement exists.[51]

Additionally, basic contract principles apply when deciding if there is a valid agreement. The court looks at

whether there was an offer, acceptance, and bargained-for consideration.[52] Assent is also required for a contract or an agreement to exist: "It is a well[-]settled principle of law that to constitute a contract[,] the minds of the parties must assent to the same thing in the same sense."[53] Additionally, "[m]utuality of contract means that an obligation rests upon each party to do or permit to be done something in consideration of the act or promise of the other; that is, neither party is bound unless both are bound."[54] However, as long as a contract meets the consideration requirement, "an arbitration clause in the contract will not be invalidated for a lack of mutuality of the obligation to arbitrate."[55] But, it is important to note that a signature is not required to demonstrate acceptance because assent can be shown in other ways.[56]

The court is the gatekeeper and must first determine the legality, validity, and enforceability of the agreement as a whole. "[A]rbitration agreements are tested through a lens of ordinary state-law principles that govern contracts, and consideration is given to whether the arbitration agreement is improper in light of generally applicable contract defenses."[57] That means that an arbitration agreement "could be declared unenforceable if a generally applicable contract defense, such as fraud, duress, or unconscionability, applied to concerns raised about the agreement."[58]

An example of determining the legality, validity, and enforceability of an agreement includes an illusory promise. A promise to arbitrate "is illusory when one party retains the unilateral right to amend the agreement and avoid its obligations."[59] In other words, "[a]n illusory promise does not make valid consideration."[60]

Further, "any act forbidden by legislative enactment, if passed for the protection of the public and providing for a penalty, cannot be the foundation of a valid contract."[61] In *Schoene v. Hickam*, the Supreme Court of Missouri quoted another court opinion that noted "[t]he illegality inhering at the inception of such contracts taints them throughout and effectually bars enforcement."[62] If the act done was prohibited by law, there cannot be a valid arbitration or delegation clause.

Is a specific challenge to the delegation provision required?

A "delegation provision is an agreement to arbitrate threshold issues concerning the arbitration agreement."[63] These "gateway" issues include whether the parties agreed to arbitrate or whether certain controversies are covered under the arbitration agreement.[64]

There has been a shift in the law regarding challenging delegation provisions in contracts. Prior to the *Theroff* decision, the *Newberry*, *Soars*, and *Pinkerton* cases required the party challenging the arbitration agreement to directly attack the arbitration provision and not the contract as a whole.[65] Further, *Newberry* and *Soars* stated, "that a party must specifically challenge a delegation provision to avoid its application."[66]

Theroff explicitly stated, however, that "[t]o the extent *Newberry*, *Soars*, and *Pinkerton* can be read to suggest one can be forced into arbitration by a contract to which one is a stranger, this interpretation is incorrect."[67] In *Theroff*, the Supreme Court of Missouri stated, "*Newberry*, *Soars*, and *Pinkerton* presumed an arbitration agreement existed[;] these cases did not address the situation in which a party claimed she did not assent to an arbitration agreement in the first instance."[68]

If there was no valid agreement to arbitrate, a delegation provision is not effective.[69] However, the delegation provision is important when the parties agree, or the circuit court finds, there is a valid agreement to arbitrate. "A court should determine if the contract in question falls within the coverage of the arbitration act *before* applying the act's severability principle, requiring a challenge to an arbitration agreement, or delegation provision, separate from a challenge to the overall contract."[70] The existence of an agreement to arbitrate is a prerequisite to compelling arbitration,[71] meaning a valid contract must exist before the issue of arbitration should be addressed. If there is no valid contract, there can be no arbitration or delegation under *Theroff*.[72]

Concept of Severability

If there *is* a valid contract, then the concept of severability comes into play. Agreements to delegate issues of arbitrability create additional agreements subject to the regular laws of arbitration.[73] In *Rent-A Center*, the U.S. Supreme Court stated a party must challenge the delegation provision under the FAA specifically.[74] The question before the Court in *Rent-A-Center* was whether the district court was required to determine whether an arbitration agreement subject to the FAA is unconscionable, even when the parties to the contract have clearly and unmistakably assigned the issue to an arbitrator.[75] The U.S. Supreme Court held that "a party's challenge to another provision of the contract, or to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate."[76] However, in *New Prime Inc. v. Oliveria*,[77] the U.S. Supreme Court "held that, prior to compelling arbitration, a court should decide whether there is a contract that falls within the boundaries of sections 1 and 2 of the [FAA]."[78] *New Prime* "clarified that a court should not order arbitration until it has decided whether there is a contract evidencing a transaction involving commerce."[79]

Delegation provisions are subject to the severability principle, "meaning that the party opposing arbitration must challenge the delegation clause separately from the arbitration agreement itself."[80] Additionally, "[t]he challenge must directly and specifically address the delegation provision."[81] Even more,"[t]he court must consider the delegation provision 'standing alone' from the rest of the arbitration agreement."[82] Further, "[a] direct challenge is one that specifically addresses the delegation provision. A party must levy a specific challenge to the delegation to avoid its application."[83]

The party challenging the delegation provision "does not need to craft new arguments to separately challenge the delegation provision – she needs only to tailor those arguments to the delegation provision specifically."[84]

However, there are cases holding that a plaintiff cannot rely upon the same arguments "they direct[] at the arbitration agreement as a whole; an approach specifically rejected by our courts."[85] It would appear that a party challenging the delegation provision should only discuss that provision. If the party brings other provisions into the challenge, a court may reject the argument as not being specifically tailored. Future litigation may reveal a single answer on how to attack the delegation clause.

"A delegation provision may be invalidated, revoked, or otherwise found unenforceable upon such grounds as exist in law or in equity for the revocation of any contract."[86] When there is no legally enforceable agreement from the beginning, a specific challenge to the delegation provision is irrelevant.[87] It is not necessary for a party to specifically challenge the delegation provision as a "challenge to the existence of the mutual agreement in its entirety because of a lack of assent necessarily challenges the existence of any delegation provision it contains."[88] The *Theroff* court abrogated the proposition set forth in *Newberry*, *Soars*, and *Pinkerton* that if "the [a]greement as a whole contains illusory provisions [it] is for the arbitrator to determine so long as the delegation provision, standing alone, is valid."[89]

Lastly, the *Theroff* decision cited the recent U.S. Supreme Court opinion, *New Prime Inc. v. Oliveira*. Both courts noted a court's authority to compel arbitration is not unconditional.[90] "A court should determine if the contract in question falls within the coverage of the arbitration act *before* applying the act's severability principle, requiring a challenge to an arbitration agreement, or delegation provision, separate from a challenge to the overall contract."[91]

After the trial court's ruling

What happens after the trial court grants or denies the motion to compel arbitration? If the trial court denies the motion to compel arbitration, § 435.440.1, RSMo. gives the losing party the right to an immediate appeal.[92] A denial of a motion to compel arbitration must be appealed within 10 days after the trial court's denial or the appeal will be dismissed for being untimely.[93] However, motions to compel arbitration that are granted by the trial court are not appealable.[94] "Instead, a writ of mandamus is an appropriate mechanism to review whether a motion to compel arbitration was improperly sustained."[95] Of course, a writ of mandamus is discretionary and there is no right to issuance.[96]

Generally, whether a party's motion to compel arbitration should have been granted is a question of law which courts review de novo.[97] Appellate courts will not give deference to the trial court under de novo review and will instead make a determination independently.[98] The de novo standard will be used by appellate courts when there is no factual dispute about the existence of an arbitration agreement.[99] Further, appellate courts will then make their own independent determination regarding compelling arbitration.

However, "in an appeal from a circuit court's order overruling a motion to compel arbitration when there is a dispute as to whether the arbitration agreement exists, the circuit court's judgment will be affirmed *unless there is no substantial evidence to support it*, it is *against the weight of the evidence*, or *it erroneously declares or applies the law*."[100] This standard of review is usually referred to as the *Murphy v. Carron* standard.[101] An example of this standard at play is in *Duncan v. TitleMax of Missouri, Inc*. Duncan challenged the existence of the arbitration agreement between him and TitleMax.[102] The circuit court denied TitleMax's motion to compel arbitration.[103] Because Duncan challenged the existence of an agreement to arbitrate, the circuit court could be reversed under the *Murphy v. Carron* standard.[104] TitleMax challenged the circuit court's ruling arguing that substantial evidence did not support the circuit court's order and it was against the weight of the evidence.[105] The Missouri Court of Appeals-Western District found that there was substantial evidence to support the circuit court's order and that it was not against the weight of the evidence.[106] It is clear that when there is a dispute as to the existence of an arbitration agreement, there is greater deference given to the circuit court when it makes findings of fact. It is still too early to see how the standard will be carried out by the appellate courts in Missouri.

The battle over arbitration

You may question why parties fight over whether a case will proceed in a circuit court or go to a private arbitrator. There are numerous aspects lawyers consider when deciding whether to proceed to litigation or arbitration.

Litigation can be expensive,[107] and lawyers can continuously file extensive motions with no end in sight, leading to higher costs for all involved. Discovery during litigation can be costly due to employees or executives taking time to answer questions or attend depositions.[108] However, arbitration is generally not as expensive if discovery is limited, which also leads to fewer filings that need to be responded to by opposing counsel.[109] But, most arbitrators now allow extensive discovery similar to litigation because of the high value of arbitration proceedings.[110] As a result of the expanding discovery in arbitration, it potentially makes arbitration less advantageous than in the past.

ANOTHER MAJOR DIFFERENCE BETWEEN LITIGATION AND ARBITRATION IS WHETHER THE PROCEEDINGS ARE OPEN TO THE PUBLIC.

Another major difference between litigation and arbitration is whether the proceedings are open to the public.[111] Most court filings in lawsuits are public. Meanwhile, most arbitrations are private with little public record. That means arbitration disputes can continue past the media without much knowledge. Of the top Fortune 100, 81 companies have used arbitration agreements in connection with consumer transactions.[112] Since arbitration is conducted in private and its outcome is typically kept

confidential, underlying consumer problems may be kept hidden. For example, financial services company Wells Fargo opened approximately 3.5 million bogus bank and credit card accounts in the names of real customers.[113] When customers found out, they tried to sue but were forced into arbitration and confidential settlements.[114] It was not until the government got involved that the story was in the media.[115]

It is no secret that litigation moves slowly. A lawsuit filed today in the United States can take 18 to 36 months to get to trial.[116] This could be one of the biggest downsides to litigation. However, arbitration tends to move more quickly than litigation, which could benefit one party over the other.[117] The average arbitration is approximately 20 months faster than the average trial; however, the time it takes for an arbitration to begin has been steadily increasing.[118] This seems to be the case due to the size of disputes now going to arbitration rather than litigation.[119]

Additionally, litigation can be unpredictable, which potentially leads certain parties to want arbitration proceedings.[120] That unpredictability ranges from the selection of a jury to the uncertainty of a judge's ruling on issues in the case.[121] Jury selection can be one of the most important aspects for a case since lawyers are afforded great latitude when questioning potential jurors during voir dire.[122] In Missouri, the typical number of jurors is 12.[123] Importantly, the right of trial by jury is one of the basic rights afforded by the Missouri Constitution.[124] Some will argue that arbitration interferes with such a right. However, Missouri courts have held that parties may contractually relinquish fundamental and due process rights such as waiving a jury trial or their right to present a claim to any judicial tribunal.[125] In contrast, arbitration can be seen as more predictable to the participants because they chose at least one of the arbitrators, and the people who are chosen usually have industry experience.[126] Arbitration may remove a lot of uncertainty that a jury may bring to a case when it comes to decision making. However, instead of 12 jurors deciding, it comes down to one arbitrator, or sometimes a panel of three. This clearly can have a significant impact on the outcome of a dispute. But nothing is guaranteed out of arbitration because there will always be some uncertainty.

One of the most significant differences between arbitration and litigation is the review process of the decision.[127] In Missouri, the litigation appeal process can be extensive depending on the circumstances of each case. The Missouri Court of Appeals and/or Supreme Court of Missouri potentially could review an order from a trial court.[128] This process could result in a party not getting relief for years. However, in exchange, several judges will review to make sure the law was properly followed. In contrast, most arbitration rulings have little ability to be reviewed in an appellate process.[129] Section 435.405.1(1)-(5), RSMo, noted above, outlines strict review standards for arbitration.[130] "The appealability of arbitration decisions might be summed up in one, not all too inaccurate phrase, 'forget it.'"[131]

These differences, among others, play into this battle between wanting to proceed on a claim through litigation or arbitration. Missouri courts continue to deal with this battle over which adjudication process should be utilized. There is not much certainty regarding the future of this dispute. Parties will continue to fight over whether a judge and jury get to decide issues or whether a private arbiter does. One thing is certain, the battle continues.

Conclusion

Overall, a court must first determine whether there is a dispute regarding the existence of a contract and agreement to arbitrate. If there is a dispute, then the circuit court shall hold an evidentiary hearing to determine whether an agreement exists. If the circuit court finds there is no agreement, the arbitration and delegation clause is void. However, if the circuit court finds there is a valid agreement, the opposing party must specifically challenge the delegation clause in the contract instead of the whole contract under the severability doctrine. If there is a valid delegation clause, the arbitrator determines "gatekeeping" issues. But if there is no valid delegation clause, the court will make a determination whether an issue should go to an arbitrator or not. Missouri courts have continued to grapple with arbitration. Future court decisions will hopefully create more certainty regarding the battle between arbitration and litigation.

Endnotes

Cameron A. Roark

1 Cameron A. Roark is an associate in the St. Louis law firm of Behr, McCarter, Potter, Neely & Hyde P.C. He received his bachelor's degree from the University of Missouri-St. Louis and juris doctorate from the University of Missouri-Kansas City. Many thanks to W. Dudley McCarter for his advice in preparing this article.

2 *TD Auto Finance, LLC v. Bedrosian*, 609 S.W.3d 763, 768 (Mo. App. E.D. 2020).

3 Darren K. Sharp and Laurence R. Tucker, *Traversing Legal Labyrinths in Arbitration*, 66 J. Mo. B. 24, 24 (2010).

4 Section 435.400 RSMo (2016).

5 *See* § 435.405 RSMo (2016).

6 Section 435.405.1(1)-(5) RSMo (2016).

7 *See Substantive appeals of awards in arbitration*, 18A Mo. Prac. § 44:15 (3d ed.).

8 *Lunsford v. Deatherage*, 518 S.W.3d 890, 894-95 (Mo. App. S.D. 2017) (*citing Riley v. Lucas Lofts Inv'rs, LLC*, 412 S.W.3d 285, 290 (Mo. App. E.D. 2013)).

9 *Keeling v. Preferred Poultry Supply, LLC*, 621 S.W.3d 672, 677 (Mo. App. S.D. 2021).

10 *See Motion to compel arbitration*, 2A Mo. Prac. § 31.10 (4th ed.).

11 *Duncan v. TitleMax of Missouri, Inc.*, 607 S.W.3d 243, 249 (Mo. App. W.D. 2020).

12 Section 435.355 RSMo (2016).

13 *Theroff v. Dollar Tree Stores, Inc.*, 591 S.W.3d 432, 436 (Mo. banc 2020).

14 *See id.* at 437.

15 *See id.* at 439.

16 *See TD Auto Finance*, 609 S.W.3d at 770.

17 *Theroff*, 591 S.W.3d at 436.

18 *State ex rel. Hewitt v. Kerr*, 461 S.W.3d 798, 805 (Mo. banc 2015).

19 9 U.S.C. § 2; *see also* § 435.350 RSMo and *Rose v. Sabala*, 632 S.W.3d 428, 432 (Mo. App. E.D. 2021).

20 *Brewer v. Missouri Title Loans*, 364 S.W.3d 486, 491-92 (Mo. banc 2012).
21 *See Bunge Corp. v. Perryville Feed & Produce, Inc.*, 685 S.W.2d 837, 839-40 (Mo. banc 1985).
22 Section 435.350 RSMo (2016).
23 Section 435.460 RSMo (2016).
24 *Id*.
25 *State ex rel. Tri-City Const. Co. v. Marsh*, 668 S.W.2d 148, 153 (Mo. App. W.D. 1984).
26 *Id*.
27 *Theroff*, 591 S.W.3d at 436.
28 *Id*. at 432.
29 *Id*. at 436.
30 *Id*. at 437.
31 *Id*. at 438.
32 *Id*. at 442 (J. Brent Powell, dissent).
33 *Id*.
34 *See id*.
35 *See id*. at 437.
36 *Id*. at 435.
37 *Id*.
38 *Id*.
39 *Id*.
40 *Id*. at 434.
41 *Id*. at 435.
42 *Id*.
43 *Id*.
44 *Id*.
45 *Id*.
46 *Id*. at 434.
47 *Id*. at 435.
48 *Id*. at 438-39.
49 *Id*.; *see also* § 435.355.1 RSMo (2016).
50 *EM Medical, LLC v. Stimwave, LLC*, 626 S.W.3d 899, 906 (Mo. App. E.D. 2021).
51 *Duncan*, 607 S.W.3d at 249.
52 *Holm v. Menard, Inc.*, 618 S.W.3d 669, 674 (Mo. App. W.D. 2021); *TD Auto Finance, LLC v. Bedrosian*, 609 S.W.3d 763, 768-69 (Mo. App. E.D. 2020).
53 *Theroff*, 591 S.W.3d at 437 (*quoting Green v. Cole*, 15 S.W. 317, 318 (Mo. 1891)).
54 *TD Auto Finance*, 609 S.W.3d at 769.
55 *Keeling*, 621 S.W.3d at 677 (*citing Eaton v. CMH Homes, Inc.*, 461 S.W.3d 426, 433-34 (Mo. banc 2015)).
56 *Holm*, 618 S.W.3d at 675.
57 *Keeling*, 621 S.W.3d at 677 (*quoting Robinson v. Title Lenders, Inc.*, 364 S.W.3d 505, 515 (Mo. banc 2012)).
58 *Id*.
59 *Harris v. Volt Management Corporation*, 625 S.W.3d 468, 476 (Mo. App. E.D. 2021) (*quoting Baker v. Bristol Care, Inc.*, 478 S.W.3d 423, 770 (Mo. banc 2014).
60 *Id*.
61 *Hospital Development Corp. v. Park Lane Land Co.*, 813 S.W.2d 904, 908 (Mo. App. W.D. 1991).
62 *Schoene v. Hickam*, 397 S.W.2d 596, 602 (Mo. 1965) (*quoting Garvin v. Gordon*, 36 N.M. 304, 14 P.2d 264, 266 (1932)).
63 *State ex rel. Schermerhorn v. Cordonnier*, 616 S.W.3d 418, 421 (Mo. App. S.D. 2020) (*quoting Fogelsong v. Joe Machens Automotive Group Inc.*, 600 S.W.3d 288, 293 (Mo. App. W.D. 2020)).
64 *Id*.
65 *See Soars v. Easter Seals Midwest*, 563 S.W.3d 111, 114 (Mo. banc 2018); *see State ex rel. Newberry v. Jackson*, 575 S.W.3d 471, 475 (Mo. banc 2019); *see also State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 36, 52 n.12 (Mo. banc 2017).
66 *Soars*, 563 S.W.3d at 116; *see Newberry*, 575 S.W.3d at 475; *Pinkerton*, 531 S.W.3d at 52 n.12.
67 *Theroff*, 591 S.W.3d at 439.
68 *Id*. at 437.
69 *See id*. at 439.
70 *Id*. at 440.
71 *Id*. at 436.
72 *Id*. at 440.
73 *Harris*, 625 S.W.3d at 475.
74 *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 72 (2010).
75 *Id*.
76 *Id*. at 70.
77 139 S. Ct. 532 (2019).
78 *Theroff*, 591 S.W.3d at 440 (citing *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 537 (2019)) (J. Beckenridge concurring).
79 *Id*. at 441.
80 *Harris*, 625 S.W.3d at 475.
81 *Id*.
82 *Id*. (*citing Soars*, 563 S.W.3d at 117).
83 *TD Auto Finance*, 609 S.W.3d at 770.
84 *Harris*, 625 S.W.3d at 475; *see Esser v. Anheuser-Busch, LLC*, 567 S.W.3d 644, 650 (Mo. App. E.D. 2018).
85 *Fogelsong v. Joe Machens Automotive Group Inc.*, 600 S.W.3d 288, 299 (Mo. App. W.D. 2020) (*quoting Hughes v. Ancestry.com*, 580 S.W.3d 42, 49 (M. App. W.D. 2019).
86 *Fogelsong*, 600 S.W.3d 288 at 299 (*citing Hughes v. Ancestry.com*, 580 S.W.3d 42, 48 (Mo. App. W.D. 2019)).
87 *Theroff*, 591 S.W.3d at 440.
88 *Duncan*, 607 S.W.3d at 248 (*citing Theroff*, 591 S.W.3d at 439).
89 *Soars*, 563 S.W.3d at 117; *see Theroff*, 591 S.W.3d at 440.
90 *Theroff*, 591 S.W.3d at 440 (*citing New Prime Inc. v. Oliveira* 139 S. Ct. at 537).
91 *Id*.
92 *See* § 435.440.1 RSMo (2016).
93 *Sanford v. Century Tel of Missouri, LLC*, 490 S.W.3d 717, 719 (Mo. banc 2016); § 435.440.1 RSMo (2016).
94 *State ex rel. Schermerhorn v. Cordonnier*, 616 S.W.3d 418, 420 (Mo. App. S.D. 2020).
95 *Id*. (*quoting State ex rel. Hewitt v. Kerr*, 461 S.W.3d 798, 805 (Mo. banc 2015)).
96 *Curtis v. Missouri Democratic Party*, 548 S.W.3d 909, 914 (Mo. banc 2018).
97 *Theroff*, 591 S.W.3d at 436.
98 *Pearson v. Koster*, 367 S.W.3d 36, 43-44 (Mo. banc 2012).
99 *Theroff*, 591 S.W.3d at 436.
100 *Harris*, 625 S.W.3d at 474 (*quoting Theroff*, 591 S.W.3d at 436 (*citing Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976))) (emphasis added).
101 *Id*.
102 *Duncan*, 607 S.W.3d at 248.
103 *Id*. at 247.
104 *Id*.
105 *Id*. at 249-51.
106 *Id*.
107 *Six Key Differences Between Litigation and Arbitration*, LexisNexis (Feb. 22, 2021), https://www.lexisnexis.com/community/insights/legal/b/thought-leadership/posts/six-key-differences-between-litigation-and-arbitration.
108 *Id*.
109 *Id*.
110 Kevin Mason, *Will Discovery Kill Arbitration*?, 2020 J. Disp. Resol. 207, 207-08 (2020).
111 *Six Key Differences Between Litigation and Arbitration*, *supra* note 110.
112 Imre Stephen Szalai, *The Prevalence of Consumer Arbitration Agreements by America's Top Companies*, 52 U.C. Davis L. Rev. Online 233, 234 (2019).
113 Scott Medintz, *Forced Arbitration: A Clause for Concern*, Consumer Reports (Jan. 30, 2020), https://www.consumerreports.org/mandatory-binding-arbitration/forced-arbitration-clause-for-concern/.
114 *Id*.
115 *Id*.
116 *Six Key Differences Between Litigation and Arbitration*, *supra* note 110.
117 *Id*.
118 Mason, *supra* note 113.
119 *Id*.
120 *Six Key Differences Between Litigation and Arbitration*, *supra* note 110.
121 *See id*.
122 *Voir Dire*, 2 Mo. Prac. § 10.5 (4th ed.).
123 *Six Key Differences Between Litigation and Arbitration*, *supra* note 110.
124 *Right to a jury trial*, 2 Mo. Prac. § 10.1 (4th ed.).
125 *Holm*, 618 S.W.3d at 677.
126 *Six Key Differences Between Litigation and Arbitration*, *supra* note 110.
127 *Id*.
128 *See* Mo. Const. art. V, § 3.
129 *Six Key Differences Between Litigation and Arbitration*.
130 Section 435.405.1(1)-(5) RSMo (2016).
131 *Substantive appeals of awards in arbitration*, 18A Mo. Prac. § 44:15 (3d ed.).

