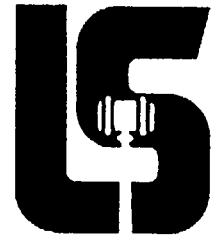


The Landrum & Shouse Report



Welcome to the Landrum & Shouse Report, a newsletter designed to keep you informed on current events and legal issues. Landrum & Shouse, LLP, traces its history from pre-World War II legal service. For nearly 40 years following military service, the late Weldon Shouse and Charles Landrum, Jr., together with their firms, practiced law throughout Kentucky before merging in 1984 to become what is now known as Landrum & Shouse, LLP. The resulting firm is built upon the well-deserved reputations of its founders as experienced, knowledgeable, and hard working trial lawyers.

MAKING THE GRADE

For more than a century, Martindale-Hubbell has been the leader in providing biographical and contact information on attorneys across the country. An important part of Martindale-Hubbell's service to the legal community is the Lawyer Rating System, which evaluates lawyers and law firms across the country based upon peer review.

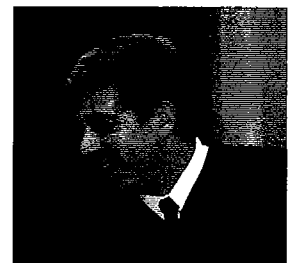
According to Martindale-Hubbell, "The rating system attests to a lawyers' legal ability and professional ethics, and reflects the confidential opinions of the Bar and Judiciary."

The highest of these ratings is AV. An AV rating shows "that a lawyer has reached the height of professional excellence. He or she has usually practiced law for many years, and is recognized for the highest levels of skill and integrity."

Landrum & Shouse LLP is proud to have ten AV rated lawyers. Here at L&S we believe this is a reflection of our standing within the legal community and is evidence of many years of striving to serve our clients' needs at the highest professional and ethical levels.

BENNETT BAYER AND TEEN COURT: THE POSITIVE TREND FOR JUVENILE JUSTICE

For over nine years, Bennett Bayer, an associate with the Lexington office, has served as the Teen Court Judge for the Fayette County Teen Court Program. Fayette County is one of 23 Teen Courts operating in 32 counties in Kentucky, and is considered a leading program among the state. Teen Court provides first-time juvenile offenders the opportunity to participate in a formal hearing conducted solely by their peers. More importantly, Teen Court provides the mechanism to bring these offenders "into the system" through the use of positive peer pressure.



TEEN COURT CONTINUED...

The program began in 1992 as one of many law related programs offered by the Kentucky Court of Justice through its Department of Juvenile Services. More than 15,000 students have participated in the Kentucky program since its inception. Defendants who appear in Teen Court are first-time misdemeanor offenders, age 10 through 17, who have pled guilty or have been found guilty by a Juvenile Court judge. The judge has the option to refer defendants to Teen Court for sentencing.

The student volunteers review the facts of the case as jurors and hear testimony before recommending their disposition or "sentence". Often, the defendant is allowed to speak in his or her own defense and apologize for the crime. Most penalties involve community service, sometimes as much as 80 hours, but other dispositions are writing letters of apology or attending counseling sessions. The sentences are legally binding and require the defendants to complete the penalty in six months or be returned to Juvenile Court for further prosecution. Most importantly, every disposition requires the offender to participate in at least two future Teen Court Trials as a member of the jury. By serving as a juror, not only is the offender brought into the system as a vital member of the program, but they also offer new perspectives to the other members in future trials.

Bennett Bayer serves as the judge during the trial, which is operated entirely by student volunteers, ages 13 to 17. Every student participant must complete five training sessions in courtroom roles, such as prosecutors, defense counsel, court clerks, bailiffs, and jurors. All student volunteers are sworn in by the Fayette County District Court, where they take an oath of confidentiality to protect the privacy of the defendants who will appear before them.

Peer pressure in Teen Court, along with its other unique characteristics, have a lasting effect on everyone involved. Statistics have shown a lower rate of recidivism among offenders who have been through Teen Court. Further, every student walks away from their experience knowing that they are a vital member of this community and that they have made differences in the lives of others.

Through his hard work and dedication to this program, Bennett Bayer has had a lasting and positive impact on numerous individuals. He teaches and heads the training sessions, holds one-on-one counseling sessions with the juvenile offenders and their parents, presides over every trial that comes through the program, and facilitates with the District Court Judges. Most importantly, his energy and enthusiasm encourage the students he influences to be positive members of their communities.

Landrum & Shouse is extremely proud and grateful for Bennett Bayer's positive impact and dedication to the youth of our community!

APPELLATE REVIEW

The case of Asbury College v. Ohio Casualty, 2004-CA-001044, which is currently on appeal, may be of interest to many of our clients who deal with insurance coverage. The issue is whether coverage is determined by the date of the negligent act or the date of the injury. The general liability policy in question was issued for a coverage period of 1976-1977. The Plaintiff claims that he was sexually assaulted by an employee of Asbury College in 1978. There are also claims of negligent hiring and supervision against Asbury that allegedly occurred during Ohio Casualty's coverage period. . In the declaratory judgment action, Ohio Casualty successfully argued that the sole date for determining coverage is when the injury occurs. Asbury has appealed, arguing that coverage is determined by the date of the negligent act. Further, as Ohio Casualty cannot produce a copy of its actual policy, Asbury also argues that Ohio Casualty must provide coverage under its "lost policy", because it cannot prove the exact policy terms. We hope to be able to update you on the results later in the year. (Ohio Casualty is represented by Douglas L. Hoots and Jeffrey Taylor in our Lexington office)

PUBLIC SECTOR DEFENSE UPDATE

by David P. Bowles

Public sector defense can be a very interesting and rewarding practice area. Recent forays into the Federal Reporter resulted in the discovery of the following decisions pertaining to the defense of public sector employees and entities.

