A Better Option?

Some children in Tennessee’s foster care system are ‘already home’ with relatives, but there’s no category to recognize that. Is Subsidized Guardianship the answer?
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On the Cover

Children who are in state custody but living with relatives could benefit from a guardianship option subsidized by the federal government. The new option would also be cost-effective for the state. In Tennessee though, that option is currently not available. Find out why subsidized guardianship would be win-win, page 16.

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One of the privileges of serving as president of the TBA is that you get the opportunity to regularly travel around the state on the business of the association. On one of my recent trips while traveling west across the Cumberland Plateau, I found myself traveling behind a pick-up truck, obviously a working farm truck, in the back of which there was a gorgeous, young border collie dog. (Animal rights activists, don’t call me ... wasn’t my truck, wasn’t my dog!) As luck would have it, the driver of this truck and I apparently had our respective cruise controls set at just the same speed because I followed that truck for almost 50 miles across the plateau. We were together for so long, I was compelled to name the dog. I called him “Shep” in honor of his heritage as a herding animal, as well as in honor of one of my favorite lawyers anywhere, Shep Tate of Memphis. (Sorry, Shep, but he was a really beautiful dog!) Shep was a busy dog. If we passed a vehicle, he would run over to the right side of the truck and bark at it until he could no longer see it. When other vehicles passed us, Shep ran to the left side of the truck and barked at it until it was gone. Shep ran about from side to side and barked almost constantly for the entire 50 miles we were together. When his owner exited the interstate, I was sad to see him go. Good ol’ Shep, just barkin’ in the wind!

I think again about Shep today because I received for the umpteenth time the question I have been asked most since assuming the role of TBA president. “What are you all going to do about the sorry state of the public perception of lawyers in this state?” Maybe I am too much of a pessimist but, to me, that’s almost like asking “What are you all going to do about changing this rotten weather we’re having?” The historical, socio-economic, cultural and anthropological roots of lawyer-bashing are so long and so entrenched within our society that I believe it is unlikely that anything we do as an organized profession will diminish the delight non-lawyers experience in taking shots at us and in telling jokes at our expense. The ABA has spent wheelbarrows of money and time searching for a solution to the negative public perception of the profession. Virtually every statewide bar association and countless local bars have devoted untold time, energy and resources in attempts to resolve this dilemma. From my perspective, the reward derived from such monumental efforts has been minimal, at best. Like my old friend, Shep, we’ve mostly just been barkin’ in the wind.

Does my conclusion necessarily imply that we should just accept and embrace the inappropriately assigned role as “society’s bad guy”? Not at all. First and foremost, we must remember that role is NOT who we are and it is NOT what we are. When I was a teenager, my mother gave me sound advice that stands the test of time. “Son,” she said, “before you can tell other people what you stand for, you’ve got to know yourself what it is you are willing to stand up for.”

What is it we as a profession stand for? This is not a question of what creeds we have adopted and what pledges have we professed. It is a question of what have we done as a profession that defines what we really stand for. And, friends, when you look at what we actually have done together as a profession, I believe you can be absolutely justified in being proud to be a lawyer. In previous columns, I have

(Continued on page 4)
discussed many projects in which the TBA has participated which should serve as a source of pride. The cynics among you may see that as a TBA guy blowing the TBA’s own horn. Let me give you another, non-TBA example, of why we should be proud of our profession.

In 1986, our Supreme Court led our profession by adopting the IOLTA (Interest On Lawyer’s Trust Accounts) program. As a consequence, interest from lawyer’s trust fund accounts across the state was accumulated into a single fund, administered by the Tennessee Bar Foundation and its exceptional Executive Director, Barri Bernstein. The Foundation, acting through its IOLTA Grant Review Committee (upon which, to date, 89 of our fellow lawyers have served) and its trustees, makes grants of funds to worthy programs and organizations. Thus far, through this program, lawyers in Tennessee have made available more than $11.5 million in grants that meet very real needs in our communities across the state. These funds have assisted attorneys in providing legal aid ($8.9 million), and child advocates ($718,000), assisting survivors of domestic violence ($726,000), providing mediation services ($352,000), rehabilitation services ($431,000), scholarships ($36,000) and many other worthwhile activities including law-related education ($347,000).

You won’t hear jokes about the needs lawyers are meeting through their participation in the IOLTA program. Unless you happen to be a member of the Tennessee Bar Foundation or serve on the IOLTA Grant Review Committee, you may not hear about this program at all. Barri Bernstein does an excellent job of trying to get the word out about the good things lawyers accomplish through this program, but, as you know, good news is no news. As an attorney, however, you should be aware of this program. You should be willing to respond to lawyer bashers by making them aware of the many wonderful things we as lawyers do to make the lives of people better.

I will not be recommending to our Board of Governors that the TBA spend time and money on a public relations campaign designed to enhance the public image of lawyers. To me, that would just be joining ol’ Shep, barkin’ in the wind. But I do hope that you will look at the facts. When you do, I think you will join me in being very proud to be a member of what continues to be a most noble profession. And, if you want to tell your lawyer-bashing “friends” why you’re proud to be a lawyer, well, that’s OK too.

(Continued from page 3)
Southern Migrant Legal Services is also funded by LSC

As Thomas C. Galligan Jr. emphasized in last month’s Access to Justice issue (“Understanding the Unrepresented,” TBJ February 2005), lack of access to counsel also means lack of access to the American dream for many of the most vulnerable families in Tennessee. Farmworker families are the kind of working-poor family identified by the legal needs survey as having significant unmet legal needs.

Unfortunately, in listing the legal services offices that serve the indigent in Tennessee, Dean Galligan neglected to mention Southern Migrant Legal Services (SMLS). Since 2001, SMLS, which receives all of its funding from the federal Legal Services Corporation, has provided free employment-related representation to eligible migrant farmworkers in cases concerning wages, working conditions, pesticide exposure, migrant housing, labor relations, unemployment insurance, employment discrimination, and civil rights. The article entitled “Migrant Farmworkers’ Labor Rights Protected by Southern Migrant Legal Services,” which was also included in the Access to Justice issue, contains additional information about our clients and practice. Although SMLS is based in Nashville, we represent migrant farmworkers employed across Tennessee, as well as in Alabama, Arkansas, Kentucky, Louisiana and Mississippi.

We are proud to be members of a community of lawyers that believes that a person’s ability to protect her rights should not be limited by her income, occupation, ethnicity or ability to speak English. We encourage Tennessee attorneys to familiarize themselves with our practice so that they can refer eligible clients to us or consult with us on cases in our practice areas.

— Douglas L. Stevick, Southern Migrant Legal Services, A Project of Texas Rio Grande Legal Aid Inc.

Word revision to settlement agreements could save client taxes

On Jan. 15, 1997, Eugene Amos Jr. was employed as a television cameraman in Minneapolis, Minn., and was sitting on the arena floor near or behind the back-
Tennessee Health Care Decisions Act
New health care forms are more user-friendly

Based on the Uniform Health Care Decisions Act, the new Tennessee Health Care Decisions Act (HCDA) offers greatly simplified mechanisms for patients to give advance directions to their caregivers. The HCDA, which went into effect July 1, 2004, authorized both instructional directives (to replace the old “living will”) and proxy directives (an appointment of a health care agent, to replace the old durable power of attorney for health care).

“While the old Tennessee statutes and forms remain in effect and valid,” says Charles Key, “the new mechanisms are much more straightforward and user-friendly.” Key is a former chair of the TBA’s Health Law Section and a member of The Bogatin Law Firm in Memphis.

The Tennessee Department of Health (TDOH), Board for Licensing Health Care Facilities recently approved new forms for use under the HCDA. The TDOH forms are model forms and are not mandatory. Valid, individualized forms may be created under the HCDA, and forms may be customized to suit individual preferences.

Draft final regulations have been completed by TDOH, and at presstime were awaiting the attorney general’s approval. These forms may be used before the regulations are finalized.

The Advance Care Plan and Appointment of Health Care Agent forms may be found at http://www.tba.org/news/hcda/.

Dixon, Warnock in 5th district contested election
Eason to be TBA president in 2007

Marcia Eason of Chattanooga was the only qualifier for the office of Tennessee Bar Association vice president. In uncontested races, candidates are automatically elected. The position of vice president leads to president-elect next year and Eason will be association president in 2007. The petition deadline was Feb. 15.

There was one race in which two candidates qualified and therefore will be an election. Jackie Dixon and Tim Warnock, both of Nashville will run for the 5th District seat. Ballots will be sent to members in that district by April 1 to be returned by May 1.

In addition to these, the following petitions were filed by the deadline and therefore they are automatically elected:

- East Tennessee governor (one-year term): Sam Elliott, Chattanooga
- Middle Tennessee governor (one-year term): Sue Van Sant Palmer, Nashville
- West Tennessee governor (one-year term): Ed Stanton, Memphis

There was no qualifier, therefore the Board of Governors will select someone to fill the seat until next election.

- Eighth District governor (three-year term): Nancy Miller Herron
- TBA delegate to the ABA House of Delegates, Position 1: Randall Noel, Memphis
- TBA delegate to the ABA House of Delegates, Position 3: Tasha Blakney, Knoxville
- TBA delegate to the ABA House of Delegates, Position 5: Paul Campbell III, Knoxville

More resources for indigents needed

The TBA House of Delegates and Board of Governors overwhelmingly accepted the report of the TBA Special Committee to Study the Effectiveness of Counsel in Capital Cases, which is chaired by former TBA President Katie Edge. The study recommends that the TBA recommit itself to pressing for more resources for indigents involved in the process.

The complete study may be found at http://www.tba.org/sections/TB_Crime/capitalcases_study.html.