International Child Abduction and the Hague Abduction Convention

David Michael Breon[1]

Scenario 1:

A prospective client alleges that his or her child's biological father or mother has, without the other's consent, wrongfully removed the child from the child's country of habitual residence or has wrongfully retained the child in a foreign country.

Scenario 2:

A prospective client has received a summons to appear before a Missouri county circuit court or Missouri U.S. district court to answer the other biological parent's allegations of having wrongfully removed or retained their child in Missouri.

The Hague Abduction Convention – formally known as the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – is an international treaty between sovereign nations. Specifically, it is "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments . . . ."[2] An "instrument" is a "written legal document" that "defines [the] rights, duties, entitlements, or liabilities" between parties to the agreement.[3]

The Hague Abduction Convention seeks "to protect children internationally from the harmful effects of their wrongful removal or retention [across international boundaries by providing a procedure to bring about] their prompt return [and ensuring] protection for rights of access."[4] It aspires to deter wrongful removal or retentions by "depriv[ing] [the abductor's] actions of any practical or juridical consequences."[5] Recognizing the convention's guiding principle that "the child's place of 'habitual residence' is 'best [suited] to decide upon questions of custody and access,"[6] the convention does not constitute substantive law regarding custody. It does, however, function as a forum-selection device by restoring the pre-abduction "status quo and [deterring] parents from crossing [international] borders in search of a more sympathetic court."[7]

Despite the profusion of international child abduction cases, few lawyers and state judges have likely heard of the Hague Convention, much less the one dealing with international child abduction.

Every year between 2010 and 2020, at least 487 children were abducted to or retained in the United States.[8] Before the COVID-19 pandemic in early 2020, the peak of incoming abductions and retentions occurred in 2019, with 623 cases reported.[9] From 2010 to 2020, 28.5% on average of children abducted to or retained in the United States came back – either voluntarily, by court order, or otherwise – to their country of alleged habitual residency. In 2016, only 15% of children were returned.[10]

Since 1998, there have been 15 Hague Abduction Convention cases reported in the U.S. District Court of Missouri-Western District[11] and 13 cases for the Eastern

District.[12] Despite the frequency of international child abductions, neither the Office of State Courts Administrator nor any of Missouri's 46 judicial circuit courts track the number of Hague Abduction Convention cases that are and have been filed in their courts.

Although there are various factors for the low return rates, one substantial cause is that too few legal professionals are familiar with the civil remedies available for victims of international abduction cases. While there might, and frequently are, alternative criminal[13] and civil[14] remedies for Scenario 1, the most effective and expeditious method,[15] and maybe sole method,[16] to achieve a child's prompt return shall be pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, which is likely the same procedure under which relief would be solicited under Scenario 2. For those lawyers who anticipate one day being confronted with an analogous scenario to those above, this article is for you.

Background: The Hague Abduction Convention and ICARA

The convention is the product of the inter-governmental organization of the Hague Conference on Private International Law[17] in the Hague, Netherlands. The conference consists of 89 member states, including the United States, Canada, Mexico, Australia, Japan, China, India, and a significant majority of the countries of Europe and South America.[18] The conference first met in 1893,[19] and, since 1955, its members have assembled every four years in "Ordinary Sessions."[20]

On Oct. 24, 1980, during the 14th session of the Hague Conference on Private International Law, the member states present – including the United States – voted unanimously to adopt the Convention on the Civil Aspects of International Child Abduction.[21] The following day, the delegates signed the Final Act of the Fourteenth Session, which contained the text of the convention and the model form that is routinely used in convention applications for wrongfully abducted or retained children.[22]

The "Supremacy Clause" of the U.S. Constitution mandates that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby … ."[23] On Dec. 23, 1981, the United States signed the convention[24] and, seven years later (April 29, 1988), recorded its ratification in the Hague.[25]

Because treaties are "compact[s] between independent nations," any court with jurisdiction to hear a Hague Abduction Convention case must first "ascertain the intent of the parties" by the convention's "text and context,"[26] and "to read the [Convention] in a manner 'consistent with the shared expectations of the contracting parties [*i.e.*, nations]'"[27] – not pursuant to regional laws, principles, or Missouri court precedence in domestic cases.[28] Most of the provisions of the treaty are self-executing,[29] meaning they do not require any type of federal implementing legislation to be immediately enforceable in U.S. federal and state courts.[30]

Despite those self-executing provisions, on July 1, 1988, Congress enacted the International Child Abduction Remedies Act (ICARA), which both ratified and implemented the Hague Abduction Convention into federal law and set out the procedure by which an application for return is to be filed and prosecuted or defended.[31] The lawyer must assure that the country from which the child has been removed or retained is a party to the convention. Although there are 101 convention state members, as of October 2021,[32] the United States is partners with only 79 of them.[33] If the state member (*viz*. country) is not a signatory, then the convention is inapplicable. If the state is a signatory, then the lawyer must determine whether that state member has deposited any reservations contingent upon its adoption of the treaty (and if so, review it); has subsequently ratified, accepted, or approved the Hague Abduction Convention; and has deposited its instruments of the same with the Netherlands' Ministry of Foreign Affairs.[34] If prosecuting or defending against a Hague Abduction Convention case in a foreign state, ratification is important because any implementing legislation likely contains information on how that member state interprets certain definitions or provisions of the treaty, as well as the procedure for how to petition, or defend against, a convention case in its country. However, under the two above scenarios, the lawyer need only determine whether the other country is a signatory to the convention and a partner member with the United States.

Under ICARA, all courts of the United States have concurrent original jurisdiction of actions arising under the Hague Abduction Convention,[35] such that any court (*e.g.*, federal or Missouri circuit court) in which an applicable action has been brought is empowered to determine the case under the convention's provisions.[36] Any court with jurisdiction to hear a convention case must "decide the case in accordance with the Convention,"[37] not pursuant to regional laws (*e.g.*, a "best interests" analysis) in which the case is heard. The convention's goal is limited to restoring the pre-abduction "status quo and to deter parents from crossing international boundaries in search of a more sympathetic court."[38]

To achieve its objectives, the Hague Abduction Convention mandates that each contracting state must designate a central authority,[39] which is authorized to take a limited set of actions to facilitate the prompt return of a wrongfully removed or retained child back to his or her country of habitual residence.[40] In the United States, the central authority is the U.S. Department of State's Office of Children's Issues in the Bureau of Consular Affairs.[41] Although the Office of Children's Issues will not act "as an agent or attorney or in any fiduciary capacity in legal proceedings,"[42] or pay for the transportation or legal costs or fees, it will, upon application and request, facilitate the applicant in locating, securing access to, or "obtaining the return of [the] child."[43]

The Office of Children's Issues can aid a client in a variety of ways for both incoming (*i.e.*, children abducted to or retained in the United States) and outgoing cases (*i.e.*, children abducted out of the United States or retained in another country). If the parent in Scenario 1 above were to apply to the Office of Children's Issues, then the agency would either "forward the application to the Central Authority of the [signatory] country where the child is believed [to be] located or provide the applicant with the

necessary form, instructions, and the name of the address of the appropriate Central Authority" in that country, so that the applicant might thereby personally transmit such application.[44] Moreover, upon request, the Office of Children's Issues would attempt to obtain from the foreign central authority "information regarding the laws of the child's state of habitual residence,"[45] a statement regarding the "wrongfulness of the taking of the child under the laws of the child's state of habitual residence,"[46] or "information relating to the social background of the child."[47] Also, upon request and pursuant to a voluntary agreement by the accused or by court order, the Office of Children's Issues will attempt to arrange transportation for the child from the foreign country to the United States.[48] Although not relevant to either scenario, for children abducted to the United States, upon application and request, the Office of Children's Issues will help the applicant[49] discover the location of the child in the United States.[50] It will then, if with consent by the left-behind parent, attempt the voluntary return of or access to the child by sending a letter to the alleged abducting parent.[51] If not, then the Office of Children's Issues would help the applicant, if eligible, find affordable legal representation.[52] The Office of Children's Issues will also provide legal mentors for those lawyers handling Hague Abduction Convention cases for the first time.[53] To prevent a child's potential abduction from the United States, the Office of Children's Issues can submit the case for enrollment into the U.S. Customs and Border Protection's Prevent Abduction program.[54] Some of these services may also be useful for the respondent in Scenario 2 above, in particular with respect to identifying the relevant and controlling domestic relations laws in the foreign country which the plaintiff (*i.e.*, the other biological parent) alleges is the child's habitual residence.

To prosecute or defend against a Hague Abduction Convention case, lawyers must become thoroughly familiarized with the convention, its official Explanatory Report,[55] ICARA, the U.S. State Department's evolving interpretations of the convention,[56] fundamental case law in both the U.S. and signatory states, and relevant case law analogous to the facts of their cases. The convention considers the child's habitual residence as the proper forum (*i.e.*, place) to determine issues of custody or access (*i.e.*, visitation rights).[57] To achieve its goal, the convention functions solely as a "forum-selection mechanism"[58] and constitutes *no* authority relating to custody. Therefore, at the convention proceeding, the lawyer must be prepared to thoroughly educate the court on the convention and ICARA, as well as the prohibition upon the court from making any initial custody determination until the court first determines the issue of venue pursuant to the Hague Abduction Convention.[59] The lawyer should caution the court that, when making its determinations, it avoid using approaches (*e.g.*, a "best interests of the child" analysis) inapposite to a convention proceeding.[60] Because the convention presumes the "authorities … of the child's habitual residence … are … best [suited] to decide upon questions of custody and access,"[61] a "best interest" analysis could not occur until after the court has made all required findings and determinations pursuant to the convention and ICARA.[62]

Unless the respondent(s) can meet one of a few narrow exceptions, the court must order the child be promptly returned to his or her place of habitual residence should less than one year have elapsed since the date of the wrongful removal or retention and the child be adjudicated to have been "wrongfully" removed or retained outside his or her country of habitual residence.[63] Even if the Hague Abduction Convention proceeding commenced one year after the wrongful removal or retention, the court must still order the child be returned unless the respondent demonstrates, by a preponderance of the evidence,[64] "that the child is now settled in its new environment."[65]

How to file a Hague Abduction Convention petition

Akin to Scenario 2, the routine Hague Abduction Convention case involves a child traveling abroad to visit the noncustodial parent who, at the end such visitation, refuses to return the child.[66] If, either with or without the aid of the apposite central authority, a lawyer cannot achieve the voluntary return of the child, then a lawyer can file the client's petition for return pursuant to the convention and ICARA in the state or federal district court where the child is located at the time of filing.[67] Conversely, if defending a client against such claim, a lawyer must file the client's answer to the convention petition, which ordinarily emanates from a federal district court.[68] Upon the filing of the petition, that court is statutorily precluded from making *any* determination regarding the child's custody "until it has been determined that the child is *not* to be returned under the Convention."[69] Consequently, the court must address the convention petition before any custody hearing can proceed or determination be made.

How to prosecute or defend against a Hague Abduction Convention case

Upon taking up the petition, the court must "decide the case in accordance with the Convention."[70] The petitioner bears the burden of proving, by a preponderance of the evidence, that the child has been wrongfully removed or retained, within the convention's meaning.[71] The removal or retention is "wrongful" when it is in breach of the rights of custody attributed to a person under the law of the state in which the child was habitually resident immediately before the removal or retention, provided that, at the time of the removal or retention, those rights would have been exercised, but for the removal or retention.[72]

Consequently, the inquiry requires the court to determine: 1) when the removal or retention took place; 2) where the habitual residence of the child was immediately prior to the removal or retention; 3) whether the removal or retention violated the petitioner's custody rights under the law of the child's habitual residence; and 4) if the petitioner would have exercised those custody rights, but for the removal or retention.[73]

The first element, regarding when a removal or retention occurred, requires that the petitioner prove that the removal or retention had occurred. In *Barzilay v. Barzilay*, the U.S. District Court of Missouri - Eastern District found that a retention had occurred upon the father's accusation that the

mother had breached their agreement that the mother was to have returned their daughter to Israel.[74] Alternatively, the court might conclude the date of retention occurred at the moment the alleged noncustodial parent filed the petition for custody, when the alleged noncustodial parent breached both parents' joint agreement to return the child within a specific time-frame,[75] or when the child failed to be placed upon a return bus[76] or flight to his or her state of habitual residence.[77]

As to the second element, a child can have one habitual residence – which is not to be confused with the child's domicile.[78] Although "habitual residence" is not defined by the Hague Abduction Convention or ICARA, the U.S. Supreme Court begins with a textual analysis and points out that, although "residence" refers only to where one lives, "habitual" connotes that one's residence is more than "transitory," but "[c]ustomary, usual, [or] of the nature of a habit," and where the child acquires "some degree of integration by the child in a social and family environment."[79] The Hague Abduction Convention's explanatory report describes "habitual residence" as "the family and social environment in which [the child's] life has developed"[80] and the Court of Justice of the European Union clarifies how a child's residence can become "habitual" only after "some degree of integration by the child in a social and family environment"[81] has occurred. Indeed, every U.S. Circuit Court of Appeals agrees that a child's habitual residence is the place that child would have considered his or her "home" at the time of the removal or retention.[82] The child's perception of the parents' or legal custodians' "settled purpose" for the move is "a central element" for the court to consider when determining the place the child would have considered his or her "home" at the time of the removal or retention.[83]

The determination of habitual residency requires the court to consider the totality of the circumstances applicable to each case's facts and cannot determine the same solely under categorical requirements (e.g., evidence of a parental agreement that specifies where the parents intended to raise their child).[84] When the allegation is wrongful retention, the 8th U.S. Circuit Court of Appeals directs the courts to focus on the child's perspective immediately before the removal or retention.[85] Factors that federal and state courts have considered regarding the determination of a child's habitual residence include: 1) the settled purpose of the move to the new country from the child's perspective;[86] 2) parental intent regarding the move;[87] 3) change in geography; 4) passage of time;[88] 5) acclimatization of the child to the new move;[89] 6) where the parents have made their home;[90] 7) presence or absence of permanent home(s);[91] 8) length and type of employment of child's custodians;[92] 9) duration in the community;[93] 10) agreement between the parents to reside in a particular place;[94] 11) strength and duration of other community ties;[95] 12) child's age;[96] 13) immigration status of child and parent;[97] 14) academic activities, sports, excursions, and social engagements;[98] 15) language proficiency;[99] and 16) location of personal belongings.[100]

A child's "settled purpose" need not be to stay forever in a new location, but the move must have a "sufficient degree of continuity"[101] there; although, the settled purpose "may be for a limited period."[102] "The court [should] focus on the *child*, not the parents, and examine past experience, not future intentions."[103] The child's perspective is important to prevent his or her removal from "the family and social environment in which [the child had] developed."[104] However, for a child too young or incapable of acclimating to his or her environment, the parental intent and circumstances of the child's custodians are relevant to the inquiry; although, facts indicating the child's acclimatization are highly and progressively more relevant as the child ages.[105]

If, after this analysis, the court concludes the child's habitual residence is another country from where he or she was removed or from a country other than where the child was retained, then the inquiry turns to whether the child's removal or retention violated the petitioner's custody rights under the law of the child's habitual residence at the time of the removal or retention. This analysis can become difficult to prove and often requires foreign counsel or experts to be retained. However, the Hague Abduction Convention facilitates this process by authorizing the court or administrative authority to take judicial notice of the law of the child's habitual residence.[106] Also, in determining whether the petitioner would have exercised his or her rights of custody, but for the removal or retention, the analysis frequently requires an analysis of foreign law.

THE 8TH CIRCUIT COURT RECOGNIZES ONLY TWO CATEGORIES OF CIRCUMSTANCES UNDER WHICH A CHILD'S RETURN WOULD ENTAIL GRAVE RISK: 1) TO A WARZONE, FAMINE, OR DISEASE; OR 2) TO SERIOUS ABUSE OR NEGLECT.

If the court ultimately concludes that the respondent wrongfully removed or retained the child, then the court *must* order that the child be returned to his or her state of habitual residence, unless the respondent asserts and proves one or more narrow exceptions condoned under the convention. The two primary exceptions to an adverse habitual residence determination are when the respondent proves: 1) by the preponderance of the evidence[107] that the petitioner had previously consented or subsequently acquiesced to the removal or retention;[108] or 2) by clear and convincing evidence[109] that the child's return to his or her habitual residence would expose the child to a grave risk of physical or psychological harm or otherwise place the child in an intolerable situation.[110] Both inquiries are quite narrow.[111] The 8th Circuit Court recognizes only two categories of circumstances under which a child's return would entail grave risk: 1) to a warzone, famine, or disease; or 2) to serious abuse or neglect.[112] There is another exception – although, it requires a very high level of proof and is almost never granted or upheld on appeal[113] – which requires that

the respondent prove by clear and convincing evidence[114] that the child's return to his or her habitual residence would violate "the fundamental principles of the requested State, relating to the protection of human rights and fundamental freedoms."[115] The human rights exception would apply if the respondent proves that the return would violate the child's human rights under common international law or treaty,[116] such as when the child's return would be tantamount to torture (*e.g.*, female genital mutilation).[117]

Then, even if the trial court finds that the child was wrongfully removed or retained and the respondent has not met any of the narrow exceptions to return, the trial court still may "refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views."[118] The 8th Circuit Court calls this the "mature child affirmative defense."[119] The "affirmative defense" requires a case-by-case analysis, but the majority of federal courts concede that children 11-15 years old are of sufficient maturity to take their objections to return into account.[120]

Last, even if the petitioner makes its prima facie case and the respondent proves an affirmative defense, the court may still, upon request or sua sponte, order the child's return[121] if doing so "would further the aims of the Convention."[122] The 8th Circuit Court recognizes "[t]he primary purpose of the Convention is 'to restore the status quo ante and to deter parents from crossing international boundaries in search of a more sympathetic court.'"[123] Therefore, if facts permit, the petitioner's counsel should buttress their request that the court order the child's return because doing so would restore the custodial arrangements immediately prior to the child's removal or retention and have the precedential effect of deterring parents from abducting their children to foreign countries in search of a more advantageous forum in which to seek a custody determination. Inversely, and if facts permit, the respondent's counsel should counter that returning the child would not restore the status quo ante that existed at the time of removal or retention and that the purpose for the respondent's removing or retaining the child was not to pursue a more favorable forum in which to seek a custody determination, or both.

Financial relief for fees, costs, and expenses

Should the court order the child be returned to his or her place of habitual residence, then the court must order the respondent pay any "necessary expenses" incurred by or on behalf of the petitioner, including court costs, legal fees, or other costs accrued during the course of the proceedings, as well as "transportation costs related to the return of the child, unless respondent establishes that such order would be clearly inappropriate."[124]

Duty to inform client of remedies pursuant to Hague Abduction Convention

If one day a lawyer has a client – prospective or retained – with facts analogous to Scenarios 1 and 2, and the client's goal is either (1) the immediate return of the child back to the child's "home country," or (2) to defend against the child's return, then, presuming that the foreign country is a signatory to the Hague Abduction Convention and the United States has accepted the country as a partner, the lawyer should advise the client of the convention and its remedies.[125] Only then should the lawyer determine whether the client has a prima facie case for filing a petition pursuant to the convention and ICARA. If a prima facie case exists, then filing a Hague Abduction Convention petition in federal or Missouri circuit court with jurisdiction over where the child is located at the time of filing shall likely be the quickest and most efficacious method for achieving the child's return.

Endnotes

David Michael Breon

1 David Michael Breon is a lawyer, mediator, and educator. He is the owner and lead attorney of Semita Legalis, LLC, which focuses exclusively on family, immigration, education law, and mediation cases. He is licensed to practice law in Kansas, Missouri, and Illinois, as well as in the U.S. District Court of Missouri-Western District and the U.S. Immigration Court. He is fluent in English and Spanish, and he lived in Spain for two years and in Ecuador for five years. He is the husband of an Ecuadorian wife (who, at the time of writing, is expected to soon become a naturalized U.S. citizen) and the father of a child of dual United States and Ecuadorian citizenship.

Breon would like to thank the following people who contributed to this article's successful publication: Leonard K. Breon, who provided substantive and stylistic feedback and suggested revisions in the article's earliest stages; Timothy E. Lynch, who contributed feedback regarding the article's alignment with his extensive knowledge of the general principles of international law, suggested modifications regarding a few datapoints, and opined upon the impact of different draft versions; Mary K. Kisthardt, who provided stylistic feedback and provided her first impression regarding the article's significance regarding family law in Missouri; the U.S. Department of State's Office of Children's Issues, whose top representatives met with the author and clarified its role regarding incoming and outgoing child abduction cases, reviewed the article, and provided substantive feedback; and his wife, Evelyng Katherine Astudillo Sánchez, who provided emotional support, encouragement, and caregiving of their son and Breon's aging parents during the article's composition.

2 Vienna Convention on the Law of Treaties art. 2(a), opened for signature May 23, 1969, 1155 U.N.T.S. 331.

3 *Instrument*, Black Law's Dictionary (11th ed. 2019).

4 Hague Convention, at Preamble.

5 *Barzilay v. Barzilay (Barzilay II)*, 600 F.3d 912, 916 (8th Cir. 2010) (quoting Elisa Pérez–Vera, Explanatory Report, *in* 3 Hague Conference on Private Int›l Law, Acts and Documents of the Fourteenth Session, Child Abduction 426, 429 (1982)).

6 *Id.* at 917-18. *See also* 42 U.S.C. § 9001(b).

7 *Friedrich v. Friedrich (Friedrich I)*, 983 F.2d 1396, 1400 (6th Cir. 1993); *see also*, *Rydder v. Rydder*, 49 F.3d 369, 732 (8th Cir. 1995); and *Feder v. Evans-Feder*, 63 F.3d 217, 221 (3d Cir. 1995).

