• VOLUME 1 | • ISSUE 3 | • SPRING 2006

Tennessee Young Lawyer

A QUARTERLY PUBLICATION OF THE TENNESSEE BAR ASSOCIATION YOUNG LAWYERS DIVISION

YLD Election Filing Results

Young lawyers desiring to hold elected positions in the 2006-2007 bar year filed nominating petitions in April. Pursuant to the YLD bylaws, candidates unopposed for a position are deemed elected on April 1. Congratulations to the following unopposed candidates who have been elected:

- **President:** Lisa Richter of Springfield
- **President-Elect:** Jason Long of Knoxville
- **Vice President:** Michelle Sellers of Jackson
- **Secretary:** Effie Bean of Memphis
- **Treasurer:** Sarah Henry of Nashville
- **Assistant Treasurer:** David Thompson of Nashville
- **East Tennessee Governor:** Tasha Blakney of Knoxville
- **District 14 Representative:** Brian Faughnan of Memphis

Open Seats

Vacancies exist in the following offices. Under the bylaws, the president-elect must appoint a nominating committee to nominate a candidate or candidates to fill the position by May 1. Voting on the nominated candidate will occur at the annual meeting.

- **Middle Tennessee Governor**
- **District 2 Representative** *(Anderson, Campbell, Claiborne, Cocke, Fentress, Grainger, Jefferson, Scott, Sevier, Union counties)*
- **District 4 Representative** *(Bledsoe, Blount, Bradley, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane counties)*
- **District 6 Representative** *(Clay, Cumberland, DeKalb, Jackson, Overton, Pickett, Putnam, Van Buren, Warren, White counties)*
- **District 8 Representative** *(Macon, Smith, Sumner, Trousdale, Wilson counties)*
- **District 10 Representative** *(Cheatham, Dickson, Houston, Humphreys, Montgomery, Robertson, Stewart counties)*
- **District 12 Representative** *(Benton, Carroll, Crockett, Dyer, Gibson, Henry, Lake, Obion, Weakley counties)*

Contested Election

Contested elections are decided by secret ballot at the division's annual meeting in June. A successful candidate must receive a plurality (the greatest number) of votes. In the event of a tie vote of the membership, the YLD Board elects the candidate. In the event of a tie vote of the board, the YLD president breaks the tie. Balloting will be held for the contested position of **West Tennessee Governor.** Two candidates qualified for the post. They are:

- **Jeff McGoff** of Memphis
- **Andrew Sellers** of Jackson

For a brief overview of the candidates see page 3.

If you have questions about the election process, please contact TBA YLD Director Stacey Shrader at sshrader@tnbar.org, 615-383-7421 or 800-899-6993. ■

Legal Services for Tornado Victims

Many of our fellow Tennesseans suffered complete devastation from the tornadoes and violent storms that ripped through Gibson and Dyer counties in early April. Multiple tornadoes in middle Tennessee just a week later also left victims in need of basic legal resources. The TBA is recruiting lawyers to provide legal services to these victims. Volunteer your services at http://www.tba.org/tornadoes/volunteer.html. If you know someone who needs legal assistance, a new toll free hotline has been set up at 866-336-8276. ■

INSIDE

- President's Corner . . . 2
- Candidates for West Tennessee Governor 3
- Face of the Young Lawyer . . . 4
- Notice Requirements Applicable to Probate Proceedings . . . 5
- Mock Trial Results . . . 6
- Computer Networking Basics . . . 9
- CLE Calendar . . . 11
- 2006 Convention . . . 11
- Vanderbilt Modernizes Legal Education 12
- USERRA . . . 13
- Erin McArdle Coughlin Honored . . . 14
- Public Service Day . . . 15
- Upcoming Events . . . 16

THE PRESIDENT'S CORNER

America is Diversity: We Came Here in Different Ships but We're in the Same Boat Now

By Danny Van Horn

The title of this article is nearly a direct quote from Fred Gray, the legendary civil rights lawyer who represented Rosa Parks and others in the civil rights movement. Gray spoke at a Diversity Summit sponsored by the Tennessee Bar Association at the National Civil Rights Museum in Memphis on April 1. The goal of the summit was twofold: to discuss the challenges keeping Tennessee's legal profession from being as diverse as it could be and to identify concrete steps that can be taken to increase diversity. The summit was not meant to be a solution to all the problems we face, but rather a concerted first step in a long journey toward equal and greater opportunity for women and persons of color in the legal field.

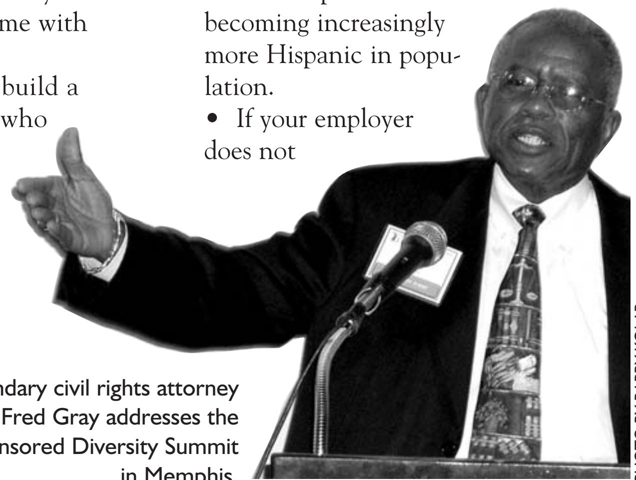
Gray spoke of making diversity something you feel down deep in your bones. He challenged Tennessee lawyers to move beyond words and platitudes to a deep abiding commitment to change how we live life. He posited a simple test to determine whether one is living a life of diversity. Look around at work, where you live, worship and play. If the vast majority of the faces there look like you, then your life is not really that diverse. Gray made it clear that the test applies to all races and to both men and women. Realistically, most of us fail that test. It is a fact of life that people consciously or subconsciously chose to surround themselves with those who are most like them. In order to overcome this built-in bias, we have to be aware of it and actively work to change it. We have to force ourselves to get outside of our comfort zones.

Danny Van Horn is the current YLD president. He practices law at Butler Snow O'Mara Stevens & Cannada in Memphis and can be reached at danny.vanhorn@butlersnow.com

At first blush, you may be wondering what you as a young lawyer can do to be part of the process of ending racism and sexism, thus increasing opportunities for all. The truth is, young lawyers can play a huge role. Gray had been practicing law for just one year when he represented Rosa Parks and others in the Montgomery bus boycott. Several of the attorneys representing Dr. Martin Luther King in federal court with regard to the Memphis sanitation workers' strike were young lawyers. Many of the early pioneers of the women's suffrage and women's rights movements also were young lawyers. These heroes show us that young lawyers not only can be part of the process, but also can lead it.

Certainly becoming a leader and a public voice for equal opportunity is a great way to help increase diversity in our profession. However, there are countless smaller, but no less important, things that you can do today to increase diversity.

- Invite someone of another race or gender to have lunch with you or to have Sunday dinner at home with your family.
- Actively seek out and build a friendship with someone who doesn't look like you.
- If you have children, talk to them about racism and sexism. Make sure they are exposed to children of other races and genders.
- When you see racism, stand up against it.
- When you hear racist comments, speak out.
- Get involved with programs at your law school alma mater to help increase the number of minority candidates entering the school and the number of jobs available to minority candidates upon graduation.
- Agree to serve as a mentor to another young lawyer, whether they are a person of color or a lawyer of a different gender.
- Learn Spanish — our state is becoming increasingly more Hispanic in population.
- If your employer does not



Legendary civil rights attorney Fred Gray addresses the TBA-sponsored Diversity Summit in Memphis.