ABA House of Delegates, Position 3: Tasha Blakney, Knoxville
ABA House of Delegates, Position 5: Paul Campbell III, Knoxville
Two ANLIR executives plead guilty in malpractice insurance case, claims still uncertain

Two former insurance executives of entities that once provided malpractice insurance to Tennessee lawyers pleaded guilty to conspiracy to commit insurance fraud in February. Kenneth R. Patterson and Carolyn Hudgins pled guilty to fraud charges stemming from the collapse of the Reciprocal of America (ROA). Tennessee lawyers were affected because one of ROA’s sister companies was the American National Lawyers Insurance Reciprocal (ANLIR). ROA was placed into receivership on Jan. 29, 2003.

“The pleas of these two are seen as steps toward charging others,” says Robert S. Brandt in a letter to the Tennessee Bar Association. Brandt is ANLIR special deputy receiver. “We do not know at this early date how this will affect the receiverships.”

There are two potential sources of funds for payment of claims, a petition in Virginia seeking to have ANLIR insureds treated as ROA insureds, and a suit filed against officers of ANLIR and the other companies and the reinsurer, GenRe. Both cases are pending in Memphis. Brandt reports that the claims administration is continuing, but warns that “determining the amount of a claim has no relationship to whether there will actually be funds to pay claims. That depends upon the outcome of the two actions [in Memphis].”

Leadership Law ‘Best Bar Projects of 2004’, new class begins

The TBA’s new Leadership in the Law program (TBALL) has been designated as one of the Best Bar Projects of 2004 by the National Conference of Bar Presidents and the ABA Division for Bar Services. The program achieved the distinction in the new publication released at the ABA Midyear meeting in Salt Lake City in February.

TBALL is a program for emerging leaders that “aims to serve the legal profession by equipping participants with the vision, knowledge and skills necessary to serve as leaders in the profession and community.” Over the year’s time, the program covers such topics as policy and politics, the courts, community leadership and concepts and skills of leadership.

Class of 2005

The second class of TBALL is underway. Participants are Heidi Barcus, Knoxville; Tasha Blakney, Knoxville; Lara Butler, Memphis; Patrick Carter, Columbia; Lisa Cole, Nashville; Phillip Cramer, Nashville; Matthew Evans, Knoxville; the Hon. Max Fagan, Springfield; Brian Faughnan, Memphis; Paul Gontarek, Nashville; Tonya Grindon, Nashville; William Haynes, Nashville; Jeffrey Hill, Nashville; Kelvin Jones, Nashville; Benjamin Jones, Knoxville; Christopher Kelly, Dickson; Richard Littlehale, Nashville; Jason Long, Knoxville; Anne Martin, Nashville; Jack McCall, Knoxville; John Mitchell, Murfreesboro; Jackie Prester, Memphis; Shannone Raybon, Nashville; Arleta Roberson, Chattanooga; Kathryn Sasser, Nashville; Michelle Sellers, Jackson; Kevin Sharp, Nashville; Theresa Smith, Oak Ridge; M. Matthew Thornton, Memphis; Christopher Varner, Chattanooga; and Jude White, Nashville.

The steering committee for the program is Gail Vaughn Ashworth, Bill Harbison, James Blumstein, Susan Emery McGannon and John Tarpley.

Youth courts resolved 188 cases last year

Youth courts, also known as teen or peer courts, in Tennessee are keeping busy — data for 2004 is just out, indicating 188 cases were adjudicated and more than 250 young people volunteered with teen courts, donating thousands of hours of service to their communities.

Teen courts are an alternative sentencing option for first-time non-violent juvenile offenders wherein they are sentenced by a jury of their peers — other teenagers. The Tennessee Youth Court Program (a program of the Tennessee Legal Community Foundation) works to provide services including program design, technical support, volunteer recruitment and training, and evaluation support to developing and existing youth courts across our state.
The Nashville firm of Neal & Harwell PLC recently added three new associates. Chandra Flint graduated from Vanderbilt Law School in May 2004, where she received the Lightfoot, Franklin & White Best Oralist Award for the best oral argument of an appellate brief. She will practice in the area of general litigation. Aaron Morris also graduated from Vanderbilt Law School in May 2004, where he served as an editor for the Vanderbilt Journal of Transnational Law. Prior to joining Neal & Harwell, Morris served as an intern for the Hon. E. Richard Webber of the U.S. District Court for the Eastern District of Missouri. He will practice in the area of white-collar defense and civil litigation. Elizabeth Tipping received her law degree as well from Vanderbilt Law School, where she was named to the Order of the Coif and served as a member of the Vanderbilt Law Review. Tipping will practice in the area of white-collar crime and civil litigation.

The law firm of Leitner, Williams, Dooley & Napolitan PLLC recently added 11 new associates to its Tennessee offices. The Chattanooga office welcomes Ann E. Blankenship, Heather Floyd Magnuson and Carmen Y. Ware. Blankenship obtained her law degree at the University of Tennessee in 2004 and is licensed to practice law in both Tennessee and Georgia. Magnuson received her law degree from Samford University, and Ware earned her law degree from Vanderbilt University.

The Knoxville office welcomes Meredith A. Balthrop and Kenny L. Saffles. Balthrop received her law degree, cum laude, from the University of Tennessee. Saffles received his law degree, summa cum laude, from Chapman University, where he was valedictorian of the 2004 class.

The Memphis office welcomes Asa W. Baker, Cliston V. “Doc” Bodine III, Rhoberta R. Giambelluca and Candice C. Hargett. Baker received his law degree from the University of Mississippi and is licensed to practice in both Tennessee and Mississippi. Bodine received his law degree, cum laude, from the University of Georgia. Giambelluca earned her law degree from the University of Tennessee. Hargett obtained her law degree from the University of Mississippi.

The Nashville office welcomes Catherine E. Cunningham and David M. Rich. Cunningham received her law degree from the University of Tennessee College of Law in 2004. Rich obtained his law degree from the University of Georgia.

The Nashville-area law firm of Branham & Day announced that Rebecca C. Blair has been named a shareholder in the firm. Blair earned her law degree from the University of Tennessee College of Law. She practices in the fields of medical negligence, personal injury, commercial and estate litigation.

Ngozi C. Joe-Nwankwo recently joined the Nashville law firm of King and Ballow as an associate in the labor section. Joe-Nwankwo earned her law degree from the Thames Valley University Ealing Law School in London. Prior to joining the firm, she worked in London as senior legal editor in the Statutory Publications Office of the Department of Constitutional Affairs. Joe-Nwankwo will concentrate her practice in the areas of immigration and naturalization.

Dollar General, headquartered in Goodlettsville, announced that Christine Connolly has been promoted to corporate secretary and chief compliance officer. Connolly, who formerly served as the company’s senior securities attorney and worked as a corporate and securities attorney at Dinsmore & Shohl LLP in Nashville, will manage all Securities and Exchange Commission (SEC) compliance matters as well as Dollar General’s corporate compliance program.
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Jody P. Mitchell has joined the Kingsport office of Hunter, Smith & Davis as an associate attorney in the firm’s litigation section. Mitchell received his law degree from the Appalachian School of Law in May 2004 where he graduated cum laude. While in law school he served as president of the Student Bar Association, associate editor of the Law Review from 2002-2003 and senior editor of Law Review from 2003-2004. He also worked in the Virginia Attorney General’s office.

The Nashville firm of Parker, Lawrence, Cantrell & Dean announces the addition of two new associates to its practice. Frank M. Gallinais received his law degree from the University of Memphis Cecil C. Humphreys School of Law in 2004. He will focus his work on insurance defense and collections. Amanda S. Thompson earned her law degree from Vanderbilt University Law School in 2004, where she served on the Vanderbilt Law Review. During her final year of law school, Thompson worked as a law clerk for the firm. She will practice general civil litigation with an emphasis on professional malpractice, insurance defense and appellate advocacy.

The Nashville office of the Legal Aid Society of Middle Tennessee and the Cumberlands recently expanded its staff with the addition of Sharmila Murthy, who will provide representation, outreach and self-help education to people in Latino, Kurdish, Somali and other immigrant communities in Davidson and Williamson counties. Murthy, who earned her law degree from Harvard Law School, is funded by a Skadden Fellowship — a program that places outstanding law graduates with public interest law firms. Prior to joining the Legal Aid Society, Murthy clerked for a year with Judge Martha Craig Daughtrey of the U.S. Court of Appeals for the Sixth Circuit and worked with rural women in India as a Fulbright Scholar. Murthy speaks Spanish, French and Hindi. In her new position she will be working to expand services to immigrants, including immigrant victims of domestic violence.

Robert Thomas Carter of the Tullahoma law firm Henry, McCord, Bean, Miller, Gabriel & Carter has been certified by the Tennessee Commission of Continuing Legal Education and Specialization as a criminal trial specialist. Carter, who earned his law degree from the University of Tennessee College of Law in 1988, has practiced with Henry, McCord since 1995. Prior to joining the firm, he served as an attorney in the U.S. Navy Judge Advocate Generals Corps.

Matthew J. Scanlan recently joined the Nashville office of Colbert & Winstead PC. Scanlan received his law degree from the University of Dayton in 2003. Prior to joining Colbert & Winstead, he served as legislative session attorney for the 103rd Tennessee General Assembly. Scanlan will focus his civil litigation practice in the areas of commercial disputes, transportation, contracts, labor and employment.

Gov. Phil Bredesen has appointed James C. “Jim” Cotey of Stites & Harbison PLLC to the board of directors of the Regional Transportation Authority (RTA). The RTA coordinates and promotes van pooling and car pooling throughout middle Tennessee and is the largest rideshare coordinator in the Southeast. Cotey has practiced law since September 2000 and has been an associate with the real estate and financial service group of Stites & Harbison since October 2003.

Davis W. Turner has been named vice president and assistant general counsel for Vanguard Health Systems, Inc. of Nashville, which owns and operates acute care hospitals and complementary facilities. Prior to joining Vanguard, Turner was a member at the law firm of Waller Lansden Dortch & Davis.

