

DICTA



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VOTE!
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**Recap of
the 2014
Midterm
Elections**

Photo Op

TRIVIA NIGHT

The KBA Functions Committee sponsored a Trivia Night on Monday, November 10, 2014, at The Bistro at the Bijou. Close to 70 members and guests participated and everyone had a great time. Congratulations to "Board Games & Bragging Rights" for being our 1st place team. Team members were John Rice, David Watkins, Jill Evert and Chris Belford, who are all members of the Knoxville Barristers.



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DICTA

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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).

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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 will resume monthly CLE programs in September. 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).

Bankruptcy Law Section

The new Bankruptcy Section will meet on Tuesday, December 2nd from 4:00 p.m. – 5:00 p.m. in the Small Assembly Room located in the City County Building. At this meeting we will take a few minutes to get to know one another, set a standing meeting date and discuss possible CLE plans for 2015. If you are not able to join us for the section meeting but would like to know how you can get involved, please contact **Tom Dickenson** at tdickenson@hdclaw.com or (865) 292-2243.

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. 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. Section members are encouraged to review the new Local Rules of Knox County Criminal Court on the KBA website on the page for the Criminal Justice 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 Criminal Justice Section, please contact **Jonathan Cooper** (524-8106) or **Hon. Steve Sword** (215-2508).

Employment Law

The 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 the Employment Law Section co-chairs: **Howard Jackson** (hjackson@wimberlylawson.com), **Mark Travis** (mtravis@travisadr.com) and **Tim Roberto** (troberto@brownandroberto.com).

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@bwmmattorneys.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).

Senior Lawyers

The Senior Section will meet next on December 10, 2014 at Chesapeake's at 11:30 a.m. Russ Dedrick and Randy Nichols will present "Memories of a Retired District Attorney and a Retired United States Attorney (War Stories Galore!)". Previous Senior Section Luncheons have sold out so members are encouraged to make their reservations early by registering online at www.knoxbar.org or by sending \$25 to the KBA Office. For information on the Senior Section, please contact Chair **Wayne Kline** at 292-2307.

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. For more information about the section, please contact Chairs **Greg Hall** (546-0080) or **Tripp White** (712-0963).

Event Calendar

December

- 1 ADR Section CLE
- 2 Bankruptcy Section Meeting
- 3 Fee Dispute Comm Meeting
- 3 Solo Small Firm Section
- 5 Ethics Bowl CLE
- 9 Professionalism Committee Meeting
- 10 Senior Section
- 10 Barristers Election & Holiday Party
- 11 Lunch & Learn
- 11 Judicial Committee Meeting
- 12 Annual Meeting & Elections
- 16 Family Law Section CLE
- 17-31 Procrastinator's CLE Series

January

- 3 Fee Dispute Committee
- 3 Solo Small Firm Section
- 8 Judicial Committee Meeting
- 12 Minority Opportunities Committee
- 13 Professionalism Committee
- 10 Barristers Monthly Meeting
- 15 Lunch & Learn
- 20 Family Law Section
- 21 KBA Board of Governors
- 22 Barristers Volunteer Breakfast
- 22 Access to Justice Committee
- 22 Barristers Happy Hour
- 26 Unmet Legal Needs of Children Committee
- 27 CLE Committee

Mark Your Calendar

**Barristers Holiday
Celebration & Elections
December 10, 2014**

**KBA Annual Meeting &
Elections
December 12, 2014**

By: Wade Davies

Ritchie, Dillard, Davies & Johnson

RITUALS

I will always be able to hear John Smartt's voice melodiously enunciating every syllable of the full names of deceased lawyers we honored at the early annual meetings I attended. To me those memories symbolize the importance of the rituals of the bar. The most important of those rituals, the annual meeting, is coming up on Friday, December 12, and I want you to come and bring someone with you.

Truthfully, the first time I attended a Knoxville Bar Association annual meeting, I thought the Memorials Committee presentation was a little strange. I didn't know John Smartt, and I probably did not know any of the lawyers we honored that year. I actually remember thinking about how long it was taking him to say the names and how much I had to do back at the office. As the years progressed, I grew to appreciate the ritual and to understand how important it is to pause and reflect on the lives that we honor as well as what it means to be a member of this honorable profession. "Enjoy" isn't the right word for a memorial, but I began to look forward to hearing John's voice and to use the time to focus on honoring those we lost. It became an important ritual for me, and I'm proud that the Knoxville Bar Association has continued and improved how we honor our members.

The only reason I attended the first annual meeting (after I'd been practicing almost a whole month) was that it was what the lawyers in my firm did. I don't remember giving it much thought. I just went with them. We have tried to focus this year on service to younger lawyers who don't have the kind of structure and support a lot of us did. So, reach out and invite lawyers who might not otherwise attend this year's meeting, and let them learn the importance and the power of this group for themselves.

My trusty 1984 edition of the *Compact* (magnifying glass) *Edition of the Oxford English Dictionary* (one of my prize possessions – I admit I'm a nerd) reminds us that "ritual" comes from devotional services, and that is appropriate for our annual meeting for a couple of reasons. Obviously, this profession requires devotion. It isn't something you can mess around with.

Lawyering becomes part of life. Second, lawyers are devoted to service. I understand that there is a move to try to quantify how much pro bono work lawyers do. I know, though, that lawyers are naturally engaged people who are interested in the world and trying to influence it. It isn't even possible to measure. By any measure, lawyers score very high in devoting time to community service.

Our bar rituals connect us to the profession and provide time for reflection on what we do and why we do it. Far beyond hearing reports and voting for board members, the annual meeting connects us to each other and to the profession and provides a space for us to be proud of the profession. It is also just plain enjoyable to see everyone together.

In preparing for the annual meeting, it is normal for the president to consider the year's accomplishments. I am proud of what we've done to make sure the association stays strong and relevant to modern practice, but I'd rather focus on issues that we'll need to grapple with for a long time. One of those is obviously judicial selection. Amendment 2 passed, but that is not the end of the story. We have to be actively involved in its implementation – especially the legislative approval aspect. No one really knows what that is going to look like. We have to lead in providing accurate information to the legislative committees and help deter sideshows about irrelevant issues (like whether a nominee has represented unpopular clients). I also hope we'll continue to debate the Bar's role in public education for contested elections. Finally, I hope we will continue to find ways to serve new lawyers in very practical ways that can essentially provide firm-like support in the new environment.

I'm honestly a little sad to be thinking about the annual meeting this year and the end to what has been the most rewarding and most fun year of my practice. There is no way I can even try to point out how much good work our members and our staff have done this year, but please read all about it in the Year in Review that will be distributed at the meeting. It has been an incredible honor for me to serve as the president of this well-organized and effective organization. If you have been around me, you know I'm not shy about the fact that I am very proud of this profession and especially this organization. Thank you for all you have done, and I'll look forward to seeing you at the annual meeting on December 12.

Our bar rituals connect us to the profession and provide time for reflection on what we do and why we do it.



**Pick up your
2014 Lawyers' Pictorial Register
at the
KBA Annual Meeting & Elections
on Friday, December 12, 2014.**



BEYOND THE FIRM

By: Kyle A. Baisley

Associate General Counsel

Pilot Flying J

Pilot Logistics Services

IN-HOUSE VS. PRIVATE PRACTICE - MORE SIMILAR THAN YOU MAY THINK

I currently have equal parts of experience in private practice and in-house. I spent a little over three years in the Knoxville office of Baker, Donelson, Bearman, Caldwell & Berkowitz and now have just over three years in-house at Pilot Flying J. The longer I practice in-house, the more parallels I am able to draw between private practice and in-house practice. You typically hear of the differences between the two, such as getting away from the billable hour, escaping the pressures of client development, and, the more laughable one, finding a better work-life balance. While there are many distinctions that one can draw from private practice when compared to in-house practice, there are many lessons learned in private practice that carry over quite well into an in-house role.

While practicing at Baker Donelson, I was fortunate enough to have several great mentors, two of whom I will mention here. Dave Fielder educated me on the substantive side of business law that was and still is the foundation of my practice. He was a stickler for details, something that I am hopefully passing on to my UT Law Contract Drafting students. I always felt as though I owed him a pack of red ball-point pens after most first drafts that I submitted to him. More importantly, Dave taught me, by example, how to take great care of clients. Client communication was key with Dave. He always stressed the immense importance of ensuring that we could adequately communicate to our clients what we were doing and why, in a language that they could easily understand. I quickly learned that flexing legal skills and knowledge, while often times obtaining excellent results for clients, was perceived as useless by most clients if they didn't understand how it fit into the grand scheme of things within their business.

Clarence Risin taught me the business side of a law practice. Clarence was, and still is, a master of selling what he can do for a client and, if not within his area of expertise, what the other attorneys in the firm can do for them. Clarence has the ability to take a single-matter client and turn them into a repeat customer. He is able to do this by first providing them with excellent and responsive representation that provides results. He then digs deeper into that client's business, almost always on a non-billable basis, to find other opportunities where he or his colleagues may be able to provide assistance. He learns a client's business and management team inside and out. He gets on a first-name basis with the decision makers in short order and learns about their families, their interests, and what they look for in good legal representation. He visits their corporate headquarters, stores, plants and factories. He learns the particular quirks with each client and is able to grasp that he must treat certain clients differently from others to meet their needs and that one size doesn't fit all.

Both of the lessons that I learned from Dave and Clarence are two of the most important lessons that I believe an attorney in private practice can learn to be successful. I also believe that those are also the two most important things to focus on while practicing in-house.

In-house practice is fast-paced. I once heard someone liken it to drinking from a fire hose. Based on my experience thus far, that description is pretty spot on. Your clients are only a few doors down the hall or in the building next door. They can appear in your doorway almost as quickly as they can shoot you an email or give you a call. Almost all of them have (and should have) your cell phone number. You run a significant risk of the ever-awkward but always efficient

over-the-urinal-stall legal consultation (in-house ladies, you can rest more easily on this one). Without fear of the billable hour, questions flow freely and frequently. I probably have two to three times more client interaction in-house than I did in private practice. In each one of those interactions, I try to put those lessons learned from Dave to good use. I must make sure that I completely understand what is needed of me, how it fits into the bigger picture that is Pilot Flying J, and then how to keep my various contacts within the company aware of what I am doing and why I am doing it a certain way. In doing this, I can help them to more easily detect issues in the future so that our processes become more efficient. With every project, I educate them a bit on the law and they educate me a bit on the many business facets of Pilot Flying J. Through this mutual process, we both take away an experience that will make us more effective the next time we run into the same or a similar issue.

A common misperception of in-house practice is that client development is a non-issue. As demonstrated by Clarence in the private practice setting, an in-house attorney must also go above and beyond to get to know the people within their company so that utilization of their skills and that of the other in-house attorneys can be maximized. While my true client is Pilot Flying J as a company, I try to treat each department within Pilot Flying J as a distinct and different client. It just so happens that all of my clients' salaries are paid from the same account that pays my salary, and we all succeed or fail together. Each department has different leadership, and, accordingly, each department has a different personality. I must dive deep into each individual department to see what their specific needs are, what they have experienced in the past, and what they are looking at down the road. The only way to do this is by spending time with those people who are in charge of those departments and their team members. There is no substitute. I try to spend as much time as possible in their offices and cubicles. I try to learn their department-specific lingo and have lunch with them as often as I can. By utilizing those same client development skills that have been perfected by Clarence in the private practice setting, I believe that I will be able to be of much greater service to Pilot Flying J and the many individuals that are ultimately responsible for its operations.

At the end of the day, whether you are in private practice representing a client from afar, or in-house and sharing a wall (stall or otherwise) with your client, I urge you to keep the importance of client communication and knowledge of your client at the forefront. I believe that in either instance it will make for a more effective (and likely more enjoyable) experience.



By: Chris W. McCarty

Lewis Thomason



TO OFFER OR NOT TO OFFER

No Tennessee Rule of Civil Procedure better fits “all bark, no bite” than Rule 68. Many of us have been caught in a seemingly endless offer of judgment loop. Neither your client nor the opposing party wants to talk reasonably, so both sides start shooting out offers of judgment like they are selling Girl Scout cookies.

In its most basic form, Rule 68 appears useful:

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property, or to the effect specified in the offer, with costs then accrued.... If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay all costs accruing after the making of the offer.

Most eyes focus on that last part. It discusses a rejecting party paying “costs accruing after the making of the offer” if the final judgment is less favorable than said offer. “Costs,” as I originally read it, would seem to implicate court costs *and* discretionary costs. Why? Because holding court costs over an opposing party’s head would not have much of an effect. Those costs rarely approach \$1,000.00 and usually come in below \$500. Discretionary costs, on the other hand, could include expert witness fees.

For a person who practices primarily civil defense, the idea of possibly sticking a plaintiff with expert fees following a bad verdict would seem to give teeth to Rule 68. You know what they say about people who assume, right? A few years ago, I had the great idea of trying this approach with a very good plaintiff’s attorney who would not budge from his last offer. I sent an offer of judgment. I followed it with a letter discussing the risks of being hit with expert witness fees. And, within

what seemed to be only a few minutes, the same plaintiff’s attorney taught me a lesson on assuming.

The attorney in question simply forwarded me an e-mail attaching *Austin v. Allen*, 2009 Tenn. App. LEXIS 303 (Tenn. Ct. App. Mar. 27, 2009). *Allen* is a little-known, unpublished opinion. It concerns a dispute over the removal of a fence and the enforcement of a drainage easement. But the *Allen* opinion should be well-known for the following line alone: “expert witness fees are not a ‘cost’ recoverable under [Rule 68].”

If a party rejects an offer of judgment under Rule 68 and that party then receives an award below the offer of judgment amount, the party suffers the wrath of... court costs? In my experience, court costs do not cause many sleepless nights.

When might one get use out of Rule 68? Most notably, rejecting an offer of judgment can be risky in claims allowing for the collection of attorney’s fees. Every claim/standard is different, however, so take a look at applicable case law before faxing opposing counsel an offer of judgment with “na-na na-na boo-boo” scribbled across the top.