PHOTO BY BARRY KOLAR

Staff

- Danny Van Horn, President
- April Berman, Editor
- Rae Oliver, Assistant Editor
- Stacey Shrader, YLD Director
- Landry Butler, Design & Production

have a diversity committee, work to develop one.
- Volunteer to serve as an attorney coach for an inner city high school mock trial team.
- Encourage minority lawyers to get involved with the bar and to apply for the Tennessee Bar Association Leadership Law program.

The actions set forth above are not meant to be an exhaustive list of things to do but some suggestions to jumpstart your thinking about this issue. We must continue talking about diversity, but also must start taking action. As young lawyers we can make a tremendous difference. We can lead on this issue — whether as a vocal leader or someone who leads by example. Are you ready to take action? Are you ready to make diversity a way of life so that you feel it down deep in your bones? If so, there's no time like today to start that journey. ■

NASHVILLE SCHOOL OF LAW

One of several breakout groups at the summit discusses how to make a difference for minorities in the legal profession.

ELECTION 2006

Candidates for YLD West Tennessee Governor

McGoff

Sellers

Candidate: William Jeffrey McGoff
Hometown: Memphis
Firm: Burch, Porter & Johnson PLLC
Law School: University of Memphis (2003)

A Memphis native, Jeff McGoff practices law at the Memphis firm of Burch, Porter & Johnson PLLC. He attended the University of Memphis and earned a B.B.A. in 1998, an M.S. in 2000 and his law degree in 2003. While in law school he served as a staff member of the *University of Memphis Law Review* and received the Cecil C. Humphreys Law Fellowship. In 2004 he completed an LL.M. at the University of Florida and was admitted to the Tennessee bar. McGoff is a member of the American Institute of Certified Public Accountants, and the Memphis, Tennessee and American Bar Associations. He practices in the areas of estate planning, business and personal tax planning, mergers and acquisitions, business transactions, corporate governance and federal/state/local taxation.

Contested elections are decided by secret ballot at the division's annual meeting in June.

If you have questions about the election process, please contact TBA YLD Director Stacey Shrader at sshrader@tnbar.org, 615-383-7421 or 800-899-6993.

Candidate: Andrew Vincent Sellers
Hometown: Jackson
Firm: Waldrop & Hall
Law School: University of Memphis (1998)

Born in Madison, Tenn., Andrew Sellers practices law at the Jackson firm of Waldrop & Hall. He graduated from Nashville's David Lipscomb University in 1993 with a B.S. in business management/organizational communications and a minor in marketing. He earned his law degree from the Cecil C. Humphreys School of Law at the University of Memphis in 1998.

At Waldrop & Hall he practices general civil and commercial litigation, with an emphasis on insurance defense in personal injury cases, workers' compensation, medical malpractice, employment law, product liability and civil rights. Sellers chairs the Tennessee Bar Association YLD's Communications Committee and serves as editor of *E-DICT*, the division's electronic newsletter. He also fills one of three young lawyer seats in the TBA House of Delegates. He previously held the position of Jackson-Madison County Bar Association liaison to the TBA YLD, served as district representative to the TBA YLD and was a member of the TBA's inaugural Leadership Law program. ■

Editor's Note: Biographical sketches were compiled by TBA staff based on publicly available information.

Face of the Young Lawyer

By Rae Oliver

Interviewing David Johnson of Nashville's Miller & Martin PLLC was a bit of a daunting task. He's got quite a sense of humor … but then he's got this other side. For instance, he just made partner and he's a new father. I guess I just wasn't sure which side to focus on. So I did my research and explored the obvious resources at my fingertips: the other members of the YLD. And from there the story possibilities were endless.

Our David Johnson grew up in Knoxville's "Big Orange Country" and he's somewhat of a legacy there. David didn't go to UT, but he can't help being a fan. His grandfather played football there back in the 1920s. David left his family's sports heritage behind to pursue the law, becoming the only lawyer in his family since Baxter Cato, a 1907 graduate of Vanderbilt Law School. David found the law by way of a clerkship, well, actually three clerkships. He clerked for judges whom he describes as "excellent mentors." This gave me the opening for what would become my first Barbara Walters moment when I asked Johnson to comment on the rumor that a Court of Appeals judge has a shirtless picture of him in her office. Johnson's stammering and final reply of, "Well … you'd have to ask the judge" did not deter me. I repeated my question. Perhaps it was Johnson's fear that my source would come forward, or perhaps it was fear that the picture itself would surface that prompted him to explain, "Well, the judge's daughter was a fan of mine." So, apparently, David allowed himself to be photographed shirtless with a fake tattooed heart containing the girl's name. Cute. But I have to wonder, where is this girl now? And is she reading this?

David Johnson is a member in the Nashville law firm of Miller & Martin. He is proof that lawyers can do serious work while maintaining a sense of humor.

The interview was filled with many awkward pauses in which I asked a question and David scrambled for an answer. Readers should know that there were several questions Johnson refused to answer and other answers he cautioned me about publishing. He did 'fess up to some things in his past, like the practical jokes played on members of our judiciary. In one gusty move, Johnson drummed up a false and inflammatory letter from one judge to another. And then there was the incident in law school when Johnson was asked to leave a "haunted forest" of some sort — presumably a charity event — for attempting to relieve himself in the forest. It turns out people carry flashlights at these things. Who knew? I don't make the facts folks. I just report them.

The last time I authored the "Face of the Young Lawyer," Bass Berry posted the article on its web site. Something tells me this issue will not make it into the hall of fame at Miller & Martin. But frankly, it should, because David Johnson has made some worthwhile contributions to the bar. He has served as chair of the state mock trial competition — no small task — and in 2004 he received the TBA YLD's Outstanding Service Award. In addition, David has been quite involved in the American Bar Association. Of his involvement in bar work, Johnson says, "I've enjoyed getting to know other young lawyers across the state and across the country." He went on to say how exciting it has been to see his colleagues pursue higher positions, such as Ed Stanton, who is currently running for U.S. Congress.

As for his choice of profession, David says he relishes the strategy of practicing law and likens it to a "chess match." And he has some good advice for young lawyers just getting settled in the profession. "Get involved and don't just focus on the business before you. Get involved in something that will enhance you as a person." Outside of his bar activities, Johnson serves on various projects for the American Cancer Society.

Finally, I gave David an opportunity to comment on the YLD's current administration. "Three words describe Danny Van Horn's presidency: drunk with power. Every time President Bush thinks about his low approval rating, he turns his mind to Danny's rating and smiles. It's a good thing that Van Horn's tenure is almost up or we'd be looking at an impeachment." Puzzled, I asked, "Aren't you and Danny close friends"? He replied, "Oh, yeah, we met a long time ago in law school. Well, actually, we met on the Internet." After getting permission to print that, my job was complete. ■

Rae serves in the Office of the U.S. Attorney for the Western District of Tennessee. The Face of the Young Lawyer is designed to feature young lawyers embracing unique aspects of life. If you know someone who would make for an interesting profile, please contact Rae at rae.oliver@usdoj.gov or April Berman at april.berman@asurion.com.

