# Premium Estimate Request Form

**RETURN COMPLETED FORM FOR PREMIUM INDICATIONS**

**Questions?** Please call Debbie Matthews, Director, at 615.652.4033

**PLEASE RETURN TO:**
- Debbie Matthews
- Fax No.: 615.658.0844
- E-mail: debbie_matthews@agj.com

## 1. CURRENT COVERAGE

<table>
<thead>
<tr>
<th>Number of years of continuous coverage</th>
<th>A.</th>
<th>E. Annual premium:</th>
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<tr>
<td>Current Professional Liability Coverage Program</td>
<td>B.</td>
<td>F. Deductible:</td>
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<td>Current Limit in $</td>
<td>C.</td>
<td>G. Per Claim or Annual Aggregate:</td>
</tr>
<tr>
<td>Accident Due Date</td>
<td>D.</td>
<td>H. Does your current policy modify or exclude coverage?</td>
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**CURRENT POLICY EXPIRATION DATE:**

## 2. ATTORNEYS

Please provide information about each attorney in your firm. If any attorney or part-time attorney, provide a number of hours worked on behalf of the firm. (Attach additional sheets as necessary.)

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Date Admitted to Bar</th>
<th>State</th>
<th>Date Began Practice</th>
<th>Date Joined Firm</th>
<th>Status: Single, Married, Partner, Non-Attorney</th>
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## 3. AREA OF PRACTICE

<table>
<thead>
<tr>
<th>Practice Area</th>
<th>Percentage of Billable Hours, Net Income</th>
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<tbody>
<tr>
<td>Civil Litigation</td>
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<td>Business Litigation</td>
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<tr>
<td>Construction</td>
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<td>Professional Liability</td>
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<tr>
<td>Family Law</td>
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<tr>
<td>Real Estate</td>
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<td>Taxation</td>
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## 4. CLAIM INFORMATION

A. Have any claims, including disloyalty claims, been made against you or any present or past partners, attorneys, or counsel in the last five years?

B. Have any claims, arising out of or related to your practice, or any claim for loss or damage, been made against you or any member of your firm in the last five years?

C. Do you have a policy of professional liability insurance?

D. Do you have a policy of errors and omissions insurance?

E. Do you have a policy of employment practice liability insurance?

F. Do you have a policy of professional liability insurance?

G. Are you a member of a bar association?

H. Do you have a policy of professional liability insurance?

## 5. RISK ASSESSMENT AND UNDERWRITING INFORMATION

**YES NO**

A. Is any attorney in your firm a director, officer, or employee of any entity, either directly or indirectly, that is a significant client or a significant source of income from any source?

B. Does your firm issue a service agreement for independent claim checking?

C. Do you have a conflict of interest for this client?

D. Do you use engagement agreements for independent claim checking?

E. Do you share office space with other firms?

F. Do you have an office in another state?

G. Do you own a Title Agency?

H. Do you have a policy of professional liability insurance?

**YEAH IT WILL WORK!**

**NOTE:** This form is for estimate purposes only. Completing this form does not guarantee underwriting acceptability or premium rates. Coverage may be subject to audit in writing and may be canceled at any time.

**ENDORSED FOR:**

**LAWYERS PROFESSIONAL LIABILITY INSURANCE**

**INSURANCE BY:**

**Gallagher Lawyers Professional Solutions**

**Your Information Will Be Submitted to a Minimum of 3 Insurance Companies!**
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☐ Business Overhead Expense
☐ Financial Review Service
☐ Retirement Planning
☐ Long Term Care
☐ Health
☐ Life

COVERAGE FOR MY LAW FIRM
☐ Office Contents/Building Package
☐ Workers’ Compensation
☐ Professional Liability
☐ Life and AD&D
☐ Disability
☐ Health
☐ Dental

Name __________________________________________________________

Firm Name ______________________________________________________

Address _______________________________________________________

City/State/Zip __________________________________________________

Phone (_____) ___________________________ Fax (_____) _____________

E-mail _________________________________________________________

Fax to: 423.629.1109
**PRESIDENT'S PERSPECTIVE**

**But Seriously, Folks …**

It’s time to stand up and deliver

If you are a regular reader of this publication, you may be asking yourself, “What in the world is Haltom doing in the front of the Journal?”