Bill Bruce, a principal with the Nashville law firm of Stokes Bartholomew Evans & Petree, has been elected vice chair of the Tennessee Housing Development Agency (THDA) Board of Directors. Bruce, who served in the Tennessee House of Representatives from 1966–1968 and in the Tennessee Senate from 1968–1972, is a member of the government relations practice group at the firm. He began his law practice in Memphis in 1959 and has served as a member of the board of directors of the THDA since 1998.
The Nashville law firm of Manier & Herod recently announced the addition of four new associates. Colin M. McCaffrey, who earned his law degree from the University of Tennessee College of Law in 2004, will concentrate his litigation practice in the area of workers’ compensation defense. Jarrod W. Stone, another recent graduate of the University of Tennessee College of Law, will focus his practice in the areas of surety, construction, insurance and general civil litigation. Krista L. Thornton, a graduate of the Vanderbilt University Law School, will focus her practice in the areas of fidelity law, surety law and civil litigation. Justin D. Wear, who obtained his law degree from the University of Tennessee College of Law, will focus his practice in the areas of surety law and litigation.

Metro-Nashville Coun-cilmans Adam Dread has joined the law firm of Jackson, Kweller, McKinney, Ward & Hayes, where he will focus his practice on family law and business formation. Dread earned his law degree from the Nashville School of Law in 2004.

Krivcher Magids PLC, a law firm based in Memphis, has announced that Geoffrey M. Hirsch has become a member of the firm. Hirsch joined Krivcher Magids in 1998 as an associate upon earning his law degree from the University of Memphis Cecil C. Humphreys School of Law. His practice has focused on representing clients in commercial transactions.

Larry Johnson and Thomas Prior, attorneys with Morris & Schneider PC, have announced that the firm will merge with Jackson and Hardwick to form Atlanta’s largest real estate firm and the 16th largest law firm in Georgia. The two firms will become Morris Hardwick Schneider effective March 1, and operate six hub offices in Birmingham, Charlotte, Greenville, Nashville, Tampa and West Palm Beach.

Kim E. Linville, a Covington attorney in the Law Office of J. Houston Gordon, has been elected president of the Tipton County Bar Association.

Chad W. Whitfield, an attorney with Hunter, Smith & Davis LLP in Johnson City, is the new president of the Tri-Cities Estate Planning Council. Whitfield serves on the firm’s corporate/business team and works extensively with clients in estate planning and tax law. Whitfield earned his law degree from the St. Thomas University School of Law in Miami.

The Memphis law firm of Apperson, Crump & Maxwell PLC has announced that Angela R. Graves and Robin H. Rasmussen have become members of the firm. Graves is a 1999 graduate of the University of Memphis School of Law, focuses her practice on tax and estate planning and holds her C.P.A. certification. Rasmussen is a 1994 graduate of the University of Memphis School of Law and focuses her practice on employment law and civil litigation.

Armstrong Allen attorney Neil Harkavy has been awarded the Martindale-Hubbell AV rating, a designation that indicates an attorney has reached the height of professional excellence and is recognized for the highest levels of skill and integrity. Harkavy practices in Armstrong Allen’s east Memphis office and focuses on real estate and mortgage related transactions.

Paul Julienne has joined the Nashville law firm of Miller & Martin PLLC as an associate in the area of business law. Julienne received his law degree from the University of Tennessee College of Law, summa cum laude, in 2004 where he was the Harold C. Warner Scholarship recipient and served as the executive editor of the Tennessee Law Review.

The Memphis based Law Office of Arnold M. Weiss began operating as Weiss Spicer PLLC on Jan. 1 with Valerie Ann Spicer moving from associate to partner. The practice will continue to focus on foreclosure and bankruptcy law for financial institutions and the mortgage banking industry. The firm also has a separate department that concentrates on bank-owned real estate closings. Spicer received her law degree from the University of Memphis.
Reinstated

The following attorneys have been reinstated to the practice of law after complying with Rule 21 as required by the Board of Professional Responsibility. All were suspended on Sept. 7, 2004.

TENNESSEE
Brentwood: Steven Terrell Raney
Memphis: Rosemary Clark, Terry A. Scott and William H. Thomas
Whites Creek: Jay Myron Gilpin,

OUT OF STATE
Florida: Alexander M. Clem
Kentucky: Leroy Arlis Gilbert Jr.
Wyoming: Christopher Hampton Hawks
Alabama: John F. Porter

On Dec. 31, 2004, the Tennessee Supreme Court reinstated the law license of Timothy Joseph Richter, who practiced law in Springfield until taking disability inactive status in 2003. Richter’s reinstatement is conditioned on compliance with a number of actions, including continuing to work with the Tennessee Lawyer Assistance Program and obtaining a practice monitor.

Suspended

The Supreme Court of Tennessee suspended the law license of Cordova attorney William A. Cohn for 90 days, effective Dec. 24, 2004. Between 1991 and 1998, Cohn, who is an experienced bankruptcy attorney, collected post-confirmation attorney fees from 61 debtor clients using a creditor’s procedure that the bankruptcy court found improper. The Supreme Court found that by failing to provide meaningful notice of his post-confirmation claims to the bankruptcy court, the Chapter 13 trustee and his clients, Cohn’s actions were surreptitious and designed to avoid scrutiny. Originally, a hearing panel of the Board of Professional Responsibility had recommended that Cohn repay the fees he collected, be given a public censure and be indefinitely suspended if he did not repay the fees within 60 days. Both the board and Cohn requested a judicial review of that judgment. The Shelby County Chancery Court required Cohn to disgorge a portion of the funds, affirmed the public censure, but set aside the indefinite suspension. Again, both the board and Cohn appealed the decision to the state Supreme Court. The Supreme Court upheld the repayment of fees but reversed the chancery court’s decision to impose a censure. Given Cohn’s four reprimands, his deceptive and clandestine behavior and his substantial experience in the practice of law, the court instead imposed the temporary suspension. Cohn is required to notify all clients, co-counsel and opposing counsel of this final disciplinary action and must deliver to all clients any papers and property to which they are entitled. On March 25, Cohn may resume the practice of law.

Nashville attorney David Alan Gold was summarily suspended from the practice of law by the Tennessee Supreme Court on Jan. 7 after pleading guilty to the crime of accessory after the fact of especially aggravated robbery. Gold was required to notify all clients, co-counsel and opposing counsel of this suspension and deliver to all clients any papers and property to which they are entitled. Finally, he must not maintain a presence where the practice of law is conducted and must refrain from using the indicia of lawyer, legal assistance, law clerk or similar title. The suspension remains in effect until dissolution or modification by the Supreme Court. Gilmer may petition the court for such action upon a showing of good cause.

Censured

The Board of Professional Responsibility publicly censured Claiborne H. Ferguson of Memphis on Nov. 29, 2004, for improperly threatening to file criminal charges against a client who had not paid all attorney fees due. The board found that the client’s actions did not rise to the
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level of criminal fraud and should have been handled as a civil case for alleged breach of contract. The board also concluded that Ferguson’s use of threats, both to present criminal charges and to have the client’s judicial diversion revoked, was designed to gain an advantage in the dispute. The censure was issued pursuant to Rule 9, Section 8 of the Rules of the Tennessee Supreme Court.

Henry Clay Barry of Lebanon was publicly censured by the Board of Professional Responsibility on Nov. 29, 2004, for false or misleading advertising in violation of Rule 1.7(a)(b) of the Rules of Professional Conduct. Barry advertised in a general newspaper that he could obtain a “very quick divorce … usually within less than 24 hours if no children are involved, and [and] both [parties] agree, sign and stipulate grounds.” He advertised a two- to three-day wait for divorces involving children. Barry informed the board that he has obtained divorces in Wilson County within these time frames when clients executed marital dissolution agreements. The board concluded that the ads were misleading as potential clients and opposing parties would not understand that Barry was representing only one party. The board also determined that the ad’s exhortation to the unrepresented defendant to conclude the matter in a short time frame violated Rule 4.3, which prohibits attorneys from giving legal advice to unrepresented defendants except for the advice to retain counsel. With regard to the use of marital dissolution agreements, the board determined that this was inappropriate and prejudicial to the administration of justice since these agreements are authorized only under irrevocable divorce procedure set forth in Tennessee law.

On Dec. 28, 2004, the Board of Professional Responsibility censured Memphis attorney Samuel L. Perkins for failure to render effective counsel to a former client being prosecuted for alleged homicide. The board found that Perkins failed to discover a material witness, did not call the witness to testify at trial and lost all record of the witness. The client petitioned for a retrial and despite the use of this new information, was convicted of second-degree murder and sentenced to 15 years in prison. Following the conviction, Perkins entered into a settlement in which he accepted censure for his neglect and agreed to work with a practice assistance monitor, who will review Perkins’ caseload and compliance with criminal defense standards for one year and make quarterly reports to the board regarding his findings.

On Jan. 24, the Board of Professional Responsibility issued a public censure to James L. Rather of Knoxville.

Rather was employed as a Tennessee in-house attorney for an estate planning company out of Louisiana called Mid-South Planning, which provides living trust documents to elderly consumers. These documents include a durable power of attorney, the revocable living trust and a living will.

Rather prepares the documents. The salesperson also sells annuities to the customers. The salesperson sold one such package to a woman who suffered from Alzheimer’s Disease. An associate of Mid-South visits the customer in his or her home, signs the customer up for documents and then returns the documents to the customer to be notarized. The customer then writes a check to Mid-South for approximately $1,800. The customer never meets with Rather. The customers sign these documents, often unaware of their effect on prior documents that have been signed by these usually elderly customers. Rather is paid by Mid-South.

The board found that Rather thereby violated these ethics rules: DR 3-101 (A) and 3-102 (A), as well as RPC 5.5. These rules prohibit attorneys from assisting the unauthorized practice of law.

Notice of this censure was mailed to Rather, pursuant to Rule 9, rules of the Supreme Court of Tennessee. He did not request a hearing and the censure thereby became final.