8 *Reported Abductions and Returns 2010 – 2020*, U.S. Dep't of State, Bureau of Consular Affairs, Off. of Child.'s Issues (Jul. 09, 2021), *available at* https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/data.html.

9 *Id.*

10 *Id.* (On average, between 2010 to 2020, there were 487 incoming cases reported, with about 139 returns; in 2016, although there were 514 cases reported, and only 79 children were returned).

11 *Jordan v. Jordan*, No. 4:99-cv-01011-ODS (W.D. Mo. Dec. 28, 1999); *Contreras v. Rojas*, No. 4:02-cv-00140-GAF (W.D. Mo. Apr. 4, 2002); *Geddes-Campbell v. Westfall*, No. 4:04-cv-00113-GAF (W.D. Mo. March 31, 2004); *McCubbin v. McCubbin*, No. 2:06-cv-04110-NKL (W.D. Mo. Aug. 31, 2006);

Nunez v. Gonzalez, No. 4:08-cv-00161-DW (W.D. Mo. Sept. 16, 2008); *Fern v. Fern*, No. 5:08-cv-06044-GAF (W.D. Mo. Sept. 24, 2008); *Romanowicz v. Romanowicz*, No. 4:15-cv-00022-BCW (W.D. Mo. March 24, 2015); *Mullen v. Polson*, No. 3:12-cv-05104-MCH (W.D. Mo. Jan. 23, 2019); *Perez v. Mejia*, No. 6:17-cv-03342-MDH (Feb. 13, 2019); *Chumba v. Jeptanui*, No. 4:18-cv-00796-BP (W.D. Mo. Feb. 20, 2019); *Quinn v. Quinn*, No. 3:19-cv-05010 (W.D. Mo. July 15, 2019); *Jamael v. Ebel*, No. 2:20-cv-04031-NKL (W.D. Mo. May 26, 2020); *Akerman v. Carter*, No. 6:19-cv-03399-BCW (W.D. Mo. Sept. 30, 2020).

12 *Phylaktou v. Phylaktou*, No. 4:98-cv-00829-CDP (E.D. Mo. Oct. 28, 1998); *Alapizco v. Williams*, No. 2:01-cv-00084-DJS (E.D. Mo. May 28, 2002); *Meyer v. Gilstrap*, No. 4:03-cv-01447-RWS (E.D. Mo. Feb. 25, 2004); *Diallo v. Bekemeyer*, No. 4:07-cv-01125-SNLJ (E.D. Mo. June 11, 2007); *Sita-Mambwene v. Keeton*, No. 4:09-cv-00913-ERW (E.D. Mo. March 05, 2010); *Barzilay v. Barzilay*, No. 4:07-cv-01781-ERW (E.D. Mo. Apr. 23, 2010); *Drozdov v. Drozdova*, No. 4:10-cv-01002-JCH (E.D. Mo. Sept. 28, 2010); *Mitsuing v. Lowry*, No. 4:09-cv-02124-ERW (E.D. Mo. Oct. 18, 2010); *Fernandez v. Bailey*, No. 1:10-cv-00084-SNLJ (March 25, 2011);; *Jose Martin Ortega Pacheco v. Arely Gutierrez Bautista*, No. 4:14-cv-01822-AGF (E.D. Mo. Dec. 24, 2014); *Portilla v. Lennartz*, No. 4:16-cv-01225-ERW (E.D. Mo. Nov. 01, 2016); *Custodio v. Samillan*, No. 4:15-cv-01162-JAR (E.D. Mo. Dec. 23, 2016); *Cohen v. Cohen*, No. 4:15-cv-01756-JAR (E.D. Mo. Sept. 29, 2017); *Ocana Duran v. Perez Delgado*, No. 4:16-cv-01733-HEA (E.D. Mo. Aug. 26, 2019); *O'Neill v. Sezgin*, No. 4:19-cv-02686-DDN (E.D. Mo. Nov. 26, 2019).

13 18 U.S.C. § 1204(a) ("Whoever removes a child from the United States, or attempts to do so, or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both."); Section § 565.153(1) RSMo ("In the absence of a court order determining rights of custody or visitation to a child, a person having a right of custody of the child commits the offense of parental kidnapping if he or she removes, takes, detains, conceals, or entices away that child within or without the state, without good cause, and with the intent to deprive the custody right of another person . . . ."); Section 476.110(3), RSMo ("Every court of record shall have power to punish as for criminal contempt persons guilty of … [w]illful disobedience of any [*e.g.*, child custody or visitation] order lawfully issued or made by it.").

14 Section 452.400(3), RSMo ("The court shall mandate compliance with its [custody or visitation] order by all parties to the action, including parents, children and third parties. In the event of noncompliance, the aggrieved person may file a verified motion for contempt. If custody, visitation or third-party custody is denied or interfered with by a parent or third party without good cause, the aggrieved person may file a family access motion with the court stating the specific facts which constitute a violation of the judgment of dissolution, legal separation or judgment of paternity."); Section 452.425, RSMo (sheriff or law enforcement to enforce custody or visitation order); Section 452.870, RSMo (expedited enforcement of child custody determination); Section 452.885(1), RSMo (Warrant to take physical custody of child: "Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is likely to suffer serious imminent physical harm or [be imminently] remov[ed] from this state.").

15 Hague Convention on Civil Aspects of International Law, art. 11, Oct. 25, 1980, T.I.A.S. No. 11670, S. Treaty Doc. No. 99-11, 1343 U.N.T.S. 98 [hereinafter, "Hague Convention"], *available at* https://www.hcch.net/en/home (requiring all Hague Convention proceedings to be resolved "expeditiously" and the Court to make every effort to resolve the issue of return within six weeks after commencement of proceedings); *cf*. *Monasky v. Taglieri*, 140 S. Ct. 719, 726 (2020) (refusing to remand the case, but ordering the immediate return of child back to Italy based on sufficient evidence in the record and because remand would unnecessarily protract final resolution, in contravention of Hague Convention's objective "for resolving a return-order petition" within six weeks).

16 *Leonard v. Lentz*, 288 F. Supp. 3d 945, 956 (N.D. Iowa 2018) (finding that a Hague Convention petition offered sole legal remedy for left-behind parent to achieve children's return from United States to Turkey).

17 Elisa Perez-Vera, Explanatory Report ¶ 1.

18 Hague Conference on Private International Law, HCCH Members, https://www.hcch.net/en/states/hcch-members (last visited, June 27, 2021).

19 Hague Conference on Private International Law, Information on the Hague Conference on Private International Law, https://www.hcch.net/en/about/more-about-hcch (last visited, June 27, 2021).

20 Statute of the Hague Conference on Private International Law, art. 4(6) (entered into force Jul. 15, 1955), *available at* https://www.hcch.net/en/home.

21 Elisa Perez-Vera, Explanatory Report ¶ 1.

22 *Id*.

23 U.S. Const. art. 6, cl. 2.

24 Exec. Order No. 12648, 53 Fed. Reg. 30637 (Aug. 11, 1988).

25 *Id*.

26 *Lozano v. Montoya Alvarez*, 572 U.S. 1, 11 (2014) (citing *United States v. Choctaw Nation*, 179 U.S. 494, 535 (1900)); *cf*. *Abbott v. Abbott*, 560 U.S. 1, 12 (2010) ("The interpretation of a treaty, like the interpretation of a statute, begins with its text.") (citing *Medellin v. Texas*, 552 U.S. 491, 506 (2008));Vienna Convention, at art. 31 ("A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Frequently, a treaty's object and purpose can be found in its preamble and annexes.); Hague Convention, at art. 1 ("The objects of the present Convention are … to secure the prompt return of children wrongfully removed to or retained in any Contracting State and … to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.").

27 *Lozano,* 572 U.S. *at* 12 (citing *Olympic Airways v. Husain*, 540 U.S. 644, 650 (2004)) (quoting *Air France v. Saks*, 470 U.S. 392, 399 (1985); 22 U.S.C. § 9001(b)(3) ("In enacting [the Convention,] Congress recognize[d] … the international character of the Convention" and "the need for uniform international interpretation.").

28 *Abbott*, 560 U.S. at 12 ("This uniform, text-based approach ensures international consistency in interpreting the Convention. It forecloses courts from relying on definitions of custody confined by local law usage, definitions that may undermine recognition of custodial arrangements in other countries or in different legal traditions, including the civil-law tradition."); *id*. at 15-18 (In the *Abbott* case, "[t]he Court's view [was] substantially informed by the views of other contracting states on the issue" of whether a *ne exeat* right is a right of access or of custody under the Hague Convention.).

29 Elisa Perez-Vera, Explanatory Report ¶ 62.

30 *Self-executing*, Black Law's Dictionary (11th ed. 2019).

31 *See* 22 U.S.C. §§ 9001-9011.

32 28: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Status table, https://www.hcch.net/en/instruments/conventions/status-table/?cid=24 (last visited June 27, 2021) (signatories include: Albania; Andorra, Argentina; Armenia; Australia; Austria; Bahamas; Barbados; Belarus; Belgium; Belize; Bolivia; Bosnia and Herzegovina; Brazil; Bulgaria; Burkina Faso; Canada; Chile; China; Colombia; Costa Rica; Croatia; Cuba; Cyprus; Czech Republic; Denmark; Dominican Republic; Ecuador; El Salvador; Estonia; Fiji; Finland; France; Gabon; Georgia; Germany; Greece; Guatemala; Guinea; Guyana; Honduras; Hungary; Iceland; Iraq; Ireland; Israel; Italy; Jamaica; Japan; Kazakhstan; South Korea; Latvia; Lesotho; Lithuania; Luxembourg; Malta; Mauritius; Mexico; Monaco; Montenegro; Morocco; Netherlands; New Zealand; Nicaragua; Norway; Pakistan; Panama; Paraguay; Peru; Philippines; Poland; Portugal; Republic of Moldova; Republic of North Macedonia; Romania; Russia; Saint Kitts and Nevis; San Marino; Serbia; Seychelles; Singapore; Slovakia; Slovenia; South Africa; Spain; Sri Lanka; Sweden; Switzerland; Thailand; Trinidad and Tobago; Tunisia; Turkey; Turkmenistan; Ukraine, Great Britain; United States; Uruguay; Uzbekistan; Venezuela; Zambia; and Zimbabwe).

33 Interview by David M. Breon with Office of Children's Issues, Bureau of Consular Affairs, U.S. Dept. of State, by email (Jul. 23, 2021).

34 Hague Convention, at art. 37.

35 22 U.S.C. § 9003(a).

36 *Id*. at (d).

37 *Id*.

38 *Friedrich 1*, 983 F.2d at 1400.

39 Hague Convention, at art 6.

40 *Id*. at art. 7.

41 22 C.F.R. § 94.1.

42 22 C.F.R. § 94.4(a).

43 22 C.F.R. § 94.5.

44 22 C.F.R. § 94.7(a).

45 *Id*. at (c).

46 *Id*. at (d).

47 *Id*. at (e).

48 *Id*. at (f).

49 The U.S. Central Authority will also assist the applicant, upon request, in obtaining a "voluntary agreement for suitable visitation rights by the applicant or for return of the child," "receiving from the foreign Central Authority information relating to the social background of the child or the laws of the country of the child's habitual residence," or a statement regarding "the wrongfulness of the taking of the child under the laws of the country of the child's habitual residence[.]"*See* 22 C.F.R. § 94.6. *Cf*. *Paroginog v. Paroginog*, 2017 WL 630575 (D. Minn. Feb. 15, 2017) (parents entered into a voluntary agreement and the district court issued an order directing the mother to return the minor children back to their habitual residence in Canada).

50 22 C.F.R. § 94.6(b).

51 Interview by David M. Breon with Office of Children's Issues, Bureau of Consular Affairs, U.S. Dept. of State, by email (Jul. 23, 2021).

52 22 C.F.R. § 94.6(e).

53 Interview by David M. Breon with Office of Children's Issues, Bureau of Consular Affairs, U.S. Dept. of State, by email (Jul. 23, 2021).

54 *Preventing International Child Abduction*, U.S. Customs and Border Protection, U.S. Dept. of Homeland Security (Jul. 26, 2021), *available at* https://www.cbp.gov/travel/international-child-abduction-prevention-and-return-act.

55 The United States Court of Appeals for the 8th Circuit recognizes the official Hague Conference Explanatory Report "as the official history and commentary on the Convention and is a source of background on the meaning of the provisions of the Convention." *Custodio v. Samillan*, 842 F.3d 1084, 1088 (8th Cir. 2016) (corroborating the Court's holding that any authority of the Hague Convention's provisions becomes moot and without force at the instant the child turns 16 years of age) (quoting *Barzilay II*, 600 F.3d at 916 n.6); Elisa Perez-Vera, Explanatory Report ¶ 77 ("[N]o action or decision based upon the Convention's provision can be taken with regard to a child after its sixteenth birthday.").

56 *Abbott*, 560 U.S. at 15 ("It is well settled that the Executive Branch's interpretation of a treaty 'is entitled to great weight.'") (quoting *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185 (1982)) (deferring to the State Department's interpretation of a provision of the Hague Convention).

57 22 U.S.C. § 9002(7).

58 *Villegas Duran v. Arribada Beaumont*, 534 F.3d 142, 146 (2d Cir. 2008).

59 22 U.S.C. § 9001(b)(4); *Cohen v. Cohen*, 858 F.3d 1150 (8th Cir. 2017) (declaring how the "[C]ourt may not address the merits of an underlying child custody dispute," until it first makes all the necessary findings in the Hague Convention proceeding).

60 Elisa Perez-Vera, Explanatory Report ¶ 22.

61 *Id*. at ¶ 34.

62 Hague Convention, at art. 16.

63 *Id*. at art. 12.

64 22 U.S.C. § 9003(e)(2)(B).

65 Hague Convention, at art. 12; *cf*. *Sorenson v. Sorenson*, 559 F.3d 871, 874 (8th Cir. 2009) (declaring respondent's and her child's stay in Australia for three years prior to the alleged retention a "substantial amount of time" and sufficient for the child to have become settled in its new environment); *Amdamaskal v. Amdamaskal*, 2018 WL 3360767 1, 5 (D. Minn. July 10, 2018) (finding both children, age 6 and 11, settled in the United States after father waited over 20 months to commence Hague Convention proceeding, despite knowing of the children's location; children have frequent contact with extended family; live in the same household since their arrival; are "fully integrated into and thriving in their classrooms"; speak fluent English; engage in extracurricular and religious activities; oldest child is a U.S. citizen; and mother can provide the children adequate care because of her asylum claim, which has allowed her and the youngest child to legally reside in the United States, and for her to obtain full-time employment); *Monzon v. De La Roca*, 910 F.3d 92, 105-06 n.88 (3d Cir. 2018) (provides 10-factor test for determining whether child settled in its new environment).

66 *See*, *e.g.*, *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001) (finding children were "wrongfully retained" when they had traveled from Israel to the United States to visit their father in Los Angeles for exactly 15 months, during which he filed for dissolution of marriage and custody about three months before their scheduled return to their mother in Israel); *Fabri v. Pritikin-Fabri*, 221 F. Supp. 2d 859, 871-72 (N.D. Ill. 2001) ("Many cases begin with a parent's taking the child away from home for a vacation or visit with the consent of the other parent . . . .").

67 22 U.S.C. § 9003(b).

68 Nigel Howe and Victoria Stephens, *Part III—A statistical analysis of applications made in 2015 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction—National Reports*, HCCH and International Centre for Missing and Exploited Children, July 2018, p. 142.

69 Hague Convention, at art.16.

70 22 U.S.C. § 9003(d).

71 *Id*. at (e).

72 Hague Convention, at art.3.

73 *Barzilay II*, 600 F.3d at 918 (citing *Mozes*, 239 F.3d at 1070).

74 *Barzilay I*, 609 F. Supp. 2d 867, 878 (E.D. Mo. 2009).

75 Elisa Perez-Vera, Explanatory Report ¶ 108; *Cohen*, 858 F.3d at 1154 (8th Cir. 2017) (holding that the record from the U.S. Dist. Ct. of the E.D. of Missouri "support[ed] [the trial court's finding] that the alleged wrongful retention occurred either in July 2014, when [the mother] filed for divorce, or in October 2014, when the six-month period under the travel agreement expired"); *Beard v. Beard*, 2020 WL 4548253 (S.D. Iowa June 19, 2020) (retention occurred when father, despite being in contravention to their Canadian custody agreement, sent mother an email stating his intention to keep child in Iowa).

76 *Babcock v. Babcock*, 2020 WL 7020293 1, 8 (S.D. Iowa Nov. 30, 2020) (finding date of retention was when father failed to place child on bus back to Canada because it represented his unequivocal intention to retain the child in Iowa and because mother had unequivocally revoked "'[her] prior consent[, of child's return 10 days after that date] and reassert [her] custody rights' when she contacted local law enforcement in [Iowa] for assistance in returning the [C]hild to Canada.").

77 *Quinn v. Quinn*, 2019 WL 2518147 1, 3 (W.D. Mo. June 18, 2019) (finding that despite parental agreement that child would only temporarily stay in the United States and would be sent back to its mother in Japan on a particular date, the retention occurred when father failed to return child on that date).

78 *Silverman v. Silverman*, 338 F.3d 886, 898 (8th Cir. 2003).

79 *Monasky*, 140 S. Ct. at 726.

80 Elisa Perez-Vera, Explanatory Report, ¶ 11.

81 *OL* v. *PQ*, 2017 E. C. R. No. C–111/17, ¶ 42 (Judgt. of June 8).

82 *Monasky*, 140 S. Ct. at 726-27; *Karkkainen v. Kovalchuk*, 445 F.3d 280 (3d Cir. 2006).

83 *Barzilay II*, 600 F.3d at 918 (citing *Silverman*, 338 F.3d. at 898).

84 *Id*.

85 *Barzilay I*, 609 F. Supp. 2d at 897-898.

86 *Cohen*, 858 F.3d at 1154 (finding that when the child moved with its mother from Israel to St. Louis, MO, from the child's "perspective, [its] family had moved to the United States indefinitely and established a home there . . . .").

87 *Mozes*, 239 F.3d at 1079-1080 (declaring it important to "regard the intentions of the parents … because the child's knowledge of these intentions [*e.g.*, to move abroad] is likely to color its attitude toward the contacts it is making").

88 *Doudle v. Gause*, 282 F. Supp. 2d 922, 929 (N.D. Ind. 2003) (finding that "even if [the mother] intended only to remove the children for a maximum of one year, her actions since [that time] have exceeded the scope of [father's] consent and she is wrongfully retaining the children in the U.S.").

89 *Barzilay II*, 600 F.3d at 918. *Cf*. *Cohen*, 858 F.3d at 1154 (holding that trial court had committed no clear error in finding that the child had "experienced 'a clear change in geography' and had acclimated to life in the United States," based on facts in the trial court's record showing how: 1) its mother had established a home in St. Louis, MO; 2) the child had "maintained considerable connections to [its] environment" by "attend[ing] school and speech-therapy classes, had a pediatrician, socialized with friends, … had extended family in the area, … primarily spoke in English, … participated in [martial arts and swimming] at [its] local Jewish Community Center, …", and had few connections with Israel; and 3) the mother "[had] obtained employment [and] purchased a vehicle").

90 *Babcock*, 2020 WL 7020293 at 8 (finding mother and father's "clear intent to abandon the United States as the [C]hild's country of habitual

residence after mother had acquired home in Canada where both parents "intended . . . the whole family to [live] indefinitely[, … had] moved all of the children's personal belongings," and where child, for the past two years before visiting father for the summer in Iowa, had "attended school, made friends, participated in sports, and had his medical needs met"); *Sorenson*, 559 F.3d at 873-74 (finding child's habitual residence as Australia where parents had moved all their possessions and lived there for three years).

91 *Silverman v. Silverman*, 2002 WL 971808, 1, 2 (D. Minn. May 9, 2002) (focusing on parental intent whereby the renting instead of purchasing a home suggested their stay in Israel as temporary*); Sorenson v. Sorenson*, 563 F. Supp. 2d 961 (D. Minn. 2008) (qualifying its finding of habitual residence of children as Australia by highlighting evidence that parents had not purchased a home there).

92 *Dubikovskyy v. Goun*, 2021 WL 456634 1, 2, 8 (W.D. Mo. Jan. 7, 2021) (finding any undertaking uncredible because father's work in Geneva, Switzerland, "required a long commute and long hours, causing him to be frequently absent from home," and, based on father's past behavior, child would likely "spend substantial periods" of time alone without supervision. In contrast, mother worked at the University of Missouri-Columbia as a Chemistry professor, owned and lived in her home in Columbia, MO, and child attended school in Columbia); *Sorenson*, 563 F. Supp. 2d at 963 (dismissing father's Hague Convention petition because child not wrongfully retained by mother in its habitual residence of Australia where father had previously accepted a sales engineering position in Australia and had received a three-year work visa and subsequently moved there with mother and child whose visas were dependent on his).

93 *Cohen*, 858 F.3d. at 1154 (finding child's stay of two years in the United States sufficient for him to have acquired significant attachments to his community where he "attended school and speech-therapy classes, had a pediatrician, socialized with friends, and had extended family in the area").

94 *Sorenson*, 559 F.3d at 871-874 (affirming trial court's determination that child's habitual residence was Australia where mother and father agreed to move to Australia with their son for at least three years; however, the marriage subsequently deteriorated, father moved back to U.S. and then alleged that the move had been only temporary); *Cohen*, 858 F.3d at 1150 (affirming trial court's determination that child's habitual residence was St. Louis, MO, where both child's mother and father agreed for mother and child to move from Israel to the United States; however, after the mother and child had been living in the United States for three years, the marriage deteriorated and the father then alleged that the move had been only temporary).

95 *Monasky*, 140 S. Ct. at 729.

96 *Amdamaskal*, 2018 WL 3360767 at 5 (finding children as young as six years of age "old enough to form relationships and emotional ties to the[ir] community").

97 *Leonard v. Lentz*, 297 F. Supp. 3d 874, 895 (N.D. Iowa 2017) (buttressing the court's finding that child's return to Turkey would expose it to grave risk because only viable and available kidney donor, the mother, a U.S. citizen, could not return to Turkey for the procedure because she was not a Turkish citizen and was unable to receive a visa to enter Turkey when both the United States and Turkey had indefinitely suspended visa services to the other country's citizens); *Bejarno v. Jimenez*, 837 Fed. App'x 936, 937-38 (3d Cir. 2021) (concluding no clear error in finding that child was settled in its environment in New Jersey despite the uncertainty of abducting father's asylum claim and tenuous employment prospects); *cf. Lozano v. Alvarez*, 697 F.3d 41, 57 (2d Cir. 2012) (declaring "no court has held [immigration status] to be singularly dispositive"), *aff'd sub nom. Lozano v. Alvarez*, 572 U.S. 1, 134 (2014); *Alcala v. Hernandez*, 826 F3d 161, 174 (4th Cir. 2016) (same).