LAW STUDENT FEATURE

The Actual Notice Requirements Applicable To Probate Proceedings In Tennessee

By Vanessa M. Cross

Death does not eliminate an individual's debts.[1] Instead, the decedent's estate becomes liable for settling remaining debts.[2] Historically, the notice standard applicable to estate creditors was designed to expedite estate settlement by imposing non-claim statutory bars against claims not brought within the statute's timeframe. For most state probate statutes, constructive notice by publication to creditors was sufficient.[3] In *Tulsa Professional Collection Services v. Pope*,[4] however, the United States Supreme Court extended the actual notice standard articulated in *Mullane v. Central Hanover Bank and Trust Co.*[5] to known or reasonably ascertainable estate creditors when the state non-claim statute is not self-executing.[6] The so-called self-executing statutory provision simply "act[s] to cut off potential claims against the decedent's estate by the passage of time" without court intervention.[7] The *Pope* case was clearly a victory for estate creditors, but added investigatory responsibilities to the personal representative. In Tennessee, post-*Pope* case law has brought to light that even when a personal representative sends actual notice, the content of the notice must be sufficient to meet due process clause demands.[8] This article explores the actual notice requirements under Tennessee's non-claim statute set forth at *Tenn. Code Ann.* § 30-2-305, *et seq*.[9]

The personal representative must, at a minimum, send or deliver to known or reasonably ascertainable creditors a copy of the published notice to creditors of the commencement of probate proceedings.[10] The Tennessee statute[11] provides, in relevant part:

> [I]t shall be the duty of the personal representative to mail or deliver by other means a copy of the published or posted notice as described in subsection (c) to all creditors of the decedent of whom the personal representative has actual knowledge or who are reasonably ascertainable by the personal representative, at such creditors' last known addresses. Such notice shall not be required where a creditor has already filed a claim against the estate, has been paid, or has issued a release of all claims against the estate.

Additionally, the general rule in *Tenn. Code Ann.* § 30-2-307(a)(1) provides that all claims are barred unless filed within four months of the published notice to creditors,[12] absent application of the exceptions set forth in §§ 30-2-307(a)(1)(A)-(B) discussed below.

As demonstrated by Tennessee case law, actual notice may be something other than an exact copy of the published notice to creditors outlined in *Tenn. Code Ann.* § 30-2-306(c) but must, at a minimum, include (1) information of commencement of probate proceedings and (2) the specific time period for the particular creditor to file.[13] Though literally in compliance with the statute, notice that gives erroneous information of the time period to file a claim is no more acceptable than a notice with no information concerning the time period.[14]

Minimal Content to Effect Actual Notice

In *Estate of Jenkins v. Guyton*,[15] the Supreme Court of Tennessee articulated the content that is minimally required to satisfy the actual notice standard to estate creditors. The claimant, Thomas L. Guyton, domesticated a foreign judgment in Davidson County, Tenn. against Richard H. Jenkins. On Sept. 15, 1992, an agreed order was entered in the court awarding Guyton an enforceable judgment of $141,781 against Jenkins. Installment payments were negotiated and an order to stay execution was effectuated. Jenkins died testate on Sept. 25. On Oct. 1, Jenkins' will was offered for probate in Davidson County Probate Court. The probate clerk published a notice to creditors in the *Nashville Business Journal* on Oct. 12 and 19. On Oct. 21, a co-executor of the estate sent an installment payment on Guyton's judgment to his attorney. It contained a letter stating that Jenkins had died and his will was being probated. Installment payments were sent for four subsequent months, but no further action to "notify" Guyton as a known creditor was provided. Guyton called the co-executor when he did not receive a fifth installment payment. Guyton was informed that no further payments would be sent because he had not filed a claim within the then six-month period provided in *Tenn. Code Ann.* §§ 30-2-306(c) and 30-2-307(a)(1).

Guyton filed his claim on May 3, 1993. On May 25, the co-executors filed an exception to the claim alleging that the six-month period beginning with publication of the notice to creditors in the *Nashville Business Journal* had lapsed, thus barring the claim. The probate court allowed the claim and the intermediate appellate court affirmed.

The issue before the Supreme Court of Tennessee was whether the letter sent by the co-executor to Guyton informing him that (1) Jenkins had died and (2) his will was being probated constituted the requisite "actual notice" under *Tenn. Code Ann.* § 30-2-306(c) and thus limited the period for filing claims to six months following publication of notice. Guyton was indisputably a known creditor of the estate. The court noted that the letter sent to Guyton's attorney did not include a copy of the notice to creditors published in the *Nashville Business Journal* pursuant to the requirement of *Tenn. Code Ann.* § 30-2-306(e). The executor argued that Guyton's attorney should be presumed to know the law and should have been put on inquiry notice from the Oct. 21, 1992 letter and that the actual notice standard had been met. The court rejected the executor's attempt to establish a "different standard of 'actual notice' for those well-versed in probate law, such as attorneys, and those not so well informed." The court reasoned, *inter alia*, that such analysis would "run afoul of

continued on page 8

YLD IN THE COMMUNITY

The Verdict Is In: Knoxville West High Wins State Mock Trial Tournament

By Adam O. Knight

Sixteen teams from across the state competed in the 2006 Tennessee Bar Association State High School Mock Trial Competition March 17 and 18 in Nashville. To reach the state competition, teams had to win district competitions by playing the roles of attorneys and witnesses in a fictitious case developed by the TBA Young Lawyers Division. This year, teams presented the case of *Dale Evans v. Kris Harris*, a civil suit involving a tour bus and pedestrian accident that occurred while tourists were trying to catch a glimpse of a popular country singer. Teams presented their best arguments as to whether the bus driver or the pedestrian was at fault.

Each of the four rounds saw fierce competition from every team present, with considerable movement in the rankings throughout the first three rounds. Indeed, the standings were so close that a mere ten points separated the second from the third place team.

At the conclusion of four preliminary rounds, Knoxville West High School and St. Mary's Episcopal High School of Memphis were the top finalists. After a well-fought championship round, presided over by Tennessee State Supreme Court Justice Cornelia Clark, Knoxville West High School emerged victorious as the 2006 Tennessee Bar Association High School Mock Trial champion.

The YLD Mock Trial Committee would like to thank the 200 volunteers who served as scorers, bailiffs and presiding judges dur-

PHOTOS BY STACEY SHRADER

Competition Chair Jordan Keller announces the results of the championship round.

Knoxville's West High School gathers around Supreme Court Justice Cornelia Clark to celebrate their victory.

Individual Award Winners

Best Plaintiff Advocate
Tracey Hancock of Gallatin High School
Best Plaintiff Witness
Paige Hamby of Gallatin High School
Best Defense Advocate
Jennifer Camfield of West High School
Best Defense Witness
Harry Watson of Ravenwood High School

Most Valuable Players

Cookeville High School
Rachel Steidl
Dobyns-Bennett High School
Josh Mosley
Family Christian Academy
Ethan Hargraves
Gallatin High School
James Butler
Germantown High School
KC Young
Harpeth Hall
Claire Burks
Haywood High School
Trista Wade
Hume-Fogg Academic High School
Maggy Randels
McCallie School
Shayne Woods
Oak Ridge High School
Erin Wendt
Ravenwood High School
Robert Gardner
St. Mary's Episcopal School
Jenny Guyton
Seymour High School
Marcus Baker
South Greene High School
BJ Short
Webb School
Kelsey Lewis
West High School
Ian Orr

2006 Championship Round Available on Video

Are you planning to coach a mock trial team next year? See what it takes to make it to the championship round. The final round of this year's competition features West High School and St. Mary's Episcopal School battling for the first place trophy. Videos are just $10 and can be purchased by contacting Stacey Shrader at the Tennessee Bar Association at 615-383-7421, 800-899-6993 or sshrader@tnbar.org. ■

ing the competition. Without your help the event would not be as successful as it is each year. Additionally, the committee offers congratulations and praise for a job well done to the competitors, coaches, faculty sponsors and family members who worked so hard on this year's case.

