

## CAREER MILESTONES

In the forty-five years since I graduated from the University of Virginia Law School and became a licensed practicing lawyer, I have practiced in virtually all areas of law except for criminal law. Over the years, I have been blessed to practice alongside of some of Kentucky's elite lawyers.

It has been a true privilege to have the professional opportunity to earn the trust of and serve the interests of hundreds of very diverse clients, who trusted me to represent their best interests. The close working association with and trust of those clients has been a great reward for me, as their legal counsel. I have always striven to do my very best for each client and to live up to my goal of providing each one of the service that think of as – ***“EXCELLENCE IN LAW”***.

The following summarizes a few highlights of my career – so far!

- **“THE ANCHORAGE SCHOOL CASE”**

In the early 1970s, civil rights groups filed Federal lawsuits in the U.S. District Court in Louisville, Kentucky against the three public school systems in Jefferson County, Kentucky. J. Donald Dinning and James W. Stites, Jr., and I represented the tiny Anchorage Independent School District which operated a single public school (Grades 1-8) in Anchorage, Kentucky. The only school in that school district had about 350 students. I performed legal research and drafted many of the legal arguments used by Anchorage in Briefs filed with the Federal Courts. In 1974 the desegregation case was considered by the United States Supreme Court, where I was admitted to practice. I was 28 years old. The Supreme Court granted a review (certiorari) in July 1974 and remanded the cases to the Sixth Circuit Court of Appeals for further consideration.

During the litigation, the City of Louisville School District was closed and by law merged into Jefferson County School District. Ultimately, the Anchorage School District prevailed for valid legal reasons we had argued and was not included in a Court Ordered busing plan to integrate the other Jefferson County schools. Over forty years later the Anchorage School continues to thrive and operate, as one of the very best public schools in Kentucky.

- **“THE TOYOTA MOTOR SALES U.S.A., INC. ANTITRUST CASE”**

In early 1974 I acted as co-counsel with Lively Wilson in winning a defense jury verdict in an Antitrust case filed in Federal Court in Lexington, Kentucky against our clients **TOYOTA MOTOR SALES CO., LTD** (the Japanese manufacturer) and **TOYOTA MOTOR SALES U.S.A., INC.** (the U.S. importer of Toyota automobiles). The jury

returned a \$1.6 million dollar verdict for the Plaintiff Bug's Imports of Danville, Kentucky against the two co-defendants from Chicago that distributed Toyotas in the mid-west. Under the Sherman Antitrust act that Verdict was tripled (trebled). Bug's Imports had signed a Sub-Distributor Contract with one of the Chicago companies to convert its network of brown-market Volkswagen dealers into Kentucky's first group of Toyota dealers. The Plaintiff was to be paid \$100.00 per car for every new Toyota sold by these dealers. Toyota had entered the U.S market place in 1957. The sales of its Toyopet automobiles were limited. It changed its brand to Toyota and in the early 1970s sales were just starting to pick-up. The Court had dismissed the claims against Toyota Motor Sales well before the trial. After over a month of trial the Jury returned a defense verdict that found our client, Toyota Motor Sales USA, had not conspired with the other Defendants in violation of Sherman Antitrust Act to terminate the sub-distributor agreement between Bug's Imports and one of the two Chicago companies, who distributed Toyotas in the mid-west.

- **“LOUISVILLE, KENTUCKY'S FIRST CABLE TELEVISION SERVICE”**

From 1978 – 1984 Lively Wilson and I represented CPI OF LOUISVILLE, INC. (“CPI”) When the City was about to terminate CPI's cable franchise for its five-year failure to build the cable system (interest rates were in the 18-20% range) I was able to negotiate a short extension of the franchise agreement in exchange for a firm commitment to start construction. CPI kept that commitment and a few months later construction began of Louisville's *first* cable-television system. Over the next few years I represented CPI in acquiring additional franchises in Jeffersontown, KY, St. Matthews, KY and approximately 6 other smaller cities in Jefferson County. CPI was acquired by the Times Mirror Co. of Los Angeles and it eventually agreed with Storer Communications Inc. to swap a number of cable-television systems operating in seven cities throughout the country.

Times Mirror, the publisher of the Los Angeles Times, traded its systems in North Little Rock and Jacksonville, Ark., Point Pleasant Beach, N.J., and Louisville, Ky., for Storer Communication's systems in Phoenix, Mesa and Paradise Valley, Ariz., and in Laguna Beach, Calif. My representation of CPI was brought to an end.