98 *Cohen v. Cohen*, 2016 WL 4546980 (E.D. Mo. 2016) (finding that child had become settled and acclimated to its new environment in St. Louis, MO, in the prevailing three years there based in part on facts showing how the child was enrolled and attended elementary school, received speech therapy services, socialized with friends, and was involved in activities such as martial arts and swimming); *In re Hague Application*, 2007 WL 4593502, 1, 9 (E.D. Mo. 2007) (finding New Zealand was "clearly" the children's habitual residence partly based on their having "engag[ed] in the full spectrum of normal childhood activities: attending school, participating in extracurricular activities, hanging out with friends, engaging in sports activities, and generally enjoying the social and cultural environment of New Zealand").

99 *Sorenson*, 559 F.3d at 874 (after three years abroad, U.S.-borne child spoke with Australian accent); *Cohen*, 858 F.3d. at 1154 (after three years in St. Louis, MO, Israeli-born child spoke primarily in English).

100 *Monasky*, 140 S. Ct. at 735 n.3; *Sorenson*, 559 F.3d at 872 (after the father accepted a job in Australia under a three-year work visa, he and his wife sold their U.S. residence and vehicles, "shipped most of their personal belongings to Australia," and moved with their minor child to Australia).

101 *Sorenson*, 559 F.3d at 874.

102 *Stern v. Stern*, 639 F.3d 449, 452 (8th Cir. 2011).

103 *Friedrich I*, 983 F.2d at 1401. (emphasis added)

104 Elisa Perez-Vera, Explanatory Report, ¶ 12.

105 *Monasky*, 140 S. Ct. at 727. *Cf. Whiting v. Krassner*, 391 F.3d 540, 550-51 (3d Cir. 2004) (affirming as self-evident that a four-year old was "not only aware of those around him but [was] able to form meaningful connections with the people and places [it] encounter[ed] each day[,]" but that a child of one-year of age lacked "such capability").

106 *Mozes*, 239 F.3d at 1084.

107 22 U.S.C. § 9003(e)(2)(B).

108 Hague Convention, at art.13(a); *Baxter v. Baxter*, 423 F.3d 363 (3d Cir. 2005) (consent "involves the petitioner's conduct prior to the contested removal or retention," and "acquiescence addresses whether the petitioner subsequently agreed to or accepted the removal or retention"); *id*. (Acquiescence "require[s] an act or statement with the requisite

formality, such as testimony in a judicial proceeding[,] a convincing written renunciation of rights[,] or a consistent attitude of acquiescence over a significant period of time.") (citing *Friedrich v. Friedrich (Friedrich II)*, 78 F.3d 1060, 1070 (6th Cir. 1996); *id*. (The analysis of whether or not Petitioner had acquiesced "turns on [Petitioner's] subjective intent") (citing *Friedrich II*, 78 F.3d at 1060); *Baxter*, 423 F.3d at 368-69 (3d Cir. 2005) (setting aside district court's finding that father had consented for mother and child to "leave Australia definitively" as clearly erroneous where record showed parents "undecided about their next residence" and father's consent for mother and child to travel to Delaware was merely to buy the parents time and in a safe and stable environment to regroup and consider how to proceed); *cf*. *Gonzalez-Caballero v. Mena*, 251 F.3d 789, 794 (9th Cir. 2001) (concluding no clear error in district court's finding that mother, a Panamanian citizen, consented to child's removal from Panama to United States to live with father, a U.S. citizen, after both parents determined that Child "would have a better life in the United States" and child's removal being conditional on father's subsequently assisting mother to immigrate to the United States, which he later reneged).

109 22 U.S.C. § 9003(e)(2)(A).

110 Hague Convention, at art. 13(b); Hague International Child Abduction Convention; Text and Legal Analysis, 51 Fed. Reg. 10494-01 (grave risk of harm does not include situations where the child's return home would be where "money is in short supply, or where educational or other opportunities are more limited than in the requested State"; however, it would include "one in which a custodial parent sexually abuses the child"); *Silverman*, 338 F.3d at 901 (Israel does not fall within the "zone of war" grave risk category because the violence in Israel, such as suicide bomb attacks, occur everywhere and are experienced by all; thus, the Court delimits the attacks as "general regional violence"); *Vasquez v. Colores*, 2010 WL 3717298 (D. Minn. Sept. 14, 2010) (U.S. citizen mother returned to the United States with infant daughter without the Mexican citizen father's consent. Court found child's habitual residence as Mexico, and mother failed, for lack of evidence, to substantiate her grave-risk-of-harm defense that infant child would face physical and psychological harm by father if returned to Mexico).

111 *Vasquez v. Colores*, 648 F.3d 648, 650 (8th Cir. 2011).

112 *Id*. *Cf*. *Leonard*, 288 F. Supp. 3d at 960-61 (confirming its decision that returning child back to Turkey would place it at grave risk to its health and survival where Respondent offered no evidence of available kidney donor and suitable post-op treatment in Turkey, and Petitioner proved, by clear and convincing evidence, that both the availability, operation and post-op treatment was immediately available in the United States).

113 *Aly v. Aden*, 2013 WL 593420, at 9 (D. Minn. Feb. 14, 2013).

114 22 U.S.C. § 9003(e)(2)(A).

115 Hague Convention, at art. 20.

116 *International Convention on the Elimination of all Forms of Racial Discrimination*, 660 UNTS 195 (entered into force Jan. 4, 1969) [ICERD]; *International Covenant on Civil and Political Rights*, 999 UNTS 171 (entered into force March 23, 1976) [ICCPR]; *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3 (entered into force Jan. 3, 1976) [ICESCR]; *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 UNTS 13 (entered into force Sept. 3, 1981) [CEDAW]; *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85 (entered into force June 26, 1987) [CAT]; *Convention on the Rights of the Child*, 1577 UNTS 3 (entered into force Sept. 2, 1990) [CRC]; and *International Convention on Protection of the Rights of all Migrant Workers and Members of their Families*, 2220 UNTS 93 (adopted Dec. 18, 1990) [ICMRW].

117 *Aly*, 2013 WL 593420 at 9.

118 Hague Convention, at art. 13.

119 *Custodio*, 842 F.3d at 1087.

120 Elisa Perez-Vera, Explanatory Report, ¶ 30 (suggesting that children nearing age of 16 should usually have their desires to remain or objections to return to the place of their habitual residence respected); *Custodio*, 842 F.3d at 1088 (holding no abuse of discretion district court's respecting 15-year-old child's "opposition to returning to Peru and desire to remain in the United States"); *Kofler v. Kofler*, 2007 WL 2081712 (W.D. Ark. July 18, 2007) (finding children aged 11, 13, and 15 sufficiently mature to have their objections to return to be considered); *Diaz Arboleda v. Arenas*, 311 F. Supp. 2d 336, 343 (E.D.N.Y. 2004) (finding children of 12 and 14 years of age sufficiently mature to have their objections to return to be considered); and *Antunez-Fernandes v. Connors-Fernandes*, 259 F. Supp. 2d 800 (N.D. Iowa 2003) (finding that two children of age 4 and 7 had "not attained an age or degree of maturity to make it appropriate to take their views into account"); *Avendano v. Balza*, 985 F.3d 8, 13-14 (1st Cir. 2021) (concluding no clear error in district court's determination that 11-year-old child was sufficiently mature to consider its objections to return to Venezuela where those objections were based on the "ongoing political and societal tumult" in Venezuela, and child's decision appeared to have been "reached independently" and "free of undue influence by" father); *cf*. *Forcelli v. Smith*, 2020 WL 5015838 1, 10-11 (D. Minn. 2020) (finding despite 12-year-old child preferring not to return to mother in Germany, child's preference might have been unduly influenced by father and others, child's objections are not particularized, child previously preferred to stay with mother when living with her in Germany, and any other consideration on the issue would essentially be a "best interests" analysis as to whom is the better parent, which the Hague Convention prohibits); *Babcock*, 2020 WL 7020293 at 11-12 (finding that, despite being 12 years of age, child's reasons for wanting to stay with father in Iowa were too generalized, which included activities and situations already present in Canada, and child's views were likely the product of undue influence by father and others because child's idiomatic expressions that he used in Court mirrored his father's).

121 Hague Convention, at art. 18.

122 *Friedrich II*, 78 F.3d at 1067 (citing *Feder*, 63 F.3d at 226).

123 *Silverman v. Silverman*, 267 F.3d 788, 791 (8th Cir. 2001); *cf*. *Leonard*, 297 F. Supp. 3d at 900-901 (finding the use of court's discretion to return child inapposite where father's exercise of custody rights unaltered no matter if the children stayed in the United States or returned to Turkey, and that mother had not taken the children to the United States to seek a more sympathetic court in which to receive a more favorable custody determination).

124 22 U.S.C. § 9007(b). *Cf*. *Silverman v. Silverman*, 2004 WL 2066778 (D. Minn. 2004) (finding awarding *any* fees would be clearly inappropriate because it "would impair significantly [respondent's] ability to care for [the] children" where respondent was then unemployed, had to support two households, had already paid extensive legal fees partially based on unnecessary litigation spurred by petitioner, and petitioner "ha[d] failed to provide timely and adequate financial support for the children;" also, the court factored petitioner's physical and psychological abuse towards respondent); *Vasquez*, 2010 WL 3717298 (finding awarding any fees to be clearly inappropriate because of respondent's "small salary").

125 Mo. R. Prof'l Conduct 4-1.4.

CHIEF JUSTICE PAUL WILSON DELIVERS STATE OF THE JUDICIARY ADDRESS

HON. PAUL WILSON

Speaker Vescovo, Lieutenant Governor Kehoe, President Pro Tem Schatz, members of the 101st General Assembly, statewide office holders, cabinet members, and other executive branch officials: thank you for this opportunity to speak to you this morning.

Chief Justice Paul Wilson discusses the State of the Judiciary. Photo: Tim Bommel, Missouri House Communications

The concept of separation of powers is one of our Constitutional cornerstones, but it can be misleading. Separate does not mean adversarial, and it never has. In truth, our constitution demands just the opposite. Despite the different roles we play in our system of checks and balances, all three branches must continually communicate and cooperate if we are to serve the constitution and the people well.

Obviously, my address this morning is largely ceremonial, but that does not mean it doesn't matter. I think it's important for the people of our great state to see us gathered on occasions like this – together – demonstrating the cooperation that goes on, not just on this day, but throughout the year. For that reason, and in that spirit, I deeply appreciate your willingness to listen to what I have to say.

There are somewhere north of 200 of us in this room, and we all asked to be here. No one made us take the path of civil service that brought us here. Every one of us is a volunteer, and we worked hard to have the chance to serve this state and its people. Others can rail against "the government" as if it were some nameless, faceless entity, but we in this room know better. You, me, and the nearly 50,000 other public servants who live and work in virtually every community in this state, we are the government. Government is people and, for today's purposes, it's us.

I was born and raised here in Jefferson City, and maybe that's why this idea is so important to me and so ingrained in who I am. The legislature wasn't just some headline to me. Instead, it was my neighbor and childhood idol Jim Strong, who served in this chamber and then in the Senate down the hall. The legislature was my Uncle Jim – and all those he would introduce me to on the many afternoons I came to watch him in this building.

Most of the kids I grew up with had parents who worked in government, at all levels. My dad served many years as a judge in the municipal and associate circuit courts. My mom worked in public health for nearly 50 years, starting as a school nurse and ending up as a division director in the department of health in the Ashcroft administration.

When you grow up here in Jefferson City, even statewide office holders are just people, as I learned one cold winter's day 50-some years ago when I accidentally knocked Jack Danforth off his feet at the skating rink. My dad helped him, and me, up, and then said to me: "You know who that is, don't you!?!" Well, of course, I didn't … but I quickly learned and, senator, if you're listening, please accept this very overdue apology!

My father is no longer around to pick me up when I make a mistake, but my wife Laura is. She's the love of my life for more than 30 years, and she's with us in the gallery today. Please make her feel welcome.

The point is, I grew up believing that government is people – well meaning, hardworking people – and I believe that still today. I promise you it's no less true of me or my colleagues than it is of you or yours. We all have different jobs, and we serve in different ways, but we

are united in the spirit and goal of service. This unity of purpose brings us together this morning so the people of this state can see us – gathered in their name – to discuss their business … together.

So, let's get down to business …

Court employees

The state of the judicial branch is sound. Last year, despite all its challenges, more than 750,000 circuit court cases were resolved. While the pandemic impacted our backlog, its effect was not as big or as widespread as some feared, and we are working to clear it.

And, when I say we, I mean them – the 350 trial judges, and the more-than-3,000 court clerks, bailiffs, court reporters, juvenile officers, juvenile detention officers, and all the other staff who really make up the judicial branch. It's not the seven of us – it's all of them and the work they do. We know it, they know it, and I want all of you to know it, too.

They are the ones who kept the courts open through the pandemic. They are the ones who work to help keep Missouri kids safe. Who collect and disperse more than $100 million every year. Who schedule every court hearing and help people know when and where they're supposed to be.

Our people are your people, your constituents, your friends and neighbors, and they live and work in every corner of this state. They are the face and beating heart of your judicial system. The work they do is incredibly important and often incredibly difficult, and I would ask you to help me recognize them now.

On their behalf, I thank you for the cost-of-living increases you have been able to give in recent years and, especially, the one you approved just a few days ago. That kind of increase is important to our employees, not merely in terms of buying power, but because it demonstrates that you in this chamber know who they are. You see them, and you proudly recognize the work they do.

But there is more we can, and need, to do. Like the rest of government, we struggle to retain experienced workers and recruit new employees to careers in the courts. All too often, we spend precious tax dollars recruiting and training people, giving them the skills and experience we need them to have, only to see them move to better-paying, private-sector jobs after our training is complete. A market-based approach to compensation will give us a fighting chance to attract and keep expert staff in our courtrooms and courthouses. Those folks want to serve, just as all of us do, and competitive compensation will allow them to do that. By continuing to work with you, we can find a common-sense, long-term solution to this problem.

Judges

I urge each of you to reach out to your local judges. Spend some time in your local courthouses. Talk with your local court staff and see what's happening there. Decide for yourselves how busy Missouri's courts are, how fair they are, and how well we serve the laws you write and the constitutional principles every one of us has sworn to protect. My hope is you'll see ways we can work together to improve our justice system.

One reason I ask you to do this is because so many of our judges are new. In the last four years alone, 40% of all the trial and appellate judges have been new to their positions. Some of those changes came as the result of local elections, but more than three fourths of the new judges over these last four years – including 109 trial judges and 13 appellate judges – were appointed by the governor either under article IV, section 4, or under our constitution's nonpartisan court plan.

One of these recent appointees is Judge Robin Ransom, the newest member of the Supreme Court. She is a native of St. Louis. She worked as a public defender, a prosecutor, a family court staff attorney, a court commissioner, and then a circuit judge. In 2019, Governor Parson elevated her to the Court of Appeals and then, last May, appointed her to the Supreme Court. She is not only the owner/operator of the most infectious smile you've ever seen, but she also just might be the best bowler in this room! We could not be more thrilled to work with her. Please join me in recognizing our newest judge.

Court security

With the judicial branch working in more than 120 courthouses around the state, security – for citizens, lawyers, judges, and other court personnel – has always been a priority.

Thankfully, security in our courthouses has come a long way since 1992, when a man shot four people in a St. Louis County courtroom and then executed his wife on the witness stand. But security risks continue, they're on the rise, and they are no longer just inside the courthouse.

Those of us in public service are increasingly vulnerable. As public servants, we know we are not – and should not be – immune from public scrutiny and criticism … it comes with the job. But none of us – or our families – should be put in harm's way.

In 2005, a judge's husband and mother were murdered in Illinois. In 2015, a judge survived an assassination attempt outside her home in Texas. And, in 2020, a New Jersey judge's husband was shot and her son killed in an attack meant for her. All three states responded with laws aimed at protecting the private personal information of judges and their families, but those laws came too late to prevent those tragedies. We owe it to the those who serve in Missouri's judiciary not to learn – in the worst possible

way – that we, too, did too little, too late.

Missouri judges have been harassed online and at home, they've been threatened, and they've had their personal information posted on the web. Eleven states have already passed laws enhancing safety for judges, and more are considering such legislation now. We appreciate Representative DeGroot's efforts in this area and believe that legislative protections for Missouri's judges, together with the governor's budget recommendations you're now considering, are a good start – and we look forward to working with you on this issue as well.

Court technology

Online services are revolutionizing the courts just as they are the rest of government. This was true before COVID, and the last two years have greatly accelerated this trend. When conditions limited the number and types of hearings that could be held in person, we held thousands of hearings online, in virtual courtrooms. This approach made it possible to keep the work of the judiciary moving, and it was well received by those the courts are here to serve. Data from around the country shows that virtual proceedings not only make courts more efficient, but they also increase access to justice for many.

But this demand for increased online services highlights how much more difficult it is for some to make use of those services than others. There can be no doubt the "digital divide" is real. And it can be caused as much by geography as by poverty. Courts, whether virtual or in person, must be equally open and accessible for all Missourians, regardless of who you are or where you live.

This is why we're excited by Governor Parson's recommendations for broadband expansion around the state. Increased bandwidth, especially for our rural courthouses and the communities they serve, will help us better utilize online services to increase efficiency and access, making your courts more user-friendly for everyone.

Treatment courts

Those logistical issues – compensation, security, and infrastructure – are important, but only because they make it possible for the judicial branch to fulfill the role assigned to us. I want to turn now to some of the more creative work going on in our courts, work that presents continued opportunities for cooperation among our three branches.

One recurring theme in State of the Judiciary addresses over the past 20 years has been drug courts. They have been one of the greatest collaborative successes showing what is possible when the three branches work together with creativity and a commitment to serving Missourians better.

By identifying appropriate offenders and diverting them from prison to treatment, we – together – found a better way to serve not only those individuals, but also their families and society as a whole. This approach is cost effective, to be sure, but more importantly, it's fair … and just. These programs stand as proof that our justice system often does better when it responds to the whole person and not merely to their conduct. This was true more than a century ago when legislation created the very first diversion court, which we now call juvenile courts, and it remains true today.

Veterans courts

But there is another diversion court, another form of treatment court, that I believe needs the same sort of sustained cooperation and commitment that – together – we have given drug courts and juvenile courts in this state. I'm talking about veterans courts.

As home to Fort Leonard Wood, Whiteman Air Force Base, and many other installations, Missouri is proud to host some of the most elite fighting men and women in the world. But we are equally proud when service members choose to make Missouri their home after they leave active duty. As Governor Parson noted in his State of the State address, Missouri ranks ninth in the nation as home for our retired military.

Sadly, however, the burdens of military service do not magically disappear the moment a veteran leaves active duty. For some, those burdens can lead to mental health struggles that manifest themselves in substance abuse and conduct that, unfortunately, can land them in our justice system.

Then, our choice is clear. We can view those veterans solely in terms of their conduct, or we can look at the context from which their conduct arises and see whether treatment and other forms of support can produce a better outcome, both for the veterans and for all of us they have served.

Make no mistake: Missouri veterans courts work. We now have 15 programs serving 40 counties and, in the past five years alone, they've graduated more than 360 former service men and women. One reason these programs work so well is the role that volunteer veterans and active-duty soldiers play as mentors. No one can help a veteran like someone who's walked a mile – and probably a thousand miles – in their combat boots. Missouri veterans courts have demonstrated the kind of success we've come to expect from drug courts and other treatment courts … and now it's time we do more.

Today, veterans courts serve only a third of our local jurisdictions, largely clustered around VA hospitals and clinics. Outside of those areas, however, resources are scarce. The simple truth is that veterans who need help throughout most of Missouri will not have access to a veterans court should they find themselves on the wrong side of the law. We can work together to fix this, and I hope you will agree we owe it to these men and women

as the very least we can do to honor the sacrifices they've made.

Cooperative solutions

And there are other examples where our three branches have communicated and cooperated to better serve Missouri and her people:

- The Justice Reinvestment Initiative led by the department of corrections;
- the Partnership for Child Safety and Well Being, where we work together with the children's division, youth services, and the department of mental health;
- and the initiative we call Leading Change in Criminal Justice, which helps local stakeholders better coordinate services for individuals with co-occurring mental health challenges and substance use disorders.

And the list goes on and on and on. Leaders from across government … people working together to empower local solutions. Are you sensing a winning formula? I hope so.

So, I am happy to report that the State of the Judiciary is sound, and the future is bright. While I've mentioned a few of the ways we can work – and have worked – together, the opportunities for cooperation are limited only by our creativity and our courage.

Conclusion

Missouri has always had her share of challenges. For example, as you all know, fire destroyed the state Capitol in 1911. But, as Missourians always do, we rebuilt, and this magnificent building was the result.

Yet the beauty of the design and the quality of the work that went into this building were not a celebration of what Missouri was, or a salute to leaders who already served. Instead, I believe this building – and, in particular, this chamber, The People's Chamber – was designed and built as a monument to what Missouri can be, and as a challenge to all those who would seek to lead in the future.

The commission overseeing the new Capitol project identified 14 qualities – characteristics the people of Missouri should aspire to embody. But I think it's instructive that – of all the places around the Capitol that the commission might have chosen to display these qualities – they chose here. Those 14 traits are literally carved into the walls of this chamber. They have stood here for more than a century as a silent challenge to all those who sought to lead.

Even now, today, they challenge you and me to find these virtues in ourselves and in each other.

- To find Honor and Truth and Charity,
- To find Justice and Equality and Liberty,
- and all the rest.

To find them within ourselves and in each other – and to let those virtues guide the work we've volunteered to do.

And yet, as I look at these virtues, I can't help but notice the one that isn't there. Courage. Maya Angelou, a native of St. Louis and one of America's greatest poets, once said:

> Courage is the most important of all the virtues, because without courage you can't practice any other virtue consistently. You can practice any virtue erratically, but nothing consistently without courage.

You see, it takes courage to lead; to make the decision you know is right but may not be popular; to listen and cooperate and compromise; to build a future for everyone and not merely those who look and sound like us. There is no tomorrow for any of us that is not the tomorrow for all of us, and that future will only be as bright as we make it.

So, will those of us who have gathered in this chamber today have what it takes to practice these virtues?

To practice Justice and Truth … Liberty and Honor … Equality and Charity ... and all the rest?

And will we have the Courage needed to practice them consistently?

With God's help and blessings, I believe we will.

Thank you.

HOW ATTORNEY DISCIPLINE WORKS: INSIGHT INTO THE OCDC'S COMPLAINT REVIEW AND SANCTION ANALYSIS

SAM PHILLIPS[1]

Complaint review process

Any given year, the Office of Chief Disciplinary Counsel receives 1,700 to 2,200 complaints. OCDC staff members carefully read every complaint and reject jurisdiction on more than half.

