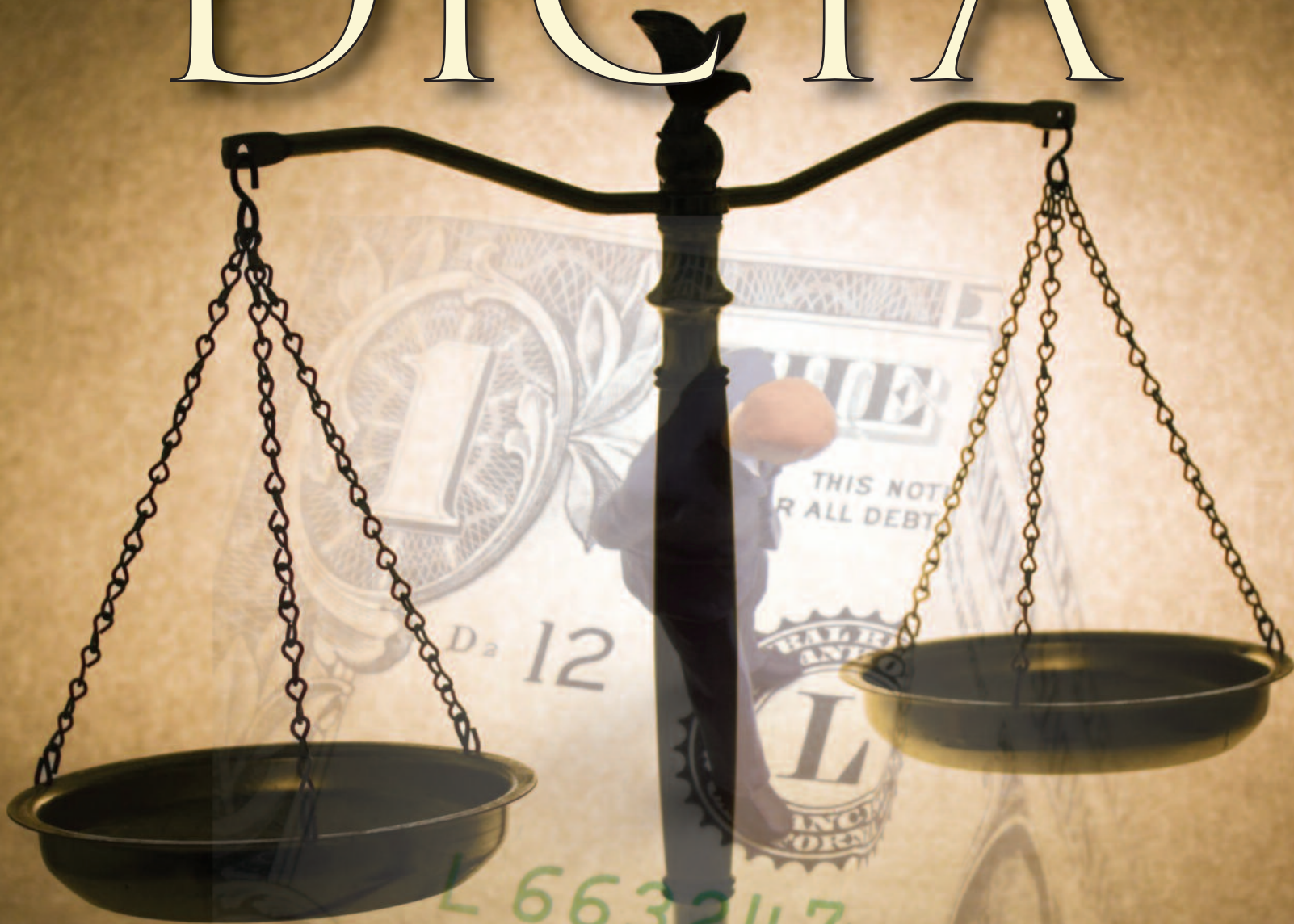


# DICTA



## **Glass Half Full: America's Lawyer Crisis and Its Upside**

**SUPER  
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ISSUE**





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**DICTA**

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

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

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

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## section notices

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

### Alternative Dispute Resolution

The ADR Section 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).

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

### Environmental Law

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

### Government & Public Service

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

### Senior Lawyers

The Senior Section will meet next on September 10, 2014 at Chesapeake's at 11:30 a.m. Sam Venable Knoxville News Sentinel Columnist, will present the program "You Just Can't Make This Stuff Up! (truisms from modern life)". Previous Senior Section Luncheons have sold out so members are encouraged to make their reservations early by registering online at [www.knoxbar.org](http://www.knoxbar.org) or by sending \$25 to the KBA Office. Please indicate menu choice of Salmon & Broccoli Pasta or Grilled Chicken Teriyaki. 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

### June

- 4 Fee Dispute Committee
- 4 Solo Small Firm CLE
- 9 Minority Opportunities Committee
- 10 Professionalism Committee Meeting
- 11 Employment Law Section CLE
- 11 Barristers Executive Committee
- 12 Judicial Committee
- 17 Family Law Section
- 18 Board of Governors Meeting
- 19 Lunch & Learn
- 23 Unmet Legal Needs of Children Committee Meeting
- 26 In Chambers CLE
- 26 Barristers Volunteer Breakfast
- 26 Access to Justice Committee
- 26 Barristers Happy Hour

### July

- 2 Fee Dispute Committee
- 2 Solo Small Firm CLE
- 8 Professionalism Committee Meeting
- 9 Barristers Executive Committee
- 10 Lunch & Learn
- 10 Judicial Committee
- 14 Minority Opportunities Committee
- 15 Family Law Section
- 18 Barristers Summer Party
- 22 CLE Committee Meeting
- 23 Gun Laws CLE
- 24 Barristers Volunteer Breakfast
- 24 Access to Justice Committee
- 25 Gov't Section CLE
- 28 Unmet Legal Needs of Children Committee Meeting

Join us  
for the  
Annual

Supreme Court Dinner  
September 3, 2014

By: Wade Davies

*Ritchie, Dillard, Davies & Johnson*

## JUDICIAL SELECTION ... AND MY FAVORITE TOPIC: BOASTING ABOUT THE KNOXVILLE BAR ASSOCIATION

This month I want to use part of my space to brag about the Knoxville Bar Association and then turn to judicial selection and our responsibility as a bar and as individuals.

I wrote last month about the planning for the Law Practice Today Expo. I've been to the Expo several times, but, as President, I got to see first-hand the incredible planning and execution that went into making the Expo a huge success. The Expo attracted a record 315 attendees and 35 sponsors. I feel very comfortable telling anyone who will listen that the Knoxville Bar Association puts on national quality CLE. The Judicial Roundtable Luncheon was fantastic as well. Olympian Davis Tarwater shared his successes and also what he perceived to be his shortcomings. (And, I got to see a gold medal, which had the appropriate awe-inspiring effect on me). In addition to the statistics, there is an excitement to this event that makes me proud to be President of the association that can pull this off.

I especially want to thank the Law Office Technology and Management Committee and the KBA Staff for this effort. I understand the committee has already started planning the Expo for April 16-17 next year.

Judicial Selection – You might have noticed this is an election year! This year we are not only choosing judges at the polls, Tennesseans are deciding the very way that judges are selected and retained. The Knoxville Bar Association believes that lawyers and the organized bar have a critical educational role to play in these elections. I don't agree with those who say that the public does not respect lawyers' opinions. I find that people pay special attention to the opinions of lawyers they know, and the Bar Association has an educational role to play as well.

It is hard to fulfil our educational mission without understanding the issues ourselves. We were fortunate to have our own Cheryl Rice and our incoming Supreme Court Justice Holly Kirby join us at Law Day on May 2. Cheryl and Judge Kirby provided the background on the way appellate judges are selected in Tennessee. The proposed Constitutional Amendment 2, calling for gubernatorial appointment, legislative confirmation by both houses and retention elections, will be on the ballot on November 4, 2014. One of the procedural points that struck me is that in order to pass, the amendment needs half of the number of votes cast in the gubernatorial race – not just half the ballots cast on the amendment. In other words, if 100,000 votes were cast for governor, the amendment would have to receive 50,000, even if only 60,000 votes were cast on the amendment question. This is a lot for anyone to study and understand, so the critical educational role lawyers can play is obvious.

The Knoxville Bar Association will not endorse candidates but will provide the public with resources for evaluating the candidates and issues. We never want to alienate our membership by taking what amounts to a political or partisan stand. What we can all agree on, though, is that the public needs to understand this process. As you can see from the article by Hanson Tipton and Keith Burroughs, our Judicial Committee has been working hard to make sure we do everything we can to fulfill our educational rule. The Get to Know Your Judicial Candidates site went far beyond the traditional bar poll, and provided the public with detailed, but not overwhelming, information to allow voters to make informed decisions. The judicial candidates were able to submit their profiles providing information about their experience and qualifications, and the site explains what the various courts do.

For the general election, we will add information about the retention elections, including the reports of the Judicial Evaluation Commission. When people ask you for advice, please suggest that they visit our site.

The KBA will also be monitoring the efforts of, and coordinating with, other bar associations. On May 14, the co-chairs of our Judicial Committee, Marsha and I participate in a TBA sponsored statewide conference call regarding the upcoming retention elections as we determine our most effective role. While we feel that our educational outreach efforts are better than a local poll, it is my understanding that the Tennessee Bar Association will be doing a statewide poll on the retention elections.

In the next few months, lawyers will be called upon to respond to a variety of issues, including public attacks on judges. In my view a local bar association should not be a political organization. I never want to see the divisiveness that some national associations have experienced. A local bar association should not reflect the politics of its current President. There are times, however, when the Association has to state the case on an issue on which the overwhelming majority of the bar would agree. That is one reason I've proposed that the KBA adopt a policy on responding to unfair criticism of judges. See Judy Cornett's Schooled in Ethics column. The reason I'd like to have a policy is so that Presidents don't have to make calls on their own about what the Association's position is. The Tennessee Bar Association has had such a policy for several years. If adopted, I anticipate the policy being used rarely, but when public statements are made about a judge that are demonstrably false, we need to have a process in place to be able to respond in a manner that assists our profession. We will be very careful and guided by the rules Judy sets out in her column, but we will respond when necessary. The KBA Board of Governors will consider the proposed policy at their meeting on May 21.

Again, thank you for the opportunity to serve as your President during this key year for our profession.





## CALLED AWAY

By: **Daniel C. Headrick**  
*Paine, Tarwater, and Bickers, LLP*

# CALLED TO MINISTRY

A good friend once told me, upon hearing the news that I was discerning a call to ministry, to be sure that I was running *to* ministry, not running *from* the practice of law. Those were hard words to hear, because at that time I was still struggling to explain to myself and others the reason why I was leaving a successful law practice filled with wonderful attorneys. When the struggle ended, the truth was as simple as it was disruptive: God called, and I responded. I was called to be a lawyer for a season, but that season is now over. In July, I will run *to* ministry, and my family will move with me to Texas for my seminary training.

Seven years ago, I took the bar exam and joined Paine, Tarwater & Bickers LLP as an associate. I thought of myself as a litigation attorney, but I'm not sure I had the slightest idea what that meant. I worked alongside some of the most thoughtful and humane people I've had the privilege of knowing. My work was challenging and often fascinating to me, but what I wanted more than anything was to be admired by others. The desire to achieve, so that I could be thought of as successful, was intense. I wanted also to acquire a certain lifestyle surrounded by material goods, but I never found meaning in those things; either the desire for the things, or the things themselves. I spent my twenties largely unchurched, and when life's challenges arose, I found my own resources to be woefully inadequate.

When I submitted to the discipline of Christian community, I found ultimate meaning through my relationship with Jesus, which is the prism through which I see all other relationships. Gradually, the discipline of Christian community and the call to discipleship began changing my life. What I learned was that Christian discipleship was the only intelligible answer to many of the questions young and old alike ask: How are we to be married and live in relationship with friends and family? How are we to treat our neighbors? How are we to understand the nature of God? How are we to understand the purpose and meaning of our work?

The irony is that we cannot answer these questions with any degree of satisfaction—especially this last one—solely by resorting to our work. Put differently, as Christians our work does not contain within it our purpose for being; rather, our purpose for being shapes, disciplines, and enlivens our work. Christians proclaim that their purpose for being is to follow Jesus, and if you claim that for your own life, your work as a lawyer cannot help but be shaped by that purpose. As a lawyer, then, your practice will be constituted by the kind of spiritual formation in which you are engaged, for better or for worse. And when your professional work becomes your sole identity, you should not be surprised that your life has become chaotic, anxiety-ridden, and beset with disappointment. For Christians, our work is not the most determinative thing about our lives. Jesus Christ is.

And so it was that over a year ago, God called me out of a life where I had become comfortable, where I had conformed to the story I had scripted for my family. My wife had just finished her first year as a partner in a successful medical practice. We had two beautiful children. My disclosure to my wife that I was being called to ministry was a profound disruption, and it was a strain on our marriage. Today, our marriage has never been stronger. I was finishing my sixth year of practice with the law firm where I had been given every opportunity to succeed, and where I had made many lasting, profound relationships. I feared the reaction of my coworkers and employer. Would they see in me what I was discerning? When I did tell the partners of my decision—months before our scheduled move—I feared early termination. What I received instead was incredible grace and mercy. For that, I will be forever grateful.

The Apostle Paul has this beautiful passage in 1 Corinthians about the calling of individuals within the context of the Church: *And God has placed in the church first of all apostles, second prophets, third teachers, then miracles, then gifts of healing, of helping, of guidance, and of different kinds of tongues.* 1 Cor. 12:28 (NIV). When I read Paul's words about those who have gifts of "helping" and "guidance," I see those gifts in many lawyers I know. But the truth is that our gifts are not meant to be exercised solely within the context of "church," as we commonly understand that term. Christian lawyers are called to discipleship in every aspect of their life, both within their profession and *through* their work. The wall we sometimes erect between our faith life and our professional life is crumbling under the weight of this calling.

When you are ready to retire from law, what will you take with you? Will you take with you your discovery battles and epic letters, your "victories" in depositions, trials, and settlements? I hope you will take with you what I am taking now: the beauty and strangeness of every complex human relationship I ever had as a professional. The meaning and purpose one derives from relationships with others transcends every mark of what counts as "success" for a professional. For it is in loving relationships where we find a truth which points us toward the One who sustains and nourishes all relationships.

Blessings on you, my friends and colleagues. The word I leave you with is that for every time your life is in chaos, know that there is One who is calling you to a life of discipleship that will both shape and transcend your earthly work as a lawyer. God is calling. How will you respond?

## DICTA EDITORS' NOTE

DICTA is a monthly publication of the Knoxville Bar Association. DICTA is offered to all members of the Knoxville Bar Association as one of the many benefits of membership. This issue represents one of our "super circulation issues" and is sent not only to all members of the Knoxville Bar Association but to all lawyers licensed to practice law in Knox County and all of its contiguous counties, Blount, Loudon, Anderson, Union, and Sevier. DICTA is an important publication to the Knoxville Bar Association and provides news regarding members and events of the Knoxville Bar Association as well as information on upcoming CLE seminars and news and notices from the Knoxville Bar Association president, the Barristers, and Knoxville Bar Association's twenty different committees and eight different sections. If you are interested in becoming a member of the Knoxville Bar Association, please contact KBA Executive Director **Marsha Wilson** at 505 Main Avenue, Suite 50, P.O. Box 2027, Knoxville, Tennessee 37901-2027, (865) 522-6522 or access our award-winning website at [www.knoxbar.org](http://www.knoxbar.org).

