References to Television Shows in Judicial Opinions and Written Advocacy (Part I)

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REFERENCES TO TELEVISION SHOWS IN JUDICIAL OPINIONS AND WRITTEN ADVOCACY (PART I)

Douglas E. Abrams

“THINK OF THE POOR JUDGE WHO IS READING . . . HUNDREDS AND HUNDREDS OF THESE BRIEFS,” SAYS CHIEF JUSTICE JOHN G. ROBERTS, JR. “LIVEN UP THEIR LIFE JUST A LITTLE BIT . . . WITH SOMETHING INTERESTING.”

IN 1942, SHORTLY BEFORE HE ASCENDED TO THE SUPREME COURT BENCH, D.C. CIRCUIT JUDGE WILEY B. RUTLEDGE SIMILARLY ADVISED ADVOCATES THAT “[I]T HELPS TO BREAK THE MONOTONY OF THE PRINTED LEGAL PAGE TO ADD A BIT OF LIFE NOW AND THEN.”

Justice Antonin Scalia urged brief writers to “[m]ake it interesting.” “I don’t think the law has to be dull.” “Legal briefs are necessarily filled with abstract concepts that are difficult to explain,” Justice Scalia continued. “Nothing clarifies their meaning as well as examples” that “cause the serious legal points you’re making to be more vivid, more lively, and hence more memorable.”

In the Journal of the Missouri Bar, I have written about how lawyers can “liven up” their advocacy, and add “a bit of life now and then,” with examples drawn from cultural markers that help define American life. Lawyers would follow the lead of federal and state judges, who often spiced their opinions with these markers.

My previous Journal articles have concerned examples drawn from baseball, football, and other prominent sports whose basic rules, strategies, and terminology are generally well-known to lawyers and judges. This article concerns examples drawn from well-known television shows.

In written opinions that decide cases with no claims or defenses concerning television programming or the television industry, judges often help explain substantive or procedural points with references to themes and fictional characters from well-known television dramas, situation comedies (“sitcoms”), and even reality shows. In civil and criminal cases, the courts’ careful use of television references invites advocates to use such references carefully in their written submissions.

Some judges use references to television shows that regularly feature lawyers and law enforcement; other judges discuss shows that mention the law rarely or not at all. Some of the shows (such as Perry Mason and Dragnet) feature characters and themes that appeared earlier in novels or on radio, but recollections of today’s judges and lawyers likely stem primarily from the hit television shows, even years after the cited shows left the air.

This is a two-part article. This Part I opens with brief discussion of television’s profound decades-old influence on American culture, a sturdy foundation for judges’ confidence that readers will connect with references to popular shows that dominated the airwaves as today’s generation was growing up. This Part then surveys the array of television dramas that appear in federal and state judicial opinions.

In the Journal’s next issue, Part II will survey the array of sitcoms and reality shows that appear in judicial opinions. Part II will conclude by discussing why advocates should feel comfortable following the courts’ lead by carefully referencing television shows to help sharpen substantive and procedural arguments in the filings they submit.

Television’s Influence on American Culture

“In many ways over the past half-century, the history of
television has become the history of America,” says historian Steven D. Stark.8 Television programming, he explains, “has been influential – superseding school, and sometimes even the family, as the major influence on our social and moral development. It is fair to say that there have been two eras in America: Before Television (BT) and After Television (AT).”9 Contemporary writers and readers of briefs and judicial opinions grew up in the latter era, marked by television’s dominance in American homes from coast to coast.

Transforming American Life

With television still in its infancy, only nine percent of U.S. households owned at least one set in 1950. Two historians say, however, that the new medium was already “finding its place in the American living room (and bedroom and dining room and kitchen and den and basement and hospital ward and bus station).”10 From 1954 to 1956, about 10,000 U.S. households a day were installing a television set for the first time.11 By 1955, 13 percent of households owned two or more sets and some owned as many as six.12 The percentages of TV ownership grew each year, reaching 64.5 percent of American households in 1955 and 85.9 percent in 1959.13 By the end of the 1950s, households with television sets watched an average of five hours and two minutes of programming daily.14

“Nothing,” wrote journalist David Halberstam, “changed the culture and the habits of Americans more than the coming of television.”15 Pulitzer Prize-winning historian Daniel J. Boorstin said that the medium “opened another world [that] would transform American life more radically than any other modern invention except the automobile. . . . Just as the printing press five centuries before had begun to democratize learning, now the television set would democratize experience.”16

Television, writes legal historian Lawrence M. Friedman, became one of the “powerful forces unifying the economy.”17 Halberstam called television a “true national phenomenon” whose power “revolutionized American society” by “wir[ing] the entire country together visually.”18

Television’s growing presence in American homes, writes presidential historian Jon Meacham, gave Sen. Joseph Television’s growing presence in American homes, writes presidential historian Jon Meacham, gave Sen. Joseph Theodore H. White observed that in the prior decade, television had “exploded to a dimension in shaping the American mind that rival[ed] that of America’s schools and churches.”20 The nation was raising what National Humanities Medal-winning writer William Manchester called “the first television generation.”21 Historians report that television had become “one of the most powerful of all postwar entertainments,”22 indeed “an American habit and a virtual necessity,”23 and an “electronic prodigy endowed with the capacity to influence an entire nation.”24

In 1961, Federal Communications Commission chairman Newton N. Minow recognized television’s emerging cultural force when he sharply criticized the medium as a “vast wasteland,” marked by “a procession of game shows, formula comedies about totally unbelievable families, blood and thunder, mayhem, violence, sadism, murder, western bad men, western good men, private eyes, gangsters, more violence, and cartoons.”25

“When television is good, nothing — not the theater, not the magazines or newspapers — nothing is better,” Minow concluded, “[b]ut when television is bad, nothing is worse.”26

Television took a sharp turn toward the good on September 2, 1963, when the three major networks expanded their nightly newscasts from 15 minutes to half an hour. Describing this new sinew that would help bind the nation together, White called the expanded coverage “as significant in American history as the Golden Spike that linked the Union Pacific and Central Pacific to give America is first continental railway in 1869.”27

To paraphrase Minow, television emerged as an indispensable force for good when the networks steadied the wounded nation in the four fateful days immediately after President John F. Kennedy’s assassination on November 22, 1963. Journalist White reported that most Americans (Manchester’s “first television generation”) watched virtually non-stop. The networks responded with tasteful, informative around-the-clock broadcasting uninterrupted by commercial advertising. Television, said White, “stabilized a nation in emotional shock and on the edge of hysteria.”28

With its demonstrated capacity to command a national audience by the 1960s, television remained on the cutting edge of social change. “The civil rights revolution in the South,” write journalists Robert J. Donovan and Ray Scherer, “began when a man and the eye of the television film camera came together, giving the camera a focal point for events breaking from state to state, and the man, Martin Luther King, Jr., high exposure on television sets from coast to coast.”29

‘A Television Nation’

In 1969, White reported that television had emerged as “the greatest of all the new media of American culture,” a common denominator that “fused all America into one audience” and “held all America captive.”30 With audiences of 40 or 50 million viewers from coast to coast, White added, the networks’ nightly newscasts alone had become “for the masses, the mirror of the world.”31

Television’s influence on American culture continued growing. The percentages of U.S. households owning at least one TV set rose from 87.1 percent in 1960 to 95.0 percent in 1969, and from 95.2 percent in 1970 to 98.0 percent in 1978.32 The average amount of household time spent daily watching television rose from five hours and six minutes in 1960, to five hours and 48 minutes in 1969.33 By 1978, the average daily amount stood at six hours and ten minutes.34 and “America’s infatuation with television”35 led adults to spend about 28 percent of their leisure time watching the set.36 Americans, said journalist Halberstam, now had television “connecting them to the world,” and the United States had become “a television nation.”37

By 2007, the average household’s daily dose of television had
risen to more than eight hours. The average child graduates from high school after spending 13,000 hours in school and 25,000 hours in front of the TV set. In the 2017-2018 season, 96.5 percent of U.S. homes owned a television, more homes than have indoor plumbing.

By the 1980s, Americans—including judges and advocates—had either grown up during what Manchester called the “Age of Television,” or had become increasingly familiar with TV programming throughout adulthood. In 1989, one film critic wrote that “[g]iven the sheer breadth of its appeal, television tends to address—and help create—widely held beliefs that permeate the culture.”

Television Dramas

“Writing,” said Sir Ernest Gowers, “is an instrument for conveying ideas from one mind to another; the writer’s job is to make his reader apprehend his meaning readily and precisely.” Federal and state judges sometimes convey ideas with careful references to television dramas, situation comedies, and reality shows. We turn here to dramas, before turning to the other two genres in Part II of this article next time.

Perry Mason

“Ever since the days of Perry Mason, viewers have always flocked to shows about lawyers.” Prominent among the “flock” are lawyers themselves, including Justice Sonia Sotomayor who, during her 2009 Senate confirmation hearings for a Supreme Court appointment, cited Perry Mason as the childhood influence that led her to pursue a career in law.

Perry Mason has been called “America’s lawyer,” and his dramatic television series remains the shows lawyers show discussed most often in judicial opinions. To Supreme Court judges and other Americans, the name “Perry Mason” remains almost synonymous with the term “lawyer.” Indeed, in a National Law Journal poll conducted in 1993 (nearly 30 years after the show left prime time for syndication), the fictional Mason finished second to F. Lee Bailey as the nation’s most admired lawyer. Bailey might not have won the honor after his controversial role as a defense counsel in the O.J. Simpson criminal trial shortly afterwards. Nor would Bailey’s lofty stature have survived his 2001 disbarment in Florida, and the later unwillingness of Maine bar authorities to license him.

Defense counsel Perry Mason’s character originated in Erle Stanley Gardner’s detective novels and had a successful run in four movies and on radio before Raymond Burr played the title role in 271 television episodes that aired from 1957 to 1966. Citing Perry Mason’s enduring image as the “flawless” lawyer who never lost a case, most judicial decisions discussing the show presume readers’ understanding, without explanation in text or footnote. Only a few decisions provide brief explanations to orient readers who might be too young to recall the television series, or who might not follow today’s re-runs.

Typical in presuming readers’ understanding is Spotted Cat, LLC v. Bass, which disqualified the plaintiff’s counsel in a damage action on the ground that counsel would be a necessary trial witness. The federal district court rejected the plaintiff’s speculation that the defendant “may, upon taking the oath at trial, suddenly decide to fully agree with Plaintiff’s version of events.” The court found the speculation remote because it depended on “the occurrence of a ‘Perry Mason’ moment in the courtroom. . . . [I]n the Court’s experience, such moments are usually confined to fictional courtrooms.”

The U.S. Court of Appeals for the 1st Circuit observed that defense counsel Mason “possessed an uncanny aptitude for exonerating clients by casting blame elsewhere.” Representing clients whose guilt appeared likely for much of the hour, he would defeat prosecutor Hamilton Burger with dogged personal investigation, usually climaxed by Mason’s dramatic cross examination that led a key witness or a spectator to break down on the stand or elsewhere in the courtroom, often with a tearful confession. Hence, the “Perry Mason moment.”

Courts citing Perry Mason recognize that during cross-examination in actual criminal and civil proceedings, witnesses do sometimes break down with key concessions, unanticipated information, or tearful confessions. But courts also cite Perry Mason for the proposition that these climaxes remain “very rare” because well prepared counsel normally anticipate the course of the trial in the relatively few cases that do not end with pretrial settlement or plea bargain, and because contemporary procedure emphasizes pretrial discovery and favors conferences with the court outside the jury’s presence or earshot when surprise does surface. Courts frequently call attention to Perry Mason defenses and Perry Mason moments, but also recognize (according to the Minnesota Court of Appeals) that such twists and turns “tend only to happen on late night TV if your station carries reruns.”

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ETHICS

REFERRALS: WHAT YOU NEED TO STAY OUT OF ETHICAL TROUBLE

Nancy Ripperger

Referral marketing can be a very desirable source of new business for an attorney. The American Bar Association (“ABA”) has noted that encouraging referrals in a systematic and structured way is the most cost-effective and productive marketing that an attorney can do.

Referring out a matter also can be beneficial to an attorney if a matter is outside of the referring attorney’s usual practice area or outside the referring attorney’s geographical location. The referring attorney may be able to share in the fees but does not have to learn a new area of law, obtain licensure in another jurisdiction, or travel long distances to handle the matter.

While referrals can be beneficial to both the referring and receiving attorney, referrals are not without ethical risks. Before making or accepting a referral, an attorney should ensure that the referral complies with the Rules of Professional Conduct. This article will set out some of the common ethical issues related to referrals.

Kickbacks, Along With Nominal Nonmonetary Gifts, Are Prohibited

There is much written about what an attorney can do to develop and maintain a referral network to increase business. One of the most common suggestions for an attorney to keep and increase a referral network is for the attorney to show his or her appreciation to the referring client, third party, or attorney. Sending a thank you note to any of the above referring sources is ethically acceptable. However, sending a monetary fee or gift to an attorney, client or third party for a referral is prohibited by Supreme Court Rule 4-7.2(c). It provides that a lawyer shall not give anything of value to a person for recommending the lawyer’s services. It does not contain an exception for nominal, nonmonetary gifts. Thus, an attorney is prohibited from giving the referral source a “substantial monetary kickback” and from more innocuous activities such as taking the referral source to dinner or sending the referral source a nice bottle of wine to show his or her appreciation for the referral.