Several complaints are resolved each year through the OCDC's Informal Resolution Program; The Missouri Bar's Complaint Resolution Program; or the bar's Lawyer-to-Lawyer Dispute Resolution Program (see Rule 5.10). When successful, those programs help maintain lawyer/client relationships and eliminate the need for a disciplinary investigation. Additionally, many complaints are not opened for investigation but instead are referred to The Missouri Bar's Fee Dispute Resolution Program.

About 700 to 900 complaints are investigated each year. Lawyers being investigated are required by Rule 4-8.1 to comply with OCDC requests for information. In some situations, the lawyers are asked to produce records related to the representation of clients and documentation from their trust accounting records. Frequently, lawyers are required to appear for sworn statements. Investigations can take several months and involve some extensive back-and-forth correspondence.

Upon finding a violation, the OCDC can decide, under Rule 5.11, that further proceedings are not warranted and that an admonition is appropriate. The rule requires the lawyer to accept or reject the admonition. When deciding whether an admonition is adequate to protect the public, disciplinary authorities consider the nature of the violation, the level of intent, the lawyer's disciplinary history, and the harm or potential harm. Admonitions are often intended to help the lawyer redirect their practice to better protect their clients. If a lawyer decides to reject an admonition, Rule 5.11 indicates that the OCDC *shall* file a formal information.

Of the 855 complaints investigated in 2020, more than 87% were resolved with findings of insufficient probable cause to believe that the lawyer was guilty of professional misconduct that would justify discipline. The other 13% (105 cases in 2020) resulted in the following dispositions:

Lawyers accepted **76 Admonitions** issued by the OCDC.

The Supreme Court imposed the following sanctions:

- **Reprimands: 4**
- **Suspensions Stayed with Probation: 2**
- **Suspensions (not stayed): 14**
- **Disbarments (including Surrenders): 9**

Sanction analysis

The remainder of this article addresses the OCDC's sanction analysis in non-admonition cases or where the lawyer rejects an admonition. These are the cases where the OCDC files an information. Ultimately, the Supreme Court of Missouri considers the record and the recommendations of the parties, then decides what sanction, if any, to impose. Rules 5.16, 5.19, and 5.225 list the available sanctions, which include reprimand, reprimand with conditions, probation, stayed suspension with probation, suspension, and disbarment.

Sources for guidance

In recommending sanctions for lawyer misconduct, the OCDC has historically relied on five guiding sources.

The OCDC first looks to disciplinary decisions issued by the Supreme Court of Missouri to maintain consistency and fairness, and ultimately, to accomplish the Court's stated goals of protecting the public and maintaining the integrity of the profession. The Court's decisions become standards, even if not controlling precedent, when it issues opinions in lawyer discipline cases.[2]

Similarly, the OCDC analyzes the Court's many unreported decisions made in both stipulated and contested lawyer discipline cases. Recognizing the uniqueness of each case, patterns and trends are nevertheless apparent. As with reported decisions, the OCDC attempts to analyze each unreported decision, considering the particular facts, the level of harm, the level of intent, the nature of the violations, and any proven mitigating and aggravating factors. If, for example, the Court recently rejected one or more sanctions recommended by the OCDC (or stipulated by the OCDC and the respondent), the OCDC may adjust its recommendations

going forward. Similarly, the OCDC's recommendations in a certain type of case may be shaped by the Court's repeated acceptance of OCDC recommendations or stipulations in those cases.

For additional guidance, and with a nod to the objectivity that can develop with the volume of cases heard throughout the country, the OCDC routinely refers to the ABA's Standards for Imposing Lawyer Sanctions (1991 ed.), which recommend baseline discipline for specific types of misconduct, taking into consideration the duty violated, the lawyer's mental state (level of intent), and the extent of injury or potential injury. Once the baseline guideline is known, the ABA Standards allow consideration of aggravating and mitigating circumstances. These ABA Standards will be discussed below.

The Court is often interested in analysis from courts in other jurisdictions when they have addressed similar facts and issues, especially in cases with seldom-seen facts and legal issues. The OCDC tries to provide that analysis.

Finally, the OCDC also considers the findings of fact, conclusions of law, and sanction recommendation issued by the Disciplinary Hearing Panel that heard the case in accord with Rules 5.15 and 5.16. After the panel makes its recommendation, the OCDC and respondent may accept or reject it. In fact, the Court itself may accept or reject the panel's sanction recommendation, even if both the OCDC and the respondent reached agreement. Importantly, under Rule 5, the Court's review of the record is de novo, so the panel's findings, conclusions, and sanction recommendation are advisory.

Using these sources, each new case is analyzed for an appropriate disposition. The OCDC's recommended sanction is made with an assumption that consistent sanctions in common cases have, over time, become de facto standards, even without reported decisions. Of course, each case is unique; certain facts require deviation from standards. The OCDC aims to recommend sanctions in accord with those apparent standards and to explain or justify any deviations from the apparent standards.

In addition to complaints from clients and others, the attorney discipline system also processes cases resulting from lawyers found guilty of certain crimes and lawyers disciplined by other jurisdictions. Although those cases are processed directly in the Supreme Court, the sanction analysis is very similar to cases resulting from client complaints.

ABA standards for imposing lawyer sanctions

Like the OCDC, the Supreme Court of Missouri routinely refers to the ABA Standards for Imposing Lawyer Sanctions (1991 ed.) that were developed by the ABA's Center for Professional Responsibility.[3] The guidelines consider the following primary questions:

(1) What ethical duty did the lawyer violate? (A duty to a client, the public, the legal system, or the profession?);

(2) What was the lawyer's mental state? (Did the lawyer act intentionally, knowingly, or negligently?);

(3) What was the extent of the actual or potential injury caused by the lawyer's misconduct? (Was there a serious or potentially serious injury?); and

(4) Are there any aggravating or mitigating circumstances?[4]

The ABA Standards "assume that the most important ethical duties are those obligations which a lawyer owes to clients." Application of the ABA Standards requires the user to analyze the first three questions and then, only after a baseline sanction is apparent, to consider aggravating and mitigating circumstances.[5] The drafters intentionally rejected an approach, however, that focused only on a lawyer's intent. Instead, they recognized that sanctioning courts must consider not only the lawyer's intent and damage to the client, but also the damage to "the public, the legal system and the profession."[6]

When there are multiple acts of misconduct, the sanction imposed should be consistent with the sanction for the most serious instance of misconduct among the violations.[7]

An example from the ABA Standards might be helpful here. This set of guidelines[8] applies to misuse of client property:

- Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

As noted, the ABA Standards also allow for consideration and balancing of both aggravating and mitigating circumstances; they can justify deviations from the baseline. Here are lists of those factors, as well as a list of factors that are neither aggravating nor mitigating.[9]

Factors which may be considered in aggravation

Aggravating factors include:

(a) prior disciplinary offenses;

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of victim;

(i) substantial experience in the practice of law;

(j) indifference to making restitution;
(k) illegal conduct, including that involving the use of controlled substances.

Factors which may be considered in mitigation

Mitigating factors include:
(a) absence of a prior disciplinary record;
(b) absence of a dishonest or selfish motive;
(c) personal or emotional problems;
(d) timely good faith effort to make restitution or to rectify consequences of misconduct;
(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
(f) inexperience in the practice of law;
(g) character or reputation;
(h) physical disability;
(i) mental disability or chemical dependency including alcoholism or drug abuse when: (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability; (2) the chemical dependency or mental disability caused the misconduct; (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
(j) delay in disciplinary proceedings;
(k) imposition of other penalties or sanctions;
(l) remorse;
(m) remoteness of prior offenses.

Factors which are neither aggravating nor mitigating

The following factors should not be considered as either aggravating or mitigating:
(a) forced or compelled restitution;
(b) agreeing to the client's demand for certain improper behavior or result;
(c) withdrawal of complaint against the lawyer;
(d) resignation prior to completion of disciplinary proceedings;
(e) complainant's recommendation as to sanction;
(f) failure of injured client to complain.

Specific Missouri rules for probation and mental health issues

In Missouri, two key sanction factors are established by court rule, essentially overriding otherwise applicable ABA guidelines.

First, Supreme Court of Missouri Rule 5.225 lists criteria for the use of probation, which may be imposed as its own sanction or imposed along with a stayed suspension. Rule 5.225 sets the minimum standards for the use of probation in Missouri discipline cases. Briefly, a lawyer is *eligible* for probation if (a) the lawyer is unlikely to harm the public and can be supervised, (b) continued practice by the lawyer would not harm the profession's reputation, and (c) the misconduct does not warrant disbarment. The OCDC fully supports the use of probation in many cases and routinely suggests terms and conditions for probation that are intended to both protect the public and help correct any deficiency in a lawyer's practice. The OCDC often opposes probation, however, when the misconduct is more serious and when no obvious probation conditions could remedy the problem that led to the lawyer's violation. In those circumstances, the OCDC has concerns that the public cannot be protected. A lawyer's refusals to respond to disciplinary investigations or to accept responsibility provide concerns about whether that lawyer's practice can be effectively supervised.

The second sanction analysis governed by Court rule relates to the possibility of mitigation arising from respondents' claims of mental health conditions. Rule 5.285 defines the mental conditions that can mitigate; as importantly, it sets criteria for mitigation. First, a mental health condition, including substance abuse and dependency, cannot mitigate unless the respondent raises it when filing an answer to the information. And, the condition only mitigates if it has been diagnosed by a licensed, non-treating (independent) mental health professional. Lawyers claiming mitigation have the burden to establish, through the independent evaluation, that the conditions caused or had a substantial and direct relationship to the misconduct and that the lawyer has a current ability to manage the mental disorder for a meaningful and sustained period of successful functioning, and that recurrence is unlikely. Even if those factors are met, mitigation is not automatic.

Other factors include:
(1) The seriousness of the misconduct;
(2) The extent to which the misconduct is attributable to the mental disorder;
(3) The extent to which the mental disorder will interfere with the ability to practice law;
(4) The results of a functional analysis of the person's abilities in light of the mental disorder;
(5) Other health conditions the person has that interact with, or result in, mental health disorders or impairments;
(6) The person's prognosis including, but not limited to, the likelihood of relapse as determined by an independent evaluation;
(7) The person's history of dealing with the mental disorder;
(8) The person's ability to self monitor the person's status in relation to the mental disorder;
(9) The level of monitoring that will be needed;
(10) The length of time monitoring will be needed;
(11) The cost of monitoring; and
(12) The likelihood the person will be able to continue to practice in a manner in which the public is protected once any period of monitoring is complete.[10]

Supreme Court of Missouri analysis

While the OCDC and respondent lawyers often argue their respective positions, the Court analyzes and decides each case on its merits. In some instances, the Court concurs with the OCDC; at other times, respondents are more persuasive. Occasionally, the Court imposes sanctions harsher than

the OCDC requests. Over time, and with a critical mass of cases, Missouri sanction standards emerge. But, each set of facts offers new opportunities for the OCDC, respondents, and the Court to find unique circumstances justifying any sanction provided for in Rule 5. Not surprisingly, apparent standards may evolve as differing concerns are recognized.

Endnotes

1 Sam Phillips is deputy disciplinary counsel at the Office of Chief Disciplinary Counsel in Jefferson City.

2 *In re Kazanas*, 96 S.W.3d 803 (Mo. banc 2003).

3 *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994).

4 ABA Standards for Imposing Lawyer Sanctions: Theoretical Framework, p. 5 (1991 ed.).

5 ABA Standards for Imposing Lawyer Sanctions, Preface: Methodology, p. 3 (1991 ed.).

6 *Id.*

7 *In re Ehler*, 319 S.W.3d 443 (Mo. banc 2010); ABA Standards for Imposing Lawyer Sanctions, (Theoretical Framework), p. 6 (1991 ed.).

8 ABA Standards for Imposing Lawyer Sanctions, 4.11-4.14, (1991 ed.).

9 ABA Standards for Imposing Lawyer Sanctions, 9.2, 9.3, 9.4, (1991 ed.).

10 Missouri Supreme Court Rule 5.285.

DISCIPLINARY ACTIONS

PROBATION

2/8/22 Mark T. McCloskey
#36144
The Niemann Mansion
4472 Lindell Blvd.
St. Louis, MO 63108

2/8/22 Patricia Lynn Novak McCloskey
#36153
The Niemann Mansion
4472 Lindell Blvd.
St. Louis, MO 63108

SUSPENSIONS

12/21/21 Stephen Ray Wigginton
#38254
7110 W. Main St.
Belleville, IL 62223-3073

A PLANNING GUIDE TO REDUCE SQUIRREL CHASING

PAUL UNGER, AFFINITY CONSULTING[1]

LEGAL PROFESSIONALS GET AN EXTERNAL INTERRUPTION EVERY THREE TO FOUR MINUTES FROM EMAIL, INSTANT MESSAGES, CALLS, SOCIAL MEDIA, AND MORE.

There is something that can torpedo our daily schedules even worse, though ... internal interruptions. According to some studies, we switch tasks on our computer nearly 600 times a day and take 70 to 100 email curiosity breaks per day. The reality is that we sabotage our own day chasing squirrels more often than we care to admit.

Attention/distraction management is an essential skill to learn in today's age of information overload. There are many techniques that we can employ to assist us with this problem, but one that we too often overlook is good, old-fashioned planning.

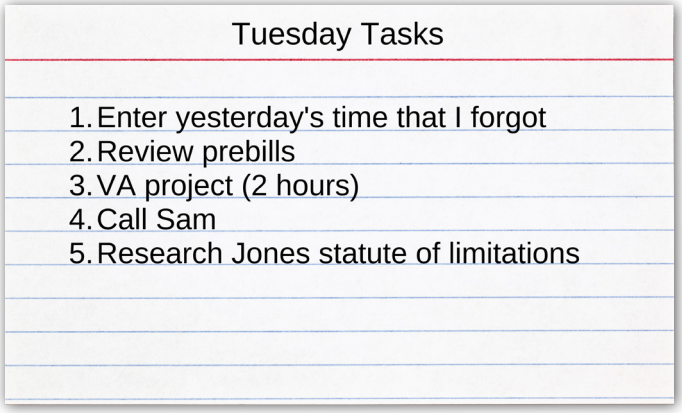
Your daily plan

Daily and weekly planning are critical if you want to change your life and habits. Few people take 10 or so minutes at the beginning or end of the workday that will save them time later. Instead, we jump right into checking our email and are instantly derailed by fighting little fires instead of first defining clear goals for the day. Many prefer planning tomorrow's roadmap at the end of a day since the to-do tasks are fresh in their minds. Others enjoy daily planning in the morning because they are rested and have a clear mind. If you engage in morning planning, come in early – before all the fires start – because it's difficult to focus once the chaos begins, especially if you don't have a solid roadmap for the day.

Now it's time to write down your goals. One great tool is a paper-based planning journal. Keep it open next to your keyboard all day, so you can look at it when you have the urge to check email 75 times. Some question why we should re-write this information on paper if it is already on the calendar in Outlook. There are multiple reasons:

- The roadmap is in front of you so you can always see it. If it is out of sight, it is out of mind.
- The roadmap doesn't need to be displayed on a big computer monitor, so you can use your monitors for more useful functions like comparing documents or displaying reference/subject matter relevant to your projects.
- Events on your calendar may have been created weeks ago, so they are not fresh on your mind. Re-writing those events jogs your memory.
- It is helpful to time-block those tasks so you can properly allocate enough hours for projects and engage in realistic planning.
- Your plan serves as a contract with yourself to get those things done that day.

Another tool you could use is the simple index card. A pack of 100 will cost you less than $3. Use one card per day, writing three to five tasks that you want to accomplish that day. It's fine to re-write items that are on your calendar, and if you complete those goals, grab another card and write down more tasks!



Your weekly plan

A once-a-week "get organized" deep dive is essential to successful distraction and time management. This will help you frame realistic daily planning, review all tasks and deadlines on your plate, and keep focused on the big-picture goals you want to achieve. If you think it would be helpful, reach out to a colleague to keep you on track.

Set aside 60 minutes for planning one day a week. Performing this one-hour ritual on the same day and time each week will make it infinitely easier to develop the habit. Moreover, it is proof to your team (and yourself) about how important and sacred this practice is to your organization. At each weekly planning session, these are the tasks you will perform:

✓ **Review calendar two-weeks forward**. Open your calendar and touch every single appointment listed. Stop, pause, and think about what you must do to prepare for this appointment. Can you move forward

with it, or do you have research to do? Do you need to block out time on your calendar to prepare? If so, reserve that preparation time. If you need to look out further than two weeks (or less), adjust accordingly.

- ✓ **Review calendar two-weeks back.** Open your calendar and touch every single appointment on your calendar, going back two weeks. Stop, pause, and think about whether you did everything that you promised people in those appointments. If not, schedule time to do those things and update your task list.
- ✓ **Review your case/matter/project list.** Always have a list of all your active cases, matters, or projects, and review it regularly. Are there any that you can remove? Ask yourself with each item on that list, "Am I on-track or off-track?" If you are off-track, block off time on your calendar to do a deep dive into that case, matter, or project.
- ✓ **Review your task list(s) and follow-up email folder.** Stop, pause, and think about every item on your task list(s). Just like with the calendar above, you are not skimming. You are actively thinking about each item. If a task is complete, mark it as such. If the task is still relevant but not quite to the finish line, leave it on the list. If a task is overdue or urgent, block off time on your calendar to get it done. Consider if you need to provide status updates to anyone or follow up with someone to complete a task. Finally, and this is important, remember to check all your task lists, including your strategic planning, quarterly, or long-term lists. It is vital that we have a routine/system in place that makes us review all items on all task lists.
- ✓ **Delete, delegate, or delay emails.** Process your inbox to delete any emails that you can. Delegate any emails that you need to assign. Finally, if you need to delay acting on an email, record it on your task list, create an appointment with yourself to do it, and save the email into the case/matter/project folder so you can delete it from your inbox. Remember, your inbox is a terrible task list. If you use Outlook, you can easily convert emails to tasks by dragging and dropping an email on to the Task icon or using Quick Steps. This function acts as a "copy" and will create a task, while still leaving the email in your inbox for you to take further action like creating a calendar event or filing it away. You can convert that same email to an appointment by dragging it on to your calendar icon.
- ✓ **Clean your desk, piles, and notes.** It would be ideal to enter all tasks and do all your time blocking on your calendar immediately when the task surfaces, but we all know that hardly happens perfectly. You may be running out the door when the phone rings and someone asks you to do something. So, you jot it down on a sticky note and slap it on your keyboard. Likewise, maybe someone sent you a pile of paper that is sitting on your desk as a reminder to review it. All these things are really tasks and appointments that should be created, and then you should scan, save, or throw away those papers and notes. The result is that (1) you have a single place where you need to look and manage your tasks, and (2) you have a clean desk, which will help you concentrate.
- ✓ **Weekly time report.** Review your billable timesheets for the week. Learn how to run a report from your time billing and accounting system (or have someone run it for you). For this information, stop, pause, and think about each time entry. Did you do everything that you promised relating to the activity that you performed for this time entry? If not, update your task list and/or schedule time on your calendar to do it. Are there any follow-up items that you should pursue relating to this time entry? This will allow you to proof your time entries and remember tasks you still need to complete.

While no system is perfect, these weekly and daily planning habits will help you prepare for the tasks ahead and find "things that slip between the cracks" because we always have more squirrels surprise us than we can count!

Endnote

1 Paul Unger is a national speaker and author who offers customized workshops to help lawyers learn how to be more efficient with time management. He also performs technology assessments throughout the United States and Canada. Unger practiced law for six years, focusing on litigation and bankruptcy, before starting a legal technology consulting company with partner Barron Henley in 2000.

Writing by presidential example: The first inaugural addresses of Reagan and Obama

Douglas E. Abrams[1]

This article is about two recent U.S. presidents who differed from one another in prominent respects. One entered the Oval Office as a staunch Republican; the other entered as a staunch Democrat. One was one of the oldest men ever to serve in the Oval Office; the other was one of the youngest. The pair assumed contrasting positions on the political spectrum.

Douglas E. Abrams

Despite these differences, however, the pair – Ronald Reagan and Barack Obama – shared an important common denominator. As president, both achieved recognition as "great communicators," thanks in large part to their speeches marked by dexterity with the spoken and written language. In June 2009, after Obama had been in the White House for five months, journalist Albert R. Hunt wrote in the New York Times that "Mr. Obama is the most impressive presidential communicator at least since Reagan."[2]

Gone are the nation's earliest decades, when Americans received texts of presidential speeches only from newspapers, leaflets, or other print sources. With the evolution of radio, newsreels, television, the internet, and social media, a more intimate personal connection links presidential speeches and the people's reception. "An effective communicator doesn't assure a successful presidency," Hunt said, but "without it, success isn't possible."[3]

When the president delivers a speech today, personality and charisma surely count (and Reagan and Obama each had plenty of both). The printed text, however, can also matter. For their substance and style, printed texts of carefully crafted presidential speeches can remain treasure troves for lawyers who seek to sharpen their own writing by reading the articulate writing of others. (President Joe Biden's texts are available on, among other sources, WhiteHouse.gov; for other recent presidents, texts are available from, among other sources, "Public Papers of the Presidents," whose volumes are compiled and published by the Office of the Federal Register, National Archives, and Records Administration.)[4]

William Zinsser is correct that "Writing is talking to someone else on paper."[5] Texts of prepared presidential speeches, which administration speechwriters typically draft and closely edit, remain valuable learning tools for lawyers who invest time to read the texts on the printed page, without the influence of tone of voice, facial expression, or other presidential personality.

Some presidents and speechwriters express themselves better than others, but Reagan and Obama provide especial models of excellence. In two parts below, this article concerns the skilled expression that marks the public lives of both presidents. Part I presents selected brief excerpts from their first inaugural addresses, which launched the Reagan administration in 1981 and the Obama administration in 2009.[6] Both addresses were delivered orally, but both addresses also still shine on the printed page.

Gleaned from these brief excerpts, Part II delivers six lessons that legal writers can draw from the two presidents' mastery of expression: Both presidents understood the audience; marshalled reason and passion; used short words; generally used the active voice; avoided unnecessary words; and used plain English.

I. The two inaugural addresses

Reagan and Obama each entered the White House amid national and international crises. Reagan's election followed a decade marked by fuel shortages, high inflation, and the Iranian hostage standoff. Obama faced the Great Recession and the wars in Iraq and Afghanistan. In their inaugural addresses, both presidents identified the nation's crises and

sought to encourage Americans to imagine a brighter future. Both men had their work cut out for them.