Federal Decisions

Terrell v. Larson, 371 F.3d 418 (8th Cir. 2004). In this §1983 decision by the Eighth Circuit, the Court held that a police officer whose response had been cancelled on an emergency run could be liable under §1983 when he drove through a red light at a high rate of speed while responding to a domestic disturbance call. A resulting crash killed an innocent third party motorist and the deputy operating the other vehicle (1) knew that other officers were responding; (2) was driving an unfamiliar vehicle; and (3) was operating his vehicle on wet and slushy roads. The Court considered this conduct sufficiently conscience-shocking to state a claim of a substantive due process violation and therefore liability under §1983.

Bellville v. Town of Northboro, 375 F.3d 25 (1st Cir. 2004). This decision reaffirmed existing federal constitutional law that states that the federal constitution does not prohibit the use of civilians during searches. However, the civilian participating in the search with police must be serving a legitimate investigative function as particular expertise may be necessary, especially in cases involving computers and highly technical equipment.

Morrison v. Warren, 375 F.3d 468 (6th Cir. 2004). In this police discharge case, the Sixth Circuit held that notice of a pretermination hearing under the Loudermill decision may be provided by oral or written notice and that the oral delivery of notice of a pretermination hearing to a deputy sheriff did not violate procedural due process protections.

Kentucky Decisions

Kentucky appellate courts have been busy in recent months dealing with two precedents that are near and dear to the heart of public sector defense practitioners.

On September 24, 2004, the Kentucky Court of Appeals rendered two unpublished opinions affirming the Kentucky Supreme Court's decision in City of Florence, Kentucky v. Chipman, Ky., 38 S.W.3d 387 (2001). In Chipman, the Kentucky Supreme Court held that, absent a special relationship between a public official and a victim, there is no duty of care owed to the victim by the public official to protect the victim from third party harm. In order for the special relationship that would give rise to a duty under law to exist, (1) a victim must be in state custody or otherwise restrained by the state at the time her injury occurred, and (2) the violence or other harm inflicted upon the victim must have been committed by a state actor.

In Bramble v. Graham, Ky. App., 2003-CA-110755, the Court of Appeals reaffirmed the special relationship test enunciated in Chipman, and further held that a statutory duty to report suspected child sexual abuse "in no more than a general duty owed to the public at large," and that it did not impose a duty that would trump the special relationship test in Chipman.

In Burton v. City of Lebanon, Ky. App., 2003-CA-001845 (briefed and argued by the author) and Burton v. City of Lebanon, Ky. App., 2003-CA-001170, the Court affirmed the grant of summary judgment to the appellees by the Marion Circuit Court on the basis of Chipman.

Finally, in Jones v. Lathram, Ky., 2004 WL 2152487 (2004), the Kentucky Supreme Court held that a state trooper's act of driving his police cruiser to an emergency did not necessarily constitute a discretionary act, and that the trooper was therefore not entitled to qualified official immunity from suit in a wrongful death action filed by a motorist who was killed when the trooper's cruiser struck the motorist's vehicle in a blind intersection.

(David P. Bowles is a retired Jefferson County Police Department Lieutenant. He now serves as an associate in the Louisville office of Landrum & Shouse, LLP, where his practice is concentrated on public sector insurance defense.)

OLD FACES

Landrum & Shouse LLP is pleased to announce that Bradley C. Hooks has become a partner in the firm. Brad has been associated with Landrum & Shouse since 1998 in the Lexington office. His practice consists of civil litigation, insurance defense, construction and municipal defense. We are also pleased to report that Brad and his wife, Kristi, have recently become the proud parents of a new baby daughter, Riley Elizabeth Hooks, born October 28, 2004.



The Landrum & Shouse Report is a quarterly publication and contains news and general information about the firm. It is not meant to nor should be viewed as a legal research tool or legal advice.

Landrum & Shouse, LLP, is dedicated to serving the needs of its clients. Our professional and support staff has extensive litigation experience and is able to prepare and execute top quality trial presentations in any forum in the Commonwealth of Kentucky.

Our computerized systems support productivity in research and include sophisticated communications networks, while the firm's extensive use of modern accounting methods and budgetary controls maintain the most cost effective approach for our clients. We are well prepared to meet your legal needs. Give one of our legal professionals a call for an introduction to the tradition of Landrum & Shouse.

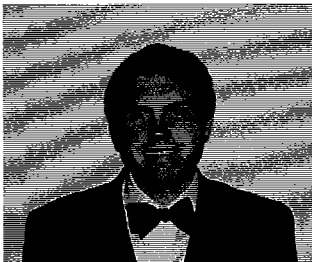
You can also visit us on the Web at www.landrumshouse.com for additional information about our attorneys and the firm.

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NEW FACES

Landrum & Shouse, LLP is also pleased to announce that Tyler Smith has become associated with the Lexington office. Tyler is a graduate of the University of Kentucky and the University of Dayton School of Law where he was a Moot Court Team member. He practices in the areas of civil litigation and insurance defense law.



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