The Tennessee Court of Appeals highlighted another use for Rule 68 in the recent decision of *McGinnis v. Cox*, 2014 Tenn. App. LEXIS 710 (Tenn. Ct. App. Oct. 31, 2014). Therein, the Court of Appeals “agree[d] with the federal courts that Rule 68 offers of judgment are generally not revocable prior to the expiration of the time period for acceptance provided by the Rule, regardless of traditional contract principles.” *Id.* at *24. How might this work to your advantage? Imagine a scenario where an offer of judgment comes in to you on Tuesday and then both sides discover your case is in the tank by Friday. Under *McGinnis*, you would still have time to advise your client to accept the offer of judgment. The opposing party, on the other hand, would possess no method of rescinding what is now a bad offer.



With deepest gratitude, I thank Judge Steve Sword, the Knoxville Bar Association, the Criminal Court attorneys with whom I had the pleasure to work, and the many lawyers who participated in my "retirement docket." That day was one of the most special days of my life and career. It is a great honor to be a member of the Knoxville Bar and to serve our profession with all of you."

Mary Beth Leibowitz



ATTORNEY PROFILE

By: Jack H. (Nick) McCall

TASHA C. BLAKNEY: KBA PRESIDENT-ELECT



Our incoming KBA President, Tasha Blakney, was the subject of a previous DICTA profile ten years ago. What a difference ten years makes! Before she dons the mantle of the KBA's leadership, let's reacquaint ourselves with Tasha and see what the last decade has brought.

First things first: In 2003, Tasha and Dave Eldridge had just begun their own law firm. Celebrating its eleventh anniversary in September, Eldridge & Blakney continues to grow and thrive. In fact, the firm has doubled in the last ten years (to four lawyers). "It's been really fast and really fun," Tasha recounts. "Sometimes, the time we've spent together at this firm feels like five minutes; other times, maybe a bit longer. On balance, though, it seems like it was just yesterday when Dave and I were talking about starting this firm. Years later, we're still doing the kind of work we believe in. That's one of the things that I'm most grateful for."

In 2004, Tasha was living the life of a single girl. In September 2008, she married Michael Rogers, field producer for Jupiter Entertainment and one of the key players behind Oxygen TV's "Snapped" series of true crime stories.

"Michael is a force in motion; he never, ever stops," Tasha laughs. "He's the perfect partner-in-life and partner-in-crime for me. We share many things we love and have similar philosophies." One of the things they love



Peru

is travel: these two are true globetrotters. In the past six years, they have traveled to 18 different countries and locations as diverse as Macchu Picchu; Angkor Wat; the Cliffs of Moher; Budapest; Montevideo; and Berlin's Brandenburg Gate one New Year's Eve. This December, they will be *en route* to Ecuador and the Galapagos Islands. (That latest trip will be, of course, *after* the KBA Annual Meeting.)

Marriage to Michael also brought two other wonderful things into Tasha's life: her beautiful, talented and wonderful stepdaughters, Caroline and Katie. Caroline, 17, is a senior at Bearden High; she has excelled at Mock Trial and has been a two-time state-level Best Advocate, as well as having won both the TBA's statewide essay contest and, most recently, the TBA's 2014 high school video competition. With such law-themed activities, a natural question is whether Caroline plans to follow in her stepmom's footsteps. "When I asked her about law school," Tasha said, "her answer was: 'No way!' But, she's 17, so who knows? When I was her age, I knew instinctively that I wanted to go to law school but didn't know specifically. She, on the other hand, has a clearer and more accurate concept of what lawyering is really like than I did then."

Caroline's pre-college interests are gravitating towards journalism or psychology. Tasha describes 13-year old Katie, a Bearden Middle School 7th-grader, as being "one of the funniest people I've ever known. Besides her gift of humor, Katie is also very athletically inclined; she is a rising track and cross-country star, and she is also thriving academically. Katie loves the piano, while Caroline is a guitar player."

In 2004, Tasha was the proud human of one dog, her beloved Border Collie, Clark, who died recently after a long and full life. (Tasha jokes, "Michael says he brought Katie and Caroline to the marriage; I brought Clark.") The Blakney-Rogers home, however, remains full of pets. These comprise an attitudinous cat, Goose, described by Tasha as being "just a wretched cat, truly dreadful; she barely tolerates me and has no use for anyone else;" Bailey, a goofball Lab mix rescued by Tasha from southeast Georgia near Michael's home town; Caesar, a spunky terrier mix adopted from the Young-Williams Animal Center "with a hysterical underbite;" and Ollie, an East Tennessee hound and another Young-Williams "alumnus" (move over, Smokey). Tasha also has just taken ownership of a fourth dog, Duke, who was just saved from being euthanized.

The litany of these pets brings home one of the things that I have known and appreciated about Tasha for years: she has an enormous heart and is passionately devoted to several causes that matter enormously to her, besides the law. Animal welfare is one of those causes and another shared hobby of Tasha and Michael. They occasionally drive dog transports--described by Michael as a "doggie underground railroad"--which are, essentially, a shuttle service carrying dogs on "death row" in kill shelters from Tennessee and Mississippi to Northern no-kill shelters in towns with fewer dog-overpopulation issues than many Southeastern cities. "I've driven countless dogs," Tasha adds.



(Continued on Page 9)

ATTORNEY PROFILE TASHA C. BLAKNEY *(Continued From Page 8)*

Another passion: hiking and enjoying the East Tennessee countryside. "We're so incredibly lucky to live where we live. I'd prefer to be in the mountains more than anywhere else. I feel fortunate, whenever we travel, to come home to Knoxville. It's just a great place to live," says this child of West Tennessee.



Mt. LeConte

Tasha's achievements are considerable. A very abbreviated list includes numerous bar service awards; service as the District 2 representative on the TBA Board of Governors; a Fellow of

each of the Knoxville, Tennessee and American Bar Foundations; a 2005 graduate of the TBA Leadership Law; and years of service in various capacities in the KBA and ABA. As for the KBA and practicing law in Knoxville, Tasha reserves her highest praise:

My KBA experience and career has been during a true golden age of experience and leadership. We've been mentored by great leaders, who also happened to be in Knoxville. I'm proud and humble to take on the role of KBA President, being aware of the traditions before me and what that means. Having had a chance to meet other lawyers from all over the state, the U.S. and even other countries, I know how special it is to practice law in Knoxville. This is not a bar association that needs major fixes; it serves its members and its community in ways that work and in ways that make me

proud. If I can help keep all that going, then I will be proud of my year of service. The spirit of the KBA has not changed over time, although the demographics have of course changed. We all should take ownership and pride in that.

Ten years later and better than ever, the woman from West Tennessee with the initials of Elvis' motto is still "Taking Care of Business," now for the good of all of us in the KBA.



Ijams



DISTINCTION

*Donna Dobson, Legal Administrator
Sherrard & Roe, Nashville, Tennessee*

When Sherrard & Roe began looking at options for their malpractice insurance, Donna Dobson remembers that they were looking for something different. They wanted a company that spoke their language and could respond to their needs quickly and directly. They wanted to partner with real people that understand the practice of law and the business of running a large law firm. What they wanted, a broker simply couldn't provide. That's why Sherrard & Roe chose ALPS.

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LEGAL MYTH BREAKERS

By: David E. Long

Leitner, Williams, Dooley & Napolitan, PLLC

“WHAT’S SAUCE FOR THE GOOSE....”

In the interplay between federal and state litigation practice, issues of substantive and procedural law are not always apparent. The *Erie R. Co. v. Thompson*, 304 U.S. 64 (1938) “doctrine,” however, is important to remember in terms of procedural law dealing with statutes of limitations, which are almost always procedural and not substantive. A good example of the analysis is T.C.A. sec. 20-1-119. Succinctly, 20-1-119 is a savings statute that allows (where modified comparative fault is at issue), a plaintiff to bring a new defendant into a lawsuit even if the statute of limitations would have run on that defendant. Even if the statute has run, if another defendant “points the finger” at a new person or entity claimed to be at fault, the plaintiff has 90 days to bring in the new potential defendant either by (1) filing a separate lawsuit or (2) amending the initial complaint. If (2) is chosen, T.C.A. sec. 20-1-119 (a)(1) allows amendment “pursuant to Tenn. R. Civ. P. 15,” along with “caus[ing] process to be issued for that person.”

Prior to 2007, the process was controlled by *Jones v. Professional Motorcycle Escort Service, LLC, et al.*, 193 S.W.3d 564, 570 (Tenn. 2006). In order to comply with 20-1-119, four things had to happen: (1) the filing; (2) and **granting** of a motion to amend; (3) the filing of the amended complaint; and (4) the issuance of process. Thus, prior to July 1, 2007, the court had to grant the motion to amend under TRCP 15, assuming it was not agreed to by the other party and the time to amend by right had run. The General Assembly amended 20-1-119, which took effect on July 1, 2007. In doing so, TRCP 15.01 was amended to state “[f]or amendments adding defendants pursuant to...20-1-119, however, written consent of the adverse party or leave of court is not required.” The amendment was provided to help eradicate the harsh result of requiring the plaintiff to make sure the trial court actually “granted” the motion to amend within 90 days. Prior to the amendment, TRCP 15 and FRCP 15 were practically identical.

Enter the *Erie* doctrine into the mix. We all know that the doctrine (in 42 U.S.C. sec. 1332 cases) mandates federal courts to apply state substantive law and federal procedural law. Statutes of limitation are procedural. *Electric Power Bd. of Chattanooga v. Monsanto Co.*, 879 F.2d 1368, 1375 (6th Cir.1989). T.C.A. sec. 20-1-119(c) states it does not shorten or lengthen any statute of limitations “other than as provided in

subsection (a).” The point is: FRCP 15 was not amended (nor could it be practically) to take into account the 2007 amendment to 20-1-119 or TRCP 15.01. In order to follow the *Erie* doctrine in a 20-1-119 amendment of pleadings situation, FRCP 15(a)(2) still requires “the opposing party’s written consent or the court’s leave.” In federal court, the *Jones* case is alive and well. All four things stated above still have to occur in federal court for the 90 day window of 20-1-119 to be utilized effectively.

There is a split in the federal Middle District and the Eastern District. In *Williams v. Corrections Corp. of America*, 2011 WL 795012 (M.D. Tenn., 2011), Magistrate Brown held the reading of what is discussed above as being too harsh. Essentially, the *Williams* court did not realize a motion to amend was pending. The Court pointed out that leave should have been granted, but held it was not “productive” to deny the amendment. The court discussed the fact that the defendant was not prejudiced and held that the outcome in federal court should be “substantially” the same as in state court, and it granted the amendment as timely. The *Williams* court did not analyze the *Erie* doctrine. It is suggested that the *Williams* case was decided wrongfully and is not good precedent for a 6th Circuit appeal.

The Eastern District follows a strict *Erie* procedural reading. *Anderson v. Bovis Lend Lease, et al.*, 2008 WL 336741 (E.D., Tenn. 2008), an opinion by Judge Collier, holds, in federal court, the *Jones* case is still applicable in federal court, and as such, all four things still have to happen, including permission by the opposing party or leave of court by granting the motion to amend. In relation to the *Erie* doctrine, the *Anderson* case is the correct procedural decision. So long as statutes of limitation are considered procedural in this State, unless FRCP 15 is amended, or other legislative action is taken on a state level, *Anderson* remains the correct result (although admittedly harsh) in federal cases dealing with T.C.A. sec. 20-1-119 and amending complaints during the 90 day window.

Although the saying “what’s sauce for the goose is sauce for the gander,” is a colloquial statement that might be applied to substantive law in 42 U.S.C. sec. 1332 cases, it is not a good benchmark when dealing with the differences in federal and state procedural law.



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Through the end of the year, DICTA will have a 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 transactional and business-related law for almost 28 years, beginning at a very large metropolitan law firm, moving to a small-to-medium sized firm, and then going on my own for the past 15 years. I am an adjunct professor at the UT College of Law.

1) What is the biggest change you have seen in the practice of law?

The direct and indirect effects of technology. I remember the days before fax machines, much less email. There were services like Delta Dash and the time stamp machine at the Post Office Office for District Court filings. If you had to file something critical in Bankruptcy Court after hours, you called the Bankruptcy Court Clerk at home. While technological advances have helped make practicing law more efficient in many ways, those same advances have also led to sloppy work and a tolerance for what previously would have been intolerable. Nobody lines up numbers in the same manner we were taught in typing class back in the 1960s.

Of course, there's a good side to this too. I remember the curved metal plates that were necessary when erasing errors on the typewriter while having carbon paper in the machine in order to have multiple copies of the same document. Manual blacklining of documents, highlighting the changes since the last draft, was an endeavor that was often less than trustworthy.

2) What is the most difficult aspect of practicing law?

Balancing. I don't care what kind of law you practice or where you practice it, as a lawyer you are constantly balancing. There's work life vs. home life; this client vs. that client; returning phone calls vs. completing an employment agreement; writing down time in order to properly and accurately bill vs. simply doing the work and getting it out the door; reviewing bills and getting them out vs. working on an agreement that should have been done yesterday. I could take up this entire column with examples of the balancing practicing attorneys must perform everyday.

I have an old wind-up clock on the wall in my office that ticks very loudly. Most of the time it is quite soothing, but it is also a constant reminder that time is marching on and I must be acutely aware of striking the proper balance between all of those matters that add up to the concept of "practicing law."

3) What is the most satisfying part of your job as a lawyer?

Solving interesting problems. That alone covers a wide spectrum of "satisfaction"—these problems are frequently academically challenging, involving detailed legal research; as well as creatively challenging, as in finding solutions where others think there are none; and they sometimes call on drafting skills and legal concepts that I do not get to use very often.

Right up next to that is staying in touch with former students and working with them when they call for guidance. I was lucky enough to have two of the best lawyers in East Tennessee guide me through the learning process of "how to practice law," and 28 years later, I'm still calling them for advice and guidance. I consider myself very lucky to be able to pass along some of that wisdom to others.

4) What piece of advice would you give to someone considering law school?

By all means go to law school. It's a great education, and it does not mean you must become a practicing attorney when you get out. There are a number of incredibly successful business folks in East Tennessee who have a law degree, but who have chosen not to go into the practice of law. They have used that education—that way of thinking and analysis—to further their business endeavors, to tremendous success.

In terms of advice to assure success in law school, I would suggest not going straight through from undergraduate school, but getting out in the real world and working 2-5 years. You will have a much better perspective from which to approach your legal education, and I guaranty you that you will work harder and do better, by which I mean achieve higher grades.