- **“THE EVERGREEN FUNERAL HOME LAWSUIT 1990 - 1992”**

In another *first* in Kentucky, I successfully filed a class action lawsuit against all parties who owned an interest in Evergreen Cemetery located on Preston Street in Louisville, Kentucky. Prior to that lawsuit no funeral home had ever been constructed on the grounds of a Kentucky cemetery. The Jefferson Circuit Court designated class representatives, who were represented by separate legal counsel, and the Declaration of Rights case was

fully litigated. It resulted in a Landmark Opinion by the Trial Court that it was legal in Kentucky to construct a for-profit funeral home on the grounds of a for-profit cemetery. Shortly thereafter the **Evergreen Funeral Home** was constructed as the *first* “*combination’ funeral home/cemetery*” in the state. Subsequently, additional “combinations” have been constructed in Jefferson County and elsewhere in Kentucky.

My representation of Evergreen Funeral Home lead to my subsequent representation of Saber Management Company described below.

- **“THE LOUISVILLE INTERNATIONAL AIRPORT EXPANSION (1991 - 1993) “**

I was part of a team of lawyers representing the Regional Airport Authority of Louisville and Jefferson County (“RAA”). I successfully acquired the *first* two non-residential properties needed to expand two new RAA airport runways, primarily needed to benefit the business of United Parcel Service. The first was the acquisition by negotiation of the James Russell Lowell Elementary School in 1992. The second was the acquisition of the Hall Contracting property on Grade Lane that was acquired without litigation through a Binding Arbitration procedure.

Today UPS is the largest employer in Louisville, Kentucky employing about 20,000 full and part-time employees.

- **“COMMONWEALTH v. STALLARD, 958 S.W.2D 21 (KY. 1997)”**

It was a great personal honor to be asked by the Kentucky Supreme Court to serve as a “Special Justice” on the Kentucky Supreme Court in 1997, because one of the Justices had a conflict of interest. I was asked to **author** the Supreme Court’s unanimous Opinion about two employees of a Commonwealth Attorney’s Office who were separately indicted for first-degree perjury for testimony each had given regarding the number of hours per pay period one of them worked as part-time secretary in the office. The Circuit Court had dismissed the perjury charges and the Kentucky Court of Appeals affirmed. The Commonwealth was granted Discretionary Review by the Supreme Court. The Supreme Court, held that employees’ allegedly false statements to the grand jury regarding number of hours one of them worked were not material, and thus, the employees did not commit the felony of “first-degree perjury”. The published Opinion did not decide “whether the elements of any other crime relating to false testimony have been fulfilled, because that issue is not before the Court”.

[Click here](#) to read the **Commonwealth v. Stallard** Opinion.

- **“THE LOUISVILLE BRIDGES PROJECT & THE DRUMANARD ESTATE (2012)”**

In December 2011 I was retained by owner of the historic Drumanard Estate located at 6401 Wolf Pen Branch Road in Prospect, Kentucky. The Drumanard Estate consisted of 50 acres with a 10,000 square foot, six bedroom, eight bath house: a guest cottage; gardeners cottage; greenhouse; pool; and gazebo. The Kentucky Transportation Cabinet needed to condemn this 50-acre property to construct Kentucky’s second longest highway tunnel under the Estate. The tunnel would connect the existing Gene Snyder Freeway at U. S. Highway 42 to the proposed new East End Bridge between Prospect, Kentucky and Utica, Indiana.

My client had purchased the Drumanard Estate property as investment property in February 2000 for \$2.9 million dollars with a goal to subdivide the Estate for a high-end residential subdivision. In 2003 the Federal Highway Administration announced the Louisville Bridges Project and its intention to place strict development limitations on the Drumanard Estate precluding all future development of the site. In 2003 Kentucky Transportation officials had suggested the owner discontinue improvements on the existing cottage, because the Transportation Cabinet’s planned taking of the property was imminent. Only because of my law firm’s extensive experience in representing developers was I aware that essential sewer capacity had been available for the Drumanard Estate in 2003 and 2004. When the Transportation Cabinet finally offered to purchase this property in 2013 sewer capacity was no longer available.

I arranged for an MAI real estate appraiser to appraise the Drumanard Estate’s value at the time the Louisville Bridges project was announced in 2003 at a time when sewers were available. On March 1, 2012, less than 90 days after I was hired, the owner signed a contract with the Transportation Cabinet to sell the Drumanard Estate for **\$8.3 million dollars** - **\$1.5 million dollars** more than the state’s previous best offer. In addition, I arranged for the owner to lease-back the property for \$2,700 per month for one year. The \$8.3million dollars paid for the Drumanard Estate was the most money the Kentucky Transportation Cabinet had ever paid to acquire a residential property in Jefferson County, Kentucky.