For the past 16 years, I have been safely tucked away in the back of each issue in what has been labeled a “humor column.”

Over the years there has been a split of opinion in the Tennessee Bar Association regarding whether my columns rose to the level of “humor.” Many Tennessee lawyers have told me that my writing has been “the funniest thing in the Journal.” For a long time I regarded this comment as a compliment until one day it hit me. What these people were saying was that my columns are funnier than either the disciplinary notices or “Paine on Procedure.” This may be a classic example of damning with feint praise.

Other Tennessee lawyers have quite bluntly told me they haven’t liked my humor columns. Some of these critics have accused me of being a bleeding heart liberal. Others have accused me of being a fascist. One reader got so mad at one of my columns that he actually called me and said he wanted to challenge me to a duel. Being a bleeding heart coward, I declined.

Well, I have some good news for those Tennessee lawyers who want to shoot me for being (a) a bleeding heart liberal, (b) a fascist, (c) a raging moderate, or (d) all of the above. I am pleased to announce that I am taking a one-year sabbatical from my part-time lucrative career as a humor columnist for the Journal. That’s the good news.

The bad news is that having recently been installed as Grand Poo-Bah of the Tennessee Bar Association, I now have a bully pulpit right in the front of the Journal! It’s prime time, baby! I’m even ahead of the disciplinary notices!

My buddy Roy Herron tells me that now that I hold a quasi-public office, I have lost my First Amendment rights. I no longer have the freedom to write just any crazy thing that pops in my mind, and if it offends somebody, just pass it off as a bad joke.

To put it bluntly, I’m going to have to get serious, at least for a year. I promise you that during the coming year, I will try not to take myself too seriously. After all, being president of the Tennessee Bar Association is just one step above student council. However, I promise that I will always take seriously the work of the Tennessee Bar Association. That’s because, my fellow lawyers, we have some serious work to do. We live in a time when the American legal system is under attack by politicians, the media, and the culture. We lawyers have been the subject of intense public criticism for years. There is a simple explanation for this that is probably best illustrated by a line in my all-time favorite novel, *To Kill a Mockingbird*. Following the trial of Tom Robinson, Atticus Finch is reviled and literally spit upon by a number of his fellow citizens in Maycomb, Ala. This greatly distresses Atticus’s children, Scout and Jem. But their neighbor, Miss Maudie, tells them, “There are some men in this world who were born to do our unpleasant jobs for us. Your father is one of them.”

We lawyers are often scorned and reviled because we so often do the unpleasant jobs for our communities. We may be called upon to be the voice of the oppressed, the reviled, and the hated. This sort of work doesn’t lend itself

(Continued on page 4)
to high public approval ratings. But I’ve never met a lawyer who hired a pollster to tell her or him whether to represent a client, and if so, what to say.

But while the attacks on lawyers are nothing new, the targets of the latest assault now include “activist judges” (translation: a judge who reaches a decision you don’t agree with) and “runaway juries” (translation: a jury that reaches a verdict you don’t agree with). Well, in the coming year, I’m going to be real serious about this issue. I believe it is time for Tennessee lawyers to do what we do best. It’s time for us to stand up and deliver. We need to stand up and speak out for the American legal system. And we also need to deliver by living out the ideals of our profession in our daily work.

During the coming year, I’m going to be calling on you to help me stand up and deliver for the American legal system. Through a statewide grassroots public education campaign, we will spread the word that what makes America great is the rule of law. We will tell our fellow Tennesseans that when people attack the American legal system,

“We may be called upon to be the voice of the oppressed, the reviled, and the hated. This sort of work doesn’t lend itself to high public approval ratings.”

they are attacking the foundation of democracy. We will remind our neighbors that when the critics attack the jury system, they aren’t just attacking the lawyers and the judges, they are attacking us the people, because they are saying we can’t be trusted to fairly and equitably resolve disputes in our community.

And we’re not just going to talk. We’re going to deliver through a statewide grassroots campaign to organize pro bono and access to justice efforts across Tennessee.