Finally, I would advise taking writing courses and doing as much as possible to boost your language skills. Words are your stock in trade as a lawyer. Whether you are a courtroom type or a paper-pusher, words are really all you have, and you better be good with them.

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

This is a trick question, right? I think if I ever feel comfortable doing this it will be a signal that it's time to quit. Sure, I've become more proficient in working on certain matters, but I think that if I ever feel "comfortable" doing this, it will mean I have lost my edge and I will worry about whether I am doing an adequate job for my clients. I still get a shaky stomach just before hitting the "send" button when transmitting a document to my adversary. For that, I am thankful because it means I am not complacent with practicing law.

6) What do you consider your greatest professional achievement?

This is risky, but I would say it is coming this far in this profession, and remaining in Don Paine's category of "those who are going to be." That is, Don used to say there were two types of lawyers in Tennessee,

those who have been before the Board of Professional Responsibility and those who are going to be. I am still in the latter category, which baffles me, but for which I am eternally grateful.

I suppose a better (read: more traditional) response would be that I have come this far in this profession, alienating only a few, satisfying many, and enjoying the respect of most of my clients and fellow lawyers for my skills. You can never satisfy everyone, and you

probably do not want to.

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

I do not believe the "problem solving" aspect of my practice will see much change at all. It can be pretty inefficient in terms of the time involved compared with the amount the solution may be worth. Of course, the pendulum swings the other way occasionally as well, and an obscure, but good, working solution may take no time at all to discover. That's when you hit a home run for your clients.

This kind of work is very time intensive, and you have to love working with difficult-to-resolve issues. More than one of my colleagues has said to me, when I have called to talk through my thoughts, "How do you find clients with these issues?" And my reply has always been, "I have no idea. They seem to find me." I do not think that aspect of what I do will change much.

What will change, and it's happening already, is the planning and drafting of good, solid transactional documents. For example, while working with two nationally-known law firms on a transaction the value of which was in excess of \$1 billion, I pointed out that the document was replete with comma errors, some of which actually changed the meaning of the provisions in the document. I also pointed out that I have lots of cases in which the placement or omission of a comma was outcome-determinative. When I offered to fix these errors, I was told, "No. That's OK. We do not need that done." In the final version of the document, none of those errors was changed.

My goal in passing along that concern was two-fold: (a) to have a proper set of documents, and (b) to prevent any legal malpractice finger-pointing at me if the deal goes south. While (a) is changing constantly, (b) is probably a safe bet to still be around in 10-20 years.

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

I've never thought about having a legacy, and I suppose that's because I've never thought about leaving the practice of law as long as I have interesting and challenging matters on which to work. I do not want to be the 79-year-old guy they discover slumped dead at his desk one day, but how can you turn someone down when she calls with a problem involving accretion or reliction or the effect of the Rule Against Perpetuities on a charitable bequest? If there's a legacy in there somewhere, I'll let others come up with that.

Transactional and Business-related practice for almost 28 years



By: Joe Jarret

DAVID “DAVY” CROCKETT: FRONTIERSMAN, DEFENDER OF THE ALAMO, TENNESSEE JUSTICE OF THE PEACE

To those of us introduced to Davy Crockett in the late fifties and early sixties, compliments of *The Wonderful World of Disney*, the most important thing in life was to own a coonskin cap and be able to sing, “The Ballad of Davy Crockett.” I often wonder how tired my parents must have been of the constant refrain from the ballad recited by my brothers and me “born on a mountaintop in Tennessee, killed a bear when he was only three . . .” not to mention our equally constant requests for coonskin caps and other Crockett memorabilia. Unlike historians who are forever attempting to separate fact from fiction, and folklore from historically accurate attributes of the man, kids in my day were only interested in how many settlers were saved from marauding indigenous peoples (dubbed “blood thirsty redskins” during the political climate of the time) and how many bears he killed with knife or tomahawk alone. However, attorneys may be interested to know that this iconic figure not only served in the Tennessee House and the U.S. Congress, ultimately meeting his demise at the Alamo (where, according to the most historically accurate sources he was captured, bayoneted and shot to death on General Santa Anna’s orders), but that he was also a duly appointed justice of the peace.¹

According to historian Michael Wallis,² Davy Crockett, when he wasn’t serving in the militia or bear hunting (his favorite pastime) served Lawrence County, Tennessee (where an impressive statue of the man still stands on the Lawrenceburg town square) as a justice of the peace, a position he seemed to have some success in holding. His duties and responsibilities included presiding over property disputes, issuing warrants and licenses, taking depositions of various litigants, paying out bounties for wolf skins, supervising county road improvements and assisting with the census. According to one historian, Crockett relied upon his “natural-born sense” to decide cases on this rugged frontier. Further, on at least one occasion, Davy found himself in the collection business, having been required, as a duty and responsibility of his office, to collect funds from a county resident “for the support of a bastard child.”³ This was no mean feat. Back in the 19th century, illegitimate children were the most vulnerable population group which was complicated by the fact that society was often skeptical when it came to the identification of, and pressure placed upon, fathers of illegitimate children to support their offspring.

Although there does not appear to exist any written arrest warrants issued by Crockett, according to historian George Edward Stanley,⁴ it was Crockett’s habit to inform the local sheriff to “catch that fellow dead or alive.” It is said that the local legal culture in Crockett’s time retained their character, in that there was a general resistance towards trends that lead to state superintendence of law and judicial services which had a tendency to reduce local residents’ access to the courts. Crockett in particular was opposed to such measures and brought this fierce notion of local resident’s rights to the State House in 1821 where he earned the reputation as a legislator who spent his entire legislative career fighting for the rights of impoverished settlers whom he felt dangled on the

precipice of losing title to their land due to the state’s complicated system of grants.⁵

The law was simpler back then, and as such, Crockett’s friends, neighbors and most residents intimately knew the various justices who ran their local courts and likewise knew from whence came the law and punishments that affected their daily lives. Further, residents acted to participate in dispensation of local justice, especially when it came to the whipping of horse thieves. One historian, writing on America’s frontier justice meted out by the various justices of peace noted that “the justice of the peace was a powerful individual, with authority to hear civil actions, shut down illegal gambling dens, hear cases of trespass and traffic violations, register stray animals, and more.”⁶ Further, records maintained by the East Tennessee State University Archives of Appalachia read in part that “Tennessee Justices of the Peace were officers of the state’s county court system, a system that provided the justices concurrent jurisdiction with their peers of the Chancery Courts. Prior

According to one historian, Crockett relied upon his “natural-born sense” to decide cases on this rugged frontier.

to Tennessee’s 1835 Constitution, two justices were appointed by the governor for each ‘captain’s company’—a militia unit arbitrarily assigned to a county by the state legislature, commanded by a captain who was appointed by its eligible male constituency.” Crockett, prior to being appointed justice of the peace, served in the Tennessee militia as both an officer and enlisted soldier. The aforementioned records also read that “Justices of the Peace heard civil cases of common law involving less than \$1,000 and equity involving less than \$50. They also decided misdemeanor cases if the fine was less than \$50. The bulk of a justice’s responsibilities centered around issuing warrants and subpoenas for all courts including civil court warrants for forcible entry, debt, and trespassing and criminal court warrants for first degree murder, manslaughter, rape, burglary, larceny, counterfeiting, forgery, assault with intent to kill, and conspiracy.”⁷ From what we can glean from the various historical writings about Crockett, he pretty much dealt with most if not all of the offenses listed.

In summary, when it came to dispensing justice on the Tennessee frontier, it appeared Davy Crockett had a simple philosophy: “Be always sure you’re right—then go a-head!”⁸ Indeed!

¹ Crockett, according to records maintained by the National Archives was appointed by the Tennessee Legislature to the position of Justice of the Peace on November 17, 1817.

² For an excellent writing of the life and times of David Crockett, see Wallis, Michael, “David Crockett: The Lion of the West.” Norton & Co. 2011

³ Shackford, *Davy Crockett: The Man and the Legend*, 41.

⁴ Stanley, *Davy Crockett: Frontier Legend*, 27

⁵ Boylston, James R.; Wiener, Allen J. (2009). *Davy Crockett in Congress: The Rise and Fall of the Poor Man’s Friend*. Houston, TX: Bright Sky Press.

⁶ See Hall, “The Judiciary on Trial: State Constitutional Reform and the Rise of an Elected Judiciary” in *The Historian*, vol. 45, no. 3 (May 1983)

⁷ East Tennessee State University, Archives of Appalachia, Box 70295, Johnson City, Tennessee 37614

⁸ James Wakefield Burke, *Davy Crockett* (Austin: Eakin Press, 1984)

By: Matthew R. Lyon

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HANNAN, THE “ZOMBIE CASE”: WILL THE TENNESSEE SUPREME COURT DRIVE A STAKE THROUGH ITS HEART?

This month's column transcribes a recent e-mail exchange between Civil Procedure professors at Knoxville's two law schools. *Hannan v. Alltel Publishing Co.*¹ was born on Halloween 2008 and was purportedly killed on May 20, 2011, when the General Assembly passed Tennessee Code Annotated section 20-16-101. But like the undead, *Hannan* still walks abroad, striking fear into the hearts of defendants throughout Tennessee.

MATT LYON: Hey, Judy. Did you hear that the Supreme Court recently granted a Rule 11 application² in a summary judgment case out of the Western Section?³ Heightening the intrigue, the Court stated in the Rule 11 order that it “is particularly interested in briefing and argument of the question of whether the Court should reconsider the summary judgment standard previously articulated by the Court in *Hannan v. Alltel Publishing Co.*”⁴

JUDY CORNETT: Really? That seems odd, given that Tennessee Code Annotated section 20-16-101, which applies only when the summary judgment motion is filed by the party that does not bear the burden of proof at trial,⁵ was enacted in 2011 in an attempt to legislatively overrule *Hannan* and replicate the federal summary judgment standard⁶ in Tennessee.

ML: Yes, I was surprised too, since the *Hannan* standard is already on its way out. Section 20-16-201 applies to all civil suits filed on or after July 1, 2011,⁷ so as cases have worked their way through the pipeline, *Hannan*'s significance has steadily waned. Do you know anything about how Tennessee appellate courts have been applying the statute since its passage?

JC: I've looked into it, Matt. The lower courts seem to be applying both *Hannan* and the statute appropriately. Out of 95 summary judgment cases decided on appeal between the effective date of the statute and October 10, 2014, there is only one case in which application of the *Hannan* standard might arguably have made a difference.⁸ What exactly is this new Supreme Court case about?

ML: It involves a couple who sued the wife's OB/GYN and treating clinic in Memphis because the physician failed to administer the wife an injection of RhoGAM during her third pregnancy.⁹ The wife's resulting Rh-sensitivity posed a risk of harm to any future children she might carry, leading the couple to limit their family planning despite their religious beliefs to the contrary.¹⁰ The Court of Appeals engaged in a careful, claim-by-claim analysis, applying *Hannan* to affirm summary judgment on some claims but not others and taking care not to weigh evidence at the summary judgment stage. Moreover, I think there is only one claim – the husband's stand-alone claim for negligent infliction of emotional distress¹¹ – for which the application of section 20-16-101 might have resulted in summary judgment where *Hannan* did not. So I just can't imagine why the Supreme Court chose this particular case as the vehicle to readdress *Hannan*.

JC: I think I may know what the Court is doing. A couple of years ago, just after the new summary judgment statute was enacted, we wrote a

law review article in which we described a game of “chicken” being played out between the General Assembly and the Tennessee Supreme Court over the issue of who has the power to determine the summary judgment standard for Tennessee.¹² We argued that section 20-16-101 is unconstitutional because it violates the separation of powers provision of the Tennessee Constitution.¹³ Relying on the Court's 2001 decision in *State v. Mallard*,¹⁴ we argued that the statute usurps the Supreme Court's rulemaking power and “strike[s] at the very heart” of the judiciary's “powers to hear facts, to decide the issues of fact made by the pleadings, and to decide the questions of law involved.”¹⁵

ML: That's right. And although no appellate court has faced a constitutional challenge to section 20-16-101, one decision from the Eastern Section has referenced the possibility of “an unraised question as to the constitutionality of [the statute].”¹⁶

JC: Overruling *Hannan* would likely moot any constitutional challenge to the statute, because the Supreme Court's interpretation of the state's summary judgment rule¹⁷ would be the same as the standard enacted in section 20-16-101.

ML: We can only speculate what the Court might do, as *Hannan*'s author, Justice Holder, and dissenter, Justice Koch, both retired this year, and a majority of the Court's current members were not involved in the decision. I guess we'll just have to wait and see whether *Hannan* has haunted Tennessee defendants for the last time.

¹ 270 S.W.3d 1 (Tenn. 2008).

² See TENN. R. APP. P. 11.

³ *Rye v. Women's Care Center of Memphis, M PLLC*, No. W2013-00804-COA-R9-CV, 2014 WL 903142 (Tenn. Ct. App. Mar. 10, 2014), *perm. app. granted* (Tenn. Sept. 19, 2014).

⁴ Tennessee Supreme Court, Discretionary Appeals, Grants and Denials List (Sept. 22, 2014), available at http://www.tncourts.gov/sites/default/files/discretionary_appeals_-_sc_corrected_25sept2014.pdf.

⁵ See, e.g., *State ex rel. Garrett v. City of Norris*, No. E2013-02355-COA-R3-CV, 2014 WL 4260848, at *3 (Tenn. Ct. App. Aug. 28, 2014).

⁶ See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1478 (6th Cir. 1989) (“In other words, the movant could challenge the opposing party to ‘put up or shut up’ on a critical issue.”).

⁷ Act of May 20, 2011, ch. 498, 2011 Tenn. Pub. Acts. The Court of Appeals has held that, although the codified version of the statute does not include the effective date, the Public Act as passed governs, and the statute as codified will not be applied retroactively.

⁸ *Cartwright v. Jackson Capital*, No. W2011-00570-COA-R3-CV, 2012 WL 1997803, at n.6 (Tenn. Ct. App. June 12, 2012).