Today, the tunnel construction is nearly complete, a **historic preservation and conservation easement** has been placed on the Drumanard Estate and it is being offered for sale by the Transportation Cabinet, as surplus property, for a minimum bid of \$3.5 million dollars.

- **“ENSOR v. ENSOR, KY. APP., 431 S.W.3D 462 ( 2013)”**

I was the sole trial attorney and lead appellate counsel in this major divorce case of *first impression* in Kentucky. I successfully argued that the Kentucky Court of Appeals should reverse a decision of the Circuit Court that held that a Grantor Retained Annuity Trust (“GRAT”) was “marital property”. The Court of Appeals in a published Opinion held that the GRAT, which included significant assets such as real estate and partnership interests transferred into the GRAT during the marriage, was not property of the marriage subject to division upon dissolution. Thus, the real estate and partnership interests were validly removed from the marital estate; the GRAT was created during the marriage as a means of estate planning, and it was legal, valid, and not undertaken with fraudulent intent or in contemplation of divorce or separation.

Because of that reversal of the Trial Court’s Opinion my client’s obligation to his ex-wife was reduced by **\$1,410,106.00**.

[Click here](#) to read the Ensor Opinion.

- **“THE HENRY CLAY HIGH SCHOOL HALL OF FAME (2013)”**

For generations Henry Clay High School in Lexington, Kentucky has been recognized as one of the elite public high schools in the United States. One of the great milestones of my career was my induction into the Henry Clay High School Hall of Fame. My Hall of fame class included United States Congressman Andy Barr and longtime Fayette County attorney Larry Roberts.

- **“THE SABER MANAGEMENT CASE (2014- 2016)”**

My client, Saber Management, operates eighteen cemeteries in Kentucky. Three, including two in Jefferson County and one in Kenton County, have funeral homes erected on the grounds of the cemeteries. The Kentucky Board of Embalmers and Funeral Directors (the “Board”) licenses Saber’s three funeral homes and all of its Funeral Directors and Embalmers. As soon as Saber began its funeral home business in Kentucky it had relationships with independent contractors who were licensed Kentucky Life Insurance agents. Those agents discussed with potential Saber consumers’ pre-need funeral planning for funeral goods and services funded by life insurance policies. If a consumer was interested in such an arrangement, the licensed life insurance agents would complete a pre-need application using Saber’s “General Price List” and would submit it to a Saber Funeral Director for acceptance, rejection or modification. This had been a customary way for Kentucky funeral homes to do business for many years. The licensed life insurance agents were never subject to the jurisdiction of the Board.

In mid-January 2014 the Board issued Administrative Subpoenas to Saber's three funeral homes requesting hundreds of Saber Pre-need Funeral Contracts and related documents which Saber produced. This involved approximately 600 Saber clients and/or potential clients. In late January 2014 Saber's President received a telephone call from the Chairman of the Board who told him that Saber's sale of pre-need funeral contracts funded by life insurance was illegal "funeral directing" and the "most egregious" violation of the Rules and Regulations of the Board that he had seen in sixteen years on the Board. The Board Chairman further stated that Saber was subject to heavy fines and that the licenses of Saber's funeral homes and its funeral directors could be revoked. Saber's President responded that Saber was relying on the Board's "PRE-NEED POLICY STATEMENT" dated April 28, 2007, which authorized Saber's pre-need sales involving life insurance.

Because Saber's continued funeral business, its licenses and its customary way of doing business was threatened by the Board Chairman, I filed a Complaint against the Board for Declaratory Relief, Injunctive Relief and Other Relief on behalf of Saber in the Franklin Circuit Court on March 3, 2014. A few weeks later the Board filed Administrative Complaints against three of Saber's funeral directors regarding its practices using licensed life insurance agents to propose pre-need funeral services, subject to Saber's acceptance of those proposals by Saber funeral directors.

Both parties conducted Discovery in the Declaration of Rights suit. I took the depositions of the Board's Investigator and the Board itself under CR 30.02(b)(6). In the Fall of 2014 the parties filed Cross-Motions for Summary Judgment. Saber's Motion was supported by the Affidavits of its President, the Vice-President and General Counsel of an insurance company that sold pre-need life insurance policies and a former Assistant Kentucky Attorney General who had served as legal counsel for the Board. I also submitted Briefs on behalf of Saber.