**SUPER  
CIRCULATION  
ISSUE**



By: Jason H. Long

*Lowe, Yeager & Brown*

Charles Swanson

*City of Knoxville Law Department*

## HERE COME DA' JUDGE

So I received an email a couple of weeks ago asking me to collaborate with Charles Swanson to write a profile of our newest Federal Court Judge for the Eastern District, Pamela Reeves. The only instruction we received was to "make it funny." I think both Charles and I approached this project with some apprehension. First, it can be a time consuming task. Moreover, a federal judge profile is not the type of topic that lends itself to "funny." There is no doubt that I got the better end of the deal, however. The worst Judge Reeves can do to me is hold me in contempt (I think that's the worst, perhaps I should brush up on my federal practice). For Charles, a misstep here could lead to disaster at home. It is axiomatic that "when momma ain't happy, ain't nobody happy." It is therefore unsurprising that we waited until the last minute to pull something together. Below is the actual e-mail exchange we had on the topic:

**From:** Jason Long [mailto:jhl@lyblaw.net]  
**Sent:** Tuesday, April 29, 2014 10:38 AM  
**To:** Charles Swanson  
**Subject:** RE: PLR Article

This profile on our new federal judge isn't going to write itself. Here is my idea, we do an email exchange discussing the various attributes we believe will make Pam a good judge. My emails will be from the viewpoint of a common bar member, while yours will be the inside stuff that only a husband would know. I will effectively be playing the straight man (Dean Martin without the scotch) to your Jerry Lewis.

Let us begin:

One word that comes to mind when thinking of Pam is "accomplished." She is a founding member of her law firm (prior to being appointed). She is a past recipient of the KBA's Governor's Award, our highest recognition. Pam has served as President of the Tennessee Bar Association, Chair of the Knox County Election Commission, Justice on the Court of the Judiciary, and columnist for the Knoxville News-Sentinel. These accolades only scratch the surface. For goodness sake, she has her own Wikipedia page. There does not seem to be a limit to her energy or enthusiasm in tackling new challenges.

**From:** Charles Swanson [mailto:cswanson@cityofknoxville.org]  
**Sent:** Tuesday, April 29, 2014 3:13 PM  
**To:** Jason Long  
**Subject:** RE: PLR Article

So this is the part where I, the smart aleck husband, running little professional risk as I am already conflicted out of her court, would follow up with some "inside scoop" on Pam which, although not necessarily contradictory, would add a human dimension to the generally accepted perception, as well as injecting a little humor into this article. That whole concept has fallen over the cliff in the very first paragraph. Ok, Pam is preternaturally accomplished in the professional sense but surely that doesn't hold true for her life outside of the law, does it? Well, in a word (and not a particularly humorous word)... "Yes!" Parenting skills? Pam is without question the best mother to our two children you can imagine. Athletics? In law school and for some years beyond, Pam was an accomplished athlete, demonstrating skill for the UT Law Women in softball, basketball and football and, in her early years of practice, on the soccer field as well. Skills in the kitchen? Despite a total absence of any known Italian heritage, Pam makes a lasagna to die for. Gardening? To say she has a green thumb is an understatement...our basement is a veritable jungle. Every time I suggest getting rid of any excess plant life,

she reminds me, "That plant has been with me longer than you have." (I know that; in fact, that may have something to do with why I want to be rid of it!) Logistician? Pam is a consummate hostess as well as a great party and vacation planner. Our children will attest that vacations with Pam are so activity-laden that, when the trip is over, the kids and I are grateful to return to school and work just to get a little rest! Frankly, I am at a loss to come up with a single area where I can humanize Pam by revealing a lack of skill and success. Maybe we need to re-think this concept?



**From:** Jason Long [mailto:jhl@lyblaw.net]  
**Sent:** Tuesday, April 29, 2014 3:47 PM  
**To:** Charles Swanson  
**Subject:** RE: PLR Article

O.K., I see two problems developing here. First, either through fear of reprisal or lack of talent, neither one of us is particularly funny, which will lead to a very dry profile. We might as well cut and paste Pam's resume in here and be done with it. Second, at the rate we are going, this column will be 10,000 words long and will need to be spread out over seven installments of DICTA. Key concepts from here on out, wit and brevity. A suggestion on the latter point, was it really necessary in your last email to point out

that Pam had no known Italian heritage? Your entire family, Pam included screams Scandinavia or British Isles. Do they make sunscreen with an SPF 300?

I'm going to throw out two words here: Large Personality (er... uh, I mean charismatic). Can we agree that Judge Pam Reeves is no shrinking violet? From the first day I met her, she has commanded every room she was in... in a good way, I swear, your honor. She seems to know every person at every event she attends and is well versed in whatever the topic of the day is, from the subtle nuances of the ADA to the lack of depth in UT's front four, Pam will engage you on any topic and she is not afraid to let her thoughts be known.

**From:** Charles Swanson [mailto:cswanson@cityofknoxville.org]  
**Sent:** Wednesday, April 30, 2014 9:18 AM  
**To:** Jason Long  
**Subject:** RE: PLR Article

Agreed. As you might suspect, having a parent with a Large Personality can be both intimidating and embarrassing for teenagers. Their choice was either to embrace it or to run from it. Our children elected to embrace it and put a name on it. Consequently, even to this day among the fairly large circle of friends our children have cultivated both in high school as well as in college, my wife is known and referred to, even to her face, as "The Pamela."

**From:** Jason Long [mailto:jhl@lyblaw.net]  
**Sent:** Thursday, May 01, 2014 2:02 PM  
**To:** Charles Swanson  
**Subject:** RE: PLR Article

"The Pamela." That is perfect. I wonder if she will let me call her that while sitting on the bench? Actually, I suspect after this article runs, I may well be banned from her court. That brings up another point though. I think, as a Judge, Pam will be lawyer-friendly. She strikes me as someone who sees the big picture and won't let formalities get in the way of the job being done. Don't misunderstand me, I think Pam will absolutely apply the letter of the law and expect high standards from litigants in her courtroom in that regard. Still, I feel like Pam's

(Continued on page 8)



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

# DICTATION/TRANSCRIBER APPS

You are sitting at the car shop waiting on your car to get the oil changed. You are waiting outside of the courtroom on your case to be called. You are waiting outside your child's school for pickup. Suddenly, an idea comes to you that is very important and you are afraid you will forget it before you get to a computer. Not to worry, there are apps for that.


**Dragon Dictation** ([www.nuance.com](http://www.nuance.com)) – In order to use Dragon Dictation you simply hit the record button and Dragon does its job. Unlike other apps, Dragon Dictation does not convert your voice to text until after you are finished recording. For someone like me who can talk for a long time, it may not be a good idea especially as I need to check for mistakes due to my accents. Those who have used it more than I have says that it adapts to accents but I haven't tried it enough to see if it adapts to my Jamaican accent. The website does boasts that it high accuracy in 30 languages and dialects but I was not able to find out if Jamaican was one of them.

Once transcribed and edited (as needed), you can email, copy and paste to your clipboard, Tweet, send to Facebook, or use in a Text message. That makes for efficient working conditions on the go.

Dragon Dictation is **free** on both iTunes (iPhone) and Google Play (Android).

**Evernote** ([www.evernote.com](http://www.evernote.com)) – Along with being able to add audio files to your notes, you are able to use the Dictate function to dictate your notes. Once you have dictated your notes you are able to sync those notes to your Evernote account which makes them available on all of your devices including your phone, your tablet and your computer. This allows you to have easy access to all of your notes no matter where you are. You can dictate a letter on your phone while out of the office and your assistant would be able to print it at the office and have it to your client or opposing counsel before you even make it back to the office.

Although this app is **free**, you do need internet access in order for it to sync to all devices. It is available on most platforms.

iPad Voice Dictation – Although this is not officially an app, it is very useful. You are able to use the  key on your iPad keyboard to start transcribing emails or documents. Once you click that button start talking. Once you are done talking, the iPad will transcribe your voice into text. The main benefits of this are that it is pre-installed on your iPad and is free. However, as the name suggests, it is only available on the iPad. As I do not currently own an iPhone, I am not able to remember if it is available on the iPhone but somehow I think it is. Samsung users are also in luck as there is a similar button on your keyboard that has the same function. Should you need help identifying that button or using it, please feel free to contact me and we can work it out together.

### About this column:

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

## HERE COME DA' JUDGE *(Continued from page 7)*

courtroom will be a comfortable environment where attorneys will be able to speak freely and have a Judge who will be accessible.

**From:** Charles Swanson [<mailto:cswanson@cityofknoxville.org>]  
**Sent:** Thursday, May 01, 2014 2:47 PM  
**To:** Jason Long  
**Subject:** RE: PLR Article

You are a braver man than I if you refer to her as "The Pamela" while she is on the bench. Most likely, that would be an excellent opportunity to get to know some very nice but somewhat humorless federal marshals! I have not seen any scientific studies on this, but I am inclined to think that folks who were raised in a home where they had to carry water for a bath in from the creek and answer midnight calls of nature by wading through the snow to an outhouse, as was true for Pam during a portion of her youth, are folks who are really well grounded. Certainly, my view is that her early childhood plays a major role in her development of an exceptional capacity for appreciating the big picture and not being too distracted by formalities. On the other hand, after this article gets published, there is a really good chance that my personal opportunities to speak freely and have access to the Judge may be severely limited!

**From:** Jason Long [<mailto:jhl@lyblaw.net>]  
**Sent:** Thursday, May 01, 2014 3:19 PM  
**To:** Charles Swanson  
**Subject:** RE: PLR Article

Is it a job requirement that federal marshals have to check their sense of humor at the door when they put on the badge? I tried cracking a few jokes about sneaking my phone into the courthouse one day and they landed like lead balloons. Fortunately, I do believe her honor has a good sense of humor. I've seen Pam trade sarcastic barbs and indulge in

self-deprecation with the best of them. I would imagine she will need that sense of humor as she assumes the bench. It won't be all wine and roses up there and I believe her ability to laugh at herself and her surroundings will probably go a long way toward success in her new position.

**From:** Charles Swanson [<mailto:cswanson@cityofknoxville.org>]  
**Sent:** Thursday, May 01, 2014 4:18 PM  
**To:** Jason Long  
**Subject:** RE: PLR Article

Unquestionably, our marriage of over a quarter century would have to be Exhibit A in any argument to prove that Pam has a sense of humor! Judges Varlan, Phillips, Murrian, Guyton and Shirley all have confirmed for me the accuracy of your statement that life on the federal bench most assuredly will not be all wine and roses. It seems that all the foibles and shortcomings of the human experience eventually parade themselves before the federal court and I have no doubt that there will be times of frustration, exasperation, distress and genuine sadness in her coming career. Still, I know of no one more equipped than Pam to work through those times without losing both a good heart and a good sense of humor.

We had to stop the interchange there as this article was already running very long. Needless to say, both Charles and I are thrilled with the newest addition to the federal bench. Judge Pamela Reeves is accomplished, charismatic, well-grounded and possesses a good sense of humor. For lawyers in this area, I am not sure there is much more we could ask for in a new federal court judge (at least not within the confines of a short profile). Congratulations your Honor. We look forward to having you up there.



By: **Andrew S. Roskind***Pratt Aycock, PLLC**Partner*

## Practice Makes Perfect

The practice of law is just that – a perpetual learning experience. Some may specialize in the practice, but in the end, regardless of background, experience, or whether you won or lost your last case, we practice the art of practicing law. Typically, we know how to research, write and argue – but the practice involves so much more. In the field of criminal defense, similar to other areas, practitioners must hone both the typical practice skills as well as many others. Here's a primer on criminal practice to help you navigate the waters.

1. Know the court's rules. I'm not talking about the Tennessee Rules of Criminal Procedure (although you should at least skim those). I'm talking about the local rules. Get online to find out if the court has local rules. Read them. Follow them. Use them to your advantage.

2. Know the court's unwritten rules. The unwritten rules ultimately play a major role in how your day unfolds. In Knox County, most, if not all, General Sessions and Criminal Court judges, hear short matters and agreements first. This seems simple enough. It's not. We attorneys have surprisingly unique and expansive definitions for "short" matters. In my book, picking a new hearing date is a short matter. However, arguing a motion to continue, although you may successfully argue your motion and get a new hearing date, is not a short matter.

Another unwritten rule concerns where to sit – especially for that short matter you plan on arguing before someone else's agreement is taken up. In Knox County Criminal Court, arrive early and take the first seat by the podium. The first seat is taken early followed by the second, then the third, etc. The expectation of everyone sitting down the line from you is that you truly have a short matter and you deserve to go first on your short matter because of the diligence you showed by getting to court earlier than everyone else. Make believers of us and show that the system works by being quick. Of course, the system has a flaw because it unintentionally allows for one attorney to be heard on a plethora of short matters. Nothing is worse than getting to court early enough (not "first chair early" but still kind of early) to take the second chair only to see your criminal defense brethren take multiple files to the podium. You hear a quick announcement and the defense attorney saying, "Thank you your Honor," and you know you're next. This is it. Your day is going to be great. The sun is shining and Spring is in the air. By getting to court early you've ensured you will be ahead of schedule for the rest of the day. You grab your notepad and start to stand up only to hear, "Your Honor, next I have . . ." You slump back in your chair unintentionally making an audible sound of disgust – day ruined – your schedule is completely thrown out of whack. You and your matter wait.

3. Know the prosecutor assigned to your client's case. Most counties have multiple assistant district attorneys. Call the DA's office and find out who is assigned to your case. Make this phone call early especially is you need to talk with the ADA before your court appearance. Like most other attorneys, some are prompt in returning phone calls while others are slightly . . . less prompt. If you need to talk to the prosecutor but wait until your next court date you will most likely have a long day in court waiting, and waiting, and waiting.

While you may have a handful of cases on the day's docket, the ADA has more. Typically, the ADA will have more cases on a single day's docket than you have all week. In practical terms this means numerous other defense attorneys lie in wait for the prosecutor to enter the courtroom. My suggestion: don't crowd and hoard over the ADA. You have no good reason to stalk them. Instead, let him or her know

you're there, grab the warrant from the bench (or pass on first call) and wait. You may wait for quite a while. No matter – you wait – patiently (or at least give the appearance of waiting patiently).

4. Know how to enter a plea. Although entry of a guilty plea is similar in all courts, how and when a judge takes pleas is unique. Some courts read through a defendant's rights after taking up short matters and calling through the docket. Those judges expect all defendants who may enter pleas to be present in the courtroom when the rights are read. Those courts typically allow defendants to enter pleas throughout the morning/day as the defendants are ready and once the paperwork is submitted to the judge. Other judges conduct group pleas – meaning, you may be ready to go at 9:30 but the court will not take it up until everyone is ready. If you're unsure how the judge takes pleas, ask the DA.

Lastly, if your client is entering a plea, please make sure you and the client know what questions the judge will ask. Regardless of whether the court takes up individual or group pleas, nothing screws up a day quite like a botched plea. Before your client gets in front of the judge, go over his/her rights, the questions and expected answers. Go over the actual plea and the resulting sentence. When the court asks your client, "Do you understand what you're doing here today?" your client should say, "Yes," rather than "I think so." And when asked, "Do you have any questions," the only acceptable response should be "No." Practice with your client. After all, that's what we do. We practice.