Disability Inactive

On Nov. 15, 2004, the Tennessee Supreme Court issued an order transferring the law license of Jackson attorney Michael B. McWherter to disability inactive status. McWherter agreed to the transfer, which is required when a lawyer is so incapacitated that he cannot adequately practice law. An attorney on disability inactive status may petition the court to reinstate his license by presenting clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Compiled by Stacey Shrader from information obtained from the Board of Professional Responsibility of the Tennessee Supreme Court.
board during a game between the Chicago Bulls and the Minnesota Timberwolves. At some point during the game, Dennis Rodman of the Chicago Bulls fell onto the group of photographers, one of which was the plaintiff, twisting his ankle, after which Mr. Rodman then kicked the plaintiff, causing personal injury.

Shortly after the incident, plaintiff was taken by ambulance for treatment at a hospital. The plaintiff contended at the hospital that he was experiencing shooting pain in his neck immediately after being kicked in the groin, but that the pain was subsiding. He also complained of a pre-existing back condition being aggravated.

The plaintiff filed a report of the incident with the Minneapolis Police Department. Subsequently, the plaintiff sought medical treatment at a Veterans’ Affairs medical center.

The plaintiff obtained an attorney, who was contacted by an attorney representing Mr. Rodman, and after some discussions and meetings, a settlement was reached. The terms of the settlement included a Release to be signed by the plaintiff. It contained clauses which released Mr. Rodman from all claims of personal injuries, known or unknown, etc., but also included (but was not limited to) any statements made after the incident or subsequent conduct relating to the incident by Amos, Rodman, Chicago Bulls, the National Basketball Association, or any other person, firm or corporation.

The Release further provided as follows:

The Agreement and Release includes but is not limited to claims, demands or actions arising under the common law, and under any state, federal or local statute, ordinance, regulation or order, including claims known or unknown at this time concerning any physical, mental or emotional injuries that may arise in the future allegedly resulting from the incident.

The Release further contained the provisions “that Rodman and Amos shall not at any time from the date of this Agreement and Release forward disparage or defame each other.”

The Release goes on to say that Amos further represents, promises and agrees that as a part of the consideration of this Agreement and Release, this Agreement and Release shall forever be kept confidential and not released to any news media personnel or representative thereof or to any other person, entity, company, government agency, publication or judicial authority for any reason whatsoever.

By signing, Amos further represented and promised and agreed that as a part of the consideration for the Agreement and Release, he has communicated to the Minneapolis Police Department that he does not wish to pursue any criminal charges against Rodman.

In the United States Tax Court, No. 13391-01, the question was whether any or all of the $200,000 paid as a result of this claim should be included in Amos’s gross income. The court in its opinion found that under the Agreement, the money was paid not only for the physical injuries to the plaintiff, but also money was paid for the plaintiff’s agreement not to 1) defame Mr. Rodman; 2) disclose the existence of the terms of the Settlement Agreements; 3) publicize facts relating to the incident; or 4) assist in any criminal prosecution against Mr. Rodman.

The court thereafter concluded that $80,000 of the $200,000 paid was not as a result of physical or mental injuries, which are not to be included in the injured party’s gross income. 26 U.S.C. §104(a)(2). It is recommended that the following wording be inserted in the Settlement Agreement: The total consideration paid in this settlement is for the injur(ies) and not in exchange for confidentiality.

— Sidney Gibraith, Knoxville

**What you said is not what I heard**

Recently I read a Journal article and was offended due to some language that sets off an emotional response with me (“E-mail order preacher,” by Bill Haltom, January 2005 TBJ). I then assumed the worst possible intentions on the part of the author. I should have called and asked what was intended.

Instead, I wrote a letter and sent it to the Journal. I got a call and was asked if I wanted the letter printed. I was again upset by what I thought the author intended. I told them to print it. The author was called for any response and, in turn, called me. He was hurt that I would have implied that he would have meant what I assumed.

As a lawyer, I should have known better. As a human being, I know the pain of being misunderstood. I, like all of you, at some point have been the target of someone who thought they knew what you meant. As an inadequate follower of the Carpenter, it is evident that I hurt a really good man. I am glad that I got this letter off before the other one was published.

— John E. Acuff, Cookeville

**He turned into a lawyer anyway**

This letter was written to columnist Bill Haltom:

You are a joy! Your last article in the Tennessee Bar Journal (“E-mail order preacher,” January 2005 TBJ) reminds me that I had a great-grandfather who was a Baptist minister … and a chaplain in the Army of the Confederacy. But, despite many suggestions, I followed the example of both my grandfathers and my father to become a legal advocate. (I am reluctant to use the word “lawyer”!)

I look forward to your term as president of the Tennessee Bar Association with a great deal of pleasurable anticipation!

— Jac Chambliss, Chattanooga
A Better Option?

Some children in Tennessee’s foster care system are ‘already home’ with relatives, but there’s no category to recognize that. Is Subsidized Guardianship the answer?

By Susan L. Brooks, Andrew J. Shookhoff and Candice M. Richards
Jermaine is a 14-year-old who has been living with his maternal aunt for the past four years. His mother has struggled with a substance abuse problem, and has been in and out of prison during this time. Jermaine’s aunt is a kinship foster parent meaning that technically Jermaine is a ward of the state, and his aunt receives assistance from the state to care for him. This is a necessity given the aunt’s financial circumstances, including the fact that she is also taking care of Jermaine’s two siblings and other children and grandchildren of her own.

Despite his mother’s struggles, Jermaine continues to love his mother and to hold out hope for her recovery. He is adamant that he does not want to be adopted, even by his aunt. Jermaine’s aunt does not feel the need to adopt him, given that they already have a close and well-defined family relationship. Both Jermaine and his aunt hope one day Jermaine’s mom will be able to step in and have her kids living with her.

The goal on Jermaine’s Permanency Plan, which is the blueprint for mapping out his long-term goals, is “Planned Permanent Living Arrangement with a Relative” (PPLA). Although technically this goal does not violate the law, it means that most likely, unless his mother is able to rehabilitate successfully, Jermaine (and probably his siblings as well) will remain in the state’s legal custody until they reach adulthood, simply because they cannot return to their mother’s care, and because adoption is not suitable to them. It also means that Jermaine and his siblings, along with their aunt, will have to accommodate twice-monthly case-manager visits in their home and attend regular court reviews and administrative meetings. And the case manager must continue to spend his or her time on these required administrative tasks — time that could be better spent working with more vulnerable children and families. Despite the facts that this placement is stable and Jermaine’s aunt can manage it well assuming she continues to receive financial help, she still must obtain permission before doing such routine tasks as taking one of the children to the doctor.

Fran is the maternal grandmother caring full-time for three of her 13 grandchildren, a baby girl named Shauna, and 10-year-old twins, Terence and Terrell. Her daughter, Alicia, is the children’s mother. Alicia loves her children and tries her best to be a good mother, but because of her chronic mental illness, she will never be capable of fully parenting them on her own. Their fathers unfortunately have not been involved in their lives. Fran is a kinship foster parent for these children.

Fran is very willing to raise them until they are grown, but she does not want her daughter’s parental rights to be severed. She wants to encourage Alicia to be as involved in raising the children as is safe and possible. Like Jermaine’s aunt, she too does not believe that it would be in the children’s best interests to have their mother’s parental rights terminated.

The meaning of kinship foster care has even more dramatic consequences for this family, because of the ages of the children. Their choice is either be forced to remain in the state’s custody for their entire youth, or face the prospect of having their mother’s parental rights terminated, neither of which is a desirable option. Fran wishes she could afford to care for the children on her own without the state’s help, but she knows that is not realistic, given her fixed retirement income.

Both of these families faced a terrible dilemma given the current state of affairs in Tennessee’s child welfare system. Yet, these families and their situations are not unique in Tennessee. The 2000 Census ranked Tennessee 10th in the nation for its proportion of grandparents raising grandchildren, and indicated that there are over 61,000 grandparent caregivers in our state. For most children living with relatives, financial constraints create significant hardships. Relative caregivers acting on their own currently are not eligible for any significant financial assistance to care for kin, even though almost 20 percent of their families live below the poverty line. However, there is a legal option that would help a significant number of these families: Subsidized Guardianship (SG).

The SG Option

Kinship foster families, such as Jermaine’s and Fran’s, could benefit tremendously from a guardianship option subsidized by the federal government. Under such a program, young people in the care of the state who cannot be returned to their biological parents and do not wish to be adopted can remain in the safe and stable permanent homes of extended family members. Recent studies indicate that children in out-of-home care who live with relatives do better overall than children who live with strangers.

SG option would promote children’s well-being and would be a cost-effective measure, both in terms of immediate cost-savings and long-term beneficial effects. They would facilitate permanency by moving children out of state custody and into permanent arrangements with relatives (and other long-term caregivers) without the necessity of first terminating parental rights.

According to surveys by the Urban Institute and the Children’s Defense Fund, 34 states offer some form of SG, which is often funded through a combination of federal (TANF, Title IV-B and other non-IV-E sources) funds and state and local funds. Seven states have received waivers from the federal government that allow them to use Title IV-E funds to operate SG programs. The Department of Health and Human Services currently is offering states the opportunity to apply for similar waivers.

States currently offering SG as an option say that SG has numerous benefits. Guardianship provides children with a more stable and permanent placement than foster care. With SG, relative caregivers providing stable, permanent homes can receive needed financial support without having to go through other unnecessary requirements of foster care. This option recognizes that most children who are in the care of grandparents or other relatives do not need intensive supervision of their placements by the court or by state agencies. It reserves the intensive casework and supervisory resources of the courts.

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and the state agencies for cases in which
children do not have an option for safe,
stable care within the family.