Stay tuned for next year's problem, which will be a criminal matter. Competitors can expect to see some familiar names in the problem and a whole lot of twists and turns. ■

Adam served as vice chair of the state mock trial competition this year and will assume the chairmanship for the 2007 competition. He can be reached at AKnight@sedlaw.com.

ABOVE: Where the magic happens: Mock Trial committee members Scott Rose (right) and David Thompson (left) take a break from power matching as rounds get underway.

RIGHT: St. Mary's team members present their side of the case.

Final Rankings

1st place
West High School
Knoxville
2nd place
St. Mary's Episcopal School
Memphis
3rd place
Family Christian Academy
Chattanooga
4th place
Hume-Fogg Academic High School
Nashville
5th place
Webb School
Bell Buckle
6th place
Ravenwood High School
Brentwood
7th place
McCallie School
Chattanooga
8th place
Gallatin High School
Gallatin
9th place
Harpeth Hall
Nashville
10th place
Haywood High School
Brownsville
11th place
Germantown High School
Germantown
12th place
South Greene High School
Greeneville
13th place
Seymour High School
Seymour
14th place
Dobyns-Bennett High School
Kingsport
15th place
Oak Ridge High School
Oak Ridge
16th place
Cookeville High School
Cookeville

The Probate Proceeding Actual Notice Requirements Applicable to Estate Creditors

continued from page 5

the *Mennonite* court's injunction that 'actual notice' shall be made available to '*any* party, whether unlettered or well-versed in commercial practice, if its name and address are reasonably ascertainable." After holding that Guyton had not received actual notice because of the deficiency of the contents in the letter, the court then looked to *Tenn. Code Ann.* § 30-2-307(a)(1)(B), which effectively imposes a one year limitation period where a known or reasonably ascertainable creditor receives no notice. The court noted that although an exact copy of the published notice to creditors may not be required, at the very least, information of the probate proceeding's commencement and the time period requirements for filing a claim are required.

Communicating an Accurate Time-Period to Creditors

In an opinion delivered by Justice Birch in *Bowden v. Ward*,[16] the Tennessee Supreme Court addressed the issue of whether notice to an estate creditor that does not correctly communicate the time period for filing a claim is equivalent to no notice at all.

Jones Elmer Bowden died on March 27, 1996. On April 9, his daughter qualified as executrix. On April 12, the clerk published the notice to creditors. The executrix delivered notice of the probate proceedings to creditors ascertained from the decedent's records. This did not include Larry E. Ward because the executrix found no record of decedent's debt to Ward.[17] On Oct. 28, the executrix recognized Ward's name in an address file and attempted to call him on an unrelated matter, but Ward was out of the country. In a conversation with Ward's daughter, the executrix was advised of a debt owed by the decedent to Ward from an installment note from the sale of a business and airplane.

Upon returning to the United States and learning of Bowden's death, Ward forwarded a letter identifying himself as an estate creditor and explaining the status of the installment loan. On Dec. 2, the estate's attorney sent a letter to Ward rejecting the claim. Additionally, the estate attorney expressly asserted that even if Ward were a creditor a claim would be barred "because [he] did not file such claim with the probate court as required by law within [the then] six months after the first publication of the notice to creditors." The estate attorney included a copy of the published notice to creditors with the letter.

Ward was advised by an attorney that he had twelve months from Bowden's death to file a claim, but should file immediately. In a letter to the estate attorney dated Dec. 30, Ward forwarded documents pertaining to the sale of the airplane and advised the estate attorney of his intent to file a claim. Ward filed a claim on Feb. 11, 1997.

The trial court found that Ward had become a known creditor on Nov. 20, 1996, and was entitled to actual notice. Further, the court found that actual notice to Ward was effectuated when Ward received the letter and a copy of the published notice to creditors from the estate attorney on Dec. 6. Accordingly, the trial court held that the letter started the 60 days from receipt of actual notice statutory period for filing a claim, pursuant to *Tenn. Code Ann.* § 30-2-307(a)(1)(A). Under this analysis, the trial court held that Ward could have filed a timely claim by Feb. 6, 1997. The court barred the claim because it was not filed until Feb. 11.

The appellate court reversed and concluded that the notice to creditors Ward received did not constitute actual notice under the statute because it "contained a time period that had since expired and failed to contain, at a minimum, the applicable time period in which he had to file his claim." Accordingly, the appeals court held that the 12-month self-executing limitation period applied, making the filed claim timely. The relevant provision[18] provides:

> If a creditor receives actual notice less than sixty days before the day, which is twelve months from the decedent's date of death or receives no notice, such creditor's claim shall be barred unless filed within twelve months from the decedent's date of death.

The Supreme Court of Tennessee agreed with the appellate court. Instructively, the court intimated that communication to this creditor should have included not only a copy of the published or posted notice to creditors but a copy of the statute which sets out the various time limits and a statement of the date of the decedent's death.

The 12-Month Absolute Bar on Claims

As seen in *Bowden v. Ward*, if the creditor never receives notice or gets actual notice less than 60 days before the date that is 12 months from the date of the debtor's death, the creditor has the full 12 months from date of death to file a claim.[19] The question becomes, does the 12-month bar really mean 12 months in all situations. By way of illustration, if D's probate proceeding is instituted 24 months after the decedent's death, are all claims forever barred? In *Estate of Luck v. FDS/Goldsmith*,[20] the Tennessee court made clear that 12 months from the date of death is in fact the absolute last date an estate creditor may file a claim in all circumstances. The 12-month statute of limitations applies regardless of whether the creditor knew the debtor was dead, received any type of notice of the debtor's death or received notice to file a claim. ■

Vanessa is a third year law student at the Cecil C. Humphreys School of Law at the University of Memphis. She will graduate in spring 2006. She can be reached at crosswriting@yahoo.com

Notes

1. *Tenn. Code Ann.* § 30-2-305 provides that "every debtor's property, except such as may be specifically exempt by law, is assets for the satisfaction of all the debtor's just debts."