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**By: Carol Anne Long***Judicial Law Clerk, Tennessee Court of Criminal Appeals*

## HILDA AND MOOSE: THE “LAW AND ORDER” OF DOGS

Working in downtown Knoxville has many benefits: proximity to Market Square for festivals, shops, and dining options; quick access to an Early Voting location; and, most recently, an opportunity to sample the delightful offerings of the many new food trucks. And, of course, there is the chance to see Hilda and Moose, the majestic Weimaraners who can be found walking their humans, Paul and Janet Hogan, on many an afternoon. Seeing these beautiful dogs out for a walk with the Hogans has brought a smile to my face on many occasions, and from the stories that Janet and Paul told me, Hilda and Moose have been bringing smiles to the faces of lawyers, clients, and even the postman for many years.

Sixteen years ago, when Janet and Paul were experiencing “empty nest” syndrome after all four of their children had left for college, the Hogans decided they needed a little company, so Hilda joined the family



when she was just a six-week-old puppy. She received her unique name from the late 1970s/1980s BBC television program, “Rumpole of the Bailey,” which centered on the exploits of “an aging London barrister who defends any and all

clients.”<sup>1</sup> The show’s title character, Horace Rumpole, secretly referred to his wife, Hilda, as “She Who Must Be Obeyed,” and the Hogans believed this name would be perfect for their household’s new leader! Because Paul and Janet were running a very busy law practice at the time, they felt it would be best to bring baby Hilda to the office with them so that they could keep a close eye on her, thus beginning Hilda’s career in law. Hilda got off to a rather inauspicious start, however, as she managed to chew every pen and the corner of every filing cabinet in the office.

Over time, Hilda learned what it meant when she was told, “Go to your office” (also known as Janet’s office), and she would dutifully trot straight there. When Janet and Paul would go to court, they would leave Hilda inside Janet’s office and close the door. Because the office staff members were aware of Hilda’s penchant for chewing items located on Janet’s desk (such as court orders), they learned to buzz through on Janet’s office phone and command, “Hilda, get down!” Hilda would usually comply, until one day when the staff members were puzzled to discover that they could not buzz through. The reason? Hilda had managed to hit the “Do Not Disturb” button on the phone. Apparently, she preferred to chew on those court orders in peace that day.

Janet and Paul recall that it took about two years for Hilda to calm down from her puppy stage, but once she did, she calmly took up her sentry post by the front door of the office and patiently waited to be petted by everyone who entered. Hilda often returned the favor, however, by helping to calm anxious clients by jumping onto the sofa and gently placing her head on their shoulders. Hilda has also enjoyed great success in mediation, having sat through close to 1000 mediations. Once, during a case that Paul was mediating, the two sides had reached an impasse. While Paul was in the room with the defendant and the insurance adjuster, Paul invited Hilda to enter and sit, and he then posed the following question to Hilda: “Hilda, the insurance company only

wants to pay \$10,000, and the plaintiffs want \$15,000. I think they should split the difference. If you think that’s a good idea, give me your paw.” Hilda immediately offered her paw. The defendant and the adjuster were completely delighted by this display, proclaiming it the cutest thing they had ever seen. Thanks to Hilda’s charm (and obvious sense of justice), the case settled. Hilda was such a success in assisting their law practice that Janet and Paul referred to their practice as Hogan, Hogan & Hilda for years, and Hilda is featured prominently on their business cards.



Approximately five and a half years ago, Paul and Janet decided to add to their family, and they adopted seven-month-old Moose. Laughing, Janet reports that Moose “was a mess!” Although Hilda was none too happy with her new brother initially, she managed to train him and eventually warm to his presence. When Moose first began coming to work with Paul and Janet, he only wanted to sit on Paul’s lap during mediations. Needless to say, he was soon banished from mediations. Although he no longer insists on Paul’s lap for his seat, Moose now finds mediations to be boring, and he soon walks out on them. As well suited as Hilda is for a career in law, Moose appears to be equally well suited for a career in law enforcement. He once stuck his nose into a plaintiff’s handbag and emerged with a mouthful of twenty-dollar bills. Given Moose’s strong olfactory sense, Paul believes that his officer-in-training smelled cocaine on those 20s!

The Hogans’ downtown mailman loved Hilda and Moose so much that he would often enter the office, lie down on the floor, and play with the dogs. Even after his route changed, he would still stop by for a visit with Hilda and Moose, and now that he’s retired, he’s become the Hogans’ pet sitter. Countless clients have requested to see Hilda and Moose over the years, and the staff members at the Hogans’ firm, none of whom considered themselves to be “dog people” initially, have all come around. However, when asked to discuss the disadvantages of practicing law with your dogs under foot, Janet and Paul laugh and instruct me to “ask Teresa,” their secretary!

Perhaps Hilda and Moose have been so successful as lawyer-and-police dogs because their breed bears such a striking resemblance to humans. Once while in line at the bank drive-thru, Moose was sitting in the passenger seat of Janet’s car, but the bank teller did not send through a dog treat. When Janet asked for one, the teller looked startled and replied, “Oh, I thought that was your mother!” On another occasion, Paul parked the car outside a Weigel’s and went inside, leaving Moose in the driver’s seat and Hilda in the passenger’s seat. When the girl working the cash register noticed the dogs in Paul’s car, Paul just shrugged and said, “That’s my chauffeur.”

Despite their success at their many canine career opportunities, Hilda and Moose have clearly enjoyed the most success simply by being wonderful companions to Janet and Paul, and without question, these beautiful dogs have greatly enhanced the practice of law in Knoxville. Happiness is definitely a warm dog, but perhaps a successful mediation experience is a warm dog, too.

<sup>1</sup> Wikipedia, *Rumpole of the Bailey*, [http://en.wikipedia.org/wiki/Rumpole\\_of\\_the\\_Bailey](http://en.wikipedia.org/wiki/Rumpole_of_the_Bailey).



By: Elizabeth Rutledge



## A Law Clerk's Perspective on Clerking

I turned my alarm off as soon as its annoying ring ended my restless night. That day was a big one, and the advice from seasoned clerks echoed through my mind. "Impress them." "Outwork them." "Don't overwork yourself." "Show them that you're willing to be miserable." "Show them that you're a natural and that you don't have to be miserable in order to be a good clerk." I trusted every word of that contradictory advice and hoped everything would make more sense as soon as I walked into the law firm. All I knew for certain that morning was that I was a summer clerk—whatever that was.

We clerks recognize that we are lucky, very lucky, to have the opportunity to accept our clerkship positions; however, we only have a fuzzy knowledge of what we are getting into when we accept. There is some necessary information that we cannot know unless our employers tell us. I believe that law firms generally succeed in orienting us with the office, including us in social activities, and assuring that we are given real world experience. Nonetheless, I believe employers could improve the clerkship program by providing three forms of simple guidance.

First, give us the basics during the orientation. This suggestion might seem elementary, but we don't know what a day in the life of a clerk looks like and many of our questions are going unanswered. For example, when can we be at the firm? What are our work and lunch hours? Do you expect us to eat lunch at our desk, take a solo breather, or join you for a group lunch? Can we take our work home with us? How do you want things done? Are there samples on file? If so, are we even allowed to look at the samples on file? Samples are our best friend. A sample of a memo or document format will save us a few hours of format frenzy and facilitate a polished product. Finally, when it comes to billing time, we are clueless. Please, help. This basic knowledge and information can be established within the first few minutes of

orientation and will help us manage our time for your expectations.

Secondly, let us know how we are doing. Employer feedback is not just a personal want, but in my opinion, a job necessity. We strive to do good work for the firm and for you individually; however, tailoring our work for your preferences is almost impossible unless you indicate what you want and expect. For example, if we draft a memo for you, take a few minutes to put some red ink on it and then send it back. If we don't have to make any changes, tell us. Conversely, if the memo was no help at all, tell us. Doing this a few times will let us know how to best work for you individually. The most common clerkship wail I have heard and stated has been, "I've done a lot of work, but I never hear anything back. I hope no news is good news." I cannot emphasize enough how much we lack, appreciate, and want feedback.

Finally, treat others—yes, even us clerks—the way you would like to be treated. Specifically, please consider the not-so-bountiful job market when hiring clerks. Since clerking is generally the key to landing a job, we admittedly look to our clerkship employers in hopeful waiting. However, a guaranteed post-grad job is not the only reason we clerk. We need the experience. If you are not looking to hire post-clerkship, simply tell us. We will value your honesty and the clerkship for the unique experience, networking, and resume building it provides.

Even though I am sure I am not alone in thinking the clerkship program could stand some tweaking, I believe I speak for the majority of clerks when I say we thank you for the opportunity to work with you.

*Elizabeth Rutledge received her J.D. from the University of Tennessee College of Law in May 2014. She is currently studying for the Louisiana Bar Exam.*

**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.

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

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

The use of technology, of course, has re-defined how we practice law, from the way we perform research, to drafting documents, communicating, filing pleadings, conducting discovery, trying cases and even marketing our practices. That brings up another change. Lawyers advertise to the extent and in ways we never dreamt of when I began practicing. Lawyers do not follow the traditional model as much anymore as many practice in more than one firm in their careers. The biggest change I have seen in the practice of law itself, however, is the diminished time spent in courtrooms. Motions practice is drastically reduced. Fifteen years ago, every other Friday, the three Knoxville Circuit Courts were packed with lawyers arguing motions, frequently arguing in multiple circuits on the same day. I think this is largely due to rulings by appellate courts, particularly on summary judgment practice, and to some degree, as a result of statutory changes in certain areas of the law. More importantly, and in my view, unfortunately, jury trials are becoming a rarity.

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

Although primarily an adversarial art, practicing law can still be handled graciously, professionally, and respectfully. Encountering contrariness by other lawyers for the sheer sake of being contrary, and worst of all, dishonesty, are the most disheartening challenges.

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

There are a few parts. I have been blessed with opportunities, education and many great relationships with colleagues. Service back to the bar and to the communities where I work and raising my family enriches my life and how I feel about my work when it gets tough. Admittedly, I am also competitive, so I enjoy strategizing and guiding a complex case through to a successful outcome for my client.

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

The market for lawyers has changed drastically in the last five to ten years. Far fewer jobs are available in firms, where much of a lawyer's practical learning takes place. Potential law students should consider whether they are willing to be a solo practitioner, because that might be their reality upon graduation. Being open-minded to many practice areas will help make them more marketable and better prepared in the event they must hang a shingle. Also, the hours can be long and the stress can be high. You only get one go 'round and hopefully will be lucky enough to love your life's work, so do some soul-searching about this career and seek out mentors to help you decide if law school should be your path. Lawyers are willing to share their experiences with you.

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

My areas of practice have broadened in recent years from almost exclusively medical malpractice and products liability defense to include more personal injury plaintiff's work and commercial litigation, as both the law and market demands have changed. Over the years, every case has presented learning opportunities, which keeps my work interesting. I will always continue learning, but I felt "comfortable" after about five years of practice and "confident" after about seven; however, the day I stop being nervous stepping in front of a jury panel for *voir dire* in a new

trial is the day I need to stop practicing law.

## 6) What do you consider your greatest professional achievement?

I kept coming back to this question. It's a tough one to answer. I think of a "greatest" achievement as one that would have a broad effect or benefit many people, which I would certainly like to do. Nothing in particular stands out to me. I have done what a lawyer does . . . represent her clients' interests.

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

Technology will probably continue to streamline the way our office practices, particularly as clients and insurance companies are looking for ways to reduce legal expenses. But my goal for 20 years is that the scenery in my office will overlook my garden and grandchildren-to-be playing there.

## 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 hope others would say that I practiced with integrity, worked hard, was skilled, and represented my clients zealously. I think others would say that I practice ethically, work cooperatively, and represent my clients effectively.

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

Well, I would like to have Mickey Haller's overhead – or lack thereof – in *The Lincoln Lawyer*. Oh, if only I could operate a law office on the cost of a cell phone, a nice car WITH A DRIVER, and a friendly investigator. I would not really want to be Vinny Gambini, but I did love some of his lines . . . "So, I wore this ridiculous thing for you!" and "Option A . . . or Option B? I'm going with Option B." You've got to laugh, and do not overlook that his trial effectiveness was really because he had done the groundwork first by interviewing witnesses. He was prepared. I wouldn't mind looking like Sandra Bullock's character Lucy in *Two Weeks Notice* -- the scene where she is dressed in a magnificent black gown, not the one wearing a yellow rain slicker and leaning over the side of the ship after too much champagne. If Don Paine ever made a movie, I would definitely pick him, but alas, he did not. He and Mr. Bear would have been a classic duo on film. So, at the risk of a cliché, I choose Don's fictional personification in *To Kill a Mockingbird*. Not merely an exceptional lawyer fighting the good fight, Atticus was a kind and loving father, who wanted his children to be honorable. In my yearly reading, Atticus' departure from the courthouse catches my breath with this sentence: "Miss Jean Louise, stand up. Your father's passin.'" I'm my daddy's girl.

## 10) What book related to the practice of law are you reading now/have you recently read?

*Summer for the Gods*, by Edward Larsen, exposing the motivations and antics involved in and leading up to the Scopes trial. Thanks to our current judiciary and ethical rules, I cannot see the likes of Darrow or Bryan carrying on like that in a modern courtroom, but it is fascinating to read just how huge their personalities were.

**Civil litigation practice  
for 23 years in (2)  
mid-size law firms**



By: **Melanie Reid**  
 LMU-Duncan School of Law



## COMPARING THE CAUSATION ANALYSIS IN CRIMINAL LAW AND TORTS

Causation is not the foremost thought in a criminal law practitioner's mind as he or she builds a case or attacks criminal charges. In most cases, it is obvious that the person who shoots, stabs, robs, rapes, or defrauds is the one who caused the injury. However, in the case of a multiple drug overdose, the answer is not so obvious. Do we hold each drug supplier accountable regardless of the amount of drugs found in the drug user's system? Or, as in the Supreme Court's oral argument hypothetical in *United States v. Burrage*,<sup>1</sup> if someone ingests three drops of poison and it is unclear which one of the three is the extraneous drop, should we find causation as to all three?

In *Burrage*, the victim, Banka, died following an extended binge during which he used marijuana, oxycodone, and less than one gram of heroin he purchased from Burrage.<sup>2</sup> Burrage was charged with unlawfully distributing heroin and that "death . . . resulted from the use of [th]at substance" under 21 U.S.C. § 841(b)(1)(C).<sup>3</sup> This "death resulted from" penalty enhancement provision subjected Burrage to a 20-year mandatory minimum sentence.<sup>4</sup>

Two medical experts testified at trial regarding Banka's death, stating that heroin "was a contributing factor" in the victim's death as it interacted with other drugs in his system to cause him to stop breathing.<sup>5</sup> Burrage's attorney proposed jury instructions that would have required the government to prove that the heroin was "a cause of death that played a substantial part in bringing about the death."<sup>6</sup> Instead, the court gave an instruction that the government must prove "that the heroin distributed by the Defendant was a contributing cause of [the victim's] death."<sup>7</sup> The jury convicted Burrage on both counts, and Burrage was sentenced to the 20-year mandatory minimum.<sup>8</sup>

A defendant may not be convicted unless his conduct is both the actual cause and proximate cause of the result. The causation analysis in tort law is much more developed than in criminal law. Under tort law, there are several alternative theories to prove actual causation: the "but for" test, the substantial factor test, and the concurrent causes test. Under the "but for" test, the plaintiff must identify the injury and the defendant's wrongful conduct, then create a counterfactual hypothesis where the defendant's wrongful conduct is "corrected." The question then becomes whether the injuries the plaintiff suffered would probably still have occurred had the defendant behaved correctly.<sup>9</sup> If the plaintiff would have still suffered the injury, the defendant has not "caused" the plaintiff's injury. Put simply, "but for" the defendant's negligent act, the injury would not have occurred.<sup>10</sup> The substantial factor test applies if the plaintiff sustains injury as the result of the negligent conduct of two tortfeasors, and it appears that the conduct of either one would have been sufficient to cause the injury.<sup>11</sup> Both are liable if each of their acts was a "substantial factor" in causing the injury. Lastly, the plaintiff can prove causation via the concurrent causes test, where the separate negligent acts of the defendant and other third parties concur to cause a single injury and it appears that the plaintiff would not have been injured but for the combination of the defendant and other parties' negligent acts.<sup>12</sup>

The experts at Burrage's trial were unable to say whether Banka's death would still have occurred had Banka not taken the heroin and had only taken the oxycodone and marijuana.<sup>13</sup> Thus, the "but for" test fails. The experts also were unable to say the heroin was a "substantial factor" in the death; only that the heroin was a "contributing factor."<sup>14</sup> Thus, the

substantial factor test fails. However, because the heroin use, in combination with other drugs, caused the death, it is likely actual causation was met under the concurrent causes test.