Again, my hero Atticus Finch said it best. In his closing argument in his defense of Tom Robinson, Atticus said, “I’m no idealist to firmly believe in the integrity of our courts and in the jury system — that is no ideal to me. It is a living, working reality.”

Amen, Brother Atticus! And so, my fellow lawyers, during the coming year, let us stand up and speak out in defense of the American legal system. And let us deliver by making our ideals a living, working reality in our daily lives as lawyers. Please join me in this important work.

For once, I’m serious.

Bill Haltom is a partner with the Memphis firm of Thomason, Hendrix, Harvey, Johnson & Mitchell.

If the Partnership Track is not for you, we need to talk...

Counsel On Call provides a variety of career options for Nashville attorneys who enjoy the practice of law but not necessarily the responsibilities of partnership.

LITIGATION ATTORNEY - Currently interviewing attorneys who have a Tennessee law license and are available to work out of a Nashville office. Requires capability of taking a file and running with it, assembling data and presenting it in an administrative tribunal. This is a great opportunity to gain on-your-feet experience. Must have ability to travel. Anticipated start date is mid-July and last 6-9 months. E-mail resume to mail@counseloncall.com or fax to 615-467-2391.

LITIGATION PARALEGAL - Do you enjoy working closely with attorneys- assembling information needed to argue motions or cases? Do you have the ability to work well in a high volume environment? Do you have a paralegal certificate, a few years of experience? Currently interviewing for a 3-month contract position anticipated to start mid-July and last 6-9 months that will enable someone to gain valuable experience. E-mail resume to mail@counseloncall.com or fax to 615-467-2391.
Idea to abolish lower federal courts reflects constitutional check and balance for an overreaching judiciary

The following letter was written to then-TBA President Charles Swanson:

I am writing in response to your column, “Our Judiciary Branch Under Attack” (June 2005 TBJ “President’s Perspective”). Your column no doubt arose out of the Terry Schiavo case and its fallout. While you are right to be concerned with comments made about the judiciary, I think your perspective is wrong.

The courts’ decisions in the Schiavo case remind me of a remark made by our own President Jackson regarding Chief Justice John Marshall’s opinion holding the Cherokee Removal to be unconstitutional. After receiving the opinion, President Jackson stated, “That is Mr. Marshall’s opinion. Now let’s see if he can enforce it.” Although the Republic survived (as the judiciary will the Schiavo case), this truly was a constitutional crisis. We had a sitting U.S. president blatantly ignore an order of the Supreme Court. Whether Jackson was right or wrong begs the question of how he should have proceeded under our Constitution, which was to change the constitution rather than ignore the court’s opinion.

I would encourage you to read the statute which bestowed jurisdiction on the federal courts to hear the case (the act). If read without the taint of how the courts ultimately ruled, it is plain that Congress wanted the federal courts to

(Continued on page 33)
What lawyers should watch from the legislature

The first session of the 104th General Assembly was quite a productive one despite the diversions on ethics issues and the major struggles to address the TennCare issue. This article reviews several of the major developments of which lawyers may want to take note.

In the business law arena, perhaps the biggest development is the adoption of the Revised Limited Liability Company Act. This Tennessee Bar Association (TBA) initiative attempts to streamline the methods for creating limited liability companies. It is effective Jan. 1, 2006.

Several changes in the real estate practice were wrought during the session. One longtime TBA goal, that of requiring "good funds" at closing, was adopted at the initiative of the Tennessee Land Title Association with the assistance of the TBA. Federal government checks, official checks and cashiers checks are all defined as "good funds" for purposes of the act. Legislation to require that quarantine orders for methamphetamine labs be recorded in the Registers office should aid in tracking and addressing the issues created by contamination. This bill also provides that, after cleanup, a notice that the property is safe may be filed.

As more fully explained in an article by David Raybin (this issue, page 14), the criminal sentencing system in Tennessee was re-worked to make the grids advisory. These changes were made to try to assure compliance with evolving constitutional standards.

In the family law arena, one of the few major bills to be adopted was a TBA-backed bill to divorce the child support and alimony provisions from each other and to clarify their implementation. Much of the TBA activity was devoted to turning back legislation that would narrow court discretion in family law matters. Those proposals include one to reinstate the tort of alienation of affections, to provide punitive damages for adultery and other familial torts, and creating a presumption of 50/50 custody in all cases.

