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Spring January, 2015

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Akram Faizer



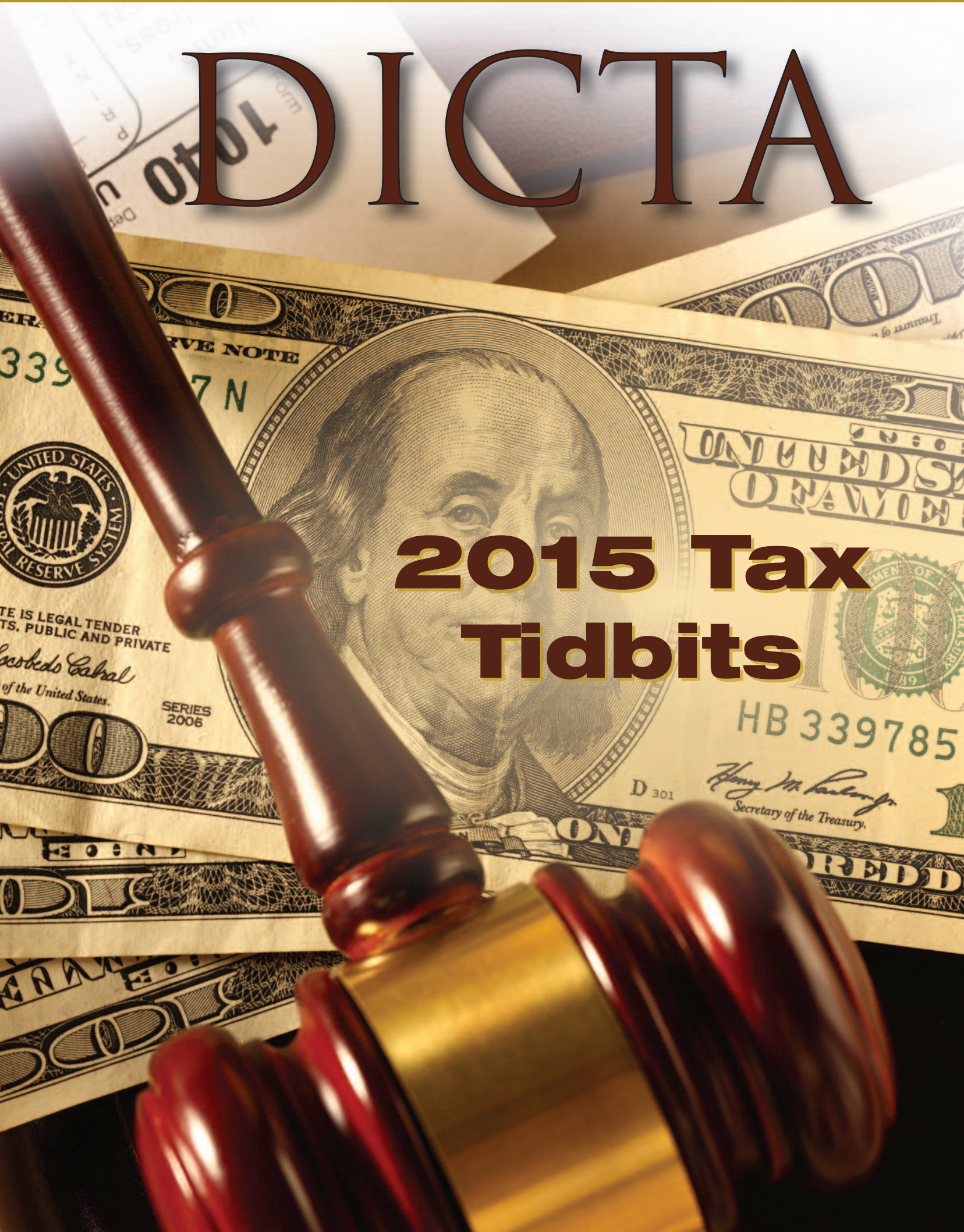
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DICTA

2015 Tax Tidbits





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17

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

Bankruptcy Law Section

The Bankruptcy Section will plan to meet quarterly in 2015. To have your name added to the section list, please contact the KBA office at 522-6522. If you have program topic or speaker suggestions, please contact the Section Chairs **Tom Dickenson** (292-2307) or **Cindy Lawson** (938-0733).

Corporate Counsel

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

Criminal Justice

The KBA Criminal Justice Section represents all attorneys and judges who participate in the criminal justice system in Knox County. To have your name added to the section list, please contact the KBA office at 522-6522.

Employment Law

The Employment Law Section is intended for management and plaintiffs' counsel, in addition to in-house and government attorneys. To have your name added to the section list, please contact the KBA office at 522-6522. If you would like further information, please contact the Employment Law Section co-chairs: **Howard Jackson** (hjackson@wimberlylawson.com), **Mark Travis** (mtravis@travisadr.com) and **Tim Roberto** (troberto@brownandroberto.com).

Environmental Law

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

Family Law

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

Government & Public Service

The Government & Public Service Section is open to all lawyers employed by any governmental entity, state, federal, or local, including judicial clerks and attorneys with legal service agencies. If you would like further information on the section, please contact Chairs **Leah McClanahan** (545-4260) or **Daniel Sanders** (215-2327).

Senior Lawyers

The Senior Section will meet quarterly in 2015. If you have suggestions for speakers, 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.

Event Calendar

January

- 7 Fee Dispute Committee
- 7 Solo Small Firm Section
- 7 Open Service Project
- 8 Judicial Committee Meeting
- 12 Minority Opportunities Committee
- 13 Professionalism Committee
- 14 Barristers Monthly Meeting
- 15 Lunch & Learn
- 20 Family Law Section
- 21 KBA Board of Governors
- 22 Barristers Volunteer Breakfast
- 22 Access to Justice Committee
- 26 Unmet Legal Needs of Children Committee
- 27 CLE Committee
- 29 Bar Leaders Meeting

2015 KBA Membership Dues

The KBA membership dues notice for 2015 has been mailed so if you have not received your dues notice, contact the KBA office at 522-6522. Please take a few minutes to complete this update, so that we will be able to maintain current information on each of our members. The deadline for dues is January 9.



By: **Tasha C. Blakney**
Eldridge & Blakney, P.C.



A NEW BAR YEAR: THE YEAR OF THE VOLUNTEER

Welcome to my first column as your newly-minted Knoxville Bar Association President, and I thank you sincerely for allowing me this opportunity to serve.

It's been the typical fast and furious holiday season, culminating ultimately in the professional honor of leading this very fine organization. With that in mind, there was very little on my Christmas list this year. I also haven't planned to make any grand New Year's resolutions. My entire goal this year is to make sure the KBA is in (at least) as good of a position this time next year as it is today, if not even better.

I don't say that lightly. This organization consists of one of the finest groups of volunteer lawyers I've ever seen. We work hard and we enjoy a great sense of camaraderie. It's not an exaggeration to say that this organization is the envy of many others. Every officer, board member, committee chair, section participant, member, and volunteer truly provides value to this organization.

Also, we have a top notch staff, led by the capable and dedicated **Marsha Wilson**. We are, very simply, blessed. We have a cadre of talented and collegial members and staff who are willing to roll up their sleeves and pitch in for common goals.

Just take a look at the statements submitted by the candidates hoping to be elected to your Board of Governors in December. When asked their goals for the KBA in the new year, every single candidate used words like "enhance," "continue to build," "value," "professionalism," "civility," and "collegiality." For us, these are not merely aspirational words. They are the ideals of an organization that is already achieving much and has enjoyed a legacy of outstanding leadership.

Of course, that doesn't mean that there aren't new ways to serve our members and our community. That's why this year, I have asked two exceptional lawyers with a track record of meaningful service to lead a newly formed task force to help us identify community needs and to put together service opportunities for lawyers. The Open Service Task Force (affectionately known around my office as the "Do-Gooder Task Force") will be co-chaired by **Jamie Ballinger-Holden** and **Troy Weston**, and I am pleased to report that they are already well underway in their planning endeavors.

In addition to the pro bono service we provide, lawyers perform so much good work in and around Knoxville. They don't do it for accolades or acknowledgement. They do it because they are fine people who care about the community. Some of what they do, we know about. But, much of it is done quietly, diligently, and without recognition.

The purpose of this Task Force, therefore, will be to connect lawyers who are already out there donating their time and talents to worthy endeavors with lawyers who would like to have the chance to get involved and do the same. We will gather once a month to perform a service project in the community, and I think you'll find that at least one event over the next year will strike a chord with you and what you find to be important in community service.

I'm pleased to report that through the efforts of the Task Force, along with the assistance of the **Honorable Deborah Stevens**, we have arranged our first project at the YWCA serving dinner to the residents, many of whom are victims of domestic violence. That event is now scheduled for January 7, 2015. I encourage you to read the article on page 10 in this edition of DICTA for more details about the event, and I also encourage you to join us for this or any other event that speaks to you along the course of the year. If you have ideas about future service projects, we want to hear about that too, so please call Jamie, Troy, or me with your suggestions.

In addition to our service, I plan to ensure we also have a little fun. The committee that puts the "fun" in "functions" is back again and is also already well underway making sure we have the chance to network together in new and exciting venues. Co-chairs **Carrie O'Rear** and **Mark Castleberry** have proven that they know how to throw a KBA party. I think they'll keep that tradition alive this year and will undoubtedly do us all proud.

Add to these items our quality CLE, the work of our Access to Justice Committee, our annual award-winning and ever-growing technology Expo, the tireless and charitable Barristers, our publications, our section work, and our on-going projects which provide service to our community and value to our members, and we'll have a very busy, but very fun, year.

As you know, when there's a strong foundation, building is much easier. I hope to build this year on the foundation of the many outstanding leaders of this organization who came before me including, most recently, our immediate past president **Wade Davies**, who led us skillfully and successfully through a year which saw unprecedented challenges to our judiciary. My hat is off to him and to all who came before him. I am honored to follow in your collective steps.

As for me, I know I won't always get it right, but you can be sure I will always try. I hope you will tell me when we at the KBA get it right, but I hope you'll call if we get it wrong, too, and that you'll tell us how to do it better and how to make membership in the KBA more rewarding for you and the members of your firm.

So, keep your eye open for opportunities to enhance your participation in the Knoxville Bar. We make it better because we do it together. Thank you for the work you already do to make our legal community strong, vibrant, and collegial. And, most of all, thank you for allowing me to serve as the President of your Knoxville Bar Association.

This organization consists of one of the finest groups of volunteer lawyers I've ever seen. We work hard and we enjoy a great sense of camaraderie.



PORTRAIT OF JUDICIAL EXCELLENCE

By: Elizabeth Ford

Federal Defender Services

Don K. Ferguson

US Distric Court Historical Society

JUDGE LEON JORDAN

Excerpts from an article that appeared in the January/February 2014 edition of *The Federal Lawyer - The Magazine of the Federal Bar Association*



Senior U. S. District Judge Leon Jordan received the Knoxville Bar Association's Judicial Excellence award at the annual KBA meeting on December 12, 2014. This award recognizes judges who have given special service to the Courts and to the bar.

Close your eyes, and imagine that you are watching a movie, a courtroom thriller. The judge who sits behind the bench is tall; he is white-headed; and he has a kindly smile and treats all of those who appear before him graciously.

For those who practice in the Eastern District of Tennessee, this is not a scene produced in Hollywood. It is a frequent occurrence in the courtroom of the Honorable Leon Jordan, a working senior federal court judge who has been on the federal bench since 1988, when he was appointed by President Ronald Reagan.

At the time of his appointment, Judge Jordan was on the state bench, serving as Chancellor in Upper East Tennessee for eight years. Before his state judicial service, Judge Jordan worked for oil companies and banks and later was a partner in a law firm dealing with civil law.

Chancery Court in Tennessee does not have criminal jurisdiction, but it does have divorce jurisdiction. On one occasion during a divorce trial, Chancellor Jordan had stepped into another office while in recess, and he heard a gunshot from the direction of the courtroom. The brother-in-law of the woman seeking a divorce shot her to death in the courtroom, because he did not want her to be awarded any of his family's property. The murder caused a new era of court security in the state of Tennessee.

Judge Jordan, a life-long Republican, was nominated by President Reagan and supported by Tennessee's two Democratic senators, James Sasser and Albert Gore, Jr., to succeed U.S. District Court Judge Robert L. Taylor. The full Senate approved his nomination, and Judge Jordan was sworn in on November 15, 1988.

On his second day as a federal judge, he was assigned more than 400 civil cases. These cases included several FDIC cases that resulted from the collapse of a banking empire headed by two Union County brothers, Jake and C.H. Butcher. One of those cases, brought by the FDIC against the accounting firm Ernst & Whinney, resulted in a trial which lasted 99 days over the span of 13 months. At that point, the

parties asked for time to negotiate. Judge Jordan gave the lawyers six weeks. The case settled. This case was the longest trial in the nation that year.

Judge Jordan did not have experience handling criminal cases until he became a federal court judge, but no one would recognize this when watching him preside over a criminal trial or sentencing. Rarely has he been reversed. For Judge Jordan, the biggest challenge of handling criminal cases is sentencing, particularly having to impose mandatory minimums.

When asked of what he is most proud, Judge Jordan mentions three accomplishments. He is proud of having taken a leading role in bringing the federal and state judges closer in the state of Tennessee. In 1992, he was appointed by then-Chief Judge Gil Merritt of the Sixth Circuit Court of Appeals to a committee charged with improving the communication among state and federal judges in Tennessee.

Judge Jordan drew up the charter for the Tennessee State and Federal Judicial Conference. The Conference succeeded in bringing the judges together, sharing solutions to issues that all judges face. Unfortunately, the Conference is no longer active due to changes in the courts' leadership.

A second thing of which Judge Jordan is proud is his key role in obtaining a new federal courthouse in Knoxville. When he came to the federal bench, there was insufficient space in the U.S. Post Office and Courthouse for a second judge or a second district courtroom. [U.S. District Judge James H. Jarvis, appointed in 1984, was the other federal judge in Knoxville.]