2. Id.

3. *See Continental Ins. Co. v. Moseley*, 100 Nev. 337, 338, 683 P.2d 20, 21 (Nev. 1984)

(Moseley II) (the first case requiring that estate creditors receive actual notice instead of publication notice in probate proceedings)

4. *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 491, 108 S.Ct. 1340, 1348 (1988) (examining Oklahoma's non-claim statute and establishing the standard for determining whether a estate creditor is entitled to actual notice pursuant to the Due Process Clause of the Fourteenth Amendment)

5. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 108 S.Ct. 1340 (1950) (at a minimum due process requires notice and an opportunity for a hearing before deprivation of life, liberty, or property)

6. *See Pope*, *supra*, at 487 (where the state plays no other role outside of enacting the statute, such a "limited involvement in the running of the time period generally falls short of constituting the type of state action required to implicate the protection of the due process clause")

7. *Pope*, *supra*, at 483, 1344. *See also Texaco v. Short*, 454 U.S. 516, 533, 102 S.Ct. 781, 794 (1982) ("it is essential to recognize the difference between the self-executing feature of the statute and a subsequent judicial determination that a particular lapse did in fact occur")

8. U.S. Const. Amend. XIV § 1. *See Estate of Jenkins v. Guyton*, 912 S.W.2d 134 (Tenn. 1956) and *Bowden v. Ward*, 1999 WL 144933 (Tenn. Ct. App. 1999), aff'd, 27 S.W.3d 913 (Tenn. 2000)

9. *Tenn. Code Ann.* § 30-2-307

10. *Tenn. Code Ann.* § 30-2-306(c) (the general requirement that notice by publication should be provided upon opening an estate)

11. *Tenn. Code Ann.* §30-2-306(e)

12. *Tenn. Code Ann.* § 30-2-307(a) ("all claims against the estate arising from a debt of the decedent shall be barred unless filed within the period prescribed in the notice published or posted in accordance with § 30-2-306(c))

13. *See generally, In re Estate of Jenkins v. Guyton*, 912 S.W.2d 134 (Tenn. 1995)

14. *See generally, Bowden v. Ward*, *supra*, at 916

15. *Guyton*, *supra*, at 134

16. *Bowden v. Ward*, *supra*, 1999 WL 144933 * 2

17. *Id.*

18. *Tenn. Code Ann.* § 30-2-307(a)(1)(B)

19. *Id.*

20. *Estate of Luck v. FDS/Goldsmith*, No. W2004-01554-COA-R3-CV, 2005 WL 1356448 (Tenn. Ct.App. 2005)

TECHNOLOGY AND THE LAW

Computer Networking Basics

By Bill Edwards

While most young lawyers feel fairly comfortable with desktop and laptop computers, few are well-versed enough in the basics of computer networking to understand how networking (of the non-client development variety) can be of vital importance to a one's law practice. Most folks view computer networks as a spaghetti monster of wires connecting magic black boxes that miraculously work, or, when they fail to work, the source of a enormous headaches and gargantuan repair bills from the IT witch doctor who charges more by the hour than the average plumber (or lawyer, in some cases.). The good news is that network systems have become increasingly simpler as they have developed, but the jargon surrounding them has made understanding their workings more difficult. Much like the legalese you learned to speak in law school, however, the language of computer networking can be learned.

Switch and Router

A computer network's function is to control and share information. The centerpieces of a network are the switch and router, the devices into which everything else is plugged. A network switch is a long black box covered on one side with plugs for CAT-5 cable. These are known as RJ-45 jacks. In lay terms, a CAT-5 cable is one that looks a lot like a telephone line, only bigger, and an RJ-45 jack looks like an oversized telephone plug. The network switch controls the flow of data from one computer to another on the network, or to a network device such as a server or network printer. The network switch controls the flow of information within the network and the router controls the flow of information between the network and the rest of the world.

Firewall

Routers often have built-in "firewalls," but stand-alone firewalls are preferable. A good router and switch combination can cost as little as $125, but a good firewall may cost $400 to $500. When it comes to constructing firewalls for professional offices I believe in the scorched earth policy: nothing should get in. While standard software packages are sufficient for most users, they probably are not strong enough for professionals with a need to protect privileged or confidential information. Most folks would never consider a $2 combination lock to protect their child's bicycle, but are willing to trust a $49 software firewall/virus protection package (or, worse, one downloaded for free) to protect data that took years to accumulate and if lost would spell financial ruin. Purchase a good firewall with a maintenance contract and keep it updated.

Wireless Network

Many consumers today try to eliminate the switch and cables by installing a wireless network. While this is an attractive idea, it is one that should be approached with extreme caution by lawyers because of security concerns. Wireless networks are slower than cabled ones and can pose a security risk to client information, which may be vulnerable to interception by others, especially if the network is unsecured. At a minimum, one should employ a secure network and monitor the security of that network for weaknesses. Another weapon against unlawful interception is encryption software, which can provide at least some protection against either purposeful or accidental intrusion. The bottom line, however, is that you should be careful what you send and receive on a wireless system.

The Computer

Computers are the residents of the network. Entire books have been written dolling out advice about how much computer to buy, but one simple rule holds true: you get what you pay for. If you need a $700 system to do the job, and you spend $399 you have not saved $300, rather, you have wasted $400.

Before purchasing new computers for use in a legal environment, consider the

continued on page 10

Computer Networking Basics

continued from page 9

following: as more courts adopt electronic filing, computer system requirements will have to change to accommodate these new rules. A computer purchased today should have one gigabyte (1GB) of memory and a discrete graphics card. Memory, often called "RAM" is not the same thing as storage. Storage is hard drive and flash memory. Buy as much hard drive as you want, go wild with it, have fun, but don't expect it to speed up your system as the hard drive size has nothing to do with how fast the computer processes data.

By contrast, a discrete graphics card will speed up your system. Don't be fooled by the term "integrated graphics," which also goes by a lot of really cool, feel-good, high-tech names depending on the manufacturer. What it really means is the absence of a discrete graphics card. Without a discrete card, your main processor and memory are tasked with doing all the chores of managing and manipulating graphic images (like all those PDF files you are or soon will be sending and receiving), making the entire system move more slowly.

It is possible to have a server with a single hard drive, but I never recommend that as a solution as this setup lacks any redundancy. When the hard drive crashes (and believe me, it will), all data will be lost and years of work can go down the drain.

Server

The final major component of a network is the server. Servers are intimidating devices that sound extremely expensive (they can be) and complicated (often true). After you read this article you will not be able to configure a server, but you will be able to identify the server features that are important to your practice.

There are two types of servers: the general server, which serves multiple functions, or the specifically-dedicated server that hosts specific functions such as websites, email, applications and files. The general-purpose server is most common in law offices, typically functioning as the file, email and application server.

Configuring a server is a lot like configuring a desktop computer, as most of the parts are the same. When configuring a server you must examine the operating system, the memory, the hard drive and the permanent storage. In addition, there are two concepts to keep in mind: redundancy and scalability. Redundancy is the notion that data should be stored in more than one place in case one part fails, and that, as often as practical, parts that tend to fail should have backups in place. Scalability is the idea that a great deal of money is going into this equipment and the user should be able to update it later to lengthen its lifespan.

There are six crucial components to a server:

Processor. For a server processor, users have two basic choices: the familiar "Pentium" chip or a chip with the intimidating name of "Xeon" (which simply means that it is a Pentium chip that has been designed to work in the same computer as other Pentium chips). By adding more chips one can increase the server's ability to do multiple tasks simultaneously and, thus, increase effective speed. Intel recommends one processor for every 20 to 25 users.

Memory. Server memory also is easy to figure out: buy as much as you can afford. Two gigabytes (2GB) is a good start, although a small firm may not need that much. Most servers allow for memory upgrades, and I recommend you buy a configuration that leaves memory slots open for future expansion.

Operating System. A multitude of server operating systems are available on the market. The most common are Windows Server, Windows Small Business Server, Novell and Linux. The latter two often are recommended by IT professionals familiar and comfortable with their use. Both are quite powerful and functional. If the user is not familiar with these systems and wants to be his or her own server administrator, Windows Small Business Server works well. However, be aware that it does have limitations. For example, it must be the first server on the network and it will not host more than 75 users.