⁹ *Campbell v. Memphis-Shelby Cty Airport Auth.*, No. W2013-01641-COA-R3-CV, 2014 WL 2810204 (Tenn. Ct. App. June 20, 2014) (holding that summary judgment was inappropriate, even though plaintiff could not say what caused her fall at airport, because defendant did not show plaintiff could not prove causation at trial).

¹⁰ *Rye*, 2014 WL 903142, at *1.

¹¹ *Id.*

¹² *Id.* at *23-24.

¹³ Judy M. Cornett & Matthew R. Lyon, *Contested Elections as Secret Weapon: Legislative Control over Judicial Decision-Making*, 75 ALBANY L. REV. 2091, 2096 & n.33 (2012).

¹⁴ TENN. CONST. art. I, §§ 1 & 2.

¹⁵ 40 S.W.3d 473 (Tenn. 2001).

¹⁶ Cornett & Lyon, *supra* note 12, at 2106 (quoting *Mallard*, 40 S.W.3d at 483).

¹⁷ *Cooper v. Robert Ledford Funeral Home, Inc.*, No. E2013-00261-COA-R10-CV, 2013 WL 3947758, at n.5 (Tenn. Ct. App. July 29, 2013) (determining that “the result would be the same whether we applied the statutory standard or the standard set out by our Supreme Court in *Hannan*”).

¹⁸ TENN. R. CIV. P. 56.



LEGALLY WEIRD

By: **Latisha J. Stubblefield**

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

“Motion to Dismiss This Bulls**t”

It would be insincere to say that I haven't wished I could file a similarly-titled motion a time or two (or twenty). When an opposing party's claim or argument is so far-fetched, it would be so much easier to just call them on their bull, rather than wading through all the legal theories and precedents and explaining why they don't apply. In *Kristal Holmes, aka Jane Doe v. Grambling T. Dominique, Jr.*, Case No. 1:13-cv-04270-HLM, U.S. District Court for N.D. Ga. Holmes, also an attorney, filed suit against Dominique alleging defamation and RICO claims. The complaint alleges that Dominique defamed Holmes by posting statements about her on reportyourex.com. The RICO claim stems from the fact that reportyourex.com allows people to post potentially defamatory statements about former significant others and then charges the target of the defamatory rant hundreds of dollars in exchange for removing the post.

In his motion, Dominique, acting *pro se*, asks the court to dismiss the case for lack of subject matter jurisdiction because he does not live in Georgia and hasn't lived there for five years. To put it mildly, Dominique's informal motion is laced with profanities that would make a sailor blush. Dominique's relationship with Holmes sounds like it might be too risqué (or perhaps just perfect) for a Lifetime movie. After their brief courtship, if one could even call it that, Holmes lied to Dominique, telling him their daughter had died at birth. Dominique found out this was a lie over a year later when he saw Holmes on the news discussing her new job as “a State's attorney in one of those weirdo a** cities in Gwinnett County” and how great her life had been since the birth of her daughter sixteen months prior. Hence, Dominique's rants on reportyourex.com.

Throughout the motion, Dominique makes it clear that he abhors Holmes' attorney and law partner, Sandra Finch Lekan: “The Plaintiff, Ms. Kristal Holmes through her attorney Sandra Filth-Le Can herein refer to as “I-85”, due to her WELL KNOWN HISTORY OF EXTREME PROMISCUITY OF MEN UP AND DOWN THE I-85 expressway from South Carolina to Alabama and, for her abuse of CRACK COCAINE.” He literally refers to Holmes' attorney as “I-85” throughout the entire motion.

In defense of his motion, Dominique explained that he lived in Georgia for less than a year over five years ago, during which time he was either in jail fighting his criminal charges or living in an apartment in Gwinnett County that he rented only so he could pursue a federal lawsuit he had filed. Dominique argues if his “un-computer-savvy a**” could locate the order of possession where he was evicted from his Gwinnett County apartment five years ago, then “I-85” should have been able to do the same. This analysis leads Dominique to pontificate about “I-85”: “So, the question is, is she a lying crack addict [expletive], or incompetent and on drugs, or both?”

In closing his masterwork of a motion, Dominique states: “Hummmmm???? Sounds and looks like bulls**t to me Judge but, you get the last word ... Judge I ask this court to dismiss this bulls**t, and sanction the [expletive] out of I-85 and Kristal Holmes for defrauding and lying to the court, and filing this baseless lawsuit. ... That's it Judge. That's all I got.”



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

BAH, HUMBUG

It may be a very Grinchy thing to say, but December stinks. If it were up to me, there would be one more month after December so that we could have a little cushion of time to finish everything that has to be done before the end of December. It could be like the work version of overtime—you get four more weeks to make your big play before the buzzer goes off to signal the end of the year.

The problem with December is that all of the piranhas who take bites out of your time each day turn into Great White Sharks in full feeding frenzy mode. This is the month when clients remember that they really wanted to get that deal closed, that lawsuit settled, or that new set of policies drafted. December is when people want to have planning meetings to strategize for the new year. For most firms, it is the last month to bill and collect for the year, and that means having “The Talk” with certain clients. That will pull the holiday spirit right out of you.

Then, there are the parties: work parties, family parties, Secret Santa parties, parties-to-thank-all-those-who-volunteered-their-time-at-the-nonprofit, networking parties, fundraising parties, and parties for those who didn't get invited to other parties. Most people would be grateful for so many excuses to buy new shoes, but I will gladly donate my glass slippers to whomever wants to take my place.

If you have elementary school-aged children, you will also be asked to make appearances at various school parties. You will be asked to bake something, unless you got to the list before everyone else and managed to sign up to bring plates and napkins.

If you have tweens or teens living in your house, you will just be informed that you are going to drive them to various functions. You will get this information via cryptic, three-letter text messages that have no useful details whatsoever which you must decipher well enough to drop off your child within a one-mile radius of the event. Unfortunately, you also have to pick them up. Apparently, parents remember things like that, or so I have been told.

Plus, you get to add the end-of-the-year school projects which seem to get more complicated each year. For instance, this year, our household will be producing an edible model of a plant cell complete with realistic representations of the endoplasmic reticulum (a thing which hopefully looks like a gummy worm) and mitochondria. Why teachers assign cooking projects to kids who are too young to cook is outside the scope of this column. If I were a conspiracy theorist, I might think the project is payback for declining to do my time at the school bake sale and offering to send in store-bought cookies instead of baking something from scratch. In my defense, the list was circulated while I was in a meeting, and by the time I got to the list, the other clever parents had called dibs on the plates and napkins.

Then, there are the cards to address, the gifts to wrap, the photographs to take, the visitors to entertain, the house to decorate, the relatives to visit, and the list goes on and on. If you have older relatives who need assistance with driving, shopping, card addressing or decorating, you may be asked to do many of these things for them as well. I suspect that many of us could do all of these things (and enjoy them) if we did not have the work things to do. On the flip side, I believe we could do all of the work things (and enjoy them), if we did not have all of the extra things to do.

That is why we need an extra month at the end of the year. Unfortunately, we don't have that luxury. So, that is why we need to do what we can to make each of December's thirty-one days count. This column is based on the premise that work-life balance is a false

paradigm and that striving for work-life balance often leads to frustration and getting worn out. That is never more true than in December. Instead, this column is based on four principles.

- (1) **Perspective.** Refrain from viewing work and life as mutually exclusive but as two parts of the whole called life.
- (2) **Prioritize.** Rank your obligations and interests and then don't be afraid to change the ranking periodically. Sometimes things just have to move up the list.
- (3) **Focus.** Devote your full energy and attention to the thing you are doing right now so you can do it to the best of your ability and enjoy it as much as possible without being distracted about what you have to do next.
- (4) **Community.** Be willing to use the resources around you to help you be more efficient and actually enjoy what you are doing. The world will not end if you ask someone else to take your mother to the grocery store or if you deliver store-bought cookies to the school bake sale (although you may end up having to figure out what food product looks the most like cytoplasm).

December 31, 2014 is coming, and January 1, 2015 is right behind it no matter how much anyone protests. So, work hard; don't forget to pick up the people you dropped off from wherever you left them. Be understanding of your fellow attorneys (they are as stressed as you are), and enjoy it as much as you can for the craziness that life is.



RECAP OF THE 2014 MIDTERM ELECTIONS

Although midterm elections usually lack the excitement and anticipation of the quadrennial Presidential elections, the biennial exercise of democracy here in Tennessee was not short on drama. While you undoubtedly know the results, this article will give a brief recap of the four 2014 constitutional amendments and attempt to provide a little context on some aspects of the amendments. As for the state and federal elections, there is not much to say other than to provide the results. Finally, the result of the local ballot matters (wine!) are included.

VOTER TURNOUT

As a general rule, midterm elections do not have the voter turnout of Presidential elections, typically 10% to 15% lower.¹ Voting for this election was even less. According to data from the United States Elections Project, 35.1% of the voting-eligible public in Tennessee voted in the midterm elections in 2010.² In 2014, however, turnout was only 29.1%, a six-percent drop in an already low number.³ Across the country, thirty-eight states had lower turnout in 2014 than in 2012, and six states saw greater than 10% declines.⁴ In this state, it was speculated that the constitutional amendments, particularly Amendment 1, would drive increased voting in Tennessee. Apparently, they did not.

STATE AND FEDERAL ELECTIONS FOR KNOX COUNTY

Election Results

Seat	Winner	Overall Vote	Knox County Vote
U.S. Senate	Lamar Alexander (R)	61.89%	63.91%
U.S. House, Dist. 2	John Duncan, Jr. (R)	72.49%	69.66%
Governor	Bill Haslam (R)	70.32%	77.05%
Tenn. Senate, Dist. 5	Randy McNally (R)	100%	100%
Tenn. Senate, Dist. 7	Richard Briggs (R)	n/a	65.25%
Tenn. House, Dist. 13	Eddie Smith (R)	n/a	50.69%
Tenn. House, Dist. 14	Ryan Haynes (R)	n/a	100%
Tenn. House, Dist. 15	Joseph Armstrong (D)	n/a	76.00%
Tenn. House, Dist. 16	Bill Dunn (R)	n/a	100%
Tenn. House, Dist. 18	Martin Daniel (R)	n/a	100%
Tenn. House, Dist. 19	Harry Brooks (R)	n/a	100%
Tenn. House, Dist. 89	Roger Kane (R)	n/a	100%

Amendment 1

Without question, Amendment 1, which constitutionally specifies the ability of the General Assembly to regulate abortions in this state, was the most controversial ballot item this November. The amendment's proponents openly touted it as a response to the Tennessee Supreme Court's ruling in the 2000 case of *Planned Parenthood of Middle Tennessee v. Sundquist*, where the Court found that certain abortion-regulating statutes violated the Tennessee Constitution.⁵ The Court succinctly summarized its ruling in the opening

paragraphs of the opinion:

We conclude that a woman's right to terminate her pregnancy is a vital part of the right to privacy guaranteed by the Tennessee Constitution. As this right is inherent in the concept of ordered liberty embodied in the Tennessee Constitution, we conclude that the right to terminate one's pregnancy is fundamental.⁶

Faced with this language from the Tennessee Supreme Court, those wishing to regulate abortion were left with no choice but to amend the Tennessee Constitution or face strict scrutiny review of every abortion-regulating law. Accordingly, Amendment 1 proposed adding the following language to the Tennessee Constitution:

Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion. The people retain the right through their elected state representatives and state senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.⁷

Knox County voted 50,626 (48.34%) in favor of Amendment 1 and 54,108 (51.66%) against.⁸ However, Tennesseans voted 728,751 (52.61%) in favor of Amendment 1 and

passage of a constitutional amendment: "And if the people shall approve and ratify such amendment or amendments by a majority of all the citizens of the state voting for governor, voting in their favor, such amendment or amendments shall become a part of this Constitution."¹²

According to the lawsuit, proponents of Amendment 1 encouraged individuals to vote in favor of Amendment 1 but abstain from voting in the gubernatorial race; the thought being that the required minimum vote for a constitutional amendment – the "majority of all the citizens of the state voting for governor" – would be easier to attain if fewer people voted in the gubernatorial election.¹³ As a result, the lawsuit argues that the State Election Commission's tabulation method on Amendment 1 is flawed, counting all "yes" votes rather than only counting those "yes" votes on ballots that also voted in the gubernatorial election. The lawsuit further alleges that this flawed tabulation method violates the Fourteenth Amendment of the United States Constitution by creating a "fundamentally unfair system of voting."¹⁴ A recount is demanded. If a recount is impossible, the lawsuit demands that the vote on Amendment 1 be invalidated altogether. The Coordinator of Elections for Tennessee, Mark Goins, called the lawsuit "absurd."¹⁵

So would a recount make a difference? There were 1,352,608 votes cast in the Tennessee gubernatorial election. The half needed to satisfy Article XI, section 3 is 676,304 (plus 1 vote to pass). A total of 1,385,178 votes were cast for or against Amendment 1, or 32,570 more than in the gubernatorial race. Even if these non-gubernatorial-voting ballots are discarded, though, there likely would still be "yes" votes in excess of half of the votes cast in the gubernatorial election. Regardless, it is clear that Amendment 1's success will remain uncertain at least into the immediate future.

Amendment 2

In recent history, Tennessee appellate judges were selected through a process called "merit selection."¹⁶ The governor selected new judges from a slate of candidates proposed by the Judicial Nominating Commission, a committee comprised of lawyers and non-lawyers from across the state. After appointment, judges were subject to retention elections by the public. This process is known as the "Tennessee Plan."

Some felt the Tennessee Plan was unconstitutional, pointing to Article VI, section 3 of the Tennessee Constitution: "The Judges of the Supreme Court shall be elected by the qualified voters of the state. The Legislature shall have power to prescribe such rules as may be necessary to carry out the provisions of section two of this article."¹⁷ Based upon these two sentences, challengers to the Tennessee

By: Taylor Williams

Paine, Tarwater & Bickers

Plan have argued that the general public of Tennessee is entitled to select appellate judges by popular election. Proponents of the Tennessee Plan, on the other hand, argue that retention elections satisfy the constitutional requirement. For forty years, a version of the Tennessee Plan stood until the General Assembly allowed the Judicial Nominating Committee to sunset on June 30, 2013.