We project that close to 2,000 children
could immediately exit the custody of the
Tennessee Department of Children's
Services (DCS) using this option. These
would include children who are now in
state custody and have been placed with
relatives. If the state were to broaden its
subsidized guardianship program to
include non-relatives, that number would
potentially be much larger.

Current research indicates that
kinship may actually be the strongest
predictor of permanency. An extensive
study conducted in Illinois, a state that
funds and supports SG and subsidized
adoption at the same level, shows that
the existence of a kinship relationship
may be an even stronger predictor of
permanency and stability than whether
permanency is achieved through adop-
tion or guardianship. Relatives were
consistently more likely to make a perma-
nent commitment to the children in their
care than non-relatives. From the chil-
dren's standpoint, they appear to view
themselves as equally, if not more, safe
and stable when they are in the care of
relatives. In short, the legal designation
seems to make less of a difference from
the standpoint of the child and the care-
giver than the kinship bond.

It is also worth mentioning that a
significant number of grandparent care-
giver arrangements are within the
African-American Community. At the
same time, African-American children
are over-represented in the foster care
system. Supporting the efforts within
the African-American community to care
for their own children through SG would
be more culturally sensitive and would
likely help to address the racial disparities
in Tennessee’s foster care system.

Implementing SG as an option would
also create significant cost savings for the
state of Tennessee. Currently, the close to
2,000 children who are in the state’s legal
custody and placed with relatives must
receive the same state agency and court
supervision as every other child in foster
care, despite the fact that most of these

Legal options for relative caregivers:
Current Tennessee policies and practices

In many Tennessee households, grandparents and other relatives are taking
care of children whose parents are unable to do so because of substance abuse,
mental or physical illness, economic hardship, incarceration, domestic violence,
child abuse or neglect, or other issues. There are currently five legal “options”
available to relative caregivers.

1. Why do relative caregivers need to know about the five legal options?

- The “legal relationship” between the child and his or her relative caregiver
determines:
- The amount of medical, financial and other types of support available to
assist relative caregivers;
- The ability of the relative to consent to medical treatment, enroll a child in
school, and perform other parental roles;
- The rights and responsibilities of the parents, including whether and how
they can resume their parental roles.

2. What are the five current legal options and how do they differ?

OPTION 1: INFORMAL FAMILY-ARRANGED CARE

Relative caregiver provides “primary care and control” without any legal document
and without any change of legal custody, legal rights, or legal responsibilities.
Relative caregiver is often eligible for a Families First “child-only” payment,
TennCare (at least coverage for the child).
Relative caregiver may be eligible for community-based services.
Relative caregiver may be eligible for tax deduction, earned income tax credit,
child care credit and other tax benefits.

OPTION 2: POWER OF ATTORNEY (POA)

Written legal agreement between parents and relative caregiver to transfer
“temporary care giving authority” for medical and educational decision
making in “hardship situations.”
No transfer of legal custody.
No lawyer required.
No need to go to court or file anything with a court.
Form available through DCS and on line at www.aarp.org/tn.
Form must be completed by caregiver and custodial parent and must be notarized.
Relative caregiver may use POA to enroll the child in school, in extracurricular
activities, and special education programs.
Relative caregiver may use POA to obtain medical and mental health treatment
for the child.
Parents may authorize relative caregiver to make other decisions.
“Hardship situations” include situations in which parents are unable to care for
their child because of substance abuse, mental or physical illness, economic
hardship, incarceration, or other issues.
Relative caregiver is often eligible for Families First “child-only” payment,
TennCare (at least coverage for the child).
Relative caregiver may be eligible for community-based services.
Relative caregiver may be eligible for tax deduction, earned income tax credit,
child care credit and other tax benefits.

**OPTION 3: LEGAL CUSTODY**
Relative caregiver is given “legal custody” by court order (in most cases through a proceeding in juvenile court; in some cases through circuit or chancery court). Custody can be “sole custody” or “joint custody” (shared custody).

Custody order ordinarily provides for parent to have visits and other contact with child, but may specify certain conditions.

Custody order ordinarily provides for parent to pay child support.

Custody order ordinarily provides relative caregiver with authority to enroll child in school, obtain medical and mental health treatment, and make other parental decisions.

Relative caregiver is often eligible for Families First “child-only” payment, TennCare (at least coverage for the child). Relative caregiver may be eligible for community-based services.

Relative caregiver may be eligible for tax deduction, earned income tax credit, child care credit and other tax benefits.

**OPTION 4: KINSHIP FOSTER CARE**
DCS takes legal custody through juvenile court.
Relative caregiver becomes an “approved foster home” for the child.
Relative caregiver receives “foster care board payment” and other financial services and assistance available to foster parents.
Child and parents receive services and assistance from DCS.
Relative caregiver must undergo background check, home study, and complete foster parent training classes in order to become an “approved foster home” for the child.
Child's situation will be monitored regularly by DCS and by the court, through visits by the DCS worker to relative caregiver's home and by court hearings, DCS meetings, and meetings with the foster care review board.
DCS has the right and obligation to provide for the educational, medical, and mental health needs of the child.
Ordinarily parents have the right to have visits and other contact with child, but there may be certain conditions placed on that visitation to ensure the health and safety of the child.
Parents are ordinarily required to pay child support.

**OPTION 5: ADOPTION**
Relative caregiver becomes the permanent legal parent of the child.
Court “terminates parental rights,” meaning that parents lose all legal rights and responsibilities forever. This can occur as part of a termination of parental rights hearing, by the parents co-petitioning the court, or by the parents signing a voluntary surrender with the court.
Court order grants the adoption and establishes the relative caregiver as the “new” parent.
Relative caregiver has sole and complete authority to decide whether there is any contact between the child and the parents.
If the child is in DCS legal custody in foster care (either a kinship foster home or some other foster home or residential placement) and the relative adopts the child from foster care, the relative is usually eligible for financial and other assistance through an adoption subsidy.
If the child IS NOT in DCS legal custody at the time of the adoption, the relative is NOT eligible for any adoption subsidy.
After adoption, caregiver is no longer eligible for Families First “child-only” payment and may or may not be eligible for TennCare for the child.

3. What support is available through Families First?
A relative caregiver may be eligible to receive a “child-only” payment from Families First, about $140 a month for one child (with small additional amounts for each additional child). The relative caregiver:
• Must be within the 5th degree of relationship to the child (includes siblings, grandparents, aunts and uncles, first cousins).
• Must have “primary care and control” of the child.
• Does not have to have legal custody.
• Does not have to be below a certain income level to qualify (only the child's income can be considered in determining “child only payment” eligibility; additional assistance, including food stamps, may be available depending on household income).
• Does not have to enroll in or meet the work requirements or time limits of the Families First Welfare to Work Program.
Application for “child only” payment, food stamps and other assistance, should be made at the local Department of Human Services office.

4. What support is available through TennCare?
A relative caregiver is usually eligible for free or low cost health insurance on behalf of the child in his or her care. The child's eligibility for TennCare depends on the child's income, not on the relative caregiver. Relative caregivers may also be eligible for free or low-cost health insurance for themselves. For information on TennCare enrollment call 877-608-1009.

(Continued on page 22)
children are only in state custody because of their relatives’ financial need. The result of this arrangement is that the state spends thousands of dollars every year on the administrative costs of staffing and monitoring these cases. Additionally, these children’s cases must be regularly reviewed by judges, meaning that the cases take up precious and costly court time. Moving these children into SGs would thus not only mean a cost savings for DCS, but also cost savings for the already overcrowded court system.

Additionally, by moving these children out of state custody and into permanent homes with relatives, the state would improve its compliance with the demanding requirements of the Adoption and Safe Families Act (ASFA), the federal law governing our foster care system. Under this act, the state must move children into permanent situations within extremely short time frames, or risk losing important federal funding to support vulnerable children in this state. The law also provides financial incentives and bonuses for achieving permanency for children, particularly through adoption. In other states, implementing SG has led to increased adoptions of children out of foster care as well. Currently, when families in Illinois are offered both options at the identical levels of funding, they choose subsidized adoption three times as often. If the Tennessee experience were similar, it would mean that not only would the state be in better compliance with the federal law, but that the state would actually receive financial bonuses that could be spent in other important ways to help vulnerable children and families in our state.

Finally, by offering subsidized guardianship to families, the length of time children spend in state custody could potentially decrease. Implementation of SG as an option would also probably reduce the rate of re-entry for children who exit custody to live with relatives. Subsidized guardianship offers a permanency option that allows children to stay where they already feel at home without severing familial ties or confusing established relationship roles. If we can move children out of state custody into safe, permanent homes with their relatives, then the state can improve its compliance with federal law, save money, and provide a stable environment for vulnerable children.

Susan L. Brooks is clinical professor of law, Vanderbilt University Law School. She received her law degree from New York University School of Law (1990) and her master of arts in clinical social work from the University of Chicago School of Social Service Administration (1984).

Andy Shookhoff is associate director of the Child and Family Policy Center of the Vanderbilt Institute for Public Policy Studies in Nashville.

Candice M. Richards is a 2005 candidate for a law degree from Vanderbilt University Law School.
What’s new at TennBarU?

TENNESSEE SUPREME COURT IN REVIEW

What were the key decisions coming out of the Tennessee Supreme Court during 2004? And what do you need to learn from them for your practice?

This new TennBarU online course has the answers. Tennessee Attorneys Memo Editor and TennBarU faculty member Virginia Mayo takes you through the court year, analyzing cases dealing with torts, workers’ compensation, contracts, taxation, property, family law, criminal law, criminal procedure, and post-conviction relief. Of course that’s just the latest offering from TennBarU Online. Also available are a pair of video programs from ethics expert Lucian Pera that tackle Conflict Waivers and Engagement Letters under Tennessee’s new ethics rules; three one-hour video programs from Nashville attorney Gary Brown that provide an update of corporate ethics issues; and our course on the new Tennessee Child Support Guidelines.