Judge Jordan and his staff were housed in rented space across the street from the courthouse. Judge Jordan and the late U.S. District Judge Thomas Gray Hull went to Washington and made their case for a new courthouse. They were successful in obtaining approval and funding. The first bids for the new building came back way over budget, but an almost-new facility in the heart of downtown Knoxville became available at the same time--the two-square-block Whittle Communications building.

Judge Jordan and Judge Jarvis convinced the federal government's General Services Administration and the Administrative Office of the U.S. Courts to purchase the building and its custom-made furnishings for use as a federal courthouse.

The third accomplishment cherished by Judge Jordan is the part that he played in the development of the court's mediation program. In the early 1990s, the court's civil docket was growing. There were only four district judges in the district. Judge Jordan was appointed chair of a committee to determine what type of alternate dispute resolution (ADR) program would work in the district.

The committee determined that court-annexed mediation would be the most efficient method. By the summer of 1994, the first group of mediators were certified. Today, there are more than 60 mediators in the Knoxville area representing all major practice specialties.

Family is at the center of Leon Jordan's life and has always been. The youngest of seven children, he grew up on a farm near Clarksville, in Middle Tennessee. He served in the United States Army and then attended the University of Tennessee on the GI Bill for his undergraduate and law degrees.

One does not have to spend much time with Judge Jordan before learning about his "bride" of 56 years. The Judge and Dottie have traveled the world and have raised three children. They are the grandparents of two grandchildren, one of whom has performed at Carnegie Hall.

Judge Jordan plans to work as long as his health will allow.

By: Hon. Pamela L. Reeves

United States District Judge, Eastern District of Tennessee

SARAH Y. SHEPPEARD, 2014 GOVERNORS' AWARD RECIPIENT



On December 12, 2014, Knoxville lawyer Sarah Sheppard was honored by the Knoxville Bar Association when she was awarded the Governor's Award. That award is the highest honor given by the KBA. It is no surprise that Sarah was chosen for this award. If you say the name "Sarah Sheppard" out loud at any gathering of Knoxville lawyers, inevitably, several people will say, "Sarah is one of the smartest lawyers I have ever met." And it is true. Some of us learned that long before we even became lawyers. Sarah is the only one I know who could give birth to a child in her first year of law school and to another child at the end of her third year of law school and still end up graduating only 6 months late, all the while doing Law Review and graduating on the Dean's List.

Since Sarah began her legal career in 1980, she has been the epitome of what a Governor's Award winner should be. No one works harder for her clients or for the legal community as a whole, and few have achieved more recognition for their efforts.

First and foremost, Sarah is a good lawyer. One indication of her skills as a lawyer is the fact that she was certified as a civil trial specialist in 1997 by both the Tennessee Commission on Continuing Legal Education and Specialization and the National Board of Trial Advocacy.

Sarah has spent much of her legal career representing clients in high-stakes domestic matters where the parties are going through extremely traumatic personal experiences. She has handled these cases with skill and diplomacy. Additionally, she has served as mediator for numerous other complicated domestic and other civil cases since becoming a Rule 31 mediator in 1998.

Sarah has also worked tirelessly to improve the legal profession as a teacher, as a bar leader, and as a writer. She was an adjunct Trial Practice and Family Law professor at the UT College of Law from 1987-2002. Since 1991, Sarah has co-authored the Tennessee Law of Evidence with Don Paine and then Neal Cohen. She has lectured at dozens of CLEs across the state and at TBA's SKI CLE for more than a dozen years.

Lawyers across the state recognize her as a result of the Tennessee Law Institute lectures she has been giving since 1988. An evaluation

during her first year said simply "Ditch the Blonde." Fortunately, TLI did not take this advice. Sarah will be the first to admit that having to do TLI this year without Don Paine has been a challenge, but as usual, Sarah has risen to the occasion.

Looking back from the perspective of 20 years and seven female KBA presidents later, it is easy to understand why Sarah was the one to crack the glass ceiling when she became the first woman to be elected president of the KBA in 1994. One of the great things Sarah did as KBA president was to start the KBA's tradition of building a Habitat House. Those who worked on the house will tell you that Sarah was not just there for moral support. She literally climbed on the roof rafters, effectively wielding a hammer from her very own tool belt. For this and her many other accomplishments, Sarah was recognized as one of the YWCA's Women of the Year in 1993.

For many years, judges across the state have waited with bated breath at judicial conferences for Sarah to explain exactly what they meant when they wrote their decisions. From 1999 to 2008, they shuddered when it was their turn to appear before her when she chaired the Tennessee Judicial Evaluation Commission--the body that made the decision as to which appellate judges should be recommended for retention.

Being one of the original members of the Hamilton Burnett American Inn of Court and the Knoxville Bar Foundation are just two more examples of Sarah's leadership in the world of legal professionalism. She has served on so many TBA boards, committees and commissions that it would take more words than Marsha would give me to list them all. Last year, she jumped back into a leadership role as a member of the Tennessee Bar Association's Board of Governors.

Despite her massive commitments of time and energy to the practice of law, Sarah has maintained an amazing life balance. She and her husband, Ben Alford, fell head over heels in love when she was a sophomore and he was a senior at Bearden High School. They were married in 1974 and forty years later, they are still madly in love. They have two wonderful children--Jennifer Akerman, a professor at UT's College of Architecture, and Lee Alford, the Housing Development Officer for Community Housing Partners in Richmond, Virginia. Least, but certainly not least in her heart, Sarah has two adorable grandchildren, Emma and Hayden Alford.

But there is much more to Sarah Sheppard. The Good Samaritan Episcopal Church is very much a part of her life, and Sarah has served in many leadership capacities with the church, including being chair of the local vestry, providing floral arrangements for the altars on Sunday mornings, and serving as the Chancellor (chief legal officer) for the entire East Tennessee diocese. Sharing Sarah's love of all growing things, I personally consider the fact Sarah is a Certified Master Gardener to be one of her greatest accomplishments. As though she did not have enough to occupy her time, Sarah's most recent challenge has been to take up flying lessons.

The people who work with Sarah are the first to agree she has brought "distinction and honor to the legal profession" through her "enduring, faithful and distinguished service to the community." Additionally, they will tell you as will Charles Swanson, her law partner for nearly 20 years, that "while she is the greatest law partner anyone could ever have, she is an even better friend."

ETHICS BOWL Snapshots

CONGRATULATIONS TO THE WOMEN'S TEAM, THE WINNERS OF THE 2014 ETHICS BOWL!

The members of the Women's Team were: Wynne Caffey, Jamie Ballinger Holden, Rachel Hurt, Cheryl G. Rice, Debbie Poplin and Ann Short. The Men's Team included: Doug Blaze, Tom Dillard, Chris McCarty, Charles Swanson, Joey White, and John Winemiller. Special thanks go to U.T. College of Law Professors Alex Long, Paula Schaefer, and Judy Cornett for their help in preparing for the Ethics Bowl competition, Emcee Tom Jones, Timekeeper Shelly Wilson, Ask a Judge Lifeline Hon. Chuck Cerny and Ethics Panel participant Chancellor John Weaver. The CLE Committee would like to recognize the following KBA members for their help in drafting the questions used in the Ethics Bowl: Stephen Adams, Heather Anderson, Joe Jarret, Chuck Young, Greg Brown, Chuck Waller, Susan Herndon, Paula Schaefer, Judy Cornett, and Alex Long.



By: Loretta Harber

Assistant U.S. Attorney Chief, Civil Division

UNITED STATES BANKRUPTCY JUDGE SUZANNE H. BAUKNIGHT



On November 10, 2014, Suzanne H. Bauknight was sworn in as Bankruptcy Judge for the Eastern District of Tennessee, at Knoxville, succeeding Bankruptcy Judge Richard Stair, Jr. who retired on September 30, 2014. As we all know, many folks in our profession have come to the law on traditional paths, often following the legacy and fine examples of parents and grandparents who made their life's work as attorneys. Others, however, have not followed that route but rather have come to the law by a more circuitous path. Judge Bauknight falls into the latter category.

Judge Bauknight was born in Hickory, North Carolina, in 1966. Her parents provided early examples of integrity and hard work. The Judge's father, a long-distance truck driver, raised her to believe she could accomplish anything she put her mind to. He told her, "The sky is the limit if you do your best." The Judge's mother put that principle into practice when, after working many years as a telephone operator, she decided in her 50s, to become a telephone installation and repair worker. To do that, she was required to attend pole-climbing school. She was the second woman in North Carolina history to be admitted to pole-climbing school!

Judge Bauknight entered college as a music major, but left school at 18 to become a secretary. She eventually decided she wanted to complete her education, so, in 1990, at age 24, she entered the University of South Carolina. Thinking she might someday want to attend law school, Judge Bauknight became a legal secretary, thus killing two birds with one stone. She funded her undergraduate schooling and, at the same time, learned what it is like to be a lawyer. Believing she "could do what lawyers do," Judge Bauknight firmly set her sights on law school. In the midst of work and school, Judge Bauknight found time to fall in love, and, in 1991, she married Jamie Bauknight.

In 1994, Judge Bauknight graduated from USC's Honors College, magna cum laude. In 1997, she graduated magna cum laude from the USC School of Law, which she attended on full scholarship. She earned admittance to Order of the Coif and the John Belton O'Neill American Inn of Court.

After graduation, Judge Bauknight took a position clerking on the South Carolina Court of Appeals. When her clerkship ended, Judge Bauknight and Jamie decided to look for employment where they could

raise a family and satisfy their mutual passion -- motorcycle riding in the mountains. Knoxville, a city close to the winding roads of the Smoky Mountains, seemed like a good fit. Let it be known, however, that now, as parents, the Judge and Jamie place a high priority on life and limb and have permanently parked their bikes, spending their spare time raising and enjoying their two daughters Tessie (13) and Sarah (12).

In 1998, Judge Bauknight became an associate with Baker, Donelson, Bearman, Caldwell & Berkowitz. There, she focused on commercial litigation and eventually moved into employment law. In 2004, she joined the United States Attorney's Office. As an Assistant United States Attorney, she handled cases involving widely divergent areas of the law including employment discrimination, tort, environmental, collections, Bivens (constitutional torts), and, of course, bankruptcy. Two years later, she became Chief of the Civil Division. Also while with the USAO, Judge Bauknight served (and is currently serving) as President of the Hamilton Burnett American Inn of Court. In 2010, she was appointed to DOJ's Civil Chiefs' Working Group, and, from 2012-14 she served as its Chair. She also sat on the U.S. Attorney General's Advisory Committee. From 2008-14, Judge Bauknight led the KBA Government and Public Service Sector Lawyers Section as co-chair. She continues to teach at the UT College of Law as an adjunct professor.

Now, having recently taken the bench, Judge Bauknight acknowledges she has big shoes to fill. In her estimation, Judge Stair was a great student of the law; he was fair; and justice was never delayed or denied in his court. He developed a court system that ran smoothly and efficiently. Formerly, as a regular practitioner in Judge Stair's court, Judge Bauknight observed his judicial demeanor and practices, and she now hopes to "pick up and run with the fine legacy he has put into place."

The only thing Judge Bauknight is more passionate about than the law is her family. She and husband Jamie have been supportive of each other's endeavors throughout their marriage. The division of labor in their household has been somewhat unconventional in that, after Tessie's birth, Jamie chose to be a "stay-at-home" dad and has spent the majority of his time being the primary caregiver for the girls. He has worked part-time as an assistant pastor at their church, and, most recently, he has returned to college to earn a bachelor of science in ministry and leadership. The Bauknight family ministers to Knoxville's homeless on a weekly basis through the Highways and Byways Ministry, and they have visited Guatemala for several years through their church's international missions program.

When asked what kind of a judge they thought their mom would make, Tessie and Sarah gave similar answers. Tessie said her mom would be a "good and fair" judge because she is "usually" good and fair at home. Sarah said her mom would be a good judge because she is "trustworthy" and will "go completely by the rules." Responding to the same question, Jamie said, "Suzanne will be a great judge because she knows the law and she will follow it. But more than that, Suzanne is a person of the highest integrity. She will do whatever is right no matter how popular or unpopular." When asked how he knows this, he replied, "Because she does the same thing at home, no matter how unpopular her decisions might be!" These are great recommendations and observations from those who know and love Judge Bauknight best! To all you bankruptcy practitioners out there – a word to the wise!



OPEN SERVICE

By: **Jamie Ballinger-Holden**

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

COME GET LOST WITH US

This is an invitation, not an article. It is the first invitation of twelve that you will receive in the next twelve months to participate in the KBA's "Open Service" project.

Open Service is the core initiative of our new KBA President Tasha Blakney. She asked that Troy Weston and I co-chair it, and we are honored to do so. With Tasha's help, we have put together a committee to brainstorm and lead our Bar in one service project a month in 2015. Our committee members are the Honorable Greg McMillan, District Attorney General Charme Allen, Francis Lloyd, Farrell Levy, Katrina Arbogast, Maha Ayesh, and John Winemiller.

As a Bar, we talk a lot about the value of service. We particularly discuss the value of pro bono service, which is, without a doubt, a core pillar of our profession. Open Service, however, is not about providing legal services. It is about having an easy, open format in which to engage in community service as individuals, not just attorneys. For me, the quote that best sums up the spirit of this project is from a fellow lawyer who was famous for his service, Mahatma Gandhi. He said "The best way to find yourself is to lose yourself in the service of others." Indeed.

Our committee hopes that engagement with various local communities brings joy to each lawyer who participates in an Open Service event. And, we hope to engage with diverse communities in our area. For example, we plan to engage our Muslim community, our Lesbian, Gay, Bisexual, and Transgender community, and our African-American community, among others. We are also hopeful that this project improves the perception of lawyers in our community.



Lawyers are some of the hardest working people I know and are very generous with their time. It's time to showcase that. In addition, as even more of an incentive, each time you participate in an Open Service project, you will be entered in a drawing to dine with Justice Gary Wade.

Our first Open Service project is January 7th at 6:00 p.m. at the YWCA downtown. The Honorable Deborah Stevens, who is the President of the YWCA Board of Directors, has graciously agreed to be our host, and she will give us a tour of the facility. The YWCA Knoxville is dedicated to eliminating racism, empowering women and promoting peace, justice, freedom and dignity for all. Our service project for the YWCA will be to provide dinner for its 50 residents. Our dinner theme will be a "Tour of Italy," and we need volunteers to sign up to bring items for dinner, to help serve, and to assist with decorations.