Fee Sharing with Non-Attorneys Is Prohibited By Rule 4-5.4(a)

An attorney should not agree to split or share a fee with a non-attorney. Rule 4-5.4(a) prohibits the sharing of fees with non-lawyers except in certain limited circumstances. This prohibition includes agreements with non-attorneys to solicit clients in return for a share of the fee.

Fee Sharing Between Attorneys Requires Strict Compliance with Rule 4-1.5(e)

Despite the limitations of Rule 4-7.2 (c), an attorney can split or share fees with another attorney if certain conditions are met. Missouri Supreme Court Rule 4-1.5(e) addresses the division of fees between attorneys who are not from the same firm. The first requirement of Rule 4-1.5(e) is that both attorneys must retain some level of responsibility for the representation. The courts are very strict in applying this requirement. Failing to comply with the responsibility requirement can subject an attorney to both disciplinary action and the loss of fees.

For example, in Risjord v. Lewis, an attorney who had handled a personal injury action brought a declaratory action to determine whether the referring attorney was entitled to any of the attorney fees. The fee agreement with the client provided that the referring attorney was entitled to 40 percent of the attorney fees. The Court struck down the fee agreement, noting that “merely recommending another lawyer or referring a case to another lawyer and failing to do anything further” does not entitle the referring attorney to any portion of the fees.

Rule 4-1.5(e) sets forth two situations whereby the referring attorney retains the requisite level of responsibility needed to share in the fees. The first situation is where the referring attorney continues to provide legal services to the client along with the other attorney. In other words, the referring attorney acts as co-counsel in the matter. In this situation, the division of the fees must be proportional to the services performed by each attorney. Rule 4-1.5 (e)(1). Courts generally look to see whether the division of fees bears a reasonable correlation to the amount or value of the services rendered by the attorney. Courts will strike down a fee division if there is a glaring imbalance between a lawyer’s share of the fee and the value of his or her services. For example, in Eng v. Cummings, McClung, Davis & Acho, the referring attorney was seeking one-third of the attorney fees. The Court noted that passing on updates to the client from the trial attorney and providing counseling about the trial process did not constitute one-third of the work.

In the second situation, the referring attorney generally is not required to perform any actual work on the referred matter.
However, the referring attorney must assume “joint responsibility” for the representation. Comment 7 to Rule 4-1.5 states “joint responsibility entails both financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.” Missouri courts have not defined what “financial responsibility” or “ethical responsibility” means. However, courts from other jurisdictions have defined “financial responsibility” to mean that the referring attorney would be jointly liable in a malpractice suit. See *Kammerer v. Marshall.*10 Because of the joint financial liability imposed by Rule 4-1.5(e), the referring attorney may want to ascertain whether the receiving attorney has malpractice insurance and whether the referring attorney’s malpractice insurance policy covers malpractice of co-counsel.

“Ethical responsibility” is somewhat more difficult to ascertain as no court has opined on its meaning. In addition, Missouri has not addressed the issue via a formal or informal ethics opinion. However, the Wisconsin State Bar Professional Ethics Committee Formal Ethics Opinion EF-10-02 (“the Opinion”) is instructive.11 The Opinion provides clear cut and practical advice on the issue of “ethical responsibility.” It emphasizes that “the duty of joint responsibility imports a serious responsibility as a lawyer and is not a mere hand off of the case to another lawyer to handle in his or her own fettered discretion.”

The Opinion provides that while the referring attorney need not be involved in the day-to-day handling of the case, the referring attorney must periodically review the status of the matter and maintain enough contact to ascertain whether the attorney handling the matter is abiding by the Rules of Professional Conduct. It also sets forth that the referring attorney has a duty to ensure the attorney who receives the referral is competent to handle the matter.12 These requirements make clear that the referring attorney needs to be very careful in the selection of the attorney to handle the matter and should not base his or her selection merely upon which attorney offers the referring attorney the best fee sharing deal.

The Opinion also explains that while the referring attorney need not have the same resources or expertise as the receiving attorney, the referring attorney must be willing, and able, to step in if the receiving attorney cannot complete the matter. For example, per the Opinion, the referring attorney must step in if the receiving attorney becomes unable to act due to illness. The referring attorney must take whatever action is necessary to protect the client’s interests. This could mean entering an appearance and requesting a continuance or helping the client to find new counsel.

Besides requiring the referring attorney to share some level of responsibility in the case, Rule 4-1.5(c) requires that the fees charged be reasonable. In this context, “reasonable” means that the total fee should not be significantly greater than it would have been if there had been no association with another attorney. Thus, it is important that the attorneys do not “double charge” for doing the same work.

Finally, and very importantly, Rule 4-1.5(e) provides that the client must agree to the association between the two attorneys and the agreement must be “confirmed in writing.”13 “Confirmed in writing” means either that the client consents to the referral in writing or that the lawyer promptly sends a writing to the client confirming the client’s oral informed consent to the referral. Rule 4-1.0(b). While the client must consent to the association, the attorneys are not required to disclose to the client what share of the fees each attorney will receive. Comment 7 to Rule 4-1.5(e).13 However, to avoid fee disputes between the attorneys it is recommended that the attorneys have a written agreement which sets out both parties’ responsibilities in the matter and the fee division between the attorneys.

The rule is silent as to which lawyer must obtain the written consent from the client. Missouri courts have not addressed the issue but some courts in other jurisdictions have suggested that the responsibility falls on both the referring and receiving attorney. See *Kentucky Bar Association v. Chesley.*14 Thus, to avoid any potential problem concerning this issue, it is best for both attorneys to obtain the consent.

### Conclusion

In summary, referrals can be beneficial to an attorney whether the attorney is making the referral or receiving the referral. However, before an attorney makes a referral or encourages others to make referrals to the attorney, an attorney should review Missouri Supreme Court Rules 4-1.5(c), 4-5.4(a), and 4-7.2(c) and then ensure that his or her conduct is in accordance with the rules.

### Endnotes

1 Nancy Ripperger is staff counsel for the Office of Chief Disciplinary Counsel in Jefferson City.


3 Missouri Supreme Court Rule 4-7.2(c) contains exceptions which allow an attorney to pay for the reasonable cost of advertising and pay the usual charges of a qualified lawyer referral service or other not-for-profit legal services organization.

4 Missouri’s Rule 4-7.2 is based upon ABA Model Rule 7.2. On August 6, 2018, the ABA amended Model Rule 7.2 to permit a lawyer to give a nominal gift as an expression of appreciation to a person for recommending the lawyer’s services or referring a prospective client. The Comments to the amended rule specify that the gift cannot be any more than a token item as might be given for holidays or other ordinary social hospitality. The Missouri Supreme Court has not adopted the ABA’s amendment to Rule 7.2.

5 987 S.W.3d 403 (Mo. App. W.D. 1999).

6 Id. at 405.


8 No. 08-4103-CV-C-NKL, 2009 WL 1543840 (W.D. Mo. 2009), aff’d 611 F.3d 128 (8th Cir. 2010).

9 As explained below, if the attorney who receives the referral becomes incapacitated, the referring attorney would need to step in and do enough to ensure that the client’s interests are protected until new counsel is obtained.


11 The language of Wisconsin’s rule is different than Missouri Supreme Court Rule 4-1.5(c). Wisconsin’s rule states that the lawyers must “assume the same responsibility for the representation as if they were partners in the same firm.” In contrast, Missouri Supreme Court Rule 4-1.5(c) merely provides that “each lawyer assumes joint responsibility for the representation.” However, Comment 7 to Missouri’s rule provides that ethical responsibility entails “responsibility for the representation as if the lawyers were associated in a partnership.” Thus, because of the clarification provided by Comment 7, it appears that both rules require the same thing.

12 Comment 7 to Missouri’s rule sets out the same requirement.


14 The client’s written consent to the referral can easily be incorporated into the fee agreement. If the case is a contingent fee matter, a written fee agreement is required. Rule 4-1.5(c).

15 Missouri’s rule differs from the Model Rules of Professional Conduct. Model Rule 1.5(e) requires the client to “agree to the arrangement, including the share each lawyer will receive.” 393 S.W.3d 584 (Ky. 2013).
The Supreme Court of Missouri, in an order dated December 4, 2018, repealed subdivision 8.09, entitled “Admission by Transferred Uniform Bar Examination Score,” of Rule 8 (Admission to the Bar), and in lieu thereof adopted a new subdivision 8.09, entitled “Admission by Transferred Uniform Bar Examination Score.”

This order becomes effective January 1, 2019.

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

In an order dated December 3, 2018, the Supreme Court of Missouri repealed subdivision 74.11(a), entitled “Acknowledgement of Satisfaction,” of Rule 74 (Judgments, Orders and Proceedings Thereon), and adopted a new subdivision 74.11(a), entitled “Acknowledgement of Satisfaction.”

This order becomes effective July 1, 2019.

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 December 3, 2018, adopted and approved for distribution forms for motion to modify child support and related instructions prepared by that Court’s Committee on Access to Family Courts and reviewed by the State Judicial Records Committee and the Supreme Court. The forms are effective July 1, 2019 and may be used prior thereto. These forms supersede any similar forms and instructions previously approved by the Supreme Court of Missouri.

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

In an order dated December 3, 2018, the Supreme Court of Missouri corrected an order of June 29, 2018, when it repealed and adopted provisions of Rule 37, entitled “Statutory and Ordinance Violations and Violation Bureaus,” including repeal of subdivision 37.43 (Ordinance Violation – Summons or Arrest Warrant – When Issued – Failure to Appear); subdivision 37.435 (Statement of Probable Cause); subdivision (f) of subdivision 37.64 (Sentence and Judgment); subdivision 37.65 (Imposition and Payment of Fines, Fees, and Costs, and Contempt Proceedings); and the heading title and subdivision 37.66 (Sentence of Imprisonment – Transcript to Corrections Official) and in lieu thereof adopted a new subdivision 37.43 (Ordinance Violation – Summons or Arrest Warrant – When Issued – Failure to Appear); a new subdivision 37.435 (Statement of Probable Cause); a new subdivision (f) of subdivision 37.64 (Sentence and Judgment); a new subdivision 37.65 (Imposition and Payment of Fines, Fees, and Costs, and Contempt Proceedings); and a new heading title and new subdivision 37.66 (Sentence of Incarceration – Transcript to Corrections Official).

This order became effective January 1, 2019.

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 December 18, 2018, repealed subdivision 21.03 (Misdemeanors – Summons or Warrant of Arrest – When Issued); subdivision 21.04 (Misdemeanors – Statement of Probable Cause – Contents); subdivision 21.05 (Misdemeanor – Summons – Contents); the heading title and subdivision 21.06 (Misdemeanors – Warrant of Arrest – Contents); the heading title and subdivision 21.09 (Misdemeanors – Appearance Under Warrant Before Judge); and the heading title and subdivision 21.10 (Misdemeanors – Initial Proceedings Before Judge) of Rule 21, entitled “Procedure Applicable to Misdemeanors Only,” and in lieu thereof adopted a new subdivision 21.03 (Misdemeanors – Summons or Warrant of Arrest – When Issued); a new subdivision 21.04 (Misdemeanors – Statement of Probable Cause – Contents); a new subdivision 21.05 (Misdemeanor – Summons – Contents); a new heading title and a new subdivision 21.06 (Misdemeanors – Warrant for Arrest – Contents); a new heading title and a new subdivision 21.09 (Misdemeanors – Appearance Under Warrant Before the Court); and a new heading title and a new subdivision 21.10 (Misdemeanors – Initial Appearance Before the Court).

In the same order, the Court repealed subdivision 22.03 (Felonies – Statement of Probable Cause – Contents); subdivision 22.04 (Felonies – Warrant of Arrest – When Issued); the heading title and subdivision 22.05 (Felonies – Warrant of Arrest – Contents); the heading title and subdivision 22.07 (Felonies – Appearance Under Warrant Before Judge); the heading title and subdivision 22.08 (Felonies – Initial Proceedings Before Judge); and subdivision 22.09 (Felonies – Preliminary Hearing) of Rule 22, entitled “Procedure Applicable to Felonies Only,” and in lieu thereof adopted a new subdivision 22.03 (Felonies – Statement of Probable Cause – Contents); a new subdivision 22.04 (Felonies – Warrant of Arrest – When Issued); a new heading title and a new subdivision 22.05 (Felonies – Warrant for Arrest – Contents); a new heading title and a new subdivision 22.07 (Felonies – Appearance Under Warrant Before the Court); a new heading title and a new subdivision 22.08 (Felonies – Initial Appearance Before the Court); and a new subdivision 22.09 (Felonies – Preliminary Hearing).

In addition, the Court repealed subdivision 33.01 (Misdemeanors or Felonies – Right to Release – Conditions); the heading title and subdivision 33.02 (Misdemeanors or Felonies – Warrant for Arrest – Officials Authorized to Set Conditions of Release – Conditions to be Stated on Warrant); subdivision 33.04 (Misdemeanors or Felonies – Officer Authorized to Accept Conditions of Release); the heading title and subdivision 33.05 (Misdemeanors or Felonies – Right to Review of Conditions); subdivision 33.06 (Misdemeanors or Felonies – Modification of Conditions of Release); subdivision 33.07 (Misdemeanors or Felonies – Rules of Evidence Inapplicable); the heading title and subdivision 33.08 (Misdemeanors or Felonies – Rearrest of Accused); subdivision 33.09 (Misdemeanors or Felonies – Failure of Court to Set Conditions or Setting of Inadequate or Excessive Conditions for Release – Application to Higher
NEW DEVELOPMENTS FOR 2019

Scott E. Vincent

The Tax Cuts and Jobs Act (TCJA) created substantial changes for taxpayers. As practitioners and the Internal Revenue Service (IRS) work through implementation of the TCJA, guidance is being issued from the IRS. This article outlines several key items for consideration as we begin 2019.