1) Ronald Reagan (Jan. 20, 1981)

Reagan opened his first inaugural address by defining a predominant national challenge as he saw it:

> We suffer from the longest and one of the worst sustained inflations in our national history. It distorts our economic decisions, penalizes thrift, and crushes the struggling young and the fixed-income elderly alike. It threatens to shatter the lives of millions of our people.[7]

From this catalogue, Reagan sought to influence Americans by hitting the "high notes":

> We have every right to dream heroic dreams. Those who say that we're in a time when there are not heroes, they just don't know where to look. You can see heroes every day going in and out of factory gates. Others, a handful in number, produce enough food to feed all of us and then the world beyond. You meet heroes across a counter, and they're on both sides of that counter. There are entrepreneurs with faith in themselves and faith in an idea who create new jobs, new wealth and opportunity. They're individuals and families whose taxes support the government and whose voluntary gifts support church, charity, culture, art, and education. Their patriotism is quiet, but deep. Their values sustain our national life.[8]

2) Barack Obama (Jan. 20, 2009)

Obama's first inaugural address recited his perceptions of the challenges his administration faced:

> Our nation is at war against a far-reaching network of violence and hatred. Our economy is badly weakened, a consequence of greed and irresponsibility on the part of some, but also our collective failure to make hard choices and prepare the nation for a new age. Homes have been lost, jobs shed, businesses shuttered. Our health care is too costly, our schools fail too many – and each day brings further evidence that the ways we use energy strengthen our adversaries and threaten our planet.[9]

Obama catalogued ambitious solutions:

> We will build the roads and bridges, the electric grids and digital lines that feed our commerce and bind us together. We'll restore science to its rightful place, and wield technology's wonders to raise health care's quality and lower its cost. We will harness the sun and the winds and the soil to fuel our cars and run our factories. And we will transform our schools and colleges and universities to meet the demands of a new age. All this we can do. All this we will do.[10]

Like Reagan before him, Obama sought to energize Americans by hitting the high notes. Obama spoke confidently and made a vow:

> Today I say to you that the challenges we face are real. They are serious and they are many. They will not be met easily or in a short span of time. But know this America: They will be met.[11]

II. Six lessons for legal writers

Based on Part I's selected excerpts from the Reagan and Obama inaugural addresses, Part II delivers six lessons that legal writers can draw from the two presidents' command of language. Each lesson surveys the two presidents' postures, followed by the legal writer's typical posture in law practice.

Lesson one: Presidents Reagan and Obama understood the audience

From the podium and in the broadcast or print media, the two presidents' diverse audiences numbered in the millions throughout the nation and the world. Both presidents knew that legions of their listeners and readers were ordinary men and women, drawn from various walks of life and unschooled in the intricacies of government, politics, or law. As discussed below, both presidents sought to motivate their audiences with language and style that combined reason and passion, which they expressed in language that was concise, precise, simple, and clear.[12]

* * *

For lawyers, the first step toward effective legal writing is to identify, to the extent possible, the audience who will likely be on the receiving end. With this identification, the writing's content and tone can be tailored to meet the lawyer's goals (which may be adversarial, persuasive, informative, cooperative, or some combination). The writing can also be tailored to meet the factual and legal context.

Identifying a legal writing's likely audience can be a relatively straightforward exercise because the circle of anticipated readers is often discrete.[13] For example, advocates know that, at least initially, their briefs and other court submissions will likely reach only their clients, other parties, and the judge or judges who hear and decide the case.

Lesson two: Presidents Obama and Reagan marshalled reason and passion

Reagan and Obama both sought to boost Americans' morale with two ingredients. First came "reason," or factual recitation of the challenging national and international crises. Then came "passion," forceful advocacy that hit the so-called high notes with calls for a better future.

* * *

Legal briefs and much other written advocacy summon a balance between reason and passion, two complementary forces that have long characterized quality persuasive argument. For advocates in court submissions, "reason"

loosely means carefully applying precedents and other relevant doctrine to the facts; "passion" loosely means presenting vigorous argument based on that doctrine in the effort to prevail for the client or cause.[14]

Recitation of relevant doctrine plus vigorous argument underlie persuasive legal writing. Giving short shrift to either disserves the advocate's cause by squandering opportunities to influence the intended audience.

Lesson three: Presidents Reagan and Obama used short words

Journalist E.B. White counseled writers to use "the smallest word that does the job."[15] Sir Winston Churchill – prime minister, steadfast wartime leader, and recipient of the Nobel Prize in literature – concurred: "Short words are best and the old words when short are best of all."[16]

In his "A Dictionary of Modern English Usage," H.W. Fowler explained that "shortness is a merit in words" because "short words are not only handier to use, but more powerful in effect; extra syllables reduce, not increase, vigour."[17]

"Those who run to long words," Fowler said, "confuse pomposity with dignity, flaccidity with ease, and bulk with force."[18]

Reagan and Obama both understood the uneasy audience had little appetite for pomposity, flaccidity, or bulk. With crises looming, the American people expected their president to deliver a sturdy guide to the future, marked by sinew and not fat.

Both presidents conveyed dignity and resolve through short words, mostly of only one or two syllables – words that people could readily understand.

* * *

Some lawyers may assume that peppering their writings with "$10 words" somehow displays learning and competence worthy of respect from clients, opponents, or other readers. These unnecessarily complex words may boost the writer's ego, but they do little to serve the client's cause, and may be a disservice. Some readers might not know what some of the words mean and might skip over the passage without scurrying for a dictionary. Ego or no, advocates can persuade best when the court remembers the message but not necessarily the messenger.

Justice Elena Kagan says that often a lawyer's paramount task is to "figure out how to communicate complicated ideas to people who know a lot less than you do about a certain subject."[19] One early step is to opt for reasonable simplicity in word choice, delivered in a recitation that is concise, precise, and clear.

Lesson four: Presidents Obama and Reagan relied on the active voice

The two presidents emphasized the usually strong, direct, and clear active voice. For example, Obama opened his list of proposed solutions recited above with the active: "We will build the roads and bridges ..." Assume instead that he had opened the list with the passive: "The roads and bridges will be built ..." Assume too that he had similarly expressed each of his other proposed solutions in the passive voice rather than the active voice. Without identifying "we" each time as the builders and the other agents of change, his effort to stimulate the American people toward concerted action might have fallen flat.

Obama, however, remained versatile by using the passive voice when he vowed – with no ifs, ands, or buts – that the nation's challenges "will be met." The vow was at least as forceful as it would have been if the new president had said, "We will meet the challenges."

* * *

For lawyers and other writers, the passive voice can produce unnecessary verbiage, can leave readers uncertain about who did what to whom, and can abandon forceful expression for the soft. Novelist Stephen King finds the passive voice usually "weak," "circuitous," and "frequently tortuous."[20] Legal writers should remain sensitive to these shortcomings and should rely generally on the strong active voice.

However, recall Obama's use of the passive voice in his vow that the nation's challenges "will be met." Legal writers should recognize roles for the passive voice, including (as Obama did) to maintain persuasive force while maintaining cadence or clarity.

Lesson five: Presidents Reagan and Obama avoided unnecessary words

In their classic "The Elements of Style," William Strunk Jr. and E.B. White offered writers this advice: "A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts."[21]

Reagan and Obama each relied on lean, strong language. Clutter and fat would have disserved their goals of persuading the American people to follow their lead.

* * *

Effective legal writing is lean and strong, marked by reason and passion free from distracting verbiage that can clutter and weaken the message. Unnecessary words or sentences from a judge or advocate can also provide ammunition to readers who seek to distinguish the precedent or distort the message.[22]

Lesson six: Presidents Obama and Reagan used plain English

The two presidents mined the English language's richness, without resorting to foreign words, whose meanings might have escaped much of their vast audience, which consisted primarily of laypeople from various walks of life. Both presidents relied on concise, precise, simple, and clear expression in the national tongue.

* * *

Some legal writing is littered with foreign words such as *faux, inter alia*, and *ratio decidendi*. Indiscriminate use can break the flow of persuasion between writer and non-comprehending reader. Virtually all foreign words have English counterparts that are usually more effective. Why not say "false," "among other things," or "the rationale for the court's decision"?[23]

Conclusion

In their first inaugural addresses, Reagan and Obama sought to energize the American people in times of crisis. The addresses reflected philosophical differences, but the two presidents' polished expressive skills set the tone for their administrations while also setting examples that remain instructive for legal writers.

Endnotes

1 Douglas E. Abrams, a University of Missouri law professor, has written or co-written six books, which have appeared in a total of 22 editions. Four U.S. Supreme Court decisions have cited his law review articles. His writings have been downloaded more than 40,000 times worldwide (in 153 countries). His latest book is "Effective Legal Writing: A Guide for Students and Practitioners"(West Academic 2d ed. 2021).

2 Albert R. Hunt, *On Message and On Everywhere*, N.Y. Times, June 21, 2009.

3 *Id*.

4 Off. of the Fed. Reg., Public Papers of the Presidents, https://www.archives.gov/federal-register/publications/presidential-papers.html.

5 William Zinsser, On Writing Well x (2001).

6 Ronald Reagan Presidential Library & Museum, *Inaugural Address 1981*, https://www.reaganlibrary.gov/archives/speech/inaugural-address-1981; The White House, *President Barack Obama's Inaugural Address (Jan. 20, 2009)*, https://obamawhitehouse.archives.gov/blog/2009/01/21/president-barack-obamas-inaugural-address.

7 Ronald Reagan Presidential Library & Museum, *supra* note 6.

8 *Id*.

9 The White House, *supra* note 6.

10 *Id*.

11 *Id*.

12 *See* Henry Weihofen, Legal Writing Style 4, 8-104 (2d ed. 1980) (discussing concise, precise, simple, and clear writing); Antonio Gidi & Henry Weihofen, Legal Writing Style (3d ed. 2018).

13 Henry Weihofen, Legal Writing Style 6 (2d ed. 1980); Antonio Gidi & Henry Weihofen, Legal Writing Style (3d ed. 2018).

14 Douglas E. Abrams, Effective Legal Writing: A Guide for Students and Practitioners, Ch. 7 (West Academic 2d ed. 2021).

15 Max Messmer, *It's Best to be Straightforward On Your Cover Letter, Resume*, Pittsburgh Post-Gazette, Nov. 29, 2009, at H1 (quoting White).

16 Never Give In!: The Best of Winston Churchill's Speeches 453 (Winston S. Churchill ed. 2003); The Wicked Wit of Winston Churchill 30 (Dominique Enright ed. 2001).

17 H.W. Fowler, A Dictionary of Modern English Usage 344 (2d rev. ed. by Sir Ernest Gowers 1985).

18 *Id*. at 342, *quoted in* Douglas E. Abrams, *supra* note 14 at 54.

19 Robert Barnes, *Kagan Made Her Mark in a Bold Rookie Term*, Wash. Post, Sept. 26, 2011, at A1 (quoting Justice Kagan).

20 Stephen King, On Writing: A Memoir of the Craft 123 (2000), *quoted in* Douglas E. Abrams, *supra* note 14 at 62. Concerning the active voice and passive voice generally, see, e.g., Richard C. Wydick, Plain English for Lawyers ch. 4 (5th ed. 2005).

21 William Strunk Jr. & E.B. White, The Elements of Style 23 (4th ed. 2000), *quoted in* Douglas E. Abrams, *supra* note 14.

22 *See* George D. Gopen, Writing From a Legal Perspective 1 (1981) (discussing "hostile" readers).

23 Douglas E. Abrams, *supra* note 14 at 64.

THE LAWYERS' MART

THE CHOICE OF A LAWYER IS AN IMPORTANT DECISION AND SHOULD NOT BE BASED SOLELY UPON ADVERTISEMENTS

ATTORNEY SERVICES

Trademark Searches & Registrations
Copyright Registrations
"Representing Law Firms Who Do Not Have Their Own Trademark Attorney Since 1983"
Annette P. Heller
314-469-2610
www.trademarkatty.com

Chicago/Illinois Attorney – Missouri Bar member. Wash. U. Law grad, available for referral or to serve as local counsel in Chicago and Northern Illinois. Steven I. Rapaport, 847/559-9270. E-mail: srapaport@rapaportlawgroup.com.

CONTRACT HEARING OFFICER
for Missouri State Agencies and Political Subdivisions
Daniel Jordan, Attorney and Counselor at Law
DrejLaw@gmail.com.
Missouri license continuously active since 1985, with over 33 years of experience in the practice of Missouri administrative law, including:

- Conducting evidentiary hearings and conferences on complex matters of fact and law.
- Issuing decisions and orders, final, recommended, or interlocutory, substantive and procedural.
- Drafting procedural regulations.
- Investigative and legislative hearings.
- Numerous publications and presentations on Missouri administrative law.

LinkedIn: linkedin.com/in/daniel-jordan-6440a283

Appellate and Research Attorney
Missouri Bar member with 20+ years of experience briefing and arguing cases before the Missouri Courts of Appeals and the Missouri Supreme Court available for appellate referrals, collaborative work, and research projects. Flat fees are available. Contact em@carringtonmoore.com.

JOBS FOR MISSOURI LAWYERS

Grant, Miller & Smith, LLC, a family law and criminal defense firm with offices in Clayton and St. Charles is seeking an experienced attorney for its family law department. The ideal candidate will have experience handling family law matters from the initial call through case completion, including trial. Salary and pay structure is open to discussion and will be competitive. Responses will be kept strictly confidential. If interested, please email hankm@mgmlawfirm.com.

SPECIAL SERVICES

HANDWRITING EXPERT
FORENSIC DOCUMENT EXAMINER
DOCUMENTS IN DISPUTE, INC.
Lynda Hartwick, Police Detective (ret)
Secret Service Trained – Board Certified
www.docsindispute.com
314-791-6633; 573-964-5159

HYDRO-ENGINEERS, LLC
A case building technical research service exclusively for lawyers. Provides detailed engineering investigations, report preparation, case preparation advice, and reference to expert witnesses. Specializing in cases involving water issues and civil engineering. Registered Professional Engineers with Ph.D.s; 707 Rutland Drive, Columbia, MO 65203; (O) 573/44/-0245; (C) 573/578-9773; e-mail; hydro@centurylink.net.

Professional Investigations - Simpson Advisory Group
Dennis Simpson
Specializing in Complex Investigations, Trial and Litigation Support, Due Diligence and Business Investigations
Office: (314) 910-2804
Email: info@SimpsonAdvisoryGroup.com
www.SimpsonAdvisoryGroup.com
Missouri Agency License #2018044936

Donald Hopewell MD
Board certified neurologist, Assistant Professor of neurology, Director of the Neuromuscular Diagnostic Center at UMKC/ Truman Medical Center in Kansas City with 35 years of clinical experience in adult neurology. Available for evaluation and consultation in personal injury, disability, and medical malpractice cases. Contact BT Consulting LLC. 913-748-9597

Moon, Schwartz & Madden
Moon, Schwartz & Madden is a leading provider of actuarial pension plan valuations for purposes of marital property offset in equitable distribution and community property states. We have valued thousands of plans including ERISA, Public, Federal and Military retirement plans (including SBP valuations). Reports are $325/plan and we offer quick turnaround as well as remote or in-person testimony if needed (at additional cost). Please call (925) 258-7100 or visit www.msmqdros.com.

Classified Ad Rates: $1.25 per word for members of The Missouri Bar or surviving spouse of deceased members ($30 minimum); $2 per word for non-members and for organizations not related to The Missouri Bar ($50 minimum). No discount for repeat insertions. Copy for ads must be received 15 days prior to the first day of the month of issue: February, April, June, August, October and December. Any element surrounded by spaces is a word.

File Numbers: If a file number is used, emailed responses should have a subject line of File (No.) and be sent to ads@mobar.org. Mailed responses to the ad should be addressed: File (No.), Journal of The Missouri Bar, P.O. Box 119, Jefferson City, MO 65102-0119.

Publication of advertising in The Lawyers' Mart is not an endorsement by The Missouri Bar or the *Journal* of the goods or services advertised.

NINTH CIRCUIT HOLDS LITIGATOR LIABLE FOR TAX DEFICIENCY AND FRAUD PENALTY

SCOTT VINCENT[1]

THE UNITED STATES COURT OF APPEALS FOR THE 9TH CIRCUIT RECENTLY FOUND THAT A DISBARRED LAWYER WHO HAD SPECIALIZED IN TAX FRAUD LITIGATION WAS LIABLE FOR INCOME TAX DEFICIENCIES AND A TAX FRAUD PENALTY.[2]

The 9th Circuit affirmed the tax court's decision in *Isaacson v. Commissioner*,[3] finding that the Internal Revenue Service properly imposed tax deficiencies and a 75% tax fraud penalty relating to legal fees intermingled with client funds and not reported as income.

Scott E. Vincent

Background

Lon Isaacson was a long-time trial lawyer, practicing tax fraud litigation. Isaacson was disbarred in 2013 for willfully violating Rule 4-100 of the California Rules of Professional Conduct, which requires that client funds be kept in trust accounts, imposes record-keeping requirements, and bars lawyers from commingling client funds. Before the disbarment, Isaacson represented four individuals who had been sexually abused as children by members of the Catholic clergy (clergy lawsuit). Isaacson personally knew these clients, who considered him to be both a lawyer and trusted friend.

With some variations, the four clients' fee agreements included up to a 60% contingent fee for Isaacson and reimbursement for as much as 110% of Isaacson's costs. Terms also included purporting to allow Isaacson to deposit client funds in non-IOLTA accounts with Isaacson retaining interest on the deposits. Some of the clients communicated to Isaacson that they did not want him to manage investment of future settlement proceeds and did not want future settlement proceeds invested at Union Bank of Switzerland (UBS).

Isaacson had a relationship with UBS and its advisors, and he had previously established a UBS account where he deposited proceeds from the clergy lawsuit settlements (UBS account). On documents opening the UBS account, Isaacson identified the account as for a sole proprietorship, listed himself as the principal officer and beneficial owner of the account, and handwrote the word "Trustee" after his law firm's typed name on the line listing the account owner's information. Isaacson did not identify this account as a client trust account, and he did not indicate that the source of account funds would be client trust funds. Instead, Isaacson indicated that the source of funds for the UBS account would be "income from the business/organization."

In 2007, as part of a global settlement involving several clerical organizations and hundreds of victims of childhood sexual abuse, Isaacson secured a collective settlement of $12.75 million for his four clients in satisfaction of their pending claims. Isaacson allocated this settlement among the clients and charged each of the four clients a 60% fee, which was not formally challenged despite some complaint by two of the clients.

Isaacson deposited the settlement funds from the clergy lawsuit in the UBS account in 2007. The tax court found Isaacson then treated the UBS account as a personal account and not an account held in trust for the benefit of his clients. For example, in December 2007, Isaacson had a personal need for liquidity and directed UBS to sell $1.85 million of auction rate securities, but then that same day he directed UBS to repurchase the $1.85 million of securities just sold. Also in December 2007, Isaacson emailed UBS asking for clarification of which auction rate securities were "purchased for my benefit," the "amount of my present holdings, and the interest I have earned to date." Once UBS responded, Isaacson directed UBS to transfer $50,000 of earned interest to his personal trainer and social acquaintance as a gift. Later in December 2007, Isaacson sent UBS handwritten instructions to transfer $600,000 from the UBS account into his law firm's Bank of America account, and UBS transferred the funds that day.

In 2008, Isaacson continued to use and manage the funds in the UBS account. In January 2008, he withdrew $100,000 from the UBS account and deposited the money into his law firm's Bank of America account. Later in January 2008, he withdrew $1.3 million from the UBS account and deposited

the money into another account he controlled at California Bank & Trust. On Jan. 29, 2008, Isaacson paid one of the clients his portion of the clergy lawsuit settlement funds.

In February 2008 the market for auction rate securities froze, and UBS engaged outside advisors, including Howard Privette II with the Paul Hastings law firm, to review auction rate securities matters which included the UBS account. After reviewing Isaacson's activity with the UBS account, Privette was concerned that the UBS account was not a valid client trust account under California law and therefore posed a risk to UBS because of potential unknown ownership interests. Accordingly, on March 10, 2008, UBS placed a legal hold on the UBS account. After a series of letters and affidavits from Isaacson and his clients, UBS later lifted the hold on the UBS account. Isaacson and his clients later engaged in litigation with UBS over investment of the clergy account funds in auction rate securities, resulting in a settlement in favor of Isaacson and his clients and a partial distribution of settlement proceeds to them in 2009.

For preparation of his 2007 income tax return, Isaacson retained an outside CPA and provided the CPA with QuickBooks ledgers relating to his practice. However, these ledgers did not account for the UBS account and transactions. Isaacson also failed to tell the CPA that the UBS account existed. In 2008, Isaacson had a legal assistant in his law firm draft a memorandum advising that funds held in a client trust account would not represent income. The memorandum, which Isaacson represented to be a tax opinion letter, purported to provide "authority supporting our position that our client, taxpayer, is not responsible to report income he never actually or constructively received." This memorandum does not identify Isaacson as the hypothetical taxpayer-client. Allegedly relying on the legal assistant memorandum, Isaacson did not tell his CPA about the receipt of the clergy lawsuit settlement funds, nor did he report any legal fees earned from the clergy lawsuit settlement as income on his 2007 income tax return.

On audit, the IRS sought an income tax deficiency of more than $2.8 million, and a 75% fraud penalty under Code § 6663 of over $2 million. Isaacson petitioned the tax court, and the tax court held that Isaacson was liable for the tax deficiency and fraud penalty asserted by the IRS. The tax court found that when Isaacson deposited the clergy lawsuit settlement funds into the UBS account in December 2007, he alone controlled the UBS account. The tax court further found that the IRS had proven, by clear and convincing evidence, that Isaacson's underpayment of tax was done with fraudulent intent.

Isaacson appealed the decision to the Court of Appeals for the 9th Circuit. Isaacson argued that he held the funds resulting from the clergy settlement for the benefit of his clients and was not required to report his legal fees in 2007 because of a fee dispute with at least two of the clients.

The 9th Circuit findings

The 9th Circuit reviewed the tax court conclusions of law de novo and its factual findings for clear error. The 9th Circuit specifically indicated it would defer to the tax court factual findings "unless we are left with the definite and firm conviction that a mistake has been committed."

The 9th Circuit first noted that from the time the settlement funds were wired into the UBS account, Isaacson treated the funds as his own. He immediately commingled the settlement funds with money he had previously deposited in the UBS account, and he directed UBS to invest the funds consistent with his personal risk preferences. Days after the funds were invested, for "liquidity" reasons, Isaacson directed UBS to sell $1,850,000 of securities purchased with the settlement funds. The following week, Isaacson instructed UBS to transfer $50,000 from the UBS account to his personal trainer. Based on these findings, the 9th Circuit found that the tax court did not err in concluding that Isaacson's conduct demonstrated his dominion and control over the funds.

The 9th Circuit also found that the tax court did not abuse its discretion by estopping Isaacson from arguing that a fee dispute existed with his clients. This argument was plainly inconsistent with Isaacson's representations to the Superior Court of California that no such dispute existed during the relevant time period, which resulted in a Superior Court disbursement of $6,883,047.05 of settlement funds to Isaacson. The 9th Circuit also found that, even absent judicial estoppel, they would still affirm the tax court because "the record as a whole supports the conclusion that no fee dispute existed." Notably, the tax court had also concluded that even assuming there was a fee dispute with his clients, Isaacson should have recognized his asserted fees as income for 2007.

