

DICTA

Donald F. Paine
1939-2013



Knoxville Bar Association

Law Day

Celebration & CLE Program

Friday, May 2, 2014

11:30 a.m. - 1:30 p.m.

Knoxville Hilton

Receive one hour of Dual CLE Credit for attending this great annual Knoxville Bar Association tradition.

The buffet opens at 11:30 a.m.
The Law Day program begins at 12 noon,
so please plan to arrive prior to 11:45 a.m.

KBA Members: \$40

Tables of 10 may be reserved in advance.

Reservation Deadline: April 25th

Register online at www.knoxbar.org or call
the KBA Office at (865) 522-6522.

AMERICAN
DEMOCRACY
AND THE
RULE OF
LAW

WHY EVERY VOTE MATTERS

LAW DAY 2014

Schedule:

11:30 a.m.

Buffet Lunch Opens

(Please arrive prior to 11:45 a.m.)

12 noon

Law Day Program including Recognition of the High School Mock Trial Team; Announcement of the prestigious Law & Liberty Award; and Commemoration of the Law Week activities by the Knoxville Barristers.

12:30 p.m.

-1:30 p.m. Program - Approved for 1 hour of Dual CLE Credit



Law Day Luncheon



Hon. Holly Kirby
Tennessee Court of Appeals

Join us for an important discussion about why voters should care about how judges are elected and appointed in Tennessee. In December 2013, Governor Bill Haslam appointed Judge Holly Kirby to the Tennessee Supreme Court, to replace current Justice Janice Holder. She will be sworn in as a Justice in Fall 2014. Judge Kirby will discuss the proposed amendment to Tennessee's constitution on judicial selection. Judge Kirby will be joined by KBA member Cheryl Rice, who serves on the Governor's Commission for Judicial Appointments.



Cheryl G. Rice
Egerton McAfee Armistead
& Davis, P.C.

"Democracy cannot succeed unless those who express their choice are prepared to choose wisely. The real safeguard of democracy, therefore, is education."

— Franklin D. Roosevelt

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Volume 41, Issue 4

DICTA

DICTA is the official publication of the Knoxville Bar Association

DICTA is published monthly (except July) by the Knoxville Bar Association. It is designed to offer information of value to members of the local bar association. The news and features should illustrate the issues affecting the bar and its members. The opinions expressed do not necessarily represent those of the Knoxville Bar Association.

All articles submitted for publication in DICTA must be submitted in writing and in electronic format (via e-mail attachment). Exceptions to this policy must be cleared by KBA Executive Director Marsha Wilson (522-6522).

DICTA subscriptions are available for \$25 per year (11 issues) for non-KBA members.

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section notices

There is no additional charge for membership in any section, but in order to participate, your membership in the KBA must be current.

Alternative Dispute Resolution

The ADR Section has monthly CLE programs scheduled. See the CLE insert for details. If you have program topic or speaker suggestions, please contact the ADR Section Chairs **Kim Burnette** (546-7000) or **Dana Holloway** (643-8720).

Corporate Counsel

The Corporate Counsel Section provides attorneys employed by a corporation or who limit their practice to direct representation of corporations with an opportunity to meet regularly and exchange ideas on issues of common concern. Check out the section's quarterly newsletter on the section's webpage at www.knoxbar.org. If you would like further information on the Corporate Counsel Section, please contact Section Chairs **Marcia Kilby** (362-1391) and **David Headrick** (599-0148).

Criminal Justice

The KBA Criminal Justice Section represents all attorneys and judges who participate in the criminal justice system in Knox County. To have your name added to the section list, please contact the KBA office at 522-6522. If you would like further information on the Criminal Justice Section, please contact **Jonathan Cooper** (524-8106) or **Hon. Steve Sword** (215-2508).

Employment Law

The new Employment Law Section is intended for management and plaintiffs' counsel, in addition to in-house and government attorneys. There is no fee for KBA members to participate in the section. To have your name added to the section list, please contact the KBA office at 522-6522. If you would like further information on the Employment Law Section, please contact **Mark Travis** at mtravis@travisadr.com or at (931) 252-9123.

Environmental Law

The Environmental Law Section meets regularly and presents speakers on topics relevant to both practitioners of environmental law and lawyers with an interest in the area. The Environmental Law Section provides a forum for lawyers from a variety of backgrounds, including government, corporate in-house, and private firm counsel. For more information about the section, please contact Section Chairs **LeAnn Mynatt** (lmynatt@bakerdonelson.com) or **Jimmy Wright** (jwright@bvblaw.com).

Family Law

The Family Law Section has speakers on family law topics or provides the opportunity to discuss issues relevant to family law practice. To have your name added to the section list, please contact the KBA office at 522-6522. For more information about the section, please contact Chairs **Elaine Burke** (tbpc@bellsouth.net) or **Niki Price** (nprice@bwmattorneys.com).

Government & Public Service

The Government & Public Service Section is open to all lawyers employed by any governmental entity, state, federal, or local, including judicial clerks and attorneys with legal service agencies. If you would like further information on the section, please contact **Suzanne Bauknight** (545-4167) or **Daniel Sanders** (215-2327).

Solo Practitioners & Small Firm

The goal of the Solo & Small Firm Section is to provide and encourage networking opportunities and CLE. To have your name added to the section list, please contact the KBA office at 522-6522. Please join other members of the Section on the first Wednesday of each month at the LunchBox at noon. **Garrett Swartwood** is coordinating a monthly column about solo and small firm practice for DICTA. If you have a topic suggestion or would like to write an article, please contact Garrett at 584-4040. For more information about the section, please contact Chairs **Greg Hall** (546-0080) or **Tripp White** (712-0963).

Event Calendar

April

- 2 Fee Dispute Committee
- 2 Solo/Small Firm Meeting
- 3 Meet & Greet Judicial Candidate Reception
- 4 Law Practice Today Expo
- 4 KBA Office Closed
- 7 ADR Section CLE
- 7 Monthly Opportunities Committee
- 8 Professionalism Committee Meeting
- 8 Membership Committee
- 9 Barristers Executive Committee
- 10 Lunch & Learn
- 10 Judicial Committee
- 15 Family Law Section CLE
- 16 Board of Governors Meeting
- 17 Criminal Court Clerk Forum
- 22 LRIS Committee
- 24 Barristers Volunteer Breakfast
- 24 Access to Justice Committee
- 24 Barristers Happy Hour
- 28 Unmet Legal Needs of Children Committee
- 29 Environmental Law CLE

May

- 2 Law Day Luncheon
- 5 ADR Section CLE
- 7 Fee Dispute Committee
- 7 Solo Small Firm Meeting
- 8 Lunch & Learn
- 8 Judicial Committee
- 9 Chancery Court Bench Bar CLE
- 13 Professionalism Committee Meeting
- 14 Barristers Executive Committee
- 15 Blind Wine Event
- 20 Family Law Section
- 20 CLE Committee
- 21 Board of Governors Meeting
- 21 Past Presidents Dinner
- 22 Barristers Volunteer Breakfast
- 22 Access to Justice Committee
- 22 Barristers Happy Hour
- 29 Knoxville Bar Foundation Dinner

Join us for the Law
Practice Today Expo
April 4, 2014

By: Wade Davies
Ritchie, Dillard, Davies & Johnson



I LOVE DON PAINE

Don Paine. It seems to me that lawyers are not quick to use the word love when describing another lawyer. Paine was an exception. There was almost a Pavlovian response. To lawyers around the state, you could say the words "Don Paine," and out would come, "I love Don Paine."

Although I'd started going to Tennessee Law Institute weekends in Gatlinburg with my parents when I was eight years old, I did not get to know Don until my first week of law school. I checked my little law school mailbox, and there was a handwritten note. I remember exactly what it said:

Wade,

Come see me during my office hours. I'm afraid I know your entire family.

Don Paine

As I remember, his office hours were well before dawn, but I went in, a little nervous, and began a friendship that benefitted me more than I could imagine at the time. I don't remember exactly what we talked about, but I remember being surprised that he seemed genuinely interested in my plans and what I had to say. The next year I had the privilege of learning Evidence from Don and Mr. Bear.

I never understood how he did this, but Don always had time to answer a question – not just off the top of his head. He would sometimes get so interested in your question that you'd get three return calls and a follow up fax.

Don paid me one of the highest compliments of my career in asking me to take over some of his TLI sections beginning in 2011. You have to be nuts to agree to stand up and claim enough expertise to teach evidence to hundreds of lawyers with Paine and Sheppard on either side of you, but I agreed, and I'm glad I did so, because I'll always remember seeing Don nod when I made a point. It made me realize that maybe I was getting it right. I have a treasure of faxes that I got from Don, usually early in the morning, on weighty research topics like what kind of beer cans he was seeing in researching the Redneck Litterbug Beer of the Year award.

Don was one of those people that just naturally made you feel like you were his good friend, even if you saw him once a year. I'm so glad that the editors of DICTA have decided to honor this incredible person who provided an example of love of the law and caring for people that I hope we can all carry with us.

Don was one of those people that just naturally made you feel like you were his good friend, even if you saw him once a year.



Beginning this month and continuing through the end of the year, DICTA will have a new monthly column entitled “Perspectives” in which a member of the KBA will answer a series of fixed questions. Each month the answering attorney will be identified by years of experience and practice area only so as to provide a semblance of anonymity. Hopefully, we can all learn something from seeing the practice of law through another’s eyes.

Please state your practice type (government, criminal, law firm practice, non-traditional/non-law firm practice, litigation, transactional) and the number of years you’ve been practicing law.

I have been practicing in a governmental legal department for almost 17 years, with emphasis in administrative law, contracts and civil litigation. Previously, I was in private practice with a small firm for 8 years doing general litigation and insurance/civil rights defense.

Q: What is the biggest change you have seen in the practice of law?

A: Without question, it’s the use of technology. It has affected almost every single aspect of the practice, from the way we communicate with clients and each other, to the way we research and write, to the way we interact with the courts. It’s still possible to practice law if you haven’t mastered the technology, but you can’t be effective as a zealous advocate for your client if you don’t at least work with someone who has.

Q: What is the most difficult aspect of practicing law?

A: At least starting out, the most difficult thing was time management – how do I make sure that I have enough time to do the things that have to be done, or prepare for things that require significant advance preparation? There’s nothing worse than waking up in the middle of the night worrying about how you’re going to do all the things that must be done! As I’ve gotten older, I’ve gotten better at time budgeting and advance planning, but it still takes an effort.

Q: What is the most satisfying part of your job as a lawyer?

A: In my current position, I get to head off problems before they occur. My clients come to me for advice on formulating policies, for help in training employees, and for advice in resolving difficult situations before they reach the clerk’s office with a summons attached. When I was in private practice, it seemed I was always on the defensive, never knowing anything about the lawsuit that just came in the door. Now when the litigation hits the fan, I’m usually already waiting for it, with a file in hand and with some knowledge of the people and circumstances involved.

But it’s the knowledge that there are lawsuits I’ll never see and ditches my clients never drive into because of advice or training given, that I find most satisfying.

Q: What piece of advice would you give to someone considering law school?

A: Make sure it’s really what you want to do. Three years of your life and a boatload of money is a lot to give up if you’re just curious. I’ve always felt that in our profession, it’s easier to get in than it is to get out. And that’s not just the old “there are too many law schools” argument – I mean that the investment of time and money (and sometimes the accumulated debt) makes it more likely that someone will stick with the practice of law (particularly after about the second year of law school) even if they discover that it’s really not their passion in life. There’s a lot to be said for really liking what you do.

Q: How many years did you practice before you felt comfortable in the practice, or are you still working on it?

A: I’m still working on it, but I didn’t really begin to feel comfortable until I made the move to the public sector. I think it’s a matter of finding the right fit.

Q: What do you consider your greatest professional achievement?

A: I’ve been able to draft legislation that was ultimately enacted into state law, and I’ve argued and had victories (and some defeats, of course) in reported cases, including the Tennessee Supreme Court and the 6th Circuit Court of Appeals. But what I consider my greatest professional achievement isn’t something that you can hang on a wall, or point to in a state reporter or code book. My professional “achievements” are mostly team achievements – a piece of legislation here, a court decision there – all for the benefit of the client and the citizens they represent. I consider it a great professional achievement when the policy makers you work most closely with recognize and appreciate your contribution to the team.

Q: In the next 10 or 20 years, what area of your practice do you think will see the most change and why?

A: I’d have to again say technology will continue to transform the practice, because it’s transforming society. The privacy issues of today will only expand. Real-time information is becoming more and more available to anyone (and created by anyone) with a handheld or wearable device and an Internet connection. That information has to be sifted and stored, and with more electronically stored information, discovery is becoming a specialty field within the practice. And using the Affordable Care Act as just one example, more and more “outside” regulations will affect the business side of the practice of law.

Q: If you left the practice of law today, what would you want your legacy to be? And, what would others say your legacy was?

A: You obviously want people to say that you were a good lawyer who worked hard for your clients, but more than that I’d hope others would say that I was honest, fair, easy to work with but willing to put up a good fight when necessary, and kept a good sense of humor. I might kick in a little cash if they were also willing to throw in charming and devilishly handsome.

Q: If you were to pick a lawyer from a TV series or movie that you would like to be, who would you pick and why?

A: There’s an entire generation of lawyers who were drawn into the profession by Atticus Finch, but that’s not me – I’m on the tail end of the Baby Boomers, so *To Kill a Mockingbird* was a little before my time. I’m tempted to say Gomez Addams from *The Addams Family* (most people don’t know that he was a lawyer), simply because of his joy of life, no matter how strange a life it may be. But I think I’ll go with Ransom Stoddard, from *The Man Who Shot Liberty Valance*. He was a flawed man, but he kept his integrity even in the face of a difficult situation. Plus he was one of the few men who got to slug John Wayne and get away with it.

Q: What book related to the practice of law are you reading now/have you recently read?

A: *Johnny Carson*, by Henry Bushkin. Known affectionately as “Bombastic Bushkin” in the nightly monologue, Bushkin was Carson’s lawyer for years, and is a graduate of Vanderbilt Law School (1966).

**From the perspective
of a government
lawyer with 17 years
of experience.**

By: Sarah Y. Sheppard

Sheppard & Mynatt P.L.C.

DONALD F. PAINE, ESQUIRE



At a recent Inns of Court meeting, I asked for a show of hands of people who had learned from Don Paine – in law school; in the bar review course; in CLE seminars; or in one of his delightful historical Lunch and Learn programs. About 150 hands were raised. So I asked the inverse: “Who here never had a Don Paine program?” Four bright, shiny faced young persons with “I’m a law student” stamped on their faces raised their hands. I’m sorry for their loss in not knowing Don. If you never knew Don Paine, you’d be wondering what the fuss is about. The rest of us know.

Don grew up on a small farm on Bearden Hill in Knoxville with his parents and sister, Julie. He completed high school at a boys’ school in North Carolina that he called “reform school,” although he never divulged to me what manner of mischief landed him there. After receiving his bachelor’s degree from UT, he began work on a master’s in English. When a friend who was attending law school at UT encouraged Don to try that as well, Don reportedly said that he had no interest in going to that “trade school.” Somewhere along the way, he changed his mind. Thank goodness.

Don loved teaching and taught law at both UT and Vanderbilt. He was in private practice, first at Egerton, McAfee, Armistead & Davis, P.C. before founding Paine, Swiney and Tarwater, now known as Paine, Tarwater, and Bickers, LLP. He excelled at practicing law, tried cases all over the country, and was elected to ABOTA. His keen intellect, understanding of the practitioner’s needs and point of view, and skill for teaching coalesced, resulting in the creation of the Tennessee Law Institute and its Annual Review Seminar. Only twenty-two people attended that first seminar in 1972, long before the days of mandatory CLE. John Walker joined him the following year and taught until his retirement in 2011. I had the good fortune to be added to the team in 1988 and, in the ensuing years, got to know Don well. Here are some things you might not know:

Although Don had lived in a big house in Sequoyah Hills, driven a Cadillac, and enjoyed life with all the trappings, he was a simple guy from Bearden at heart. After his separation from his ex-wife Cynthia, with whom he remained close until her death, he moved to a one-bedroom apartment in Inskip, where he still resided at the time of his death decades later. (Fortunately, the red and black shag carpet was replaced somewhere along the way!) The apartment had everything Don needed, including a living room that doubled as a home office and a second refrigerator to hold his beer keg. As some of his former law students can attest, the legal education for Professor Paine’s students could include a field trip to Inskip for a lesson in making home-brew.

