

# THE ADVOCATE

March  
2015

## Upcoming events:



Chuck Haddix of KCUR's  
Fish Fry radio show.

### March

#### Practice Management CLE & Meeting

*When:* March 18  
CLE at 4:00 pm  
Meeting at 6:00 pm

*Where:* Hollywood Casino

*Cost:* \$25 for the CLE  
\$25 for dinner

### April

#### Nuts and Bolts of Kansas DUI CLE & Meeting

*When:* April 15  
CLE at 4:00 pm  
Meeting at 6:00 pm

*Where:* Hollywood Casino

*Cost:* \$25 for CLE  
\$25 for Dinner

### June

#### Golf Tournament & CLE

*When:* June 25

*Where:* Dub's Dread Golf  
Course

*Cost:* \$100 per person

## KCUR'S CHUCK HADDIX TO SPEAK THIS WEDNESDAY

Chuck Haddix will be the guest speaker at the meeting this Wednesday, March 18, 2015 at 6:00 p.m. at the Hollywood Casino. Chuck Haddix aka Chuck Haddock joined the staff of KCUR as jazz producer in 1984. The next year, he began producing the Fish Fry, which has been described as a public radio party in your living room, serving up the best in blues, R&B, soul, jumpin' jazz and zydeco.

He is also the director of the Marr Sound Archives, a collection of 350,000 historic sound recordings housed in the Miller Nichols Library at the University of Missouri—Kansas City. Haddix also teaches Kansas City jazz history at the Kansas City Art Institute.

Over the years, Haddix has contributed to a wide variety of theatrical recording, video and film projects including "Cronkite Remembers" a biography of Walter Cronkite, Robert Altman's "Kansas City" and Merchant-Ivory's "Mr. and Mrs. Bridge." His articles have appeared in *Down Beat* and *Living Blues Magazine*. He is the coauthor of *Kansas City Jazz: From Ragtime to Bebop—A History* for Oxford University Press and author of *Bird: The Life and Music of Charlie Parker* for the University of Illinois Press.

## Save the Date

The 35th Annual Wyandotte County Bar Association  
Golf Tournament is coming up on June 25.

Start getting your teams together and if you have any  
questions contact Zak Kolich at [zak@mrwallaw.com](mailto:zak@mrwallaw.com)



## A message from our President

As I begin my term as President of the Wyandotte County Bar Association I am excited to announce that in the near future, we will be implementing a new “Ask a Lawyer” Program. This program will allow our members to take advantage of the vast collective knowledge of our Bar Association. Some of our members who have expertise in certain areas of the law have agreed to make themselves available to other members who may not be as familiar with that particular area of law. Examples of these areas of law are: bankruptcy; criminal/traffic; personal injury; office management/IT; etc. The list of lawyers who have agreed to share their expertise will be published and members are free to contact the lawyer with

any question you might have about their particular area of law. We hope this will be a valuable service to our members and will raise the level of professionalism in the Wyandotte County Bar.

Membership applications were recently mailed to you. If you have not already done so, I encourage you to complete the application and mail it back. I know this is going to be another great year and we look forward to you sharing it with us as a member of the Wyandotte County Bar Association.

**Mike Sexton,  
President**

## Member Spotlight: Katie Devlin

*by Mike Sexton*

Katie Devlin is a very active member of the Wyandotte County Bar Association. Katie grew up in Oskaloosa, Kansas and went to the University of Kansas for her undergraduate degree, majoring in journalism. She then worked for four years in marketing. Before she went to law school, Katie was the director of marketing for the environmental division of Burns & McDonnell.

Her plan for law school was to study environmental law and return to Burns & McDonnell. However, after an internship with the Clay County Prosecutor’s office, her plans changed. She fell in love with

criminal law and knew that was her future. Katie then took a job with the Wyandotte County District Attorney’s office where she is an Assistant District Attorney prosecuting all types of crimes.

Katie is married to Travis Devlin, who is in charge of the home theater section at Nebraska Furniture Mart. Katie and Travis have two dogs, a cat and are expecting their first child in May.

Katie enjoys the social aspect of the Bar Association events and getting to know other lawyers she doesn’t get to see on a regular basis.



**Jury verdicts** *October through December***Civil****Division 3****1/5/15**

Case No. 13 CV 1385

Joeann Campbell vs. BNSF Railroad

Plaintiff: Stephen Parker &amp; Jeffrey Chod

Defense: Michael Preston &amp; Carl Christiansen

Verdict: For the plaintiff in the amount of  
\$182,185.83**2/23/15**

Case No. 14 CV 436

Carol Larsen vs. Frederick Bond

Plaintiff: Stephen Voorhees

Defense: Kyle Roehler

Cause of action: Auto accident

Verdict: Plaintiff found 90 percent at fault.

**Division 7****2/2/15**

Case No. 11 CV 1146

Tonia Watson vs. University of Kansas Hospital

Plaintiff: Athena Dickson

Defense: Larry Longback

Cause of action: Slip and fall

Verdict: No party found to be at fault.

**Criminal****Division 4****1/5/15**

Case No. 12 CR 1460

State of Kansas vs. Bobby Hale

Prosecution: Shawn Boyd &amp; Logan McRae

Defense: Kiann McBratney

Charges: Count I—First Degree Murder  
Count II—Criminal Discharge of a  
Firearm at an Occupied VehicleVerdict: Hung on Count I, guilty on  
Count II.**1/26/15**

Case No. 13 CR 279

State of Kansas vs. Dominaez Thomas

Prosecution: Shawn Boyd

Defense: Dionne Scherff

Charges: Count I—Sale of Cocaine  
Count II—No Tax Stamp  
Count III—Sale of Cocaine  
Count IV—No Tax Stamp  
Count V—Sale of Cocaine  
Count VI—No Tax Stamp

Verdict: Not guilty on all counts.