Business Meals and Entertainment

The TCJA disallowed deductions for entertainment, amusement, and recreation activities. However, the new provisions did not address when the food and beverages might constitute entertainment. The IRS has issued new guidance (Notice 2018-76) allowing taxpayers to deduct 50 percent of business meal expenses if: (a) the expense is an ordinary and necessary trade or business expense; (b) the expense is not lavish or extravagant under the circumstances; (c) the taxpayer, or an employee of the taxpayer, is present at the furnishing of the food or beverages; (d) the food and beverages are provided to a current or potential business customer, client, consultant, or similar business contact; and (e) in the case of food and beverages provided during or at an entertainment activity, the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts.

Meals for Convenience of Employer

The IRS has issued counsel advice (AM 2018-004) regarding the Code § 119 exclusion from employee income for meals furnished on the employer’s business premises for the convenience of the employer. In Commissioner v. Kowalski, the U.S. Supreme Court determined that the § 119 exclusion only applies if meals are necessary for the employee to properly perform duties for the employer. Under this “convenience of the employer” test, carrying out of the employee’s duties must require that the employer provide the employee meals so that the employee can properly discharge such duties and be done for noncompensatory business reasons. Treasury regulations include meals provided for employees with short meal periods due to the employer’s business or employees who must be available for emergency calls during meal periods. Prior cases have found that the IRS is precluded from substituting its judgment for the business decisions of a taxpayer regarding business needs and related employer policies. However, the IRS can determine whether an employer actually follows and enforces its own stated business policies and practices, and whether these policies and practices, and the needs and concerns they address, necessitate the provision of meals so that there is a substantial noncompensatory business reason for furnishing meals to employees.

Depreciation and Expensing

The IRS has issued Revenue Procedure 2019-8 with guidance on deducting expenses under § 179 and the alternate depreciation system (ADS) under § 168(g), as amended by the TCJA. The Revenue Procedure explains how qualified real property, as defined under the TCJA, can be treated as property eligible for the § 179 expense election. The TCJA increased the § 179 deduction to $1 million and increased the phase-out limit to $2.5 million, with indexing for inflation after 2018. The TCJA also amended the definition of qualified real property to include qualified improvement property and some improvements to nonresidential real property, including: roofs; heating, ventilation and air-conditioning property; fire protection and alarm systems; and security systems. The Revenue Procedure outlines how real property trades or businesses or farming businesses that elect out of the TCJA interest deduction limitations may change to the ADS for property placed in service before 2018; the IRS also addresses whether these changes may be a change in accounting method. In addition, the Revenue Procedure provides an optional depreciation table for residential rental property depreciated under the ADS with a 30-year recovery period.

Partnerships

The IRS issued final regulations implementing the new centralized partnership audit regime. The final regulations are generally effective for partnership tax years beginning after 2017,
but partnerships can make an election to have the provisions apply to earlier periods. Under the new rules, adjustments to partnership-related items are determined at the partnership level. The final regulations clarify that items or amounts are partnership-related items only if shown, or required to be shown, on the partnership return or required to be maintained in the partnership’s books and records. Partners must report these partnership-related items consistent with the treatment on the partner’s return or provide adequate notice to the IRS of inconsistent treatment. A partner can provide notice to the IRS of inconsistent treatment by attaching a statement to the partner’s return (including any amended return) on which the partnership-related item is treated inconsistently. If the IRS adjusts partnership-related items, the partnership, rather than the partners, is subject to liability for any imputed underpayment and must take other adjustments into account in the adjustment year. Alternatively, the regulations allow a partnership to make an election to distribute the effect of the adjustments to its partners for the year that adjustments are made by the IRS, causing the partners to pay any tax due as a result of the adjustments.

**State and Local Tax and Charitable Contributions**

For tax years beginning after 2017, the TCJA limits an individual’s deduction to $10,000 ($5,000 in the case of a married individual filing a separate return) for the aggregate amount of the following state and local taxes paid during the calendar year: (1) real property taxes; (2) personal property taxes; (3) income, war profits, and excess profits taxes; and (4) general sales taxes. This limitation does not apply to certain taxes that are paid and incurred in carrying on a trade or business or for-profit activity. Since the enactment of the TCJA, some taxpayers sought to avoid the limitation by making deductible charitable payments to charitable entities pursuant to state and local tax credit programs. During 2018, the IRS issued guidance undermining this strategy, finding that charitable contributions were reduced by the amount of any “quid pro quo” return tax credit benefit. However, the IRS has now released Revenue Procedure 2019-12 with safe harbors that do allow a deduction for certain payments made by a C corporation or a “specified pass-through entity” to or for the use of a charitable organization if the paying entity receives or expects to receive a state or local tax credit in return for the payment. If qualified, the payment is treated as meeting the requirements of an ordinary and necessary business expense for the business entity.

The Revenue Procedure safe harbor only applies to specified pass-through if: (1) the entity is a business entity other than a C corporation that is regarded for all federal income tax purposes as separate from its owners; (2) the entity operates a trade or business; (3) the entity is subject to a state or local tax incurred in carrying on its trade or business that is imposed directly on the entity; and (4) in return for a payment to a charitable organization, the entity receives or expects to receive a state or local tax credit that the entity applies or expects to apply to offset a state or local tax described in (3), above, other than a state or local income tax.

**Suspension of Personal Exemption**

The IRS issued Notice 2018-84 with interim guidance to clarify how the suspension of the personal exemption deduction from 2018 through 2025 under the TCJA applies to certain rules that reference that provision but were not also suspended. These include rules dealing with the healthcare premium tax credit, and the individual shared responsibility provision (also known as the individual mandate) for 2018. The notice confirms that, for purposes of other provisions, the suspension of the personal exemption by reducing the exemption amount to zero shall not be considered in determining whether a deduction is allowed or allowable, or whether a taxpayer is entitled to a deduction. The reduction of the personal exemption to zero is not intended to alter the operation of other provisions of the Code that refer to a taxpayer allowed a deduction.

**Affordable Care Act Hardship Exemption and Deadline Extensions**

The IRS has issued Notice 2019-5 with additional hardship exemptions from the individual shared responsibility payment (also known as the individual mandate) that a taxpayer may claim on a federal income tax return without obtaining a hardship exemption certification from the Health Insurance Marketplace. The IRS also issued Notice 2018-94 extending one of the due dates for the 2018 information reporting requirements under the ACA for insurers, self-insuring employers, and certain other providers of minimum essential coverage, and the information reporting requirements for applicable large employers (ALEs). If applicable, the due date for these parties to furnish certain ACA forms is extended to March 4, 2019. Transition relief from certain penalties for good faith efforts to comply with the ACA information reporting requirements is also extended.

**Limitation on Business Interest Expense Deductions**

For tax years beginning after 2017, the TCJA provides that the deduction allowed for business interest for any tax year cannot exceed the sum of: (1) business interest income; (2) 30 percent of adjusted taxable income (but not less than zero); plus (3) floor plan financing interest (certain interest paid by vehicle dealers).

The term “business interest” means any interest properly allocable to a trade or business. However, the deduction limit on business interest does not apply to interest properly allocable to an “electing real property trade or business.” The IRS has issued Revenue Procedure 2018-59 to provide a safe harbor that allows taxpayers to treat certain infrastructure trades or businesses as real property trades or businesses solely for purposes of qualifying as an electing real property trade or business. The Revenue Procedure identifies infrastructure property that may qualify, including airports, docks, ports, mass commuting facilities, water furnishing and disposal facilities, sewage and waste disposal facilities, and several others.

**Penalty Avoidance**

The IRS issued Revenue Procedure 2019-9 identifying circumstances under which disclosure on a taxpayer’s income
tax return with respect to an item or position is adequate to reduce understatement of tax for purposes of the substantial understatement accuracy-related penalty and for purposes of the tax return preparer penalty for understatements due to unreasonable positions. The Revenue Procedure applies to 2018 tax returns and outlines specific information that must be provided for certain items, including: itemized deductions on Form 1040 (Schedule A); certain trade or business expenses; differences in book and income tax reporting; certain foreign tax items; and other items such as moving expenses and employee business expenses. The Revenue Procedure also requires that money amounts entered on a form must be verifiable, which means the taxpayer can prove the origin of the amount (even if that number is not ultimately accepted by the IRS) and the taxpayer can show good faith in entering that number on the applicable form. Further, when the amount of an item is shown on a line that does not have a preprinted description (such as on an unnamed line under an “Other Expense” category), the taxpayer must clearly identify the item by including a description on that line. For items not covered by this Revenue Procedure and for related party transactions, adequate disclosure requires filing a Form 8275 (Disclosure Statement) or 8275-R (Regulation Disclosure Statement).

**Conclusion**

Hopefully, this is a good summary for review by you and your clients as we begin 2019. Be careful to watch for ongoing changes in Congress and at the IRS in coming months. 

**Endnote**

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

John H. Bleckman, age 70, of St. Louis on September 23, 2018. He joined The Missouri Bar in 1984 and practiced law in St. Louis.

David N. Clayton of Hannibal on December 8, 2018 at the age of 46. He received his law degree from the University of Missouri-Kansas City. He first joined the Public Defender Office in Columbia. In 2014, Governor Jay Nixon appointed him Marion County prosecutor. He was later elected to that position and served until his death. He was a member of The Missouri Bar, the Missouri Association of Prosecuting Attorneys, and the 10th Judicial Circuit Bar Association.

Donald H. Clooney, age 88, of St. Louis on November 25, 2018. He is a veteran of the U.S. Air Force, where he served as a captain and was drafted by the U.S. Water Polo Team to play in the 1952 Olympics. He earned his law degree from Saint Louis University and practiced law for more than 50 years.

Hon. Frank D. Connett Jr. of St. Joseph on November 6, 2018 at the age of 96. He served in the U.S. Army Air Corps during World War II. In 1949, he received an LL.B. degree from the University of Missouri. He served as Buchanan County assistant prosecuting attorney from 1951-1954 and as prosecutor from 1955-1958. In 1957, he was president of the Missouri Association of Prosecuting Attorneys. Beginning in 1958, he was an elected judge of Division III of the 5th Judicial Circuit for 30 years. He served as an honorary colonel on the staff of Governor John Dalton. In 2002, the Missouri Bar Foundation honored him with the Spurgeon Smithson Award.

Edward A. Cook III, age 88, of Georgetown, TX on August 13, 2018. During the Korean War he served in the U.S. Army Counter Intelligence Corps. He received his law degree from the University of Missouri and joined The Missouri Bar in 1953. For five decades he practiced law in Lexington, NE with Cook & Kopf & Doyle Law Office. He was also president of First State Bank in Gothenburg, NE and president of the Nebraska Cultural Endowment.

Hon. Wesley C. Dalton of Wright City on December 16, 2018 at the age of 60. He joined The Missouri Bar in 1988, and was the presiding circuit judge for the 12th Judicial Circuit, comprised of Warren, Montgomery and Audrain counties.

Gary I. Froistad, age 75, of Savannah, GA on October 25, 2018. He earned his J.D. from the University of South Dakota and joined The Missouri Bar in 1990.

Virginia L. Fry of Springfield on November 18, 2018 at the age of 64. She earned her J.D. from the University of Missouri-Kansas City. In 1994, she was the first female president of the Springfield Metropolitan Bar, and is the only woman to receive its Distinguished Attorney Award. In 1998, she joined Husch Blackwell, LLP as a partner, serving as office managing partner from 2008 until 2015. She served as a member of The Missouri Bar Board of Governors from 2007-2008. In 2015, Missouri Lawyers Media honored her as Woman of the Year. She was elected as chair of the Missouri State University Board of Governors in 2017.

Susan M. Hunt, at 66, on November 27, 2018. Prior to receiving her law degree from the University of Missouri-Kansas City, she was a chemist with the Kansas City Police Department. She joined The Missouri Bar in 1986 and spent most of her career as a solo practitioner.

Edwin P. McKaskell of Wildwood on March 1, 2018 at the age of 79. He received his law degree from the University of Mississippi and joined The Missouri Bar in 1977. After graduation, he became a special agent for the F.B.I., then general manager of asset protection for AT&T, retiring after 35 years.

Joseph J. Nitka Jr. of St. Louis on July 12, 2018 at the age of 89. He received his law degree from Saint Louis University and joined The Missouri Bar in 1956. He retired at the age of 82 after serving as a labor arbitrator for more than 40 years.

Pastor/Honorable John F. Payne, age 72, of Kansas City on November 4, 2018. He was a veteran of the U.S. Air Force and earned his J.D. from the University of Missouri-Kansas City. He practiced law as a partner of Gray, Payne & Roque before serving as a family court commissioner for the 16th Judicial Circuit Court, Juvenile Division 41, for nearly 18 years, retiring in 2008. In 2003, the Missouri Governor and General Assembly established the commission on Children’s Justice and named Payne as a member. Ordained in 1992, he was called to be pastor of the Temple of Faith in 2003. He served as a member of the board of Niles Home for Children and in November 2009 was named Outstanding Family Advocate-2009 by the Cornerstones of Care.