The TLI seminar gave Don statewide exposure and recognition, but he remained that humble guy from Bearden. He was a blue jeans and flannel shirt kind of guy. He phased out his active private law practice years ago, spending his time instead doing pro bono work in Legal Aid’s Saturday Bar program. He spent significant time answering questions for lawyers (and even judges) about difficult legal issues. And he read recent cases every day – yes, including Christmas Day – in preparation for the next year’s TLI seminar.

Thirty-four years ago, Don was diagnosed with thyroid cancer. A tumor would be removed, Don would take the minimum possible time to heal, and he would be back at work. The year that the Tennessee Rules of Evidence were passed, our first TLI seminar was in Memphis. Don had a tumor growing so quickly that it interfered with his ability to talk, and he had to fly back to Knoxville to have surgery the day before the seminar started. John Walker and I somehow muddled through that first day, covering Don’s subjects as well as our own. On the morning of the second day, when Evidence was to be the first topic covered, there was a commotion in that back of the room as Don walked in, lecture notebook in one hand, briefcase in the other, and strolled to the podium to a standing ovation. No one but Don was going to teach the Tennessee Rules of Evidence that he had played such a huge role in drafting, even if it meant leaving the hospital against medical advice.

Don wasn’t all work, though. He loved to sing and play the guitar, as he demonstrated in numerous classes and seminars. He combined his loves of history and the law by investigating old cases. He would check out the appellate record, read the transcript and the exhibits, and take field trips to places relevant to the case. I traipsed various cemeteries and other sites with Don when he was conducting such an investigation, and he was like a kid in search of a prize. He would mentally step back in time to re-live what the parties in the case had lived. It was about the people.

With Don, it was always about the people: Educating the law students, bar review hopefuls, and lawyers; providing assistance and relief to his pro bono clients; engaging in the quest to find the answer to a tricky legal problem for a brother or sister in the profession. His many awards demonstrate that he did so many things well, but it wasn’t about accolades; it was about the people.

Four people were especially important to Don: his son, Franklin; his daughter Emily and her husband, Jim Settlemeyer; and his assistant and best friend, Karen Roberts. We share their deep sense of loss, even as we remember all the good times with Donnie Paine from Bearden, a man who was humble, with a self-deprecating sense of humor, and yet always the brightest legal scholar in the room. God speed, Donnie.

His many awards demonstrate that he did so many things well, but it wasn’t about accolades; it was about the people.



TECHNOLOGY FOR LAWYERS

By: Kristina M. Chuck-Smith
Cohen & Chuck-Smith, PLLC
Julia Spannaus

INTERNET-BASED FAX SERVICES

Internet-based fax services are an essential tool for today's small firm and solo practitioner, especially if you are operating with minimal or no support staff or are frequently out of the office. Most services operate similarly, with a "fax" received at your email account as a ".pdf" attachment. Some also allow you to send faxes either from your computer or from your mobile device.

eFax (www.efax.com)

The Efax service has two service tiers: 150 pages each incoming and outgoing per month for 14.13 per month and 200 pages each incoming and outgoing per month for 16.63 per month. Both plans are slightly more expensive if used on a month-to-month basis rather than on a year-long contract, and both plans charge \$0.10 per page if you exceed the monthly allotment. Mobile apps are available. This service has the "865" area code with a Knoxville-based numbers available, which not all services offer. You receive "faxes" via emails with ".pdf" attachments which can be easily saved and printed. Sending a fax involves uploading files ending in the extension ".pdf", ".doc", ".xls" and many other commonly-used document types. An electronic receipt is emailed to you upon successful completion or failure of the fax.

Downsides are that the searchable sent/received fax function is unwieldy and it is often faster to search faxes through your own email rather than on their mailbox system. The Address Book function can also be slow and not worth the time to utilize. Upsides are the ability to forward faxes to clients or other persons via email, to review faxes from your mobile phone, and to easily save the files in your electronic client folders.

MyFax (www.myfax.com)

MyFax is similar to eFax but with a few less features. MyFax includes fax by email (received and send). When receiving faxes via email you are able to have the fax come in to up to 5 different email addresses. Also, should you accidentally delete that email your faxes (sent/received) are available in an archive. There is no software to download and there is an app available for your mobile device. For \$10 per month you can send 100 pages and receive 200 pages, for \$20 you can send and received 200 pages, and for \$40 you can send and receive 400 pages.

One downfall to this service is that you are not able to port your current number over to the service.

Send2Fax (www.send2fax)

With Send2Fax you are able to send faxes via email or on their web-based site and you receive emails via email or the web-based. This allows for multiple faxes to come in without experiencing a busy signal. You are also able to use the "Send-to" feature in the Office 2003 Suite to send and receive faxes (I was unable to find out if it works with newer versions of Office). The two plans offered are the Home Office and the Small Business Office. The Home Office plan costs \$8.95 per month for 150 incoming and outgoing pages. The Small Business plan cost \$12.95 and allows you 350 incoming and outgoing pages. The overage for both plans is \$0.12 per page. Both plans offer free set up and the first month free.

About this column:

The goal of this column is to provide timely information on technology issues of interest to local lawyers and their staff. If you have comments about this column or ideas for a future column, please contact **Kristina Chuck-Smith** at 329-3334 or kristina@ccsgal-law.com.



The attorneys of
Lowe Yeager & Brown
welcome

Jason H. Long
to the firm and congratulate him on his election as
Vice President,
Tennessee Bar Association

Please visit our new offices at
2102 Riverview Tower
900 S. Gay Street
Knoxville, TN 37902
(865) 521-6527

By: Jack Burgin
Kramer Rayson LLP



Crossed Thoughts About Evidence

When asked to write an article about practical evidentiary issues that arise in federal court, I thought, why me? I have no magic solutions and my writing style tends to lean toward the pedantic. But I'm always happy to talk about how I plan for a trial so here are several thoughts that have gotten me by so far. Use them, or not, as you think appropriate.

1. What do I want to get in and how do I get it in?

I start tackling evidentiary issues when litigation commences (if not before) by identifying every document and piece of testimony I want to introduce and then asking myself how can I introduce it. Employment law (my primary field) often relies heavily upon documentation. Some of these documents include statements by employees other than the document writer. So, for example, if Kristi reports that Mike harassed her and Kevin confirmed Kristi's report, getting Mike fired, does the hearsay rule prohibit me from introducing the written statements from Kristi and Kevin when Mike sues? Must Kristi and Kevin testify and, even then, would that make their statements admissible?

2. What do I want to keep out and how do I keep it out?

After knowing what I want to get in, at some point, I'll need to formulate objections to the evidence my opponent wants to introduce. If I don't have a credible reason to exclude a damaging document, can I object to part of it? Forcing my opponent to redact hearsay statements in a document could weaken their proof or, at least, limit the issues to which I have to respond.

3. What deposition questions should I ask about my opponent's evidence?

Rarely will I not ask deposition questions about the opposition's evidence. For example, employees inclined to sue employers often keep notes about conversations with co-workers or managers. If John, who didn't get a promotion, writes that his co-worker, Pete, told him that Dustin, a young manager, said John was "old, and set in his ways," I'll make sure to establish that John didn't actually hear the statement. I've taken more than one deposition principally to establish that a document written by a potential witness was based on hearsay. I'm surprised when opposing counsel fails to ask questions about the evidence I intend to introduce. If there is a way to show opposing counsel's evidence has issues, I will almost always drive home those issues during a deposition.

4. Timely object to potentially inadmissible evidence.

Federal Rule of Civil Procedure 26(a)(3) requires both parties to file exhibit lists with the court at least 30 days before the trial. It further requires objections be filed within 14 days. Failure to object amounts to waiver of the objection unless the objection is for relevance or for the probative value being outweighed by one of the problems listed in Rule 403. The objections should be more than conclusory, one-word assertions because Rule 26(a)(3) requires you to state the "grounds" for the objection. Understand that, as federal court scheduling orders typically explain, the court will not ordinarily rule on pretrial objections unless you file a motion in limine.

5. File motions in limine but be choosy about it.

The Federal Rules do not explicitly authorize in limine rulings but the practice has developed pursuant to the district court's inherent authority to manage the course of trials. *Luce v. United States*, 469 U.S. 38, 41 (1984). Motions in limine are supposed to "narrow the evidentiary issues for trial and to eliminate unnecessary trial interruptions" but they "should not be used to resolve factual disputes." *Louzon v. Ford Motor Co.*, 718 F.3d 556, 561 (6th Cir. 2013). The last point is often overlooked; I've seen more than a handful of motions in limine impermissibly ask the judge to resolve a hotly disputed fact in the course of deciding whether to admit or reject evidence.

I also try to be reasonable with the number of motions in limine. Not every evidentiary dispute needs to be resolved before the hearing. Some disputes only present routine issues. I file motions in limine (1) where the evidence is significant, or (2) where the evidentiary dispute presents an unusual issue. When it will reduce the number of motions without unduly lengthening the brief, I'll address similar legal issues (e.g., hearsay) in one motion in limine.

On the whole, motions in limine seeking to exclude evidence on the ground of relevance are rarely granted. It is almost impossible for a judge to decide what is or is not relevant without considering the evidence in context. And, if you want a judge to admit or exclude a specific document, make sure the document is attached to the motion as an exhibit or, at least, already filed in the court record.

Despite their popularity, motions in limine are only supposed to be granted

when the result is clear. In other words, your motion in limine probably won't be granted. But not every denied motion in limine is a loss. Properly written, a motion in limine helps to inform the judge about the evidentiary dispute and is an opportunity to present favorable precedent to the judge before the trial. This increases the chance of a favorable evidentiary ruling during the trial. Also, you shouldn't bet the farm on a motion in limine being granted. Have a contingency plan for the trial.

6. Preserve objections to the admission or rejection of evidence.

Filing pretrial objections to exhibits is simply a procedural prerequisite to stating the objection at the trial. Generally, you must still offer the evidence or timely assert the objection during the trial. See *Barner v. Pilkington N. Am., Inc.*, 399 F.3d 745, 749 (6th Cir. 2005). This rule is not absolute, *Griffin v. Finkbeiner*, 689 F.3d 584, 597 (6th Cir. 2012) (where the disputed evidence was fully disclosed in a motion in limine hearing), but don't count on the exception if you want to argue the evidentiary issue on appeal.

If there is a way to show opposing counsel's evidence has issues, I will almost always drive home those issues during a deposition.



By: Carol Anne Long

Judicial Law Clerk, Tennessee Court of Criminal Appeals

FOR THE LOVE OF DOGS

If you are a stray dog and you are lucky enough to get adopted by Tasha Blakney and her husband, Michael Rogers, you have just hit the doggie jackpot. You would be hard-pressed to find more big-hearted dog lovers than Tasha and Michael. Their love of dogs is so great that they currently have four fur-babies at their home (along with their human children, Caroline and Katie Rogers).

Tasha comes by her love of canines honestly.

Growing up in Millington, Tennessee, Tasha always had dogs around, and she recalls that her parents would often bring home strays that they could not bear to leave behind. As an adult, Tasha

has always adopted her dogs from shelters and rescue organizations, a practice that is very important to her. Two of her four current dogs were adopted from Young-Williams Animal Center here in Knoxville.

When Tasha and Michael were married in September 2008, it was a package deal: her fur-baby, Clark, who she had adopted from Border Collie Rescue, came with her. A few months later when Tasha and Michael were visiting Michael's ailing grandmother in Georgia, they encountered a rather pitiful looking Labrador mix who had wandered onto Michael's parents' farm. Unable to part with her, they brought her home and named her Bailey. After lots of love, TLC, and heartworm treatment, Bailey has thrived, so much so that she is now lovingly referred to as "Belly" on occasion. In 2011, Tasha and Michael adopted Chelsea, a Brittany spaniel mix, from Young-Williams. Tasha was somewhat hesitant to adopt Chelsea because she had already been adopted once and was returned, apparently because the owners believed her to

be too hyper. Tasha took a chance on Chelsea because she saw "something special" in the sweet dog, and she turned out to be an absolute delight. Tasha brought Chelsea to the office with her often, especially on Sunday afternoons. Tragically, Chelsea was hit by a car and passed away just prior to Thanksgiving.

Tasha visited Young-Williams in early December but, overcome with emotion, decided it was too soon to adopt another dog. She returned in late December with her stepdaughter, Katie, and this time, she was ready. A hound mix called Ollivander (they shortened it to Ollie) was roughly six years old and had been at the shelter for over two months. Worried that Ollie's time might be running out, she knew that she had to adopt him. And then they saw



Tasha with Clark



Caesar

Caesar. A terrier mix who Tasha describes as having "a face only a mother could love," she learned that his elderly owner was forced to surrender him due to the owner's health problems. Tasha was so moved by Caesar's story (and Katie's plea that they HAD to

take him) that she left with two dogs that day. "We didn't intend to be a four-dog family – it just worked out that way!" laughs Tasha.

Tasha reports that all four dogs get along very well together. The younger three definitely respect the elder-statesman, Clark, and give him his space. The four get along exceedingly well with other dogs and children. Tasha says that they are all immediately gentle with children and seem to intuitively understand how to behave around them.

Although all of her dogs visit her office, Caesar has stepped into Chelsea's place and accompanies Tasha to the office on most Sunday afternoons. "I think it's just more pleasant to have your pet at work with



Ollie

you when you can. It forces you to get up from your desk and take a walk, which is very important, so it's a win/win situation," Tasha says. Tasha also loves the dog-friendly atmosphere of downtown Knoxville, noting that "people are just as apt to greet your dogs as they are to greet you."



Chelsea at Tasha's office

When Caesar is visiting the office of Eldridge & Blakney, he always "makes the rounds," trotting from office to office. He stays in one office until the person working there stops petting him, and then he moves on to the next friendly hand.

Tasha's love of dogs extends past her own, and she has selflessly devoted countless hours and miles over the past few years to the transport of stray dogs from "high-kill" shelters in Louisiana and Mississippi to New England states, where their adoptive families are waiting. "States like Maine and New Hampshire don't have many dogs available to adopt," Tasha reports, so rescue groups in the southeast (where there is, sadly, an overabundance of strays) foster the dogs until the transport groups have assembled a run-sheet to transport the pooches to their new homes. Tasha and Michael, often with the help of Caroline and Katie, typically drive the route from Athens, Tennessee to Knoxville or the Tri-Cities area, where the next driver meets them and loads up the dogs for the next leg of the trip. The back of Michael's small SUV is often loaded with dog crates and a menagerie of dogs.

Are there more dogs in Tasha's future? I feel certain that there are. And for those lucky pups who will hit the future doggie jackpot, Sunday afternoons spent in a downtown law office will be lovely for all involved.