Please contact me at jballinger@bakerdonselson.com or 865-549-7216 to sign-up to attend and bring an item. It is going to be a great night of fellowship at the YWCA. And, even though we are there to help the women of the YWCA, I always find they help me more. Please come get lost with us in the service of others.



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By: **Richard A. Major**
Criminal Court Clerk Chief Deputy



Q&A WITH MIKE HAMMOND CRIMINAL COURT CLERK



Mike, you often speak about technology and a twenty-first century clerk's office. What improvements in technology do you believe would be of particular interest to the bar?

I believe that our new website is perhaps the most popular and obvious technology improvement. The website contains a wide variety of useful information for each court. Most importantly, the website contains a docket search application for each court. Anyone can access a specific division or the entire docket for the criminal division of Sessions Court, Fourth Circuit Court or Criminal Court. Additionally, you can search for defendant specific information. Each separate alleged offense, docket number, court system identification number and court date are available for defendants with scheduled court appearances. Beginning just this past week, a docket search will also indicate whether or not the defendant is in custody locally. We have also replaced every computer in the offices. In response to the request of some of the Judges, I have put in motion plans to update the Criminal Court jury room with modern audiovisual equipment. We will also be installing electronic signage to better direct people to the proper courtroom.

Many people have heard you discussing the importance of real-time data entry for the criminal division of General Sessions Court. Why is it necessary to reconsider the data entry method?

Because the current process allows too great of an opportunity for error. After the Judge announces an agreed disposition, the paper warrant document is passed on to a deputy court clerk for entry into the court's database. Due to the high volume of cases in Sessions Court, the deputy clerk is not able to complete data entry in the courtroom. Often the deputy clerk must take the data entry work back to the office for completion later in the afternoon or even the next day. As many attorneys will know, the warrant document also serves as a case file and a judgment form. This multiuse documents is festooned with a wide variety of orders, dates and shorthand codes. There are multiple judgment actions, dates and Judges' signatures all on the same form. Much of the information is handwritten by a variety of individuals. Hours or days after court, the deputy clerk must correctly interpret handwriting and decipher all of this information for input into the computer database. Not surprisingly, this process lends itself to transcription errors.

How do you intend to address the problem?

We are proposing true real-time data entry. Working with our partners in the Knox County Office of Information Technology, we have spent these first few months redesigning the basic data entry systems. These software enhancements will enable a deputy clerk to enter proposed agreed disposition data into a data queue. In cases where the attorneys negotiate a plea deal, they will be able to communicate the proposal directly to a deputy clerk for entry into the queue. When the case is called, the agreed disposition data will be awaiting the Judge's decision. If the Judge approves the agreement, the proposed data will instantly populate the electronic record and the system will produce a printed judgment form. This process will ensure that both the electronic and printed record agree with one another. Additionally, the record making process will occur while all of the interested parties are still present and able to identify any discrepancies.

Accuracy is always first. Speed is good, but never at the cost of accuracy. Everything we do is oriented around a directive to focus on getting it right. We will be relentless in that focus.

What changes in General Sessions Court do you believe attorneys will appreciate?

We have literally cleaned house. When I took office, we discovered boxes of unsorted case files piled everywhere in the office. Case files were stacked in the floor outside the break room and in boxes to the ceiling in backrooms. If cases were in a file cabinet, they were often misfiled. In some cases there were overlapping numbering sequences in the same file drawer. No wonder it often took hours, days and even weeks to find case files. Our first task on day one, was to tackle the file problem. Our team rose to the occasion! Within the first month, the team sorted and filed just over five hundred boxes of case files. We transferred over two hundred thousand cases to our records management facility for safe and orderly storage. We now maintain a volume of current case files that is manageable. We have assigned a fulltime file clerk to continually sort all our active files and search for misfiled cases. We can now provide attorneys faster service locating documents, while better safeguarding their integrity.

Is there anything new in Fourth Circuit Court that might interest members of the bar?

I am particularly proud of what our people have been able to accomplish in Fourth Circuit. As many members of the bar are aware, the check in process on Order of Protection days used to be time consuming and disorganized. Working with Judge McMillan, we have been able to better organize the process. Our people now arrive thirty minutes earlier so that we can begin check in by 8:00 sharp. We open multiple lines and focus on the work of processing everyone efficiently. As a result, we usually have everyone sorted and in a courtroom well before 9:00.

What would you like the local bar to know about your priorities as Clerk?

Accuracy is always first. Speed is good but never at the cost of accuracy. Everything we do is oriented around a directive to focus on getting it right. We will be relentless in that focus. As an example, we are currently working to automate our reporting to the Department of Safety. Our reporting will occur automatically within the background of our computer system, rather than relying on a deputy clerk to complete a separate manual process. Secondly, we are customer service focused. Coming from the private sector, I find this is often missing in government. It does not matter to me why anyone is at one of my counters. Every citizen of this county is both my boss and my customer. I intend to treat them as such.



LEGAL UPDATE

By: Matthew R. Lyon

LMU-Duncan School of Law

F. Regina Koho

Tennessee Valley Authority, Office of the General Counsel

M. Akram Faizer

LMU-Duncan School of Law

UPDATE ON 2014 LEGAL UPDATE COLUMNS

Happy New Year! This month's column seeks to bring you up to date on legal events occurring subsequent to the publication of four of last year's Legal Update columns.

January: Fraud-on-the-Market Presumption in Securities Class Actions (Lyon)

The January column discussed a case pending before the U.S. Supreme Court that had the potential to revolutionize securities class action litigation. In *Halliburton v. Erica P. John Fund, Inc.*,² the Court considered whether to overturn the fraud-on-the-market presumption of reliance it had adopted twenty-five years earlier in *Basic Inc. v. Levinson*.³ The effect of *Basic* was to permit most class action plaintiffs to avoid presenting proof of direct reliance on the materially misstatement that resulted in the drop in stock price, a requirement of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5.⁴ Jettisoning the fraud-on-the-market presumption of reliance would have created a serious impediment to certifying most classes in 10b-5 suits, due to the both the commonality prerequisite⁵ and the additional requirement of predominance for damages classes.⁶

The Court, in an opinion authored by Chief Justice Roberts and released in June, settled on a middle ground. The Court determined *Halliburton* had not presented the "special justification" required to overcome the principal of *stare decisis* – which "has 'special force' in respect to statutory interpretation" because of Congress's ability to overturn or modify aspects of the Court's decision⁷ – and overturn *Basic*. The Court did, however, adopt an additional obstacle to class certification in 10b-5 cases, allowing defendants to defeat the presumption of reliance at that stage of the litigation by presenting evidence that the material misrepresentation did not actually affect the market price.⁸ Three of the Justices concurred in the result but would have overruled *Basic*.⁹

March: Litigation Financing Legislation in Tennessee (Lyon)

SB 1360 was passed by the Tennessee Senate in January to regulate the practice of third-party lawsuit funding. An amended version of the bill passed the House by a vote of 52-36 in April, was signed by the Governor, and was assigned Public Chapter No. 819. The version of the "Tennessee Litigation Financing Consumer Protection Act" that became law differs in several ways from the Senate bill described in the March column.

The law excludes from its regulatory provisions all legal services provided on a contingency fee basis, commercial tort claims under Tennessee Code Annotated section 47-9-102, and workers' compensation claims.¹⁰ It requires litigation financiers to register with the State, and mandates several conspicuous disclosures in litigation funding contracts, including a right of rescission.¹¹ The required annual fee cannot exceed more than 10% of the original amount provided to the consumer,¹² and the maximum yearly fee, calculated exclusive of the annual fee, cannot exceed 36% (up from 25% in the Senate bill described

here in March).¹³ One of the largest consumer lawsuit lending services, Oasis Legal Finance, announced it was leaving the Tennessee market as of July 1, 2014, the Act's effective date.¹⁴

August: Reasonable Accommodation in the Sixth Circuit (Koho)

In *EEOC v. Ford Motor Company*, a two-judge majority,¹⁵ over a vigorous dissent,¹⁶ held a telecommuting arrangement for employee Jane Harris was a reasonable accommodation under the Americans with Disabilities Act, despite Ford's claim that physical presence at the worksite was an essential function of her job. As predicted in the August column, the court granted rehearing en banc, which vacates the panel's opinion and "restores the case on the docket as a pending appeal."¹⁷ Arguments were heard on December 3.

Although several judges appeared sympathetic to the EEOC's position, the bulk of the questioning seemed to indicate Ford will prevail. The EEOC suggested it was Ford's burden to present an alternative telecommuting arrangement after rejecting Harris's request. Some judges did not view the ADA as requiring Ford to "bargain" in this way and thought the interactive process was satisfied by Ford's offer of a different accommodation. When asked whether Harris had a *reciprocal* interactive obligation, the EEOC conceded a jury might find Harris's rejection of Ford's alternatives unreasonable but stressed inferences must be construed in her favor.

Another topic was Harris's request itself, which one judge described as "considerably different" from her co-workers' arrangements. Although Harris requested "up to" four days a week at home, her co-workers telecommuted on specific days and agreed to come in if an emergency arose. Ford argued Harris's previously unsuccessful completion of trial flex-schedule/telecommuting arrangements should inform the analysis of whether her request was reasonable, a position some judges found appealing. At least one judge mentioned evidence in the record that physical presence was an essential function of Harris's job.

November: Tax Credits for Affordable Care Act Exchanges (Faizer)

Yogi Berra's famous statement that "[i]t's tough to make predictions, especially about the future" manifested itself once again on November 7, when the U.S. Supreme Court chose to review *King v. Burwell*.¹⁸ King is the Fourth Circuit decision upholding the IRS rule granting tax credit subsidies for health insurance policies purchased on both state and federal health care exchanges authorized by the Affordable Care Act.¹⁹

The Court's decision to review the IRS rule's legality surprised many, including the author of the November column, who thought the D.C. Circuit's vacatur of an illegality conclusion in *Halbig v. Burwell*²⁰ precluded the Supreme Court's review of the issue. That opinion removed a decisional split among the circuit courts of appeal, which is traditionally the strongest basis for the Court to grant an appeal.²¹ The fact the Court did so, notwithstanding the lack of a decisional split, likely means at least four of the Court's nine justices have concluded the

Continued on Page 13

IRS rule is illegal.²² Because only five justices are needed to invalidate the rule, this may well adumbrate such a finding.

Thank you for reading the Legal Update column, and best wishes for a peaceful and productive 2015. If you have any columns you would like to see (or even write) in 2015, please feel free to e-mail Matt Lyon at matthew.lyon@lmunet.edu.

¹ Any opinions expressed in this article are those of the author and are not attributable to the Tennessee Valley Authority.

² 134 S. Ct. 2398 (2014).

³ 485 U.S. 224 (1988).

⁴ See *Halliburton*, 134 S. Ct. at 2408; see also Adam Liptak, *New Hurdle in Investors' Class Actions*, N.Y. TIMES (June 24, 2014), at B1.

⁵ FED. R. CIV. P. 23(a)(2); see *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2550-57 (2011) (narrowly interpreting the commonality prerequisite of Rule 23(a)(2)).

⁶ FED. R. CIV. P. 23(b)(3).

⁷ *Halliburton*, 134 S. Ct. at 2411.

⁸ *Id.* at 2414-16.

⁹ *Id.* at 2417 (Thomas, J., concurring).

¹⁰ Pub. Ch. 819, § 1, codified at Tenn. Code Ann. § 47-51-102(3) (2014).

¹¹ *Id.*, codified at Tenn. Code Ann. §§ 47-51-104, -106.

¹² *Id.*, codified at Tenn. Code Ann. § 47-51-110(a).

¹³ *Id.*, codified at Tenn. Code Ann. § 47-51-110(c).

¹⁴ Andrew G. Simpson, *Litigation Financing Firm Exits Tennessee as New Law Goes into Effect*, INS. JOURNAL (July 3, 2014), available at <http://www.insurancejournal.com/news/southeast/2014/07/03/333772.htm>. For opposing perspectives on the litigation, see Moe Cain, *Tennessee Curbs Consumer Litigation Funders – Will Other States Follow?*, LEGAL FIN. JOURNAL (Aug. 11, 2014), available at <http://legalfinancejournal.com/tennessee-curbs-consumer-litigation-funders-will-other-states-follow/>.

¹⁵ 752 F.3d 634 (6th Cir. 2014).

¹⁶ *Id.* at 649, 653-54 (McKeague, J., dissenting).

¹⁷ 6TH CIR. R. 35(b).

¹⁸ ___ F.3d ___, 2014 WL 3582800 (4th Cir. 2014).

¹⁹ This is an issue because ACA section 36B limits tax credits to individuals "enrolled in through an Exchange established by the State under 1311 "and either intentionally or mistakenly omits mention of "federal" exchanges.

²⁰ ___ F.3d ___, 2014 WL 3579745 (D.C. Cir. 2014).

²¹ Supreme Court review of cases is a matter of judicial discretion; a factor to be considered is whether a circuit court "has entered a decision in conflict with the decision of another [circuit court] on the same important matter[.]" SUP. CT. R. 10.

²² By unwritten convention, it takes four of nine justices to issue a writ of certiorari and hear an appeal.



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LEGALLY WEIRD

By: **Latisha J. Stubblefield**

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

Degree of Reclinability

You'll have to admit that wheeled office chairs can be scary. Particularly the ones where you lean back one inch too far and suddenly fear for your life. I'm sure several co-workers can attest to seeing the fear of God in my eyes when I have tilted back a bit too much whilst sitting in a conference room chair. I'm graceful like that. Good news for law firms though (and all office chair owners, for that matter) - you do not have a duty to warn a client/office visitor/unwanted guest regarding the natural tendencies of office chairs. While sitting through his wife's deposition, Thomas Hickey got a little too relaxed and leaned back too far in an office chair and fell to the floor, injuring himself. Continuing his family's litigious nature, Hickey sued the law firm for his injuries. Though Hickey's expert could find no defect with the manufacturing or design of this particular office chair, Hickey argued that the law firm had an obligation to reset the chair's tilting mechanism before every use. Even assuming there was a common-law duty to adjust the chair's "degree of reclinability," the court found that the fact that Hickey had been sitting in the chair for ninety minutes prior to his fall negated it. The court found that this was sufficient time for Hickey to "learn the chair was designed to tilt and to appreciate its tension setting." Thankfully, the court agreed that there was no "duty to warn of a non-defective chair's commonplace tendencies."