Stacey M. Reines of Overland Park, KS on October 18, 2018 at the age of 63. She received her J.D. from Washington University and joined The Missouri Bar in 1981. She started her career as in-house counsel at the Housing Authority of Kansas City and most recently worked at Meico Lamp Parts.

Daniel D. Sawyer, age 89, of Leawood, KS on October 15, 2018. In 1946, he joined the U.S. Army Air Forces and served in Japan as a paratrooper. In 1956, he earned his law degree from the University of Missouri-Kansas City and joined The Missouri Bar. That same year, he joined the law firm of Hubbell, Lane & Sawyer, where he practiced law for more than 40 years before his retirement. He then served as of counsel for the Barnes Law Firm for several years before his final
retirement. In addition to being past president of the Missouri Association of Trial Attorneys, he was an active member of the VFW, having served as commander of Pete Dover Post 302.

Hon. Harvey J. Schramm of Brentwood on December 9, 2018 at the age of 80. He was a veteran of the U.S. Army, serving in the Active Army Reserves from 1960-1961. He earned his law degree from Washington University and served as St. Louis County prosecutor for three years before the governor appointed him as judge at the St. Louis County Courthouse, where he served eight years. He continued in his private law practice for more than 35 years. He also served as president of the St. Louis Chapter of B’nai B’rith and on the board of directors of the American Jewish Congress.

Don R. Wintermeyer of Georgetown, TX on July 27, 2018 at the age of 77. He joined The Missouri Bar in 1966.

The Journal of The Missouri Bar publishes items in the “In Memoriam” section as they are received. To honor the lives and achievements of deceased members, The Missouri Bar solicits additional information about these men and women from family members or printed obituaries. When that information is not provided or is otherwise unavailable, the Journal will print only the deceased’s name, city of residence, and date of death.

President’s Page

Continued from page 6

academics, community members, elected officials, or other interested stakeholders, Missouri lawyers are positioned and able to help others work together to address today’s problems in a productive and collaborative way. I invite you to join your Missouri Bar in fostering these important conversations to improve our profession, the law, and the lives of our fellow Missourians.

Endnotes
1 Raymond E. Williams is an attorney with Williams Law Offices, LLC in West Plains.
2 See Joseph P. Lash, Helen and Teacher: The Story of Helen Keller and Anne Sullivan Macy (Radcliffe 1980).
4 Id.
5 Id.
6 Id.
7 See, e.g., Dan Kittay, Bringing People Together: The Bar’s Role as Convener, BAR LEADER, Jan.-Feb. 2018.
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<tr>
<td>1/9/19</td>
<td>Jeffrey B. Allen</td>
<td>255 N. Adams, Ste. C P.O. Box 996 Lebanon, MO 65536</td>
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### Reprimands

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<td>11/1/18</td>
<td>Robert B. Leggat Jr.</td>
<td>112 S. Hanley, Ste. 200 St. Louis, MO 63105</td>
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<td>Lamar E. Otten Jr.</td>
<td>112 S. Hanley, Ste. 200 St. Louis, MO 63105</td>
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<td>11/26/18</td>
<td>Bradford C. Emert</td>
<td>11934 Bedford Dr. St. Louis, MO 63131</td>
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<tr>
<td>12/6/18</td>
<td>Jay R. Yorke</td>
<td>16 E. Stoddard St. P.O. Box 621 Dexter, MO 63841</td>
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Copy must be received by February 20 (for March/April issue), April 20 (for May/June issue), June 20 (for July/August issue), August 20 (for September/October issue), October 20 (for November/December issue), and December 20 (for January/February issue). Send notices to Cynthia Heerboth at The Missouri Bar, P.O. Box 119, Jefferson City, MO 65101, by e-mail to cheerboth@mobar.org.

NOTICE OF WINDING UP OF LIMITED PARTNERSHIP TO ALL CREDITORS OF AND CLAIMANTS AGAINST WIL-MAR ACRES, LP

On October 16, 2018, WIL-MAR ACRES, LP, a Missouri limited partnership, filed a Cancellation of Registration with the Missouri Secretary of State. Persons with claims against the limited partnership are requested to present them in accordance with the Notice of Winding Up. You must furnish your name, address, and telephone number together with the following: (1) Amount of the claim; (2) Basis for the claim; and (3) Documentation of the claim.

Claims must be mailed to: Robert C. Black, 245 Main St., P.O. Box 2058, Platte City, MO 64079.

A claim against the limited partnership will be barred unless the proceeding to enforce the claim is commenced within three (3) years after the date this notice is published.

NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST ABLES MANOR PROPERTIES, LLC

On October 30, 2018, Ables Manor Properties, LLC, a Missouri limited liability company (hereinafter the “Company”), filed its Notice of Winding Up for a Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Terry Cole, 1311 Columbine, Sikeston, Missouri 63801. 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 date this notice is published.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST THE GREEN CORPORATION

On October 30, 2018, The Green Company, Inc. filed its articles of dissolution with the Missouri Secretary of State. The dissolution was effective on October 30, 2018.

You are hereby notified that if you believe you have a claim against The Green Company, Inc., you must submit a summary in writing of the circumstances surrounding your claim to the Corporation in care of Patrick E. White, P.O. Box 7183, Kansas City, MO 64113. 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 The Green Company, Inc. will be barred unless the proceeding to enforce the claim is commenced within two years after the date this notice is published.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST ARBORS AT KEHRS MILL, LLC

Arbors at Kehrs Mill, LLC, a Missouri limited liability company, filed its Notice of Winding Up with the Missouri Secretary of State on October 30, 2018.

Any and all claims against Arbors at Kehrs Mill, LLC may be sent to Robert Berra, 5091 New Baumgartner Road, St. Louis, Missouri 63129. 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; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Arbors at Kehrs Mill, LLC will be barred unless the proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST DEER & DUCKS, LLC

Deer & Ducks, LLC, a Missouri limited liability company, filed its Notice of Winding Up with the Missouri Secretary of State on October 30, 2018.

Any and all claims against Deer & Ducks, LLC may be sent to Robert Berra, 5091 New Baumgartner Road, St. Louis, Missouri 63129. 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; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Deer & Ducks Mill, LLC will be barred unless the proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST THE VILLAS AT SUSON HILLS, LLC

The Villas at Suson Hills, LLC, a Missouri limited liability company, filed its Notice of Winding Up with the Missouri Secretary of State on October 30, 2018.

Any and all claims against The Villas at Suson Hills, LLC may be sent to Robert Berra, 5091 New Baumgartner Road, St. Louis, Missouri 63129. 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; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against The Villas at Suson Hills, LLC will be barred unless the proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.
St. Louis, Missouri 63129. 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; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against The Villas at Suson Hills, LLC will be barred unless a proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

The company requests that all claims be presented immediately by letter to: Malika Simmons, c/o Kansas City Life Insurance Company, 3520 Broadway, KCMO 64111. Claims must include name, address, and telephone number of claimant; amount; the basis for the claim; and documentation.

All claims against the company shall be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST WILMAS FARM, LLC

Wilmas Farm, LLC, a Missouri limited liability company, filed its Notice of Winding Up with the Missouri Secretary of State on October 30, 2018.

Any and all claims against Wilmas Farm, LLC may be sent to Robert Berra, 5091 New Baumgartner Road, St. Louis, Missouri 63129. 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; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Wilmas Farm, LLC will be barred unless a proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST KCL GEORGIA CREDIT PARTNERS IIA, LLC

KCL Georgia Credit Partners IIA, LLC filed its Notice of Winding Up on November 5, 2018.

The company requests that all claims be presented immediately by letter to: Malika Simmons, c/o Kansas City Life Insurance Company, 3520 Broadway, KCMO 64111. Claims must include name, address, and telephone number of claimant; amount; the basis for the claim; and documentation.

All claims against the company shall be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST MCP 2010, LLC


The company requests that all claims be presented immediately by letter to: Malika Simmons, c/o Kansas City Life Insurance Company, 3520 Broadway, KCMO 64111. Claims must include name, address, and telephone number of claimant; amount; the basis for the claim; and documentation.

All claims against the company shall be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST MISSOURI CREDIT PARTNERS 2002, LLC

Missouri Credit Partners 2002, LLC filed its Notice of Winding Up on November 5, 2018.

The company requests that all claims be presented immediately by letter to: Malika Simmons, c/o Kansas City Life Insurance Company, 3520 Broadway, KCMO 64111. Claims must include name, address, and telephone number of claimant; amount; the basis for the claim; and documentation.

All claims against the company shall be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST PREMIER PAPER AND PACKAGING, INC.

On October 8, 2018, Premier Paper and Packaging, Inc., a Missouri corporation (the “Corporation”), filed its Articles of Dissolution with the Missouri Secretary of State. The dissolution was effective upon this date.

You are hereby notified that if you believe you have a claim against the Corporation, you must submit a written summary of your claim to the Corporation care of The Law Firm of Haden & Haden, ATTN: Brent Haden, PO Box 7166, Columbia, MO 65205. The summary of your claim must include the following information:
1. The name, address, and telephone number of claimant;
2. The amount of the claim;
3. The date on which the claim is based occurred;
4. A brief description of the nature of the debt or the basis of the claim; and
5. Whether the claim is secured, and if so, the collateral used as security.

All claims against the Corporation will be barred unless this summary is received within 2 years of this notice.

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

On November 7, 2018, LBR – Lambert, LLC filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The notice was effective on November 7, 2018.

YOU ARE HEREBY NOTIFIED that if you believe you have a claim against LBR – Lambert, LLC, you must submit a written summary of the circumstances surrounding your claim to the said LBR – Lambert, LLC at the following address:
LBR – Lambert, LLC, 2107 Ridgecrest Street, Chillicothe, Missouri 64601.
Telephone: (660) 973-4490.

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 for which the claim is based occurred; and

...
4. A brief description of the nature of the debt or the basis for the claim.

All claims against LBR – Lambert, LLC will be barred unless the proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

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

On November 7, 2018, LBR – Fair, LLC filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The notice was effective on November 7, 2018.

YOU ARE HEREBY NOTIFIED that if you believe you have a claim against LBR – Fair, LLC, you must submit a summary in writing of the circumstances surrounding your claim to the said LBR – Fair, LLC at the following address:

LBR – Fair, LLC, 2107 Ridgecrest Street, Chillicothe, Missouri 64601.

Telephone: (660) 973-4490.

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 for which the claim is based occurred; and
4. A brief description of the nature of the debt or the basis for the claim.

All claims against LBR – Fair, LLC will be barred unless the proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

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

On November 7, 2018, LBR – Fairview, LLC filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State. The notice was effective on November 7, 2018.

YOU ARE HEREBY NOTIFIED that if you believe you have a claim against LBR – Fairview, LLC, you must submit a summary in writing of the circumstances surrounding your claim to the said LBR – Fairview, LLC at the following address:

LBR – Fairview, LLC, 2107 Ridgecrest Street, Chillicothe, Missouri 64601.

Telephone: (660) 973-4490.

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 for which the claim is based occurred; and
4. A brief description of the nature of the debt or the basis for the claim.

All claims against LBR – Fairview, LLC will be barred unless the proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST ABC OF SOUTHEAST MISSOURI, L.L.C.

On November 9, 2018, ABC of Southeast Missouri, L.L.C., a Missouri limited liability company (hereinafter the “Company”), filed its Notice of Winding Up for a Limited Liability Company with the Missouri Secretary of State.

Any claims against the Company may be sent to: Terry Cole, 1515 East Malone, Sikeston, Missouri 63801. 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 GREEN CROW, LLC

Notice is hereby given that Green Crow, LLC, a Missouri limited liability company (the “Company”), is being liquidated and dissolved pursuant to the Missouri Limited Liability Company Act (the “Act”). This notice is being given pursuant to Section 347.141 of the Act.

All persons with claims against the Company should submit them in writing in accordance with this notice to: Vatterott Harris P.C., Attn: Paul J. Harris, 2458 Old Dorsett Road, Suite 230, Maryland Heights, MO 63043.

Claims against the Company must include: (1) the claimant’s name, address, and phone number; (2) the amount claimed; (3) the date the claim arose; (4) the basis of the claim; and (5) documentation supporting the claim.

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

NOTICE OF CORPORATE DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST FIRST BANC INSURANCE SERVICES CORPORATION

On October 16, 2018, FIRST BANC INSURANCE SERVICES CORPORATION, a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Secretary of State of Missouri, effective on October 16, 2018.

Any claims against FIRST BANC INSURANCE SERVICES CORPORATION may be sent to: Legal Department, 11901 Olive Blvd., Suite 212 Creve Coeur, Missouri 63141. Each claim must include the following information: name, address, and telephone number of the claimant; amount claimed; date on which the claim arose; basis for the claim; and documentation supporting the claim.
Each claim will be barred unless a proceeding to enforce it is commenced within two (2) years after publication of this notice.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST SUMMER CASUAL, LLC

You are hereby notified that on November 6, 2018, Summer Casual, LLC, a Missouri limited liability company (“LLC”) was dissolved upon the filing of its Articles of Termination with the Missouri Secretary of State.