The 9th Circuit also found no error in the tax court's imposition of the 75% fraud penalty. The court carefully considered relevant considerations for fraud and found that an inference of fraudulent intent was supported by the record from the tax court.

Conclusion

This 9th Circuit case is a cautionary example regarding handling of client settlement funds and trust accounts. The lawyer/taxpayer in this case violated ethical requirements in this regard. The case further illustrates income tax and timing considerations with client settlements and disputed contingent fees. Another important note here in a fee dispute with multiple clients: the portion of fees that is undisputed should be recognized as income as soon as all the events which fixed the lawyer's right to the fees occur. As evidenced by this case, the all events test may occur in stages in a multiple client situation or when only a portion of a fee is disputed.

Endnotes

1 Scott E. Vincent is the founding member of Vincent Law, LLC, in Kansas City.

2 *Isaacson v. Comm'r*, 2022 PTC 49 (CA9 02/23/2022).

3 *Isaacson v. Comm'r*, T.C. Memo. 2020-17 (U.S.T.C. Jan. 23, 2020).

IN MEMORIAM

Thomas William Alvey Jr., age 81, of Belleville, IL, on March 24, 2021. Alvey practiced law at Pope and Driemeyer, as well as Thompson Coburn LLP. He graduated from Washington University School of Law and joined The Missouri Bar in 1985. Alvey served in the U.S. Army.

Gena J. Awerkamp, age 73, of Quincy, IL, on April 2, 2020. Awerkamp practiced law in Columbia at Smith, Lewis, Beckett, and Powell before becoming a partner at Schmiedeskamp, Robertson, Neu, and Mitchell. She graduated from the University of Missouri School of Law and joined The Missouri Bar in 1982.

Hon. Stanley Douglas Brown, age 74, of St. Louis, on Jan. 12, 2022. Brown worked as a circuit court administrator for the City of St. Louis and deputy director of the Missouri Department of Corrections. He was also an adjunct professor of legal studies at Webster University. He graduated from Georgetown University Law Center in 1978. Brown served in the U.S. Army Reserves with the judge advocate general corps.

Mary Susan Carlson, age 72, of St. Louis, on Dec. 30, 2021. Carlson founded Van Amburg, Chackes, Carlson, and Spritzer and practiced law in St. Louis. Carlson also served in the Missouri House of Representatives from 2011-2013. She graduated from the University of Nebraska School of Law and joined The Missouri Bar in 1988.

Donald Raymond Carmody, age 79, of St. Louis, on Dec. 19, 2021. Carmody worked in the St. Louis City Counselor's Office before founding Carmody MacDonald P.C. in 1981. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1967.

John W. Carter, age 85, of Dixon, on Dec. 1, 2021. Carter joined The Missouri Bar in 1965.

Hon. Donald E. Dalton, age 88, of Mesa, AZ, on Jan. 26, 2020. Dalton served as St. Charles city attorney, St. Charles County prosecuting attorney, and circuit judge for the 11th Judicial Circuit Court. He joined The Missouri Bar in 1955.

Christopher Lee Davis, age 52, of Jackson, on Dec. 23, 2021. Davis worked at the Missouri State Public Defender System for more than 25 years, serving as district defender and senior public defender. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1995.

Jessica Lynn Diamond, age 42, of St. Charles, on Oct. 21, 2021. Diamond worked at Boehmer Law, LLC, and joined The Missouri Bar in 2008.

Richard Dee Dvorak, age 63, of Overland Park, KS, on Jan. 6, 2022. Dvorak worked at Dvorak Law, Chartered, and joined The Missouri Bar in 1979.

Ralph Edwards, age 87, of Chesterfield, on Aug. 18, 2021. Edwards practiced law with Greensfelder, Hemker, and Gale for 38 years. He graduated from the University of Missouri School of Law and joined The Missouri Bar 1960. Edwards served in the U.S. Army.

Sheryl B. Etling, age 75, of Garden City, KS, on Dec. 5, 2020. Etling was a lawyer at Stinson & Mag Law Firm and later taught law at Tulsa University and the University of South Dakota. She graduated from the University of Missouri-Kansas City School of Law with her J.D. and the University of Michigan with her master's in law. She joined The Missouri Bar in 1975.

William Bales Fisch, age 85, of Columbia, on July 7, 2021. Fisch was a law professor at the University of North Dakota School of Law and the University of Missouri School of Law for more than 40 years. He received a Bachelor of Law from the University of Illinois College of Law, a Master of Comparative Law from the University of Chicago School of Law, and a Dr Jur from Albert-Ludwigs-Universität Freiburg in Germany. Fisch joined The Missouri Bar in 1982.

Jennifer Borron Furla, age 49, of Mission Hills, KS, on Nov. 8, 2021. Furla was the first publisher of Missouri Lawyers Weekly and worked with a national fundraising consultancy. She graduated from Saint Louis University School of Law and joined The Missouri Bar in 1987.

Clifford Leo Goetz, age 91, of St. Louis, on Dec. 17, 2021. Goetz was a partner at Hinkel and Carey law firm before he bought Tree Court Builders Supply, which he operated until retirement. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1956. Goetz served in the U.S. Marine Corps.

Micalyn S. Harris, age 79, of Ridgewood, NJ, on Sept. 17, 2021. Harris served as vice president, secretary, and general counsel at Winpro Inc. She served as the chair for The Missouri Bar's International Law Committee from 1972-73. Harris joined The Missouri Bar in 1967.

Bruce R. Hopkins, age 80, of Kansas City, on Oct. 31, 2021. Hopkins practiced law in Kansas City and Washington D.C. for more than 50 years. He was a lecturer at George Washington University National Law Center for 19 years and a professor at the University of Kansas School of Law. He wrote numerous books on legal topics, particularly nonprofit law. Hopkins graduated from George Washington School of Law and joined The Missouri Bar in 1999.

Charles D. Hoskins, age 52, of St. Louis, on Dec. 15, 2021. Hoskins worked as a public defender in the Capital Division of the Missouri State Public Defender System, focusing on defending those facing the death penalty. He graduated from the Saint Louis University School of Law and joined The Missouri Bar in 1994.

Richard L. Jones, age 65, of Winnetka, IL, on Aug. 3, 2021. Jones practiced law at several organizations, including Chicago Transit Authority, City of Chicago Corporation Counsel, and Law Office of Stephen P. Rapp. He graduated from the University of Illinois Chicago John Marshall Law School and joined The Missouri Bar in 2010.

Diana Lynn Jordison, age 60, of Kansas City, on Jan. 9, 2022. Jordison practiced in medical malpractice defense, primarily representing hospitals and doctors for over 30 years. She retired from Horn Aylward & Band, LLC. Jordison graduated from the University of Missouri-Kansas City School of Law and joined The Missouri Bar in 1994.

H. Carl Kuelker, age 75, of St. Louis, on Jan. 29, 2022. Kuelker was a lawyer in the St. Louis area, and he served in Vietnam. Kuelker joined The Missouri Bar in 1972.

Gary M. Kupferle, age 79, of Ballwin, on Nov. 18, 2021. He graduated from Washington University School of Law and joined The Missouri Bar in 1966. Kupferle served in the U.S. Air Force.

John K. Leopard, age 95, of Gallatin, on April 23, 2021. Leopard practiced law with his father at Leopard & Leopard Law Office and served as prosecuting attorney for Daviess and Putnam counties. He graduated from the University of Kentucky School of Law and joined The Missouri Bar in 1953. Leopard served in the U.S. Navy.

Julie Long, age 56, of Kirkwood, on Jan. 5, 2022. Long practiced law for several years, as well as formed the nonprofit One Spirit Engineering. She graduated from Saint Louis University School of Law and joined The Missouri Bar in 1993.

Stanley A. Loring Jr., age 93, of Springfield, on Oct. 13, 2021. Loring worked at aerospace manufacturing corporation McDonnell Douglas. He later worked for the federal government, examining contracts. He graduated from Saint Louis University School of Law and joined The Missouri Bar in 1974.

Murry A. Marks, age 88, of St. Louis, on Jan. 21, 2022. Marks was a lawyer in the St. Louis area and opened The Marks Law Firm. He graduated from Washington University School of Law and joined The Missouri Bar in 1963. Marks served in the U.S. Army.

W. Thomas McGhee, age 85, of St. Louis, on Jan. 27, 2022. McGhee served as founding partner of several law firms and general counsel to numerous global corporations. He graduated from Washington University School of Law and joined The Missouri Bar in 1961.

Edward P. McSweeney, age 93, of St. Louis, on Dec. 23, 2021. McSweeney opened a law office in Los Angeles, CA, before moving to St. Louis, where he worked as a special assistant attorney general and was a partner at McSweeney, Slater, and Merz. He graduated from Washington University School of Law and joined The Missouri Bar in 1952. McSweeney served in the U.S. Army.

Sister Joan C. Moran, age 86, of San Antonio, TX, on Dec. 23, 2020. Moran served in the Sisters of Charity of the Incarnate Word's education and law ministry in Texas, Missouri, Illinois, and Wisconsin. She joined The Missouri Bar in 1984.

Hon. Thad F. Niemira, age 85, of St. Louis, on Nov. 6, 2021. Niemira practiced law for more than 25 years and served as an associate circuit court judge. He joined The Missouri Bar in 1960. Niemira served in the U.S. Air Force as a judge advocate.

Hon. Daniel W. Olsen, age 69, of Raymore, on Nov. 9, 2021. Olsen was a partner with Van Hosser, Olsen, and Eftink for 27 years, as well as served as municipal judge for Raymore, Lake Winnebago, and Garden City. He also worked as Cass County associate circuit judge for nearly 13 years. Olsen graduated from Washburn University School of Law and joined The Missouri Bar in 1979.

David L. Pentland Sr., age 83, of Warson Woods, on Jan. 3, 2022. Pentland practiced law in St. Louis for 56 years and served as a prosecuting attorney for Warson Woods for 26 years. He graduated from Saint Louis University School of Law and joined The Missouri Bar in 1965.

Daniel T. Rabbitt Jr., age 79, of St. Louis, on March 3, 2020. Rabbitt worked at The Rabbitt Law Firm, LLC. He joined The Missouri Bar in 1964.

Jerome Raskas, age 88, of St. Louis, on Jan. 24, 2022. Raskas was a lawyer in the St. Louis area and worked as an adjunct professor at Washington University School of Law for 36 years. He graduated from Washington University School of Law and joined The Missouri Bar in 1959.

Hon. James R. Reinhard, age 92, of Hannibal, on Nov. 11, 2021. Reinhard served for 20 years as a judge for the Missouri Court of Appeals-Eastern District. Prior to that position, he was a judge for the 10th Judicial Circuit Court, a prosecuting attorney for Sullivan and Monroe counties, and owner of a general practice law office in Paris. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1953. Reinhard served in the U.S. Army.

David J. Slobodien, age 68, of Naples, FL, on May 12, 2021. Slobodien was a corporate lawyer with Dun and Bradstreet. He graduated from Washington University School of Law and joined The Missouri Bar in 1978.

William H. Strop, age 82, of St. Joseph, on Feb. 13, 2021. Strop worked at the family law firm Strop, Watkins, Roberts, and Hale. He graduated from the University of Missouri School of Law and joined The Missouri Bar in 1963. Strop served in the Missouri Air National Guard.

Jonathan P. Tomes, age 75, of Kansas City, on Jan. 20, 2021. Tomes served for 20 years in the U.S. Army and was a prosecutor, defense counsel, and judge for the Judge Advocate General's Corps. He later became a law professor. He joined The Missouri Bar in 1997.

Roberta M. Truman, age 69, of Elkton, MD, on Jan. 16, 2022. Truman was a lawyer for the Federal Bureau of Prisons for more than 20 years. She graduated from Florida State University College of Law and joined The Missouri Bar in 1988.

Grover C. Wilcher, age 86, of Lee's Summit, on July 15, 2021. Wilcher served as legal counsel to Truman Medical Center. He graduated from the University of Missouri-Kansas City School of Law and joined The Missouri Bar in 1966.

Hon. Jerri Bush Winger, age 77, of Unionville, on Jan. 8, 2022. Winger served as the Putnam County associate circuit judge for 15 years. She graduated from the University of Tulsa School of Law and joined The Missouri Bar in 1982.

William Guy Wold, age 49, of St. Louis, on Jan. 12, 2022. Wold worked as a lawyer and owned the Law Office of Guy Wold. He graduated from Saint Louis University School of Law and joined The Missouri Bar in 1997.

Gregory L. Vranicar, age 71, of Overland Park, KS, on Aug. 22, 2021. Vranicar practiced in Kansas City, eventually becoming a fundraiser for the Catholic Archdiocese of Kansas City and the Catholic Diocese of Kansas City-St. Joseph. He graduated from the University of Iowa School of Law and joined The Missouri Bar in 1978. He served in the U.S. Air Force as a judge advocate.

Michael J. Zpevak, age 68, of Irving, TX, on May 12, 2020. He owned the Law Offices of Michael J. Zpevak. He graduated from Saint Louis University School of Law and joined The Missouri Bar in 1976.

The Supreme Court of Missouri, in an order dated Feb. 8, 2022, adopted and approved the following revised MAI-Civil Instruction:

2.01 [2022 Revision] Instruction for All Cases
(Approved February 8, 2022; Effective July 1, 2022)

(1) GENERAL – JURY INSTRUCTIONS

This instruction and other instructions that I will read to you near the end of the trial are in writing. All of the written instructions will be handed to you for guidance in your deliberation when you retire to the jury room. They will direct you concerning the legal rights and duties of the parties and how the law applies to the facts that you will be called upon to decide.

(2) OPENING STATEMENTS

The trial may begin with opening statements by the lawyers as to the evidence that they expect to present during the trial. What is said in opening statements is not to be considered as proof of a fact. However, if a lawyer admits some fact on behalf of a client, the other party is relieved of the responsibility of proving that fact.

(3) EVIDENCE

After the opening statements, the plaintiff(s) will introduce evidence.[1] The defendant(s) may then introduce evidence. There may be rebuttal evidence after that. The evidence may include the testimony of witnesses who may appear personally in court, the testimony of witnesses who may not appear personally but whose testimony may be read or shown to you and exhibits, such as pictures, documents and other objects. Testimony of witnesses shown to you by video may contain pauses or "glitches" due to editing or to conform to rulings of the court.

(4) OBJECTIONS

There may be some questions asked or evidence offered by the parties to which objections may be made. If I overrule an objection, you may consider that evidence when you deliberate on the case. If I sustain an objection, then that matter and any matter I order to be stricken is excluded as evidence and must not be considered by you in your deliberations.

(5) RULINGS OF LAW AND BENCH CONFERENCES

While the trial is in progress, I may be called upon to determine questions of law and to decide whether certain matters may be considered by you under the law. No ruling or remark that I make at any time during the trial will be intended or should be considered by you to indicate my opinion as to the facts. There may be times when the lawyers come up to talk to me out of your hearing. This will be done in order to permit me to decide questions of law. These conversations will be out of your hearing to prevent issues of law, which I must decide, from becoming mixed with issues of fact, which you must decide. We will not be trying to keep secrets from you.

(6) OPEN MINDS AND NO PRELIMINARY DISCUSSIONS

Justice requires that you keep an open mind about the case until the parties have had the opportunity to present their cases to you. You must not make up your mind about the case until all evidence, and the closing arguments of the parties, have been presented to you. You must not comment on or discuss with anyone, not even among yourselves, what you hear or learn in trial until the case is concluded and then only when all of you are present in the jury room for deliberation of the case under the final instructions I give to you.

(7) OUTSIDE INFLUENCES

During the trial you should not remain in the presence of anyone who is discussing the case when the court is not in session. Otherwise, some outside influence or comment might influence a juror to make up his or her mind prematurely and be the cause of a possible injustice. For this reason, the lawyers and their clients are not permitted to talk with you until the trial is completed.

(8) PROHIBITION OF JUROR RESEARCH OR COMMUNICATION ABOUT THIS CASE

Your deliberations and verdict(s) must be based only on the evidence and information presented to you in the proceedings in this courtroom. Rules of evidence and procedure have developed over many years to make sure that all parties in all cases are treated fairly and in the same way and to make sure that all jurors make a decision in this case based only on evidence allowed under those rules and which you hear or see in this courtroom. It would be unfair to the parties to have any juror influenced by information that has not been allowed into evidence in accordance with those rules of evidence and procedure, or to have a juror influenced through the opinion of someone who has not been sworn as a juror in this case and heard evidence properly presented here.

Therefore, I instruct you that you may not conduct your own research or investigation into any issues in this case. You must not visit the scene of any of the incidents described in this case. You must not conduct any independent research or obtain any information of any type by talking to any person, referring to textbooks, dictionaries, magazines, blogs, the Internet, or any other means about any issues in this case, or any witnesses, parties, lawyers, medical or scientific terms, or evidence that is in any way involved in this trial.

You're not permitted to communicate, use a cell phone, record, photograph, video, e-mail, blog, tweet, text, or post anything about this trial or your thoughts or opinions about any issue in this case to any other person or to the Internet, "Facebook," "MySpace," "Twitter," "Snapchat," "Instagram," or any other personal or public website or any other social media platform during the course of this trial or at any time before my acceptance of your verdict at the end of the case.

If you break any of these rules, this will be a serious breach of your oath as a juror. It could result in a miscarriage of justice, and we may have to start the trial all over.

(9) FINAL INSTRUCTIONS

After all of the evidence has been presented, you will receive my final instructions. They will guide your deliberations on the issues of fact you are to decide in arriving at your verdict.

(10) CLOSING ARGUMENTS

After you have received my final instructions, the lawyers may make closing arguments. In closing arguments, the lawyers have the opportunity to direct your attention to the significance of evidence and to suggest the conclusions that may be drawn from the evidence.

(11) DELIBERATIONS

You will then retire to the jury room for your deliberations. It will be your duty to select a foreperson, to decide the facts and to arrive at a verdict. When you enter into your deliberations, you will be considering the testimony of witnesses as well as other evidence. In considering the weight and value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the case, the relation of the witness to any of the parties, the inclination of the witness to speak truthfully or untruthfully and the probability or improbability of the witness' statements. You may give any evidence or the testimony of any witness such weight and value as you believe that evidence or testimony is entitled to receive.

[Optional Paragraphs (12) and (13): See Committee Comments D & E]

[(12) NOTETAKING]

[Each of you may take notes in this case, but you are not required to do so. I will give you notebooks. Any notes you take must be in those notebooks only. You may not take any notes out of the courtroom before the case is submitted to you for your deliberations. No one will read your notes while you are out of the courtroom. If you choose to take notes, do not allow your notetaking to interfere with your ability to observe the evidence and witnesses as they are presented.

Do not discuss or share your notes with anyone until you begin your deliberations. During the deliberations, if you choose to do so, you may use your notes and discuss them with other jurors. Notes taken during trial are not evidence. You should not assume that your notes, or those of other jurors, are more accurate than your own recollection or the recollection of other jurors.

After you reach your verdict your notes will be collected and destroyed. No one will be allowed to read them.][2]

[(13) JUROR QUESTIONS]

[After all parties have completed questioning each witness, any juror may anonymously submit written questions to me for my review. You may not ask questions orally or out loud. I may limit the number of questions or revise the form of any question. You must not draw any adverse inference against any party if I decide not to allow one or more of your questions for legal reasons. If I decide to allow any of your questions, I will read them to the witness and allow the witness to answer. I may then allow follow-up questions of that witness by the attorneys.][3]

Notes on Use (2008 Revision)

[No change to Notes on Use]

Committee Comment (2014 Revision)

[No change to Committee Comment]

The order will become effective July 1, 2022.

The complete text of the order may be read in its entirety at www.courts.mo.gov.

The Supreme Court of Missouri, in an order dated Feb. 8, 2022, repealed subdivision (g) of subdivision 15.05, entitled "Continuing Legal Education Requirements," of Rule 15, entitled "Continuing Legal Education," and in lieu thereof adopted new subdivision (g) of subdivision 15.05, entitled "Continuing Legal Education Requirements."

The order became effective Feb. 8, 2022.

The complete text of the order may be read in its entirety at www.courts.mo.gov.

The Supreme Court of Missouri, in an order dated March 1, 2022, repealed subdivision (d) of subdivision 74.14, entitled "Uniform Enforcement of Foreign Judgments," of Rule 74, entitled "Judgments, Orders and Proceedings Thereon," and in lieu thereof adopted a new subdivision (d) of subdivision 74.14, entitled "Uniform Enforcement of Foreign Judgments."

The order will become effective Jan. 1, 2023.

The complete text of the order may be read in its entirety at www.courts.mo.gov.

MoBar CLE

RELEVANT | RESEARCHED | RESPECTED

2022 Annual Law Update

Online Webinar

Available Registration Dates

May

MAY 20

MAY 25

June

JUN 02

JUN 18

JUN 23

JUN 28

JUN 14

JUN 21

JUN 27

JUN 29

MOBarCLE@MoBar.org

Aug. 4-6,2022

22nd annual

family law conference

Register today @

MoBar.org/family

Chateau on the Lake, Branson

In-person & virtual passes available

Presented by MoBarCLE and the Family Law Section

NOTICES OF CORPORATE DISSOLUTION

Notice of Corporate Dissolution Rates: $1.25 per word for a member of The Missouri Bar; $2.00 for non-members. For purposes of the total word count, any element surrounded by spaces is considered to be a word. DO NOT SEND A CHECK with the notice. You will be invoiced in advance of publication, and all invoices must be paid prior to publication.

Copy must be received by September 1, 2021 (for September/October 2021 issue), November 1, 2021 (for November/December 2021 issue), January 4, 2021 (for January/February issue), March 1, 2022 (for March/April 2022 issue), May 2, 2022 (for May/June 2022 issue), and July 1, 2022 (for July/August 2022 issue).

Send notices by email to ads@mobar.org.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST 4545 MAIN, LLC

On Jan. 27, 2022, 4545 Main, LLC, a Missouri limited liability company (the "Company"), filed a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State, effective as of Jan. 27, 2022.

All persons with claims against the Company may submit any claim in accordance with this notice to: Michael J. Book, 9101 W. 110th St., Suite 200, Overland Park, Kansas 66210. All claims must include the name, address, and telephone number of the claimant; the amount claimed; the basis for the claim; the documentation of the claim; and the date(s) of the event(s) on which the claim is based occurred.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST 8TH & WALNUT LAND HOLDINGS, LLC

On Feb. 14, 2022, 8th & Walnut Land Holdings, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Bush & Patchett, LLC, Attn: Kerry Bush, 4240 Philips Farm Road, Suite 109, Columbia, MO 65201. Each claim must include the following information: name, address, and telephone number of the claimant; amount of claim; date of which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST AITCHISON-RICHMOND SUPPLY COMPANY

On Feb. 4, 2022, Aitchison-Richmond Supply Company, a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State. Dissolution was effective on Feb. 4, 2022.