On July 14, 2015 the Franklin Circuit Court Judge Phillip Shepherd issued his OPINION AND ORDER **completely vindicating** Saber's position and holding that the Board had no jurisdiction to regulate Saber's method of marketing pre-need funeral contracts involving life insurance agents who were regulated by the Kentucky Department of Insurance. The Court also agreed with Saber that the negotiation prior to death of a Funeral Planning Agreement that included funeral services to be provided in the future did not fit within the statutory definition of "funeral directing." As a consequence, he held the Board had no authority to regulate pre-need arrangements that were funded by a life insurance policy. The OPINION also cited sections of Kentucky's Insurance Code regulating the sale of life insurance to fund Pre-Need Funeral Planning Agreements. In addition, the Trial Court found that the Board's PRE-NEED POLICY STATEMENT adopted April 28, 2007 was null, void and unenforceable.

Although the Board appealed Judge Shepherd's OPINION AND ORDER to the Kentucky Court of Appeals, it agreed to dismiss its Appeal with prejudice following a

Prehearing Conference. In addition, under a SETTLEMENT AGREEMENT and MUTUAL GENERAL RELEASE OF CLAIMS the Board agreed to dismiss, with prejudice, the three Administrative cases it had filed against Saber's funeral directors. [Click here](#) to read Judge Shepherd's OPINION AND ORDER. Please contact me if you would like to receive a copy of the SETTLEMENT AGREEMENT and MUTUAL GENERAL RELEASE OF CLAIMS dated March 22, 2016, which was filed with the Kentucky Court of Appeals.

This is the most recent case of *first impression* that I handled. It benefited Saber, all other Kentucky funeral homes using life insurance policies to fund pre-need funeral contracts, life insurance companies selling pre-need life insurance in Kentucky, and thousands of Kentucky consumers. It is a Landmark case.

- **“THE DOUGHERTY v. DISHMAN CASE 2015 WL 1966724 (KY. APP. 2015)”**

My client, a retired automobile dealer filed this declaration of rights and fraud suit to challenge the legality of an **irrevocable trust** secretly created by his wife and her personal attorneys using his durable power of attorney that named her as his attorney-in-fact. The wife secretly placed over **\$18.5 million dollars** of her husband's money in the irrevocable trust, naming herself as the sole Trustee. The wife's had transferred millions of dollars of her husband's money into the irrevocable trust, despite a Pre-Nuptial Agreement that required her and her husband to keep their assets completely separate.

I was able to immediately enjoin the wife's future actions as Trustee without Court approval, sought her removal as Trustee and a full accounting. The wife counterclaimed for reimbursement of attorney fees she personally incurred in connection with the irrevocable trust. A few months after the husband divorced his wife, the Trial Court removed the ex-wife as Trustee of the trust and the newly Court appointed Co-Trustees returned all of the **\$18.5 million dollars** in trust assets to my client. About a year later my client died, and the executrix of his estate was substituted as the Plaintiff in the lawsuit.

The Jefferson Circuit Court initially denied the estate's motion for summary judgment which argued the power of attorney provided absolutely no authority to the wife **to create the trust**. After a lengthy bench trial concerning whether the wife had acted in “good faith” in creating the Trust, the Trial Judge found she did, and it entered a judgment awarding the ex-wife some, but not all, of the attorney fees she sought relating to her conduct as attorney in fact. The ex-wife appealed the Trial court's denial of her claim for over \$300,000.00 in attorney fees she had expended in the litigation. The Estate cross-appealed the Trial Court's denial of its summary judgment motion.

In this important case of *first impression* I persuaded the Kentucky Court of Appeals that the durable power of attorney that named the wife as her husband's attorney-in-fact, and authorized her to “[c]onvey any real or personal property to the Trustee of any trust

agreement between me and said Trustee and entered into either before or after the date of this instrument” and to “[d]raw, make and sign any and all checks, contracts or agreements,” **did not authorize wife to create an irrevocable trust** for husband and name herself as its Trustee; nothing in the power of attorney specifically authorized those actions, and the parties’ Prenuptial Agreement specifically required them to keep their separate assets separate. KRS 386.093.

In order for an attorney-in-fact to create a trust under a power of attorney, the Court of Appeals held that authority must be expressly provided for in the instrument, if it contains a specific provision related to trusts. KRS 386.093.

On remand the ex-husband’s estate recovered over **\$282 thousand dollars** from the ex-wife representing over \$87 thousand dollars (plus accumulated interest) of her ex-husband’s money she had expended to pay her personal attorneys to illegally create the Trust and to attempt unsuccessfully to have her husband declared incompetent.

**[Click here](#)** to read the Kentucky Court of Appeals unpublished Opinion in **Dougherty v. Dishman**.