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There is still time to make your reservation for an exciting Alaskan Cruise CLE program coming this summer from TennBarU. You’ll join a group of your Tennessee legal colleagues as they sail from Seattle on July 23 to visit Ketchikan, Juneau and other Alaskan ports. This eight-day voyage isn’t just a great vacation, it will also include at least six hours of top-flight CLE programming.

3 TOP PROGRAMS COMING YOUR WAY IN APRIL

Starting with the Labor & Employment Law Forum in early April, the TBA’s TennBarU has three major programs coming your way this spring.

Now in its ninth year, this forum will push the traditional CLE format beyond the norm with intriguing panels and more during its April 7 program at the Tennessee Bar Center.

Following that will be TennBarU’s annual LawTech show on April 14, this year featuring Phillip Hampton from LogicForce.

Finally, in late April, the Intellectual Property Forum returns for its second year. The April 28-29 forum will feature basic and advanced topics, along with a networking reception.

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The TennBarU TeleSeminar series offers you the chance to hear leading national experts discuss timely topics from the convenience of your office or home. All TennBarU Teleseminars are broadcast via telephone at noon central time. Visit www.tba.org/tennbaru to find a full schedule.

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TENNBARU: CLE FOR TENNESSEE
5. What support is available by becoming a Kinship Foster Home?
A relative caregiver who becomes a “Kinship Foster Home” receives the same support that is available to all other foster parents, including:
- A monthly board payment (more than $300 per month) for each child (higher for a child with special needs)
- A periodic clothing allowance;
- Medical, dental and mental health services for the child;
- Additional supportive services.

The Kinship Foster Care board payment is significantly higher than the Child-Only payment, especially if there is more than one child in the home.

For information on becoming a Kinship Foster Home, a relative caregiver should contact the local Department of Children’s Services office or the State Department office at 1-877-DCS KIDS (1-877-327-5437)

6. What support is available through the Relative Caregiver Program established by the Tennessee Legislature?
The Tennessee legislature has established “relative caregiver programs” in a number of Tennessee counties. The support provided by these programs varies, but often includes:
- Support groups, respite care, individual and family counseling, legal services, concrete needs (beds, mattresses, clothing), tutoring, informational meetings, access to accurate information, emergency financial help

For information about the relative caregiver programs contact the Relative Caregiver Program Coordinator at 615-253-6976.

Understanding the best evidence rule

By Donald F. Paine

Today the best evidence rule is not the big deal it once was. Let’s take a stroll through Article X of the Tennessee Rules of Evidence to see why.

When the “content” of a writing must be proved, Rule 1002 taken alone appears to state a preference for the original defined in Rule 1001(3) to include a computer printout. Rule 1001 defines a computer printout as an original and defines a mechanical or electronic or chemical reproduction as a “duplicate.” Rule 1003 makes a duplicate equally admissible with an original.

Consequently, a best evidence issue will arise nowadays only when oral testimony is offered to prove the content of a document.

Rule 1004 lists instances where even oral testimony is admissible. Most important is the category for collateral writings, those being writings “not closely related to a controlling issue.” The judge necessarily has some leeway in distinguishing collateral versus controlling issues. Oral testimony is also admissible if the original is (1) lost or destroyed without bad faith,

“A best evidence issue will arise nowadays only when oral testimony is offered to prove the content of a document.”

(2) not obtainable by subpoena duces tecum, or
(3) in the opponent’s possession.

Another category is in Rule 1007. If the opposing party has admitted documentary contents during testimony or a deposition — or in another writing — you can use the admission instead of the original document.

Rule 1005 covers filed official records and recorded instruments such as registered deeds. Obviously originals cannot be removed for trials; therefore certified copies can be used instead.

Rule 1006 applies to voluminous documents that “cannot conveniently be examined in court.” A summary of contents can be introduced into evidence so long as the originals or duplicates were made available for inspection by your adversary.

Finally, Rule 1008 separates judicial from juror functions. For example, the judge decides whether an original was destroyed in good or bad faith. On the other hand, the jury decides whether the original ever existed.

I hope this short course helps you.

Donald F. Paine is a past president of the Tennessee Bar Association and is of counsel to the Knoxville firm of Paine, Tarwater, Bickers, and Tillman LLP. He lectures for the Tennessee Law Institute, BAR/BRI Bar Review, Tennessee Judicial Conference, and University of Tennessee College of Law. He is reporter to the Supreme Court Advisory Commission on Rules of Practice and Procedure.
permanent homes with relatives, we will be ensuring a potentially better future for countless Tennessee children who might otherwise flounder in the foster care system. As stated by Dr. Viola Miller, Commissioner of the Tennessee Department of Children Services, “[w]e’re not talking about more kids or more money … we’re talking about different ways to individualize how we spend those dollars to frame programs around children and families instead of having to take children and families and stuff them into those predetermined programs.”

Notes
1. PPLA is only one of several goals that might be reflected on the Plan in a kinship foster care arrangement. Others might be: Reunification, Exit Custody with Relative, and Adoption.
3. Id.
4. In Tennessee, children in relative care and outside the formal system of foster care may be eligible to receive a Child-Only Grant through the Department of Human Services’ Temporary Aid to Families (TANF) Program. Grant amounts range from roughly $140/month for one child to a maximum of $345/month for seven or more children. If the children were placed into foster care and relatives were approved as kinship foster parents, these relatives would receive well over $300/month per child. These figures illustrate the need to provide better assistance for relatives who want to maintain the family unit and take care of these kids, but may not have the financial resources to care for them on their own. See Elizabeth S. Black & Susan L. Brooks, A Tale of Two Grandmothers: Child Welfare, TANF, & the Need for More Support for Kinship Care in Tennessee, 11 PUB. POL’Y & AGING REP. 7, 8 (2000).
5. Fostering Results, Family Ties: Supporting Permanence for Children in Safe & Stable Foster Care with Relatives & Other Caregivers 20-21 (Mark Testa, Nancy Salyers, Michael Shaver, & Jennifer Miller, eds., 2004). Additional information is available from Fostering Results at www.fosteringresults.org.
6. Fostering Results, Family Ties: Supporting Permanence for Children in Safe & Stable Foster Care with Relatives & other Caregivers 13-15 (Mark Testa, Nancy Salyers, Michael Shaver, & Jennifer Miller, eds. 2004). Under SG, financial support would still be provided, but administrative costs would be reduced because there would no longer be a need for extensive court and agency supervisory resources. See Rob Geen, What Are the Cost Considerations for Subsidized Guardianship?, in USING SUBSIDIZED GUARDIANSHIP TO IMPROVE OUTCOMES FOR CHILDREN 65 (Mary Bissell & Jennifer L. Miller eds., 2004).
7. Geen, supra note 6, at 63.
8. Id. at 63-64.
9. Id. at 63.
10. This projection is based on 2004 figures submitted by DCS, including the number of current kinship foster homes, as well as an examination of the number of young people who have relevant permanency goals, including PPLA with a Relative, and Exit Custody with a Relative/Reunification (i.e., dual goals).
11. Given that many kinship families in Tennessee fall outside of the formal foster care system, it is also hoped that the federal government will provide additional funding of a preventive nature for kids who are at risk of entering the foster care system.
13. Id. at 58.
14. Id. at 63.
16. “By 2000, they represented 40% of the foster care population even though they accounted for only 15% of children in the general population.” Id.
We take civics education seriously at the Tennessee Bar Association.

We know that a public educated in the history and workings of our legal system is vital to our country's future — and to the future of the legal system itself. For our country to carry on the traditions that have made it great — and our legal system a model for the world — we must have a public that understands its rights and responsibilities and how they are tied to this system.

That’s why the TBA supports a strong lineup of programs across the state to teach civics in our schools and offer resources through our TnCivics web site to help everyone learn these important lessons.

One of the TBA’s biggest education efforts is the annual Tennessee State High School Mock Trial Competition. Since its founding by the Young Lawyers Division in 1980, this program has grown so that today more than 100 teams compete in district matches with the goal of qualifying for the state competition.

Your support of the Tennessee Bar Association makes all of this possible.
In Northern Crossarm Co. v. Chemical Specialties Inc., plaintiff requested a number of e-mails during discovery. Ask and ye shall receive: 65,000 pages worth. Printed. Plaintiff, probably unexcited about the notion of slogging through a stack of paper 21 feet tall, asked the court — via an argument based on Rule 34(a) of the Federal Rules of Civil Procedure — to compel the defendant to re-provide the e-mails in electronic form.

The court declined, saying 34(a) does not entitle a party to electronic evidence in a certain “preferred format,” so long as the respondent provides a format that “mimics” the electronic original.

Fortunately, from a precedent perspective, the court went on to say that when a party “specifically requests the production of electronic information in a specific electronic format, then the respondent cannot simply ignore

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the request: it must comply, compromise, or seek court protection."

The obvious lesson: Be sure to ask for exactly what you want, the first time, or risk being stuck with what you get. This has always been true to a degree, but in electronic discovery it takes on added significance. In this case, assuming the analysis personnel could thoroughly examine an average of four pages of printed e-mails per minute, a two-person crew would have to work 45 hours per week for three weeks just to examine this one evidentiary element. By contrast, the e-mails could have been produced electronically on a single disk (CD or DVD), from which a sharp e-discovery technician could extract the relevant information from 65,000 pages of e-mails in minutes or hours instead of weeks. This dramatically increased efficiency is of course one of electronic discovery’s greatest advantages. It also appears to have been the only impetus behind plaintiff’s unsuccessful motion to compel. Should it have been?