The one major piece of ethics legislation adopted affects officials in state and local government. The new law prohibits certain consulting arrangements and requires the disclosure of certain other activities. The definition of consulting services contains a provision, advanced by the TBA, that officials who undertake administrative contested matters are not engaged in consulting.

Several bills were introduced to end or change the Tennessee Plan system of merit selection and retention for judges in Tennessee. All of those efforts were turned back. A new scheme on pay for General Sessions judges was adopted. The General Assembly delayed action on judicial pay for trial and appellate judges until next year.

As a result of legislative action, several procedural changes will take place. The rules amendments adopted by the Tennessee Supreme Court were ratified and are effective July 1. The one rule that did not emerge from the process was one that would have required that all records including depositions and other un-filed discovery were a public record. The TBA expressed its concern about this proposal. Under one bill adopted, class-action certification questions will now be appealable at the discretion of the intermediate appellate court. Based on a study of the court clerks' fees by the Judicial Council, legislation that consolidates the more than 90 different individual fees and provides for a flatter upfront filing fee for most cases will be in effect for cases filed after Jan. 1, 2006. Another new provision permits insurance carriers to present an affidavit of payment as presumptive evidence in subrogation actions.

Efforts to cap non-economic damages in malpractice and other actions and other efforts to restrict parties' rights were unsuccessful but can be expected to re-emerge next year. The annual effort to refine estate planning and probate practice resulted in adoption of several minor refinements, including one that removes the testamentary formality requirements from trusts.

Looking ahead at next year, it is expected that the issue of process servers will get a new look through a study resolution adopted at the instance of the House Judiciary Committee Chair, Rep. Joe Fowlkes. Salary for trial court judges will be considered. Several issues deferred to the summer docket of the House Judiciary Committee may resurface.

— Allan F. Ramsaur
Commission petitions court for new specialties, changes in filing policy and name

The Tennessee Commission on Continuing Legal Education and Specialization petitioned the Tennessee Supreme Court recently for additions to specialties and changes to policies and even its name.

The first would establish three new specialization categories this year. Until now, attorneys have been able to gain certification in 11 areas of specialization. If the court approves the commission’s petition, attorneys will also be allowed to apply for specialization status in Social Security Disability Law, Juvenile Law (Child Welfare) and DUI Defense.

Under the specialization rule, there is a 90-day comment period before certifications are effective. To read the proposals, go to http://www.tba.org/rules/cle_2005/

The commission also petitioned the court last week to amend § 6.02 so that most attorneys will no longer be required to sign and return the Annual Report Summary (ARS), which is mailed by the commission each January. If the court approves the petition, attorneys who are short on CLE hours, owe a fee or need to claim an exemption will be required to sign and return the summary. No hearing or comment deadline has been set by the court for this.

“For 18 years, we required all attorneys to review the Annual Report Summary, sign it and send it back to us,” said David Shearon, executive director of the commission. “If they failed to sign and return it, they were in a state of non-compliance. With the improved electronic communications we now have among CLE sponsors, the commission and attorneys, the need for attorneys to confirm their CLE history is just not as great. We want to make it as easy as possible for attorneys to achieve compliance, and this had just become an unnecessary step.”

The commission also requested approval from the court to change its name in order to better reflect the two separate functions it oversees: the Tennessee Commission on Continuing Legal Education will continue its oversight of CLE in the state while the newly named Tennessee Board of Legal Specialization would allow greater focus to be placed on specialization. This would allow lawyers certified to use the phrase “Board certified” when referring to their certification.

If approval is received, the two functions will continue to operate from the same offices with the same staff. David N. Shearon will continue to serve as executive director over both entities.

To read this petition, go to http://www.tba.org/rules/cle_2005/. Go to www.cletn.com for information on certification and specialization.

Effective July 1
New uniform Parenting Plan form adopted

Working with the TBA’s Family Law Section, the Judicial Conference Domestic Relations Committee and others, the Administrative Office of the Courts has developed a parenting plan form that will be used consistently by each court within the state that approves parenting plans under §36-6-403 or §36-6-404.

The form is to be used on and after July 1, 2005. You can access the new form in several formats from the TBALink Web site at http://www.tba.org/parenting.