And you thought there was a room in your home that needed cleaning (Warning - Don't read while eating)

This story comes from our lovely Canadian neighbors to the north. Although there is nothing lovely about this story. (See disclaimer above). This past December, Kaling Wald pled guilty in what can only be described as a sad and bizarre case. Kaling's husband, Peter Wald, 52, suffered from diabetes and his left foot had become infected; however, Peter refused to go to the hospital and remained in his bed at home, believing that God would cure him. Peter later slipped into a coma. Days later, Kaling noticed Peter's stomach bloating and signs of rigor mortis on his forehead. Instead of notifying the authorities of her husband's passing, Kaling left Peter in the bed, his body covered with two blankets and his head with a toque, and she padlocked the bedroom door. Kaling sealed the door and vents with duct tape to protect her family from the smell. She and her family who lived in the home - which included five of her six children and seven other adult friends - continued for months to pray for Peter's return. Ms. Wald eventually defaulted on the mortgage on the home. In September 2013, when the sheriff came to evict the family, he was more than shocked at what he found after asking Kaling to open the padlocked bedroom door. I'll spare you the details, but Peter was unrecognizable and the authorities confirmed that Peter had been in the room since March. Though Kaling was initially charged criminally, those charges were withdrawn and she ultimately pled guilty under the Coroner's Act for failing to notify the police or the coroner after Peter's passing. The authorities felt that Kaling was sincere in her belief that her husband would be resurrected, and there was no criminal intent in her actions. And it's probably too soon for this next commentary, but I believe "yes, someone died here" would be entirely insufficient information on the real estate disclosure for that home's next owner.



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By: Erin B. Williams
London & Amburn, P.C.



TAYLOR A. WILLIAMS

2015 BARRISTERS PRESIDENT



Taylor and I are one of those lawyer-lawyer couples, meeting in law school our 2L year. We first met while attending the same interview, competing for a summer clerkship job. Neither of us got the job, but, as it turns out, that interview worked out well for us both anyway.

Taylor grew up in South Knoxville, proudly residing in the 37920 zip code for his first 30 years. In fact, it was not until a few months ago that Taylor moved out of the 37920 zip code for the first time. Don't worry, we didn't go far – just down the road to 37919.

Growing up, Taylor attended and still attends Lake Hills Presbyterian Church. We were married there in 2009, and he has served as a church elder. For the past three years, we were the high school youth group leaders.

Avid boaters, Taylor and his family spent their summers on Norris Lake at his grandmother's cabin. He learned how to drive boats as a small child, steering while sitting on his dad's lap. He still loves driving boats and does so every chance he gets. He can parallel park a boat in one try, which I think is pretty impressive since I'm lucky to parallel park my car after five tries. Needless to say, I leave all the boat driving to him.

Taylor also loves all water sports – water skiing, kayaking, and canoeing. As a teenager, he and his brother took a week long canoe trip through the Canadian boundary waters. While I'm certainly not adventurous enough to canoe through boundary waters, Taylor did pass along his passion for watersports, and we enjoy kayaking together during the summer. Each football season you can find Taylor as a regular member of the Vol Navy, which is the perfect combination of his love for UT sports, boating, and tailgating.

Taylor is also the most tech-savvy person I know. He can fix just about any problem with any electronic device – computer hardware and software, TVs, cameras, phones – you name it and he knows how to

make it work. He puts his tech skills to good use, though, tirelessly serving as on-call tech support for family and friends.

And, on the rare occasion that his tech knowledge and lawyer skills combine, he becomes an unstoppable force. When we had been married just two months, we had exactly one couch, one chair, and one bed to our name, making our 1700 square foot condo look quite spacious. Although we didn't have a kitchen table, we naturally needed a big screen TV. As we stood there at Best Buy gazing at the entire wall of flashing televisions, Taylor launched into what I can only imagine was one of his best oral arguments to date. Right there in the TV aisle Taylor eloquently reasoned that we needed a larger size TV – only a 55 inch would do. I disagreed, arguing it would certainly be too large for our tiny living room. Citing a questionable internet article about screen size and optimal viewing distances, it was clear we couldn't buy a TV smaller than 55 inches. Unrelenting, he eventually convinced me. I won't bore you with the details, but let's just say the TV was so big and bright that sunglasses were required to watch it at night. It was promptly returned. All this to say, Taylor is an excellent and very convincing advocate for his cause (just don't let him take you TV shopping).

In 2014, Taylor and I became parents to our now six-month old son, Kenton. We are both still trying to figure out this parenting thing, but I have learned that Taylor's patience is unmatched. I'm convinced he is the actual Sandman. Night after night he is able to outlast our stubborn, screaming baby and put him soundly to sleep. I look forward to our many future parenting adventures and to learning even more about Taylor along the way.

Taylor is a committed member of the Knoxville legal community, serving as general counsel for the Knoxville Opera since 2012. He has been active in the KBA and Barristers since he was licensed in 2009. He served as a chair of the Membership Committee for three years and as Barristers Vice President this past year. He has also served as a chair of the KBA Membership Committee and on the Publications Committee. He looks forward to serving as the 2015 Barristers President and will use his role to encourage others to become involved.





Nearly every year, tax practitioners receive a smorgasbord of new and exciting tax provisions to ponder over and plan around for the upcoming year. In 2014, this did not happen - our legislators have been more focused on immigration, health care, and mid-term elections, just to name a few. As a result, there are not a lot of new tax provisions to focus upon for 2015. Nevertheless, here is a brief summary of some of the changes in the world of tax, both federal and state, that may be of interest to you.

Expiring Tax Provisions

Several important federal tax credits, deductions, and exclusions expired at the end of 2013. A sampling of some of the more popular of these provisions includes:

- 50% Bonus Depreciation
- Research Credit
- Wind Energy Credit
- ALERT TENNESSEANS – State Sales Tax Deduction
- Exclusion for Mortgage Debt Forgiveness
- Tax-free distributions from IRAs to Charity

It was a nail-biter as to whether or not these provisions would be extended for tax year 2014. However, on December 16, 2014, by a vote of 76-16, the Senate approved the extension through December 3, 2014 of these expiring tax provisions. As of the submission date of this article, the extender bill, H.R. 5771, went on to President Obama, who is expected to sign it.

Delete Your Generic Circular 230 Email Disclosures

The Internal Revenue Service (“IRS”) issued final regulations effective June 12, 2014 (Treasury Decision 9668). These regulations cover written tax advice. The highlight of these regulations is that there is now no need for generic Circular 230 disclaimer language. These disclaimers have been found at the bottom of nearly every email sent from a tax attorney or accountant for the past ten years (whether the email had anything to do with tax or not). So feel free to take those generic disclosures off your emails, effective immediately.

Other changes include:

- One standard for all written tax advice (no heightened standard for “covered opinions”). The new standard is now basically one of reasonableness. Practitioners must:
 - (1) base their advice on reasonable factual and legal assumptions;
 - (2) use reasonable efforts to get the facts and representations needed to form an opinion; and
 - (3) consider all the relevant facts that the practitioner knows or should know.
- Practitioners may now consider the likelihood of reaching a settlement (but not the likelihood of an audit) when giving written tax advice.
- There is a more stringent standard of review for a practitioner who knows or has reason to know his opinion will be used to promote or market a potentially abusive tax shelter.

Premium Tax Credit

Starting in 2014, taxpayers who buy health insurance through the Health Insurance Marketplace (the “Exchange”) may be eligible for the new Premium Tax Credit (“PTC”), as provided for in the Patient Protection and Affordable Care Act (the “ACA”). If eligible for the PTC, the taxpayer can choose to:

- * Have some or all of the PTC paid directly to the insurance carrier to reduce the taxpayer’s monthly health insurance premium; OR
- * Wait and get the PTC back as a refund when the taxpayer files his or her federal income tax return.

To qualify for the credit, household income must fall between 100 percent and 400 percent of the federal poverty line. As an example, for 2014, the income limits are as follows:

\$11,490 up to \$45,960 for one individual
 \$15,510 up to \$62,040 for a family of two
 \$23,550 up to \$94,200 for a family of four

The credit is only available for insurance purchased on the Exchange. To be eligible for the PTC, an individual must meet other requirements as well. These include:

- The individual cannot get affordable coverage through an eligible employer plan that provides minimum value.
- The individual is not eligible for coverage through a government program, like Medicaid, Medicare, CHIP or Tricare.
- The individual did not file a Married Filing Separate tax return (certain limited exceptions may apply).
- * The individual cannot be claimed as a dependent by another person.

The United States Supreme Court will hear oral arguments on *King v. Burwell* in December of 2014. At stake in this case is whether millions of taxpayers who bought their health insurance on a federal Exchange are eligible for the PTC.

If a state did not set up its own statewide insurance exchange, then a resident of that state could buy their insurance on the federal insurance exchange. Many states (including Tennessee) did not create their own state exchange.

There is a question about whether the PTC is available to individuals who bought their insurance on the federal Exchange. The ACA says that the PTC is available to individuals that purchase insurance on an “Exchange established by the State.” The IRS issued regulations that say the PTC is available to taxpayers that purchase insurance on either the federal exchange or a state exchange. The plaintiffs in the *King v. Burwell* case challenged the authority of the IRS to issue a regulation that expands the availability of the PTC beyond what is expressly stated in the ACA.

If the Supreme Court overturns this IRS regulation, then residents of states without a state exchange stand to lose their PTC. Without the PTC, residents of these states may have difficulty affording the “affordable care” offered on the federal exchange. To make a wording change in the ACA to address this problem will require the agreement of Congress. Some think that there is a slim

By: Teresa M. Klenk
Gentry, Tipton & McLemore, PC



chance of this happening, given the great divide between both parties about the ACA. Needless to say, there is a great deal of interest in how the Supreme Court will rule on this important issue.

Tennessee Tax Changes During the 2014 Legislative Session

- **Inheritance Tax.** For decedents dying in 2015, if the value of the gross estate is under \$2,000,000, the estate is not required to file a short form inheritance tax return. (Public Chapter 808). Remember that 2015 is the last year that Tennessee will have an inheritance tax. Tennessee no longer has a gift tax.
- **Professional Privilege Tax Delinquencies.** Professional privilege taxpayers that are 90 days or more delinquent on paying their professional privilege tax must now get current with these taxes before they may renew their professional license. This law does not apply in situations where delinquent taxpayers have entered into a payment plan agreement with the Department of Revenue, have requested an informal review conference, or have filed suit. Also, this law does NOT apply to attorneys. (Public Chapter 763).
- **Repeal of the "Jock Tax".** The professional privilege tax on National Hockey League players is repealed beginning for regular season games played in Tennessee after April 24, 2014. For National Basketball Association players, the professional privilege tax is repealed for regular season games played in Tennessee after June 1, 2016. (Public Chapter 760).

The "Jock Tax" was an unusual type of tax (classified as a professional privilege tax) imposed on NBA and NHL players who played games in the state. The tax rate was \$2,500 per game with an annual cap of \$7,500. NFL players were not taxed.

Many other states have a similar tax. However, Tennessee was the only state to charge the same flat rate of tax to every player regardless of the amount of salary the player received. In some instances, after paying the tax, rookie players ended up receiving no pay at all for the game played.

The other interesting feature of the tax was that the tax collected went to the operators of the arenas where the teams play. The intent was to use the tax revenue to help fund improvements to the arenas and attract large concerts and events.

The Grizzlies lobbied hard against the repeal of the "Jock Tax" but the Predators were in favor of repeal. This is likely the reason for the extended phase out for the NBA players.

- **Amendment 3 Passes.** The voters of Tennessee agreed to an amendment to Article II, Section 28 of the Constitution of Tennessee. Tennessee's constitution will now provide that the Legislature shall not levy, authorize or otherwise permit any state or local tax upon payroll or earned personal income or any state or local tax measured by payroll or earned personal income. The amendment also says that "nothing contained herein shall be construed as prohibiting any tax in effect on January 1, 2011, or adjustment of the rate of such tax." So, while a tax on payroll or earned personal income will now be unconstitutional, taxes in existence as of January 1, 2011, such as the Hall Tax, state and local sales tax, and Tennessee franchise and excise tax are expressly permitted, and the rates of these taxes may be increased.

Cheat Sheet of Important Amounts for 2015

Finally, here is a cheat-sheet of important amounts for 2015.

Federal Estate/Gift Tax Lifetime Exemption	\$5,430,000
Tennessee Inheritance Tax Exemption	\$5,000,000
Annual Exclusion for Federal Gift Tax	\$14,000
Federal Standard Income Tax Deduction	\$6,300 (singles); \$12,600 (married joint)

2015 Retirement Plan Contribution Limits:

	Under Age 50	Age 50 or Older
Traditional/Roth IRA	\$5,500	\$6,500
401(k)/403(b)/457(b)	\$18,000	\$24,000



barrister bullets

JOIN A BARRISTERS COMMITTEE IN 2015!

Please consider volunteering to serve on one of 12 Barristers Committees in 2014. Sign-up form available on the KBA website on the Barristers page.

JOIN US FOR THE FEBRUARY MEETING

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 January 14, 2015. There are many opportunities to get involved, so please contact Barristers President **Taylor Williams** for more information.

LAW SCHOOL MENTOR

The Mock Interview Program at UT College of Law will be held February 2-6. Each interview slot is for 30 minutes and we anticipate scheduling the interviews throughout the day. The mock interview typically lasts about 20 minutes, with about 5-7 minutes held to provide feedback to the students. If you would like to volunteer or have questions, learn more online or contact **Caitlyn Elam** at celam@lewisthomason.com.