Northern Crossarm is over, but similar issues will arise again and again as the system adjusts to a new form of evidence that barely existed twenty years ago. To illustrate the principles in play more thoroughly, here are the relevant particulars in a fictional case, Decker Digital v. Cinewires et al:

- Both companies are in the business of manufacturing high-end digital video cable products.
- Co-defendant John Q. Worker was employed by plaintiff, Decker Digital, from Aug. 20, 2000, to Dec. 15, 2003, as vice president in charge of new product development.
- During Worker’s tenure, Decker Digital developed a new type of digital cable that was a quantum leap in the state of the art. The product was given the internal code name INTRIGUE.
- Decker Digital planned to file the specification for a utility patent for the new technology in early January 2004, followed by release of the product in the second quarter of 2004.
- Worker’s departure was amicable, and Worker took advantage of Decker Digital’s “Tech It with You” program and purchased his company laptop.
- On Dec. 20, 2003, co-defendant Cinewires filed for a utility patent on a new type of digital cable almost identical to the INTRIGUE product at Decker Digital. Cinewires dubbed their product FASCINATION.
- On Dec. 21, 2003, Cinewires publicly released their FASCINATION product.
- On Jan. 2, 2004, Cinewires announced the hiring of John Q. Worker as Chief Operating Officer.

The plaintiff, Decker Digital, contends that co-defendant John Q. Worker, while in the employ of Decker Digital and afterward, transferred proprietary information regarding Decker Digital’s INTRIGUE product to co-defendant Cinewires. Both Worker and Cinewires adamantly deny the accusation and Cinewires asserts that their FASCINATION product was developed independently. Cinewires further asserts that it had no contact with Worker prior to his job interview on December 28, 2003.

In the discovery request, plaintiff asked for any and all documents related to the INTRIGUE product. Defendants produced a lone e-mail from Worker’s personal laptop — the laptop he purchased from Decker Digital upon his departure. It was provided in both print and electronic (PDF) formats.

Plaintiff objected to the formats of production, but since Worker’s deposition was already scheduled, counsel decided to go ahead and depose him on schedule and deal with the format issue later. In deposition, Worker testified that:
- The e-mail was a routine status update.
- He sent the e-mail from home on a sick-day.
- After leaving the company, he deleted the patent specification file that was attached to the original e-mail.
- He never discussed the INTRIGUE product with anyone outside Decker Digital, either while working there or afterward.
- He is a totally innocent victim who has been devastated by these groundless accusations.

Based on Worker’s testimony and the e-mail, this line of inquiry looked like a dry run. Without a deeper examination, that would be accurate, and if this happened to be the central vein of evidence, the case would be all but over. That would be a huge mistake on the
But in the digital realm, where the vast majority of today’s documents are created, the visible information rarely tells the whole story. Even though a recipient was listed, any user with minimal e-mail proficiency could have also sent the e-mail to additional recipients via the BCC (blind carbon copy) feature. BCC recipients, if any exist, usually don’t show up on a printed e-mail, and if the respondent has something to hide in that regard, they almost surely won’t.

Also, for even a moderately skilled operator, generating e-mails with fake names, addresses, times, and dates, is child’s play. It’s how spammers fill your inbox with incredible offers to expand body parts and refinance your house without your being able to tell who sent it. Whether it’s e-mail, Word documents, Excel spreadsheets, or many other kinds of electronic evidence, print versions do not accurately represent the original file, period. As for the second prong of the argument, Worker’s alleged perjury, this issue will be easier to understand after discussing a couple of other points.

The court found plaintiff’s argument convincing and ordered Worker to make his laptop available. He was also ordered to preserve it in its exact condition until plaintiff concluded the examination. Worker brought the laptop in and plaintiff acquired a forensic bitstream copy of its hard drive. This kind of copy, a bit-accurate mirror image, differs vastly from the sort of copy a computer technician might make. The latter garners only active files, while the forensic copy captures everything from the original: Active files, hidden files, deleted files, unallocated space. It’s all there. Now plaintiff had access not only to that e-mail...

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Electronic Discovery

(Continued from page 27)

mail’s surface information — remember, this information can be faked — but its deeper layers of data, as well. Fortunately, within these layers are elements of an e-mail that are not so easily perverted. These elements are found within the e-mail’s extended headers, a set of technical data that provides far more detailed information about an e-mail than what is visible on the surface. Here is an excerpt of very basic information from the e-mail’s extended headers:

Worker claimed he never divulged anything about INTRIGUE to anyone outside Decker Digital, yet by going a mere one level deeper, it was clear that he sent the e-mail not only to Mr. Decker, but also to the CEO of Cinewires, via the Blind Carbon Copy feature. This newly uncovered data also yielded more information, because headers automatically record data about not only an e-mail itself, but also its journey from origin to destination(s). A simple analogy is a passport. Whenever you go through a checkpoint, the authorities record your passage via a rubber stamp in your passport. Similarly, as an e-mail makes its way from sender to recipient, it passes through various cyber-checkpoints, and each checkpoint places an electronic “stamp” in that e-mail’s headers. Some of this data can be faked, as well, but it’s far more difficult; as a result, this information is usually accurate. Here are some of the extended header entries from the legitimate recipient copy of the e-mail on CEO Decker’s computer:

A cursory investigation of the point of origin revealed that the e-mail was sent not from Worker’s home, as he had claimed, but from within Cinewires headquarters. When confronted with this new evidence in a second deposition, Worker admitted everything. It seems he thought it would be doubly satisfying to execute his betrayal right there in the lair of the enemy, and with the very e-mail he was sending to his “crusty old coot of a boss” who refused to pay him “what he was worth.”

As you can clearly see, this treasure trove of evidence is nowhere to be found in the original printed e-mail. Relying only on the printed e-mail, case-critical evidence never would have been discovered. Now, the real kicker: As noted above, defendant originally provided the e-mail not only as hard copy, but also electronically as a PDF file. PDF is routinely used in electronic discovery today, and as a document exchange mechanism, it is indeed a splendid format. The documents are great quality, reasonably compact in size, and when properly produced, they’re easily and quickly searched for relevant data. This searchability can literally

(Continued on page 30)
condense weeks of work down to hours. Unfortunately, in most cases the only difference between hard copy and PDF is that the former is committed to paper, while the latter is committed to a file.

From a data perspective, the two are identical. The same information that was missing in Worker’s printed e-mail was missing in the PDF file.

While this case and its litigants are fictional, the issues revealed are quite real, and this problem applies to far more than just e-mails. Many types of electronic documents have hidden data associated with them that can yield critical information about the documents and their history. Microsoft Office files, for example, automatically record many fields of information behind the scenes, including authorship, creation dates, modification dates, and last-accessed dates. None of this information is shown in hard copy prints, and none of this information will be shown in PDF renditions.

Bottom line? Electronic discovery can dramatically increase efficiency, but just as with hard-copy evidence, care must be taken to ensure that the evidence is not only accurate but also complete. In today’s digital age, critical data often lurks just beneath the surface.

What you don’t know can not only hurt you; it can kill your case.

_________________________

AUTHOR’S NOTE: The company and individual names, as well as all Internet and e-mail addresses, are fictitious and presented as examples of the principles involved. Any similarity to actual companies, individuals, or addresses is purely coincidental.

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30 TENNESSEE BAR JOURNAL, MARCH 2005
‘Journal’ follows TBA’s legislative wins and losses

We’re celebrating the Tennessee Bar Journal’s first 40 years all year! In each issue we will look back at an area of life in the law to see how the TBJ covered it. This month we examine legislative relationships and process.

For years the Tennessee Bar Journal’s sister publication, Tennessee Lawyer, handled most of the news of the legislature. But in 1985 at the newsletter’s demise, the Journal began a section that included legislative coverage. It covered hot issues like selection of judges, tort reform and political action committees.

As early as 1965 — and reported through various president’s columns — the TBA had been on record supporting merit selection and retention for judges, under the rubric of court modernization. By 1972 we were reporting that the appellate courts, minus the Supreme Court, would be under the so-called “Modified Missouri Plan.”

Finally in 1994 the TBA was successful in helping change the way Tennessee Supreme Court justices are chosen. What became known as the “Tennessee Plan” had been documented by the Journal since 1987 when the TBA board voted to back it. Soon after, the Journal had the honor of reporting the names of the first Judicial Selection Commission.

Also in 1987, President Don Paine addressed tort and insurance reform in his column, setting off years of advocacy by presidents in their columns. He outlined the TBA House of Delegates and Board of Governors’ positions, including that the TBA opposed any legislation that would impose a cap on non-economic damages, restrict contingent fees, abolish the collateral source rule or abolish the joint and several liability (unless there was enacted in its stead a comparative negligence statute based on the relative fault of all parties). The TBA also opposed any legislation that would change the law of punitive damages, but advocated the inclusion of Federal Rule 11 into the Tenn. Rules of Civil Procedure.

The tort law issue seemed to galvanize TBA efforts in the legislature. The next year, President Jim Emison wrote about TBA’s lobbyists and their clash with other, better-funded groups that were “dedicated to extensive legislative revision of the Tennessee tort law.” Emison urged members to contact representatives and give money. He announced the formation of the TBA’s new political action committee, LAW PAC. He wrote that before this year when other special interest groups stepped up their legislative efforts “we were too busy to look up from our desks and become involved in law making. If ignorance was bliss, we were euphoric.”

But the TBA’s rise from complacency had its effect. In 1988, Emison reported that in that year’s legislative session the credibility of the TBA on Capitol Hill was re-established and it gave the lawyers of Tennessee a potent voice there. Efforts that year resulted in the passage of the pilot public defender’s program, a new corporation act, a limited partnership act, a General Sessions Court act, numerous probate and domestic relations revisions, and “the defeat, two years in a row, of the efforts of various powerful special interest groups to remake our tort law into an instrument of their own economic self protection.”

The January/February 1989 cover of the Journal (at left) features the long hallway at the bottom floor of the Capitol that opens out onto Charlotte Ave. It illustrates a story about the TBA’s Public Defender bill, which called for a statewide system of public defenders, to include a public defender system in each judicial district.