Said LLC requests that all persons and organizations who have claims against it present them immediately by letter to the LLC c/o Checkett & Pauly, PC, PO Box 409, Carthage, MO 64836, Attention: Sarah Kersh. All claims must include: (1) the name and address of the claimant; (2) the amount claimed; (3) the basis for the claim; (4) the documentation of the claim; and (5) the date(s) of the event(s) on which the claim is based occurred.

Notice: Because of the termination of Summer Casual, LLC, any claims against it 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 LAUREL HOTEL MANAGER, LLC

Laurel Hotel Manager, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on November 29, 2018.

Any and all claims against Laurel Hotel Manager, LLC may be sent to Brian J. Beck, 7733 Forsyth Blvd., Suite 400, Clayton, MO 63105. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis of the claim; and documentation in support of the claim.

Any and all claims against Laurel Hotel Manager, LLC will be barred unless a proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST LAUREL HOTEL MASTER TENANT, LLC

Laurel Hotel Master Tenant, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on November 29, 2018.

Any and all claims against Laurel Hotel Master Tenant, LLC may be sent to Brian J. Beck, 7733 Forsyth Blvd., Suite 400, Clayton, MO 63105. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis of the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Laurel Hotel Master Tenant, LLC will be barred unless a proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

NOTICE OF CORPORATE DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST RANDOM APP, INC.

On December 10, 2018, Random App, Inc., a Missouri corporation, filed its Articles of Dissolution with the Missouri Secretary of State. Dissolution was effective on December 10, 2018.

Said corporation requests that all persons and organizations who have claims against it present them immediately by letter to the corporation at:
Random App., Inc.
David P. Weiss, Esq.
Sandberg Phoenix & von Gontard PC.
600 Washington Avenue, 15th Floor
St. Louis, MO 63101
NOTICE OF WINDING UP
TO ALL CREDITORS OF AND CLAIMANTS AGAINST
SERENDIPITY GALLERY LLC
Serendipity Gallery LLC, a Missouri limited liability company (the “Company”), was dissolved on December 9, 2018 by filing a Notice of Winding Up with the Missouri Secretary of State.

The Company requests that all persons and entities with claims against the Company present them in writing and by mail to Lisa A. Houdyshell, 8124 General Sheridan Lane, St. Louis, MO 63123.

Each claim must include:
1. The name, address, and telephone number of the claimant;
2. The amount of the claim;
3. The basis of the claim;
4. The date the claim arose; and
5. Documentation of the claim.

A claim against the Company will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication date of the two notices authorized by statute, whichever is published last.

NOTICE OF WINDING UP
OF LIMITED PARTNERSHIP TO ALL
CREDITORS OF AND CLAIMANTS AGAINST
KOENIG WILLIAMSBURG PROPERTY, L.P.
On this 4th day of December 2018 KOENIG WILLIAMSBURG PROPERTY, L.P., hereinafter referred to as (“LIMITED PARTNERSHIP”), filed its Notice of Winding Up for a Limited Partnership with the Missouri Secretary of State.

All persons and organizations with claims against the Limited Partnership must submit a written summary of any and all claims against the Limited Partnership to ZOLLMANN LAW LLC, Attention: W.J. Zollmann, III, 511 West Pearce Boulevard, Wentzville, Missouri 63365, which summary shall include the name, address, and telephone number of the claimant; the amount of the claim; date(s) the claim accrued; a brief description of the nature and basis of the claim; and any documentation of the claim.

Claims against the Limited Partnership will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

NOTICE OF WINDING UP
TO ALL CREDITORS OF AND CLAIMANTS AGAINST
MAXSON-SPA BUILDING LLC
Maxson-Spa Building LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on December 11, 2018.

Any and all claims against Maxson-Spa Building LLC may be sent to Rosenblum Goldenshersh, P.C., c/o David S. Lang, Esq., 7733 Forsyth Blvd., 4th Floor, St. Louis, MO 63105. Each claim should include the following information: the name, address, and telephone number of the claimant; the amount of the claim; the basis of the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Maxson-Spa Building LLC will be barred unless a proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

NOTICE OF DISSOLUTION TO ALL
CREDITORS OF AND CLAIMANTS AGAINST
DIAMOND LITE, INC.
On December 17, 2018, Diamond Lite, Inc. filed Articles of Dissolution by Voluntary Action with the Missouri Secretary of State. The dissolution was effective on December 31, 2018.

Claims against the Corporation must be submitted to Diamond Lite, Inc., c/o Allen & Rector, P.C., Attorneys at Law, 135 Harwood Avenue, P.O. Box 1700, Lebanon, Missouri 65536.

Claims must include: (1) The name, address, and telephone number of the claimant; (2) The amount and date of the claim; and (3) a brief description of the basis of the claim, including documentation.

NOTICE: All claims will be barred unless a proceeding to enforce the claim is commenced within two years after the date of the publication of this notice.
NOTICE OF CORPORATE DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST MACKS CREEK BANCSHARES, INC.

Macks Creek Bancshares, Inc., a Missouri corporation, filed its Articles of Dissolution with the Missouri Secretary of State.

All claims against the corporation shall be sent to David L. Wieland, Wieland & Condry, LLC, 1548 E. Primrose, Springfield, MO 65804. Each claim should include the following: name, address, and telephone number of the claimant; amount of the claim; the date the claim accrued; and the basis of the claim and any documentation.

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 OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST CARRIE REDEVELOPMENT, LLC

On December 19, 2018, CARRIE REDEVELOPMENT, LLC, a Missouri limited liability company, filed its Articles of Termination and Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State, effective on December 31, 2018.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the company at:

CARRIE REDEVELOPMENT, LLC
Attn: Mary C. Kickham, Manager
14001 New Bedford Court
Chesterfield, MO 63017

With a copy to:
Sandberg Phoenix & von Gontard, P.C.
Attn: Anthony J. Soukenik, Esq.
600 Washington Avenue, 15th Floor
St. Louis, MO 63101
(314) 231-3332

All claims must include the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the notice of winding up of CARRIE REDEVELOPMENT, LLC, any claim against it will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication date of the notices authorized by statute, whichever is published last.

COMMUNITY VOCATIONAL SCHOOLS OF LAS VEGAS, LLC
Attn: JR&M, LLC
648 Trade Center Boulevard
Chesterfield, MO 63005

or
Ann Bodewes Stephens, Esq.
Sandberg Phoenix & von Gontard, P.C.
600 Washington Avenue, 15th Floor
St. Louis, MO 63101

All claims must include the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the notice of dissolution of COMMUNITY VOCATIONAL SCHOOLS OF LAS VEGAS, LLC, any claim against it will be barred unless a proceeding to enforce the claim is commenced within the statutorily authorized timeframe after the publication date of the notices authorized by statute, whichever is published last.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST CASA BELLA DEVELOPMENT, LLC

On December 14, 2018, Casa Bella Development, LLC, a Missouri limited liability company, filed its Notice of Winding Up with the Missouri Secretary of State. Dissolution was effective on December 19, 2018.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the company at:

CASA BELLA DEVELOPMENT, LLC
Attn: Rick J. Muenks, Attorney
648 Trade Center Boulevard
Chesterfield, MO 63005

or
Ann Bodewes Stephens, Esq.
Sandberg Phoenix & von Gontard, P.C.
600 Washington Avenue, 15th Floor
St. Louis, MO 63101

All claims must include the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the dissolution of CASA BELLA DEVELOPMENT, LLC, any claim against it will be barred unless a proceeding to enforce the claim is commenced within the statutorily authorized timeframe after the publication date of the notices authorized by statute, whichever is published last.

NOTICE OF DISSOLUTION TO ALL CREDITORS OF AND CLAIMANTS AGAINST SNAGTAGG LLC

On November 19, 2018, SNAGTAGG LLC, a Missouri limited liability company, filed its Notice of Winding Up with the Missouri Secretary of State. Dissolution was effective on November 19, 2018.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the company at:

SNAGTAGG LLC
Attn: James S. Gans
648 Trade Center Boulevard
Chesterfield, MO 63005

or
Ann Bodewes Stephens, Esq.
Sandberg Phoenix & von Gontard, P.C.
600 Washington Avenue, 15th Floor
St. Louis, MO 63101

All claims must include the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the dissolution of SNAGTAGG LLC, any claim against it will be barred unless a proceeding to enforce the claim is commenced within the statutorily authorized timeframe after the publication date of the notices authorized by statute, whichever is published last.
at Law, 3041 S. Kimbrough Avenue, Suite 106, Springfield, Missouri 65807. Claims must include name and address of claimant; amount of claim; basis of claim; and documentation of claim.

Pursuant to Section 347.141 RSMo, any claim against Casa Bella Development, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

Pursuant to Section 347.141 RSMo, any claim against Lexington Square, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

NOTICE OF DISSOLUTION OF LIMITED LIABILITY COMPANY TO ALL CREDITORS OF AND CLAIMANTS AGAINST LEXINGTON SQUARE, LLC

On December 14, 2018, Lexington Square, 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 by letter immediately to the company in care of: Rick J. Muenks, Attorney at Law, 3041 S. Kimbrough Avenue, Suite 106, Springfield, Missouri 65807. Claims must include name and address of claimant; amount of claim; basis of claim; and documentation of claim.

Pursuant to Section 347.141 RSMo, any claim against Lexington Square, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of this notice.

The Flag

Continued from page 12

doctrine in Missouri. *Southers v. City of Farmington*, 263 S.W.3d 603, 610 (Mo. banc 2008). The protection is codified by Sections 537.600 to 537.650. As a public entity, Bi-State was entitled to sovereign immunity from tort liability except to the extent immunity was waived under Section 537.600.22

“By its plain language, Section 537.600 applies to the “public entity,” Bi-State, and not its employee, Allen. Additionally, by its plain language, it is clear that the statutory immunity afforded Bi-State under the statute does not apply to its employee driver.”23 “Section 537.610.5 further provides for annual adjustments on the limit amounts listed, and, at the time of trial court’s amended judgment in 2017, the limit amount for a single accident or occurrence was $414,418 (rather than $300,000).”24

We find *State ex rel. Trimble v. Ryan*, 745 S.W.2d 672, 675 (Mo. banc 1988) directly on point. In *Trimble*, an action arose out of alleged negligence in a driver’s operation of a Bi-State bus. The Missouri Supreme Court concluded that Bi-State was entitled to sovereign immunity under Section 537.600 and a reduction of the damage award under Section 537.610; however, the Court specifically held Bi-State’s driver was not entitled to a reduction.25

“More recent caselaw has similarly found that the immunity provision does not apply to the agent-employee of the government entity….26 “Therefore, because Missouri law clearly provides that the statutory cap set forth in Section 537.610.2 does not apply to public employees arising out of the operation of motor vehicles within the course of their employment, the trial court did not err in denying Appellants’ Motion for Remittitur with respect to Allen.”27

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, PC.


3 Id.
There is much debate as to the correlation between eyewitness confidence and understanding eyewitness testimony. How Memory Works: A Representative Survey of the U.S. Population. (2015), https://www.courts.mo.gov/ile.jsp?id=95086


18 MAI 310.02 Eyewitness Identification Testimony (Approved December 16, 2015), https://www.courts.mo.gov/file.jsp?id=95086

19 565 U.S. 228, 246 (2012) (addressing the “safeguards built into our adversary system that caution juries”). Id. at 245.


21 Id. at 1.

22 MAI 310.02 Eyewitness Identification Testimony (Approved December 16, 2015), https://www.courts.mo.gov/file.jsp?id=95086


24 Id.


28 Henderson, 27 A.3d at 924.


31 Id.


34 Id.

35 Id.


37 762 S.W.2d 820, 822 (Mo. banc 1988).

38 Id. at 823.

39 Id. (citing State v. George, 481 A.2d 1068, 1075 (Conn. 1984)).

40 780 S.W.2d 45 (Mo. banc 1989).


42 Id.

43 People v. Lerman, 47 N.E.3d 985, 993 (Ill. 2016).

44 In fact, in Commonwealth v. Walker, 92 A.3d 766, 782-83 (Pa. 2014), the Supreme Court of Pennsylvania collected cases from 44 states, the District of Columbia, and 10 federal circuit courts, noting “there is a clear trend among state and federal courts permitting the admission of expert eyewitness testimony, at the discretion of the trial court, for the purpose of aiding the trier of fact in understanding the characteristics of eyewitness identification.” Interestingly, it included Missouri as a state following this trend, citing State v. White, 326 S.W.3d 512 (Mo. App. S.D. 2010). In that case, however, the Southern District did not permit the admissibility of such testimony, but rather, citing Laschev & Whitmull, found no abuse of discretion in a trial court’s decision to grant a prosecutor’s motion in limine to exclude “testimony from [defendant’s] expert witness concerning the fallibility of eyewitness identification testimony.” Id. at 526, 529-30.

45 Section 490.065, RSMo 2017; see also Daubert v. Merrell Dow Pharm., 509 U.S. 579 (1997). Prior to Missouri’s adoption of the Daubert standard, trial courts had to first had the underlying science was generally accepted as reliable by the relevant scientific community in order to allow the expert to testify in a criminal case. See State v. Knightly, 147 S.W.3d 179, 187 (Mo. App. S.D. 2004). Now, the trial judge has broad discretion in determining the reliability of scientific knowledge after considering a number of factors.