However, the Court refused to apply the concurrent causes test in a criminal law context, stating "as of 1984, 'no judicial opinion ha[d] approved th[at] formulation.'"<sup>15</sup> Justice Scalia wrote that "we cannot give the [statutory] text ['resulted from'] a meaning that is different from its ordinary, accepted meaning," and that, therefore, the acceptable criminal causation test is the "but for" test, which was not met in Burrage's case.<sup>16</sup> The Court also found the substantial factor test was not met, as the defendant was "not an independently sufficient cause of the victim's death."<sup>17</sup> Therefore, the victim's death did not "result from" the heroin he purchased from Burrage, and the 20-year mandatory minimum did not apply.

Post-*Burrage*, the greatest distinction in the actual causation standards used in tort and criminal law is that under the "but for" test in the criminal context, the defendant's act must be a *substantial factor* in bringing about the result.<sup>18</sup> Also, the concurrent causes test, as applied in tort law, should not be used in a criminal context. However, in any multiple drug overdose scenario, will experts ever be able to testify which drugs were a substantial factor and which were *de minimis*? As Justice Scalia wrote:

Is it sufficient that use of a drug made the victim's death 50 percent more likely? Fifteen percent? Five? Who knows. Uncertainty of that kind cannot be squared with the beyond-a-reasonable-doubt standard applicable in criminal trials or with the need to express criminal laws in terms ordinary persons can comprehend.<sup>19</sup>

The Court ruled on actual causation grounds and did not discuss the second prong of the causation analysis: proximate cause. Proximate cause is a policy decision. It is a judicially created tool used to limit an individual's responsibility to the logical consequences of their actions.<sup>20</sup> Should all drug dealers inherently know that a foreseeable result of their selling drugs is that their customers could possibly overdose and die? Should all drug dealers who are unlucky enough to have their customers die after consuming their drugs be held accountable under the "resulted from" enhancement provision?

In Superior, Colorado, Brittney Chambers celebrated her 16th birthday by taking one tablet of ecstasy with three friends.<sup>21</sup> Within 90 minutes, she was taken to the hospital, and six days later, she died.<sup>22</sup> Should Brittney's drug supplier be charged with the "resulted from" enhancement? It is clear in that scenario the death resulted from that one tablet. If only Brittney had mixed that ecstasy with other drugs – wouldn't that have affected the causation analysis? Or should the enhancement never apply, as each drug dealer is unaware of each customer's particular tolerance level and the particular drugs' level of purity? Perhaps the enhancement should apply only to those dealers who create a bad batch, are aware that the drugs are toxic, and sell them knowing the consequences. This scenario is much more in line with murder than selling and distributing dangerous substances.

These issues will not be solved today. One thing is clear: experts witnesses must be certain when testifying that a particular drug found in

(Continued on Page 14)



## LEGALLY WEIRD

By: **Latisha J. Stubblefield**

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

**Oh Grandma, what big eyes you have!** In September 2012, a committee of 16 residents at the East Neck Nursing and Rehabilitation Center in Babylon, New York held a meeting to decide on events and activities for the senior residents. This “fun times” committee decided that they needed to liven things up, so they used their own money to pay for a stripper show to come to the nursing home. That’s right -- strippers at the nursing home. Bernice Youngblood, who suffers from dementia, was a captivated spectator at the event. Her son, Franklin Youngblood, was less excited when he learned of the event by seeing a photo of his 85-year-old mother stuffing cash into one of the male stripper’s quite tighty whiteys (see below – that’s Bernice). Her son filed suit on Bernice’s behalf against the nursing home alleging that the event caused emotional distress to his mother. The suit claimed that Bernice was “placed in apprehension of imminent, offensive, physical harm, as she was confused and bewildered as to why a muscular, almost nude man was approaching her and placing his body and limbs, over [her].” Well played, Bernice, well played. It seems that the son was more traumatized and emotionally distressed at seeing his mother oogling the scantily clad male stripper. I’d venture to guess that, if given the opportunity, Bernice would donate her money to the next strippers-for-a-cause event in a heartbeat.



**Murder He Wrote.** Jeffrey Lee Chapman, a Kansas man, is facing trial on first-degree murder charges for the 2011 murder of a man whose body was found by hunters. Chapman would like to take advantage of the whole bedrock of “innocent until proven guilty,” except for the regrettable label he is sporting around the neck. He has a giant mirror-image “MURDER” tattoo around his neck. Talk about being pigeonholed. I’m sure he’s wishing he had just gone with the butterfly tattoo instead – always a safer option. His attorneys filed a pretrial motion asking the court to allow a tattoo artist to either remove or cover up the tattoo prior to trial. His attorneys made the rather obvious argument that the tattoo could be “extremely prejudicial” to Chapman’s defense. While prosecutors do not oppose the motion, the local sheriff has kindly pointed out that Kansas tattoo artists are not allowed to practice outside licensed tattoo parlors, and he will oppose any request to transport Chapman to a tattoo parlor. Sounds like Chapman needs to invest in some turtle-necks. ASAP.

## COMPARING THE CAUSATION ANALYSIS IN CRIMINAL LAW AND TORTS

(Continued from Page 13)

a victim’s system was a *substantial factor* in bringing about the death.<sup>23</sup> And the next time the causation analysis in criminal law becomes blurred and uncertain, we can always breathe a sigh of relief that a tort law treatise filled with detailed causation analysis and hypotheticals is just a bookshelf away.

<sup>1</sup> 134 S. Ct. 881 (2014).

<sup>2</sup> *Id.* at 883.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 885-86.

<sup>6</sup> *Id.* at 886.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> DAN DOBBS, ET AL, PROSSER AND KEETON ON TORTS 265-66 (5th ed. 2004).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 267-68.

<sup>12</sup> *Id.* at 268-69.

<sup>13</sup> *Burridge*, 134 S. Ct. at 886.

<sup>14</sup> *Id.* at 885-86.

<sup>15</sup> *Id.* at 890.

<sup>16</sup> *Id.* at 891.

<sup>17</sup> *Id.* at 892.

<sup>18</sup> WAYNE LAFAYE, CRIMINAL LAW 353-55 (5th ed. 2010).

<sup>19</sup> *Burridge*, 134 S. Ct. at 892.

<sup>20</sup> DOBBS, ET AL, *supra* note 9, at 272-74.

<sup>21</sup> Sean Kelly & Marilyn Robinson, *Ecstasy, Water Killed Teen*, DENVER POST (Feb. 10, 2001), available at <http://extras.denverpost.com/news/news0210.htm>.

<sup>22</sup> *Id.*

<sup>23</sup> See *State v. Pack*, 421 S.W.3d 629, 642 (Tenn. Crim. App. 2013) (“Surely, when the defendant’s liberty is at stake and the State is required to prove beyond a reasonable doubt that the defendant’s act in providing the victim with a Schedule I or II controlled substance was the proximate cause of the victim’s death, the State ordinarily must prove the cause in fact of the victim’s death via expert testimony.”).

### Knoxville Bar Association & Knoxville Barristers Annual Charity Lawyers Link Up

## Golf Tournament

Friday, September 12, 2014  
Avalon Landmark Golf Club

Tee Times:  
11:30 a.m. - 12:30 p.m.  
Registration, Practice Range Privileges  
& Box Lunch

1:00 p.m.  
Shotgun Start

The Barristers and the Knoxville Bar Association are joining forces to co-host the annual four-person golf scramble. The entry fee of \$100 per player includes green fees, cart, range balls, box lunch, a commemorative tournament gift, 2 tickets for beverages during the tournament, great prizes, and a delicious cook-out following the tournament. All entries & payments must be received by August 22.

The proceeds will benefit the various charitable endeavors of the Knoxville Barristers.

Save 10% by registering before August 1st.  
Discounted rate available for law students and attorneys licensed 5 years or less.

Following the tournament, players are invited to a BBQ dinner for the

Hole Sponsorships Available! Contact the KBA office for details on how your firm can support this charity tournament.

Participants may sign up as individuals or teams, but each team must include at least one lawyer.

Firm/Company Name: \_\_\_\_\_ Designate one contact person if registering as a team.

Team Members: \_\_\_\_\_

Entry Fee: \$100.00 per golfer or \$400.00 team

Discounted rate of \$75 offered to law students & attorneys licensed 5 years or less.

Save 10% off \$200 fee just by registering before August 1st

Team Trash Package: \$80.00 per team  
Each member of the team will receive the following:  
Voice up to the Women's tree  
A mulligan (do-over)  
A "hand or foot" wedge  
Or, you may use a golf pro to drive for you at the designated hole.

**Cancellation/Refund Policy:** Reservations canceled less than 48 hours before the tournament are subject to the penalty of the entire amount. Substitutions may be made. Please deliver or mail check and registration form to the Knoxville Bar Association Office at 505 Main Street, Suite 50, P.O. Box 2027, Knoxville TN 37901-2027. Register online at [www.knoxbar.org](http://www.knoxbar.org).

Reservation Deadline: August 22nd

Win some of our exciting deer prizes just by participating in the tournament (no special skills required).



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

# JUST FOR FUN

Two hunters are in the woods, when one of them suddenly collapses. He wasn't breathing, and his eyes looked glazed. Thinking quickly, the other guy grabs his cell phone and calls for help. He shouts at the emergency operator, "I think my friend is dead! What do I do?"

"Calm down," the operator says in a soothing voice, "I can help you. But first, we need to make sure he's dead."

The phone goes silent for a second; then the operator hears a gunshot. "OK," says the hunter, "now what?"

In 2002, the LaughLab Project was created by Professor Richard Wiseman of the University of Hertfordshire, with the sole purpose of identifying the world's funniest joke.<sup>1</sup> For a year, people from 70 countries submitted over 40,000 jokes which received over 1.5 million ratings.<sup>2</sup> The joke you just read, submitted by a 31-year-old psychiatrist from the United Kingdom, received the highest rating worldwide.<sup>3</sup> In case you were wondering, here is the funniest joke in the United States.

Two friends are playing golf one day at their local golf course. One of the guys is about to chip onto the green when he sees a long funeral procession on the road next to the course. He stops in mid-swing, takes off his gold cap, closes his eyes, and bows down in prayer. His friend says, "Wow, that is the most thoughtful and touching thing I have ever seen. You truly are a kind man." The man then replies, "Yeah, well we were married for 35 years."<sup>4</sup>

Frivolous as it may seem, the LaughLab Project, was a scientific study of the psychology of humor. What makes us laugh and what goes on in the brain when people find things funny? Brain scans taken of people listening to some of the highest rated jokes revealed that humans use certain parts of their brains (the prefrontal cortex for you technical people) when they find something funny.<sup>5</sup> People who experience damage in these parts of the brain were most likely to not have a sense of humor.<sup>6</sup> That may explain a few people I know.

Professor Wiseman hypothesized that this is because, one of the most popular elements of a joke is the surprise or punchline. Consider the following:

Two fish were in a tank. One turns to the other and says, "Do you know how to drive this?" Bazinga.

Professor Wiseman is not alone in his research. Scientists who have studied the subject of humor have formulated a number of different theories about why people find something funny.<sup>7</sup> According to Chris Robert, professor of management at the University of Missouri-Columbia, laughter can even help you be more productive at work.<sup>8</sup> Research shows that positive emotions triggered by humor decrease stress, improve performance, and enhance the ability to communicate effectively with coworkers and work together in a more efficient manner.<sup>9</sup> It also shows that the same pathways your brain uses to process humor are also used for creative thinking supporting the theory that a person who enjoys good humor is also more creative.<sup>10</sup> Plus, laughter can be very contagious, leading to a more positive workplace atmosphere.

University of Wisconsin professor Stu Robertshaw found that, after incorporating humor into the workplace in a variety of ways, companies experienced a 21 percent decrease in turnover and a 38 percent decrease in Friday absenteeism.<sup>11</sup> See. Humor makes people want to work on Fridays. Or maybe, by Friday, people just need a good laugh.

Of course, humor has its limitations. It can be distracting, and there are few things as annoying as the loud person who has to be the center of attention and who insists on standing outside your office door cracking jokes. There are limits to the kind of humor that is appropriate for the workplace, so make sure you know your audience and stay away



from subject matter that is offensive, touches sensitive issues, or constantly makes one person or group of people the butt of the jokes. That kind of joke will have the opposite effect.

Our work is serious business, but maybe incorporating a little bit of humor into your work wouldn't hurt. Remember, humor isn't just about cracking jokes. It is more about not taking yourself too seriously. That will help keep things in perspective when you or someone else makes a public faux pas. This illustrates the point.

A man walking along a road in the countryside came across a shepherd and a huge flock of sheep. The man told the shepherd, "I will bet you \$100 against one of your sheep that I can tell you the exact number in this flock." It was a big flock, so the shepherd took the bet.

"973" said the man. The shepherd was astonished, because that was exactly right. The shepherd said, "OK, I'm a man of my word, take an animal." The man picked one up and began to walk away.

"Wait," cried the shepherd, "Let me have a chance to get even. Double or nothing that I can guess your exact occupation." The man replied, "Sure."

"You are an economist for a government think tank," said the shepherd. "Amazing!" responded the man. "You are exactly right! But tell me, how did you deduce that?"

"Well," said the shepherd, "put down my dog, and I will tell you." Smile.

<sup>1</sup> You can read more about the LaughLab Project and Professor Wiseman's research at the following website: [www.richardwiseman.com/laughlab/home.html](http://www.richardwiseman.com/laughlab/home.html).

<sup>2</sup> Richard Wiseman, *LaughLab*, <http://www.richardwiseman.com/LaughLab/introduction.html>, last visited May 8, 2014.

<sup>3</sup> Richard Wiseman, *LaughLab*, <http://www.richardwiseman.com/LaughLab/winner.html>, last visited May 8, 2014.

<sup>4</sup> *Id.*

<sup>5</sup> Richard Wiseman, *LaughLab*, <http://www.richardwiseman.com/LaughLab/brain.html>, last visited May 8, 2014.

<sup>6</sup> *Id.*

<sup>7</sup> For more information about the different scientific theories related to humor, see Marshall Brain's article, *How Laughter Works* (Apr. 1, 2000), available at <http://science.howstuffworks.com/life/laughter5.htm>.

<sup>8</sup> Karen E. Klein, *Humor in the Workplace* (Nov. 5, 2007), available at <http://www.businessweek.com/stories/2007-11-05/humor-in-the-workplacebusinessweek-business-news-stock-market-and-financial-advice>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Randy Erickson, *Humor in the Workplace* (May 1995), available at <http://www.drhumor.com/workplace>.