You are hereby notified that if you believe you have a claim against Aitchison-Richmond Supply Company, you must submit a summary in writing of the circumstances surrounding your claim against it to Jere L. Loyd, P.C., 3715 Beck Road, Suite A-104, St. Joseph, Missouri 64506. The summary of your claim must include the following information: the name, address, and telephone number of the claimant; amount of the claim; the basis for the claim; and date(s) of the event(s) giving rise to the claim.

All claims against Aitchison-Richmond Supply Company will be barred unless a proceeding to enforce the claim is commenced within two years after publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST ATOMIC FIZZ SODA POP LLC

On Jan. 19, 2022, ATOMIC FIZZ SODA POP LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the company c/o Josh Hebert, Louisburg Cider Mill, 14730 K68 Highway, Louisburg, KS 66053.

All claims against the company must include: (1) the name, address, and phone number of the claimant; (2) the amount claimed; (3) the basis of the claim; (4) the date on which the claim arose; and (5) documentation supporting the claim.

NOTICE: Because of the winding up of ATOMIC FIZZ SODA POP LLC, any claims against it will be barred unless a proceeding to enforce the claim is commenced within three years after the publication date of the notices authorized by statute, whichever is published last.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST BATTERY STORAGE LLC

On Feb. 4, 2022, Battery Storage LLC filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Persons and organizations with claims against Battery

Storage LLC should present said claims immediately by letter to Battery Storage LLC, c/o Jill D. Parks, 2140 Bagnell Dam Blvd., Suite 401, Lake Ozark, MO 65049.

All claims must include 1) the name, address, and phone number of the claimant; 2) the amount claimed; 3) the basis for the claim; 4) the date(s) on which the claim arose; and 5) documentation of the claim.

NOTICE: Because of the winding up of Battery Storage LLC, any claims against it will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notices authorized by statute, whichever is published last.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMAINTS AGAINST BOOKHAVEN, INC.

On Jan. 27, 2022, BOOKHAVEN, INC., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State.

You may submit any claim against the corporation by mail in writing to: John H. Schmidt, 2838 S. Ingram Mill Rd., Springfield, MO 65804. All claims must include claimant's name, telephone number, and address; the claim amount; the date the claim arose; the basis for the claim; and documentation for the claim.

All claims against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST BURLEY TOBACCO, L.L.C.

On Jan. 14, 2022, BURLEY TOBACCO, L.L.C. filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The event was effective on Jan. 14, 2022.

You are hereby notified that if you believe you have a claim against the limited liability company, you must submit a summary in writing of the circumstances surrounding your claim to the corporation to: Jennifer M. Snider, Attorney, Witt, Hicklin, Snider & Fain, P.C., PO Box 1517, 2300 Higgins Rd., Platte City, Missouri 64079.

The summary of your claim must include the following information:

1. The name, address, and telephone number of the claimant
2. The amount of the claim.
3.The date on which the event on which the claim is based occurred.
4. A brief description of the nature of the debt or the basis for the claim.
5. Copies of any document supporting your claim.

The deadline for claim submission is the 90 calendar days from the effective date of this notice. All claims against the LLC will be barred unless the proceeding to enforce the claim is commenced within two years after the publication of this notice.

Date of first publication: April 8, 2022

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST CAPE CORAL PROPERTY EXECUTIVES, LLC

On Feb. 14, 2022, Cape Coral Property Executives, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Bush & Patchett, LLC, Attn: Kerry Bush, 4240 Philips Farm Road, Suite 109, Columbia, MO 65201. Each claim must include the following information: name, address, and telephone number of the claimant; amount of claim; date of which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST CAS MULTI, LLC

Effective Jan. 10, 2022, CAS MULTI, LLC, a Missouri limited liability company (the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Christopher L. Stout, 11245 Talamore Blvd., Bentonville, Arkansas, 72712. Each claim must include the following information: name, address, and phone number of the claimant; amount claimed; date on which the claim arose;the basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST CBB711, LLC

On Feb. 14, 2022, CBB711, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Bush & Patchett, LLC, Attn: Kerry Bush, 4240 Philips Farm Road,

Suite 109, Columbia, MO 65201. Each claim must include the following information: name, address, and telephone number of the claimant; amount of claim; date of which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST CHINQUAPIN, LLC

On Feb. 14, 2022, Chinquapin, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Bush & Patchett, LLC, Attn: Kerry Bush, 4240 Philips Farm Road, Suite 109, Columbia, MO 65201. Each claim must include the following information: name, address, and telephone number of the claimant; amount of claim; date of which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST DENTON'S TUCKPOINTING, INC.

Denton's Tuckpointing, Inc., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State on Feb. 8, 2022. The dissolution was effective on that date.

Any and all claims against Denton's Tuckpointing, Inc. must be sent to Denton's Tuckpointing, Inc., c/o Donna Kasate, 6433 Weber Road, St. Louis MO 63123. Each claim should include: claimant's name, address, and telephone number; amount of the claim; basis for the claim; all documentation supporting the claim; and date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Denton's Tuckpointing, Inc. will be barred unless a proceeding to enforce such claim is commenced within two years after the date this notice is published.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST EHCP FUND V, LLC

On Feb. 14, 2022, EHCP Fund V, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

You are hereby notified that if you believe you have a claim against EHCP Fund V, LLC, you must submit a summary in writing of the circumstances surrounding your claim to Lara Wolf, 8816 Manchester Road, #400, St. Louis, Missouri 63144. The summary must include the following information: (1) the name, address, and telephone number of the claimant; (2) amount of claim; (3) basis of the claim; (4) the date on which the claim arose; and (5) documentation supporting the claim.

All claims against EHCP Fund V, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST EHCP FUND VI, LLC

On Feb. 14, 2022, EHCP Fund VI, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

You are hereby notified that if you believe you have a claim against EHCP Fund VI, LLC, you must submit a summary in writing of the circumstances surrounding your claim to Lara Wolf, 8816 Manchester Road, #400, St. Louis, Missouri 63144. The summary must include the following information: (1) the name, address, and telephone number of the claimant; (2) amount of claim; (3) basis of the claim; (4) the date on which the claim arose; and (5) documentation supporting the claim.

All claims against EHCP Fund VI, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST EHCP IOWA FUND III, LLC

On Feb. 14, 2022, EHCP Iowa Fund III, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

You are hereby notified that if you believe you have a claim against EHCP Iowa Fund III, LLC, you must submit a summary in writing of the circumstances surrounding your claim to Lara Wolf, 8816 Manchester Road, #400, St. Louis, Missouri 63144. The summary must include the following information: (1) the name, address, and telephone number of the claimant; (2) amount of claim; (3) basis of the claim; (4) the date on which the claim arose; and (5) documentation supporting the claim.

All claims against EHCP Iowa Fund III, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST EHCP IOWA FUND IV, LLC

On Feb. 14, 2022, EHCP Iowa Fund IV, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

You are hereby notified that if you believe you have a claim against EHCP Iowa Fund IV, LLC, you must submit a summary in writing of the circumstances surrounding your claim to Lara Wolf, 8816 Manchester Road, #400, St. Louis, Missouri 63144. The summary must include the following information: (1) the name, address, and telephone number of the claimant; (2) amount of claim; (3) basis of the claim; (4) the date on which the claim arose; and (5) documentation supporting the claim.

All claims against EHCP Iowa Fund IV, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST EHCP MINNESOTA FUND II, LLC

On Feb. 14, 2022, EHCP Minnesota Fund II, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

You are hereby notified that if you believe you have a claim against EHCP Minnesota Fund II, LLC, you must submit a summary in writing of the circumstances surrounding your claim to Lara Wolf, 8816 Manchester Road, #400, St. Louis, Missouri 63144. The summary must include the following information: (1) the name, address, and telephone number of the claimant; (2) amount of claim; (3) basis of the claim; (4) the date on which the claim arose; and

(5) documentation supporting the claim.

All claims against EHCP Minnesota Fund II, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST EHCP MINNESOTA FUND, LLC

On Feb. 14, 2022, EHCP Minnesota Fund, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

You are hereby notified that if you believe you have a claim against EHCP Minnesota Fund, LLC, you must submit a summary in writing of the circumstances surrounding your claim to Lara Wolf, 8816 Manchester Road, #400, St. Louis, Missouri 63144. The summary must include the following information: (1) the name, address, and telephone number of the claimant; (2) amount of claim; (3) basis of the claim; (4) the date on which the claim arose; and (5) documentation supporting the claim.

All claims against EHCP Minnesota Fund, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST ELEVEN TWO, LLC

On Feb. 14, 2022, Eleven Two, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Bush & Patchett, LLC, Attn: Kerry Bush, 4240 Philips Farm Road, Suite 109, Columbia, MO 65201. Each claim must include the following information: name, address, and telephone number of the claimant; amount of claim; date of which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST ERBS & ERBS P.C.

On Jan. 13, 2022, ERBS & ERBS P.C. filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State. The dissolution was effective Jan. 12, 2022.

You are hereby notified that if you believe you have a claim against ERBS & ERBS P.C., you must submit a summary in writing of the circumstances surrounding your claim to the corporation at 8605 Green Springs Drive, St. Louis, MO 63123. The summary of your claim must include the following information:

1. The name, address, and telephone number of the claimant.
2. The amount of the claim.
3. The date on which the event on which the claim is based occurred.
4. A brief description of the nature of the debt or the basis for the claim.

All claims against ERBS & ERBS P.C. will be barred unless the proceeding to enforce the claim is commenced within two years after publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST GRACE ENERGY CORPORATION

Grace Energy Corporation, a Missouri corporation, has filed Articles of Dissolution by Voluntary Action with the Missouri Secretary of State on Dec. 21, 2021.

Any and all claims against Grace Energy Corporation may be sent to Checkett, Pauly, Bay & Morgan, LLC, Attn: Sarah, P.O. Box 409, Carthage, Missouri 64836. Each such claim should include the following: the name, address, and telephone number of the claimant; amount of the claim; the basis of the claim; and any and all pertinent documents supporting the claim.

NOTICE: Any and all claims against Grace Energy Corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the date of the publication of this notice.

Date of Publication: April 8, 2022.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST INSURANCE OF ELLISVILLE, LLC

On Feb. 18, 2022, Insurance of Ellisville, LLC, a Missouri limited liability company, filed a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The dissolution was effective on Dec. 31, 2019.

In accordance with the Notice of Winding Up, you are hereby notified that if you believe you have a claim against Insurance of Ellisville, LLC, you must submit a written summary of the circumstances surrounding your claim to the company, care of:

Hein Schneider & Bond, P.C.
Attn: Nathan E. Ross, Esq.
2244 S. Brentwood Blvd.
St. Louis, Missouri 63144.

The summary of claim must include the following information: (i) the name, address, telephone number, and email address of the claimant; (ii) the amount of the claim; (iii) the date on which the claim arose; (iv) the basis for the claim; and (v) documentation of the claim.

A claim against Insurance of Ellisville, LLC will be barred unless a proceeding to enforce such claim is commenced within three years after the publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST KEHOE ENGINEERING COMPANY, INC.

Kehoe Engineering Company, Inc., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action on Jan. 4, 2022, with the Missouri Secretary of State.

All claims against the corporation must be sent to Douglas R. Smith, The O'Fallon Law Firm, LLC, at 225 S. Main St., Suite 100, O'Fallon, Missouri 63366. Each claim should include the following: (1) the claimant's name, address, and telephone number; (2) the amount of the claim; (3) the date on which the claim arose; and (4) the basis of the claim and any documents related to the claim.

All claims against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the date of this publication.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST LAW OFFICE OF JEREMY HODGES, LLC

Effective Nov. 29, 2021, the Law Office of Jeremy L. Hodges, LLC, a Missouri liability company, filed a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Persons with claims against the limited liability company should present them in accordance with the Notice of Winding Up. You must furnish your name, address, and telephone number together with the following: (i) amount of the claim; (ii) basis for the claim; and (ii) documentation of the claim.

Claims must be mailed to: Mr. Joseph Demko, Attorney for The Estate of Jeremy L. Hodges, Smith-Amundsen, 120 South Central Ave., Ste. 700, St. Louis, MO 63105-1794.

A claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF RESOLUTION TO DISSOLVE AFFIDAVIT TO ALL CREDITORS OF AND CLAIMAINTS AGAINST LUPER'S COLLISION REPAIR, INC.

Luper's Collision Repair, Inc., dba Luper's Used Cars (the "Company"), filed its Resolution to Dissolve Affidavit with the Missouri Secretary of State on Jan. 18, 2022.

Any and all claims against the Company must be sent to the Company in care of McGovern Garton, Lifescape Law & Development, LLC, 6 Westowne St., Ste.

601, Liberty, Missouri 64068.

The summary of your claim must include the name, address, and telephone number of the claimant; the amount of the claim; the date on which the claim is based occurred; and a brief description of the nature of the debt or the basis for the claim.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST MAIN 4545 PARTNERS, LLC

On Jan. 27, 2022, Main 4545 Partners, LLC, a Missouri limited liability company (the "Company"), filed a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State, effective as of Jan. 27, 2022.

All persons with claims against the Company may submit any claim in accordance with this notice to: Michael J. Book, 9101 W. 110th St., Suite 200, Overland Park, Kansas 66210. All claims must include the name, address, and telephone number of the claimant; the amount claimed; the basis for the claim; the documentation of the claim; and the date(s) of the event(s) on which the claim is based occurred.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST PAYLESS MATERIAL HANDLING, INC.

Payless Material Handling, Inc., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State on Sept. 10, 2021. The dissolution was effective on that date.

Any and all claims against Payless Material Handling, Inc. must be sent to Payless Material Handling, Inc., C/O David Wylie, 201 N. Spring St., Independence, MO 64050. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis for the claim; documentation supporting the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Payless Material Handling, Inc. will be barred unless a proceeding to enforce such claim is commenced within two years after the date this notice is published.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST PB CHESTERFIELD LLC

PB Chesterfield LLC ("Company") was dissolved on Feb. 18, 2022. Company requests that claims against Company be presented by letter to: Dan Manning, Doster Ullom & Boyle, LLC, 16150 Main Circle Drive, Chesterfield, Missouri 63017. Claims against Company must include the following: name, address, and telephone number of claimant; amount of claim; a description of the basis and nature of claim; and documentation supporting claim.

Claims against Company will be barred unless a proceeding to enforce the claim is commenced within three years after this publication.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST PNW INVESTMENTS, LLC

PNW Investments, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on Dec. 28, 2021.

Any and all claims against PNW Investments, LLC may be sent to Anderson & Associates, Attorneys at Law, 4006 Central St., Kansas City, MO 64111. Each claim must include: (i) the name, address, and telephone number of the claimant; (ii) amount of the claim; (iii) basis for the claim; and (iv) documentation of the claim.

Any and all claims against PNW Investments, LLC will be barred unless a proceeding to enforce such claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST POLLOCK INVESTMENTS, LLC

On Feb. 14, 2022, Pollock Investments, LLC, a Missouri limited liability company (the Company) filed a Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company should be submitted to: Daniel J. Haus, 7926 E. 171st Street, Suite 106, Belton, MO 64012. Each claim must include: the name, address, and telephone number of the claimant; amount and nature of the claim; date upon which the claim arose; and any claim documentation.

All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS OF REASONS & COMPANY, LLC

Reasons & Company, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on Feb. 7, 2022.

Any and all claims against Reasons & Company, LLC may be sent to Joshua Reasons, 2135 Inman Road, Poplar Bluff, Missouri 63901. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis for the claim; the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Reasons & Company, LLC, will be barred unless a proceeding to enforce such claims is commenced within three years after the date this notice is published.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST SIMPLE GOLF PRODUCTS, LLC

On Jan. 24, 2022, SIMPLE GOLF PRODUCTS, LLC filed its Notice of Winding Up for SIMPLE GOLF PRODUCTS, LLC with the Missouri Secretary of State. SIMPLE GOLF PRODUCTS, LLC requests that all persons and organizations who have claims against it present them immediately by letter to Carl C. Polster, 108 W. Adams Ave., Kirkwood, MO 63122.

All claims must include the following information: (a) name and address of the claimant;

(b) the amount claimed; (c) date on which the claim arose; (d) basis for the claim and documentation thereof; and (e) whether the claim was secured and, if so, the collateral used as security.

All claims against SIMPLE GOLF PRODUCTS, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the date of publication of this notice.

NOTICE OF REQUEST FOR TERMINATION TO ALL CREDITORS OF AND CLAIMANTS AGAINST STUPPY AUTO SALES & WRECKER SERVICE, INC.

On Jan. 18, 2022, Stuppy Auto Sales & Wrecker Service, Inc., a Missouri corporation (the "Company"), filed its Request for Termination with the Missouri Secretary of State. Termination is effective as of Jan. 18, 2022.

Said corporation requests that all persons and organizations who have claims against it present them immediately by letter to the corporation at: Kreitler Law Firm, c/o James M. Kreitler, P.O. Box 487, Ste. Genevieve, MO 63670. All claims must include:

1. The name, address, and telephone number of the claimant;
2. The amount of the claim;
3. The basis for the claim;
4. The date(s) of the event(s) on which the claim is based occurred; and
5. Documentation to support the claim.

NOTICE: Any and all claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST SUZANNE SCHULZ, P.C.

Suzanne Schulz, P.C., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State on Dec. 16, 2021. The dissolution was effective on that date.

Any and all claims against Suzanne Schulz, P.C. may be sent to Larry G. Schulz, 2900 Brooktree Lane, Suite 100, Gladstone, Missouri 64119. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis for the claim; documentation supporting the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Suzanne Schulz, P.C. will be barred unless a proceeding to enforce such claim is commenced within two years after the date this notice is published.

NOTICE OF ARTICLES OF TERMINATION FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST SYDENSTRICKER FARMS, LLC

Articles of Termination for Limited Liability Company for SYDENSTRICKER FARMS, LLC have been filed with the Missouri Secretary of State.

All claims against SYDENSTRICKER FARMS, LLC must be submitted in writing to Thomas L. Ferguson, 4508 Bluff Drive, Oak Grove, MO 64075.

Claims must include the name, address and phone number of the claimant; amount claimed; date claim arose; and the basis for such claim. All claims will be barred unless a proceeding to enforce the claim is commenced within two years of publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION FOR A NONPROFIT CORPORATION TO ALL CREDITORS OF AND CLAIMANTS AGAINST THE PLACE AT THE LAKE

On Dec. 16, 2021, The Place At The Lake, a Missouri nonprofit corporation, filed its Notice of Articles of Dissolution by Voluntary Action for a Nonprofit Corporation with the Missouri Secretary of State. The effective date of said notice was Jan. 31, 2022.

Said corporation requests that all persons and organizations with claims against it present them immediately by letter to: Jeremiah Mosley, LLC, Attorney at Law, P.O. Box 1119, Warsaw, Missouri 65355.

All claims must include:

(i) the name, address, and telephone number of the claimant;

(ii) the amount claimed;

(iii) the basis for the claim;

(iv) the date(s) on which the event(s) on which the claim is based occurred; and

(v) documentation in support of the claim.

NOTICE: Because of the dissolution of The Place At The Lake, any and all claims against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of this notice.

NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST USA SHIELDS, LLC

On Jan. 27, 2022, USA Shields, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The effective date of said notice was Jan. 27, 2022.

You are hereby notified that if you believe you have a claim against USA Shields, LLC you must submit a summary in writing of the circumstances surrounding your claim to the limited liability company at: USA Shields, LLC Attn: Anthony Trabon, 430 E. Bannister Rd., Kansas City, MO 64131.

The summary of your claim must include the following information: (1) the name, address, and telephone number of the claimant; (2) the amount claimed; (3) the basis for the claim; (4) the date(s) on which the events on which the claim is based occurred; and (5) documentation in support of the claim.

All claims against USA Shields, LLC, will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF ARTICLES OF DISSOLUTION BY VOLUNTARY ACTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST VERNON SWEARENGIN, INC.

Vernon Swearengin, Inc., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action on Jan. 18, 2022, with the Missouri Secretary of State.

All claims against the corporation should be sent to Gabrielle J White, Attorney at Law, McKay & White, LLC, 1200 E. Woodhurst Drive, Suite G-300, Springfield, Missouri 65804. Each claim should include the following: (1) the claimant's name, address, and telephone number; (2) the amount of the claim; (3) the date on which the claim arose; and (4) the basis of the claim and any documents related to the claim.

All claims against the corporation shall be barred unless a proceeding to enforce the claim is commenced within two years after the date of this publication.

NOTICE OF WINDING UP FOR LIMITED LIABILIT COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST WESTLAKE OAK, LLC

On Feb. 14, 2022, Westlake Oak, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Bush & Patchett, LLC, Attn: Kerry Bush, 4240 Philips Farm Road, Suite 109, Columbia, MO 65201. Each claim must include the following information: name, address, and telephone number of the claimant; amount of claim; date of which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS AND CLAIMANTS AGAINST WHISPERING WOODS, LLC

On Feb. 14, 2022, Whispering Woods, LLC, a Missouri limited liability company (hereinafter the "Company"), filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Bush & Patchett, LLC, Attn: Kerry Bush, 4240 Philips Farm Road, Suite 109, Columbia, MO 65201. Each claim must include the following information: name, address, and telephone number of the claimant; amount of claim; date of which the claim arose; basis for the claim; and documentation in support of the claim.

All claims against the Company will be barred unless the proceeding to enforce the claim is commenced within three years after the publication of this notice.

LEGAL SERVICES CORPORATION
Notice of Grant Funds Available for Calendar Year 2023

The Legal Services Corporation (LSC) announces the availability of grant funds to provide civil legal services to eligible clients during calendar year 2023. In accordance with LSC's multiyear funding policy, grants are available for only specified service areas. The list of service areas (and their descriptions) where grant opportunities are open are available at https://www.lsc.gov/grants/basic-field-grant/lsc-service-areas/2023-service-areas-subject-competition.

The Request for Proposals (RFP), which includes instructions for preparing the grant proposal, will be published at https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant on or around April 11, 2022.

Applicants must file a Pre-Application and the grant application through GrantEase: LSC's grants management system.

Please visit https://www.lsc.gov/grants/basic-field-grant for filing dates, applicant eligibility, submission requirements, and updates regarding the LSC grants process. Please email inquiries pertaining to the LSC grants process to LSCGrants@lsc.gov.

LawPay®

AN AFFINIPAY SOLUTION

+

THE MISSOURIBAR
MEMBER BENEFIT

> **I love LawPay!** I'm not sure why I waited so long to get it set up.
>
> *– Law Firm in Ohio*

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.

- **22% increase in cash flow with online payments**
- **Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA**
- **62% of bills sent online are paid in 24 hours**

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA, Synovus Bank, Columbus, GA., and Fifth Third Bank, N.A., Cincinnati, OH.