Transport Dogs



Bailey

By: Cathy Shuck

Of Counsel, Wimberly Lawson Wright Daves & Jones, PLLC

Final Regulations Implementing Employer Mandate Include More Delays, Few Surprises

Just as last month's issue of DICTA was going to press, the IRS and Treasury released final regulations implementing the Patient Protection and Affordable Care Act's (ACA) "play or pay" employer mandate.¹ The March cover article took an initial look at those regulations, and this space highlighted some surprising aspects of the ACA's individual mandate. This month we take a closer look at the final employer mandate regulations, including the extent to which they do and don't resolve issues raised by the draft regulations.²

A. Who is Covered Employer, and When?

The ACA requires employers with 50 or more full-time equivalent employees to offer qualifying health insurance to full-time employees and their dependents.³ On July 2, 2013, the Administration pushed the due date back one year, from 2014 to 2015. The final regulations push the due date for employers with fewer than 100 full-time equivalent employees back another year, to 2016.⁴

The preamble to the final regulations clarifies exactly when—during 2015 or 2016—a covered employer must be in compliance. If the employer maintains a calendar year health insurance plan, then the employer must comply as of January 1. But if the employer has maintained a plan that starts on a different date, such as March 1 or July 1, then the employer does not have to be in compliance until the start of its plan year. To be eligible for the delayed date, the employer must have maintained the non-calendar year plan since December 27, 2012 or earlier.⁵ This clarification should be welcome news for employers with non-calendar year plans, since it means that in most cases they will not have to make adjustments to their plans outside of the plan year to comply with the mandate.

B. Who is a Covered Full-Time Employee?

If an individual works full-time for a covered employer, that individual must be offered qualifying, affordable health insurance for herself and her dependents. Note that it is not the employer's responsibility to ensure that an eligible full-time employee *enrolls* in health insurance—the employer is only responsible for *offering* insurance. Here is a discussion of but a few of the many thorny issues around full-time employees.

1. 30-hour threshold

Recall that for purposes of the ACA, "full-time" is 30 or more hours per week.⁶ The final regulations, unfortunately, do not change that number. Note that the 30-hour requirement applies to the ACA only—it does not require employers to adopt 30 hours per week as the standard for other benefits or purposes.

The IRS notes in the preamble to the final regulations that because the 30-hour threshold is in the statute, the IRS would not increase it by regulation.⁷ Although a handful of bills with bipartisan support have been introduced in Congress to increase the threshold to 40 hours per week, none has made much headway so far.⁸ The issue continues to have support on both sides of the aisle, however, and it is *possible* that the definition of full-time will be increased by the time the employer mandate takes full effect in 2016.⁹

2. How does this apply to temps?

While most employees are easily categorized as full-time or not, one particularly difficult group to evaluate is temporary or staffing agency workers. The proposed regulations largely punted on the question of whether these employees are full-time employees, and if so, who is the employer. The final regulations provide a little clarity, in that they include a multi-factor evaluation to determine whether a temporary worker can be treated as a variable-hour employee.¹⁰ (A variable-hour employee need not be offered health insurance until he completes an initial measurement period of up to one year.) However, the regulations

are still murky on the extent to which receiving employers can avoid categorizing temporary workers as full-time employees, and the preamble notes that IRS expects to issue additional guidance on the issue in the future.¹¹

3. How does dependent coverage work?

To comply with the employer mandate, health insurance must include dependent coverage. The proposed regulations defined "dependents" in this context as children only, including natural, adopted, foster, and step-children. In other words, spouses were excluded. The final regulations continue to exclude spouses, but revise the definition of dependent children to mean only natural and adopted children up to age 26. Thus, to be in compliance, a covered employer need *not* offer spousal coverage, or coverage for foster children, step-children, or children who are not U.S. citizens or nationals, with limited exceptions.¹² Of course, an employer may elect to offer such health insurance coverage.

If the plan does not currently offer dependent coverage and the employer is covered in 2015 (because it has 100 or more FTEs), then the employer will not be subject to a penalty as long as it is taking steps in 2015 to add dependent coverage.¹³ Coverage must be in place by 2016.

4. What is the deal with the 95% coverage provision?

The IRS had previously provided that an employer will not be subject to a penalty for failing to satisfy the mandate if it offered qualifying coverage to at least 95% of its eligible full-time employees. For 2015, as well as for any part of 2016 covered by a 2015 plan year, that number is increased to 70%. In other words, for the first year that the employer mandate is in effect, employers only have to get it right 70% of the time to avoid a penalty.¹⁴

E. Conclusion

One glaring question remaining is, how is all of this going to be administered? The final regulations, like the proposed regulations, "reserve" the thorny issues of administration and procedure, meaning that specifics will be forthcoming at some later date.¹⁵ So for those of us tasked with explaining the law, and for all those tasked with implementing it, there is still plenty of excitement to be had between now and 2016 when the employer mandate finally takes full effect.

¹ See *Shared Responsibility for Employers Regarding Health Coverage*, 79 Fed. Reg. 8544-8601, February 12, 2014.

² See 78 Fed. Reg. 217 (Jan. 2, 2013) (proposed regulations).

³ 26 U.S.C. § 4980H.

⁴ See the preamble to the final regulations, 79 Fed. Reg. 8569-70 and 8574 for the most coherent discussion of the change in effective dates.

⁵ See 79 Fed. Reg. 8570, 8574.

⁶ See 26 U.S.C. § 4980H(c)(4).

⁷ See 79 Fed. Reg. 8552-53; see also 26 C.F.R. § 54.4980H-1(a)(21), (22) (definitions).

⁸ See, e.g., S. 1188 & H.R. 2988 (Forty Hours is Full Time Act of 2013) and H.R. 2575 (Save American Workers Act of 2013). See also Katherine F. Layman, *The Affordable Care Act: Use Caution before Overlooking the Employer Mandate in 2014*, Dicta, March 2014, for a discussion of some of the provisions in the final regulations addressing how to count the hours of employees in non-traditional work situations, such as educational employees and work-study students.

⁹ For example, GovTrack, a legislative tracking and analysis website, gives H.R. 2575 a 14% chance of passing. See <https://www.govtrack.us/congress/bills/113/hr2575#overview> (Mar. 8, 2014).

¹⁰ See 26 C.F.R. § 54.4980H-1(a)(49).

¹¹ See 79 Fed. Reg. 8556-57 (discussing temporary staffing firms).

¹² See 26 C.F.R. § 54.4980H-1(a)(12) (definition of dependent) and 79 Fed. Reg. 8567 (explanation). Note that if the children are residents of a country contiguous to the U.S. (Canada or Mexico) or are within a special tax exception that applies to adopted children, then they must be offered coverage.

¹³ See 79 Fed. Reg. 8573-74.

¹⁴ See 79 Fed. Reg. 8575.

¹⁵ See 26 C.F.R. § 54.4980H-6.

About this column: "*The cobbler's children have no shoes.*" This old expression refers to the fact that a busy cobbler will be so busy making shoes for his customers that he has no time to make some for his own children. This syndrome can also apply to lawyers who are so busy providing good service to their clients that they neglect management issues in their own offices. The goal of this column is to provide timely information on management issues. If you have an idea for a future column, please contact **Cathy Shuck** at 541-8835.

LAW RELATED EDUCATION = SERVING OUR COMMUNITY

For the last nineteen years, the Knoxville Bar Association has offered a free public education series called Community Law School that helps citizens learn more about planning for their own security and that of their family and loved ones. Many in our community are facing critical economic and healthcare decisions and don't know where to turn for basic legal information about their rights and responsibilities. The focus of the Community Law School is "preventative consumerism" with subjects that help those in our community avoid frauds and schemes, address credit and debt concerns and make adequate arrangements in case of death or disability. At no other time has it been more important for the members of our community to plan ahead and know their

options and rights. The KBA provides these sessions so that the public will have the information they need to approach these challenges armed with information, not riddled with fear.

This year more than 300 people participated in the Community Law School programs on March 7 and 8, 2014. East Tennessee Personal Care Service was our program partner and funding for the series was provided by the Knoxville Bar Foundation. The KBA would like to thank attorneys **Donald Farinato** (Holbrook, Peterson & Smith), **Brent Snyder** (Banks & Jones), **Mark Brown** (Menefee & Brown) and **Tom Ramsey, Daniel Wilkerson & Fiona Hill** (Ramsey, Elmore, Stone & Caffey) for teaching the programs this year.



Donald Farinato



Brent Snyder



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By: Laura S. Hash

Assistant Professor of Law, Lincoln Memorial University, Duncan School of Law

TERMINATION OF PARENTAL RIGHTS: TIPS FOR JUVENILE LAW PRACTITIONERS

Although a juvenile law practice involves more than the termination of parental rights, termination cases make up a significant portion of the juvenile-specific case law, thus providing guidance to the judiciary and attorneys alike on how to successfully proceed when terminating a parent's rights. The Court of Appeals has said that "[c]ases involving termination of parental rights involve deeply-rooted fundamental rights, and compliance with the applicable statutes, rules, and case law is especially critical."¹ Therefore, this article is going to focus on a recent statutory change and termination cases decided in 2013-2014 where the Court of Appeals reversed the trial court's findings on issues that could have been corrected by the practitioner.

Safe Harbor Act of 2013

The Safe Harbor Act of 2013, codified in Tenn. Code Ann. § 33-10-104, became effective on May 14, 2013. Although the Act has many sections, the most notable portion of the Act § 33-10-104(f)(2), says, in relevant part:

(A) If during prenatal care, the attending obstetrical provider determines no later than the end of the twentieth week of pregnancy that the patient has used prescription drugs which may place the fetus in jeopardy, and drug abuse or drug dependence treatment is indicated, the provider shall encourage counseling, drug abuse or drug dependence treatment and other assistance to the patient.

(B) If the patient initiates drug abuse or drug dependence treatment based upon a clinical assessment prior to her next regularly scheduled prenatal visit and maintains compliance with both drug abuse or drug dependence treatment based on a clinical assessment as well as prenatal care throughout the remaining term of the pregnancy, then the department of children's services shall not file any petition to terminate the mother's parental rights or otherwise seek protection of the newborn solely because of the patient's use of prescription drugs for non-medical purposes during the term of the pregnancy.²

Practice Tip

Given the serious prescription drug problem currently plaguing Tennessee, *in utero* drug exposure is a common ground for termination. This new statute prevents the termination of parental rights based solely on proof of *in utero* drug exposure prior to the mother's twenty-first week of pregnancy so long as the mother enters and complies with drug treatment recommendations throughout the duration of the pregnancy. Drug treatment programs that utilize suboxone or methadone will likely be interpreted as appropriate drug treatment programs under this statute.

In re Jordan T.J.

In re Jordan T.J. involved a custodian who filed to terminate the parental rights of their ward's parents in order to proceed with an adoption.³ The trial court terminated the parental rights of the incarcerated father after he failed to make an appearance.⁴ The petitioner appeared to have clear evidence sufficient to terminate the father's rights, as he was serving a prison sentence in excess of ten years and the child was younger than eight years old; however, the petitioner only served the father with the petition and later wrote him a letter indicating that he had not filed a responsive pleading and his silence would be considered as

a forfeiture of his rights.⁵ The Court of Appeals determined that the petitioner's failure to provide the incarcerated father with the specific notifications established in Tenn. Code Ann. § 36-1-113(f) required the Court to vacate the termination order as it pertained to the father and remand the matter back to the juvenile court for a new trial with appointed counsel.⁶

Practice Tip

Notice to Incarcerated Parent: When filing a termination of parental rights, practitioners must provide incarcerated parents with "actual notice" of the following: 1) the time and place of the hearing; 2) that the hearing will determine whether to terminate parental rights; 3) that, despite incarceration, the parent has a right to participate in the hearing and contest the allegations; and 4) if the incarcerated party wants to participate and contest the allegations and is indigent, he/she (a) will be provided with court-appointed counsel and (b) shall have the right to participate fully with live witnesses, depositions, and interrogatories per the rules of procedure.⁷ To be prudent, practitioners should create a separate document entitled Notice to Incarcerated Parent and serve the incarcerated parent with the Notice simultaneously with the petition. This Notice should be served on the incarcerated parent regardless of how clear the grounds for termination may be or the length of the parent's incarceration.

In re Devonta L.C.

In *In re Devonta L.C.*, the trial court terminated the parents' rights on multiple grounds, but failed to find that there was clear and convincing evidence of severe abuse.⁸ The Court of Appeals reversed the trial court's decision regarding severe abuse, finding that the "knowing" element of severe abuse must often be gleaned from circumstantial evidence, like medical expert testimony, on the likelihood that the injury occurred in the manner described by the parent or caregiver.⁹ Therefore, given the significant proof that was provided during the trial, the Court found that the termination of parents' rights was appropriate on the additional ground of severe abuse. However, the Court reversed the trial court's decision to terminate the parents' rights on the ground of persistence of conditions, because the relevant statute requires that there be an order of the court removing the child from the parent.¹⁰ The record failed to include an order from the trial court's removal of the children with a clear and convincing finding of dependency and neglect.¹¹ In the absence of that order, the Court concluded that an essential element of the persistence of conditions ground for termination was not proven.¹²

Practice Tips

Termination Record: Practitioners must make sure to create a complete record when proceeding with a termination case. In creating a record for persistence of conditions, prudent practitioners must include all of the relevant orders from the underlying dependency and neglect matter, including, but not limited to, the initial removal order and the adjudicatory order finding dependency and neglect.

Severe Abuse: Practitioners should procure an expert, likely a medical and/or psychological expert, to prove the "knowing" element of a severe abuse injury case. This expert will need to be able to testify to the likelihood that the injury at issue occurred in the manner described by the parent or caregiver.

In re Johnny K.F.

In re Johnny K.F. is a termination case where the trial court ruled to

Continued on Page 14



By: **Latisha J. Stubblefield**

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.

Face...pets? On February 14, 2014, a lawsuit was filed in the United States District Court for the Middle District of Tennessee wherein a group called "Facepets.com, LLC" sued Facebook, Inc. for "trademark bullying." I know. That was a loaded sentence. Facepets.com is a "concept that was created by animal-loving individuals in Nashville, Tennessee who were interested in creating a social media opportunity for users to post videos and pictures and information about their pets. Specifically, Facepets was designed to create an on-line community for registered users to participate in discussion, get feedback from their peers, form virtual communities, and engage in social networking featuring their pets and providing a website featuring technology enabling users to upload, view and download digital photos featuring their pets."¹ Facebook, LLC has opposed Facepet.com's pending trademark application, claiming that the proposed mark will likely cause confusion in the marketplace and/or dilute the distinctiveness of the Facebook mark. In its Complaint, Facepets.com alleges that Facebook, LLC has engaged in the practice of "trademark bullying" which is "when a trademark owner uses its trademark rights to harass and intimidate another business beyond what the law might be reasonably interpreted to allow."²

First, I don't practice trademark law, but "trademark bullying" kind of seems like a Friday night Dateline special or some new age Lifetime movie. Second, in the interest of full disclosure, I do not currently have a pet. I love animals and grew up on a farm with several pets, so I fully understand the love of animals. However, I just don't "get" the point/purpose/genius of Facepet.com. Do pets really need an online social media opportunity? Does Dixie, the dog that lives in Knoxville, really need to expand her social networking to virtually "befriend" Zora, the dog that lives in Nashville? I might have missed something, but I don't believe these Nashvillians have superhuman pets that can unilaterally cruise the Internet. How is this really any different than the hundreds of pet photos regularly occurring on my Facebook feed or #dogsofinstagram? And let us not forget that this is now a lawsuit in federal court (as well as a matter still pending before the United States Patent and Trademark Office) where, without a doubt, tens (if not hundreds) of thousands of dollars will be expended for the right of Lucy the cat to have her own Facepets.com profile. After some reflection, I believe there is a legitimate way to resolve the potential trademark issue. They just need to rename Facepet.com and call it what it really is: A social media dating website for people with pets who want to meet other people with pets. Let's call a spade a spade, people.