MOCK TRIAL COMMITTEE SEEKS VOLUNTEERS

The annual high school mock trial competition will be held on Saturday, February 14, 2015, and Saturday, February 28, 2015, at the City-County Building. It will begin at approximately 8:00 am and last until approximately 1:00 pm. Attorneys are needed to serve as scorers and presiding judges both Saturdays – free breakfast, lunch, and snacks will be provided. To volunteer, please contact **Kathryn Ellis** at kellis@laet.org or **William Bennett** at wbennett@samlawtn.com.

VOLUNTEER BREAKFAST

Volunteers are needed to serve breakfast at the Volunteer Ministry Center on the fourth Thursday of the month. Contact **Alan Moore** at mamoore@ftb.com or **Paul Wehmeier** at pwehmeier@adhknox.com to get involved.

BARRISTER ELECTIONS

Congratulations to the Officers for the Barristers in 2015! On Wednesday, December 10, 2014 the following were elected to serve:

President: Taylor A. Williams, Paine | Bickers, LLP

Vice President: Rachel Hurt, Arnett, Draper & Hagood

Secretary/Treasurer: Samantha Parris, Burroughs Collins & Newcomb

Members-At-Large:

Ben Cunningham, Kennerly, Montgomery & Finley

Kati Goodner, Paine | Bickers, LLP

Troy Weston, Eldridge & Blakney, P.C., was presented the Barristers Presidents' Award.



Past Presidents of the Barristers pass the gavel.



New Barristers President Taylor Williams receives gavel from Jay Moneyhun.



Jay Moneyhun with Presidents' Award recipient Troy Weston.



2014 Barristers President Jay Moneyhun

By: Melissa B. Carrasco

Associate, Egerton, McAfee, Armistead & Davis, P.C.



A HISTORICAL PERSPECTIVE

In 1863, Sam Clemens was in his first full year as a newspaper editor in tiny Virginia City, Nevada.¹ He got his start writing letters to the editor of the paper, which, to Clemens' surprise, appeared in print.² According to Clemens, that fact caused his opinion of the editors to steadily decline until he was offered a job as an editor for a whopping \$25 a week.³ It was his first time writing for a living.⁴

As the editor of a small-town paper, Clemens hit the streets with notebook in hand looking for news. He found "an old hay truck dragging in from the country."⁵ That was his first story—hay on a truck.⁶ Riveting. Actually, it was, or Clemens made it riveting. He described, "I made affluent use of it . . . and got up such another sweat about hay as Virginia City had never seen in the world before."⁷

Fortunately for Clemens, and his readers, it was not long before there was a shooting in the local saloon.⁸ Clemens described the shooting "with a hungry attention to details," and his only regret was "that they had not hanged my benefactor [the shooter] on the spot, so that I could work him up."⁹

In 1863, Thomas Crapper was busy improving . . . um . . . personal sanitation.¹⁰ Although he did not invent the modern toilet, he did invent the ballcock—that wonderful floating ball that makes the toilet stop running when the handle is jiggled just right—and the "Bottom Slapper"—a spring-loaded toilet seat, designed to automatically flush the toilet, but which routinely came loose and slapped the inexperienced user when rising from the seat.¹¹ That one didn't have the same wide-spread commercial appeal as the ballcock.

Crapper is best known for bringing the toilet out of the closet, so to speak, and indoors.¹² He was the first to put bathroom supplies in a public showroom (they say the public display of the china bowls caused quite the stir in Victorian England), and his company was invited to install the indoor bathrooms at Windsor Castle and Buckingham Palace.¹³ Of course, his name now lives on as part of American slang for the porcelain fixture he worked hard to promote.¹⁴

In 1863, a forty-something, five-foot-tall woman led a band of three hundred soldiers on a raid to cut supply lines and free slaves.¹⁵ Shortly after the Civil War began, Araminta Ross joined a group of abolitionists and headed south to help slaves who escaped behind Union lines.¹⁶ This was risky business because Ross herself had escaped from slavery only thirteen years before.¹⁷ In 1862, she was commissioned by the Governor of Massachusetts to work as a cook, nurse, and eventually, spy,¹⁸ and in June 1863, she led the Combahee River expedition, guiding boats through mine-filled waters, and dodging bullets to free over 700 slaves.¹⁹ Afterward, Secretary of War Stanton stated, "This is the only military command in American history wherein a woman, black or white, led the raid and under whose inspiration it was originated and conducted."²⁰

For her three years of Civil War service, Ross was paid a total of \$200, and when she requested a military pension, she was denied even though she had the backing of the Secretary of State.²¹ Eventually, she received a pension, but only because she was the widow of another military veteran.²²

In 1863, it is unlikely that any of these three individuals realized the importance of their work. Clemens was hard at work developing a knack for turning small-town news into humorous, relatable stories. It

was during this time that Clemens first used his pen name—Mark Twain—and thirteen years later that knack had turned into *The Adventures of Tom Sawyer*.²³

Crapper was busy inventing cleaner, more convenient ways for people to do their business. The next time you don't have to go down fifteen flights of stairs to use the port-a-potty outside, you might want to silently thank Mr. Crapper.

As for Ross, you probably know her by the name she took after her first marriage—"Harriet," for her mother, "Tubman," her first husband's last name.²⁴ She spent her first paycheck from the U.S. Army building a place for freed black women to earn money by doing soldiers' laundry.²⁵ That was how she viewed her work—as a way to help.

In 1863, each one was just getting up each day and doing the work that needed to be done. But we, with the perspective of 152 years, can see just how significant their work was. Similarly, who knows how significant our work in 2015 may be? Are we developing skills that will lead to the next great masterpiece? Will our work result in something that is so essential people do not give it a second thought? Will your one brave act inspire greatness in others and change the lives of hundreds? Perhaps. Perhaps not. History is made through small, ordinary acts, and only through the perspective of history will we know their significance.

¹ Lucius Beebe, *A Paper is Born*, <http://www.territorial-enterprise.com/> (last visited Dec. 9, 2014).

² Mark Twain in *ROUGHING IT*, available at http://www.territorial-enterprise.com/mt_rit1.htm (last visited Dec. 9, 2014).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Thomas Crapper & Co., Ltd., *History*, <http://www.thomas-crapper.com/history05.asp> (last visited Dec. 9, 2014).

¹¹ *Id.* at <http://www.thomas-crapper.com/history02.asp> (last visited Dec. 9, 2014).

¹² *Id.*

¹³ *Id.*

¹⁴ David Hiskey, *Why the Toilet is Commonly Known as "The Crapper,"* <http://www.todayifoundout.com/index.php/2011/05/why-the-toilet-is-commonly-known-as-the-crapper> (last visited Dec. 9, 2014).

¹⁵ Barbara Marazani, *Harriet Tubman's Daring Raid 150 Years Ago*, History in the Headlines (May 31, 2013) <http://www.history.com/news/harriet-tubmans-daring-raid-150-years-ago> (last visited Dec. 9, 2014); This Week in Black History, ATL. DAILY WORLD, May 29, 2014, available at <http://atlantadailyworld.com/2014/05/29/this-week-in-black-history-6/3>.

¹⁶ Marazani, at ¶ 7.

¹⁷ *Id.* at ¶ 3.

¹⁸ Jone Johnson Lewis, *Harriet Tubman in the Civil War*, http://womenshistory.about.com/od/harriettubman/a/tubman_civilwar.htm (last visited Dec. 9, 2014).

¹⁹ *Id.*; see also Marazani, at ¶ 7.

²⁰ Lewis, at ¶ 3.

²¹ Marazani, at ¶ 8.

²² *Id.*

²³ Mark Twain, *THE ADVENTURES OF TOM SAWYER* (1876).

²⁴ *Id.* at ¶ 1.

²⁵ Lewis, at ¶ 3.



WORD PLAY

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

“Foul up”

This expression finds its origin in the nautical world. The Old English *ful* (offensive to the senses) became *foul* and has many negative nautical meanings. For instance, an anchor is “fouled” when it becomes entangled, either with its own cable or something else. Of course, this situation was loathsome to the sailors tasked with resolving the matter. Ironically, in the late 16th century, a fouled anchor became an insignia of both the United States Navy and the British Royal Navy. This followed the incorporation of a fouled anchor into the coat of arms of Lord Howard of Effingham, High Admiral of England at the time. Since then, in a navy or otherwise, a mess or entanglement, even a confused individual, has come to be known as a “foul up.”

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The Volunteer Spirit

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Affordable Medical Options for Seniors Program (CAC Office on Aging)

David Holden

Street Address:

P.O. Box 51650
Knoxville, Tennessee 37950-1650

Phone: 865-524-2786

FAX: 865-546-0832

Website:

<http://www.knoxcac.org>

Agency Description

An informational and advising service that helps people who are over the age of 55 utilize all available resources to reduce the cost of their prescription medicines.

- Complete intake questionnaires by talking to consumers in person or on the phone.
- Research various programs online and help consumers fill out applications for free medicine; follow up with former clients to see if they need help.
- Distribute program information to doctors' offices, pharmacies, and hospitals.

Service Categories

- Elderly

Pictured above is a portion of the online profile of Affordable Medical Options for Seniors Program (CAC Office on Aging). This is one of 16 agencies listed in the category of Elderly. The agencies in this category focus on issues related to caring for senior citizens.

Other agencies in this category include Alzheimer's Association, Haven House, ETHRA, Passport (Covenant Health), Sr. Citizens Home Assistance Service, W.I.S.E. (Wesley House), and 10 other programs through CAC Office on Aging. Visit the Volunteer tab at www.knoxbar.org for more information.



WELCOME NEW MEMBERS

THE KNOXVILLE BAR ASSOCIATION IS PLEASED TO
WELCOME

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Changes to Tennessee Notary Law

The General Assembly made several changes to Tennessee's notary law effective October 1, 2014 (the "2014 amendments").¹ When someone suggested that we do an article on these recent changes, it got me thinking. Notaries are one of the last vestiges of the pre-digital age. Before there were passwords, before there was thumbprint identification, and before there were evidentiary rules providing that copies are equivalent to originals, commerce and law turned on hard copy signatures.

For the most part today, we don't bother to verify the authenticity of signatures. We sign electronically with our fingers on iPads and with pressure pens on keypad screens at the checkout counter. These translate into scraggly copies on the receipt, which often bear only a passing resemblance to the handwritten signature.² But ever so occasionally, we still require a real signature, in real ink, on real paper. And for those special occasions, we require notaries.

Background

Notaries, also called "notaries public"³ are public officials. They have the power to acknowledge signatures upon personal knowledge or satisfactory proof; administer oaths; and confirm the authenticity of signatures on affidavits.⁴ In short, they are vested with the power to confirm that you are who you say you are when you sign a document.

Technically, notaries are state officials. Notaries are "elected" by the county commission of the county in which they reside or will serve.⁵ Prior to the 2014 amendments, the law provided that notaries are "commissioned" by the governor. As amended, the law provides that notaries are instead "approved" by the governor. The law further provides that "[f]or purposes of of this section, 'approved' means to accept or to sanction, and does not mean to appoint."⁶ In any event, the state office that actually processes and authorizes notaries is the Secretary of State. Once a notary has been elected by the appropriate county, the Secretary of State's office issues a Notary Commission, authorizing the notary to serve. The notary must then obtain a bond, take an oath, and obtain the official state notary seal. Notaries serve for four year terms, after which they must repeat the process to renew their commission.⁷

2014 Changes to the Notary Law

In addition to clarifying the governor's role in the notary process, the 2014 amendments also changed the law's provisions regarding fees and recordkeeping.

Fees

Until October 1, 2014, the law provided a detailed fee structure for notaries. Permissible fees ranged from \$0.25 for "acknowledgement of notes for advances on tobacco" to \$1.50 for negotiable instruments.⁸ These modest (and rather outdated) fees have been replaced by a provision that notaries may "demand and receive reasonable fees and compensation" for their services.⁹ There is no definition as to what is "reasonable." The provision generated a bit of debate in the legislature, with some legislators expressing concern that notaries might charge unreasonable fees, particularly in view of the fact that many schools now require that permission slips be notarized.¹⁰ Nevertheless, no clarifying

language was adopted, so it remains to be seen what a "reasonable" fee for notary services turns out to be.

Recordkeeping

Finally, the 2014 amendments clarified that notaries must maintain a record of their acts. The amendments deleted provisions of the notary law stating that notaries were entitled to demand and receive a fee of \$1.00 "[f]or recording in a well-bound book" each of the notary's "attestations, protestations, and other instruments of publication."¹¹ As amended, the law separates the issue of fees from the requirement to maintain a record. The law now states that "notaries public shall keep a record in a well-bound book of each of the notaries' public's acts, attestations, protestations, and other instruments of publication."¹² This clarifies that a notary must keep a record of his or her acts, regardless of whether the notary charges a fee.¹³ The law still uses the old terminology "well-bound book," but the Attorney General has opined that the required record can be kept electronically if it meets the standards for electronic storage of governmental records set forth at Tennessee Code Annotated section 10-7-121.¹⁴

Conclusion

It is possible (if not likely) that signatures will eventually be eliminated from all legal and commercial transactions. Until then, we will continue to need notaries.

¹ Pub. Ch. No. 805, effective October 1, 2014.

² For an interesting piece on the history of signatures and their role in commerce today, see Planet Money Episode 564: The Signature (Aug. 29, 2014), available at <http://www.npr.org/blogs/money/2014/08/29/344034815/episode-564-the-signature> (Dec. 10, 2014).

³ The Tennessee Code Annotated uses the terms interchangeably. See Tenn. Code Ann. § 8-16-101 et seq.

⁴ Tenn. Code Ann. § 8-6-112. Of course, they can also record and/or transcribe depositions. *Id.*

⁵ Tenn. Code Ann. § 8-16-101(a).

⁶ Tenn. Code Ann. § 8-16-102.

⁷ Tenn. Code Ann. § 8-16-103.

⁸ Tenn. Code Ann. § 8-21-1201 (repealed).

⁹ Tenn. Code Ann. § 8-21-1201 (eff. Oct. 1, 2014).