<sup>12</sup> James Arendt, *Some of the Funniest Stories and Jokes I've Ever Read!*, [http://www.kt70.com/~jamesjpn/humor.shtml#Shepherd\\_economist](http://www.kt70.com/~jamesjpn/humor.shtml#Shepherd_economist) (last visited May 8, 2014).



# GLASS HALF FULL: AMERICA'S LAWYER CRISIS AND ITS UPSIDE

America legal practice remained remarkably unchanged over the last 100 years. Legal practice has changed in tools (computers notably) and in scope (today's large American law firms are without historical parallel), but not in kind. The same basic product is being sold and the same basic service is being performed. The practice of law is notoriously resistant to change and law schools have likewise remained largely the same over the last century.

No one dodges the reaper forever. The industrial revolution brought mass production to manufacturing and the information revolution has seen knowledge workers replaced by computers. In multiple areas of the economy computers now handle work once done on an individualized basis by highly paid professionals.

The pattern for these changes began in the industrial revolution and continued in the information revolution. Bespoke work done by individuals for other individuals is replaced by standardized and then commoditized products, mass produced, and much cheaper. The total number of people needed to create the good goes down, as does the average wage earned by those in the industry. The few at the top, who control the process or design the product, however, make much more than any single provider of customized services ever could.

This has contributed to what economists Robert Frank and Philip Cook call "the winner-take-all society." The individuals who own the computer processes that replace individual humans become very wealthy. The same is the case with the professionals who can do the work that is too complicated or important to outsource or computerize. Those individuals will be in high demand and also make an excellent living. The humans who used to do the work that has been computerized or outsourced are stuck competing in a fiercely competitive market, and earn much less. Growing income inequality reflects this phenomenon. The middle of various industries is being destroyed, leaving only a small top and a large bottom.

I have written a book (due out in 2015) that explains how these changes have come to the American legal profession. In homage to the late Larry Ribstein's seminal piece, *The Death of BigLaw*,<sup>1</sup> these trends are called the

four "deaths:" death from above, death from below, death from the state, and death from the side.

"Death from above" assesses the challenges facing Big Law (the large and highly lucrative American law firms that serve corporate clients). Big Law has grown exponentially in size and profits since 1980. Some of the strategies that fueled that run are killing (or at least injuring) the goose that laid the golden egg. Big Law was built on "reputational bonding."<sup>2</sup> Clients seek out large corporate law firms because these firms have presumably done the work to select the most able lawyers for the most complicated work. Over time Big Law has been mortgaging its reputational capital and its firm cultures in the relentless pursuit of increased profits per partner and size. Law firms have increased leverage (the ratio between partners and associates), aggressively pursued lateral hiring, and raised hourly rates and hourly billing targets. These have been very successful short-term strategies, but are corrosive long term.

Corporate clients have responded to the higher prices by pressing for fixed price billing and using insourcing, outsourcing, and computerization for more straightforward legal work. Paradoxically, they have continued to pay more for true "bet the company" transactional and litigation work. This is consistent with the winner-take-all economy: the most profitable firms and most in demand lawyers get richer doing the truly specialized work and everyone else falls backwards towards the pack.

"Death from below" uses Clayton Christensen's theory of disruptive technologies to describe how computerization is replacing bread and butter legal work. *LegalZoom*, *Rocketlawyer*, and others are horning in on traditional areas of practice like drafting incorporation papers and wills. Websites offering free or very inexpensive legal advice have also proliferated. So far, these websites and virtual law firms have largely avoided prosecution for the unauthorized practice of law ("UPL"), and some, like *LegalZoom*, have grown so large and prevalent that the time to quietly nip them in the bud has passed.

Computerization will not replace in-court work anytime soon, however, because that is the area most jealously protected by judges and lawyers. Just like Big Law, there will always be

some "bet the family/small business" cases that require expensive and individualized representation. As in Big Law, there is already ferocious competition over these cases and there is not enough of that work to support the current number of lawyers.

"Death from the state" describes the ways that courts and legislatures have reined in litigation since the 1980s. Tort reform and limitations on class actions, damages, and lawyer's fees have proliferated. These changes have chased non-specialists from the market and consolidated the remaining work into a smaller group of lawyers. This trend has also hit the defense bar. Because tort or class action cases are worth less and the downside risk is often capped, defendants and insurance companies are less interested in rolling up bills litigating, and plaintiffs are more likely to settle.

"Death from the side" analyzes the thirty-year decline in small firm and solo practitioner earnings. Recent coverage of the legal profession describes the employment market collapsing since 2008. That year does mark the start of Big Law's struggles (the portion of the legal market generally covered by the press), but the majority of American lawyers who work in small firms or as solo practitioners have faced grim prospects since the mid-1980s. Between then and now solo practitioners have seen a 37% decline in real income. According to I.R.S. data drawn from actual tax returns, the average solo practitioner earned \$46,560 in 2010.

Why? There are too many lawyers and too many law grads. A comparison of the number of JD holders, the number of licensed lawyers (not all of whom work as a lawyer), and the Bureau of Labor Statistics ("BLS") estimate for the actual number of lawyers shows that there are many more JD holders than there are persons employed as lawyers, and there have been since the 1980s. If you use the BLS count of lawyers, almost half of the individuals who earned a JD in the last 40 years are not currently working as a lawyer. The NALP data over the same period demonstrates that roughly 1 in 3 law school graduates were unable to find work that required a JD post-graduation.

But if underemployment is such a problem for lawyers, why are legal services often too expensive for middle and low income Americans? If there is an oversupply of JDs



By: Benjamin H. Barton

U.T. College of Law



why has it not solved America's access to justice problem? The answer is that lawyers at the low end of the market earn so little that it makes more sense to leave the profession and take another job suitable for a college educated adult than to charge even less for individualized legal services. When the average salary of a solo practitioner is \$46,500 it is easy to imagine that many JD holders would rather work as an insurance adjuster or run their own business than scrape by as a lawyer.<sup>3</sup>

Things sound grim, no? But remember that consumers are obvious beneficiaries of these changes. Whatever else is coming in the future, it seems likely that legal services will be more widely available to more people and businesses at lower prices. This trend starts at the top with corporate law firms and bubbles up from the bottom with LegalZoom and other forms providers. Lawyers and legal fees are what economists call "transaction costs." When transaction costs fall, more transactions occur, and goods and services are more likely to end up with their highest value users. The benefits will be especially marked for the poor and middle class. Most middle and low income Americans cannot afford to hire a lawyer. This means that many Americans cannot afford to have a will or get divorced or change child custody arrangements or defend themselves in eviction/foreclosure proceedings.<sup>4</sup>

Fortunately, between technology, outsourcing, the flood of new law graduates, and the displaced lawyers now willing/forced to work for lower salaries, customers will suddenly (and for the first time in recent history) be paying much less for legal services. If you have enjoyed the digital revolution in music and photography, you will likewise enjoy the legal market in ten to twenty years. Legal services will be cheaper, more accessible, AND better. That is bad for lawyers in the same way digital photography was bad for Kodak. It is outstanding news for the country as a whole.

After a wrenching period of change the profession itself will be improved. The profession will benefit greatly if fewer law students enter law school, and if those that do arrive with a more realistic of what lawyers do and what lawyers earn. Fewer law students also mean less competition for the remaining jobs.

The actual job of being a lawyer will also improve. The best of times for Big Law profits has been the worst of times for the lawyers themselves. Big Law has led a boom in both remuneration and misery. The changes ahead will slow or even shrink some portions of Big Law. They will also force "alternative billing" for many projects, encouraging creativity and efficiency rather than the grind of maximizing

hourly billing. Much of the less interesting work will be computerized or outsourced, leaving only the most challenging work. Competition from virtual law firms will allow creative lawyers flexibility in the terms and conditions of their employment, allowing some lawyers to do Big Law type work on their own schedules.

At every level of the profession, entrepreneurialism will be required. Lawyers will not be able to count on hanging a shingle and serving clients who *have* to see them. Instead, the lawyers who thrive will be the lawyers who can demonstrate the value of their insight and services. This will be hard, but satisfying for the lawyers who make it.

It will be a galvanizing time for the profession and that will draw all lawyers together, putting other concerns into perspective. It seems likely that in ten years the managing partners of large and small law firms and the deans of American law schools will gather over drinks to discuss with bemusement

the rankings and other silliness that obsessed the profession during the 1990s and 2000s.

My book closes with the most basic reason for optimism. The American legal profession has faced much worse and come roaring back. There is, however, a long American tradition of lawyer creativity and entrepreneurialism. We live in a complicated world governed by extraordinarily complex legal regimes. American lawyers have long been the guides to this world. If the past is a preview, they will find ways to remain relevant and employed for as long as legal complexity remains. The Depression presented a much starker collapse in the demand for legal services and lawyer earnings, and post-World War II saw a boom for lawyers that lasted sixty years for Big Law and thirty years for the profession as a whole. Sharp-elbowed and ambitious, tomorrow's lawyers will find a way to overcome, and eventually to triumph. They have before. They will again.



<sup>1</sup> Larry E. Ribstein, *The Death of Big Law*, 2010 WISC. L. REV. 749 (2010).

<sup>2</sup> *Id.* at 753-60.

<sup>3</sup> Cf. Jacob Gershman, *More than 50% of Graduates Aren't Making a Living – Study*, WALL ST. J., April 4, 2013, <http://blogs.wsj.com/law/2013/04/04/more-than-50-of-gra>

[duates-arent-making-a-living-study/](#).

<sup>4</sup> See, e.g., Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and Pro Se Access to Justice*, 160 U. PENN. L. REV. 967 (2012) and Benjamin H. Barton, *Against Civil Gideon (and for Pro Se Court Reform)*, 62 FLA. L. REV. 1227 (2010).



## BEYOND THE FIRM

By: **Jennifer D. Evans**

*Patricia Nash Designs*

# GO FOR IT



Full disclosure: the only thing I have to compare to my “beyond the firm” experience was a summer with a small solo-practitioner in Knoxville (George Arrants, I promise you did not scare me away from the traditional practice of the law!) So aside from what I hear through friends and family who currently practice law, I really don’t know much about billing hours or representing anyone in a court of law. I am okay with that and don’t feel the need to do either of those things. However, there are moments I wish I did bill my time because sometimes I sit back at the end of the day and wonder where the day went.

I knew upon entering law school that I had no desire to practice law in the traditional sense but I was encouraged and inspired by business people who earned their law degrees and found it extremely valuable for various reasons throughout their career. I am glad I took their advice because there isn’t a day that goes by where it hasn’t proven to be valuable to me.

After law school, I landed at a non-profit where I was tasked with the challenge of ensuring our region had the workforce it needed to grow. It was a very different environment than where I had come from in the private sector, but the Knoxville Chamber was a fantastic place to work and the particular role I held required me to frequently learn about issues, weigh the pros and cons of policies and proposed solutions, and finally communicate delicate messages to policy makers, constituents, and our stakeholders. I thoroughly enjoyed that role and found that my law degree was so important in the skills that I applied but also was a signal of achievement that helped me acquire attention and respect that was so needed in the beginning of a career that demanded talking to key policy makers and business people on a daily basis.

Six years later I was ready for another challenge so I decided to re-enter the private sector and pursue a career in the fashion industry. I was somewhat already familiar with the industry as I had been exposed to my mother’s career my whole life. In fact before going to law school, I worked in China manufacturing and exporting similar products. In October of 2013, I joined my mother and her journey to grow her company by assuming my role as VP of Operations and General Counsel of Patricia Nash Designs.

Working in an international business, it is extremely fast paced and someone is always working. When we are headed for bed, our factory partners in China are in full thrust gearing up for the day. In the morning when we get up, it is too early to bother our Los Angeles warehouse partners but we can check in with our friends in Italy to see what the status is on leather we are buying. There is always something in motion and you have to constantly be thinking about the future and how we avoid obstacles that might cause delays for our customers. Nothing is black and white and there are not always precedents you can rely on to help inform your decision or protect your conclusion.

On a daily basis I am faced with problems that need analysis and require me to consider the big picture as well as the details. I have to carefully draft language in correspondence to or documents between suppliers, lenders, customers, or employees. Being the only attorney in the company, I get asked by colleagues for my “legal opinion”. This always worries me because as we all know, just because we went to law school doesn’t mean we are an expert in anything. I truly believe practice makes perfect so in my case – the case of someone who does not technically practice a particular area of law – my “legal opinion” is not what I usually provide. I would rather help them think through their problem and point them to resources for more information because those are skills I do possess and are those my law degree did instill in me.

I am also a huge supporter of seeking help from fellow attorneys. Because I do not pretend to be an expert in the law, I do not hesitate to call other counsel in specialized areas, such as intellectual property. I fully respect the professional opinions of my fellow Bar members and appreciate their thought process and expertise.

I love how I touch so many parts of the business and get to view it through the lens of an attorney. I can’t imagine what the view would be if I didn’t have the background and experience that I have. I look forward to the day when some young professional comes to my office and asks me whether a law degree is worth it if he or she doesn’t plan to practice but instead wants to run their own business someday. My answer would of course be, go for it.

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By: **Judy M. Cornett**  
*Professor U.T. College of Law*



## JUDICIAL ELECTIONS: WHAT'S ETHICS GOT TO DO WITH IT?

Two important elections affecting the judiciary of our state are coming up this year. The first is on August 7, 2014, when Tennesseans will vote to retain or not retain most of the state's appellate judges, including three of the sitting Justices of the Supreme Court. The second is on November 4, 2014, when Tennesseans will vote on a constitutional amendment changing the way appellate judges are selected.

In August, Justices Gary Wade, Sharon Lee, and Cornelia Clark will be voted up or down. (Justice Janice Holder and Justice William Koch have both announced their retirement from the Court and are therefore not on the ballot.) According to a story by Nashville's News Channel 5 posted on May 6, 2014, and available here: <http://www.newschannel5.com/story/25434821/plan-outlines-attack-on-supreme-court-justices>, an organized campaign against the three sitting Justices is being mounted by Lt. Gov. Ron Ramsey, a nonlawyer, who wishes to replace these three Democrats with Republicans. News Channel 5 also reports that money from outside Tennessee is flowing into the state to support Ramsey's effort to defeat the three Justices.

In November, Tennesseans will vote on whether to approve an amendment to the Tennessee Constitution reading as follows:

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.

This amendment is currently being promoted in an organized campaign by Gov. Haslam called "Vote Yes on 2." This amendment, which is also supported by the Tennessee Bar Association, is being promoted as the only alternative to popular election of appellate judges.

Perhaps because of these developments, the National Association of Women Judges has named Tennessee one of 8 pilot states for its "Informed Voters" project, which seeks to educate the public about the necessity of a fair and impartial judiciary. A statewide coordinating committee has been appointed, with Knoxville represented by TBA President-Elect Jason Long, Tasha Blakney, Bruce Anderson, and me. The members of the coordinating committee, along with other lawyers who have volunteered to help in the educational effort, are travelling around the state, presenting information to voters about the role of the judiciary in a democracy and the means by which citizens can best ensure that our state has a fair and impartial judiciary. If you belong to a civic, community, school, or church group who would like to hear the Informed Voters presentation, just contact one of us.

As citizens, we have the duty to get out and cast informed votes for judges. As lawyers, we have special ethical duties with respect to judicial selection. Tenn. R. Prof. Conduct 8.2 Provides as follows:

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

Comment [3] to Rule 8.2 counsels: "To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized and to responsibly speak out when necessary to prevent or rectify injustice or to promote needed improvements in the judicial system."