Amendment 2 sought to clarify how judges of the Tennessee Supreme Court and any intermediate appellate courts are selected by removing the first two sentences of Article VI, section 3 of the Tennessee Constitution and inserting the following:

Judges of the Supreme Court or any intermediate appellate court shall be appointed for a full term or to fill a vacancy by and at the discretion of the governor; shall be confirmed by the Legislature; and thereafter, shall be elected in a retention election by the qualified voters of the state. Confirmation by default occurs if the Legislature fails to reject an appointee within sixty calendar days of either the date of appointment, if made during the annual legislative session, or the convening date of the next annual legislative session, if made out of session. The Legislature is authorized to prescribe such provisions as may be necessary to carry out Sections two and three of this article.¹⁸

As with all of its companion amendments, Amendment 2 passed – 831,549 (60.92%) in favor and 533,522 (39.08%) opposed.¹⁹ Knox County voted 68,654 (66.94%) in favor and 33,900 (33.06%) opposed.²⁰

Although there have been no direct legal challenges to Amendment 2 as of the writing of this article, a lawsuit similar to the one brought against Amendment 1 could be brought against Amendment 2, which also received total votes in excess of votes cast in the gubernatorial election.

Amendment 3

The third constitutional amendment deals with a state income tax. Although the issue of a state income tax was seemingly settled by three prior Tennessee Supreme Court cases,²¹ Amendment 3 was proposed to resolve, now and forever, that Tennessee shall have no state income tax. The text of the Amendment reads:

Notwithstanding the authority to tax privileges or any other authority set forth in this Constitution, the Legislature shall not levy, authorize or otherwise permit any state or local tax upon payroll or earned personal

income or any state or local tax measured by payroll or earned personal income; however, nothing contained herein shall be construed as prohibiting any tax in effect on January 1, 2011, or adjustment of the rate of such tax.²²

In addition to the Supreme Court precedent establishing the unconstitutionality of a state income tax, opponents to Amendment 3 objected to it on the grounds that Tennessee leads the nation in sales tax, that the last proposed income tax was over a decade ago in 2002, and that suggesting an income tax is politically devastating.²³ Moreover, opponents questioned whether ingraining such a provision into Tennessee's foundational document limits future generations, which would have to again amend the constitution if an income tax ever became necessary or desired.

Proponents of Amendment 3 point to the pro-business, job-creation aspects brought about by the lack of a state income tax.²⁴ State Sen. Brian Kelsey of Germantown, the sponsor of the amendment, referred to Amendment 3 as the "final nail in the coffin of the income tax."²⁵

Tennesseans voted 882,259 (66.22%) in favor of the amendment and 450,066 (33.78%) against it.²⁶ Remarkably, Knox County's breakdown mirrored the state-wide percentages – 66,522 (66.22%) in favor of the amendment and 33,931 (33.78%) against it.²⁷

Amendment 4

Likely the least controversial, if for no other reason than its limited scope, Amendment 4 sought to add veterans organizations, recognized as tax-exempt pursuant to 501(c)(19), to the very short list (comprised of only 501(c)(3) entities prior to the amendment) of organizations permitted to have annual benefit lotteries, subject to a two-third approval vote by the House and the Senate.²⁸ The amendment passed in grand fashion: 902,673 (69.60%) in favor and 394,317 (30.40%) against.²⁹ Knox County believed even more strongly in the amendment, casting 69,627 (72.95%) votes in favor and 25,816 (27.05%) against.³⁰

LOCAL MATTERS

Wine has made its way into grocery stores in Knox County, or at least it will by July 2016.³¹ Knox County passed the referendum by roughly 70%.³² Farragut, Maryville, Alcoa, Lenoir City, Oak Ridge, Clinton and Norris similarly passed the referendum.³³

Five amendments to the City of Knoxville Charter were also on the ballot this year. All five amendments passed by votes in excess of 70%.³⁴ An explanation of the five amendments can be found on the City of Knoxville's website.³⁵

¹ DeSilver, Drew, *Voter turnout always drops off for midterm elections, but why?*, Pew Research Center, July 24, 2004, <http://www.pewresearch.org/fact-tank/2014/07/24/voter-turnout-always-drops-off-for-midterm-elections-but-why/>.

² Cook, Lindsey, *Midterm Turnout Down in 2014*, U.S. News, Nov. 5, 2014, <http://www.usnews.com/news/blogs/data-mine/2014/11/05/midterm-turnout-decreased-in-all-but-12-states>.

³ *Id.*

⁴ *Id.*

⁵ 38 S.W.3d 1 (Tenn. 2000).

⁶ *Id.* at 4.

⁷ S.J. Res. 127, 106th Gen. Assem., (Tenn. 2011), available at <http://www.capitol.tn.gov/Bills/106/Bills/SJR0127.pdf>.

⁸ Nov. 4, 2014 Unofficial Election Results, http://www.elections.tn.gov/20141104_county_db.php?OffIcebyCounty=Amendment1

⁹ Nov. 4, 2014 Unofficial Election Results, <http://www.elections.tn.gov/?Amend=Amendment1>.

¹⁰ *Id.*

¹¹ Tracey E. George, et al. v. William Edward "Bill" Haslam, et al., No. 3:14-cv-02182 (E.D. Tenn. filed Nov. 7, 2014).

¹² Tenn. Const. Art. XI, § 3.

¹³ George, No. 3:14-cv-02182, at ¶ 5.

¹⁴ *Id.* at ¶ 40.

¹⁵ Wadhwani, Anita, *Tennessee election officials call Amendment 1 lawsuit 'absurd'*, The Tennessean, Nov. 10, 2014, <http://www.tennessean.com/story/news/politics/2014/11/10/tennessee-election-officials-call-amendment-lawsuit-absurd/18823485/>

¹⁶ *The Tennessee Plan*, Tenn. Bar Ass'n., <http://www.tba.org/sites/default/files/tennplanbrochure.pdf>

¹⁷ Tenn. Const. Art. VI, § 3.

¹⁸ S.J. Res. 2, 108th Gen. Assem., (Tenn. 2013), available at <http://www.capitol.tn.gov/Bills/108/Bill/SJR0002.pdf>.

¹⁹ Nov. 4, 2014 Unofficial Election Results, <http://www.elections.tn.gov/?Amend=Amendment2>.

²⁰ Nov. 4, 2014 Unofficial Election Results, http://www.elections.tn.gov/20141104_county_db.php?OffIcebyCounty=Amendment2.

²¹ *Gallagher v. Butler*, 378 S.W.2d 161 (Tenn. 1964); *Jack Cole Co. v. MacFarland*, 337 S.W.2d 453 (Tenn. 1960); *Evans v. McCabe*, 52 S.W.2d 159 (Tenn. 1932).

²² S.J. Res. 1, 108th Gen. Assem., (Tenn. 2013) available at <http://www.capitol.tn.gov/bills/108/bill/sjr0001.pdf>.

²³ Locker, Richard, *Amendment 3 would ban income taxes in Tennessee*, The Tennessean, Sept. 29, 2014, <http://www.tennessean.com/story/news/politics/2014/09/29/amendment-3-would-ban-income-taxes-in-tennessee/16459853/>

²⁴ *Id.*

²⁵ See <http://www.yeson3tn.com/>.

²⁶ Nov. 4, 2014 Unofficial Election Results, <http://www.elections.tn.gov/?Amend=Amendment3>.

²⁷ Nov. 4, 2014 Unofficial Election Results, http://www.elections.tn.gov/20141104_county_db.php?OffIcebyCounty=Amendment3.

²⁸ S.J. Res. 60, 108th Gen. Assem., (Tenn. 2014), available at <http://www.capitol.tn.gov/Bills/108/Bill/SJR0060.pdf>.

²⁹ Nov. 4, 2014 Unofficial Election Results, <http://www.elections.tn.gov/?Amend=Amendment4>.

³⁰ Nov. 4, 2014 Unofficial Election Results, http://www.elections.tn.gov/20141104_county_db.php?OffIcebyCounty=Amendment4.

³¹ Boehnke, Megan, *Wine sales in grocery stores passes*, Knoxville News Sentinel, Nov. 5, 2014, http://www.knoxnews.com/news/state/wine-sales-in-grocery-stores-passes_57658055.

³² Knox County, Tenn. Cumulative Report – Unofficial, <http://knoxcounty.org/election/results/cumulative.pdf>.

³³ Boehnke, *supra* n. 30.

³⁴ Knox County, Tenn. Cumulative Report – Unofficial, *supra* n. 31.

³⁵ Pension Plan Info, <http://www.cityofknoxville.org/pension/>.

barrister bullets

HOLIDAY PARTY AND ELECTIONS

Everyone is invited to the Barristers' Holiday Party and Election on December 10, at 5:00 p.m. at the Bistro at the Bijou (807 South Gay Street). At this meeting, the Barristers will celebrate the holidays and elect next years' officers. Drink tickets and hors d'oeuvres will be provided.

Nominees include:

- Vice President: Rachel Hurt of Arnett, Draper & Hagood
- Secretary/Treasurer: Samantha Parris of Burroughs, Collins & Newcomb
- Members at Large (Vote for 2):
 - o William Bennett, Sheppard & Mynatt;
 - o Ben Cunningham, Kennerly Montgomery & Finley;
 - o Kati Goodner, Paine, Tarwater & Bickers, LLP

Taylor Williams, Paine, Tarwater & Bickers, LLP, will become Barristers President at the end of the meeting.

Even if you can't stay for the whole party, make sure to drop in before 5:15 p.m. to cast your vote. There is no need to RSVP - just stop by, have a drink on us, grab some refreshments and help shape the future of our profession and community.

HUNGER AND POVERTY RELIEF

The Hunger and Poverty Relief Committee would like to thank all the firms that participated in the Fifth Annual Canned Food Drive. The Committee would also like to thank Arnett, Draper & Hagood for volunteering at Second Harvest during Firms for Food in December.

The Angel Tree project will take place in December so be on the lookout for more information on how to meet children's needs this Christmas.

Please contact Heather Ferguson at hferguson@emlaw.com or Samantha Parris at sam@bcnattorneys.us if you would like to volunteer or if you have any questions about the Hunger and Poverty Relief Committee's ongoing activities

LAWTALK...SERVING OUR COMMUNITY

For the last nineteen years, the Knoxville Bar Association has offered a free public education series called LawTalk that helps citizens learn more about planning for their own security and that of their family and loved ones. Wills, powers of attorney (for financial and health care), living wills, and trusts are the topics covered during the two Wills LawTalk sessions that were presented in November. The second program in the series, Legal Issues-Protection for Elders & Their Caregivers, provided a discussion of how to finance long-term health care, the means by which assets can be preserved, and the do's and don'ts of property transfers. This year, close to 300 people participated in the LawTalk series. East Tennessee Personal Care Service was a corporate partner for the series, and the response from the public was very positive to the free seminars. The KBA would like to thank attorneys O.E. "Sonny" Schow IV of Woolf, McClane, Bright, Allen & Carpenter, Keith H. Burroughs and Samantha Parris of Burroughs, Collins & Newcomb, PLC, and Kelly and Matthew Frère of Guyton & Frère for their participation in the series.



By: Paula Schaefer

Associate Professor
University of Tennessee College of Law

DIVORCE, BLACKOUT PERIODS, AND SOLICITATION ETHICS

Your client has been in a physically abusive marriage for six years. She has finally decided to file for divorce and is worried about her husband's reaction. Even though you have already filed the petition for divorce, you tell her that you will wait a couple of weeks before you serve her husband. Your client says that will give her time to find a new place to live so she can be out of their apartment when he finds out about the divorce.

Should you be concerned that your client's husband will learn about the divorce before he is served?

According to one Tennessee attorney, the answer is yes. Another attorney may be combing court filings and sending solicitations to soon-to-be ex-spouses before they are ever served with process. In a letter to the Tennessee Supreme Court, the attorney explained:

[O]n more than one occasion, I have had a client make the difficult decision to file for divorce or legal separation, and on one of these occasions, actually put in the divorce complaint the physical and verbal abuse that had occurred. Then, before the client even had an opportunity to have their spouse served with the divorce or legal separation complaint, seek shelter, to be away in the event of service, or tell their spouse that they had filed for divorce, their spouse received a solicitation letter telling them that they had been sued for divorce or legal separation and asking for their business.

In the letter, the attorney suggests the problem could be addressed by amending Professional Conduct Rule 7.3. Under the current rule, Tennessee attorneys are required to wait thirty days after an accident or disaster before making written contact with would-be clients about claims for personal injury, worker's compensation, or wrongful death. Because no such contact time bar applies in the family law context, attorneys seeking divorce clients are free to send letters to potential clients before they have been served.

In an October 9, 2014 Order, the Tennessee Supreme Court requested written comments on a suggested revision to RPC 7.3 to make the thirty-day blackout period apply in the divorce and legal separation context. The order is available at this link: http://www.knoxbar.org/images/Order.SCT_R8_RPC_7_3.pdf

Because attorney advertising rules restrict commercial speech, any restriction must pass constitutional muster. In the 1995 case *Florida Bar v. Went for It*, the U.S. Supreme Court held that Florida's thirty-day blackout period on attorneys contacting accident and disaster victims is constitutional. The Court recognized that the state has a substantial interest in protecting the privacy and tranquility of accident victims and protecting against the negative affects on the administration of justice caused by such solicitation. The Court explained that the harm recited must be more than speculative and was satisfied with statistical and anecdotal data it received from the Florida Bar that the public finds such solicitations an intrusion that reflects poorly upon the legal profession. Finally, the Court determined that the restriction advances the government interest in a direct and material way and that it is sufficiently narrow in scope and duration.

Unlike the blackout rule in *Florida Bar v. Went for It* and similar rules around the country (including Tennessee's current rule), Tennessee's

proposed "divorce blackout rule" is not focused on the privacy of the recipient of a solicitation. Instead, it seeks to protect families of and the individuals who file for divorce or legal separation. Though the government's interest in the new rule is different, it certainly would appear to be just as substantial as that in *Florida Bar v. Went For It*. Further, the harm described appears to be more than speculative as evidenced by the examples cited in the letter of the lawyer who proposed the rule amendment.

Whether the proposed rule is constitutional may turn on whether it is no more restrictive than necessary to achieve the stated government interest. The proposed rule would prevent contact with spouses in all cases – not just those cases where safety and security of the filing spouse and family is at risk. Nonetheless, the proposed rule may be sufficiently narrow to withstand a constitutional challenge.