¹⁰ See video clips on HB 2387, 56th Legislative Day, Mar. 24, 2014, available at <http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=HB2387&ga=108> (Dec. 10, 2014).

¹¹ Tenn. Code Ann. §§ 8-16-118 and 8-21-1201 (repealed).

¹² Tenn. Code Ann. § 8-21-1201 (eff. Oct. 1, 2014).

¹³ See Op. Atty. Gen. 14-89 (Sept. 29, 2014) (confirming that the 2014 amendments require all notaries to maintain a record).

¹⁴ See *id.*



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.



OF LOCAL LORE & LAWYERS

By: Joe Jarret

MARION GRIFFIN: TRAILBLAZER, LEGISLATOR, AND FIRST WOMAN LAWYER IN TENNESSEE

"By her indomitable will and purpose she opened up her entry into all the avenues of business and trade."

Tennessee Supreme Court Justice John Summerfield Wilkes, 1901

She was a strong, progressive woman when it wasn't fashionable or socially acceptable to be either. She was a law school graduate in an era when women college graduates were a novelty. She was Marion Griffin, the first woman to be admitted to practice law in the State of Tennessee, and, as we'll soon see, her road to the Bar was anything but an easy one.

Born in 1879, the native Georgian moved to Memphis as a young woman where she worked as a legal stenographer. This was an era when would-be lawyers were not required to attend law school but rather, could read for the law and train under a licensed lawyer before being examined by judges and ultimately licensed. Despite the fact that Ms. Griffin read for the law, she was nevertheless twice denied admittance to the Bar. In 1901, Ms. Griffin took her case to the Tennessee Supreme Court¹ to challenge state law which read, "An unmarried woman is not entitled to admission to practice as an attorney and counselor in the supreme court."² Ms. Griffin was represented by Memphis Judge and lawyer Thomas M. Scrugg, under whose tutelage she read law. Her petition was denied in a scant 75 word opinion, but not before the Court admitted that it was "divided on the matter."³ However, the dissent filed by Justice John Summerfield Wilkes was anything but scant. Some 4 pages in length, Justice Wilkes opined in pertinent part:

We can see no valid objection to a woman's practicing law upon any of the grounds stated. Whether it is best policy for her to do so from a social and pecuniary point of view is a question which addresses itself to her discretion. That she has made wonderful advances in latter years into all the fields of business and all the vocations heretofore occupied by men cannot be denied. In the shops and stores, in the banks and business houses, in lawyers' and doctors' offices, and in all the avenues of trade and commerce, she has pushed her way, either with the encouragement or over the protest of her brothers, until she has established a firm foothold, from which she cannot be removed. No one would deny her, when necessity or the desire for honest independence prompts such action, the right to enter into any field suited to her physical ability and her standing as a true, pure woman. She should be given every chance to make an honest and independent living; and, whether she makes it from necessity or choice, she should not be debarred from it except for good legal reasons. We are not able to see such reasons.⁴

As you would imagine by now, Ms. Griffin was undaunted in her quest. She temporarily left Tennessee to study law at the University of Michigan, from which she graduated with high honors. Upon graduating and returning to Tennessee in 1906 she pressed her case. In 1907, the State of Tennessee relented, and allowed her to sit for the bar examination, which she passed on her first attempt. She practiced for more than four decades. Regarding her journey to the Bar, Griffin stated, "When I turned 21 at the turn of the century, I was working as a stenographer, studying law with the purpose of becoming a lawyer. Being of legal age, and as was the custom at the time, I went before two judges for examinations, and I was found to be qualified. When I petitioned the supreme court to admit me to the bar, I was rejected on the sole grounds that I was a woman. A seven year quest ensued at that moment, for I would not be dissuaded."⁵ As if this accomplishment wasn't enough,

Griffin became the first woman to win election to the Tennessee General Assembly. Upon her election in 1923, Ms. Griffin quipped, "the state legislature should contain 'just as many women as men.'"

As an attorney, Ms. Griffin specialized in chancery and probate cases, although she was not opposed to taking criminal cases if she felt the plight of the accused was just. In one reported incident she convinced a jury to spare a man accused of murder from execution by demonstrating that he was mentally disabled.⁶ She was reported to be opposed to theater openings on Sundays, supported pensions for mothers, was a proponent of physical education in schools, and opposed what she deemed "easy divorce." She was, as one historian noted, "a true enigma!"⁷ In 2001, the Tennessee Legislature passed a Joint Resolution which reads in pertinent part: "Marion Griffin epitomized the spirit and commitment that are characteristic of a true Tennessean; the recognition of her valuable contributions forty-four years after her death is clearly needed."⁸ They are indeed.

¹ Ex parte Griffin, 71 SW 746 (Tenn. 1901).

² Id. Note: the vote was 3-2 against Griffin

³ Id. at 746.

⁴ Id. at 749.

⁵ Corrigan, Candace, 2012, Radio Portraits inspired from women's diaries written 1779-1959

⁶ Executions in the early 1900s were carried out in Tennessee via the hangman's noose.

⁷ Tennessee State Archives, www.TN.Gov/suffrage

⁸ Tennessee House Joint Resolution 441, 2001.

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HAPPY NEW YEAR

It was December 31, 1992. I was in New Orleans at the home of my college roommate, Michael, to celebrate the New Year. The original plan had been to hit Bourbon Street around 10:00 p.m. and say farewell to the old year (our last as college students) and welcome the new year (the one in which we would be starting the rest of our lives). Our plans were interrupted by Michael's family. Michael was the product of the common pairing between old south gentility (his mother had been born and raised among the poetic plantations of Louisiana) and first generation Filipino (his father obtained his medical degree in the United States and then moved his entire extended family to New Orleans). The two things these cultures had in common was love of family and entertaining. It was therefore no great surprise that I found myself in a room surrounded by 30 or so strangers who treated me like family. As midnight approached, we had not made it out of the house, but that didn't seem to matter. The wine was flowing, and everyone was having a great time. I remember, distinctly, sitting in the living room listening to Michael's grandfather, Miguel, tell stories about growing up in the Philippines.

At one point, the little old man asked if I had any cabbage leaves for luck in the new year. He told me that cabbage symbolized good luck and that every New Year's Eve, you were supposed to nail cabbage leaves to the doorposts of your home and take one leaf and put it in your wallet for good luck. Emboldened by the wine, I called him out and said such a ridiculous custom could not be true. He then reached into his pocket, pulled out his wallet, and opened it. Inside was a dried up, shriveled piece of cabbage that he had put there in December of 1991. It was a touching moment to see a man who so honored his traditional customs. At least it was until I later did some research and discovered there was no Filipino tradition involving cabbage, and it appears he was just a crazy old man who liked produce.

New Year's Eve 2014 will be upon us shortly. There are all sorts of customs and traditions we engage in to mark the event. Some will watch the ball drop in Times Square, live for those brave souls willing to make the trip, on television for those of us content to watch Ryan Seacrest work his magic. Fireworks will go off, couples will kiss, and millions will try to remember (if they ever really knew) all of the words to *Auld Lang Syne*. New Year's celebrations are important. They mark the passage of time. They allow us to express hope for the future and celebrate where we have come from. Depending on your religion and nationality, you may or may not celebrate Christmas, Valentine's Day, Halloween, or the 4th of July. However, New Year's celebrations are universal. Every culture on the planet recognizes the importance of another rotation around the sun. In that sense, New Year's Eve (whether celebrated on December 31 or not) is the celebration that binds humanity and unites us as humans.

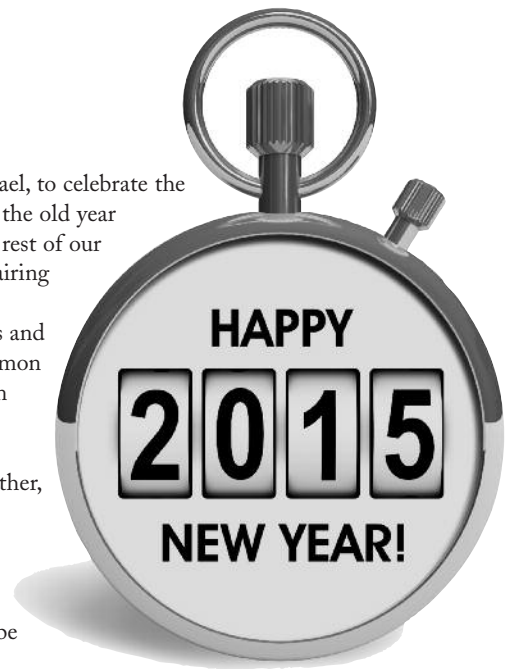
Since my Filipino New Year experience, I have done some research to see how others celebrate this important holiday. As you might expect, most countries have some sort of party or festival, often involving fireworks or concerts to mark the event. However, some celebrations are truly unique. In Germany, for instance, many engage in Bliegießen (literally "pouring lead") where molten lead is poured into cold water and people try to predict the future based upon the shapes that are formed. In Italy, people wear red underwear and eat cotechina (pig entrails). Speaking of food, in Denmark they eat boiled cod, stewed kale, and cured saddle of pork. In retrospect, forcing down a plate of black-eyed peas (which I loathe) doesn't sound so bad.

In Belgium, the farmers wish a happy new year to their animals. In Albania, people watch comedy shows because they believe you should enter the New Year with laughter and a smile on your face. In Estonia, people eat seven, nine or twelve meals during the day because these are lucky numbers (note to self, if you can verify they don't serve pig entrails or boiled cod, consider celebrating the New Year in Estonia). If you think you have trouble finding Estonia on a map, try locating Kiribati, the country with the honor of being the first to welcome in the New Year. In Mexico, they eat grapes with each chime of the clock and make a wish for the New Year.

Perhaps my favorite custom comes from Ecuador. On New Year's Eve, men dress in drag and dance in the streets to represent the widow of the passing year. I bring this up to share my second memorable New Year's Eve story. About 13 years ago (give or take), I was in Atlanta with my then girlfriend (now wife) visiting another college friend. Being the somewhat young and edgy group we were then, we went out for New Year's Eve to a downtown club that featured drag shows. I was impressed by a young man who looked and sang exactly like Jennifer Lopez (he was quite a talent). Later that evening, after a few cocktails, I saw him in the crowd and told him that I thought he was a very good drag queen (not a compliment I throw around lightly). He looked shocked and angry, and I could not understand why. That is when Carol Anne explained to me that I was not speaking to the performer but to a young woman who just happened to be wearing similar clothing. Her boyfriend was not happy that I called his date a drag queen.

These days, my New Year's Eve celebrations are much more quieter than they were in my youth. I prefer a tamer environment, at home, with family. I am content to let the younger generation blow it out in New Orleans, at the clubs in Atlanta, or on the streets of Ecuador.

No matter where you are on December 31, Times Square, Estonia or, like me, falling asleep on the couch on Woodsboro Road, chances are you will be celebrating the New Year. While you may have your own unique way of doing it, the mere act itself is something you have in common with people around the world. Happy New Year.





LAW PAWS

By: Carol Anne Long

Judicial Law Clerk Tennessee Court of Criminal Appeals

Sally A. Goade

Judicial Law Clerk, Tennessee Court of Appeals

THE COLUMNISTS' CRITTERS: A RELATIONSHIP IN TRUST

As "Law Paws" columnists in 2015, Carol Anne Long and Sally Goade have been delighted to introduce DICTA readers to canine law office and courthouse assistants, as well as a peahen law school mascot, courthouse dogs providing comfort to child victim witnesses, and goats and bunnies providing comfort to juvenile detainees. For our final installment, we can't resist introducing you to the critters who share our own households, and we are also highlighting a Tennessee statute that allows us to care for our beloved pets in the event they outlive us.

The Longs' Critter:

Growing up, I only had two pets, and both were cats (which seems like a strange choice given that my mother and I were both allergic to cats). Neither experience was particularly good. The first cat was killed by a neighborhood tomcat when it was still a little kitten, and the second appeared to be one generation removed from a wild African tiger (his favorite pastime was clawing and biting anyone who came near, and his second-favorite pastime was breaking every vase in our house, usually in the middle of the night). When that cat ultimately ran away, my parents were adamant that we would have no more pets. I had always wanted a dog, but my father refused; he wasn't a pet person and barely tolerated the cats, but he definitely didn't want to take on the trouble, as he saw it, of raising a dog.

So, for over twenty years, I had no pets. When Jason and I got married, he began talking about getting a dog. Like most American kids, he had grown up with dogs, and he had wonderful memories of his furry playmates. Because my parents had led me to believe that dogs were a lot of trouble, I continued to come up with excuses, believing that I wasn't ready to raise a dog. The excuses were easier once we had children: raising children is hard enough, so we certainly didn't have time to add a dog to the mix! But then there came a moment of weakness when I promised our then three-year-old daughter that I would buy her a puppy if she



would use the potty appropriately. You can guess what happened next. What do you say to your little angel who looks up at you from her perch on the potty, beaming with pride and excitement that she can now have her long-awaited puppy? You bite the bullet and start searching the shelters for a puppy.

It didn't take long to find a precious, scruffy little white dog on the Small Breed Rescue of East Tennessee website. Kippy, as he was named, looked perfect for us. On a Friday afternoon in October 2012, his foster mother arrived at our house with our new fluffy bundle of joy. As soon as she placed Kippy on our sofa, he trotted straight to me, put both paws around my neck, and gave me a hug. I was completely smitten, and I began mentally kicking myself for not getting a dog sooner.

After two years with Kippy, we are all completely smitten. Kippy, who we believe to be primarily a Havanese, is equal parts high-energy, bouncy effervescence and warm, cuddly, quiet companionship. He is

always ready to play fetch or tug-of-war, but as soon as you sink down onto the sofa or into the bed, he seemingly appears out of nowhere and curls up next to you, the perfect furry space heater. I spent far too many years without a dog, but thanks to Kippy and the boundless joy he has brought to our family, we will never be without a dog again. With that thought in mind, we may want to establish a trust for pets (see below) in the near future.