48 Section 547.200, RSMo 2017.


50 See e.g., State v. Carr, 331 P.3d 544, 690 (Kan. 2014) (finding “it is an abuse of discretion for . . . trial [courts] to automatically exclude [such] testimony’); People v. Lerman, 47 N.E.3d 983, 996-97 (Ill. 2016); Commonwealth v. Walker, 92 A.3d 766, 792-93 (Pa. 2014) (finding such testimony is no longer per se admissible); State v. Copeland, 226 S.W.3d 297, 304 (Tenn. 2007).


52 Nagy, 505 S.W.3d at 298.

53 Id.

Adams to either accept Forbush’s offer in its entirety or purchase Forbush’s shares on the same terms and conditions as contained in Forbush’s offer (including the unrelated terms).

The court held that “[b]ecause Texas Shootout Provisions are not contained in the additional terms and conditions in Forbush’s offer, the parties needed not conform to the requirements of the agreement’s Texas Shootout Provision.” Therefore, Forbush’s offer did not conform to the requirements of the agreement’s Texas Shootout Provision.

Although non-conforming, the Eastern District held that Forbush’s offer was not entirely void, as the parties need not be confined to the dictates of the Texas Shootout Provision in winding up their business. After considering Adams’ partial acceptance of Forbush’s offer, the Eastern District held that Adams’ “purported acceptance” was in fact a “counteroffer” as it “introduce[d] new or variant terms.” Because Forbush never responded to Adams’ counteroffer, the counteroffer failed, and the parties never reached an enforceable agreement.

Contractual Limitations on Remedies and Damages

Another provision that partners, shareholders, or members may include in their governing contractual business agreement is a “limitation of liability or damages” provision. Such a provision places limitations or prohibitions on a party’s exposure to legal liability or damages. An example of such a provision was considered in *Jacobson Warehouse Co., Inc. v. Schnuck Markets, Inc.* In *Jacobson*, the parties’ agreement included the following “limitation of” provision:

[U]nless otherwise prohibited by law, neither party shall be liable for incidental or consequential damages or indirect, special or punitive damages. Notwithstanding the foregoing limitations on types of damages, in the event that [the plaintiff, d/b/a XPO Logistics Supply Chain] would otherwise be liable to Schnucks for consequential, indirect, special or punitive damages, XPO shall be liable to Schnucks for such damages up to Schnucks’ self-insured retention under any applicable insurance policy maintained by Schnucks, not to exceed Five Hundred Thousand Dollars ($500,000)."

The U.S. District Court for the Eastern District of Missouri considered whether such a provision barred the defendant’s negligence claim. Defendant Schnuck contended that the provision applied only “to contractual claims under the agreement, and [did] not waive liability for damages consequential to a negligence claim.” The plaintiff, on the other hand, argued that the limitation of liability provision applied to Schnuck’s negligence claim, and the claim must therefore be dismissed.

“It is well-settled in Missouri that sophisticated business entities may contractually limit future remedies.” Such “[c]ontrastual limitations of liability . . . for consequential damages do not violate public policy where the language is ‘clear, unambiguous, unmistakable, and conspicuous.’”

The court considered the plain language of the operating agreement and held that the provision precluded recovery on Schnuck’s negligence claim, and dismissed the claim to the extent it sought damages barred by the provision limiting liability.

Important Issues to Consider When Drafting Agreements and Litigating Claims

The Economic Loss Doctrine

The economic loss doctrine prohibits a plaintiff from seeking to recover in tort for economic losses that are contractual in nature. “The doctrine exists to protect the integrity of the bargaining process, through which the parties have allocated the costs and risks.” Missouri courts have recognized specific exceptions to the economic loss doctrine in cases involving a fiduciary relationship or negligence in providing professional services. Another recognized exception applies where the defendant breached a public duty.

In *Jacobson*, plaintiff XPO entered into an operating agreement with defendant Schnuck “setting forth terms and conditions under which XPO would provide certain warehouse management services for [Schnuck’s] new distribution facility.” Ultimately, the relationship deteriorated, and in the ensuing litigation between the parties, “Schnuck allege[d] that XPO was negligent in operating the Facility. Specifically, Schnuck claimed that XPO breached its duty of care by ‘failing to conduct its operations pursuant to prevailing warehouse industry practices and inadequately planning, hiring, training, staffing, and supervising’ at the Facility.”

XPO [alleged] that Schnuck’s negligence claim should be dismissed [pursuant to] the economic loss doctrine because it is not independent of its breach of contract claim; both claims reference the same subject matter of the Agreement – management of the Facility, and the same standard of care – “prevailing warehouse industry standards.”

The Eastern District disagreed with XPO and denied its motion to dismiss Schnuck’s negligence claim on the basis of the economic loss doctrine. Although XPO’s agreement “to adhere to [certain] performance requirements” originated in the operating agreement, Missouri law provides that “while a mere breach of contract does not provide a basis for tort liability, the negligent act or omission which breaches the contract may serve as a basis for an action in tort.”

In determining whether a claim is prohibited by the economic loss doctrine, the following should be considered: “If the duty arises solely from the contract, the action is contractual. The action may be in tort, however, if the party sues for breach of a duty recognized by the law as arising from the relationship or status the parties have created by their agreement.” Applying this, the Eastern District held that because

Schnuck allege[d] that XPO was obligated to “perform the services necessary for the proper, accurate and efficient operation of the Facility” and to perform those services...
“in a good, professional, workmanlike, expeditious, and economical manner, consistent with the most efficient operation of the warehouse in accordance with the standards and prevailing practices in the warehouse industry.” . . . Schnuck’s negligence claim [did] not arise solely in contract and [would] not be dismissed [pursuant to the economic loss doctrine].”92

Additionally, the Eastern District held that where, as in Jacobson, the “contracting parties ‘require the exercise of reasonable skill, diligence, and care in the handling of business given over or entrusted to’ a defendant, a special relationship . . . is created by [that] contract.”93 In that case, “[a] tort action may be pursued ‘if the party sues for breach of a duty recognized by the law as arising from the relationship or status the parties have created by their agreement.’”94

Lastly, Schnuck “asserted that because XPO provided professional services to Schnuck and held itself out as a professional by representing it was skilled in the warehousing operation of the warehouse in accordance with the most efficient and economical manner, consistent with the most efficient”95

The professional services exception to the economic loss doctrine “is applied to negligence claims involving [individuals] who have been held to a professional, rather than an ordinary, standard of care and who have provided professional services to the plaintiff.”96 The court agreed that this exception could apply, and declined to rule that Schnuck’s negligence claim arose solely in contract and was barred by the economic loss doctrine.

Joint Ventures and Morley vs. Square, Inc.

A “joint venture” is subject to the same legal principles as a partnership.97 “Indeed, the legal principles for determining the existence of a joint venture have been said to be identical to those for determining a partnership, and the two may be created in the same ways.”98 In Morley, the U.S. District Court for the Eastern District of Missouri, Eastern Division, applied Missouri law to determine whether a joint venture existed between plaintiff Morley and defendants McKelvey and Dorsey. Plaintiff Morley “alleged[d] that Dorsey, McKelvey, and Morley ‘agreed to create and develop a mobile credit card transaction business’ which ‘used [plaintiff] Morley’s inventions [and ideas].’”99

Plaintiff [Morley] alleged[d] that McKelvey and Dorsey breached the [joint venture] agreement by refusing to recognize Morley’s one-third ownership and control interests, incorporating a new company, funneling all assets out of the joint venture and into that new company, and excluding Morley from ownership in and control of that company.100

McKelvey and Dorsey sought summary judgment on Morley’s joint venture claim, arguing that Morley could not “overcome the steep standard of proof required to establish [the] claim.”101 This argument required the court to determine which burden of proof standard is required “to establish a joint venture”; i.e., “a preponderance of the evidence standard” or “a clear and convincing evidence standard.” The court acknowledged that Missouri law was confusing on the issue, but that the . . . last pronouncement by the Supreme Court of Missouri . . . in Grisum v. Reesman, 505 S.W.2d 81, noted that the burden is a preponderance of the evidence unless the joint venture at issue involves “an oral contract to convey real estate or the establishment of a resulting trust in real property,” in which case the higher clear and convincing burden applies.92

Relying on this Supreme Court of Missouri precedent, the Morley court held that the correct standard in determining whether a joint venture exists is preponderance of the evidence.92 “The clear and convincing standard . . . is simply the exception to the general rule for those two particular categories of cases.”94

Applying the preponderance of the evidence standard, the Morley court considered whether there was a dispute of fact regarding the existence of a joint venture. Plaintiff Morley argued there was ‘ample evidence of the parties’ . . . intent to carry on . . . as co-owners[,]’ including:

(1) the circumstances of Morley’s invitation to be part of the enterprise; (2) the transformative nature of Morley’s . . . contribution; (3) the lack of a consulting agreement with Morley in light of the fact that other “consultants” had such agreements; . . . [(4)] verbal and written representations by the parties and others; and [(5)] the ‘defendants’’ final negotiations with Morley.”96

Defendants, on the other hand, argue[d] that [a joint venture did not exist because] Morley did not share in the company’s profits or risk of losses, had no voice in management or role in the direction of the company, had no role in employment decisions, had no ability to enter contracts for the company, was not held out as a partner to third-parties, and was willing to accept[] a mere 1% . . . stake in the company.”97

The court considered the parties’ arguments and explained that “when one party contributes the capital and the other the labor, skill or experience for carrying on a joint enterprise, such a combination constitutes a partnership unless something appears to indicate the absence of a joint ownership of the business and profits.”98 Further, the court explained that, pursuant to Missouri law, “there need not necessarily be an agreement to share losses” in order to find an implied partnership.99 The court ultimately denied defendants’ motion for summary judgement, finding that it was

clear to this Court that McKelvey and Dorsey intended to work with Morley to build a business in the mobile payments industry. Whether or not that intention rose to the level of a joint venture or partnership appears to this Court to be a question for the jury.100

An important factor for the court was that Morley’s idea in using a cell phone to read a credit card’s magnetic strip (as opposed to defendants’ original idea of using the phone camera to capture credit card numbers) was transformative because it changed the entire direction of defendants’ thinking and business plan:

Plaintiff asks how defendants could pursue an entire business on that idea, in collaboration with Morley, and
not believe that such a pursuit and collaboration was significant, probative evidence of whether or not the parties intended to carry on as co-owners. This Court agrees.

Morley had not suggested a mere logo or a company name – his idea and prototype shaped the company itself.101

The court rejected defendants’ argument that the court’s denial of their motion for summary judgment would “open the floodgates to partnership claims by every entry level startup employee.”102 The court explained:

[D]efendants once again downplay the importance of Morley’s contribution and role within the business. Considering the totality of the circumstances – the parties’ preexisting relationships, McKelvey’s invitation to “play” and earlier communications about entrepreneurial activity with Morley, the transformative nature of Morley’s idea and his work in bringing that idea to life, Morley’s continued role within the business and his work to patent the card reader (paid for by McKelvey), the promise of a “stock deal,” just to name a few – there is at least a question of fact as to whether the parties intended to carry on this business as co-owners.103

The court went on to deny defendants’ motion for summary judgment as it related to plaintiff Morley’s fraud-based claims. Morley contended – and the court agreed – that when the evidence was presented to the jury, “the same facts that support Morley’s joint venture claim could alternatively lead the jury to a slightly different conclusion: that is, although defendants may not have intended to start a business as co-owners with Morley, they did intend to defraud him in order to obtain, without compensation, his contributions.”104

Morley is an important case for business attorneys to be familiar with, as it provides an example of individuals coming together to perform business without drawing clear lines as to what their relationship will consist of, resulting in a fight over a joint venture claim. Morley also demonstrates that in the event a plaintiff is wrong that a partnership or joint venture existed between the parties, the plaintiff may still have a viable fraud claim on which he can recover.

Who Can Be Held Liable for Breach of Contract?

A person can be held liable for breaches of a corporate agreement if that person signed the agreement in their individual capacity. This is distinguishable from a situation in which a person signs in a representative capacity, such as on behalf of an entity or trust. In that situation, the person will not be held liable in his individual capacity.

In Gryphon Investments III, LLC ex rel. Schenk v. Wehrle,105 for example, the court dismissed a breach of contract claim where the plaintiff sought to hold a defendant individually liable based on the defendant’s signature on the operating agreement in his capacity as a trustee. The court stated: “Gryphon III alleges that Wehrle’s actions of diverting funds from Gryphon III breached the Operating Agreement. However, Wehrle is not a party to the Operating Agreement. He signed that document in his capacity as the trustee of the John S. Wehrle Revocable Living Trust.”106 As such, Wehrle could not be held liable in his individual capacity for breach of the operating agreement.