The Tennessee Bar Association is approaching the issue from another angle. It recently announced that it is pursuing legislation that would require a spouse to be served with a petition for divorce or separation before the action is made public. The concerns appear to be the same – spouses learning of a divorce before the filing spouse can put "safety plans" in place. The TBA states that it will work with judges, legislators, and domestic violence prevention groups "to craft a solution that balances protection of those involved in divorce cases with the public's need to know about what is happening in their courts." Information about TBA's plan to seek a legislative solution can be found on the TBA website: <http://www.tba.org/press-release/tba-to-pursue-legislation-requiring-notice-of-divorce-proceedings-before-court-filing>.





WORD PLAY

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

"Yule"

For all of our lives we have hear "yule log" and "yuletide," etc.. Being in need of a word, I thought I would look into the origin.

Certainly, the word means the same as "Christmas." Its most immediate ancestor is *yōle*, seen in *The Ormulum* (about 1200), and as *yōōle* in *Merlin* (about 1450). Both came from the Old English *geōl* or *geōla*, Christmas day, which, before 899, was also known as Christmastide.

The words were probably all from a Scandinavian word describing a twelve day heathen feast *jōl*.

In 726, The Venerable Bede used the Old English (Anglican) *giuli* to describe December and January. This probably came from the Old Icelandic *júlir*, the Yule month, which lasted from mid-November to mid-December.

Again, we see a Christian feast associated with a pagan, or in this case, heathen, feasting time.

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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.

Square One Outpatient Services (Florence Crittenton Agency)

Street Address:
1531 Dick Lomas Road
Knoxville, Tennessee 37909

Phone: 865-602-2021
FAX: 865-602-2039

Website:
<http://www.fcaknox.org>

Agency Description

Square One is a dynamic system of outpatient interventions for both male and female adolescents, ages 13 to 18, who are in need of intensive therapeutic contact due to difficulties stemming from mental health, behavioral, and/or substance abuse issues.

- Serve as a mentor or tutor to youth in recovery.
- Help with special events.
- Become a member of the board or development council.
- Groups: Help with landscaping and maintenance work on the 26-acre campus.

Service Categories

- Overcoming Addictions

Pictured above is a portion of the online profile of Square One Outpatient Services (Florence Crittenton Agency). This is one of 5 agencies listed in the category of Overcoming Addictions. The agencies in this category focus on issues related to the problem of drug and alcohol dependency in our community.

Other agencies in this category include Agape, Inc., Helen Ross McNabb Center, Metropolitan Drug Commission, and Teen Challenge.

Visit the Volunteer tab at www.knoxbar.org for more information.

WELCOME NEW MEMBERS

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

Christopher Belford

Jodie Birdwell; Tennessee Valley Authority

William B. Brewer II

Bill Dials

Nina Musinovic Eiler; Butler, Vines & Babb, PLLC

Timothy Ferraris; Law Office of Garry Ferraris

Craig Holloway; Butler, Vines & Babb, PLLC

Arthur F. Knight III; Taylor & Knight

Sarah Malia; Elder Law of East Tennessee

Bridget C. McCullough; Knox County Public Defender's Community Law Office

Matthew McDonald; Knox County Chancery Court

Haley M. Newton; Bill Hotz & Associates

Rebba Omer; Knox County Public Defender's Community Law Office

Shawn Roberts

Allison J. Scott; Gilbert & Fox Attorneys

George Shields; Ritchie, Dillard, Davies & Johnson, P.C.

Heather Shubert; Summit Medical Group

Andrew R. Tillman; London Amburn, P.C.

Brandon J. Tindell; Leibowitz Law Firm, PLLC

Kevin Tonkin; The Adams Law Firm

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Joseph H. Smith

Summers A. Smith

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Russ Swafford

Andrew B. Tucker

David R. Venturella

Erica D. Waggoner

Kimberly Wheeler

Evan A. Williams

Jeffrey L. Wilson

Thomas C. Winston

Christy A. Woods

By: **Loretta G. Cravens**
Eldridge & Blakney, P.C.



Employer Options in Dealing with the Arrest of an Employee

Let me be clear about one thing from the outset. I am not an employment lawyer. My practice is primarily criminal defense and health care related issues. However, I have helped marshal many people through the criminal justice system, the vast majority of which are, or were, someone's employee at the time of their arrest. Thus, I am thrilled to be able to offer some guidance for employers in dealing with an employee's arrest. After all, 'tis the season when holiday activities coincide with an increase in police patrols and sobriety check points and place generally law abiding citizens in a position to get an introduction to the criminal justice system.

Tennessee Employers and their counsel are generally well aware that in our fair State, employment is at will and as such, employers can, and often do, terminate employees for any reason, so long as that reason does not fall within limited protected classes, or for no reason at all.¹ Thus, in absence of a contract, Tennessee employers are legally able to terminate an employee who has been arrested even in absence of conviction. Before doing so, however, I suggest the employer considering the following.

Company Policy

First, the employer must look to their own policies. If a written policy or employee handbook exists, it should be reviewed. If there is a policy for this situation, it should be followed. If no formal written policy exists, the employee may still be subject to a code of conduct that is violated as a result of the arrest. Additionally, the employer should review and consider any actions taken in prior instances, if any, when an employee has been arrested or convicted of a crime. Inconsistency of treatment is tenuous ground for an employer.

The Nature of the Alleged Offense

Second, the nature of the allegations against an employee may also impact an employer's willingness or ability to permit an employee to continue to work. Is the charged offense a misdemeanor or a felony? Did it involve dishonesty or violence? Was the offense related to the employment or of a character that would call into question the employee's ability to perform their job? Some of these situations may be more problematic for some employers than for others, and thus merit differing responses from the employers.

For example, if the employee has been charged with a misdemeanor offense of DUI or reckless driving most employers may be perfectly willing to keep the employee working as the charges are resolved in the courts.² A pet kennel technician, or any number of other jobs, can likely be performed without incident during the pendency of a DUI or reckless driving prosecution without any additional risk to the employer or its business. On the other hand, a school bus driver, or employee required to operate a company vehicle or drive in the course of employment, is an entirely different situation and continued active employment might be against the employer's best interests.

Possible Risk or Adverse Impact of the Arrest on the Employer

An employee's arrest can directly impact an employer's ability to perform their business.³ An employer who is party to a government contract, or required to maintain a particular level of security due to either the nature of the work or contract requirements, could be prohibited from retaining an employee facing criminal charges as a result. If the employee's arrest would disqualify the employer from

continued work under the contract, the employer may be required to terminate the employee or, at a minimum, place the employee on leave until the charge is resolved.

Conversely, the employee may be charged with an offense directly related to the employer and that could potentially implicate the employer in criminal activity. If so, the employer needs to be much more cautious in evaluating how to address an employee's status and should consult counsel. It may be in the employer's best interests to also assist the employee to obtain independent counsel.⁴

Available Benefits or Assistance

Finally, consider whether the nature of the offense alleged is such that the employer can refer the employee to available resources to assist the employee to address any substance abuse or mental health issues that may have led to the arrest. The company health plan likely provides these services that, if accessed, might permit the employee to become a better, healthier employee.

When in Doubt

If the nature of the alleged offense, or the employer's business is such that arrest could adversely impact the employer, consider whether a leave of absence, paid or unpaid, is appropriate. Should the employee ultimately be convicted, the employer will still have the option to terminate employment,⁵ and will not have terminated a valued employee on the basis of the untested allegations of an arrest. This will permit the criminal justice system to take its course and provide the employee an opportunity to have his or her day in court. Remember that an employee charged with a crime is still innocent until proven guilty, and resist any urge to assume that the employee would not have been arrested if they were not, in fact, guilty, or if they had not, at a minimum, have been engaging in some wrongful conduct.

I hope that the above considerations will assist in the event an employer is faced with the prospect of terminating an employee on the grounds of an arrest. It is ultimately a decision only the employer, preferably in consultation with their own in house or outside counsel, can make.

¹ "Under the employment at will doctrine, employment for an indefinite term may be terminated by either the employer or the employee at any time, for good cause, bad cause, or no cause at all." *Williams v. Greater Chattanooga Pub. Television Corp.*, 349 S.W.3d 501, 513 (Tenn. Ct. App. 2011) citing *Franklin v. Swift Transp. Co., Inc.*, 210 S.W.3d 521, 527 (Tenn. Ct. App. 2006) and *Guy v. Mutual of Omaha Ins. Co.*, 79 S.W.3d 528, 534-35 (Tenn. 2002).

² If an employer decides to keep an employee in active employment during the pendency of criminal charges, keep in mind that this will, in all likelihood, require the employee to miss work on multiple occasions to meet with lawyers and make multiple court appearances, even for minor offense. The employer should discuss up front with the employee how these absences will be treated.

³ Depending on the nature of the arrest, it might also garner some level of publicity that reflects poorly on the employer.

⁴ Many employers also have insurance coverage that will cover an employee's attorneys' fees in this circumstance.

⁵ Employers should keep in mind however, that termination for arrest or conviction of a crime though generally permissible under the doctrine of at will employment, will not necessarily disqualify the employee from receiving unemployment benefits if the illegal activity alleged does not relate to the employers business and/or is not in violation of a duty owed to the employer. See, e.g., *Hale v. Neeley*, 335 S.W.3d 599 (Tenn. Ct. App. 2011).

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.



TECHNOLOGY FOR LAWYERS

By: **Kristina M. Chuck-Smith, Esq., MBA**
Cohen & Chuck-Smith, PLLC

TECH GIFTS 2014

It's that time of year again when you need to think of gifts to buy for your loved ones. Having trouble finding a gift for a techie in your life? Read on below to find out what options are out there.

Internet Media Streamers for TV – Lots of people have decided to pull the plug on cable television but still want to watch movies and shows. In comes media streamers. These devices allow you to watch Netflix, HuluPlus, YouTube, etc. on your television without needing to buy an internet-connectable television. Most of them offer the service for free, that is, they do not charge you an additional price for connecting to NetFlix. You just log in to your already paid for NetFlix account. Connectivity varies according to device; most are connected to the TV using an HDMI port. Examples include: Roku (\$50), Google Chromecast (\$35) and Amazon FireTV (\$84).

Portable Smartphone and Tablet Chargers – Those who use their smartphones and tablets a lot sometimes find themselves needing to charge those devices and not being able to do so. Not to worry, there is a solution for that: portable chargers. How do they work? You charge the portable charger for future use and when the time comes, you hook them up to the device that needs charging just as you would into a wall socket. Most use a USB port to charge your device but need a micro-sized cord (included) to charge the portable charger. Portable chargers are available from Mophie (Powerstation XL: \$129.99), Motorola (Powerpack Slim: \$79.99), and Innovative Technology (Justin, \$30).

Wearable Tech – What's cooler than holding technology? Wearing it! These devices can do things from giving you the weather, telling you how many calories you've burned, connecting you to your social media apps, and telling time (novel, aren't they?). Some look and feel bulky while others are so sleek no one will know that they are not normal watches. Motorola has the Moto 360 for \$299.99, then there is the Pebble Steel priced at \$199.99, and LG has the G Watch R for \$350.

Good luck finding the perfect Christmas gift for the techie (or techies) in your life!



Bernstein, Stair & McAdams LLP

ATTORNEYS AT LAW

ANNOUNCES:

- Former **Chancellor Daryl R. Fansler** has joined the firm. He will serve as a mediator and arbitrator and will handle complex litigation.
- **Nathaniel H. Evans** has joined the firm and will focus on criminal defense including DUI in both state and federal courts.
- **Elizabeth M. Towe** has joined the firm and will be part of the firm's domestic relations practice.
- **C. Scott Taylor** has been approved and listed as a Tennessee Supreme Court Rule 31 mediator.
- The firm has moved to new offices at **116 Agnes Road**, Knoxville, TN 37919. The offices are one block south of Kingston Pike in the Bearden area.

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*London Amburn is pleased to announce that
T. Mitchell Panter
has become an Associate of the firm.*

www.londonamburn.com

By: Jason H. Long

Lowe, Yeager & Brown

LOCAL RULES

It was a Friday in November of 1996. I had been a licensed attorney for less than two weeks, and Sarah Sheppard sent me down to the Child Support Referee to handle a routine hearing. It was my first court appearance. I was so excited that I laid out my blue suit the night before (truth be told, I only owned one suit and a sports jacket at the time, and the jacket was looking a bit worn, so I didn't have many options). I spent the entire previous night reviewing and re-reviewing the file that was only 20 pages thick. I was ready for my close up, Mr. DeMille. I arrived at court early and waited patiently. I can't recall what I was arguing, but there were no witnesses. Undaunted, I was ready to dazzle the court with my legal acumen. In strode my opponent, who shall remain unnamed, dressed to the nines in a cream colored suit with orange accents in honor of Tennessee's upcoming ballgame with Auburn the following day. He had even painted a little UT on his cheek. Referee Wayne Houser took the bench shortly thereafter. What occurred next remains a blur. My opponent dazzled the Referee with a sound legal argument, sprinkled with just enough comments about UT football (remember this was in the mid 90s when UT football was at its zenith) to keep it interesting. The questions from the Referee initially related to the legal issue but eventually focused upon our chances to win the big game. I knew by the time opposing counsel sat down that my argument stood little chance. The Referee saw the look of despair in my eyes and offered me a *Fresca*, to calm my nerves. I felt like a five-year-old child sipping on a juice box as I fumbled my way through my losing argument. I learned a valuable lesson about the practice of law in Knoxville that day. You have to be able to relate to your audience no matter what your argument, and, around here, Tennessee football is a nearly universal language. I also learned that I don't like *Fresca*. Nowhere but in Knoxville.

I was reflecting on that story the other day when I received my notice for the KBA Memorial Service. It struck me that I am part of a long gray line of Knoxville attorneys and, while there are many attributes and ceremonies which link us, it is our knowledge of this community and practice within it that makes us uniquely Knoxville lawyers. Consider it the unwritten local rules of court around here.