The Goades' Critters:

During thirty-seven years of marriage, my husband and I have raised three generations of pets. Having suffered through the trauma of losing old and terminally ill dogs and cats, we tell ourselves that we should space their ages better, but invariably we have a young set for a few years, with all the accompanying hilarity and activity, and then in the blink of an eye, we are again running a pet retirement home, with the accompanying poignancy and expense. We primarily have a young set now, although they are ruled by the queen of the household, a fourteen-year-old white cat named Xena, who I found as a tiny kitten, abandoned behind a bush on a favorite Idaho running trail.



Our first generation of dogs consisted of four golden retrievers, and with the advent of the first one, Amber, in 1980, I began an engrossing hobby of competing in obedience and field trials with our primarily field-bred goldens. According to my husband Dan, who actually hunted with her, Amber was the best at everything, and she did compete as one of the top utility dogs (at that time the highest level American Kennel Club obedience title) in Nevada. In the thirteen months between June 1995 and July 1996, our lives altered horribly and abruptly when we lost all four

goldens, ranging in age from eight to fifteen, to cancer.

We could not even look at golden retrievers for a while, and our interests changed such that subsequent dogs have been required only to be well-trained companions and hiking/running buddies. Except for one additional and beloved golden retriever obtained from a breeder, all of our subsequent dogs have been adopted from shelters.



Our current set includes Zeke, a 120-pound Labrador/Newfoundland mix, and Zap, purportedly a Catahoula leopard dog. Xena, the old cat, is challenged by no one, but she does occasionally deign to touch noses with

Continued on Page 25

THE COLUMNISTS' CRITTERS: A RELATIONSHIP IN TRUST (Continued from Page 24)

our young holy terror of a white cat, Pogonip (named for the Paiute word for the icy frost prevalent in Northern Nevada).

It was with these critters in mind last summer that Dan and I thought about what would happen if both of us were suddenly killed. We were headed into the California wilderness on vacation, traveling together via airplanes on the way, and something about becoming a lawyer seems to have made me anticipate the worst, or at least plan for it. Our adult son loves our pets, but he is not in a situation to care for them, and we knew that no one in our family was equipped to adopt the entire crew. Having already decided it was time to draft wills (okay, past time), we included a trust for pets, pursuant to a Tennessee statute designed for the purpose. See Tenn. Code Ann. § 35-15-408 (Supp. 2014).

Trust for Pets

First, it is important to clarify that while drafting this trust provision, I had to adjust my thinking, as you may need to advise a client to adjust his or her thinking, to realize that the pets for whom Dan and I are providing in all likelihood have yet to be born. It was startling to realize that at our age, we probably have only two “generations” of pets left to raise, but barring disaster, it is not the present generation we would leave behind. We had been worried about who could handle a dog of such intimidating size as Zeke or one with as much rocket-propelled energy as Zap, but we realized that we had to think more generically. The method for any specific matches between critter and future guardian would more likely be by informal agreement rather than through a trust in our wills.

Second, my thanks to University of Tennessee Law Professor **Amy M. Hess**, who reviewed our trust provision and suggested a couple of changes we gratefully incorporated. As Professor Hess reminded us, no one can be forced to be a trustee, and we accordingly provided for replacement and successor trustees.

Finally, the statute provides that the funds provided must not “exceed the amount required for the intended use,” meaning that a court could deem an especially large amount excessive if the trust is challenged. See Tenn. Code Ann. § 35-15-408(c).¹ Given our history with aged and terminally ill pets, Dan and I wanted to provide enough funds to cover veterinary care along with some guidelines for administering that care. See generally Mary Randolph, *Every Dog's Legal Guide* (NOLO, 6th ed. 2007).

As an example, here is Sally's trust for pets with the names of innocent friends redacted:

1. **APPOINTMENT OF TRUSTEE FOR PETS.** I hereby appoint my friend, _____, of _____, Tennessee to be the Trustee for the trust created in this section for the care of any of my pets who are living at my death if my spouse has predeceased me.

2. **APPOINTMENT OF SUCCESSOR TRUSTEE FOR PETS.** If _____ predeceases me or is unable or unwilling to serve as Trustee for the care of my pets, I appoint my friend, _____, to be the successor Trustee for said trust. If _____ predeceases me or is unable or unwilling to serve as Trustee for the care of my pets, my Personal Representative shall appoint a successor Trustee for said trust or act in that capacity herself.

3. **CREATION OF TRUST.** In the event and only in the event that my spouse predeceases me, pursuant to Tennessee Code Annotated section 35-15-408 (Supp. 2014), I give to my Trustee for pets or her successor as named above, \$15,000 in trust to provide for the care of any of my pets who are alive at the time of my death. In the event that my spouse predeceases me, I also give to my Trustee for pets or her successor as named above, any of my pets who are living at my death as her property, meaning that my Trustee or her successor may keep any of the pets or, in her good and reasonable discretion, find a new home for each and every pet not kept as her own. To facilitate the emergency care of my animals immediately upon my death, I authorize and direct my Personal Representative to transfer available liquid funds from my estate to my Trustee for pets or her successor as needed up to the full amount of the trust. My Trustee for pets or her successor shall hold, manage, and control the \$15,000 placed in this trust in accordance with the authority hereinafter conferred upon her and distribute the principal and any net income as follows:

A. My Trustee for pets or her successor, in her good and

reasonable discretion, shall distribute the funds from this trust to provide all food, shelter, veterinary, transportation, and other needs for my pets until such time as she is able to find a new, suitable home for each pet. Members of my family and my spouse's family who express interest in adopting one or more of my pets shall be given right of first refusal before the pet is placed elsewhere, provided that this interest is expressed within thirty days of my death.

B. In authorizing veterinary care for those pets not yet placed in a new home, my Trustee for pets or her successor shall use her own good and reasonable discretion to follow these guidelines:

(i) The veterinary care provided shall include all necessary vaccinations, diagnoses and medications, reasonable treatment of diseases or injury, and euthanasia if necessary pursuant to paragraph (ii).

(ii) If a licensed veterinarian determines that one of my pets has a terminal condition and that further treatment is unlikely to significantly prolong the pet's life, or that prolonging the pet's life with treatment would mean that the pet would suffer unduly, my Trustee for pets or her successor, in her discretion, may decline further treatment and may either care for the pet until its death or authorize euthanasia.

(iii) This trust will terminate upon the death of the last of my pets that was alive at the time of my death. Upon termination of this trust, I direct my Trustee for pets or her successor to distribute any principal or income remaining at the time of termination to the Oak Ridge Animal Shelter in Oak Ridge, Tennessee, or its successor organization.

¹ In case any readers are providing for especially long-lived pets, keep in mind that the statute prohibits enforcement of the trust for more than ninety years. See Tenn. Code Ann. § 35-15-408(a).



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SCHOOLED IN ETHICS

By: Judy M. Cornett

University of Tennessee College of Law

THE LEGAL ETHICS OF LAW STUDENTS: A REPORT FROM THE FIELD

Bill Moyers: What did you learn in law school about ethics?

Michael Josephson, Ethicist: I didn't learn a thing about ethics except don't lie if you are an attorney.

The founder of the Josephson Institute obviously did not think much of his education in legal ethics, although learning that attorneys don't lie is certainly a good start. This past semester I taught our Legal Profession course for the first time in several years. Since my students are your future colleagues, I thought I would report on their view of legal ethics.

First, my students want to be ethical lawyers. They see themselves as ethical people, and they value legal ethics. In their view, to be an ethical lawyer means "doing the right thing," just as they've always done. They have trouble seeing how easily ethical dilemmas can sneak up on them. They don't yet understand how tempting it can be to step onto the slippery slope of unethical behavior.

Their desire to "do the right thing" can also lead them astray. Many law students have trouble seeing themselves as criminal defense attorneys because they aren't interested in using their time and talents to help people who don't do the right thing. When I present a hypothetical about a client who confesses to committing a crime, they sometimes feel that they must "turn the client in" or make the authorities aware of the crime. They also profess their willingness to give up their law licenses in order to do the right thing, just as Jimmy did in "The Practice" when he disclosed a non-testifying medical expert report to the plaintiff – who was suffering from a previously unknown, life-threatening condition.¹

Paradoxically, my students worry about whether there is such a thing as being "too ethical." I'm not sure what it says about their view of us, but my students believe that practicing attorneys don't want an associate who is too picky about ethics. When we discuss reporting requirements; when I point out that they can be held liable for a disciplinary violation even if they were only doing what they were told to do; when we discuss circumstances in which they must turn down a case – they get nervous. They are afraid that they will be punished or even fired for adhering to the Rules of Professional Conduct. They believe that they must obey a senior attorney's directive that seems ethically suspect; they must not turn down the case even if there might be a conflict of interest; they must not display disloyalty by reporting another lawyer's misconduct. I tell my students that they must develop their own professional judgment about ethics, just as they develop professional judgment about other areas of law. I tell them that adhering to the ethics rules garners respect. Finally, I tell them that if they are working for a lawyer or a firm that disrespects their insistence on behaving ethically, then that's not a lawyer or firm they want to work for.

My students long for legal heroes. Despite their general dislike for criminal defense attorneys, many of them idolize Atticus Finch. When we reach the last chapter of our textbook,² in which we read about heroic lawyers like Thurgood Marshall, they wish that these heroes had appeared earlier in the semester. My students grow weary of reading cases in which the only response they can make to the lawyer's behavior is "What were they thinking?"³ But there does not seem to be an

overabundance of current legal heroes. Ruth Bader Ginsburg, for her championing of women's rights, and Antonin Scalia, for his originalist philosophy, are the two Supreme Court Justices who are sometimes named as heroes. The only well-known lawyer-hero named by my students was Gerry Spence. As Mark Edmundson, Professor of English at the University of Virginia notes in his book, *Why Teach?*, students' heroes are mainly "people [they have] known personally, people who [have] done something local, specific, and practical."⁴ Students who have lawyers in their families, or who know lawyers in their communities, frequently identify those lawyers as heroes. But students who don't know any lawyers must find their lawyer-heroes elsewhere – maybe next summer, in the ranks of Knoxville lawyers and judges for whom they will clerk.

In a recent interview, Seventh Circuit Judge Richard Posner asserted, "I don't consider instruction in legal ethics an important part of legal education."⁵ In this case Judge Posner seems to be a party of one. The ABA disagrees, the Tennessee Board of Bar Examiners disagrees, and everyone I know in the bench, bar, and academy disagrees with this view. If you think legal ethics education is important, let a law student know. And I predict you'll get a nod of agreement.

¹ "The Practice: Honor Code" (Season 6, Episode 6) (ABC television broadcast, Nov. 18, 2001). The episode was based upon *Spaulding v. Zimmerman*, 116 N.W.2d 704 (1962). See Timothy W. Floyd and John Gallagher, *Legal Ethics, Narrative, and Professional Identity: The Story of David Spaulding*, 59 MERCER L. REV. 941 (2008).

² Carl A. Pierce, Judy M. Cornett & Alex B. Long, *Professional Responsibility in the Life of the Lawyer* (Thomson/West 2010). A second edition of this textbook, co-authored by Carl Pierce, Alex Long, Paula Schaefer, Cassandra Robertson (from Ohio State University Law School) and me will be published soon. In the new edition, we include vignettes of heroic lawyers throughout the book.

³ Or, in their own parlance, "WTF?" Prof. Paula Schaefer teaches a seminar called "Smart Lawyers, Stupid Decisions," which just about sums up the majority of cases in our textbook.

⁴ Mark Edmundson, *Why Teach?* at 20 (2013).

⁵ Ronald K. Collins, *On Legal Education and Legal Scholarship: More Questions for Judge Posner* (Dec. 8, 2014), available at <http://www.concurringopinions.com/archives/2014/12/on-legal-education-legal-scholarship-more-questions-for-judge-posner.html>. I am grateful to Paula Schaefer for this source.



By: **Angelia M. Nystrom***University of Tennessee Foundation, Inc.*

HOLIDAY TREATS AND EATS

Anyone who has known me for any length of time knows that I have been on a diet for about the past 35 years. I have tried them all....Weight Watchers, Jenny Craig, Nutri-System, Atkins, Cabbage Soup, etc. And I have mostly failed at all of them. Last January, however, I vowed that 2014 would be different. Beginning on January 20, I gave up sugar, bread, pasta, potatoes, rice, red meat and salt. I started drinking organic dandelion root tea and water instead of Diet Cokes. Amazingly, it worked. On November 8, I hit the half-century mark. I am down 50 lbs.

Anyone who has read this column with any regularity knows that I love to eat. A lot. I spend breakfast thinking about what I will eat for lunch and lunch thinking about what I will eat for dinner. I love great food. I prefer a good restaurant over most other forms of entertainment. I'm also a big fan of the "eating holidays"—Thanksgiving and Christmas. Given my propensity to eat, this has been a particularly difficult year.

In spite of the great odds (and the temptation of Chick-Fil-A), I have survived. Since it is the season of giving, I'm giving myself a reward—the gift of food. I have decided to pick one day to eat whatever I want. Since it has been so long since I have had "regular food," I have asked for some help. I have asked for suggestions of "holiday treats" to enjoy on my day of eating.

Tasha Blakney has suggested that I begin with something hearty and filling. "I think that you should start with sausage balls at the KBA Annual Meeting," says Tasha.

Regina Lambert suggests one of her family favorites. "My favorite holiday food is probably dry bread dressing," she says. My Mom used to break up bread the night before she made it so it could get "stale" overnight. The recipe includes celery, sage, butter, chicken broth, onion, and other spices. I love the crispy bites. I lost my Mom in 2002, and dressing has never tasted quite that good since."

When I asked about dry bread dressing, she said, "I can tell you I was shocked after moving to the South and discovering that the dressing is different here. It is a debate I have every year: dry bread versus corn bread dressing. If it is my year to cook, I make both - but the dry bread dressing is my very favorite and brings back great holiday memories spent with my Mom."

Other friends have suggested "sweet treats." **Loretta Cravens** has fond memories of her grandmother's dried apple stack cake. "Every year we would peel, slice, and dry apples in the sun. Then at Christmas, and occasionally if we were really lucky also on Thanksgiving, my grandmother would spend an entire day baking from scratch, thin, perfect, slightly spiced cake layers from her memory of her mother's recipe, and then I'd help her assemble several of these cakes. The worst part...she wouldn't let anyone have a slice for at least a full day so that the rehydrated apple filling she made from the apples we had dried could soak into the layers. At 87 years of age, she now makes fewer cakes, but they are every bit as fabulous now as when I was a child."