¹ Complaint at ¶15, Docket No. 3:14-cv-00507 (M.D. Tenn. Feb. 14, 2014)

² Complaint at ¶14, Docket No. 3:14-cv-00507 (M.D. Tenn. Feb. 14, 2014)

TERMINATION OF PARENTAL RIGHTS: TIPS FOR JUVENILE LAW PRACTITIONERS *(Continued from Page 13)*

terminate the father's parental rights based on abandonment by wanton disregard and the mother's parental rights based on severe abuse by *in utero* drug exposure and by reason of the persistence of conditions that resulted in child's initial removal.¹³ The Court of Appeals vacated the finding regarding the father's wanton disregard because the petition failed to specifically allege wanton disregard as a ground for termination.¹⁴ Due process requires that grounds for termination be specifically pleaded to provide notice to defendants of all matters on which they need to be prepared to defend.¹⁵ The Court further vacated the finding of severe abuse by reason of *in utero* drug use because: 1) a rebuttal witness was allowed to testify against the mother after remaining in the courtroom for some portion of the trial despite a Tennessee Rule of Evidence 612 sequestration request being granted at the beginning of trial¹⁶ and 2) there were conflicting orders from the trial court regarding the admissibility of medical records related to the mother's drug use.¹⁷

Practice Tips

Specific Pleading: Practitioners should make sure that their termination petitions include all existing grounds for termination. If new grounds for termination emerge during trial, practitioners should formally seek leave to amend the pleadings to conform to the evidence.

Rule 612 Sequestration: When the rule of sequestration is granted, practitioners should evaluate the courtroom to ensure that every witness who may be called has vacated the courtroom prior to any testimony being heard.

Motion Hearings: Practitioners must make sure to take good notes of the court's oral ruling to ensure that the resulting order is an accurate reflection of what the judge ordered. No attorney should sign his/her agreement to an order unless it is an accurate reflection of the court's oral ruling. If attorneys cannot agree on the content of the order, each can file a competing order containing what he/she believes the court ordered.

¹ *In re Johnny K.F.*, E2012-02700-COA-R3-PT, 2013 WL 4679269 at *11 (Tenn. Ct. App. Aug. 27, 2013).

² TENN. CODE ANN. § 33-10-104(f)(2)(A)-(B) (2013) (emphasis added).

³ *In re Jordan T.J.*, M2011-01345-COA-R3-PT, 2013 WL 357584 at *1 (Tenn. Ct. App. Jan. 29, 2013).

⁴ *Id.* at *1.

⁵ *Id.* at *2.

⁶ *Id.*

⁷ *Id.* at *3 (Citing TENN. CODE ANN. § 36-1-113(f) (Supp. 2012)).

⁸ *In re Devonta L.C.*, E2012-00678-COA-R3-PT, 2013 WL 395977 at *1 (Tenn. Ct. App. Jan. 31, 2013).

⁹ *Id.* at *6.

¹⁰ *Id.* at *15.

¹¹ *Id.*

¹² *Id.*

¹³ *In re Johnny K.F.*, WL 4679269 at *1.

¹⁴ *Id.* at *7.

¹⁵ *Id.*

¹⁶ *Id.* at *9.

¹⁷ *Id.* at *9-10.

LAP SPACE

By: **Melissa B. Carrasco**
Egerton, McAfee, Armistead & Davis, P.C.



Parenting will make you do and say some pretty bizarre things. People who, at one time, were perfectly rational and socially proper find themselves wiping snot off of other peoples' faces with their shirt sleeves and discussing bowel movements with other, formerly rational adults with the seriousness usually reserved for United Nations negotiations. Parents find themselves having to conjure reasonable explanations at a moment's notice for the mysteries of life, such as why bathing will not make you turn invisible (a real concern because the dirt on your skin is what you can see) and why you can't wear your favorite socks every day ("because they stink" is not a good enough answer in some circles).

Parents are the people who act like World Cup spectators when a soccer ball accidentally hits their five-year-old on the leg (while she is picking a dandelion which happened to grow in front of the goal) and then rolls slowly into the net. Parents are the people who routinely have conversations with one child about not touching, staring at, or breathing upon the other child on the other side of the SUV and who have to explain why "I have short-term memory loss" is not something you can tell your teacher so that you don't have to answer questions in class (worked for my boy for almost an entire semester before someone ratted him out).

Parents are also the people who have to manage logistics better than UPS without a team of well-trained professional drivers to pick up and deliver priceless cargo around town. I will freely admit that I have been rather vocal about my displeasure with the number of snow days that my boys have enjoyed this year. There is nothing like leaving a client meeting to find three messages saying, "Mommy, our school is closing early;" "Mommy my teacher says you have to come get us now;" and "Mommy my teacher says we will be sitting on the sidewalk if you don't come right now." That message means you have to drop everything you had planned for that day and then drive like a crazy person in weather that, apparently, is bad enough to shut down school because it is too dangerous for driving. But, then again, my boys have spent 11 and 14 years respectively turning my brain into mush, so

irrational behavior is par for the course at this point.

Snow days, sick kids, and babysitters that move on to other career paths bring a whole new perspective to work-life balance because, quite frankly, they interrupt the plan for the day and require reserves of creativity and patience that none of us ever knew we had. So what can we do?

First, don't be afraid to ask for an extension of a deadline, to change an in-person meeting to a teleconference, or ask a colleague to cover a hearing when doing so will not jeopardize your client's interests. Working parents are all in the same boat because at any given point in time, any one of us can get that phone call that changes the plan for the day whole day. Being honest about why you need an extension on a deadline or to reschedule a hearing should not be a terrible thing.

Second, be professional and pay it forward when you can do so without jeopardizing your client's interest. If opposing counsel asks for an extension on a deadline because he/she has to make a mad dash across town to pick up a child or because the powers that be close the schools the night before a meeting, feel free to say, "Yes," unless doing so would violate an ethical duty to a client. Usually a couple of days are all that is needed to get things back on track, and you never know when you are going to need to ask for the same courtesy no matter what stage in life you happen to be at any given point in time.

Third, appreciate the moments for what they are – moments in time. As I write this, I am sitting in a chair with a sleeping eleven-year-old who woke up way too early, his faithful poodle who never leaves his side, and a laptop perched on the one knee that is not occupied by boy or poodle. It isn't easy trying to balance all three of these in my lap without letting one of them slide off onto the floor. But some day, both the boy and the poodle will be gone, and the laptop will not have to share valuable lap space. At that time, the laptop can have my full attention. For now, the laptop will have to be content with just one knee because, for this moment in time, this stage of life, the boy and the poodle get as much space as they want.



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THOUGHTS ON A GREAT FRIEND/LAWYER/ TEACHER

Devoting an entire issue of DICTA to one person might sound a bit different, but was it accurate to describe the late Don Paine as one person? To so many in the Knoxville Bar, Don Paine was a friend, a teacher, a mentor, a role-model, a legend, and a drinking buddy. Judges sought his guidance, students sought his wisdom, and everyone sought his company. So, we asked some of Don's many friends and admirers to offer a few thoughts/stories.

I will get the ball rolling by admitting that I barely knew Don Paine. I never had him for class. And I never had a case with him. When I first started practicing though, like so many Knoxville lawyers, I needed Don Paine's advice. I was going round and round with opposing counsel about some peculiar evidentiary issue. We were both firmly entrenched with no case law to support either position. While discussing (whining about) the issue with a co-worker, she said, "You should just call Don Paine."

Let me again note that I never had Don for class. In fact, I had never met the man. But I mustered up the courage to call his office. Although I was told he was not in, someone assured me that Don would call me back shortly. I had a hard time believing it. Why would he call some no-name kid back on some issue and some case that had nothing to do

more grateful.

I still think about that phone call. I wonder how many people would have taken the time. I wonder how many other people – even no-name kids like me – Don took the time to help. There will never be another Don Paine.

John W. Elder – Paine, Tarwater & Bickers, L.L.P.

As is the case for many of us, Don Paine was the first person to ever explain the exceptions to the hearsay rule to me (using a talking stuffed bear), the first law school professor to buy me a beer, and he had first editing rights on all of my publications. But it is another "first" with Don Paine that had the greatest impact on my view of our profession and my practice today. When I was a summer clerk at the firm following my 2L year, I had the opportunity to work with Don for the first time. While no one can dispute that his litigation skills were unparalleled and his understanding of the rules unmatched, neither of those was the particular focus of this assignment. He explained that he had some long-term, valued clients he needed to initiate some important litigation for and he really needed me to serve the defendant with a summons. So, for the next week I spent my

work was evident. The long-term, valued clients were Helen and Ellen Ashe at the Love Kitchen. Don and I received the warmest welcome I think I have ever received from a client that afternoon and I was introduced to the true value of pro bono legal service. For that "first," I am most indebted. While I know I will always fall short, I will never stop striving to provide the dedication to pro bono legal service that Don Paine exemplified.

James P. Moneyhun – Bass, Berry & Simms, P.L.C.

I first met Don Paine when I had the privilege of having him as my evidence professor in law school. Through his entertaining and educating lectures, he quickly became one of my favorite professors.

After a few after-class discussions, we soon realized that my father-in-law was Prof. Paine's oncologist. I then became Prof. Paine's personal message courier to his physician (which, as an aside, was much more efficient for him than an email – he once told our class what would happen if we ever emailed him: (1) his lovely secretary, Karen Roberts, would print the email, (2) Karen would fax the printed email to his office, (3) he would read the fax and prepare a response, (4) he would fax his response to Karen, and (5), Karen would type his response into an email and send it back to the original sender). A typical message consisted of the following: "Tell your father in law that I am not going to be able to take my treatment next week. I have [fill-in-the- blank speaking engagement/TLI lecture] and I am going to need as much of my voice as possible. I will, however, continue my self-prescribed daily dose of Velas Helles lager at my lucky table at Chesapeake's, which I think is working better anyway."

Don Paine left a lasting influence on me, as well as many others in our community,

While I know I will always fall short, I will never stop striving to provide the dedication to pro bono legal service that Don Paine exemplified.

with Don or his firm? Within 30 minutes, I was happily proven wrong.

I answered the phone at my desk and heard, "Chris, this is Don Paine. I'm at the grocery store right now, but what can I do for you?" He then spent the next 20 minutes shopping for produce, listening to my issue and giving me his thoughts. The man could not have been nicer. And I could not have been

mornings traipsing up to a rural portion of the county hoping to locate and serve the defendant without getting shot.

It turns out his long-term client never had or would pay a dime in legal fees, and the important litigation was a general sessions suit involving the breach of a small service contract. But once the summons was served and he took me to meet the clients, the importance of our

By: Chris W. McCarty

Lewis, Thomason, King, Krieg & Waldrop

through his humorous and enjoyable personality, through his unselfish service to the bar and the community, and by sharing his passions and gifts as a writer, researcher, and teacher.

Melissa B. Carrasco – Egerton, McAfee, Armistead & Davis, P.C.

I learned civil procedure from Don Paine. His Civ. Pro. II class at the University of Tennessee College of Law was not just about learning rules, although he certainly never tired of letting us know the many ways that the Tennessee Rules differ from the Federal Rules (and I suspect he thought the Tennessee Rules were just a tad superior). Like a master woodcarver, he taught me how to use the rules to shape civil litigation in a way that achieves the client's goals. But, he also taught me the lesser known parts of civil procedure--how to practice in East Tennessee. Know your court's Local Rules; learn how to pronounce important names like "Maryville" and "Maynardville"; if the Judge asks you whether you want "The Rule" know how to respond; make sure the savings statute will actually save you before you take a nonsuit; and if you are fortunate enough to find a good assistant, make sure you treat him or her right. Professor Paine was not just a craftsman of the Rules; he was a craftsman of attorneys.

Penny J. White – University of Tennessee College of Law

Yeats is credited with saying that "Education is not the filling of a bucket, but the

lighting of a fire." As a baby law professor, I embraced this quote, interpreting it to mean that I could omit a few topics in my evidence course as long as I created sufficient interest to motivate the students to explore the topics on their own. My interpretation significantly decreased my coverage anxiety until I learned that the students in Paine's Evidence sections had overflowing buckets as well as non-extinguishable fires.

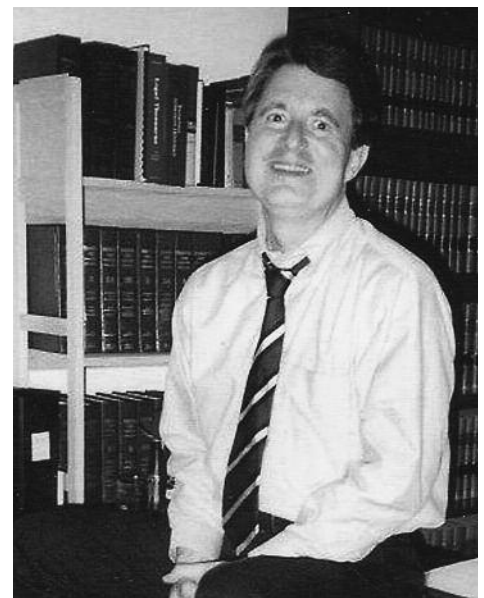
Yeats is both right and wrong. Education occurs not when teachers provide all the answers but when they inspire students to search for the answers. A good teacher inspires thinking and does not necessarily explain everything, but a teacher who never explains anything simply frustrates the student. The best teachers in my estimation, Yeats notwithstanding, are not afraid to fill buckets and light fires. Don Paine did just that.

Students who had the honor of learning evidence from Don (I purposefully did not say "taking evidence") know that Don covered the law of evidence thoroughly, from A-Z. Don's students left his class with a full bucket, but when new evidence issues arose, when rules and principles changed, Paine's former students were able to decipher what the law required because Don had built a fire that inspired them to figure it out.

Don didn't only fill buckets and light fires at UT's College of Law, he did so for countless lawyers at TLI; hundreds of judges at TJC; in TBA and KBA articles; in frequent letters to judges who ruled correctly (and those who did not); and in responses to dozens of lawyers who asked for his help. Through Don's rich legacy – and to our great benefit – Don's teachings will long live on.

Wynne du Mariau Caffey - Ramsey, Elmore, Stone & Caffey, PLLC

My word to describe Don is "generous" – of his time, his talent, and his heart, in ways both big and small. In his tiny kitchen at the Canyon Apartments, he taught me, and I'm sure many other young lawyers, how to make homebrew in old Grolsch bottles – mine of which woke my household when they exploded in the middle of the night while fermenting their way to perfection. Don and I were usually suite-mates during firm retreats to Florida during my early days as an associate and young mother. He insisted that I always have the master suite. Each morning, he rose in the wee hours around 4:00 a.m. to drink black coffee brewed as thick as syrup and read a stack of the day's slip opinions from all the Tennessee state courts, the Sixth Circuit, and the Supreme Court. During one trip to Sanibel, we discovered a monstrously huge chocolate cake. I ordered a piece and he ordered the rest of the cake – all 25 pounds of it – which we took turns holding on the trip back to Knoxville. He wanted to share a taste with our staff back home. Last Spring, I invited Don to lunch to discuss a possible KBA fundraiser during which he would be honored. Ever the gentleman, Don pulled out my chair for me to sit. Ever the humble person, with thanks and gratitude, he politely declined to receive another accolade. And of course, ever the host, he picked up the lunch tab. He is dearly loved and missed.





BEYOND THE FIRM

By: **Stacy Ellison Roettger**

The Trust Company

LEAP OF FAITH: BEYOND THE FIRM

Even before I started law school, I knew that I never wanted to walk the traditional law path of a litigator. I really enjoyed the intricacies of the law, but struggled with a future in the courtroom. I had no idea when I first started law school in 1993 what opportunities lay ahead for me. A couple of things happened that made a huge impact on my career path. First, I took advantage of a new track being offered at the UT College of Law, the Business Transactions Concentration, and second, I took tax classes from Don Leatherman. After I had a couple of tax classes under my belt, I knew I had found my chosen path. Though I had never heard of an LL.M. degree before meeting Don, after obtaining my J.D. from UTK, this southern girl headed off to New York City for the fabulous NYU LL.M. tax program.

From there I spent a couple of years in the corporate tax department at KPMG in Charlotte, and then came back home to Knoxville to focus on estate planning for individuals. Over the next several years, I gained invaluable experience in sophisticated tax planning, estate planning, conservatorships, fiduciary law, and probate cases. I loved educating my clients in these areas and helping them to solve problems and to reduce their tax liability to benefit their family and/or favorite charities. However, I still wasn't sure the life of a traditional lawyer was for me long-term, and I found myself in a niche practice with experience in trust and estate income tax, inheritance tax, generation-skipping tax, estate planning document drafting, and estate administration. What do you do with that outside of the law firm environment?