The upshot of Rule 8.2 is that lawyers cannot lie knowingly or with reckless disregard about the qualifications or integrity of a judge or a candidate for a judgeship. According to Nashville's News Channel 5, Lt. Gov. Ron Ramsey is touring the state with a slide presentation about the Tennessee Supreme Court. You can find the presentation here: <https://www.documentcloud.org/documents/1154361-supreme-court-presentation.html>. One of the slides is headed: "Tennessee Supreme Court: Soft on Crime." Two examples of reversals are then given to prove the "soft on crime" proposition. Of course, as a non-lawyer, Lt. Gov. Ramsey is not bound by the Rules of Professional Conduct, but would the statement "soft on crime" violate Rule 8.2? First of all, is the phrase "soft on crime" a statement about the Justices' qualifications or integrity? If so, is the statement "false or made with reckless disregard of its truth or falsity"? Arguably, the statement that the Supreme Court is "soft on crime" is an opinion and therefore neither true nor false. This may explain the rationale behind Comment [3] to Rule 8.2.

According to Comment [3], lawyers must also "defend judges and courts unjustly criticized." Many lawyers in our state are already speaking out in defense of Justices Wade, Lee, and Clark. For example, in a *Chattanooga Times Free Press* article published on May 8, 2014, both former Supreme Court Justice Mickey Barker and former Court of Appeals Judge Lew Connor criticized Ramsey's campaign, noting that the judicial branch is nonpolitical and that the three Justices under attack were recommended for retention by the Judicial Evaluation Commission.

So as we move forward into election season, remember, don't lie about judges, defend judges who are unjustly criticized, and if you would like to educate your non-lawyer friends about the importance of a fair and impartial judiciary, contact **Bruce Anderson**, **Tasha Blakney**, **Jason Long**, or me to schedule an Informed Voters Project presentation.





## WORD PLAY

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

### "Fairway"

The influence of seafaring on the British Isles cannot be understated. Yes, as the weather warms and the golf course beckons, many will be striving to sail their gold ball as straight as possible down the "fairway" and yes, the term has its origin in seafaring.

A "fairway" is a channel in a river, bay or inlet that is unobstructed and safe for passage by ships. The fairway in larger bodies of water is usually marked with buoys, as are the "hazards".

On a golfing fairway, the water and sand hazards may not be marked, but are correctly referred to as "hazards". The word "hazard", risk or danger, finds its origin with the Old French hazard, and perhaps the Spanish azar, a disappointing draw of a card or toss of the dice. Around 1548, the word is first used to refer to a chance of loss or risk of harm.

Good golfing!



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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](http://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.

### The Urban Cowboy Restoration Project (C.O.N.N.E.C.T)

**Street Address:**  
2340 Magnolia Avenue P.O. Box 6615  
Knoxville, Tennessee 37917-8240

Phone: 865-851-8005  
Fax: 865-851-8011

**Website:**  
<http://www.connectministries.net>

### Agency Description

Creates job opportunities for men re-entering from prison who are at high risk of recidivism, with support services, including life skills, job readiness, and employment training along with case management, mentoring, and counseling.

- Mentors are needed to walk alongside men who are re-entering the community.
- Partnerships welcome with churches, businesses, and other community groups.

### Service Categories

- Prisoners and Former Offenders

Pictured above is the online profile of The Urban Cowboy Restoration Project (C.O.N.N.E.C.T.). This is just one of 6 agencies listed in the category of Prisoners and Former Offenders. Agencies in this category focus on the physical and spiritual needs of those affected by incarceration.

Other agencies in this category include Amachi, Between Jobs Ministry, Good Samaritan Network, Restorative Justice, and The Next Door. Visit the Volunteer tab at [www.knoxbar.org](http://www.knoxbar.org) for more details and other categories.

## barrister bullets

### MONTHLY MEETINGS

Everyone is invited to the Barristers' monthly meetings held on the second Wednesday of every month at 5:00 p.m. at the Bistro by the Bijou (807 South Gay Street). The next meeting will be held on June 11, 2014. There are many opportunities to get involved, so please contact Barristers President **Jay Moneyhun** at [jmoneyhun@bassberry.com](mailto:jmoneyhun@bassberry.com) or the Vice President **Taylor Williams** at [taw@painetar.com](mailto:taw@painetar.com) for more information.

### HUNGER AND POVERTY RELIEF

*Firms for Food:* The Hunger and Poverty Relief Committee is still seeking firms to volunteer one Saturday per month throughout the year to help sort and package food at Second Harvest.

*School Supplies Drive:* The Hunger and Poverty Relief Committee will be coordinating its annual School Supplies Drive from July 7-21, just in time for the upcoming school year. More details to come.

Please contact **Heather Ferguson** at [hferguson@emlaw.com](mailto:hferguson@emlaw.com) or **Samantha Parris** at [sam@bcnattorneys.us](mailto: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.

### VOLUNTEER BREAKFAST

Volunteers are needed to serve breakfast at the Volunteer Ministry Center on the fourth Thursday of every month. Volunteer Breakfast is a great way to "get your feet wet" in the Barristers because you are only committing a couple hours of your time! The committee wants to extend a special thanks to Will Kittrell and Jay Moneyhun this month for helping prepare and serve the April Breakfast. If you would like to get involved, please contact **Alan Moore** at [alanmoorej@hotmail.com](mailto:alanmoorej@hotmail.com) or **Paul Wehmeier** at [pwehmeier@adhknox.com](mailto:pwehmeier@adhknox.com). The next breakfast will be served on June 26 at 6:15 a.m.

### LAW WEEK

The School Outreach Committee would like to thank all of the volunteers that helped with the Law Week activities. Particular thanks to everyone who took time to show the Junior Judges video to elementary schools throughout the area.

### MEMBERSHIP

Save the date for the Barristers' Summer Party to be held at the home of the U.S. District Court Judge the Honorable **Pam Reeves** and City of Knoxville Law Director **Charles Swanson** in Holston Hills on Friday, July 18, 2014. Please plan to join us for good food, drink, and fun. We hope that you will plan to attend, and we extend a special invitation to summer clerks and law students. More information to follow soon.

The Barristers' monthly happy hour takes place the fourth Thursday of every month at 6:00 PM. Both KBA members and nonmembers are encouraged to attend. If you have any questions, please contact **John Rice** at [jtrice@mijs.com](mailto:jtrice@mijs.com) or **Jill Evert** at [jevart@bvblaw.com](mailto:jevart@bvblaw.com).

### BARRISTERS' GOLF TOURNAMENT

The Barristers' Annual Golf Tournament is scheduled for September 12 at Avalon Golf & Country Club. Spots for hole sponsors and beverage cart sponsors are available. Contact **Brad Craig** at [BCraig@LewisThomason.com](mailto:BCraig@LewisThomason.com) or **Adam Moore** at [adam.moore@regions.com](mailto:adam.moore@regions.com) for more information. Signups for the tournament will begin this month.

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## AROUND THE BAR

**By: Sandy Garrett**

*Chief Disciplinary Counsel*

*Board of Professional Responsibility of the Supreme Court of Tennessee*

# WHEN AN ATTORNEY BECOMES UNABLE TO CONTINUE PRACTICING LAW

Each story is different. A prominent, well-respected attorney develops dementia. With the assistance of family, friends and the Tennessee Lawyers Assistance Program, the Board of Professional Responsibility petitions the Supreme Court to place the attorney on disability inactive status. A young attorney disappears abandoning his practice. Local judges notify the Board who petitions the Supreme Court for the attorney's temporary suspension. The local bar association, with the assistance of the Board, petitions the local Chancery Court for appointment of an attorney to close the law practice.

In 2013, 145 attorneys were placed on disability inactive status, suspended, disbarred, disappeared or died. Tennessee Supreme Court Rule 9 § 28 sets forth the process requiring attorneys disbarred, suspended or recently transferred to disability inactive status to notify clients and counsel; return client files and property; refund fees and withdraw from representation. However, attorneys often do not or cannot follow these required safeguards. In those instances, judges, attorneys and family members are faced with the challenges of closing an attorney's law practice.

### Problems

When an attorney becomes unable to practice law, protecting clients' interests is paramount. Notification of clients, courts and counsel of the attorney's inability to practice is critical to ensure that duties owed to clients, the public and the legal system are protected. Client files should be collected; reviewed; and delivered to the client or the client's new counsel. Attorney bank accounts including operating accounts, trust/IOLTA accounts and other accounts must be reviewed, properly handled, and funds disbursed. Additionally, the interests of the attorney no longer able to practice should be protected to the extent possible.

### Solutions

Historically, bar associations and altruistic attorneys in small towns and big cities across this state have assisted when an attorney's practice was disrupted. Tennessee Supreme Court Rule 9 previously provided that the local presiding judge could appoint an attorney to inventory files and protect clients when an attorney was unable to continue practicing law. Beginning January 1, 2014, the Supreme Court has provided new protections and safeguards for an attorney's interrupted practice in Tennessee Supreme Court Rule 9 § 29.

New Rule 9 § 29 allows the Board of Professional Responsibility, the Tennessee Bar Association, any local bar association, any attorney or any interested person to commence a proceeding in the chancery, circuit or probate court for the appointment of a receiver attorney to close the law practice of the affected attorney who is unable to continue practicing law. Rule 9 § 29.2(a) defines an "affected attorney" as "an attorney who is licensed and engaged in the practice of law in this state and who has no partner, associate, executor or other appropriate successor or representative capable and available to continue or wind-down the attorney's law practice." A receiver attorney is the attorney appointed to close the affected attorney's practice. The receiver attorney's duties may include taking custody of and reviewing files, records, and bank accounts of the affected attorney; notifying clients, courts and counsel of their appointment; taking custody of and acting as a signatory on bank, trust

and IOLTA accounts and disbursing funds. The receiver attorney has immunity and is entitled to reasonable fees for their service.

The appointment of the receiver attorney does not create an attorney-client relationship between the receiver attorney and the affected attorney's clients; however, the attorney-client privilege does apply to all communications between the receiver attorney and the affected attorney's clients. The entry of an order appointing a receiver attorney tolls any applicable statute of limitations, deadline, time limit or return date for filing by clients of the affected attorney from the date a complaint for appointment of a receiver attorney is filed until sixty (60) days after the date of the entry of the order appointing the receiver attorney.

The Board encourages all attorneys to designate in advance a receiver or successor attorney or make other arrangements to continue, sell or close their practice. See Tenn. Sup. Ct. R. 8, RPC 1.17 and Tenn. Sup. Ct. R. 9 § 29. Additionally, an attorney should as part of their competent representation of clients, maintain an up-to-date file containing conflicts checks; calendars, client information, and bank account information.

The Board of Professional Responsibility's website has a sample Complaint for Appointment of Receiver Attorney and Order Granting Complaint for Appointment of a Receiver Attorney in addition to checklists for attorneys and individuals faced with closing a law practice.

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865-522-6522  
tchain@knoxbar.org



By: Keith H. Burroughs

*Burroughs Collins & Newcomb, PLC*

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## Legal Issues Facing Voters

It is a judicial election year, and with the recent retirement of several Knox County judges as well as a recently-confirmed effort to oust certain appellate judges for political reasons, it is more important than ever that Knoxville Bar Association members encourage our family and friends to vote. It is also very important that we make non-lawyers aware of the legal issues facing voters this summer and fall in the ballot box, as these issues will have a direct impact on our lives as lawyers and the lives of the citizens of our county.

This year Tennessee is one of eight states participating in the in the “Informed Voters -- Fair Judges” project sponsored by the National Association of Women Judges and the League of Women Voters. For Tennessee voters, the Informed Voters website (at <http://ivp.nawj.org/state/tennessee>) provides nonpartisan information about the judicial system, qualities to look for in a good judge, a list of judges who will be on the ballot this year, and a link to request a speaker about these issues. The goal of this effort is to educate voters to protect fair courts and equal justice for all by exercising an informed vote.

As many of you are aware, the KBA has created a website called “Get to Know Your Judicial Candidates” as a public service to educate Knox County voters about our local courts and the candidates running for each local judicial seat. This site, which is a section of the main KBA website at [www.knoxbar.org](http://www.knoxbar.org), has been a major project of the KBA Judicial Committee and it includes biographical information about each candidate running this year as well as other educational resources regarding the courts of Knox County and voting in general. The site includes some of the resources linked at the “Informed Voters” website as well. We have been promoting this website in print, on the radio, and on television, encouraging voters to visit the site before voting. We are also updating the site throughout the year to reflect changes in the election landscape, such as removing candidates after the primary elections are complete and adding profiles for the appellate judges in preparation for the retention elections in August.

By the time this issue of DICTA goes to press, all KBA members should already be aware of the anticipated attack on members of the Tennessee Supreme Court through a campaign coordinated by a group of politicians attempting to convince voters to vote “No” for certain judges in the August retention election. As has been reported by several media outlets, it is anticipated that more than one million dollars will be spent on this campaign from outside the state of Tennessee. Organizations outside of our state have been increasingly funding efforts to influence Tennessee elections, and this year’s judicial elections are expected to attract these organizations’ attention. Regardless of your own personal political opinions or opinions of the individual justices, hopefully we can all agree that the politicization of Tennessee judicial elections through large sums of money from outside the state is bad for our state legal system.

As attorneys we need to make the people around us aware of these efforts and the issues surrounding them. We need to tell our friends and family about the excellent reputation our appellate courts have enjoyed for decades and how our system of merit selection for appellate judges has served as a model to the rest of the country for its efficiency in selecting the most qualified candidates through the years. This conversation will also be a good occasion to inform those close to you about the history and purpose of “Tennessee Plan” and the constitutional amendment question regarding judicial elections that will

be included on the ballot in November.

It is an unfortunate fact that voter turnout is extremely low in years that do not involve “major” national elections. As attorneys we need to urge our friends and family to get out to the ballot box for these local elections, as local elections are typically going to be the elections that have the most direct impact on the lives of voters. While presidential and congressional races are the election stories that certainly receive more media attention, it will be the winners of the local elections that have more contact with the day-to-day lives of Knox Countians. KBA members need to impress this upon our friends and family and educate them on why our local (and state) judicial elections are so important. Tell them about the “Get to Know Your Judicial Candidates” website and its resources. If you endorse certain candidates, share that with the people you know and explain your reasons. We all benefit from an informed electorate.

In addition to the “Get to Know Your Judicial Candidates” website, the KBA will also be sponsoring and hosting a Judicial Candidates Forum in July. This forum will be an opportunity for the candidates to speak to the general public between the May primary election and the county general election in August. We encourage all KBA members who are available to attend this forum and hear our colleagues speak about their candidacies for the upcoming elections.

The people close to us rely upon attorneys for information about these issues. As we are the people who come in contact with local judges the most in our practice, we have a responsibility to encourage voters to exercise their right to vote and to make informed decisions in doing so. We hope you will join the KBA in this effort to educate voters in Knox County about the legal issues in this year’s county and state elections.





By: Sally A. Goade

Judicial Law Clerk, Tennessee Court of Appeals

## COMMAS AND HYPHENS ARE NOT SALT AND PEPPER

One of my responsibilities in my pre-law life was to supervise student teachers in English. I remember cringing once when I heard one of my charges (a graduate student) telling her eighth grade students that it usually worked to place the commas “where you would breathe if you were talking.” More recently, a legal writer, recognizing that her method might not be best, confessed to me that she tends to “sprinkle” commas liberally. Perhaps comma overuse always has run rampant, but lately I also have been noticing another form of punctuation abuse: hyphen madness.