This standard similarly applies to arbitration provisions in operating agreements.107 In Springfield Iron & Metal, LLC v. Westfall, the Missouri Court of Appeals – Southern District considered whether individuals who sign an operating agreement in their representative capacities could enforce an arbitration provision located in the operating agreement for claims they bring individually. The company at issue – Springfield Iron & Metal, LLC – had two members: Westfall (an individual) and Griesedieck Brothers (an LLC with two owners – Paul and Chris). Westfall signed Springfield Iron & Metal, LLC’s operating agreement in his individual capacity.108 Paul and Chris signed the operating agreement in their representative capacities as members of Griesedieck Brothers, LLC.109 During an ensuing lawsuit between the parties in which Paul, Chris, and Springfield Iron & Metal brought claims against Westfall, Paul and Chris moved to compel arbitration on all claims based on Springfield’s operating agreement.110

Westfall contended that only the agreement’s signers were subject to arbitration.111 Paul and Chris first argued that they were “entitled to the benefit of arbitration” because [they] each had a ‘close relationship’ with [Griesedieck Brothers, LLC (which signed the operating agreement)] and non-arbitration of their claims ‘would eviscerate’ [Springfield’s] operating agreement.”112 The court disagreed, holding that “[t]o compel arbitration of non-signatory claims – even those ‘inextricably intertwined’ with signatory claims – ‘is inconsistent with the overarching rule that arbitration is ultimately a matter of agreement between the parties.”113

The court further rejected the argument that, as the agents for Griesedieck Brothers, LLC, Paul and Chris share the LLC’s “power to compel arbitration under the operating agreement[].”

The agreement does not name the Griesediecks as parties or treat them as such, nor did they sign it as individuals, but only as members of [Griesedieck Brothers, LLC]. By signing only as agents in a representative capacity, the Griesediecks are not bound by or to the agreement as individuals…. It is the principal that can be bound by the signature of the agent, not the agent that can be bound by the signature of the principal.114

The court similarly found unconvincing Paul’s and Chris’s argument that it was “only logical and efficient for everyone to arbitrate” all claims together and that “inconsistency [may arise] if some claims are arbitrated while others are not.”115 The court held that the Supreme Court of Missouri “deems arbitration a matter of agreement, even if arbitrated and non-arbitrated issues are ‘inextricably intertwined.’”116 “We are not free to erode arbitration’s voluntary nature for the sake of judicial convenience.”117

Business Contracts – Unlimited Power?

While parties have broad discretion to enter into contractual agreements to govern their business relationships, such discretion
is not unlimited. For example, business owners may not enter into agreements that violate state or federal laws. This was demonstrated in *Grillo v. Global Patent Group LLC*, in which the Missouri Court of Appeals – Eastern District held that a nonlawyer officer manager’s alleged agreement with a lawyer to share in the profits of the lawyer’s firm was unenforceable, as it violated a Missouri statute prohibiting the splitting of compensation with nonlawyers.

Additionally, minority shareholders, members, and partners may have claims against majority shareholders, managers, or controlling partners if the corporate agreements between the parties are breached, applied oppressively, or applied in ways that breach the defendants’ fiduciary duties.

**Conclusion**

Attorneys representing business clients must be familiar with the types of agreements and provisions that can be useful, or should be avoided, in business entities. What type of entity and what type of agreement best suits the client? Should the agreement include exit ramps, with buyout formulas, in the event of disability or death? What fiduciary duties should be explicitly discussed in the agreement? Attorneys well-versed in the statutes provision related to partnerships, LLCs, corporations, and joint ventures, along with the applicable case law, will be best able to assist their business clients. Absent clear agreements, the parties’ rights when things go wrong will then often depend on case law dealing with fiduciary duties and shareholder and member oppression.

**Endnotes**

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10. *Id.*

11. *Grissum v. Roesman*, 505 S.W.2d 81, 86 (Mo. 1974).


17. *Id.* at *7.

18. *Id.* at *6.

19. *Id.*

20. *Id.* at *5.

21. *Id.* at *2.

22. *Nicolaizzi* at *7.

23. *Id.* at *6.

24. *Id.* at *4.

25. *Id.*

26. *Id.*

27. *Id.* at 393.


29. *Lerner* at 449.

30. *Id.*


33. *Id.* at 509.

34. *Id.* at 511.

35. *Id.*

36. *Id.* at 512.


38. *LaRue*, 389 S.W.3d 215 (West Headnotes 2).


42. 614 F.3d 893 (8th Cir. 2010).

43. *Id.* at 904.

44. 869 S.W.2d 239 (Mo. App. S.D. 1993).

45. 930 S.W.2d 14 (Mo. App. E.D. 1996).

46. *Baron*, 614 F.3d at 904 (citations omitted) (discussing *Sturgis*, at 17).

47. *Id.* at 905.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 906.

53. *Id.* (citations omitted).


55. *Id.*

56. *Id.*

57. *Id.*


60. *Id.* at 5.

61. *Id.*

62. *Forbush*, 460 S.W.3d at 3.

63. *Id.* at 3.

64. *Id.* at 7.

65. *Id.*

66. *Id.*

67. *Id.*


69. *Jacobson*, 2017 WL 55885669 at *13, n. 3.

70. *Id.* at *4* (emphasis added).


Writing it Right
Continued from page 27

Because courts call counsel’s hope for dramatic courtroom surprise “pure fantasy”68 and a “prayer,”69 appellate courts citing the fictional Mason normally affirm the trial court’s exercise of discretion to exclude a witness or to limit cross-examination. In United States v. Beck,70 for example, the convicted defendant contended that the trial court violated the Sixth Amendment by limiting his counsel’s questioning of a hostile witness. The U.S. Court of Appeals for the 7th Circuit found harmless error.71 “It is unlikely that counsel expected [the witness] to break down on the stand and admit that his perjury was part of an elaborate scheme to frame the defendants. Only Perry Mason enjoyed such moments.”72

Courts also cite Perry Mason to reject claims that the assigned counsel’s assertedly ineffective assistance denied the defendant a fair trial. One federal district court explained that “the Constitution guarantees only representation which is reasonably competent, not the perfection which exists only in fiction.”73

In yet another case, a dissenting judge observed that on ineffectiveness claims, courts “compare counsel’s performance not to an ideal, Perry Mason-style defense . . . but to what a reasonably competent counsel could accomplish under the circumstances of the case.”74 In 2015, however, the Tennessee Supreme Court provided this advice: “[A] lawyer who represents criminal clients may be interested in watching Perry Mason . . . on television, and may even pick up a useful tidbit or two from doing so.”75

The U.S. Court of Appeals for the 5th Circuit has invoked defense counsel Mason to discuss prosecutors’ professional responsibilities: “[T]he prosecutor’s aim is justice. . . . [W]hen it becomes apparent during the trial of a criminal case, a la the celebrated fictional career of Perry Mason, that the accused

is innocent of the crime with which he stands charged, the prosecutor has not ‘lost.’”76

L.A. Law

Among television dramas about lawyers and law enforcement, the runner-up to Perry Mason for the number of citations in federal and state court opinions is undoubtedly L.A. Law, which has also led courts to distinguish fiction from reality. Commentators suspected that during its run from 1986 to 1994, the show’s fictional portrayal of law practice not only left Americans with unrealistic visions about what lawyers do, but also encouraged many applicants to pursue law school based on unrealistic visions of careers in the fast lane.77

Law school applications rose as L.A. Law presented the practice, according to one writer, as “a lifestyle package that involved clothes, friends, relationships, social status and that elusive ingredient: getting paid for championing social justice causes. . . . There was never a dull client, never a boring case and in court they were poised and articulate.”78 After the show left the air, law school application numbers fell nationwide.79

Decisions accenting L.A. Law’s unrealistic visions include United States v. Prince,80 which affirmed the defendant’s convictions for bank robbery and unlawfully using a firearm during commission of a violent crime.81 The U.S. Court of Appeals for the 10th Circuit began Prince with words of caution: “[T]he would-be lawyer raised on the hit television series, L.A. Law, to believe a law degree is that golden ticket to a glamorous career of big money, fast cars and intimate relationships among the beautiful people may think twice before sending in his or her law school application when word of this case gets out.”82

After the trial court twice denied the assigned federal public defender’s requests to withdraw from the case because defendant Prince refused to talk to him, the defendant dropped his pants and urinated in front of the jury as the panel was being sworn.83

A court-ordered psychological examination found the defendant
competent to stand trial, and the court of appeals held that the district court did not abuse its discretion by refusing to order a second examination.54

“[F]or the one-time budding lawyer whose hopes for a dazzling life have now been dashed by the facts of this case,” the Prince panel suggested “an alternative career in screenwriting.”55

The panel concluded that “[u]nusual stories like this one are apparently standard fare for the fictional television lawyers of L.A. Law, who face many obstacles before cashing their paycheck and speeding off to another intimate dinner-party.”106

Other Television Dramas About Lawyers and Law Enforcement

In addition to Perry Mason and L.A. Law, courts have discussed other television shows about lawyers and law enforcement. In State v. Taylor, for example, the Missouri Court of Appeals concluded that the trial court committed no error when it permitted the prosecutor to question prospective jurors about their willingness to convict the defendant on eyewitness testimony alone.87 The panel explained that “[g]iven the prevalence of television shows such as CSI and Law and Order, a trend exists wherein juries expect the State to present physical evidence on every issue. The trial court does not err in allowing the State to ferret out such juror biases during voir dire.”88

When the convicted defendant asserted his lack of knowledge about the underlying crime because a witness at trial never referred to stolen tractors as “hot” or “stolen,” the U.S. Court of Appeals for the 6th Circuit concluded that the witness’ characterizations “mean[ed] nothing” because “[d]iscreet thieves often tell obviously stolen property without using the lingo of the stereotype ‘Law & Order’ or ‘N.Y.P.D. Blue’ villain.”79

In Clingman v. State, the Wyoming Supreme Court rejected the convicted defendant’s contention that the prosecutor had improperly commented to the court about facts that did not concern the crimes to which the defendant had pleaded.90

Finding that the prosecutor’s comments approached impropriety, two concurring justices cited Hill Street Blues (which aired from 1981 to 1987) and repeated the advice of the show’s morning roll-call police sergeant, who would end his daily briefing with, “Let’s be careful out there.”91

Courts frustrated with written or oral verbosity, name calling, or extraneous argument sometimes issue opinions that relay the classic no-nonsense instruction from Los Angeles police Sgt. Joe Friday (played by Jack Webb) on Dragnet, a drama series that “redefined the image of law enforcement in the culture at large”90 while it aired from 1951 to 1959: “Just the facts, m’am, just the facts.”95

In Privitera v. City of Phelps, the appellate court affirmed dismissal of a slander claim against the defendant who had charged the plaintiff with membership in the Mafia.94 The panel dispensed with lengthy explanation about potential harm to the plaintiff’s reputation because (as a concurring justice stated) “[t]hose unaware of the criminal ventures of Al Capone have now been educated by the long-running TV series ‘The Untouchables,’ based on his life.”96

Judicial opinions have discussed one foreign television show about lawyers. Rumpole of the Bailey aired on the British Broadcasting Company (BBC), and on the Public Broadcasting System (PBS) in the United States. Deftly combining drama and comedy, the series concerned a fictional London barrister who usually represented criminal defendants in The Old Bailey, a court building in central London.96 Horace Rumpole, played by Leo McKern, often referred to his sometimes overbearing wife, Hilda, as “she who must be obeyed.”97

Courts in the United States have quoted barrister Rumpole by name to illustrate why administrative agency regulations must be obeyed,8 why lower courts must apply (and hence “obey”) mandates from higher courts,98 and why persons must heed (and hence “obey”) contractual obligations.100

Television Dramas Unrelated to Lawyers and Law Enforcement

Federal and state judicial opinions have also cited television dramas that treat legal topics only sporadically, if at all. In Mason v. Smithkline Beecham Corp, for example, the plaintiffs—the parents of a 23-year-old woman who committed suicide two days after taking Paxil, an anti-depressant drug similar to Prozac—alleged negligence by the defendant manufacturer for not warning that taking Paxil increased the risk of suicide.99

The 7th Circuit described Prozac this way: “Anyone who has ever watched The Sopranos knows that it’s the drug Dr. Jennifer Melfi prescribed for Tony Soprano after telling him ‘no one needs to suffer from depression with the wonders of modern pharmacology.’102

Some judges have cited Marcus Welby, M.D. (played by Robert Young in a drama that aired from 1969 to 1976) as the model family practice physician. The fictional physician, who was known for his house calls and soothing bedside manner, helped one judge discuss whether the defendant physician’s demeanor toward an allegedly demanding patient fell short in a medical malpractice action.103

Visions of Dr. Welby also helped another court explain that jurors weighing expert testimony tended to give more weight to physician witnesses than to psychologists because of “the Marcus Welby Effect” from the 1970’s television series of the same name.104

Rod Serling’s science fiction drama, The Twilight Zone (which aired from 1959 to 1964) helped popularize the term that describes the often murky “gray area” between two extremes.105

In Larsen v. State Employees Retirement System, a former state supreme court judge alleged that state agencies had improperly calculated his retirement benefits.106

Citing the television series, the federal district court determined that the action “lies somewhere in the twilight zone of Eleventh Amendment jurisprudence.”107

To illuminate procedural and substantive points, courts have cited characters and themes from a host of other television dramas, including Star Trek,108 The Outer Limits,109 The Lone Ranger,110 The Adventures of Superman,111 Branded,112 Dallas,113 The Six Million Dollar Man,114 The Bionic Woman,115 Hopalong Cassidy,116 Roy Rogers,117 and The Millionaire.118

Next issue: References to TV situation comedies and reality shows.

Endnotes

found that the event of drawing the country together in the assassination's immediate aftermath; id. at 270 (“Television transfixed the American people for four days in November 1963...”).