For me, the answer came through The Trust Company of Knoxville (TTC), an independent Knoxville-based trust company, now with offices in the Tri-Cities and Chattanooga and \$2.3 Billion dollars in assets under management. The job description included knowledge of trust law, fiduciary income tax experience, general tax research, and estate administration. I found that my years of law firm practice had prepared me perfectly for this position, and I took a leap of faith out of private law practice and into banking.

So, what do I do for The Trust Company? I am asked the question

frequently, and it is hard to explain without a sit-down and coffee as what I do changes from day-to-day, hour-to-hour, minute-to-minute. And most people aren't that interested, but since Marsha asked me to write this article I've wrestled with the answer.

My department handles traditional investment management accounts and IRAs for individuals, but also serves as a variety of different types of fiduciaries, such as corporate trustee of irrevocable trusts, including special needs trusts and charitable trusts, trustee of revocable trusts, financial conservator/guardian, and executor of estates. As Trustee, we also prepare hundreds of fiduciary trust tax returns. In my role, I answer to both my external clients and my internal clients (our employees). We have 58 employees, with 16 currently dedicated to serving as relationship managers to our personal trust clients. Part of my job is to be a resource to any relationship manager with a legal or tax issue that his or her client may have. For example, we assist many clients struggling with retirement and estate planning issues (although I do not draft estate planning documents—we look to outside counsel for that service). Also, I have my own clients, many with sophisticated estate plans, where we serve as Trustee (or agent for Trustee), and I assist them with the ongoing trust legal and tax issues. So, on any given day, I may bounce from tax return preparation to negotiating real estate contracts to visiting clients in the nursing home to researching rehabilitation facilities to researching whether a trust can pay for . . . (just fill in the blank—we've heard it all!).

Every day I draw on my past legal experience to serve TTC employees and clients. I've also learned to live with the fact that I cannot know everything or do everything that needs to be done for a company this size, and part of my job is to acknowledge that fact and hire the people (including outside counsel!) we need to continue to serve our clients to the best of our ability.

So, what do I do for The Trust Company? I help solve problems. Do I love my job? Absolutely! I love the fast-paced environment of a corporate setting with different issues that come up daily that provide a challenging and rewarding career that is never, ever boring!



CONNECTION

*Eldon Shields, Partner in Gates, Shields & Ferguson
Overland Park, Kansas & Blue Springs, Missouri
ALPS policyholders since 1988*

For over 25 years, ALPS has connected with the Main Street lawyer. From Kansas to Knoxville, ALPS will continue to fulfill our promise to our policyholders and the Knoxville Bar Association as a whole.

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ADVICE TO CLIENTS AND THE NO-CONTACT RULE

TRPC 4.2 prohibits a lawyer, in representing a client, from communicating “about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” The rule is simple enough to apply in the case of a lawyer’s direct communication with a represented individual. However, application of the rule can become more complicated in some instances. Consider the following hypotheticals:

Hypo #1: Lawyer represents Plaintiff in an employment discrimination suit against Company. Company is represented by counsel in the matter. Plaintiff still works for Company. In an attempt to uncover useful evidence, Lawyer instructs Plaintiff to speak to a manager who works for Company and ask about any other instances of discrimination that the manager knows of. Plaintiff carries out Lawyer’s instructions. Is Lawyer subject to discipline?

This is still pretty easy. Comment [7] to Rule 4.2 explains that in the case of a represented organization, the rule prohibits a lawyer from communicating with, among others, “an officer or managerial agent or employee” of the represented organization. And while Lawyer did not communicate directly with the manager, TRPC 8.4(a) prohibits a lawyer from violating a rule of conduct “through the acts of another.” Since Lawyer could not ethically communicate with the manager about the subject of the representation, Lawyer can’t use the client (“another”) to do so. So, Lawyer would probably be subject to discipline.

Hypo #2: Same facts as above except that Plaintiff approaches Lawyer and tells Lawyer that she wants to speak to her manager in an attempt to uncover useful evidence and asks Lawyer for advice as to what kinds of questions she should ask. What should Lawyer say in response?

- (A) “You can speak to the manager if you want, but I am ethically prohibited from advising you as to what questions you should ask.”
- (B) “You can speak to the manager if you want. Let me hear the questions you are thinking about asking and I’ll tell you what I think.”
- (C) “You can speak to the manager if you want. Let me write a few questions for you that you might want to ask. Where’s my pen?”
- (D) “You can speak to the manager if you want. Let me write a few questions for you that you might want to ask. But before you ask the questions, you need to encourage the manager to consult with Company’s lawyer before making any admissions or disclosing confidential information.”

And the correct answer is ... I don’t know. State ethics and judicial opinions are all over the map on this issue. Some say a lawyer may not recommend or endorse the client’s contact with the represented party, while others say a lawyer must go so far as to discourage the client from doing so. Some draw the line at the lawyer’s “scripting” of questions while others have attempted to distinguish between communications

with represented parties that are initiated by the client and those that are initiated by the lawyer.

An older Tennessee ethics opinion touches on the issue, but only in an indirect way and without providing much in the way of guidance. Op. No. 87-F-12 (“A prosecutor may not circumvent the prohibition ... by advising another to communicate in a manner which would be impermissible if engaged in by the prosecutor.”) Tennessee judicial decisions make clear that Rule 4.2 and its predecessor, DR 7-104, are designed “prevent situations in which a represented party may be taken advantage of by adverse counsel.” *Monceret v. Board of Professional Responsibility*, 29 S.W.3d 455, 459 (Tenn. 2000). But the decisions provide little specific guidance as to how Rule 4.2 should be interpreted in this situation.

Obviously, answer (A) would be the safest course of action in terms of avoiding a disciplinary charge. But it’s also the worst course of action in terms of fulfilling the lawyer’s ethical duty to provide competent advice to the client. A lawyer in this situation would hopefully want to make sure that, at a minimum, the client wasn’t about to say something foolish that might harm her case. What’s more, comment [1] to TRPC 8.4(a) advises that a lawyer is not prohibited “from advising a client concerning action the client is legally entitled to take.” Since the parties in a matter are always free to speak to each other, this comment would suggest that a lawyer is permitted to say *something* in response to the client’s stated intention to speak to the manager and request for advice.

ABA Ethics Opinion No. 11-461 supports the conclusion that a lawyer may provide at least some form of advice in this scenario. According to the opinion, a lawyer, for example, “may review, redraft and approve a letter or a set of talking points that client has drafted and wishes to use in her communications with her represented adversary.” Based on this opinion, the action described in answer (B) might be an acceptable course of action. However, the ABA opinion also cautions against overreaching, which would include “assisting the client in securing ... disclosure of confidential information or admissions against interest without the opportunity to seek the advice of counsel.” Therefore, the opinion concludes that a lawyer “must, at a minimum, advise her client to encourage the other party to consult with counsel before ... making admissions or disclosing confidential information.” Under this approach, the conduct described in answer (C) would be impermissible, but the inclusion of a warning about the need for the other party to speak with counsel would make the proposed conduct in answer (D) permissible.

Ultimately, this scenario presents a difficulty dilemma for attorneys. Perhaps the best advice when confronted with similar issues involving Rule 4.2’s no-contact command is that offered in a California ethics opinion on the subject: “[C]ounsel should be guided by the overriding purpose of [Rule 4.2], which is to prohibit one side to a dispute from obtaining an unfair advantage over the other side as a result of having ex-parte access to a represented party.” The more the communication looks like overreaching, the more likely there is to be a violation of the rule.

¹ A similar hypo is the subject of this year’s problem for the National Professional Responsibility Moot Court competition.



WORD PLAY

By: **Peter D. Van de Vate**
Law Office of Peter D. Van de Vate

“Easter”

I know that we all know what Easter is, but I always wondered from where the word came.

Well, at around 1100, the festival commemorating the resurrection of Christ came to be known as *Eastran*. Which, of course, coincided with the Jewish Passover, which in those days was known as *Easter* (Middle English *Esterne*, *Ester*) before 1387. The word *Easter* itself came from the Old English *Ēastre* (at least before 899 according to *Bede's Ecclesiastical History*). *Ēstre* was a Germanic goddess whose feast celebration was had at the spring equinox.

Easter is a cognate of the Old High German *ōstarūn* (modern German *Ostern*) and Lithuanian *ausra*, dawn. The Old English *Eastre* finds its basic origin from *ēast*, *ēast*, originally referring to the goddess of the dawn, referring to the Roman goddess *Aurōra* and the Greek goddess *Ēos*.

The Volunteer Spirit

Our community is better because of the leadership and commitment of Knoxville lawyers. If you are seeking a meaningful and enjoyable way to contribute your time and talents to real community needs, please visit www.knoxbar.org and begin your explorations. The KBA encourages members to consider volunteering at area non-profits and you can find agencies, sorted by categories or areas of interest.

Beck Cultural Exchange Center

Street Address:
1927 Dandridge Avenue
Knoxville, TN 37915

Phone: 865-524-8461

Website:
<http://www.beckcenter.net>

Agency Description

A tourist attraction in the greater Knoxville area that brings our community together in a culturally relevant way. Researches, collects, preserves, and exhibits African American achievements and culture.

- Help with the clipping and compilation of obituaries and biographical information for people completing genealogical studies and researching family history.
- Conduct a tour or compile information packets.
- Answer the phone, shelf books in the library, or file artifacts.
- Groups: Organize large amounts of information in the artists' and residents' room.

Service Categories

- Racial Reconciliation and Justice

Pictured above is the online profile of the Beck Cultural Exchange Center. This is one of 3 agencies listed in the category of Racial Reconciliation with Justice. Activities at the center include preservation of local African-American culture and history.

Other agencies in this category include Centro Hispano de East Tennessee and the Knoxville Area Urban League.

barrister bullets

MONTHLY MEETINGS

Everyone is invited to the Barristers monthly meetings held on the second Wednesday of every month at 5:00 p.m. at the Bistro by the Bijou (807 South Gay Street). The next meeting will be held on April 9, 2014. There are many opportunities to get involved, so please contact Barristers President **Jay Moneyhun** at jmoneyhun@bassberry.com for more information.

VOLUNTEER BREAKFAST

Volunteers are needed to serve breakfast at the Volunteer Ministry Center on the fourth Thursday of every month. Volunteer Breakfast is a great way to “get your feet wet” in the Barristers because you are only committing a couple hours of your time! The committee wants to extend a *special thanks* to **John Rice** and **Troy Weston** this month for helping prepare and serve the February Breakfast. If you would like to get involved, please contact **Alan Moore** at alanmoorej@hotm.com or **Paul Wehmeir** at pwehmeir@adhknox.com. The next two month's breakfasts will be served on March 27 and April 24.



BARRISTERS LAW WEEK

As part of the KBA's annual Law Week celebration, the Barristers School Outreach/Law Week Committee commits to showing an educational video to area 3rd grade classes. This year's video is “Junior Judges: Helping Kids Make Smart Choices.” The video depicts seven real-life scenarios for students to judge what options they have in tough situations and encourage them to make smart choices. The topics include cheating, destroying property, bullying, teasing, stealing, drugs and alcohol, and gangs and weapons. The purpose of the video is to increase each student's awareness of the legal system. The presentation lasts approximately 45 minutes and only minimal preparation (watching the video). To volunteer, please e-mail **Casey Carrigan** at casey@helpingclients.com or **Matt Sherrod** at matt@howardhowardlaw.com. A schedule of requested presentations will be circulated to those who are interested in participating the second week of April.

NOMINATIONS FOR BARRISTERS LAW AND LIBERTY AWARD

The Knoxville Barristers, the Young Lawyers Division of the Knoxville Bar Association, is soliciting your nominations for the 2014 Law and Liberty Award. As you may know, the Law and Liberty Award annually recognizes members of our community who have used the legal system and process to advance and protect personal, political, and civil liberties in our community. The winner of this year's award will be announced at the Law Day Luncheon on May 2. Nominations must be received by April 15, 2014, and should be made to **Casey Carrigan** at casey@helpingclients.com or **Matt Sherrod** at matt@howardhowardlaw.com.

MEMBERSHIP

The next Barristers' monthly happy hour is scheduled for Thursday, March 27 at the Icon Bar in the Sunsphere at 6:00 PM. Both KBA members and nonmembers are encouraged to attend. If you have any questions, please contact **John Rice** at jtrice@mjjs.com or **Jill Evert** at jev@bvblaw.com.

BARRISTERS' GOLF TOURNAMENT

The Barristers' Annual Golf Tournament is scheduled for September 12 at Avalon Golf & Country Club. Spots for hole sponsors and beverage cart sponsors are available. Contact **Brad Craig** at BCraig@LewisThomason.com or **Adam Moore** at adam.moore@regions.com for more information. Registration details to follow.

THE HUNGER & POVERTY RELIEF COMMITTEE is seeking local firms to volunteer at the Second Harvest Food Bank of East Tennessee. One Saturday morning each month, a local firm sends a group of volunteers (6-10 people) to help in sorting and packaging food at the Second Harvest Food Bank warehouse. After sorting/packaging, the food is then distributed by Second Harvest to its partner agencies and to families in need. If your firm is interested in volunteering, please contact **Heather Ferguson** at (865) 546-0500 or hferguson@emlaw.com or **Samantha Parris** at (865) 342-1040 or sam@bcnattorneys.us.

By: Jason H. Long

Lowe, Yeager & Brown

HE WAS A LAWYER

This past Christmas, my wife gave me a Saint Thomas More medallion. I carry it in my pocket every day. Thomas More, as you may know, is the patron saint of lawyers. He was famously executed by King Henry VIII in the Tower of London for refusing to give consent to the King's divorce from Catherine of Aragon. If you have not seen the play, *A Man for All Seasons*, by Robert Bolt and based upon More's life, by all means do so. The play depicts the essence of what it means to be a lawyer. There is a famous line in which More responds to his daughter's zealous suitor, Roper, who advocates cutting down all the laws in England if it would help him go after the Devil himself:

Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country's planted thick with laws from coast to coast – man's laws, not God's – and if you cut them down – and you're just the man to do it – do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.

More's moral compass is defined by his passion and respect for the rule of law. You get the impression that, if someone asked More to tell people about himself, he would simply have stated, "I am a lawyer," and that is really all a person needed to know.

With all due respect to Messers Sobieski, Pierce, and Cook, the hardest I ever worked in law school was in Don Paine's Evidence class. Day after day, I remember wrestling with Papa Bear, Mama Bear, and Little Bear, trying to keep track of what they were saying to one another and why anyone would want to put that information into evidence. Undaunted, I signed up for more punishment in the form of Paine's Remedies class. The first day of our 8 a.m. Monday, Wednesday, Friday lecture, Don told us that we could vote to extend the class hour and eliminate Friday lectures. We readily agreed in order to assure proper recovery time from our Thursday night Rump Court escapades. Don recorded the vote and promptly announced that the class would only meet two days a week, on Mondays and Wednesdays, at 7:00 a.m.

My first two experiences with Don taught me several lessons I will never forget: 1) The law is a bottomless pit. You can never really learn all of it. Albeit, evidence is a complicated subject, I was shocked to find out how much Don knew and how much information he was able to convey to us in those 50 minute sessions (he was born to be a teacher); 2) If you are going to make a living as a lawyer, the practice should be fun. Law does not have to be a somber, stoic enterprise. Sometimes, it's ok to bring in the stuffed panda bears; 3) Lawyers are precise and comprehensive. Had we known sacrificing a Friday class would have resulted in seemingly endless 7:00 a.m. sessions, we may have rethought our vote; and 4) It is a true joy to watch a master practice his or her profession in the way it was meant to be done.

It is the last point that I believe bears some consideration. People enter the practice of law for a number of different reasons. Some believe they will receive monetary reward (good luck). Others consider it to be a high calling and opportunity to help people. Some folks simply believe the practice is fun and beats laying asphalt. However, I submit that it is the rare individual who simply loves law for the sake of the law. Whether it is true or not, Don Paine struck me as that type of person.