This month’s column will focus both on “hyphen madness” and on one type of comma overuse: the comma placed between two verb phrases sharing the same subject. Both actually may be products of a laudable effort to streamline writing. One of George Orwell’s “rules” in his influential essay, “Politics and the English Language,” is that if “it is possible to cut a word out, always cut it out.”<sup>1</sup> One of my frequent laments after meeting a deadline is that “I didn’t have enough time to write fewer words.”

Punctuation errors can be one of the unintended consequences of an effort to streamline. You can avoid tacking on a clunky prepositional or explanatory phrase by joining two words to serve the function of an adjective, adding a hyphen, and placing your new construction before the word it is modifying. If you place your modifier after the word being described, do you still need a hyphen? No, you do not, and it is an error to use one. As for our comma usage example, you can avoid repetition of a subject by joining two verb phrases to describe your subject’s action, but do you still need a comma between the phrases? No, you do not.

### HYPHEN MADNESS

**The General Rule:** Use a hyphen to join two or more words that describe a noun they are preceding.

Examples:

- The grantor conveyed his interest in the disputed property to his then-living children.  
Explanation: “then” and “living” have been combined to describe “children,” enabling the writer to avoid adding, “who were then living.”
- During the four-month determinative period, the father failed to pay any child support.  
Explanation: “four” and “month” have been combined to describe “determinative period,” enabling the writer to avoid adding, “which lasted four months.”
- The pet-centered, in-love-with-horses-since-junior-high me was also drawn to the listing within “Peoples with Disabilities” for the Therapeutic Riding Academy of Knoxville.  
Explanation: I have to own this creation from my September 2012 DICTA article introducing KBA’s Volunteer Handbook. “[P]et” and “centered” are joined as one adjective, and those other seven words with hyphens are joined to form a second adjective, all describing “me.” The comma between the two hyphenated constructions is placed as you would any two adjectives preceding a noun. Proceed with caution, though; the effect of joining several words with hyphens to form one adjective can be a little cutesy, not to mention hard on the eyes.

**Madness:** A hyphen should NOT be used to join words in the following constructions:

- An accepted compound noun (one noun formed by two or more words)  
Examples:
  - child support order (“child support” is describing “order,” but “child support” is an accepted compound noun, so no hyphen)
  - high school student (“high school” is describing “student” but is an accepted compound noun)
 Explanation: Compound nouns are sometimes formed

with a hyphen until they become accepted, giving us an evolution such as “electronic-mail message” to “e-mail message” to “email message,” and depending on your audience, “email” as a stand-alone noun (or even verb). There are also a few words commonly used in compounds that always take a hyphen (e.g., “self” in “self-confident”).

- Noun followed by its description

Examples:

- The responsive brief is well written.  
BUT: The well-written responsive brief was persuasive.
- The defense attorney is strong willed.  
BUT: The strong-willed defense attorney battled the odds.

Explanation: You may notice that in each example with the description following the noun, an intransitive (inactive) verb connects the subject to the description, leaving no need for another connector, such as a hyphen.

- Adverb ending in “ly” and verb combined to describe a noun

Examples:

- newly acquired property (“newly” is an adverb modifying the verb “acquired,” and the two together are modifying “property”)
- timely filed appeal (“timely” is an adverb modifying the verb “filed,” and the two together are modifying “appeal”)

Explanation: Because the adverb’s function is to modify the verb, a hyphen repeats the signal of connection already given by the “ly” ending.

### SHARED SUBJECT

**The General Rule:** Do not place a comma between two elements of a compound predicate (usually two verb or adjectival phrases sharing one subject).

Example:

- Harold sprinted to the courthouse and filed the complaint two minutes before closing.  
NOT: Harold sprinted to the courthouse, and filed the complaint two minutes before closing.  
BUT WHAT IF: Harold sprinted to the courthouse, and he filed the complaint two minutes before closing.  
[Yes, now we need a comma because the subject (“Harold”) has been restated.]  
AND WHAT ABOUT: Harold sprinted to the courthouse, filed the complaint two minutes before closing, and immediately called his client.  
[Now we have a list of three verb phrases, and the commas are needed to divide the items in the list. The last comma is the somewhat controversial Oxford comma (see February 2014 “Grammar Guru” column).]

Explanation: One subject performing multiple actions will still present a simple sentence (subject-verb structure). Even though a restated subject may still represent the same actor (“Harold” and “he” above), the structure of the sentence is now compound (subject-verb, conjunction (“and”), subject-verb).

We may address more complicated compound predicates in a future column, but the basic equation is:

One Subject + Two Things = no comma between the two things

Finally, excellent readers, which lawyers really have to be, can often squeak by in their writing without analyzing the relationship between sentence structure and punctuation because they have developed a sense of what “looks right.” The sense will fool us, though, as will the pauses taken when reading aloud and the spots sprinkled with commas and hyphens like salt and pepper.

<sup>1</sup> Douglas E. Abrams, “George Orwell’s Classic Essay on Writing: The Best Style ‘Handbook’ for Lawyers and Judges.” Reprinted in the May 2014 issue of *Tennessee Bar Journal*, Vol. 50: No. 5, and originally appearing in *Precedent*, The Missouri Bar’s quarterly magazine.



By: Casey Carrigan

Associate at The McKellar Law Firm, PLLC



# Exploring the Outdoors: Suit Up!



When it comes to “suited up,” our job is not really much different than jobs requiring coveralls, scrubs, nametags, gloves, hairnets, or hardhats. Our lawyer uniform can include suit jackets, ties, cufflinks, pantyhose, heels, starched shirts, and a bar card. Likewise, weekend pursuits in the outdoors require their own uniform of sorts. Finding and acquiring the right clothes and gear can be an adventure in itself. People venture into the woods ranging from woefully underprepared to outfitted in thousands of dollars’ worth of state of the art equipment. There is a comfortable middle ground to traverse.

My early experiences with camping gear were to grab whatever could be found, scrounged, or borrowed. The family’s giant brown tent was used frequently, and set up in the living room for fun on occasion. I borrowed my mother’s Vasque hiking boots, broken in on the glaciers of Montana and the streets of Europe. My dad’s old wool sweaters made good winter base layers. I also borrowed my brother’s Boy Scout gear (backpack, sleeping roll, tin spork) that was conveniently already labeled with my last name.

I didn’t own any of my own gear until much later. Those of us who attended law school in the digital age remember the battle waged between LexisNexis and Westlaw for our loyalties. Both offered free nationwide research to get us hooked and hopefully become subscribers after graduation. Westlaw offered points for performing simple research

tasks and quizzes. As I perused the online catalog for items that could be earned and was delighted to see camping gear. I diligently logged in every day and finally accumulated enough points for my gear. I try to make at least a tenuous connection to the law when writing these articles about outdoor adventures, and sometimes this is a stretch! In this case I can say confidently that legal research earned me a tent and two sleeping bags.

Hiking, like many other sports, requires an initial investment in appropriate clothing and equipment. You can safely hike in mild-to-warm weather with a minimal amount of gear. However, when cataloguing what I like to take out on a day hike, the list becomes alarmingly long:

- Shoes. I have seen a number of people trying to hike in flip flops. Not only uncomfortable, but unsafe.
- A snack. You will torch calories on the trail, and hungry hiking is not pleasant. My favorite snack is an apple, cut in half with a pocketknife, and smeared with peanut butter.
- A whistle. To let people know you’ve fallen into a hidden crevice and would like to be pulled out.
- Water. I always bring an over-abundance. Drinking untreated mountain water can lead to stomach bugs or worse. I also bring iodine tablets in the event of an emergency.
- A camera. You never know what animal, tree, flower, or view will be around the next bend in the trail.
- A raincoat. Downpours can pop up any minute, especially in the summer.
- An extra pair of socks. These can also double as mittens.
- Trail map and compass. A hiking book with trail descriptions and elevation guides helps with navigation, and also makes the trail more interesting.
- Bear mace. Ninety-nine percent of the bears I’ve managed to see turned and ran at the first scent of human. I’m ready should this pattern change.

Add also sunscreen, bug spray, hat, first aid kit, and cell phone, and you will realize the need for a good, sturdy pack. Maybe I over-pack, but I would rather have it and not need it than vice versa.

With camping gear, like any other product or service, you will get what you pay for. When I got serious about accumulating my own gear, I slowly invested in quality mid-priced products instead of trying to buy everything all at once. There are many, many outfitters in the area to help you purchase your gear. I love to shop the end-of-the season sales at Little River Trading Company on Lamar Alexander Parkway in Maryville. Even if I can’t use it until next year, this is a great way to invest in quality gear while saving money.

There are so many great products that it is hard to single out specific brands. After all, what works for one person may not for another. I will name some current favorites, the first being my FITS™ socks. These are manufactured in Niota in the oldest operating hosiery mill in the U.S. and are cozy and sturdy. My Marmot® raincoat would probably survive a fire hose. My Suncloud© glasses turn a bright summer glare into a nice rosy gold. I now have my own pair of Vasque boots, and although the sole is currently flopping off on the left one, I will never part with them. They have been too many interesting places.





## AROUND THE COMMUNITY

**By: Debra L. House**

*Associate Director*

*Legal Aid of East Tennessee*

# AMY DILWORTH PRESENTED WITH BARRISTERS LAW & LIBERTY AWARD

At this year's Law Day Luncheon, the Knoxville Barristers presented Amy Dilworth with the Law through Liberty Award. Amy, who is a Knoxville native, is a visionary leader in the Domestic Violence community both in Knoxville and throughout Tennessee. As Executive Director of the Knoxville Family Justice Center (FJC), Amy works passionately to protect the personal, political, and civil liberties of domestic violence victims. Although Amy is committed to her work on behalf of victims and survivors, she did not initially set out on this career path.

Amy holds a Bachelor's Degree in dance education, with a focus on modern dance. While performing in a local production of *Grease* Amy heard about using music as a therapeutic tool to help those experiencing challenges in their life. Amy realized that she could use her background in dance to provide a beneficial tool to others. She saw this as an opportunity to marry her passion for dance with her calling to therapy and social justice. During an internship with the Family Crisis Center while working on her Master's Degree Amy learned about the dynamics of domestic violence and the challenges that come in working with victims as they face myriad issues working to escape their abuser. After working in several therapeutic positions in the community Amy applied to be the Program Manager at the not yet opened Knoxville Family Justice Center (FJC) in December of 2005. When Amy applied for the position, she saw it as her dream job – she would be able to use her education and her therapeutic background to work on behalf of victims of domestic violence.

Soon after starting at the FJC the then Executive Director left the program and Amy was asked to assume this leadership role at the Center. While apprehensive about this new challenge she was assured by others that she did indeed have the skill set to take on this new position, which she assumed in January of 2006. A mere four months later the Knoxville Family Justice Center held its grand opening. On that day Amy was both relieved and excited about the great opportunities that FJC presented for the Knoxville community. The FJC is a collaborative effort involving approximately 60 community partners working to meet all of the needs of victims of violence. One the many tasks for which Amy hold responsibility at the FJC is coordinating the efforts of all of these partner agencies. She is also responsible for leading the "Coordinated Community Response" (CCR) to domestic violence in Knox County. The CCR is an integral component of the operations of the FJC and others who work to end domestic violence in our community. Due in no small part to Amy's leadership within the FJC and with the CCR in Knox County Governor

Haslam has initiated efforts to spread Family Justice Centers across Tennessee. The Governor has asked Amy, her staff and her board, to lead this effort, providing the FJC with a grant to be the technical assistance provider to all newly emerging FJC's in Tennessee. Amy is currently traveling across the state supporting other new Centers and educating them on the best practices developed at the Knoxville Family Justice Center.

When Amy talks about domestic violence she describes it as a "we" issue, meaning it is an issue for all of us in the community to address.

Working to end domestic violence is not the responsibility of one segment of service providers, such as therapists, domestic violence shelters or lawyers, but is a larger problem that calls for a community approach to address. In addressing the issue Amy says that the most important aspect is to identify a voice for victims, both within the court system and in other areas where they seek help. When asked what she would like the legal community to know about this issue, Amy replied "lawyers are so needed in supporting the issue, both in the criminal and civil justice systems. Attending court is one of the biggest fears that victims have; lawyers are needed to do pro bono work, especially for those of modest means". Amy talks often about the challenges that victims face in the court system, and the fact that most victims feel that everyone else, including lawyers and judges, will believe the abuser and will never believe that this great person is capable of doing what they did to the victim. Lawyers are needed to support victims and help them gain their voice in the legal system.

One of Amy's visions for the future of the FJC is to engage in ongoing evaluation of the systems within and outside of the Center to further facilitate collaboration and work towards systemic change in the community's approach to serving victims of domestic violence and ultimately ending violence in our community. It is clear in talking with Amy that she has a genuine passion for working with victims of domestic violence and sexual assault, and perhaps as important, in working to alleviate domestic violence in our community.

Amy's work at the FJC includes daily contact with members of the legal system, from lawyers to court clerks to judges. She is well aware of the vital role that lawyers play in helping victims gain some measure of justice. There are few if any members of our community who have used the legal system and process to advance and protect personal, political and civil liberties more than Amy Dilworth. For all that Amy does for our community and to promote the cause of justice Amy has been presented with the 2014 Law through Liberty Award.



By: **Melissa C. Reinders**  
*Wagner, Myers & Sanger, P.C.*



# NEW BEGINNINGS . . . YET AGAIN

The first week of law school in 2006, I was chatting with a classmate about what we planned to with our law degrees. She said, in no uncertain terms, that her plan was to never appear in a courtroom. Her interest was business; she had absolutely no desire to perform in front of a judge.

Five years later, I heading back to Knox County and found myself in a position that put me frequently in one particular courtroom. That same classmate was there, too, at least three times a week.

In 2006, all seemed well in the legal market. Sure, there were a lot of lawyers, but we had no reason to believe that there was not plenty of room for us. Everyone who goes to law school is smart; we had been told that we could do anything that we wanted, and, up to that point, that had certainly seemed true. I would become a health lawyer, at an established firm, and do important work for doctors and big hospitals. What could go wrong?

In 2006, the world was wide open to us; by 2009, that had changed dramatically. The jobs that we expected to have our pick from simply weren't there any more, and many of us were left with no idea what to do. Some of us were lucky; I certainly was. The clerkship that I got right out of law school basically insulated me from the problems faced by my peers. Unfortunately, that year flew by, dumping me back into the job market with the class of 2010, who had things even worse.

So, we did what we could; like my court-adverse classmate, most of us abandoned plans and took what was there. More than a few hung out their own shingles; some I'm sure willingly, but many just lacked other options. Some appear to have abandoned the law entirely. I had a friend who had started his own business and seemed to be doing well, so I teamed up with him, and it was OK. It was certainly fun to work with a friend rather than a boss, and I liked being able to set my own schedule.

But work was unsteady. Many days I had nothing to do. I needed to go out and drum up business, but for a shy girl like me, trying to approach people and ask them to pay me money was a nightmare. So I jumped ship early. (My friend, by the way, is doing great now – has a full staff and offices in two cities. I'm proud of him.) I headed back to Knox County, somewhere I had never expected to live again, for a more established job.

Never mind that the job involved yet another field that I never thought that I'd work in and had never studied. Family lawyers are always needed; it paid the bills. Well, some of them. I still had to drum up business, and I was still that shy girl who hated it, but with the addition of the emotionally distressing world of divorces and child custody.

I had always planned to practice health law. Even when the recession came, even before ObamaCare, that seemed like a world that would always have high demand. The fact that I hadn't found a job in that field was disheartening. By my third year practicing in different fields, I had given up on that plan.