Likewise, **Katrina Atchley Arbogast** has fond memories of holiday goodies from childhood. "You should definitely try peanut butter swirl candy—made with icing, powdered sugar and Peter Pan peanut butter." Katrina goes on, "My mom was an expert country candy maker. When I was law school in Syracuse, my mom would send copious amounts of it to me before exams. My northern classmates loved and affectionately called it 'candy crack.' It definitely has enough sugar and protein to

keep you studying all through the night!!"

Anne McKinney suggests another family-favorite delicacy. "My guilty pleasure is both in the process and the consumption of baklava (pronounced by my Arabic grandmothers as "ba' lau-wa"). First, you must gather together the mostly lovely ingredients: Lots of butter and Crisco (!), filo (or phyllo) dough (I admit I don't make my own), a combination of finely chopped almonds, pecans and walnuts with sugar, cinnamon and crushed zwieback. Set aside loads of honey, water and lemon juice for later. Then you put on the sound track from "The Big Chill" and set it to repeat. It takes a few hours to brush the butter/Crisco on the layers of dough and intersperse with the wonderful filling. Finally, you cut up the sheets of deliciousness into triangles, bake (in the pan) in the oven, then ladle the honey and lemon over the top and let it sit for a while. Mmmmm, heaven!"

Carol Anne Long and **Stephanie Daniel** suggest beverages to complete my "day of eating." Says Stephanie, "Two words: Egg. Nog. I would never indulge in such a treat any other day, but love a little egg nog on Christmas Eve, especially the decadent Homestead Creamery brand!"

Carol Anne Long likes something a little less decadent—but equally as good. "My favorite guilty pleasure during the holidays is drinking Coke out of those little glass bottles. I think they're available all year, but for some reason, I'm only interested in drinking them during the holidays (maybe it's those cute commercials with the polar bears?). They just seem to taste better out of the glass bottles. We even leave one of the glass-bottle cokes sitting out with our Christmas cookies for Santa. We understand that Santa enjoys the Coke more than milk."

I have some great suggestions, and I am looking forward to my "day of eating." I look forward to trying all of these foods. Happy Holidays, or, better yet, Happy Eating. And pass the Alka Seltzer.





ESCAPE OUTDOORS

By: Casey Carrigan
The University of Tennessee

Your Adventures

Several colleagues have contacted me over the last several months to comment on my articles and also to share many of their own adventures. I have truly enjoyed hearing about your many hikes, drives, and boating adventures. This will be my final article before moving on to other duties on the Publications Committee. I thought it would be nice to close out with a compilation of shared adventures over the past year.

Peter Brewer of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC is especially fond of hiking on Mt. LeConte. He shared a story that is a great reminder to always be prepared for any type of weather, especially in the higher elevations. He writes:

No two hikes up the Alum Cave Trail en route to LeConte Lodge are the same. Along the way one will likely experience a significant temperature drop, increasing fog, and rain. Or sleet turning to snow. On one memorable hike I parked at the base of the trail at about 6:00 pm on a pleasant April evening. By the time I was a mile from the Lodge it had gotten dark, and then it began to rain. Along one northwest-facing ridge the wind caused the rain to heavily "fall" from the valley below and back up towards the top of the mountain. There isn't much that a rain poncho can do about that. Regardless of the conditions in Gatlinburg, always carry a dry pair of shoes and a change of socks!

I was very inspired by the adventure undertaken by **Adrienne Anderson** of Anderson Busby, PLLC. Her story shows that skill and determination can trump fancy equipment. She participated in the 28-mile Volunteer Canoe and Kayak Race this past May on Ft. Loudoun Lake. She describes the winds as brutal and broke a foot peg on her boat in the last mile, but successfully completed the course in the middle of the pack. She writes:

OK, the truth is I had the cheapest, low-tech, heaviest, slowest, most inappropriate kayak in the whole race. The racers who finished ahead of me told my husband that they couldn't believe I was trying to do it in that fishing kayak. When I finished, some guy I never saw before ran up and hugged me. My husband said he was one of the professional racers who worried about me being able to finish.



Esther Bell, CEO of Global Intellectual Property Asset Management, PLLC, found her adventure from the far-off lands of the West. She writes:

I adopted a BLM (Bureau of Land Management) mustang yearling in April of this year. He came from the Muskrat Basin area of Wyoming. I named him, "Ka Li Wo Hi" (kah-lee-WHOA-bey) which is Cherokee for "perfect." And he IS perfect in every way - calm, smart, willing and gorgeous!



I was glad to hear from our local students as well who are soothing the stress of studying and finals with a good dose of fresh air.

Michael Hromadka, a law student at The University of Tennessee College of Law, has enjoyed spending the past two and a half years exploring the parks of East Tennessee with his law school classmates. He writes:

Memorable hikes have included the Fire Tower at Frozen Head State Park, the Middle Prong Trail in Great Smoky Mountains National Park, and the Point Trail in Obed Wild and Scenic River. We base our hikes are based around finding new swimming holes, and we've encountered a fair share of snakes. I intend to purchase my first tent over Christmas.

As I have enjoyed hearing their stories, I hope you enjoyed mine. For me, being outside experiencing the beauty and tranquility of East Tennessee is an essential part of life. I hope 2015 brings you many opportunities to experience the wonders that await just outside of your office doors. Happy hiking!

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.

NEED GUIDANCE IN A SPECIFIC PRACTICE AREA?

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

FREE ONLINE CLASSIFIEDS

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

AFFILIATED ORGANIZATION

The Smoky Mountain Paralegal Association will hold its monthly meeting on Thursday, January 8, 2015, at 12:00 p.m. in the U.S. Attorney's Office, Knoxville, Tennessee. **Cindy Winters**, Office Administrator of Arnett, Draper & Hagood, and **Bob Bebbler**, Office Administrator of the Knox County Public Defender's Office, will be presenting the topic of Managing a Law Firm. The presentation will provide a 1.0 hour program. A lunch buffet is available at the cost of \$12/person with reservations. Please contact **Kelley Myers**, ACP at president@smparalegal.org or (865) 974-0425 for additional information and/or lunch reservations.

OFFICE SPACE AVAILABLE

- Office space available for one attorney at offices of Hogan and Hogan, 620 W. Hill Avenue, Knoxville, TN 37902. Experienced Secretary/Paralegal included, along with office equipment. Contact Janet or Paul Hogan at (865) 546-2200. Downtown Knoxville; convenient to Court House; river view; free parking for attorney and clients.
- Three offices (or two offices and a conference room), reception area and kitchen; reception desk included; great location near courts; 1261 sq. ft.; contact Linda Carter at 524-8444.
- Historic Post Office – space available – ready to be finished to tenant's tastes. Ideal for legal professionals. Contact Jim Justice at 865-521-7500 or 865-679-3207.
- Tired of downtown traffic and clients' not being able to find a parking place? Established West Knoxville attorney has two office spaces available. Conference room, reception area, two bathrooms, file room, kitchen area, support staff area, nine parking spaces. Easy access to Knoxville, Farragut, Maryville and Oak Ridge. For more information, call Larry or Melissa at 531-3500.
- Office available to share with sole practitioner in West Knoxville (South Peters Road). Fifteen minutes from downtown. Shared utilities. Contact Peter D. Van de Vate at 865-539-9684.
- Newly established firm of Piper, Ramsey & Hill has available a single attorney's office with adjacent support staff space. The space includes a reception area, conference rooms and kitchen. Call Jack W. Piper, Jr. to discuss options at (865) 291-1551.
- Office space in beautiful Victorian style office building. Hardwood floors and fireplace with Italian marble. Use of reception area, conference room and full kitchen. Utilities, janitorial service, and high speed internet provided. Will consider month to month lease. Rent is \$450.00 per month, with damage deposit. Adjacent to I-75 at Merchants road exit. Ten minutes from courthouse. Perfect for attorney, accountants, or insurance representatives. Please contact Jack Bowers at 688-4060 for more information.

Address Changes

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

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For more information about membership
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PRO BONO PROJECT

By: Terry Woods
Project Director

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

2014 Pro Bono Honor Roll

Almost 300 volunteer lawyers donated their time and talent to low-income clients in need of legal services in 2014. At present, the only mechanism we have for tracking pro bono service is through reports to Legal Aid; but we know that this system omits the invaluable service of a multitude of lawyers (especially the criminal-defense bar) who cannot report through LAET. We have yet to figure out a way to recognize everyone; but in the meantime, we extend our heartfelt thanks to everyone on this year's Honor Roll.

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Ali B. Abdelati
Oliver D. Adams
Stephen D. Adams
Terry G. Adams, Jr.
Dale C. Allen
G. Keith Alley
W. Dale Amburn
Adrienne L. Anderson
Edwin A. Anderson
Heather G. Anderson
J. Nicholas Arning, Jr.
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Mario L. Azevedo II
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David L. Bacon
Joseph W. Ballard
John T. Baugh
Thomas A. Bickers
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James E. Bondurant, Jr.
Wade M. Boswell
Elizabeth A. Brady
Maurice S. Briere, Jr.
Rosana E. Brown
Charles C. Burks, Jr.
Amy E. Burroughs
Amanda M. Busby
John W. Butler
Wynne du M. Caffey
Melanie Campbell-Brown
Bryan L. Capps
Robert R. Carl
W. Kyle Carpenter
Melissa B. Carrasco
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Stewart M. Crane
Loretta G. Cravens
Duncan V. Crawford
Amelia G. Crotwell
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Charles G. Currier
Tony R. Dalton
Wade V. Davies
AnCharlene D. Davis
Kristie M. Davis
Melanie E. Davis
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Thomas H. Dickenson
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Mary Elizabeth Maddox
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By: Jack H. (Nick) McCall



Q:

John, would you share with DICTA's readers your thoughts on the retirement several months ago of Judge Bill Swann and his accomplishments during his tenure in Fourth Circuit Court?

A:

JOHN K. HARBER*Pryor, Priest, Harber, Floyd & Coffey*

I think the Knox County community owes a debt of gratitude to Judge Swann for his 32 years of service. Bill was originally elected in 1982, then re-elected in each of 1990, 1998 and 2006. Bill's last day on the bench was August 26, 2014; at that time, he was the longest sitting judge in Fourth Circuit Court.

Let me take you back to 1982, when Bill was first elected after Judge George Child's retirement. We had no meaningful local rules of court then. We had no parenting plan law. We had no child support guidelines or worksheets. There was no such thing as rehabilitative or transitional alimony. There was no Family Justice Center. There was no mediation. We did not know what a parent education seminar was. We had an Order of Protection statute that was passed in 1979, but no one ever used it. We had no technology, no desktops, no laptops, and the cell phones that existed looked like walkie-talkies. We were all flying by the seat of our pants.

Soon after his election, Bill undertook the daunting task of adding much needed structure and predictability to the practice of domestic law. He quickly recognized two important social trends. First, two-income families were becoming the norm. Second, the influx of women in the work force was ever increasing.

In 1990, Tennessee first adopted child support guidelines with a presumptive 80 days of co-parenting time to the noncustodial parent. But, there was no directive as to how the 80 days would be accomplished. Bill took the initiative and created Local Rule 17, which became the template for other domestic relations courts in Tennessee.

In 2000, Bill recognized that two days every two weeks was not enough parenting time for any noncustodial parent, whether the mother or the father, and Bill created Local Rule 26, which again became the model for domestic relations courts across Tennessee. In the late 1990s, a pilot program was launched for the newly proposed parenting plan statutes, and Bill arranged for Knox County to become one of only six judicial districts in this state to adopt the new parenting plan laws as a pilot program in this county.

Major revisions were made to our Order of Protection statutes, and Bill quickly realized that domestic violence was becoming the most common violent crime in our state. In 2003, Bill and Randy Nichols obtained a grant from the Presidential Family Justice Center to help victims of family violence. Additional grants were obtained in 2006 and 2008, and our Family Justice Center was established upon Bill's initiative.

Fourth Circuit Court became the busiest Circuit Court with the highest caseload in the state. On Thursday OP days, Bill was soon running three courtrooms and disposing of hundreds of cases.

Bill made mediation mandatory before the statutes required it. Order of Protection forms were changing and improving constantly. We started off with a four-page form; today, it is ten pages. Bill learned as he went and changed Order of Protection procedures as needed to address related concerns.

Bill initiated mandatory Trial Management Conferences to more effectively manage the divorce caseload, and many more cases have been resolved without expensive costs or the necessity of trial.

Bill Swann has been a progressive judge. We are all proud of him. We are all thankful for him. We are humbled by his 32 years of service. And, we wish him all the best in his new life to follow off the bench.



The Knoxville Bar Association would like to wish the Judge a speedy and full recuperation as he recovers from surgery this fall.

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



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Annual Meeting

KBA President **Wade Davies** presided over the Annual Meeting of the Knoxville Bar Association on Friday, December 12, 2014. More than 300 lawyers and judges were in attendance. Mr. Davies announced that the following KBA members were elected as officers for 2015: **Tasha C. Blakney – President; Wayne R. Kramer – President-Elect, Amanda M. Busby – Treasurer, and Keith Burroughs – Secretary.** The membership elected the following KBA members to the four open positions on the Board of Governors: **Lisa Hall, Dana C. Holloway, Hon. Deborah C. Stevens and John E. Winters.** Tasha Blakney assumed the presidency of the Knoxville Bar Association at the close of the meeting.

Sarah Y. Sheppard was presented the highest award of the Knoxville Bar Association, the prestigious Governor's Award. In presenting the award, **Bill Vines**, stated "The Governors' Award is given each year to a lawyer whose peers believe to be deserving of special respect. Sarah Sheppard has worked tirelessly to improve the legal profession as a teacher, as a bar leader, and as a writer and she is a worthy recipient of the Knoxville Bar Association's Governors' Award." In addition, U.S. District Court Judge **Leon Jordan** was presented with the Judicial Excellence Award for 2014.