I never encountered him when he wasn't reading an opinion, writing about a point of law, teaching class, researching historical legal anecdotes, performing pro bono legal service, or brewing beer (ok, the last one doesn't fit in so nicely, but it is good to know that Don had

some other passions). Don's life appeared to be consumed by the law, for no other reason that I could discern than that that he loved it, and he relished sharing that love with others.

My image of Don will always be that of a senior mentor to countless Tennessee lawyers (honestly, how many of us do you think relied at some point on advice or counsel given by Don Paine?). I can recall, as a baby lawyer, one of my first courtroom experiences. I had the honor of working for Sarah Sheppard at the time and therefore saw Don frequently as they worked together on TLI. I felt like I knew him as well as most young lawyers of the time. To me, he was simply an outstanding professor who drilled evidence and remedies into my head and took us all out for drinks after the final exam (probably coloring my perception of him as a teacher). As I was sitting in court waiting for my case to be called, two lawyers were arguing over a point of law from a recently decided Tennessee Supreme Court Opinion. Finally, one lawyer looked at the judge and said, "Your Honor, my opponent is wrong. Donnie Paine told us last week that the case didn't say that." The judge pondered this for a second and finally said, "You know, I believe you're right. Donnie did tell us the case didn't mean that." With that, the judge ruled in accordance with Don's instructions. How many lawyers do you know who can be cited as authority in a Tennessee state court? You will probably never see another one again.

I believe the highest compliment I can give Don is that he was a lawyer. His morals, passions, character, and life were bound up with and colored by his profession. I will miss Don Paine. He was a Man for All Seasons.





By: Kathryn S. Ellis
Legal Aid of East Tennessee

BARRISTERS HIGH SCHOOL MOCK TRIAL

On any given Saturday, the courtrooms of the City County Building sit empty, recovering from a busy week of motion hearings and trials and taking a breath before the next week starts. On February 15 and February 22, however, the main floor was overtaken by a crowd so large that a casual observer may have reasonably concluded that Judge Swann had scheduled weekend sessions of Order of Protection court. The main floor swarmed with attorneys, plaintiffs, defendants, witnesses, and even family members, who all seemed to believe that they had an interest in the outcome of each and every trial about to happen. Upon closer inspection, it was quickly evident that this was not an OP crowd and that these Saturdays were anything but typical.

For those two Saturdays, the KBA Barristers High School Mock Trial Competition overtook the main floor of the courthouse. More than two dozen attorneys and law students volunteered their time to help out as presiding judges, scoring judges, and bailiffs. Many volunteered quickly, while others were adequately cajoled into service by Barristers Mock Trial Committee Co-Chair **Kathryn Ellis** of LAET and **Karrah Leary** of The McKeller Law Firm. The other Mock Trial Committee members (**Brad Craig**, **Caitlyn Elam**, **Kati Goodner**, **Ronnie Isaacs**, and **Mikel Towe**) all helped to ensure that the volunteers were fed, the bailiffs were trained, and that all courtroom needs were handled seamlessly. All of them, committee members and volunteers, graciously gave their time for the ten teams of high school student attorneys and witnesses competing for the chance to compete in the TBA statewide competition on March 14 and 15. The students represented Anderson County, Bearden, Carter, Catholic, Farragut, Powell, Union County, and West.

The competition started on the 15th with the students being greeted by KBA President **Wade Davies** and concluded on the 22nd with General Sessions Judge **Chuck Cerny**, who presided over the

championship round, announcing the winner of the overall competition. In between, 21 separate trials were heard, all fighting over the issue of whether one country singer stole another, less successful, singer's song. The song(s) in question, of course, included a broken heart and a car. More importantly, the students gave opening and closing statements and conducted examinations of their witnesses with such talent that many of the volunteer judges may seek to hire these budding attorneys in the future, rather than going up against them from opposite sides of the courtroom.

In the championship round, Bearden A and West conducted a well-fought trial in front of The Honorable **Chuck Cerny**, scoring judges **Wynne Caffey**, **Jenny Rogers**, and **William Bennett**, and bailiff **Alexandra Wolff**, a 1L at the UT College of Law. In the end, Bearden A emerged on top and will be representing Knox County in the state competition in Nashville.

UPDATE FROM THE STATE COMPETITION:

Bearden High School advanced to the State Mock Trial Competition on March 14-15, 2014 in Nashville. The school represented Knoxville and the region well, placing 10th in the state. Additionally, several individual members of the Bearden team were honored. **Abigail Wood** received the team MVP award. **Caroline Rogers** received the first place award for Best Advocate for the Plaintiff, an award she also won last year at the state competition. Both Wood and Rogers have KBA connections. Wood is the daughter of Knoxville lawyer **John Wood** of Egerton, McAfee, Armistead & Davis and Rogers is the step-daughter of **Tasha Blakney** of Eldridge & Blakney, P.C. Also taking top honors from Bearden was **Marianne Dodson**, who won the first place award for Best Witness for the Plaintiff, a statewide honor she also won last year.



Abigail Wood and Caroline Rogers with Judge Chuck Cerny



Bearden A Team - First Place Winner



By: Ann C. Short
The Bosch Law Firm



SYCAMORE ROW

by John Grisham

John Grisham's latest novel, "Sycamore Row," calls to mind William Faulkner's assessment of the enduring legacy of racial tension in America: "The past isn't dead. It isn't even past."¹ Just ask Clanton, Mississippi lawyer, Jake Brigance, introduced to us 25 years ago in Grisham's first novel, "A Time To Kill."

"Sycamore Row" returns the reader to Clanton, three years after Jake's successful defense of Carl Lee Hailey, who gunned down the redneck racists who raped and tortured his 10-year old daughter. Jake, we learn, has not been able to parlay that legal victory into a lucrative career. Financially unable to rebuild his house that the KKK torched during the Hailey trial, Jake and his family live in a cramped rental house, and Jake drives a red Saab with 190,000 miles on it. Clanton, we also learn, is racially divided as ever. As Jake's disbarred law partner, Lucien Wilbanks, reminds him, "Everything is about race in Mississippi."

"Sycamore Row" is a story about a will contest – hardly the fodder for a legal thriller, except that the testator, Seth Hubbard, is a reclusive businessman and the wealthiest man in Clanton. When the story opens, Seth is dying of lung cancer, and he hangs himself from a sycamore tree after drafting a holographic will that revokes all prior wills and leaves 90 percent of his estate to his black, middle-aged housekeeper, Lettie Lang. Seth had two financially disastrous divorces, from which he rebounded and amassed assets northward of 24 million dollars. He also had a son and daughter, neither of whom could stand their father, and the feeling is mutual, as the holographic will attests. For his ex-wives, Seth expresses hope, "May they perish in pain, like me."

Although Jake's and Seth's paths never crossed, Jake becomes involved when Seth mails his holographic will to Jake with instructions, "I want this will defended at all costs and I know you can do it. I specifically cut out my two adult children, their children, and my two ex-wives. These are not nice people and they will fight, so get ready." Seth's previous will, drafted by the Rush law firm in Tupelo, divided the assets among Seth's relatives, and his immediate offspring travel to Clanton for Seth's funeral assuming that they are the only beneficiaries. When Jake offers the holographic will for probate, fireworks ignite.

Not surprisingly, a will contest ensues. The Honorable Reuben Atlee is presiding judge, and a veritable herd of attorneys from far and wide trek to Clanton to make "appearances" on behalf of the son, the daughter, the son's children, and the daughter's children. Jake's role is to defend the will, so he technically does not represent Lettie. Without consulting Jake, Lettie's abusive husband enlists Booker Sistrunk, a brash, flamboyant, race-baiting attorney from Memphis, to represent Lettie. Judge Atlee quickly disposes of Mr. Sistrunk by holding him in

contempt for failing to obey the court's order to sit down and for generally being obnoxious, and Lettie thankfully fires Mr. Sistrunk before he hijacks the trial.

Not surprisingly, the 24-million dollar question is why Seth so generously gifted Lettie. Lettie is clueless, and the Clanton rumor mill speculates about undue influence, drug-induced confusion from the cancer pain medication, and sexual shenanigans. The trial begins with "the" question hanging over the jury box. Jake wisely reminds the jurors in opening statements: "[I]t's not your job to give away Seth's money, or to decide who should get what or how much. However, it is your job to determine if Seth knew what he was doing."

With the trial underway, Lucien is searching for answers by hunting down Seth's brother, Ancil, who is to receive 5% of the estate. In his will, Seth writes that as children he and Ancil "witnessed something no human should ever see, and Ancil was forever traumatized." Seth's will leaves the remaining 5% to the Irish Road Christian Church.

A firm in D.C. that specializes in locating missing persons alerts Jake that Ancil, a/k/a Lonny, may have been found in a hospital in Juneau, Alaska, recuperating from a bar brawl and facing drug charges. Lucien is dispatched to find out what he can and earn Ancil's trust – if, indeed, Lonny is actually Ancil.

No spoiler alert needed; it is enough to say that the reader will enjoy how the trial unfolds and concludes. Along the way, there are a few ethically cringe-worthy scenes, such as Judge Atlee's casual, ex parte conversations with Jake and opposing counsels' last minute discovery dump calculated to obscure the identity of a witness who could destroy Lettie's credibility.

I did not finish "Sycamore Row" in one sitting or even two. I lingered over the pages for a couple of weeks not because I am a "slow" reader but because I am a Southerner, and we expect our guests to stay around a while. I enjoyed catching up with old friends, such as Jake and Lucien, and I suffered along with Lettie as she tried to cope with an ever-increasing number of freeloading relatives seeking shelter, food, and the prospect of endless riches.

Grisham has confessed in interviews that Jake is his most autobiographical character, and "Sycamore Row" corroborates his assessment. The writer's catechism, "write about what you know," is faithfully showcased in this book. After all of Grisham's fame and financial success from more than 26 books, it is refreshing and just plain enjoyable to see him return to what he knows best.

¹ William Faulkner, "Requiem for a Nun" (1950).

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**By: Sally A. Goade***Judicial Law Clerk, Tennessee Court of Appeals*

WHO IS READING THIS ANYWAY?

Don Paine, who I will always think of as “Professor Paine,” made me take a spelling test long after I thought I would never take one again. The test was required for my Civil Procedure II section at UT Law, and preparing for this article, it was easy to find because the course notebook still holds a place of honor on my office shelf. Professor Paine’s list places a special emphasis on “supersede,” which I can still spell without checking because I remember his hint that “there is no ‘c’ in supersede.” Once in a while I encounter a brief in my work now with the spelling of “judgement” with an “e,” which I sometimes employed years ago when I was not writing in legal circles and read a great deal of old British literature. Professor Paine included the proper (for all American and all British legal usage) spelling of “judgment” in our drill, along with, among other gems, “admissible” (“only one ‘a!’”), “certiorari,” (so often abbreviated we often forget the full spelling), and “subpoena” (tell me you never inverted the “b” and “p”).

Professor Paine’s spelling list taught us something more, of course. He let us know that the correct spelling mattered to our target audience outside law school, experienced legal readers like him, whether they be firm shareholders, bar association leaders, or judges. Often, an error is an error. Sometimes, however, the questions that arise about usage, whether variants in spelling, punctuation, or context, boil down to one question: Who is the intended audience? Notice, for instance, how that question affects an issue posed by a KBA member this month:

Question: How is the possessive form of a proper noun ending in “s” formed?

Generally, the possessive form of a proper noun (name) ending in “s” is the full name plus an apostrophe and another “s.” Example:

Mr. Harris’s complaint included a request for attorney’s fees.
Chris’s deposition and trial testimony did not agree.

Why have we become accustomed to seeing only an apostrophe used to form such a possessive in our local *Knoxville News Sentinel* and in many other publications? Journalism has all but abandoned the second “s,” but not in all cases. The *Associated Press Stylebook* (“AP”) calls for only an “s” after a name ending in “s.” The *New York Times Manual of Style and Usage*, however, still demands the second “s” after the apostrophe, *unless* the name ends in two sibilant sounds (Kansas’s weather), *except* that the “s” should be kept after all if the second sibilant sound is silent (“Arkansas’s parks”).¹ Considering our audience for legal writing, the AP’s negation of the second “s” is probably not for us *unless* we are writing for a journalistic legal publication that has adopted AP style.

As for non-journalistic trusted authorities, the *Modern Language Association Handbook* (“MLA”) follows the traditional rule with the second “s,” as does Brian Garner’s *The Oxford Dictionary of American Usage and Style* (“Oxford”), and the *Chicago Manual of Style* (“Chicago”) (to which Garner contributes). There are exceptions to the rule, but what those exceptions are varies with the style book you are using. The Hodges’ *Harbrace Handbook* (“Harbrace”) wisely instructs us to consult the publication guide for the discipline in which we are writing. You can at least defend the following exceptions with an authority lending

support:

- (1) The name is Biblical or Classical (“Jesus’ name” or “Oedipus’ crown”) (Oxford)
- (2) The name was formed from a plural noun (“General Motors’ reputation” or “United States’ foreign aid”) (Oxford)
- (3) The name is a place or organization but refers to a single entity (“United States’ foreign aid”) (Chicago).
- (4) The name ends in a syllable pronounced “eez” (“Sophocles’ poetry”) (Chicago)

On closer scrutiny, numbers two and three amount to essentially the same exception. As for the fourth exception, I found a few variations, all dependent upon the pronunciation of the final syllable (note the exception offered by *The New York Times* above), and many with examples given that would fall under number one above, the Biblical or classical names.

Personally, I prefer to keep the second “s” unless the word is a clear exception, but then I was originally schooled in a discipline governed heavily by the MLA, which offers no exception to the rule. In many instances, to keep continuity in the office, a discussion and consensus on which exceptions to adopt may be necessary (you may laugh, but I have been involved in three such consensus-making discussions on this issue in three separate offices since entering the legal world). The key, again, is your audience, and that brings me back to Professor Paine. Suzanne Craig Robertson, in the January 2014 *Tennessee Bar Journal*, wrote a stirring tribute to Don Paine in which she described his editing style during his twenty-five years of leadership and contribution. She noted:

He viewed the Associated Press Style, which the *Journal* uses, with disdain. But if I could cite to a reference as to why I did something like I did, and if we were consistent, he would give in.

With his stylish exclamation points that looked like alarmed triangles, he would fax the proof back to correct my mistakes or omissions with short handwritten instructions: “Quotation marks needed!” If he had left off the quotation marks himself, he was quick to admit that.

Anyone who has worked for an appellate judge in Tennessee who received a corrective fax from Don Paine knows the awful feeling of realizing exactly who might be reading an error that inadvertently slipped into final copy.

In the end, the best advice for forming a possessive of a proper noun ending in “s,” or any other variable construction, is to be aware of the style your organization has adopted, choose exceptions consistently and sparingly, and imagine Professor Paine’s students (colleagues, mentees) as your readers.

¹ See also Merrill Perlman. “Multiples Choice: Some Singular Help with Plural Possessives,” *Columbia Journalism Review*, August 27, 2012, available at http://www.cjr.org/language_corner/multiples_choice.php.

By: Casey Carrigan

Associate at The McKellar Law Firm, PLLC



Wildflowers



Yellow Trillium on the Chestnut Top Trail

Each season brings its own special display of nature in the Great Smoky Mountains. Fall brings brilliant color as the leaves change, winter brings snow drifts and open vistas, and summer brings the cool spray of a waterfall to balance the heat of the day. For many, though, the best time to visit the park is the springtime. The days are lengthening, the temperature becomes milder, and the spring wildflowers begin to put on their seasonal display.