I started 2013 well-aware that I needed more steady work, so I New Year's resolved that I would do everything possible to drum up business, shy or not. Or, perhaps, I would get a new job. Surprisingly, just a few months into the year, the once-dry job boards suddenly lit up, and a health law position, exactly the kind that I had completely given up on, appeared. I interviewed and got it, and now here I am.

And there I was, baby lawyer again, at least in this field. Health law is a morass of ever-changing laws and regulations that even Professors King and Mutter could never have hoped to prepare someone for. I am extraordinarily jealous of those that started in this field right after law school, who learned their way around Medicare's regulatory scheme while I was dutifully trying to learn to love marital dissolution agreements. The field is so broad that there will always be something new. But I am learning, and will keep on.



## 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.



## SOLO AND SMALL FIRMS NOT GOIN' IT ALONE

By: Charles Torres and Solange McDaniel  
*Torres Law Firm, PLLC.*

# DEALING WITH FOREIGN CLIENTS

Being a small firm that practices immigration law we deal with foreign clients on a daily basis. Regardless, of what type of practice you have you most likely will or already have represented a foreign client. In 2012, the US immigrant population stood at almost 40.8 million or 13% of the total U.S. population.<sup>1</sup> With the U.S. immigration growing at such a high rate it is important that even small firms are equipped to overcome any cultural differences you might run into. The main area I see attorneys and foreign clients run into problems with is communication.

### Communication

If you have the opportunity, it can be extremely beneficial to do some light research on the client's home country so that you can better understand their frame of mind and possibly gain some insight into what type of hurdles you may run into.

With all foreign clients, it's important to explain exactly what the attorney-client privilege is and how it can protect them. Many other countries do not provide this type of privilege and it is important to explain that they can speak freely and that it is very important that they do. Also, a simple explanation of your fee structure can help avoid later confusion.

Obviously, language is the biggest hurdle to communicating with the foreign client. Depending on the number of foreign client's you have you may want to hire a bi-lingual receptionist that can translate phone messages, client letters, birth certificates, etc... Sending a letter to your client that has been translated to their native language always seems like the best way to communicate, but this usually does not work. My client's always want to hear the information directly from me and will call and show up at the office asking for the letter to be explained so be prepared for surprise visits.

When using an interpreter, the client's emotions and feelings can get lost in translation. Ask the client directly how they feel about what happened so that you don't miss anything. You can also run into problems when the words you use may mean something different in the foreign client's native language. For example, I have had many foreign clients come to me after having been ripped off by Notary Public's that advertised themselves as "Notarios". The literal translation of Notary in Spanish is Notario, however, a Notario in Mexico means something very different. A Notario is a type of legal representative that can be a mediator, issue judicial opinions, review deeds and powers of attorney, etc... Where as you know a Notary in the United States can only administer oaths, certify documents, and verify signatures. These foreign clients' belief that the Notary was a legal representative is understandable once you realize that in their country that is exactly what Notario means.

Make sure you spend plenty of time with your foreign client's explaining their legal issues in several different ways to insure that you are on the same page. Ask them what their expectations are and explain whether or not you will be able to meet those expectations. If they do not speak English you may not be able to take their calls or speak to them when they come by your office, so make sure they understand that your appointments may have to be scheduled far in advance.

If you are a female attorney you may find that some nationalities have a harder time believing that you can help them. Try not to be discouraged or take offense, this is a cultural difference that may take time to overcome. We have found that as long as you are confident and assured of your actions they will open up.

Finally, make sure you know your client's immigration status before you give them advice. A naturalized U.S. Citizen can vote in elections, but a Permanent Resident cannot vote. A naturalized citizen can plead to shoplifting charge, but an undocumented alien may become inadmissible in the future if you plead to even a misdemeanor shoplifting charge. Also, crimes of domestic violence and DUI can carry heavy penalties and prevent clients from qualifying for or keeping their immigrant or nonimmigrant visas. A Permanent Resident can also become deportable if he pleads to certain crimes. If you are representing an undocumented alien or a Permanent Resident in criminal proceedings, then please have him or her talk to an immigration attorney prior to pleading on any criminal matter. The consequences can be devastating on the alien and his or her family.

Also, in our office, a rainy day is a good day. When it rains, the construction workers and the landscaping workers cannot work, so they all come see me without appointments. I just laugh and greet them with smiles because I rely on their business to keep me going. Remember, don't bite the hand that feeds you.

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<sup>1</sup>Frequently Requested Statistics on Immigrants and Immigration in the United States,  
<http://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states> (April 28, 2014).





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.

#### SEARCHING FOR A WILL

**Thomas Gajewski** is looking for the attorney who prepared a will for his father, Leonard Gajewski (DOB: 3/11/27 DOD: 7/28/13) who was a retired administrative law judge with the Social Security. Please contact Thomas Gajewski at (818) 451-6308 if you have knowledge of this will.

#### NEW LOCAL RULES FOR KNOX COUNTY CRIMINAL COURT

The Local Rules of Knox County Criminal Court have not changed since 1989. Over the last 24 years, there have been many changes to the law and local practice. The criminal court judges have completed their revisions to the local rules and the rules will go into effect on June 1st. A copy of the rules may be found on the KBA website under the Criminal Justice Section.

#### TENNESSEE SUPREME COURT HISTORICAL SOCIETY RECEPTION

On October 17, 2014 at 6 p.m., the Tennessee Supreme Court Historical Society will host a cocktail reception at The Cordelle (45 Lindsley Avenue, Nashville, TN). Tickets can be purchased through **Linda Knight** at [lknight@gsrcm.com](mailto:lknight@gsrcm.com) or (615) 244-4994.

#### 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.

#### NEED GUIDANCE IN A SPECIFIC PRACTICE AREA?

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

#### AFFILIATED ORGANIZATION

**The Smoky Mountain Paralegal Association** has scheduled its June and July meetings at noon in the U.S. Attorney's Office. On Thursday, June 12, **Sarah C. Easter, Esq.** of The McKellar Law Firm, PLLC will be presenting the topic of Practice Tips and Ethical Pitfalls of Lawyer Marketing. On Thursday, July 10, **Vanessa Samano, Esq.** of The English Law Firm will be presenting the topic of recent updates in Family Law. Both presentations will provide one hour of CLE. A lunch buffet is available at the cost of \$12/person with reservations. Please contact **Kelley Myers, ACP** at [president@smparalegal.org](mailto:president@smparalegal.org) or (865) 974-0425 for additional information and/or lunch reservations.

#### 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](mailto:centro@centrohispano.org). Visit the Centro Hispano website at [www.centrohispano.org](http://www.centrohispano.org).

#### OFFICE SPACE AVAILABLE:

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

- Approximately 420 square feet available, space for one to two individual offices. Includes high speed Internet, utilities, and access to conference room. Free parking. Convenient Middlebrook Pike and Weisgarber location. Contact **Michael Cabage** at 539-4500.



## **WELCOME NEW MEMBERS**

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

**Chloe A. Akers**  
Akers Law LLC

**Jessica Jaye Baker**  
Lance K. Baker, Gordon Ball, PLLC

**Jack W. Bowers**

**Paige A. Coleman**

**Stephanie G. Crippen**

**Spencer Fair**  
London & Amburn, P.C.

**Timothy D. Hewitt**  
Knox County Public Defender's Office

**Christopher S. Irwin**  
Knox County Public Defender's Office

**Christopher L. Ivey**  
Sexton & Wyckoff, PLLC

**Melanie H. Jones**  
Clayton Homes

**Melissa D. Louthen**

**Richard A. McCall**  
Robertson Overbey

**Kevin S. Newton**

**Nancyjane B. Sharp**  
Sharp & Attanasio

**Brittany Vick**

**Darlene Walker**

#### Law Student Members:

**Travis L. Brasfield**

**Richard Graves**

**Nathan C. Holloway**

**Shannon J. Holt**

**Patrick K. Morrison**

**Lauren A. Mullins**



## PRO BONO PROJECT

**By: Terry Woods**  
*Project Director*

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

# Donald F. Paine Memorial Pro Bono Hall of Fame

You may think you knew Don Paine, but you might be in for some surprises when we introduce the *Donald F. Paine Memorial Pro Bono Hall of Fame* at the 2014 Pro Bono Celebration on July 29, 2014, with a tribute to Don. I hope you will join us.



Order tickets through Legal Aid of East Tennessee  
502 S. Gay Street, Suite 404  
Knoxville, TN 37902  
FAX (865) 525-1162

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### 2014 Pro Bono Celebration

July 29, 2014

The Square Room  
on Market Square

**Awards Presented by**  
Tennessee Supreme Court  
*Chief Justice Gary R. Wade*  
and  
*Justice Sharon G. Lee*

Dinner Buffet & Silent Auction  
5:30 p.m. - 6:30 p.m.

Awards & Tribute to Don Paine  
6:30 p.m. - 7:30 p.m.

Open Bar  
*Sponsored by*  
Leudeka Neely Group, P.C.

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

Roy Aaron  
Keith Alley  
Elizabeth Braden  
Beth Brady  
Kyle Carpenter  
Michael Coleman  
Wade Davies  
Gary Dupler  
Will Edwards

Carl Eshbaugh  
Heather Ferguson  
David Gall  
Albert Harb  
Kevin Hardin  
Susan H. Harmon  
Ian Hennessey  
James Hickman  
Pamela Huddleston

Reggie Keaton  
Malia Kim  
Brian Krumm  
Steven E. Marshall  
John McArthur  
Heather McCoy  
Rebecca McCoy  
Kenneth A. Miller  
Meghan Morgan

Julie Myrick  
Carolyn O'Hara  
Marshall Peterson  
Jon Reed  
Richard Rice  
Trevor Sharpe  
Derek L. Spartley  
Lauren Strange-Boston  
Lynn Tarpy

Kelli Thompson  
Andrew Trundle  
David Waite  
Troy Weston  
Felicia White  
Carlos Yunsan  
**4th Circuit Court**  
Brian A. Schott  
Danny Garland

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](mailto:TWOODS@LAET.ORG) fax (865) 525-1162

By: Jack H. (Nick) McCall



**Q:** JR, how does a Knoxville attorney find himself as a competitor on SyFy Channel's "Opposite Worlds" reality show, and what was it like?

**A:** **JAMES (JR) COOK**  
Knoxville lawyer and reality TV show competitor.

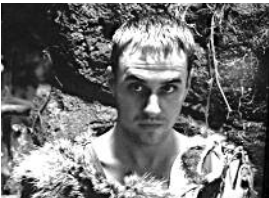


It was a great experience, but the show I ended up on was not the show I thought I was applying for! I had read on an adventure website a notice that said, "Fierce Competitor' Casting Now." "If you're a fan of 'Survivor' 'Big Brother' or a thrill seeker, apply here." I thought, "What are the odds of this happening?" and I applied. I'm a big fan of "Survivor" and reality competition shows, so I filled in the online application. Well, the network contacted me; I did several Skype interviews. Several weeks passed; then, I was notified that I was one of the finalists for a show with 14 cast members. A car picked me up in the middle of the night, and I was flown to New Orleans, near where the show was being filmed.

I had very recently got engaged before I got the call to join the show, so the timing was not necessarily the best!

After spending many days undergoing physical and psychological exams and interviewing with the network executives and show producers, I was chosen as an official contestant. Next thing I know, I begin the competition and find myself in "The Past"—a cave-like setting—and I am dressed in furs, like a prehistoric person. I was also joined by 5 other teammates. We had no idea what to expect, and now we found ourselves placed in a setting like cavemen. We spent hours trying to build a fire, and even though two members of our team were former military veterans of Iraq, and Afghanistan it was tough for them, too. The biggest surprise of all came when all of a sudden, a curtain dropped, and we realized there was a glass wall dividing the house and the other side consisted of everything futuristic including a whole another team! We now learned the premise of our show: "Opposite Worlds." One team was set in the primitive past, and the other was in the luxurious future. What a shock that was! It was like the Flintstones vs. the Jetsons!

The competition began with 12 competitors, six on each team, but as a twist, two more players entered the game. We were all individual competitors, but we were organized by teams, with only one person winning the \$100,000 grand prize. Each week, the teams would engage in a "Worldly Challenge": the winning team of that challenge would choose in which world they would "live" for the next week, either the Past or the Future. The Past—where my team was for 21 days at first—was pretty awful: it really was like living in prehistoric times, with only furs for clothing, fire for heat, and minimal food; I lost 16 pounds in three weeks.



The Future, by comparison, had everything you'd want, including a jacuzzi, tempurpedic beds, and extravagant meals. As another twist, America played a big role, week to week, as the viewers would text, call, or tweet their favorite and least favorite players of the week. My fiancé did an amazing job of rallying our friends and family together to support me! In fact, I was America's Favorite Player during week one and consistently stayed a fan favorite throughout the show. I even won a giant feast as a reward once. It



sure beat eating stale bread, carrots and an occasional piece of fruit!

On top of America voting for their favorite and least favorite players, each week, each team could "protect" a player from being eliminated, and America would vote one of these two protected players to be the "Decider." The Decider selected one player from each team to fight in a duel. The loser would be immediately eliminated from the competition. Early on, I realized the importance of avoiding the duels, which in turn avoided elimination, so I made alliances. Not only did I form an alliance with several of my own teammates, but I also formed an alliance with someone from the opposing team. He would occasionally throw me food over the glass wall and we would discuss strategy for eliminating the other contestants.

After 21 straight days in the Past, my team won a Worldly Challenge and switched worlds to the Future, which was amazing! Unfortunately, we lost the next Worldly Challenge and were sent back to the Past.

We were almost at our breaking point—when the polar vortex hit Louisiana, it was freezing cold; however, when it was hot, we were covered by mosquitoes—so that week in the Future helped us greatly with morale and regaining some strength, but going back to the past was tough since we knew what we faced.

Ultimately, I made it all the way to the finale of "Opposite Worlds," and I placed second. The winner, who won \$100,000, was a huge beast of a guy from the New York Fire Department, six feet, three inches, 270 pounds.

The creator of "Opposite Worlds," J.D. Roth, was behind "The Biggest Loser" and several other hit reality shows. The show debuted as the number one show world wide and was the most tweeted about TV Show. Some people recognize me on the street, and most say, "Hey, you were on "Opposite Worlds;" you're a good guy!" but some maybe didn't like my strategic game play.

I think I can say that my lawyering skills actually stood me in good stead and helped me further myself in the game. I was one of the smallest male competitors, and while I was confident in my physical skills, I knew I had to use strategic thinking as well if I wanted to make it to the end. In part, those skills involved being able to make solid, convincing arguments to win over my teammates. That turned out to be crucial to my game, and helped me make alliances. While all of the contestants were "fierce competitors" during the show, many of us left the show friends and continue to keep in touch.



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





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- All non-member attendees will receive 50% off room rental <sup>†</sup>

**For more information, contact Jennifer Colón at  
865.522.4653 ext. 105 or [membership@gettysvuecc.com](mailto:membership@gettysvuecc.com)**



\*Memberships are limited and subject to availability. Members who resign their membership prior to the two year anniversary will be required to pay the full membership deposit. Offer subject to change or revocation at anytime without notice. Offer expires 05/31/2014. All rights reserved. \*\*No purchase necessary and need not be present for raffle drawing. \*\*\*All tee times must be scheduled with Membership Director at (865) 522-4653, ext. 105 and used within 90 days of Open House. Events with free or discounted room rental must be booked within 90 days of open house with Catering Director at (865) 522-4653, ext. 101. Minimums may apply. Other restrictions and conditions may apply. All rights reserved.



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