**Division 5****1/20/15**

Case No. 13 CR 14

State of Kansas vs. Donald Moss

Prosecution: Ian Tomasic

Defense: Al Grauberger

Charges: Count I—Battery

Verdict: Hung.

**2/23/15**

Case No. 14 CR 480

State of Kansas vs. Jason Tyler

Prosecution: Alan Fogleman

Defense: Bill Dunn

Charges: Count I—Sale of Cocaine within  
1000 feet of a School  
Count II—Sale of Cocaine

Verdict: Not guilty on all counts.

**Division 8 (Hon. William Burns)****1/5/15**

Case No. 13 CR 119

State of Kansas vs. Michael Clayton

Prosecution: Ethan Zipf-Sigler

Defense: Damon Mitchell

Charges: Count I—Criminal Use of a  
Financial Card  
Count II—Criminal Use of a  
Financial Card

Verdict: Guilty on all counts.

## Jury verdicts (continued):

### Division 8 (Hon. William Klapper)

**1/26/15**

Case No. 14 CR 430

State of Kansas vs. Michael Yang

Prosecution: Jacob Fishman

Defense: Mike Nichols

Charges: Count I—Aggravated

Interference with Parental  
Custody

Verdict: Not guilty.

### Division 9

**1/26/15**

Case No. 13 CR 421

State of Kansas vs. Darrell Broxton

Prosecution: Sheryl Lidtke

Defense: Paul Dent

Charges: Count I—First Degree Murder

Count II—Burglary

Count III—Theft

Count IV—Theft

Verdict: Guilty of the lesser included  
second degree intentional  
murder on Count I,  
guilty on all other counts.

### Division 16

**2/17/15**

Case No. 14 CR 116

State of Kansas vs. Ulysses Wright

Prosecution: Brett Richman

Defense: Dave Matthews

Charges: Count I—Eluding a Law  
Enforcement Officer

Verdict: Not guilty.

**2/23/15**

Case No. 14 CR 107

State of Kansas vs. David Ponce-Rascon

Prosecution: Ian Tomasic

Defense: Josh Allen

Charges: Count I—Possession of Marijuana

Verdict: Guilty

## Appellate cases of interest:

by Leo Logan

### Attorney fees

The adoptive parents of a baby girl, appealed the attorney fees and expenses assessed against them to pay the attorney who represented the biological father whose parental rights were terminated. The adoptive parents argued that the attorney's fee, based on a \$150 hourly rate, should have been reduced to reflect an \$80-per-hour rate—the same rate paid in Kansas to attorneys appointed to represent indigent criminal defendants.

On appeal, the review of a district court's fee award is for abuse of discretion. A district court abuses its discretion only when it bases its decision on an error of fact or law or when no reasonable person would agree with it. While the district court has considerable discretion in determining the amount of attorney fees, the Kansas Supreme Court has provided that it should consider the eight factors set out in Rule 1.5(a) of the Kansas Rules of Professional Conduct:

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

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

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

(4) the amount involved and the results obtained;

- (5) the time limitations imposed by the client or the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

The Court of Appeals found no abuse of discretion by the trial court in the assessment of the attorney fees or hourly rate. As icing on the cake, the Court of Appeals awarded the biological father attorney fees and expenses against the adoptive parents for the work performed on the appeal—at the rate of \$150 an hour.

*In the Interest of F., a minor*, Kansas Court of Appeals, No. 111,253, Opinion filed January 23, 2015.

### Agency and fee-shifting contracts

In a dispute involving the efforts of the asset manager for the owner of an apartment complex to terminate the services of the property manager for that apartment complex, the asset manager brought an action in Johnson County District Court. Ultimately the case was settled, but the asset manager appealed from the district court's order denying its request for attorney fees pursuant to a fee-shifting provision in the management agreement.

To qualify as a “party” and “prevailing party” under the attorney fee terms of the management contract, the asset manager needed to be the agent of the owner, which was a named party to the contract. What constitutes a principal/agent relationship and whether there is competent evidence reasonably tending to prove such a relationship is also a question of law. An implied agency may exist if it appears from the statements and conduct of the parties and other relevant

circumstances that the intention was to clothe the agent with such an appearance of authority that when the agency was exercised it would normally and naturally lead others to rely on the person's acts as being authorized by the principal.

An action must be prosecuted in the name of the real party in interest, but a suit does not have to be dismissed if the real party in interest is not joined. The purpose of the real party in interest rule is to protect a defendant from being repeatedly harassed by a multiplicity of suits for the same cause of action so that if a judgment be obtained it is a full, final and conclusive adjudication of the rights in controversy that may be pleaded in bar to any further suit instituted by any other party. If the defendant is aware of the real party in interest, then the suit may proceed.

When a contract provides that *either party* who brings a claim under the contract is entitled to its attorney fees when it is the prevailing party, and when that same contract gives specific authority to a nonsignatory third party to enforce the agreement on behalf of a signatory, then such nonsignatory third party can collect its attorney fees if it is the prevailing party.

A prevailing party is the party to a suit who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily to the extend of his or her original contention. The prevailing party is one in whose favor the decision or verdict is rendered and judgment entered. With respect to the specific question of attorney fees, it has been stated a prevailing party is the person who as an affirmative judgment rendered in his or her favor at the conclusion of the entire case.

*Cure Enterprises, LLC v. Dunes Residential Services, Inc.*, Kansas Court of Appeals, No. 111,191, Opinion filed January 2, 2015.

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