Court approves extensive changes to rules comments

In orders entered at the end of May, the Tennessee Supreme Court adopted extensive revisions to comments in the Tennessee Rules of Civil Procedure, Tennessee Rules of Appellate Procedure and Tennessee Rules of Evidence. The court had requested the Advisory Commission on Rules of Practice and Procedure to undertake a thorough review of the comments on the various rules and to recommend the removal of comments that were obsolete or otherwise inconsistent with later amendments of the various rules. After reviewing those proposed revisions, the court issued orders setting forth the new comments. The orders with appendices showing the comments that have been revised may be found on TBALink at http://www.tba.org/rules/comments_05.html.
"We are a profession that truly and genuinely cares about people," outgoing president Charles Swanson said in his final speech as president of the Tennessee Bar Association during the 124th Annual TBA convention in Knoxville, June 15-18.

“We are the problem solvers and problem preventers,” he said. “I am proud to be a lawyer. I hope you are proud to be a lawyer, too.”

With that, Swanson handed the reins of the TBA over to Bill Haltom of Memphis. Larry Wilks of Springfield moved up to president-elect and Chattanooga lawyer Marcia Eason of Chattanooga is the new vice president.

Chief Justice Frank F. Drowota III administered the oath of office to new TBA president Bill Haltom during the luncheon, calling it his “last official act,” since he has announced his resignation effective this August. Drowota took the opportunity to say how much the TBA means to the bench and bar, “which is why I have only missed one convention in 35 years.”

Drowota was later awarded one of three President’s Awards “for being a wonderful friend to the organized bar,” outgoing President Charles Swanson said in his address. “The people of Tennessee are better for him having served on the court.”

The two other President’s Awards went to John Blankenship of Murfreesboro and Keith Burroughs of Knoxville. Blankenship was honored for his three years of outstanding service as the Access to Justice Committee chair. Burroughs was honored for his work on


INSET: Bill Haltom is sworn-in as the 125th TBA president by Supreme Court Chief Justice Frank F. Drowota III.
the development of a statewide fee dispute system.

The William M. Leech Public Service Award, given by the Young Lawyers Division, was presented to S. Shepherd Tate of Memphis, a former TBA and American Bar Association president. In presenting the award, YLD fellows’ president Pam Reeves said that “no one represents service to the profession and community better.” Tate, who has been in practice 64 years, recalled with a laugh that he started coming to TBA conventions so long ago because “the hotels were air conditioned and our offices were not.”

Charles E. Young Jr. of Knoxville and David Raybin of Nashville shared the Justice Joseph W. Henry Memorial Award for Outstanding Legal Writing. Raybin won for his article.

Past presidents gathered at this year’s convention. Present were, from left, John Tarpley, Al Harvey, Pam Reeves, John Waters, Shep Tate, Dan Nolan, Katie Edge, Randy Noel and Paul Campbell III.

The YLD board meeting featured a contested election for vice president between Nathan Rowell and Jason Long, both of Knoxville, in which Long prevailed. At left, treasurer Rowell, President Danny Van Horn, Immediate Past President Cindy Wyrick and president-elect Lisa Richter conduct the business of the organization.

ABOVE: Harrison McIver, left, executive director of Memphis Area Legal Services and Ann Barker of the Department of Children’s Services in Clinton attend a reception hosted by Legal Aid of East Tennessee and cosponsored by the TBA Corporate Counsel Section. AT LEFT: A delegation from UT runs in the YLD’s annual Race Gestae. From left are Keith Carver, director of development & alumni affairs; and Jeffrey Hirsch and Ben Barton, both professors at UT College of Law. TBJ columnist Dan Holbrook of Knoxville won the race.

Nashville lawyer Jackie Dixon was elected to a three-year term on the TBA Board of Governors as the district governor for the 5th District. She was in a race with Timothy Warnock, also of Nashville. Dixon took office at the TBA convention.