For example, any lawyer worth his or her salt in Knoxville knows to avoid the City County Building, if at all possible, on Thursday mornings. While I understand the trend is changing with new judges handling matters differently, Thursdays have traditionally been the day that a flood of humanity descends upon the courts to obtain orders of protection. To risk going there on a Thursday means navigating the flood and, if you were wearing a suit, politely fending off multiple requests to handle the defense of such cases.

Most lawyers around here would agree that the Bistro continues to serve as an informal mediation venue where you are almost certain to run into fellow attorneys after hours with whom you have a dispute brewing. It is not unheard of to resolve that pesky discovery controversy over a glass of beer or a couple of martinis after work.

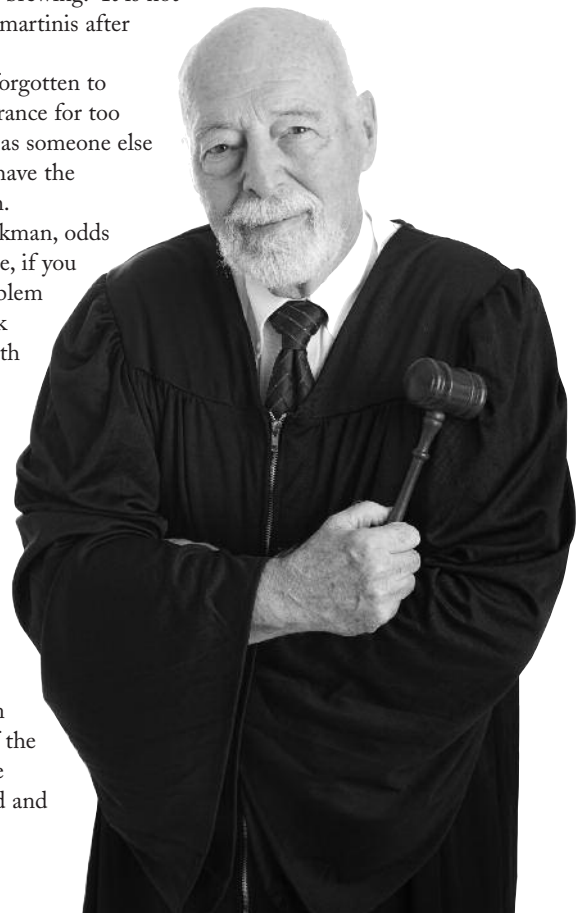
A confident wave and a brisk pace can get a good lawyer past security if they have forgotten to bring their ID card. It requires good timing, as you can't loiter outside the side door entrance for too long without drawing the attention of security guards, but if you time your entrance just as someone else is exiting, wave confidently to the guard as you pass, but avoid eye contact so they don't have the opportunity to slow you down, and you stand about a 50/50 chance of making it through.

Local attorneys would tell you that if you had a good motion in front of Judge Workman, odds were he would argue it for you and you would never have to open your mouth. Of course, if you were on the weak side of the motion . . . "abandon all hope ye who enter here." The problem was, it was often difficult to tell what Judge Workman would consider the strong or weak side of a motion. Nonetheless, it was always amusing to watch "outsiders" confronted with this procedure.

A Knoxville attorney always knew that if he or she was stuck on a particularly complicated issue, one phone call to Don Paine would often resolve the matter. I like to think that his generosity in sharing with other lawyers has, over the years, inspired generations to do likewise. I have never had an attorney refuse to assist me when asked. Of course, this may have been a truism about our bar regardless of Don's efforts, but he was certainly a prime example of the volunteer spirit that abounds here in Knoxville.

Around here, the best way to ingratiate oneself with opposing counsel, other than talking Tennessee football, is to listen to their war stories. Attorneys over the age of 60 in Knoxville have a treasure trove of stories worth hearing. From the Butcher Banking collapse to "Love on the Run," the personalities and the cases back then just seem more interesting than they do nowadays (or perhaps I am getting particularly boring cases). In any event, a good rule of thumb in Knoxville, if you have a case with a senior member of the bar, get them to tell you about the Butcher fallout or what it was like to practice in Judge Taylor's courtroom. Odds are, they will have plenty to say, and you'll be both entertained and befriended by someone who can help you later on.

There are countless other examples of the charm and absurdity of what it means to practice law in Knoxville. For me, personally, I wouldn't want to be anywhere else.





AROUND THE BAR

By: Wynne du Mariau Caffey
Elmore, Stone & Caffey, PLLC

By: Samuel W. Rutherford
Kennerly, Montgomery & Finley

ONLINETNJUSTICE

You know that the primary mission of the KBA's Access to Justice Committee is to help facilitate the public's access to legal representation or services that is often otherwise unaffordable. You might not know that running a close second is the mission of helping attorneys find fulfillment in the practice of law through service to our fellow citizens and to the communities in which we work, raise our families, worship, and enjoy the fruits of our law licenses. The prospect of carving time from an already hectic work and personal life to provide free legal services might at first blush appear overwhelming. As your colleagues in the law, we understand your concern. We have also learned that pro bono work enriches our lives and, if anything, often relieves the tremendous stress sometimes inherent to our profession.

OnlineTNJustice, a joint project of the Tennessee Alliance for Legal Services ("TALS") and the Tennessee Bar Association, captures the spirit of volunteerism coupled with the ease of incorporating pro bono services into cramped schedules with the time commitment of your own choosing. The project is a simple web-based question-and-answer format through which under-served Tennesseans post legal questions that attorneys can answer online through a confidential server. Clients must have a household income less than 250% of the federal poverty level, liquid assets not exceeding \$5,000, and not be incarcerated. Questions are grouped by subject matter, e.g., domestic relations, landlord-tenant, employment, contract, personal injury, unemployment, housing, immigration, expungement, juvenile, health care, wills, and the like. Criminal law matters are not permitted.

Once registered through a few quick steps at www.onlinetnjustice.org, attorneys receive periodic emails with links permitting them to review pending questions and decide whether to select one. "Taking" a question creates an attorney-client relationship limited in scope and duration to answering the question. Attorneys providing counsel through the website are covered by professional liability insurance through TALS. Unlike traditional in-person clinics, the web-based format permits time to research and craft responses to your satisfaction with three days to answer a selected question. Even if the questions are outside your regular practice area, the site is so user-friendly for attorneys that even many of those can be answered by referring to the legal resources and links posted on the site.

Sam Rutherford has actively participated in the program for a year. He finds it an efficient way to provide pro bono legal advice to people in need across the state. There are usually one or two pending questions within his practice areas. He answers them when it is convenient for him without disrupting his regular business hours on revenue generating matters. In his experience, with some forethought before answering, the answers typically take no more than 5 minutes.

This fall, committee member Troy Weston participated in a collaboration with students at the Tennessee College of Law for a "Virtual Saturday Bar." This unique mentoring session was organized by Brad Morgan, Buck Lewis, and Ann Pruett. Twelve attorneys were each joined with three law students in the alumni lounge to select, discuss, research and answer questions pending in the queue. The program was hugely successful not only in shortening the list of unanswered questions but in teaching future practitioners about the

importance of pro bono service. One of the 2015 goals for the KBA Access to Justice Committee is to support another similar virtual legal services clinic. We hope you will join us.

Many lawyers are very comfortable with the face-to-face free legal services clinics. Others might not have the time to devote an entire Saturday morning. Others simply might not be at ease trying to provide sound advice while facing an anxious client across the table who hopes for your immediate insight. For Troy, "those concerns evaporate" when participating in OnlineTNJustice. He also explains, "most of the questions do not involve intricate procedural issues or are not so factually driven that you need to be an expert in the area." If you need more information to respond, the site permits you to ask the client for details through the confidential exchange. Most importantly, Troy "want[s] lawyers to know that they can do this on their lunch break. You can give a legally appropriate, sound answer with only a slight investment of time and energy for what you get back."

Wherever and whenever you have access to a computer, OnlineTNJustice is available. If lunchtime usually means a working lunch at your desk, then sleepless nights or early weekend mornings before the rest of the household awakes are perfect times to log on and share your talents and much-needed advice in the quiet hours. Earning one hour of ethics & professionalism CLE credit for every five hours of pro bono provided is a nice bonus, but the greatest satisfaction comes from helping someone who really needs you.



By: Casey Carrigan
The University of Tennessee



Camping Cuisine



Cooking Bacon at Cosby Campground

Camping and backpacking food is first and foremost a source of fuel for your high-impact adventures. However, just because you are far away from your refrigerator and your oven, that does not mean you have to sacrifice on taste. With a little advance planning, you can prepare delicious and filling meals for you and your companions.

Breakfast

Breakfast on a campout should involve a propane stove and a lot of boiling water. Instant oatmeal is a staple and will help keep you full all day. If you are feeling ambitious enough for an omelet or scrambled eggs, these are actually quite easy to make on the propane stove. Crack and whisk your eggs ahead of time into a thermos, or use a carton of liquid eggs from the grocery store. Cooking bacon in the comfort of your home kitchen is greasy and messy, and is especially so at a campsite. To save time and effort, use precooked bacon strips. All you really have to do is heat them up to the right temperature. Make coffee in a French press or just use instant coffee crystals.

That rushing mountain stream by your campsite is nature's refrigerator. Hold your milk jug, cans, or bottled drinks directly under the water to quickly chill them.

Daytime Snacks

Apply a two-pronged test for a great outdoor snack: does it travel well and will it fill me up? Bagels, beef jerky, dried fruit, nuts, and granola all pass this test. My favorite outdoor snack is an apple halved and smeared with peanut butter. Wash your apples ahead of time, pack a pocketknife, and bring the individually sized tubs of peanut butter used for kid's lunches.

Boiling water to make it safe for consumption (you're treating your

water, aren't you?) is a necessary but time consuming step. If you are in a rush or don't have a filter, you may consider treating your mountain water with iodine or chlorine. Use sports drink powder or drops to improve the post-treatment taste.

Dinner

A great dinner option is prepackaged or dehydrated food. Invite your old college friends, ramen noodles and instant potatoes, on your next camping trip. To bump up the protein, use canned or foil-pocket chicken and tuna. A garnish such as pine nuts can be an unexpected and welcome surprise to a dish such as broccoli alfredo.

Another dinner option is the campfire foil packet. Growing up I always heard this called a hobo. While I don't think there are any Depression-era train hoppers who are reading this and feeling offended, I do think this meal needs a more modern name. The packet contains a combination of ground beef, potatoes, carrots, and other vegetables wrapped in aluminum foil. The packet can be prepared ahead of time and stored in a cooler, leaving little prep to do at the campsite. Just toss your packet into the hot coals and let it cook.

A third tasty dinner option is to heat up chili and then pour directly into individually-sized bags of corn chips, adding shredded cheese and sour cream to taste. This meal has the added benefit of creating no dirty dishes.

Spices are an often overlooked essential of camping and backpacking food. They are easy to store and carry. Salt, pepper, garlic, onion, basil, and cinnamon can all elevate a simple meal to another level.

Dessert

I am pretty sure there is a statute somewhere that requires that a s'more be consumed around every campfire. This classic treat of graham crackers, chocolate bars, and fire-roasted marshmallows is easy to pack ahead of time as individual servings in sandwich bags. For a twist on this staple, try using a cookie base or use flavored (chili, fruit) chocolate. Another great dessert is the biscuit-on-a-stick. Take a clean, long stick and wrap packaged biscuit dough around the end. Cook over the fire, then roll in butter and cinnamon sugar while still hot.

Be sure to comply with all recommendations for food storage and clean-up. Never, ever keep food with you in a tent or lying out on a picnic table overnight. Many campsites have cables to string up your food out of the reach of bears. Even small animals are after your food – I once had a mouse chew a hole in my backpack to get to an empty food wrapper. Remember that you are not the only creature in the woods with an appetite!

With the high activity levels that often accompany outdoor adventures, your body will crave calories and nourishment. You may even find yourself willing to eat things you normally would never try. My advice, though, is to stick with foods you know you will love and look forward to eating. In the Smokies, the saying "hunger is the best sauce" rings true.

Apply a two-pronged test for a great outdoor snack: does it travel well and will it fill me up?

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

JUVENILE SERVICE CENTER SUPERINTENDENT RICHARD BEAN ENLISTS FURRY ASSISTANTS

You may have read recently of the program in action at the Knox County Juvenile Court to provide a new stuffed animal to each child waiting in court due to a dependency and neglect or custody hearing.¹ The Honorable Timothy Irwin, Juvenile Court Judge, has appealed to Knox County residents to replenish the dwindling supply of cuddly toys. For those juveniles whose stay is longer, detainees in the Richard L. Bean Juvenile Service Center, Judge Irwin and Superintendent Richard Bean have ensconced real-life furry assistants. Four goats are in residence in the grassed courtyard between buildings housing the boys, and four rabbits reside in sheltered hutches near the girls' dormitory. When on break from the Center's routine and classes, boys have the opportunity to pet and feed the goats through an adjoining fence, and girls are able to interact with the rabbits.

Goats first became part of the Juvenile Service Center's environment in July 2006, approximately a week into Judge Irwin's tenure at the Juvenile Court. The judge mentioned to Superintendent Bean that he had read of a successful program matching shelter dogs with juveniles and that he would like to try something similar in Knox

The goats and bunnies offer a bright spot in the days of children under a great deal of stress.

County. By all reports, the goats and bunnies offer a bright spot in the days of children under a great deal of stress, and they brighten the days of court staff members also, many of whom arrange their breaks to visit the animals.

Judge Irwin is the fourth judge with whom Superintendent Bean has worked in his fifty years with the juvenile court system. A positive community institution himself, Superintendent Bean is a delight to visit if you have not yet had the pleasure. He jokes that he has finally pared down his working hours to five twelve-hour days from his former seven,

but he can still be found in his office every weekday morning at 5:00 a.m. It may be partially for this reason that the Superintendent's office feels so much like a home, filled with

photographs of visitors, fascinating memorabilia, and donated items on their way to the children. On the day I visited, about \$300 worth of pennies waited to be sheathed in paper for deposit in Superintendent Bean's "Pennies for Undies" account, providing new underwear to juveniles.

One very special presence in this delightful office now exists only in memory and photograph, however. Before the goats and bunnies arrived, a tiny white kitten with one green eye and one blue eye paved the way for future furry assistants. A friend brought the abandoned kitten to Superintendent Bean in 1998, and "Baby Boy" (named "Baby Girl" briefly until the mistake was discovered) had soon made a permanent home in the administrative office of the Center. For twelve years, Baby Boy greeted everyone who visited the office, purred in his favorite rocking chair, and provided endless entertainment. He was even featured in a television news spot.