Hard Drive. This is where things can begin to get tricky. It is possible to have a server with a single hard drive, but this setup lacks redundancy. When the hard drive crashes (and believe me, it will) all data will be lost. More sophisticated servers use hard drives known as RAID arrays. RAID stands for "redundant array of independent disks." With RAID, two or more hard drives are working as a team to store data. When one crashes, all is not lost.

Storage Device. Don't forget to pay attention to the storage devices on a server. A desktop system typically has a floppy drive and/or a CD-RW drive to back up data. A similar device is needed for a server as well. However, most servers quickly out-

Continuing Legal Education from the Tennessee Bar Association Young Lawyers Division

As a service to our members, we are pleased to announce the following YLD-sponsored courses in 2006. Each seminar will be offered in Chattanooga, Knoxville Memphis and Nashville on the same day. All are accredited for two general CLE credits and are followed by a happy hour. For more information contact Stacey Shrader at sshrader@tnbar.org or register online at https://www.tba.org/onsiteinfo/skillbuilding_05-06.html

4L SERIES

The 4L Series, designed for new lawyers in their first year of practice, includes:

Basics of Business Law . . . . . May 18
Setting up a Corporation . . . . . July 20
Wills, Uncontested Divorces & Basic Real Estate . . . . . Sept. 21

SKILLS ENHANCEMENT SERIES

Designed for young lawyers in their first two to six years of practice:

Writing Better Briefs & Drafting Contracts . . . . . June 7
Finding & Challenging Experts . . . . . Aug. 2
Choosing & Evaluating a Case . . . . . Oct. 4

CONVENTION OFFERINGS

On Friday, June 16 the YLD will present four courses as part of the TBA's annual convention in Memphis. All sessions will be held at the Peabody Hotel.

Mastering the Art of Opening Statements & Closing Arguments . . . . . 8:30 a.m.
Featuring Bill Ramsey of Neal & Harwell and Charles Grant of Baker, Donelson, Bearman, Caldwell & Berkowitz PC

Developing the Theory of a Case . . . . . 9:15 a.m.
Featuring Parke Morris of the Cochran Firm; Frank Holbrook of Butler, Snow, O'Mara, Stevens & Cannada; and Ken Bryant of Miller & Martin

Hot Topics in IP Law for the Non-IP Practioner . . . . . 10:30 a.m.
Featuring Jack Waddey of Waddey & Patterson and Grady Garrison of Butler, Snow, O'Mara, Stevens & Cannada

Ethics Jeopardy . . . . . 2 – 4 p.m.
Featuring ethics expert Lucian Pera as Alex Trebek and TBA President Bill Haltom as a contestant

grow the storage capacities of CD or even DVD. The answer: an external tape back up unit (TBU). Be sure to get one that is large enough to backup all available hard drive space minus programs and the operating system. There is no need to back these up; the original discs can be stored in a safe place off-site. I am often asked, "Why get a TBU if the hard drives are redundant to each other?" The answer goes to the overall plan of the network. It is important to back up data often and store it offsite in case the entire network is destroyed or lost. Floods and fires happen and burglars steal computers. Once gone, if there is not an offsite backup, it will not matter how many hard drives were in the server or how many desktops stored copies of files.

Power Supply. Next to a hard drive failing, the most likely source of mechanical failure on a server is the power supply. Redundant power supply is preferable if available. And don't forget to invest in a battery backup/surge suppression device. Many $10,000 servers and a lot of $2,400 servers have been lost to spikes in electrical current because they were plugged directly into a wall socket.

Hopefully, this article has provided a basic understanding of computer networks to "find your way to the courthouse." If not, do what lawyers do all the time … call an expert. ■

Bill is a third year law student at the Nashville School of Law and a student member of the TBA. A self-proclaimed computer geek, he can be reached at bill37663@hotmail.com.

Join Us for the 125th Annual TBA Convention in Memphis, June 14 – 17

Since the beginning of the bar association in 1881, its members have seen the importance of gathering together to learn from each other, share knowledge and experiences, and work together to improve the legal system. This summer, the TBA convention caps off a year in which lawyers from across the state have been standing up and delivering on President Bill Haltom's mission of educating the public on the importance of the rule of law and the American Legal System. Thousands of Tennesseans have heard this message in presentations and broadcasts, and have seen Tennessee lawyers stepping up and putting their beliefs into action with pro bono and other volunteer work.

Like any good celebration, the 2006 TBA Convention promises a full-sized portion of fun. Highlights include:

- Opening night reception atop the Peabody Hotel
- Reception and dinner at the Memphis Zoo's new $23 million Northwest Passage exhibit
- The ever-popular lawyers luncheon
- Reception at the Rock 'n' Soul Museum
- Redbirds and Rendezvous BBQ at AutoZone Park
- The YLD-sponsored 5K Race Gestae

And don't forget, on Friday, June 16 the YLD holds its annual membership meeting and elections at 4:00 p.m. CST.

For more details and a complete schedule of events visit the TBA website at http://www.tba.org/convention2006. ■

SPOTLIGHT ON TENNESSEE LAW SCHOOLS

Vanderbilt Dean Seeks to Modernize Legal Education

By Jay Campbell & Jake Kraemer

Legal education has remained relatively unchanged since the late 19th century — a Socratic education seeking to impart legal doctrine through a steady diet of appellate decisions. While most law school curriculum remains rooted in centuries-old tradition, the body of law attorneys must navigate has evolved from common law recorded in opinions to a complex system of interrelated sources — statutes, regulations, treaties and, yes, cases — many of which scarcely get mentioned, much less studied, during law school. If Vanderbilt University Law School's new dean has his way, however, the legal education at Vanderbilt will receive an extreme makeover.

Dean Edward L. Rubin came to Vanderbilt with the belief that the current curriculum at most major law schools could be enhanced to better serve the legal community. His vision is to transform legal education to reflect more accurately the modern practice of law. Having taught and practiced law, Rubin is ideally situated to bring this change to fruition. Prior to being named dean in July 2005, Rubin served on the faculty of University of Pennsylvania Law School and Boalt Hall School of Law at the University of California, Berkeley. He began his legal career as a clerk for Judge Jon O. Newman of the U.S. Second Circuit Court of Appeals and was an associate with the law firm of Paul, Weiss, Rifkind, Wharton & Garrison in New York, where he practiced entertainment law.

Dean Rubin identifies three main problems with modern legal education. First, he posits that the current education model is outdated. The modern legal education model was created in the 1870s for a legal world that did not have today's regulatory state, global interdependence or sheer volume of legal transactions. Rubin, a former transactional lawyer himself, notes that an almost exclusive emphasis on common law during law school does not make sense in a world where one-third of lawyers will rarely read a case in their daily practice. Rather than focusing on case law, Rubin would like to see a legal curriculum that emphasizes the litigation, transactional, regulatory and international aspects of the modern practice.

Second, citing medical school (where by the third year students actively are working in hospitals) and business school (where students engage in group study), Rubin argues that the passive education of law school is not in line with the active learning environments of other graduate programs. He believes that active learning opportunities must be incorporated into the curriculum.

Third, Rubin believes that law school should reflect the norms of current practice, rather than legal doctrine handed down by appellate courts. When the law school model was created there was no way to study social practice, and law was merely doctrine. Rubin notes this is why students study contract adjudication rather than contract formation. Believe it or not, many first year contracts courses do not give students the skills to read a contract, much less draft one. Rubin plans to utilize the tools of modern economics and sociology to design courses that better reflect modern practice.