An overview of the year’s legislation was published for the first time in the May/June 1992 Journal, which told what had happened to bills in the General Assembly that were of interest to lawyers. The big winner that year was the increased funding secured for public defenders and the indigent defense fund, a major success for the TBA. Passage of the Professional Corporation Act was another victory that year. The $200 tax on professionals was also passed that year. Then-TBA lobbyist John C. Lyell put it this way: “We felt like there was going to be a tax on professionals, and this was the least onerous of those proposed.”

Ellen Hobbs Lyle wrote the cover story in March/April 1993, an interview with Secretary of State Riley C. Darnell, in which he discussed politics, the shocking possibility of allowing filings by fax, upcoming legislative issues, and the role of the lawyer as legislator. He told her that he would “approach the secretary of state’s responsibilities more from the lawyer’s perspective than has been done in the past.”

In 1995, in his president’s column, Harris Gilbert urged lawyers to stay involved in the legislative process and praised Steve Cobb for doing “an unbelievable job.” Cobb is still the TBA’s lobbyist today.

LegisFax, a weekly publication faxed to subscribers for free, began in 1996. The service, now called LegisFlash and available via email, is still going strong. That year, annual legislative updates became an annual TBJ standard.

— Suzanne Craig Robertson
Bluff Walk: A John McAlister Mystery

By Charles R. Crawford,
Sunstone Press ■ $26.95
248 pages ■ 2004

Reviewed by Bill Halton

T here must be something besides fluo-
ride in the drinking water in my
home town of Memphis. Or maybe
it’s in the ribs at The Rendezvous. What-
ever the reason, over the last several
years, Memphis has become the center of
the literary universe when it comes to
legal thrillers.

This trend started back in 1990 when
a North Mississippi trial lawyer named
John Grisham published The Firm, that
ture-to-life story about a Memphis law
firm that pays its starting associates
$100,000 a year plus a new Mercedes,
asking only in return that the associate
represent the Mafia. Before I read
The Firm, I thought the only Mafia in
Memphis was Elvis’ Memphis Mafia,
those guys who hung out at Graceland
and stayed up all night with the King,
playing racquetball and eating fried
peanut butter and nanner sandwiches.
The Firm quickly became a major
motion picture starring Tom Cruise and
Justice Janice Holder, and was followed
by a whole series of Memphis-based legal
thriller novels and movies including
The Client, The Pelican Brief, The Pelican
Boxer Shorts, and my personal favorite,
The Runaway Jury That Escapes to the
Caribbean with Julia Roberts.

John Grisham has been so successful
that he has managed to escape from the
legal profession just like the protagonist
in one of his novels. However, I have it
on good authority that the reports that he
is now living on a Caribbean island with
Julia Roberts are somewhat exaggerated.

My friend and fellow Memphis lawyer
Charles Crawford is not a Grisham
wannabe. He is a successful lawyer who,
insofar as I know, has no desire to shut
down his practice and move to Holly-
wood or even the Caribbean. But in his
first novel, Bluff Walk, Charles does
prove that he has the Grishamesque
write stuff to deliver a legal thriller.

Bluff Walk is set in Memphis (where
else?) and is the story of John McAlister,
a former commercial litigator who quits
law practice and becomes a private eye.
Why? Well, probably because commer-
cial litigators never become heroes in
legal thrillers. After surrendering his law
license, McAlister quickly becomes the
coolest private investigator since Paul
Drake. He is hired on a regular basis not
by Perry Mason, but by Amanda Baker, a
go-for-the-throat divorce lawyer who
makes a living representing Memphis
country club wives by taking their rich,
unfaithful bidnessmen husbands to the
 cleaners. McAlister’s job is to get the dirt
on the cheating husbands, which he does
quite well, thank you, and for which
Amanda pays him handsomely. Things
go along well for McAlister, attorney
Baker, and all those desperate Memphis
housewives until Ms. Baker sicks McAl-
ister in search of a missing accused
dealer. In classic Paul Drake fashion,
McAlister pursues every lead, leading of
course to the sort of dangerous encoun-
ters one generally does not find in
commercial litigation, where the only
real hazard is an occasional paper cut.

Like most current legal thrillers, Bluff
Walk has very little to do with lawyers.
There is one brief trial scene, but it doesn’t even rise to the level of a subplot. Don’t get me wrong. In Bluff Walk, Charles Crawford, sends us (in the words of the late great Warren Zevon) lawyers, guns and money. But mostly, he sends us guns.

That’s probably the reason I enjoyed Bluff Walk. Like most lawyers, I find a true-to-legal-life novel about as exciting as commercial litigation. But I do like a good mystery. And that’s precisely what Crawford delivers in Bluff Walk. It’s one of those curl-up-by-the-fireplace winter weekend reads.

You show me a good lawyer, and I’ll show you a potentially good writer. There’s a simple explanation for this. What most of us do for a living is help people who are in trouble, or at least conflict. And good lawyers help people get out of conflict by writing stories that are conveyed in pleadings and briefs, and in the most dramatic fashion, in arguments to judges and juries.

Charles Crawford is a good lawyer, and therefore it’s no surprise he can tell a good story. In Bluff Walk, he does precisely that.

Charles tells me he is working on his second novel. I will definitely read it, unless it’s about commercial litigation.

Bill Haltom is a partner with the Memphis firm of Thomason, Hendrix, Harvey, Johnson & Mitchell. He is president-elect of the Tennessee Bar Association and is a past president of the Memphis Bar Association.
The Eleventh Commandment:  
Thou Shalt Read My Robes

By Bill Haltom

Here's a note to my cousin Vinny. If you ever find yourself in an Alabama courtroom again, pay close attention to the Judge's robes. They may be sending you an important message. Make that 10 important messages.

Over the past few years, the 10 Commandments have stirred up more controversy in the state of Alabama than the Alabama-Auburn football game. The controversy started a couple of years ago when the Commandments — all 10 of them — showed up in the rotunda of the Alabama Supreme Court Building. They weren't the original honest-to-God, etched-in-stone 10 Commandments that the Lord gave to Moses during a summit conference on Mount Sinai several thousand years ago. According to Exodus, chapter 32, that set was lost when Moses broke the original tablets following his descent from the mountain. That's right, brothers and sisters. Moses broke the original 10 Commandments, and folks have been breaking them ever since. But a replacement set miraculously appeared in Alabama, carved in a monument right smack dab in the middle of the building housing the Crimson Tide state's highest court.

The 10 Commandments monument offended atheists and pointy-headed ACLU liberals, so it came to pass that a lawsuit was filed, and ultimately a decree was issued by some Federal Court Caesar Augustus that the monument had to go.

Alabama Chief Justice Roy Moore, angry but not wishing to use profanity responded, “Heck no!” He chose to defy the order and was removed from office by the Alabama Court of the Judiciary, a body comprised, no doubt, of a bunch of secular humanists.

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But a replacement set miraculously appeared in Alabama, carved in a monument right smack dab in the middle of the building housing the Crimson Tide state's highest court.

The former chief justice is now considering running for governor of Alabama. If he does, he'll probably win in a landslide since his support of the 10 Commandments has made him the most popular man in Alabama since Bear Bryant.

But while the 10 Commandments have been removed from the Alabama Supreme Court Building, they have recently resurfaced in the courthouse of the Covington County Circuit Court in Andalusia, Alabama, where they can now be seen prominently embroidered on the judicial robes of presiding Circuit Judge Ashley McKathan.

Judge McKathan is a man who wears his beliefs on his sleeve. Both sleeves, in fact, and also across his chest. The judge's robes no doubt send a strong message to everyone who appears in his courtroom. For example, if you're called as a witness before Judge McKathan, not only will you be given an oath. You'll also see a warning written right across the judge's chest: THOU SHALT NOT BEAR FALSE WITNESS.

ACLU lawyers and other liberals will be relieved to know that no public funds were used in the production of Judge McKathan's robes. He ordered the robes himself and had them embroidered using his own money.

But despite the judge's prominent robes, some Alabama lawyers are apparently just not getting the message. According to a recent article in the Mobile Register, attorney Ridley Powell of Gulf Shores filed a motion objecting to Judge McKathan's robes.

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BUT SERIOUSLY, FOLKS!

I'm not quite sure how this motion was captioned. I guess it was a Motion to Require the Judge to Change his Clothes. Attorney Powell was representing an airline pilot who was to be tried by Judge McKathan on charges of driving under the influence. For the life of me, I do not know why Attorney Powell objected to Judge McKathan's robes in that particular case. To my knowledge not one of the 10 Commandments reads: THOU SHALT NOT BE A DRUNK AIRLINE PILOT.

I frankly don't know what all the fuss is about. I'm no Johnnie Cochran, but I seriously doubt that judicial robes will affect the outcome of a trial. Suppose during the OJ trial, Judge Lance Ito had worn gold lamé judicial robes emblazoned with the commandment: THOU SHALT NOT KILL. Johnnie Cochran would have countered that effectively by wearing a three-piece suit embroidered with the Eleventh Commandment: IF IT DOESN'T FIT, YOU MUST ACQUIT!

Besides, most of the 10 Commandments aren't even applicable to your typical court case. If my cousin Vinny is representing you in a car wreck case, does it really make any difference that the judge is wearing robes that warn you not to covet your neighbor's wife?

Frankly, I think it would increase respect for the law if every judge in America followed Judge McKathan's example and starting wearing message robes. Criminal Court judges could wear robes embroidered with the classic admonition of the great Judge Roy Bean: I'M GONNA GIVE YOU A FAIR TRIAL . . . AND THEN HANG YOU!

Divorce Court judges could wear robes that say simply: CHEAPER TO KEEP HER.

And Probate Court judges could wear robes that convey a final judgment: YOU CAN'T TAKE IT WITH YOU!

In the unlikely event I ever become a judge, I'm going to acquire — at my own expense — my own customized robes. They won't be black. They will be orange and will be embroidered with white lettering that says: "How 'bout them Vols?"

This will send a clear and unequivocal message to any Vanderbilt Law School grad who ever appears in my courtroom.
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