There are over 1,600 flowering plants found in the park. It is often said that the range of flora between the foothills of the Smokies and the highest peaks is similar to what you would find traveling north all the way to Canada. There are several factors that contribute to the Smoky Mountains' amazing diversity and abundance of wildflowers. During the last ice age, when glaciers covered much of North America, the Appalachian Mountain chain provided a high-elevation haven for plant species that retreated south. Another factor is the abundance of rainfall, with annual totals reaching up to 100 inches in the highest elevations.

The first flowers to make their appearance each year are the spring ephemerals. These beauties take advantage of the early spring sunlight on the forest floor. Later in the spring and summer, the trees high above will fully leaf out and cast shade. The ephemerals also rely on the nutrients provided by the decaying leaves of the previous autumn. Examples of spring ephemerals are spring beauties, violets, columbine, lady slipper orchids, and trillium. One of my favorite ephemerals is the crested dwarf iris. This flower produces a deep green and purple carpet. It is found mostly on open slopes and can also be seen along roadsides. Unlike the tall-stemmed irises in gardens, this flower only grows to four to six inches tall.

Another favorite is the flame azalea. These flowers are bright orange, and appropriately, there are a large number on Rocky Top. The best displays seem to be at high elevations. I have seen beautiful flame azaleas on Thunderhead, Mt. Sterling, and Andrews Bald.

Rhododendron varieties grow at all elevations in the park. Depending on the plant, the flowers are pink, purple, or white. The rhododendrons range from small shrubs to the size of small trees, and rhododendron "tunnels" line many park trails. During the flowering season, you may find yourself on a delightful walk with petals drifting down and carpeting your path. Mountain laurel plants are similar in size to rhododendrons, but have smaller leaves. The flowers resemble

dainty pink and white teacups. Like the rhododendron, the mountain laurel is found at virtually all locations in the park.

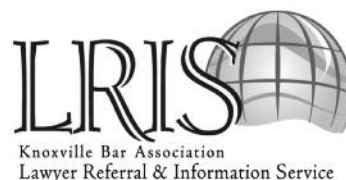
The book *Wildflowers of the Smokies*¹, written by Peter White and published by the Great Smoky Mountains Association, is a helpful guide to finding and identifying wildflowers. The book has color photographs and contains suggested walks and hikes for viewing the flowers. Take this or another guide to the Chestnut Top Trail, a top-tier hiking trail for wildflower viewing that is easily accessible from the Townsend Wye parking lot. Everyone else knows about this trail too, and a crowded trail is usually a downside for me. However, on this trail I enjoy the fact that fellow hikers will excitedly point out a hidden or rare flower, or even stop and give a naturalist's mini-lecture. You will be in good company on this trail.

For another opportunity to commune with like-minded wildflower enthusiasts, the Smokies hosts an annual spring wildflower pilgrimage.² The five-day event is held both onsite at the Gatlinburg Convention Center and offsite in the park. This year's pilgrimage will be held April 15-19 and events will include guided walks, art classes, and photography excursions. The event is now in its 64th year.

Stay on the trail when viewing or photographing wildflowers. Stepping on the flowers will disturb, wilt, or even kill them. Finally, the lawyer's caveat: do not pick wildflowers in the national parks! If you do so and are caught, you will face stiff fines and may get a chance to see some of your friends and colleagues in federal court.

¹ <http://shop.smokiesinformation.org/products2.cfm/ID/406/name/Wildflowers-of-the-Smokies> (Accessed March 8, 2014).

² <http://www.springwildflowerpilgrimage.org/> (Accessed March 8, 2014).



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AROUND THE BAR

By: Joe Jarret

Professor, University of Tennessee

Graduate School of Public Policy & Administration

"... SPEAK NO EVIL!" JUDICIAL ELECTIONS AND TENNESSEE RULE OF PROFESSIONAL CONDUCT 8.2

During the days of our youth, most of us have been admonished by parents or teachers that "if you can't say something nice about someone, don't say anything at all!" In one of the lesser known rules of the Tennessee Rules of Professional Conduct, to wit, Rule 8.2,¹ attorneys are similarly admonished when it comes to making comments about judges, and more interestingly, candidates for election or appointment to a judicial office. Entitled "Judicial and Legal Officials," the rule prohibits lawyers from knowingly or recklessly making false statements about the qualifications or integrity of judges, and "legal officers," defined by the rule to mean attorneys general, prosecuting attorneys or public defenders, as well as persons who are candidates for any of the aforementioned offices.

Although Rule 8.2 is terse in construction, the explanatory notes that follow do serve to expound upon the Rule's construction. Specifically, note 1 reads in pertinent part:

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice."

This may be a good time to reflect upon Rule 8.2, considering the fact that, under the Tennessee Constitution, all judges stand for election at the same time and are elected for eight-year terms. This year, that election will take place on August the 7th. The state's Supreme Court justices and Court of Appeals and Court of Criminal Appeals judges will be subject to a retention vote. For these judges, voters will choose either "retain" or "replace." Candidates for all other courts – including chancery, circuit, criminal, general sessions and juvenile – will face contested elections in many counties across Tennessee.²

It is interesting to note that, while lawyers are required to refrain from making inappropriate comments about judges and judicial candidates, a group of judges and prospective judges have voluntarily agreed to hold themselves to an even higher standard (than that required by Rule 8.2) by signing the "Tennessee Fair Judicial Campaign Code of Conduct." A product of the "Judicial Campaign Conduct Committee," chaired by Chattanooga lawyer Sam Elliott, judicial candidates who sign the code agree to:

- Adhere to Supreme Court rules governing judicial elections;
- Act in a manner that promotes public confidence in the integrity, fairness, competence, independence and impartiality of the judiciary;
- Not take public positions on issues that might come before the court;
- Not make false or misleading statements;
- Form a committee, if applicable, to manage campaign donations and expenditures;
- Not allow campaign staff to take public positions on issues that might come before the court; and

- Disavow campaign statements or materials that undermine the integrity of the judicial system or erode public trust and confidence in the independence of the judiciary.³

In an effort to assist attorneys and citizens alike in selecting the persons most qualified to serve as judges in Knox County, the Knoxville Bar Association (KBA) has established "Get to Know Your Judicial Candidates." This outstanding resource provides visitors to the KBA website an opportunity to learn about Knoxville's courts, review judicial candidate profiles, and browse other informative links.⁴ When you consider the fact how often our clients, colleagues, families and friends ask us about the qualifications of a specific judicial candidate, it's nice to know we have a reliable resource to which to refer them.

¹ TRPC 8.2 "JUDICIAL AND LEGAL OFFICIALS" reads: (a) A lawyer shall not make a statement that the lawyer knows to be false or that is made with reckless disregard as to its truth or falsity concerning the qualifications or integrity of the following persons: (1) a judge; (2) an adjudicatory officer or public legal officer; or (3) a candidate for election or appointment to judicial or legal office. (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

² TN Const. art. VI, §§ 3,4,5

³ <http://www.roanecounty.com/>

⁴ <http://www.knoxbar.org/>

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NEVER TRUST SPELL CHECK

My first couple of years practicing law I worked in a different city in an office with over 100 attorneys. As is often the case for young associates in large offices, I had very little direct client contact during my first year of practice. Most of my work occurred behind the scenes performing research and writing. So, in my second year, when I was put on a deal where I had to interact with the client on a daily basis, I was thrilled. I felt like I was a “real” lawyer.

During the course of this transaction I regularly communicated by email with a female client. For the purposes of this story, let’s call her Jane. Throughout the deal, Jane and I worked well together and established a good rapport. Near the end of the transaction, the seller’s counsel committed an error which required Jane to re-execute around fifty pages of closing documents in order for the transaction to close on time. I had the unfortunate task of informing Jane of this annoyance. I spoke with Jane on the phone and told her I would need her to re-execute certain documents, and told her I would send them to her as an attachment to an email in a few moments.

Right after I got off the phone with Jane, I composed an email and attached the documents that needed to be signed. In the last line of my email, I wrote, “I apologize for any inconvenience this has caused you.” Before I hit send, spell check automatically popped up as a fail-safe to correct incorrectly spelled words. I accepted all changes without paying proper attention. Then I hit “Send” and the email was on its way through cyberspace to Jane.

To this day, I have a habit of re-reading my sent emails immediately after sending them, in an effort to put myself in my client’s shoes and see the email through their eyes. So, as I usually do, I went to my sent folder and re-read the email I had just sent to Jane. As I got to the last line of the email, my jaw dropped and heart stopped. The last line of the email read, “I apologize for any incontinence this has caused you.” I had misspelled the word “inconvenience” in the email, and when spell check corrected it, the first correct word option was “incontinence” not “inconvenience”. I clearly did not pay enough attention to my word choices, and just clicked the “OK” button. I was mortified!

I quickly picked up the phone to call Jane to try and explain the situation and save a little face. Jane didn’t answer her phone and I got her voicemail. I really didn’t want to leave a voicemail explaining that I had just used the word “incontinence” inadvertently in an email I sent her, so I decided not to leave a voicemail. Then I thought that maybe I could recall the email. I knew this was a function of Outlook, but I had never used it before, so I wasn’t sure how to do it. I called my secretary into my office and told her I needed to recall an email and asked her if she could show me how to do it. My secretary and I are pretty good friends, so she asked me why I needed to recall the email. I begrudgingly admitted to her the embarrassing mistake I made. My secretary immediately started laughing, and not just a little chuckle, but a full on, rolling-on-the-floor-tears-streaming-out-of-her-eyes-can’t-catch-her-breath kind of laugh. I felt really dumb. After my secretary composed herself, she very kindly showed me how to recall an email. So, I did as she said, but it didn’t work! I asked my secretary why it wasn’t working, and she told me that you could only recall an email message that hadn’t been viewed yet, and since my message wasn’t able to be recalled, Jane must have viewed it already. I was absolutely humiliated and wanted to crawl under my desk.

Then my office phone began to ring. Yes, it was Jane. I timidly picked up the phone, not knowing what kind of reaction to expect, and said “Hello.” Jane’s first words were, “Now Kacie, I know I am a little older than you, but thankfully incontinence is not yet a problem I have to deal with.” She then proceeded to laugh and told me that she hadn’t been able to pick up the phone when I called the first time because she was laughing so hard she couldn’t catch her breath.

I am very lucky that my client had such a good sense of humor about the whole situation. Many clients I have since dealt with would not have been so gracious. I learned a very valuable lesson, and from that day on I have always, always checked all of my options in spell check before sending out an email. And yes, I did catch that spell check did not choose the proper spelling of “lesion” in that last line and chose “lesion” instead. I just wanted to see if you were paying attention.



Have a story to share?

Lane McCarty (lanemccarty@gmail.com) is coordinating this monthly column for DICTA. If you can look back and laugh at those moments that made you cringe, we’d love for you to share your story.



By: William E. Maddox, Jr. LLC
Attorney at Law

HOT TUB LAWYER TIME MACHINE (WITHOUT THE HOT TUB)

This January marked the beginning of my seventh year in solo practice (and fortunately the elapsing of the statute of limitations for breach of contract on many of the mistakes I made those dicey days of 2008). Most marriage counselors talk about the seven year itch as a time when marriages sometimes hit rough patches. So am I in for a rough patch this year? Who knows, but more importantly, what could I have done differently in the last seven years? (other than inventing Twitter or investing in Minecraft).

With that in mind, in an attempt to advise anyone attempting to take the plunge and go out into solo practice (does anyone call it "hanging your shingle" anymore?), here is a list of things I did **WRONG** at first, and a much smaller list of things I did **RIGHT**. To the time machine, Mr. Peabody....

It is January 2008, here are some **mistakes** a young (well, late 30's) solo practitioner is about to make in his first few days on his own:

- 1) **Staying in your office too much.** It's a new office; it's fun to be on your own. You can organize on your own desk, no boss breathing down your neck (this was, by the way, the first year the entire NCAA tourney was online in real time), it's so peaceful and ... quiet. Too quiet. **GET OUT OF YOUR OFFICE.** Go meet with colleagues, take people to lunch, get a giant stack of business cards, and go out. Go to bar meetings or meetings at a bar, go to the courthouse, go to where lawyers are. You have got to get the word out face to face. Mailings and announcements are fine, but nothing beats talking to a colleague face to face. They will remember that a lot more. Referrals from other lawyers have long been the life blood of my practice.
- 2) **Using your initial downtime to get organized.** Yes, before the phone starts ringing (and it will), be sure all of your systems are in place. Have forms ready, engagement letters ready, billing software in place so that when you need it, it is accessible. It is critical to client development to be able to perform to clients as promised. Waiting a week to issue an engagement letter is probably not a good start.
- 3) **Going cheap on your Internet presence.** Even in 2008, this was a bad idea. Now it would almost be fatal. The phone book is right next to the blacksmith in the museum of discarded relics of American economic history. Unless you are the rare solo lawyer who has a built in client base with no need to expand, then you have got to be able to be discovered by potential clients. Invest in some website marketing experts. (But invest wisely, once these people get wind that you are out there and looking for clients, you will be inundated with solicitors). Be sure you learn the ethics rules and pitfalls of web pages and social media. Beware especially the pay-per-click website people. Be sure embrace the Internet.
- 4) **Living in fear of making mistakes and not owning them when you do.** You are human, you are going to make mistakes. I have learned the hard way it is best to confess fully to your client or trustee or other counsel rather than to hope the mistakes blow over or you can somehow duck it. But you cannot let fear paralyze you. Remember, making a mistake in judgment in practice is not necessarily malpractice. And you will make mistakes and without the safety net of a boss or a firm behind it can be terrifying. But own them, learn from them but do not let it rule you.

Finally, a few things I can tell you I did **correctly**.

- 1) **Keeping the overhead low.** Of course as a bankruptcy lawyer, this is a rule I probably see in real life more so than other attorneys. But it is a valuable lesson. Grow slowly. You are not going to walk into a million dollar fee your first month. It takes time to make money in any business and practicing law is no exception. You are going to have to buy malpractice insurance, software, stationary etc. But be judicious about it. You do not have to subscribe to the giant legal research company your old firm uses. (Your TBA membership can hook you up to one for a fraction of the cost.) You do not need an office with a balcony (this is a temptation I still fight in my current location). Please, please, please do not go into debt starting a solo practice. Take your time. The funds will come but it does take time.
- 2) **Writing thank you notes for referrals.** Remember the personal touch. It really does go a long way. Send colleagues notes to tell them they are appreciated and be sure you follow up on every lead a colleague sends you.
- 3) **Finding a mentor.** I was ... and seven years later ... still am ... very blessed to have several colleagues I can still call and bounce ideas off. That is the hardest part about being on your own. Only one set of eyes to look at an issue. At the same time, be more than willing and available when others call for your opinion. Numerous times I have had calls from other attorneys about various types of bankruptcy questions that lead to actual paying clients when the other attorney realizes how valuable you could be. Or when the other attorney gets a call in your field, and remembers you took the time two months ago to talk to him.

So, back to 2014, it is pretty clear that some mistakes are unavoidable, some are truly great (if clichéd) learning experiences. Being in solo practice means, at least for me, busting out of your comfort zone and pushing yourself to places you would not necessarily go. At the same, after being in solo practice, I am not sure I would ever be able to work for someone else ever again. Unless John Calipari needs a new bench coach....where is that time machine anyway?

This "members only" column is published each month to share news and information among KBA members. Submissions should be limited to 50 words and will be edited for space and other considerations.

NEW TBF FELLOW

LeAnn Mynatt, a shareholder at Baker Donelson, is one of 29 attorneys to be elected a fellow of the Tennessee Bar Foundation this year. She focuses her practice on environmental, safety and health issues, and represents clients in a diverse range of industries. A graduate of the University of Tennessee College of Law, Ms. Mynatt also helps develop and implement environmental, safety and health programs at the corporate and facility levels.

FREE ONLINE CLASSIFIEDS

The purpose of the Online Classifieds is to provide an opportunity for KBA members and non-members to post and view employment opportunities, office share/rental options, as well as lawyer-to-lawyer services and other specialized categories. You might be a member looking for a fresh start in a new position or a firm seeking to increase your reach in looking for the perfect person to fill that vacant role in the office. We can set your employment listing as a blind box ad so that interested parties respond to the KBA and the emails are forwarded to you by our staff. You might have some available office space for sale or for lease or maybe you want to find someone interested in sharing space you already occupy. KBA members may post classifieds for free.