Upon arriving at Vanderbilt, Dean Rubin immediately took steps to begin this curriculum evolution. Under his direction, Vanderbilt is approaching the first year of law school differently than the second and third years. In the first year, students are given a foundation to work from, while the second and third years provide opportunities for deeper study in particular areas of law. Collectively, the faculty is working together to revamp the first year education to incorporate the changes needed to modernize the curriculum. Dean Rubin's goal for the first year is to introduce law students to "law of the Twenty-First Century" and give them a "basic legal literacy." This introduction will include areas of law that schools often overlook in current first year curricula: the regulatory state, the increasingly global nature of law, and transactional law. Rubin says his goal is that "At the end of the first year, students should be able to read a case, a contract, a lease, a statute, a regulation [and/or] a treaty."

Dean Rubin also is seeking to change the way second and third years are structured. "The problem [with second and third year curriculum] is that there is no structure, it's just a bunch of courses," he says. To address this issue, the faculty has been organized into teams, tasked with designing relevant concentrations for upper-level courses. Students will be able to choose one of these curriculum tracks to focus on a particular area of law. Currently, Vanderbilt offers a business law concentration and hopes to add concentrations in litigation and dispute resolution, international law, constitutional law, regulatory law and public interest law. Rubin also envisions increased counseling at the end of the first year to aid students in choosing a concentration.

Dean Rubin is the first to admit that he cannot make these sweeping changes alone. He credits the present faculty with a passion for educating and embracing change and the Vanderbilt University administration, namely Chancellor Gordon Gee and Provost Nick Zeppos, with extraordinary encouragement.

There is a role for Tennessee lawyers in Dean Rubin's new curriculum. Rubin would like to see an increase in the number and variety of outside-the-classroom opportunities for students to engage in the active, experiential learning model. Rubin is seeking partnerships with judges, regulatory officials and lawyers in private practice who would be willing to provide such opportunities to law students. With the support of the faculty, student body, university administration and alumni, Dean Rubin is working to ensure that Vanderbilt Law School continues to create lawyers who are prepared for the challenges of modern legal practice. ■

Jay is a third year law student at the Vanderbilt University Law School and can be reached at jay.campbell@vanderbilt.edu. Jake is in his second year and can be reached at john.a.kraemer@vanderbilt.edu. Both serve as law student liaisons to the TBA YLD.

The Uniformed Services Employment and Reemployment Rights Act of 1994

By Cynthia J. Cutler

The United States continues to deploy troops and other military personnel in Iraq, Afghanistan and other places around the world. Since Sept. 11, 2001, over 525,000 National Guard and military reserve troops have been mobilized, and more than 390,000 have been released from active duty.[1] This has led to many employees being forced to leave civilian jobs to honor military obligations and employers struggling to deal with their absence. While away, and upon return, these employees are entitled to a number of protections under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). As summarized below, USERRA prohibits employers from discriminating or retaliating against men and women who serve in the uniformed services, establishes rights to reemployment upon return from duty and provides certain benefits protection.

The act applies to all public and private employers, regardless of size. While no employer wants to be perceived as discriminating against military personnel, many employers are not prepared to meet the requirements of USERRA or are unclear how to do so. Employers struggle with the business necessities of filling positions vacated by workers on military leave and how to reemploy returning employees, particularly given the longer tours of duty that are now common and the possibility of changed business circumstances. Managing staffing issues and ensuring that benefit policies do not run afoul of USERRA has placed an extra burden on many employers. For the lawyer counseling either a business client or service member it is helpful to understand the basics of this important statute.

Overview of Important Provisions

Employers may not discriminate in the employment or reemployment of an individual on the basis of military service or membership, nor may employers refuse to grant a military leave of absence to covered employees.

Employees who voluntarily or involuntarily take military leave to perform duties (including training) in the Army, Navy, Air Force, Marine Corps, any armed forces reserve units or national guard unit, or other categories designated by the president in time of war or emergency, must be promptly reemployed by their employer upon completion of their leave and are entitled to immediate continuation of benefits, provided the following conditions are met:

- the employee held a civilian job with the employer;
- the employee gave advance notice that he or she was leaving for duty in the uniformed services;
- the employee's cumulative leave did not exceed five years;
- the employee was not separated from service under dishonorable conditions; and
- the employee reported back to the civilian employer in a timely manner (specific timelines are dependent on the length of leave).

Employers must return eligible employees to the same or similar position (with corresponding seniority, pay and benefits) that they would have held but for the military service. This is known as the "escalator principle." Determining how to comply with this requirement may result in significant analysis and employers should consult with counsel before determining the reemployment position. However, there are statutory defenses to reemployment that may be applicable. They are:

- circumstances have changed so as to make the reemployment impossible or unreasonable (e.g., the company underwent a reduction in force that would have affected the employee);
- reemployment would impose an undue hardship because the returning employee is not qualified for the position due to disability or other bona fide reason and the employer has exhausted reasonable efforts to help the employee become qualified; or
- the nature of the civilian employment is for a brief, non-recurrent period and there was no reasonable expectation of continued employment for a significant period (e.g., seasonal or temporary jobs).

Employees also are protected against discharge, except for cause, after reemployment. This actually changes the employment relationship from that of at-will employment. The protection lasts for one year if the military leave was over 180 days. If the leave was between 31 and 180 days, employees are protected from discharge without cause for 180 days after they return to work. Employees taking leave of less than 31 days do not receive any additional "termination for cause only" protection.

Earlier this year, new regulations making several important clarifications to the act were adopted.[2] These included (1) confirming that reinstatement should almost always occur within two weeks, (2) spelling out the obligations of an employer to accommodate disabilities and (3) clarifying benefit continuation issues for employees on leave. The regulations imposed no new obligations.

Enforcement

Individuals claiming violations of USERRA may follow administrative enforcement mechanisms, but also may file a lawsuit in state or federal court without exhausting administrative remedies. Plaintiffs who prevail on a USERRA violation may obtain substantial verdicts — the act allows for reinstatement; recovery for front and back pay, lost benefits, attorneys' fees, expert's fees, court costs; and liquidated damages for willful violations.

The damages in a successful USERRA case can be substantial, as evidenced by the verdict in a recent Colorado district court lawsuit.[3] The case involved a Marine reservist who was employed as a design consultant with a technology company. The employee was called up for active duty on two occasions. When he returned from

continued on page 14

The Uniformed Services Employment and Reemployment Rights Act of 1994

continued from page 13

his second tour of duty, he promptly was reinstated at work with the same pay and benefits. However, the nature of his duties and responsibilities had changed. He was instructed to work on a new project rather than in his prior role as the primary consultant for one of the business groups as the company felt it would be too disruptive to replace a primary consultant. The company also was in the process of reducing its operating budget. Due to financial pressures and negative performance appraisals of the employee, the employee was terminated approximately four months after he returned. The court held that the employer violated USERRA by (1) placing the employee in a "diminished status" upon his return, (2) failing to give the employee a fair opportunity to resume his duties before being evaluated and (3) terminating him for reasons that did not constitute "cause" within the intent of the statute. The employee was awarded lost wages and benefits of more than $380,000 plus interest. The court held that liquidated damages were not appropriate in the case.