30. Id. at 14-15.
32. Id. at 197.
33. Cobett S. Steinberg, supra note 13, at 142.
34. Id. at 150.
35. Id.
37. Cobett S. Steinberg, supra note 13, at 150; A. Frank Reel, id., at xi.
42. William Manchester, supra note 12, at 715.
47. Thomas Litch, Perry Mason 3 (2003).
48. Id. at 3-4.
58. Id. at *3 n.32.
59. Id.
60. Noah, supra note 56, at 493 n.1.
61. Devine, supra note 56, at 744 n.4.
63. Midwest Canvas Corp v. Cantar/Coolair Corp., 2003 WL 22853528 *4 (N.D. Ill. Sept. 3, 2003). See also, e.g., In re Holman, 536 B.R. 458, 467 (Bankr. D. Or. 2011) (“It is a truism (Perry Mason aside) that parties virtually never admit at trial that they acted with an intent to deceive or defraud the opposing party.”).
64. Johnson v. His Wrecker Serv., Inc., 2012 WL 181596 *1 (N.D. Ind. Sept. 26, 2012) (“While the Court acknowledges Plaintiff’s counsel’s desire to be a modern day Perry Mason, the fact is that litigation under the Federal Rules of Civil Procedure is not supposed to be merely a game, a jest, a contest; it is also a quest for truth and justice.”) (citation and internal quotation marks omitted); United States v. Schneider, 157 F. Supp. 2d 1044, 1069 (N.D. Iowa 2001) (“This type of a ‘Perry Mason’ moment, replete with the elements of surprise and prejudice, is precisely the type of matter that should be taken up with the court outside the presence of the jury.”).
65. United States v. DeVoyer, 811 F.2d 436, 440 (8th Cir. 1987) (defendant’s offer of proof that someone else committed the crime “fails” for short of establishing a Perry Mason defense”); In re Neumann, 574 B.R. 688, 700 n.16 (Bankr. D. Minn. 2007) (“The efforts in cross-examination to point the blame to another, unidentified person, somewhat in Perry Mason fashion, badly misfired.”).
70. 625 F.3d 410 (7th Cir. 2010).
71. Id. at 422.
72. Id. at 420 & n.2.
76. Edmondson v. Leccese Concrete Co., 895 F.2d 218, 225–26 (5th Cir. 1990), vac’d on other grounds, 500 U.S. 614 (1991). See also, e.g., United States v. Fletcher, 62 M.J. 175, 182 (C.A.A.F. Forces 2010) (“Although we might expect a character in a Perry Mason melodrama to point to a defendant and brand him a liar; such conduct is inconsistent with the duty of the prosecutor to ‘seek justice, not merely to convict.’”) (citation omitted).

Clark Sterne, scientiic analysis. (footnote omitted); and require that every crime be proven irrefutably by high-tech gadgetry and 'CSI efect,' the theory that because of the proliferation of crime investigation television dramas, jurors hold prosecutors to an unrealistic standard of proof and require that every crime be proven irrefutably by high-tech gadgetry and scientific analysis. (footnote omitted; Commonwealth v. Webster, 102 N.E.3d 381, 389 n.6 (2018) (discussing the CSI efect); Jenny Wise, Providing the CSI Treatment: Criminal Justice Practitioners and the "CSI Effect," 21 CURRENT ISSUES IN CRIM. JUST. 383, 383-84 (2010); The CSI Efect: Television, Crime, and Governance 141-42 (Michele Byers & Val Marie Johnson eds., 2009); Simon A. Cole & Rachel Dioso-Villa, Investigating the CSI Efect: Media and Litigation Crisis in Criminal Law, 61 Stan. L. Rev. 1335, 1336-39 (2009).

United States v. McCain, 70 Fed. Appx. 854, 858 (6th Cir. 2003). See also, e.g., Dave Keeble, Law & Order, in PRIME TIME LAW, supra note 53, at 33, 38; Richard Clark Sorne, N.Y.P.D. Blue, id. at 87, 94.

92 23 P3d 27 [Wyo. 2001].


107 Id. at 413; see also Lone Star Security & Video, Inc. v. City of Las Angeles, 827 F.3d 1192, 1202 (9th Cir. 2013); KeyCite Yellow Flag: Negative Treatment of U.S. v. Norman, 41 N.Y.S.3d 449 (Table), 2016 WL 3677220 *6 (N.Y. June 26, 2016) ("The truth is that Marcus Welby has long since retired.").


112 23 P3d 27 [Wyo. 2001].

115 Id. at 87, 94.


118 Id. at 112, 119-20 (Cir. 2007); United States v. McCarthy, 57 Fed. Appx. 5, 6 (2d Cir. 2003). See also, e.g., Dean v. Harris Cty., 770 F.3d 834, 839 (9th Cir. 2014) (in a civil RICO action, discussing "no show job" portrayed in The Sopranos: No Show [HBO television broadcast Sept. 22, 2002]); State v. Fitzgerald, 880 N.W.2d 519 (Table), 2016 WL 1466632 [Iowa Ct. App. Jan. 13, 2016] ("The finale of the Sopranos was ambiguous; the prosecutor’s statement here, not so much"); Ying Lu v. Ley, 45 F. Supp.3d 86, 99 (D.D.C. May 27, 2014) (discussing “Sopranoseseque figure”).

121 Id. at 393 & n.5; see also, e.g., United Bd. of Carpenters and Joiners v. Bd & Cons’t Constr. Bd., 770 F.3d 834, 839 (9th Cir. 2014) (in a civil RICO action, discussing “no show job” portrayed in The Sopranos: No Show [HBO television broadcast Sept. 22, 2002]); State v. Fitzgerald, 880 N.W.2d 519 (Table), 2016 WL 1466632 [Iowa Ct. App. Jan. 13, 2016] ("The finale of the Sopranos was ambiguous; the prosecutor’s statement here, not so much"); Ying Lu v. Ley, 45 F. Supp.3d 86, 99 (D.D.C. May 27, 2014) (discussing “Sopranoseseque figure”)

122 See also, e.g., Mitchell v. Comm’r of Soc. Sec., 2016 WL 4307791 *6 (N.D. Ohio Aug. 29, 2016) (discussing "the model of service being provided by a single Marcus Welby-type physician acting alone"); Peter v. Comm’r of Soc. Sec., 2016 WL 4477220 *6 (N.D. Ohio June 27, 2016) ("The truth is that Marcus Welby has long since retired.").

123 Gary Gerani & Paul H. Schuman, Fantastical Television 35, 38 (1977); Steven D. Stark, supra note 8, at 85-86 (The Twilight Zone “somehow permeated the consciousness of the entire culture”).


126 Id. at 413; see also Lone Star Security & Video, Inc. v. City of Las Angeles, 827 F.3d 1192, 1202 (9th Cir. 2013); KeyCite Yellow Flag: Negative Treatment of U.S. v. Norman, 41 N.Y.S.3d 449 (Table), 2016 WL 3677220 *6 (N.Y. June 26, 2016) ("The truth is that Marcus Welby has long since retired.").
110 Guzman v. McFarlane, 360 F.3d 644, 661–62 (7th Cir. 2004) (upholding validity of copyright on a work whose character had a distinctive appearance but no name; “the Lone Ranger doesn’t have a proper name either (at least not one known to most of his audience – actually he does have a proper name, John Reid, so that can’t be critical”); *Aquifer Gardens in Urban Areas v. Fed. Highway Adm.,* 779 F. Supp. 2d 542, 546 n.13 (W.D. Tex. 2011) (“The Lone Ranger is a fictional masked Texas Ranger who . . . has become an enduring icon of American culture.”); *E.M.B. v. A.M.B.,* 53 N.Y.S.3d 692 (Table), 2016 WL 1139206 *1 n.2 (N.Y. Sup. Ct. Mar. 3, 2017) (divorce action; “The legal status of a ‘co-respondent’ requires this court to voyage back to what were called in The Lone Ranger television show, ‘the thrilling days of yesteryear,’ when adultery was the most common form of divorce litigation.”).

111 *Gardner v. Comm’n of Internal Rev.,* 845 F.3d 971, 976 (9th Cir. 2017) (rejecting appellants’ arguments of separate identities; “This seems a little like informing the public that he was a sex offender; the condition was “reminiscent that required the defendant, as a condition of his probation, to post signs 112 *v. State* 12, 2018, repealed the heading title of subdivision 6.01, entitled “Annual Enrollment Fee and Statement – Exemptions – Penalties – Pro Hac Vice Fee,” of Rule 6, entitled “Fees to Practice Law,” and adopted a new subdivision 33.01 [Misdemeanors or Felonies – Right to Release – Conditions]; a new heading title and new subdivision 33.02 [Misdemeanors or Felonies – Warrant for Arrest – Conditions to be Stated on Warrant]; a new subdivision 33.04 [Misdemeanors or Felonies – Officer Authorized to Accept Conditions of Release]; a new heading title and new subdivision 33.05 [Misdemeanors or Felonies – Release Hearing]; a new subdivision 33.06 [Misdemeanors or Felonies – Modification of Conditions of Release]; a new subdivision 33.07 [Misdemeanors or Felonies – Rules of Evidence Inapplicable]; a new heading title and new subdivision 33.08 [Misdemeanors or Felonies – Rearrest of Defendant]; a new subdivision 33.09 [Misdemeanors or Felonies – Failure of Court to Set Conditions or Setting of Inadequate or Excessive Conditions for Release – Application to Higher Court]; a new subdivision 33.10 [Misdemeanors or Felonies – Transmittal of Record by Clerk of the Releasing Court]; and a new subdivision 33.11 [Misdemeanors or Felonies – Bonds – Where Filed – Certification by Sheriff or Peace Officer – Cash Bonds].

This order becomes effective July 1, 2019.

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

113 *Maximus, Inc. v. Lockheed Mgt. Sys. Co.,* 47 Va. Cir. 193 (Richmond Va. City Cir. Ct. 1998), aff’d in part and rev’d in part on other grounds, 524 S.E.2d 420 (Va. 2000) (discussing “the type of concealment and sharp practices that would make television’s J.R. Ewing of ‘Dallas’ fame proud”); see generally Steven D. Stark, supra note 8, at 221 (Dallas “not only reflected its times but also helped define them”).

114 *Llames v. Frontier,* 2008 WL 623796 *4 (W.D. Mich. Mar. 4, 2008) (dismissing prisoner’s civil rights claim; “[t]he plaintiff seeks a ‘bionic’ leg . . . [I]n the 1970s ‘bionic’ limbs and body parts were addressed in the fictional television series ‘The Six Million Dollar Man’ and ‘The Bionic Woman.’ . . . Given the State of Michigan’s current budget constraints, such a surgery would not be fiscally responsible or feasible.”).

115 Id.

116 Lewis v. Woodford, 2007 WL 196635 *25 (E.D. Cal. Jan. 23, 2007) (“the once-upon-a-time ‘quick-draw’ practicing with a buck knife reasonably says nothing about one’s state of mind years later. If it did, every child who ever played quick-draw, a la Hopalong Cassidy or Roy Rodgers [sic], with a toy cap gun would do so at his own later peril in demonstrating an intent to rob”); *Randle v. Sanders,* 2016 WL 7321298 *1 & n. 1 (Tex. Ct. App. Dec. 14, 2016) (“As fictional cowboy hero Hopalong Cassidy suggests, agreements made the ‘cowboy way’ are held to a higher standard.”).

117 Lewis, supra note 116.

118 *Wel-Pak of Cent. Conn. X, Inc. v. Comm’n of Educ. Servs.,* 670 A.2d 343 (Conn. Super. Ct. 1994), aff’d, 669 A.2d 1211 (Conn. 1996) (“The Millionaire, it might be recalled, was a television program . . . in which a wealthy philanthropist, John Beresford Tipton, would each week give one million dollars to a total stranger and watch to see what was done with the money.”).

The Supreme Court of Missouri, in an order dated December 18, 2018, repealed the heading title of subdivision 6.01, entitled “Annual Enrollment Fee and Statement – Exemptions – Penalties – Pro Hac Vice Fee,” of Rule 6, entitled “Fees to Practice Law,” and adopted a new title of subdivision 6.01, entitled “Annual Enrollment Fee and Statement – Exemptions – Penalties – Pro Hac Vice Fee – Pro Bono Waiver.”

In the same order, the Court adopted a new subdivision 6.01(o), entitled “Pro Bono Waiver of Annual Enrollment Fee,” of subdivision 6.01, entitled Annual Enrollment Fee and Statement – Exemptions – Penalties – Pro Hac Vice Fee – Pro Bono Waiver,” of Rule 6, entitled “Fees to Practice Law.”

The Court also adopted a new Pilot Project for Pro Bono Waiver Under Adopted Rule 6.01(o).

The effective date of the Adopted Rule is January 1, 2020.

The effective date of the Pilot Project is January 1, 2019.

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

In an order dated December 18, 2018, the Supreme Court of Missouri repealed subdivision 5.21(e), entitled “Interim Suspension and Final Discipline for Criminal Activities,” of Rule 5, entitled “Complaints and Proceedings Thereon,” and adopted a new subdivision 5.21(e), entitled “Interim Suspension and Final Discipline for Criminal Activities.”

This order becomes effective January 1, 2019.

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

**CORRECTION** – In the November/December 2018 issue of the *Journal of The Missouri Bar*, the effective date of the order of October 15, 2018 concerning Rules 56 and 58 is July 1, 2019. It was erroneously listed at January 1, 2019.
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