AFFILIATED ORGANIZATION

The Smoky Mountain Paralegal Association will hold its monthly meeting on Thursday, April 10, 2014, at 12:00 p.m. in the U.S. Attorney's Office, Knoxville, Tennessee. **Hannah S. Lowe** of Trammell, Adkins & Ward, P.C. will be presenting the topic of Common Insurance Coverage Issues. The presentation will provide 1.0 hour of education for paralegals. A lunch buffet is available at the cost of \$12/person with reservations. Please contact **Kelley Myers**, ACP at president@smparalegal.org or (865) 974-0425 for additional information and/or lunch reservations.

NEED GUIDANCE IN A SPECIFIC PRACTICE AREA?

One of the best kept secrets of the Knoxville Bar Association is our Mentor for the Moment program. We want to let the secret out and make sure that our members use this wonderful resource. It's really simple to ask a question of our helpful volunteer mentors. Log in to the members' only section of www.knoxbar.org or check out the list in the KBA Attorneys' Directory and begin your search! Our easy-to-use website allows you to search by last name or by subject area experience.

BE PART OF A HUMANITARIAN NEED

Centro Hispano provides a free legal clinic one Saturday every other month to honest, hard-working, low-income, Spanish speaking immigrants who cannot otherwise obtain legal help. Please donate an early Saturday morning to this humanitarian project to make a difference in the lives of these families. Interpreters are provided. Contact **Anabel Lino** via e-mail at centro@centrohispano.org. Visit the Centro Hispano website at www.centrohispano.org.

OFFICE SPACE AVAILABLE:

- Office Space available in West Knoxville Office available to share with sole practitioner in West Knoxville (South Peters Road). Fifteen minutes from downtown. Shared utilities. Contact **Peter D. Van de Vate** at 865-539-9684.
- Office Sharing Arrangement in Bank of America Center. The Piper Law Office has announced that there are offices available for three attorneys and support staff within a four office suite. Space also includes a reception area, conference rooms, library and kitchen. Call **Jack W. Piper, Jr.** to discuss options. (865) 291-1547 or (865) 660-8745.
- Share Office Space in downtown Knoxville with Established Law Firm. Approximately 3-4 Attorney Offices and 3-4 staff offices available. Share in overhead which includes Receptionist/Office Coordinator, Clerk/Runner; Legal Administrator; Conference Rooms including AV equipment; Kitchen; Lunch rooms; high speed Internet and Network; Time and Billing Software; Payroll Software; Workstations complete with PCs and printers; Copiers; Scanners; Desktop and Manual facsimile; janitor, utilities. Call **Chris Russell** @342-1040.
- Three offices are available for rent on Kingston Pike in West Knoxville. Rent includes utilities, phone, and access to printer/copier/scanner/fax. Great working environment, fun people, happy atmosphere. Easy to find. Close I-40 and Pellissippi Parkway. Contact **Robert Vogel** at 865-357-1949.
- Approximately 420 square feet available, space for one to two individual offices. Includes high speed Internet, utilities, and access to conference room. Free parking. Convenient Middlebrook Pike and Weisgarber location. Contact **Michael Cabage** at 539-4500.



WELCOME NEW MEMBERS

THE KNOXVILLE BAR ASSOCIATION
IS PLEASED TO WELCOME THE
FOLLOWING NEW MEMBERS:

Danielle P. Goins
U.S. District Court

William L. Gribble
Gribble, Carpenter & Associates

Tina Osborn

Melanie Reid, LMU Duncan School of Law

Amanda M. Terry, Allen Kopet & Associates

Elizabeth M. Towe
Knox County Chancery Court

Law Student Members:

Charles Al-Bawi
Naureen T. Asif
Brett A. Cole
Meagan E. Davis
Jennifer Dobbins
Erika L. Hughes
William K. Moxley
Rebekah Raymond
Elizabeth A. Rutledge
Alexandra Wolff

Address Changes

Please note the following changes in your KBA Attorneys' Directory and other office records:

Amelia G. Crotwell
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Knoxville, TN 37917
Ph: (865) 951-2410
FAX: (865) 951-2516
amelia@elderlawtn.com

James H. Hickman III
BPR: 005958
Law Office of Garry Ferraris
127 West Jackson Avenue
Suite 306
Knoxville, TN 37902
Ph: (865) 584-7720
FAX: (865) 584-6639
jhickman@ferrarislaw.com



PRO BONO PROJECT

By: Terry Woods
Project Director

*Serving the Legal Community in Assisting
Low-Income Persons To Navigate the Justice System*

Congratulations to Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.

The Knoxville office of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., was awarded the Corporate Counsel Pro Bono Initiative Award on March 1, 2014, at the Tennessee Bar Association's eighth annual Corporate Counsel Pro Bono Initiative Gala.

The TBA's Corporate Counsel Section presents an award each year to the law firm and to the corporate legal department that best exemplifies an extraordinary commitment to the ideals of access to justice, pro bono service, and the Corporate Counsel Covenant of Service.

Baker Donelson received the award for two programs it supports in collaboration with Legal Aid of East Tennessee. In recognizing the firm, TBA President Cindy Wyrick said "Baker Donelson represents the highest level of commitment to pro bono service and serves as an example to other firms about how to provide life-changing pro bono assistance to those most in need."

Under the first program -- the Pillar Law Firm Program -- Baker Donelson lawyers volunteer to represent LAET clients seeking assistance with conservatorships. Many of these clients are parents of severely disabled children who have just turned 18, necessitating a court order for the parent to continue directing the child's medical care and make other decisions about the child's long-term well-being. Others are children of aging parents facing the difficult situation of becoming their parents' caretaker. The Pillar Law Firm Program is an initiative supported by the TBA Access to Justice Committee and the Supreme Court's Access to Justice Commission. It is being implemented across the state as a way to pair firms with expertise in certain areas of the law with those unable to afford legal assistance. The Knoxville office of Baker Donelson was one of the first in the state to join the effort.

Baker Donelson was also recognized for launching Project H.E.L.P. (Homeless Experience Legal Protection) in collaborate with Legal Aid and the University of Tennessee College of Law. Through Project H.E.L.P., Baker Donelson's lawyers (and other lawyers they recruit) provide legal assistance to homeless men, women, and children seeking shelter at the Knox Area Rescue Ministries. They offer legal advice and other assistance with a variety of issues, including obtaining birth certificates; applying for food stamps, public housing, and other public benefits; expunging criminal records; avoiding wage garnishments; and arranging visitation with or custody of children.

Caterpillar Financial Services Corporation in Nashville received the award for outstanding service by a corporate legal department. Cat Financial's lawyers participated in the Tennessee Justice for Our Neighbors (JFON) partnership, helping eligible immigrants apply for "deferred action" -- an opportunity for young people who were brought to the United States as children without legal documentation to avoid deportation and obtain work authorization.



(L - R) Chief Justice Gary R. Wade, Wes Blumenshine (Caterpillar Financial Services Corp.), Carlos Yunsan (Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.), Terry Woods (Legal Aid of East Tennessee), Cynthia Wyrick (TBA President), Justice Connie Clark, Buck Lewis (Access to Justice Commission Chair)

Thank you to all of the lawyers who offered your time in the service of others, particularly those who accepted or consulted on new cases or participated in Saturday Bar, the OP Clinic, Detainer Court, mediation, or in any other way since publication of the last list in DICTA:

Ali Abdelati
Michael Coleman
Loretta Cravens
John Eldridge
Jackson Fenner
Paul Forsyth

David Gall
Ross Gray
Michael Greene
Timothy J. Gudmundson
Daniel Headrick
Barbara Johnson

Wayne Kline
Grant Lewellen
Emily Long
Kenneth A Miller
Edward Owens
Brad C. Segraves

Kevin Shepard
Lynn Tarpy
Chotes Thomas
Kelli Thompson
Walter Winchester

The Pro Bono Project • Legal Aid of East Tennessee, Inc. • 502 S. Gay Street, Suite 404 • Knoxville, TN 37902
phone (865) 525-3425 e-mail: TWOODS@LAET.ORG fax (865) 525-1162

By: Jack H. (Nick) McCall



IN MEMORIAM: DONALD F. PAINE

Paine, Tarwater, and Bickers, LLP; adjunct professor and lecturer, UT College of Law; the Tennessee Law Institute; and co-founder of LAET's Saturday Bar Program, among other achievements, roles, and service to others.



Of all of the "Last Word" contributions since the inception of this column in February 2008, this is the hardest and saddest one that I have been called upon to prepare. While this is being submitted for a special DICTA issue, these words are written just one day after many of us learned of the death of Don Paine, as memories and stories are fresh on the minds of those who were touched by this unique man's life, talents, and works.

One of the biggest fans and supporters of this column was Donnie Paine. Although he habitually referred to it as "The Last Call," Don was an inspiration in locating contributors and in adding part of the flavor of what "The Last Word" has come to be. Of course, that should come as no surprise to anyone who knew Don. He was so many things, but in each way, he was an original, and in each he excelled. Don will be remembered as a mentor and teacher; fierce advocate for his clients of all walks of life; punctilious legal scholar; frequent writer and contributor to so many publications (including DICTA); the guiding light behind, and erudite interpreter of, so many of Tennessee's statutes and codes; and the heart and soul of LAET's Saturday Bar for so many years and a passionate pro bono lawyer.

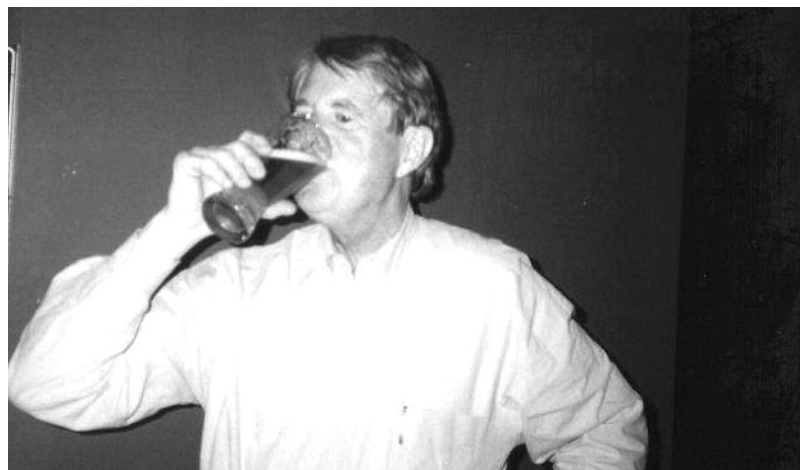
He certainly, and justly, had a loyal following, and not merely of law students, judges and attorneys. After all, how many persons – much less professors or lawyers – had a table dedicated to themselves in the old location of The Sunspot restaurant on the Cumberland Strip, which over time became a kind of shrine to Don? (I will always recall Don's tirade at a Knoxville TLI session in 2005, when he encountered some non-lawyers filching the food and drink from his paying customers. I will spare you his exact language, but rest assured, it was grade-A Don on the warpath, though.)

I'll never know if he actually got to meet the object of some of his greatest affections, Emmylou Harris, but he loved her so much, he had to have been her biggest all-time fan. Don's own fans were legion. And, besides his family and closest friends, his appreciation for his "co-pilot" in so many respects, Karen Roberts. It was only fitting that Karen also received a lifetime achievement award from the Supreme Court in 2009 for Don's service as Reporter and member of the Rules Commission.

Brewer of beer and mead – the latter, truly a Renaissance art form – griller of steaks in the wee early hours as he read the latest cases and tear sheets, and a singer of songs (sometimes to his stuffed-animal "straight man," Mr. Bear, as generations of UT Law students recall), Don lived life fully and bravely. He inspired countless others to do the same – including this lawyer and writer – and he outlasted all expectations in his war with cancer for many years more than his doctors had ever expected. "They've told me I'm a miracle case," Don mentioned to me about seven years ago; that he was, in so many ways. He encouraged my own writing, not only of this monthly DICTA column, but several other pieces as well, and I was truly honored to serve as his co-author on several occasions.

I regretted never getting to ask Donnie what would be his own last words to share with his brethren and sisters of the KBA, and now, I will never have that opportunity. But, I have to think that he would tell us all to fight the good fight, keep the faith, love what we do, and press on...always, press on. He would urge us to take care of each other, as brothers and sisters in the law, and to never forget those less fortunate than ourselves and do our part to help them out. As the first-rate legal mind that he was, he would challenge us to learn and apply the law constantly, using our skills in the best way possible to help its development and growth, while recognizing its eccentricities and quirks (which, as we know, he so often relished and critiqued). And – of course – he would also remind us heartily to have fun, and live our lives fully and joyously, with a beer – or other beverage of one's choice – preferably in hand, and a song in our hearts. If he was nearby while we enjoyed those refreshments, the bar tab somehow would miraculously disappear. The tab we owe you, Don, we can never repay.

Donnie Paine was an exceptional soul, and his like will not pass our way again. Our world, our community, and our bar are all lessened immeasurably by his loss.



"The Last Word" column is coordinated by KBA Member Nick McCall. If you have an idea for a future column, please contact Nick at nick.mccall@gmail.com.



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**Knoxville Bar Association's Award-Winning
Law Practice Today Expo**

Friday, April 4, 2014
U.T. Conference Center
600 Henley Street, 4th Floor



Attendance for the CLE sessions and lunch in the dining hall is limited to 140 registrations, so anyone interested in participating should make a reservation online at www.knoxbar.org. Questions? Call the KBA at 522-6522.

5 Reasons to attend the Law Practice Today Expo

1. The Expo is for one day only.

It is a short time away from your office, but long enough to take advantage of 13 educational sessions. CLE tracks include *Conversations that Matter*, *Technology Toolbox*, and *Effectively Manage Your Practice*. With an all day pass for only \$120, you can earn 5 hours of CLE, enjoy lunch with 25+ judges, and listen to **Olympian Davis Tarwater**.



2. Free giveaways and door prizes to everyone who attends!

Thousands of dollars' worth of gadgets, gizmos, luxury products and services donated generously by our sponsors, will leave in the hands of conference attendees.

3. Participate in conversations that matter.

Learn about what the future holds for the legal profession by local and national speakers, including **Natalie Kelly**, the Chair of the ABA's 2014 Legal Techshow.

4. You are a key to the success of your law firm.

Get exposed to a broad spectrum of products and services from top vendors who are generously sponsoring this event. Who should attend? Private, in-house and government attorneys; judges and court personnel; law office staff and IT professionals are all encouraged to participate.

5. Guarantee your attendance at the Judicial Candidate Meet & Greet.

Join your fellow KBA members in an opportunity to meet all of the judicial candidates who are running in the 2014 elections. The reception is sponsored by the Association of Legal Administrators-Knoxville Chapter and will be held on April 3, 2014 from 5—7 p.m. and admission is FREE with an Expo All-Day Pass.

RECEPTION SPONSOR



Law Practice Today Expo CLE Sessions:

- The Bill & Phil Show 2014: Agile, Mobile and Hostile -The "Secret" to Winning with Technology (Dual)
- Best Practices for Retaining Talent Roundtable (Dual)
- Cybersecurity Risks: Was the client's data breach your fault? (Dual)
- Creating a Cloud-based Document Management System (General)
- Parting Shots: Trial Tips from Retiring Judges (General)
- Social Media Is for the Birds: The Ethical Issues, Pitfalls, and How you may be wasting your time (Dual)
- Tips for Going Paperless (Dual)
- Ethics of Blogging (Dual)
- Creating a Website that Attracts Clients without Violating Ethics Rules (Dual)
- Cloud v. Traditional Software: Should You Go There (Dual)
- How to Reach Effective Agreements (General)
- Lawyers and iPads (Dual)
- Managing Your Practice through Technology (Dual)



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