After Baby Boy passed away in 2010, Superintendent Bean commissioned a small memorial stone for his grave, now visible from the Juvenile Court's back parking lot.

When asked if he might consider another kitten to brighten the office, Superintendent Bean said that after four years, he had begun to entertain the notion, although perhaps a black kitten this time to match his visitors' court clothes. Just in case this news might bring a deluge of orphaned kittens to the Center, please check with the Superintendent first, but bring on the new stuffed animals and pennies. This Center, its Superintendent, and its Judge are here for the children, and they welcome all the help we and their furry assistants can give.



County. As Superintendent Bean pondered the idea, he realized that he had immediate access to two billy goats at a relative's farm. When Judge Irwin came to work the next Monday, "Tim" and "Richard" (named for the judge and superintendent) were on the premises. A 2006 *Knoxville News Sentinel* article quotes the judge as saying at the time, "It's kind of a funny thing, but I'm for anything that helps these kids."²

Eventually, Tim and Richard returned to the farm and were replaced by less rambunctious female goats, who have provided an added bonus: "kids" for the human kids to nourish. The first female goat, Heidi, was named for Juvenile Court Director Heidi Garrett. Judge Irwin reportedly was not sure how to react when Superintendent Bean greeted him with the "good news" one morning that Heidi was pregnant with twins. Realizing quickly that it was the goat who was expecting, the judge, court staff, and juvenile detainees soon welcomed Heidi's kids, one of whom, "Linda," now has a kid of her own, "Raynella," in residence.

The bunnies came at Easter in 2007 as a special addition for the girl detainees. Superintendent Bean notes that the girls needed something of their own and that the bunnies are especially gentle and



¹ Don Jacobs, "Stuffed animals offer comfort in court," *Knoxville News Sentinel*, Nov. 1, 2014, available at www.knoxnews.com.

² "Troubled juveniles learning to care for four-legged kids," *Knoxville AP*, August 2, 2006, available at www.parispi.net.

By: Dawn Elaine Bowie, Esq.
Maryland Family Law Firm, L.L.C.



DOING THE BEST JOB POSSIBLE

Family law is perhaps the most challenging area in which to really help people. Getting involved in other people's strife is a high calling. The problem is, it's impossible to do it without bringing personal experiences into the mix. And personal experiences are seldom on point with the problems faced by clients in my area of practice. Even when you are fortunate enough to settle before trial, clients' motives usually involve some degree of selfishness. The more selfishness among the parties, the more likely it is the case will come back to court, and back to court, sometimes forever, it seems. If you have to try the case it is a rare day when one party actually walks away both satisfied and forgiving.

It's a real ego-booster to be involved in a case where at least one of those two things is the result, and usually, it's the former. The most satisfying moment of my career came a few months ago when I won a *pro bono* third-party custody case. You would think it would be easy, right? Not so. Every step was a battle. My opposition was well-financed and well-connected, and the child's attorney was clearly and solidly in their court. But at the last minute, we got a different judge who happens to be one of the best on the Montgomery County, Maryland bench in family cases. The result was that the kid went home with her mother. And a few days later, the judge called me to compliment me on the great job I had done. Nice, right?

For me, sure, but not so much for my client *and her family*. The family had been, and probably will continue to be, what psychologists call "irretrievably broken." And it is absolutely beyond my power, or the power of any court, to fix the brokenness. And that's where humility comes in. Whether we are more suited to be trial attorneys or mediators, most of us who do this work long to be able to find a way to promote forgiveness in the family. And nothing we do can accomplish that goal.

Except for one thing. Instead of focusing so much on thinking of a "win" as the client's satisfaction at the end of the day, or of the prestige it brings to be complimented on the fine work I may have done, I'm learning to begin my cases, not just with great legal strategy, but with a deep longing that everyone in the case, from judge to children, find forgiveness, for themselves and for one another.

The result has been amazing, and I've only just begun to do this. When I'm able to keep an intention for the best result possible for everyone in the case uppermost in my mind from the start, everything seems to change. I don't take things quite so personally. I'm a little better able to see where others are more like me than they are different. When faced with a truly intractable or rude opposing counsel and/or party, I can at least see glimmers of their humanity. Best of all, I can be as much a counselor-at-law as an advocate. I can let go of worrying about the result. Which is great, since I have no idea what will

ultimately be best for the families I serve. I'm free to just do the best job I possibly can, and that allows me to relax, which in turn, lets me think more clearly.¹

¹ I'm new to the KBA, still living and practicing in Montgomery County, Maryland, but hoping to move to Knoxville within the coming year and join all of you full time. I've been a sole practitioner, exclusively practicing family law for the past twelve years.



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.



2015

Annual Meeting Notice

The Annual Membership Meeting will be held on Friday, December 12, 2014 at 8:30 a.m. at the Main Assembly Room of the City County Building. A continental breakfast will be available at 8:00 a.m. in the hallway outside of the Main Assembly Room.

The Nominating Committee for the Officers and Board of Governors of the Knoxville Bar Association for the upcoming year is comprised of: Tasha C. Blakney, Chair, Christi Branscom, Sam Doak, Al Harb, Meghan Morgan, Cheryl Rice, and Hon. John Rosson.

The Committee, having met, recommends that the following, all of whom are members of the Knoxville Bar Association, be placed in nomination at the Annual Meeting:

President-Elect:
Treasurer:
Secretary:

Wayne R. Kramer
Amanda M. Busby
Keith H. Burroughs

There are four open positions on the Board of Governors. Three of the Board of Governor positions will be for three-year terms. The fourth is the one-year term government/public sector position. Nominations to fill the open positions on the Board of Governors are the following:

Three-Year Terms:

Nicholas J. Chase
Lisa J. Hall
Deb House

Dana C. Holloway
Cathy E. Shuck
John E. Winters

Government/Public Sector Position:

Hon. Deborah C. Stevens

According to Article VI, Section 1., of the KBA By-Laws: "*Nominations may also be made from the floor during the Annual Meeting by any member in good standing.*"

Pursuant to the Bylaws change approved at the Annual Meeting in 1996, members are permitted to vote by absentee ballot. The provisions are included at the bottom of this page.

All judges have been requested to delay court until 10:00 a.m. on the morning of December 12, 2014.

Tasha C. Blakney, Chair, KBA Nominating Committee

ABSENTEE BALLOTS VOTING IN THE KBA ELECTIONS

Any member in good standing who personally comes to the offices of the Knoxville Bar Association during regular business hours on any of the ten (10) working days prior to the Annual Meeting will be permitted to vote. The member must first file a written form making oath that he or she will not be in town or otherwise be unable to attend the Annual Meeting. Then the member will be permitted to cast an absentee ballot for such officer or board positions as may be contested.

KBA Office Regular Business Hours:
Monday - Friday 9:00 a.m. - 5:00 p.m.

10 Working Days Prior to the Annual Meeting:
November 26 - December 11, 2014

If you have any questions concerning voting in the KBA Election by absentee ballot, please contact KBA Executive Director, **Marsha Wilson**, at (865) 522-6522.

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.

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.

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 for one attorney at offices of Hogan and Hogan, 620 W. Hill Avenue, Knoxville, TN 37902. Experienced Secretary/Paralegal included, along with office equipment. Contact Janet or Paul Hogan at (865) 546-2200. Downtown Knoxville; convenient to Court House; river view; free parking for attorney and clients.
- Three offices (or two offices and a conference room), reception area and kitchen; reception desk included; great location near courts; 1261 sq. ft.; contact Linda Carter at 524-8444.
- Historic Post Office – space available – ready to be finished to tenant's tastes. Ideal for legal professionals. Contact Jim Justice at 865-521-7500 or 865-679-3207.
- Tired of downtown traffic and clients' not being able to find a parking place? Established West Knoxville attorney has two office spaces available. Conference room, reception area, two bathrooms, file room, kitchen area, support staff area, nine parking spaces. Easy access to Knoxville, Farragut, Maryville and Oak Ridge. For more information, call Larry or Melissa at 531-3500.
- 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.
- Newly established firm of Piper, Ramsey & Hill has available a single attorney's office with adjacent support staff space. The space includes a reception area, conference rooms and kitchen. Call Jack W. Piper, Jr. to discuss options at (865) 291-1551.
- Office space in beautiful Victorian style office building. Hardwood floors and fireplace with Italian marble. Use of reception area, conference room and full kitchen. Utilities, janitorial service, and high speed internet provided. Will consider month to month lease. Rent is \$450.00 per month, with damage deposit. Adjacent to I-75 at Merchants road exit. Ten minutes from courthouse. Perfect for attorney, accountants, or insurance representatives. Please contact Jack Bowers at 688-4060 for more information.

Start your New Year with the Lawyer Referral & Information Service



Join LRIS for half the annual fee!

Grow your Practice!

Thousands of client consultations are scheduled with paying clients every year. LRIS panel members have already earned over \$800,000 in attorney fees since January 1, 2014.

As a KBA member you can join the LRIS right now for 50% of the annual fee and receive screened referrals until June 30, 2015. Additional discounts are available to attorneys practicing less than 5 years.



Contact LRIS Intake Specialist Tracy Chain
at 865-522-6522

Customize Your Referrals

Our low annual membership fee allows you to choose the four panels dedicated to the practice areas that interest you most, with more panels available at a low additional cost.

25 practice areas including Civil Rights, Criminal Law, Employment Law, Estate Planning, Family Law, Immigration, Professional Malpractice, Real Property, and Torts can provide you with the tools to build your client base.

Save Now!
Join Today!

Address Changes

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

U.S. BANKRUPTCY COURT EASTERN DISTRICT OF TENNESSEE Hon. Suzanne H. Bauknight

Judicial Assistant: Teresa Wheeler
Howard H. Baker, Jr. U.S. Courthouse
800 Market Street, Suite 330
Knoxville, TN 37902
Ph: (865) 545-4284 FAX: (865) 545-4271

Daryl R. Fansler
BPR#: 010219
Bernstein, Stair & McAdams LLP
116 Agnes Road
Knoxville, TN 37919
Ph: (865) 546-8030
FAX: (865) 522-8879
dfansler@bsmlaw.com

Nicholas W. Lee
BPR#: 030941
Lee Criminal Defense
800 S. Gay St., Ste. 700
Knoxville, TN 37929
Ph: (865) 766-4300
nicholas@tnlawyerlee.com

Arnold G. Cohen
BPR#: 000953
Dunn, MacDonald & Reynolds, P.C.
6204 Baum Drive
Knoxville, TN 37919
Ph: (865) 524-0510
FAX: (865) 525-6001
agc@dmrplaw.com



PRO BONO PROJECT

By: Terry Woods
Project Director

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

Reports Again

Blame Congress, or thank our diligent lawmakers for insisting on careful monitoring of how our tax dollars are spent.* Either way, we have to submit a report on the status of your Pro Bono Project file by December 31, 2014.

* Congress funds civil legal services through the Legal Services Corporation, which then distributes funds to local offices, including Legal Aid of East Tennessee. LAET gets a larger percentage of our funding from LSC than from any other source. To keep that funding, we must comply with a variety of regulations. See 45 C.F.R. Part 1600 et seq. The total federal allocation to LSC to fund its own operating expenses as well as its grants to local legal aid offices is about 0.0001% of the total federal budget.

If our records show that you have an open Pro Bono Project file, you should have already received a form to complete and return to us to report the status of the file. If you did not get a form, our records are wrong.

Likewise, if you got a form but do not have an open PBP file, our records are wrong.

Why Our Records May Be Wrong

- The PBP referred a file to you in 1985, and you closed it in 1986. The PBP never recorded the file closure, so we still show the file in your name.
- The PBP referred a file to you but the client never contacted you. The PBP never recorded the client's failure to appear, so we still show the file in your name.
- The PBP referred a file to Lawyer A in 2002. Lawyer A retired in 2003 and turned the file over to you. The PBP never recorded the transfer to you, so we still show the file in Lawyer A's name.

If you need a report form, please use the form below or call (865-384-2175 – Terry's cell), fax (865-525-1162) or email (twoods@laet.org) to get a form.

Your name: _____

Client's name: _____

The file is

☐ Open. What is the current status? _____

☐ Closed. What happened? _____

If the client recovered (or saved) any money, how much was it? \$ _____

Time you spent on the file (not already reported to LAET) _____ hours* (do not include non-attorney time)

Since the CLE Commission no longer charges for pro bono time reported,
we will report your time to the CLE Commission.

You will receive one hour of ethics credit for every five hours of pro bono service (prorated). This credit should appear on your CLE Commission record in December.

IMPORTANT: *Regardless of whether you want us to report your time, please give us the following information for our report to LSC and other funders:*

Time spent on the file (not already reported to LAET) _____ hours*

\$ _____ average hourly billing rate for non-pro bono files

Thank You!

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

Q: *John and I have been married for 10 years. I have a 10-year-old son and a 12-year-old daughter. I have been diagnosed with bipolar disorder and have been on medication for several years. I am currently in a stable state, but I am concerned about the future of my family. How can I ensure that my children are protected and cared for in the event of a relapse?*

JOHN B. WATERS, III

Merry Christmas 2002

2011... We ain't done squat.

Glory to God in the highest.

PLAYBOY WATER FAMILY

HISTORY MAKING 2010

INJURED?

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Knoxville, TN 37901

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KNOXVILLE, TN
PERMIT NO. 652

Welcome New Admittees

The first week of November was an exciting time as close to 100 new lawyers were admitted to the practice of law in East Tennessee. The Tennessee Supreme Court swore in these new initiates in a ceremony at the City County Building at 10 a.m. on November 3rd. In Knoxville, freshly-admitted lawyers were invited to the Barristers Annual New Admittees Reception. This year the reception was held on November 3rd at Clancy's Tavern. The event is organized to encourage all new admittees to become involved with the Barristers specifically and the Knoxville Bar Association as a whole, highlighting the great chances for professional development, friendships, mentoring, and networking through the KBA. Congratulations to all new admittees. Welcome to the practice of law. We are glad to have you.