Challenges for Employers

USERRA poses a number of challenges for employers. Finding replacement workers to fill positions vacated by employees called up for active duty is a particular problem. Before Sept. 11, most reservists received job protection under USERRA for time needed for training or short-term assignments. Now many employees are leaving their job for 18 months at a time. Employers either need to fill these positions or shift the departing employee's work to other employees. Because the employee is entitled to his or her job (or similar one) upon return, many employers hire temporary workers to fill the vacancies. It is best to be honest with these employees about their long-term prospects in the position — even though an employer may not ask a departing service member if he or she intends to return to the company after active duty. USERRA provides no protections for employees hired to fill temporary vacancies. Handling shifting personnel is an area that employers should think about carefully, particularly if there are union contracts in place that may apply to the newly-hired individual.

Another challenging issue is how to deal with a returning employee who is now disabled. Employers must remember that the ADA applies if the employee meets the appropriate definitions to receive protection as a qualified individual with a disability (or otherwise) under that act. USERRA does not contain its own definition of disability, but does require employers to undertake a number of steps to return a disabled employee to work. First, the employer must make reasonable efforts to accommodate the disability in trying to place the employee back in the position he or she would have been in absent the military leave. If the efforts to accommodate are not successful in making the employee qualified for the position, the employee should be offered an available job that is equivalent in seniority, status, pay and benefits and for which the employee is or can become qualified to perform. Finally, if no such position is available, or the efforts to help the employee become qualified for the job have failed, the employer should offer a job the employee is qualified to perform and most nearly approximates the same status, pay and benefits as the prior position. The statute provides an exception to these obligations if efforts to accommodate truly constitute an undue hardship, but proving this defense is a high burden for employers.

Finally, employers are required to notify employees of their rights under USERRA. This requirement can be met by posting the U.S. Department of Labor's poster: "Your Rights Under USERRA." The poster may be downloaded at http://www.dol.gov/vets/programs/userra/poster.htm. ■

Cynthia practices law in the Nashville firm of Baker, Donelson, Bearman, Caldwell & Berkowitz PC. She can be reached at ccutler@bakerdonelson.com.

Notes

1. Numbers accurate as of December 19, 2005
2. 20 C.F.R. § 1002.1 *et seq.*
3. *Duarte v. Agilent Technologies, Inc.*, 366 F.Supp.2d 1039 (D. Colo. 2005)

Erin McArdle Coughlin Honored by Boy Scouts

Kingsport lawyer, Erin McArdle Coughlin, was honored with the Silver Beaver Award by the Sequoyah Council of the Boy Scouts of America at their Annual Eagle Scout & Leader Recognition Banquet March 13. Established in 1931 and presented for distinguished service to young people, the Silver Beaver Award is the highest honor the council can bestow on a volunteer. McArdle Coughlin received the award for her work as chairperson of the Northeast Tennessee Regional Mock Trial Competition, which often involves up to 16 teams competing for three slots at the state competition. Since 1996, she has worked with the Sequoyah Council to develop a team. ■

Erin is the Assistant General Counsel for the Tennessee Department of Children's Services in Bristol. She currently serves as secretary of the Tennessee Bar Association Young Lawyers Division, a post she has held since 2002. She also is the immediate past president of the Northeast Tennessee Young Lawyers Association.

Public Service Day to be Observed by Young Lawyers Throughout the State

By Jenny Rogers

Each year in conjunction with Law Day, young lawyers across the state participate in projects designed to serve the public. Many of this year's projects reflect the YLD's commitment to CASA (Court Appointed Special Advocates) and "Answering the Call" (the ABA-YLD's outreach program for people living with HIV and AIDS). Following is a list of each district's public service project for this year. Please contact your district representative for more details and information about participating in these events.

District 1
Myers Massengill; 423-764-1174
massengillmyers@netscape.net
Co-hosting a pancake breakfast fundraiser for CASA at the Rush Street Grill in Kingsport on May 6.

District 2
Chuck Buckholts; 865-482-4466
cbuckholts@msw-law.com
Working on a Habitat for Humanity House in Anderson County.

District 3
Michael Brezina; 865-546-9611
mbrezina@hdclaw.com
Working on a Habitat for Humanity House in Knox County.

District 4
Kristie Luffman; 423-472-2179
kluffman@tndagc.com
Assisting the Chattanooga Bar Association's YLD with a free legal clinic on April 22.

District 5
Valerie Richardson; 423-425-7000
vrichardson@swgwlaw.com
Continuing with a two-year campaign to recruit volunteers for CASA.

District 6
Rachel Moses; 931-528-7436
rmoses@lglaid.org
Holding a fundraiser for CASA and fielding a team for the Cookeville March of Dimes walk.

District 7
Evan Cope; 615-893-5522
ecope@murfreelaw.com
Working on a Habitat for Humanity House.

District 8
Jeff Cherry; 615-444-7222
jcherry@lowerylaw.com
Hosting a legal clinic for seniors and low-income individuals (April 29) and sponsoring a doctors v. lawyers softball game to benefit the Wilson County Child Advocacy Center (May 6).

District 9
Shannone Raybon; 615-277-0702
sraybon@bellsouth.net
Participating in the fourth annual Dining Out for Life — a fundraiser for HIV and AIDS services organization Nashville CARES. On April 25, sales at Merchants Restaurant (401 Broadway) will be donated to the organization.

District 10
John Holt; 615-382-2929
jbhlaw@bellsouth.net
Raising funds to provide children taken into custody by the Department of Children's Services with essential items through its "Backpack Program."

District 11
Wes Bryant; 931-388-4022
wbryant@hardinandparkes.com
Hosting a golf tournament to raise money for a new Maury County CASA agency.

District 12
Dean Dedmon; 731-286-2401
ddedmon@wghatty.com
Working on a Habitat for Humanity House.

District 13
Anna Banks; 731-423-5800
abanks@tndagc.com
Raising funds for the Madison County CASA program and painting their building on April 22 from 10 a.m. – 2 p.m.

District 14
Mary Beard; 901-434-8061
mhbeard@fedex.com
Partnering with the Memphis Bar Association to do repair work at Hope House, an HIV AIDS service organization for children, on May 6 from 9 a.m. – 12 p.m. ■

Jenny is chair of the YLD Public Service Committee. She can be reached at jcoro@bellsouth.net.

Upcoming Events

Event	Date
Public Service Day	Projects scheduled April 22-May 6 (see list on page 13)
Law Day Celebrated	May 1
Deadline for Open Seat Nominations	May 1
YLD CLE: Basics of Business Law	May 18
Law Day Art & Essay Contest Winners Announced	June 1
YLD CLE: Writing Better Briefs & Drafting Contracts	June 7
TBA Annual Convention The Peabody Hotel, Memphis	June 14-17
YLD CLE Mastering the Art of Opening Statements & Closing Arguments Developing the Theory of a Case Hot Topics in IP Law for the Non-IP Practioner The Peabody Hotel, Memphis	June 16 8:30 – 11:45 a.m.
YLD CLE: Ethics Jeopardy The Peabody Hotel, Memphis	June 16 2 – 4 p.m.
YLD Annual Meeting & Elections The Peabody Hotel, Memphis	June 16 4 p.m.
YLD CLE: Setting Up a Corporation	July 20
YLD CLE: Finding & Challenging Experts	Aug. 2
YLD CLE: Wills, Uncontested Divorces & Basic Real Estate	Sept. 21
YLD CLE: Choosing & Evaluating a Case	Oct. 4

Tennessee
Young Lawyer

The Tennessee Bar Association
221 Fourth Avenue North, Suite 400
Nashville, TN 37219

PRESORTED
STANDARD
US POSTAGE
PAID
Nashville, TN
Permit No. 929