Also taking office at the convention were Nick McCall of Knoxville, who was appointed to fill the open 2nd District governor seat, which had been held by Jim Moore; and Graham Swafford, who was appointed to fulfill the East Tennessee governor seat. That position had been held by Sam Elliott, who resigned that seat to fill the 3rd District governor position that Marcia Eason vacated when she was elected TBA vice president. Elliott will serve the remainder of that term.
hambliss, Bahner & Stophel PC, a Chattanooga-based firm, announced that T. Ryan Malone and Jacob C. Parker have joined the firm as new associates. Malone joins the firm’s litigation practice and will focus on medical malpractice, long-term care defense and general litigation. He received both his law and undergraduate degrees from the University of Tennessee. Parker also joins the firm’s litigation practice where he will concentrate on product liability, long-term care defense and general litigation. He earned his law degree from the University of Tennessee College of Law.

David A. Thornton has joined the Memphis office of Bass, Berry & Sims PLC as a member in the tax practice area. His specialized practice combines both litigation and business experience to assist clients with ERISA claims, fiduciary breach actions, employee benefit plans, HIPAA and COBRA compliance, IRS regulations and general corporate law. Prior to joining Bass, Berry & Sims, Thornton was a member at the law firm of Husch and Eppenberger LLC, where he specialized in employee benefits, benefits litigation, corporate and health law. He received his law degree in 1984 from the University of Tennessee College of Law, where he was a member of the Order of the Coif.

The Law Offices of Charles E. Hodum welcome Mitzi C. Johnson who will serve as “of counsel” with the firm. Johnson received her law degree from the University of Memphis and is licensed to practice law in Arkansas, Mississippi and Tennessee. She also is a Rule 31 Certified Mediator. Johnson will continue her practice in the areas of family law, probate and collections.

Donald I. N. McKenzie recently announced the opening of his law office in Nashville where he will continue his general corporate, securities, venture capital financing, and mergers and acquisition practice. Prior to opening this office, McKenzie was a shareholder in Stokes Bartholomew Evans & Petree PA, where he was chair of the firm’s corporate law and securities regulation practice group. Born in Harare, Zimbabwe, McKenzie received a bachelor of laws degree in 1968 from the University of Rhodesia in Harare and a master of laws degree and diploma in comparative legal studies in 1974 from Cambridge University in England. He is licensed to practice in Tennessee, New York and Zimbabwe.

Carolyn W. Schott has been elected a shareholder in the Nashville office of Baker, Donelson, Bearman, Caldwell & Berkowitz PC. Schott concentrates her practice in federal, state and local taxation law including corporate tax planning, individual tax and estate planning, real property transactions, business entities, probate litigation and property tax litigation. She is licensed to practice in Tennessee and Michigan.

BEN W. WILLIAMSON JR. of the Knoxville firm of O’Neil, Parker & Williamson died May 24 at home in Knoxville. He was 83 and had practiced law as a member of the Tennessee Bar for 55 years. Upon graduation from the University of Tennessee College of Law in 1950, he joined the Knoxville firm of Jennings, O’Neil & Jarvis.

Noted for his exceptional abilities in the courtroom and his vigor in the representation of his clients, Mr. Williamson was active in his practice until his passing. In lieu of flowers, the family suggests donations to Young Life Knoxville, P. O. Box 647, Knoxville, Tennessee 37901.
"How will my judge rule on this issue?"

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Manage Your Practice
Grow Your Practice

When court records research on LexisNexis CourtLink uncovered rulings made by your judge in a similar case, it was just a simple matter of incorporating his language into your motion. Not surprisingly, he found your motion clear, compelling, and well-reasoned.

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The Memphis-based law firm of Pietrangelo Cook PLC announced that Jonathan P. Lakey has joined its firm as a member. Prior to joining Pietrangelo Cook, Lakey was a member of Burch, Porter & Johnson PLLC. He will continue to focus his practice in the areas of business, commercial and tort litigation.

The law firm of Apperson, Crump & Maxwell PLC recently announced that Charmiane G. Claxton has joined the firm as an associate. Claxton earned her law degree at the University of Memphis School of Law. Prior to joining the firm, she served as general counsel for the Memphis Area Transit Authority.

H. Wynne James III has joined Waller Lansden Dortch & Davis PLLC as a member and will play a major role in the firm’s mergers and acquisitions practice. Prior to joining Waller Lansden, James was a member at Stites & Harbison PLLC and prior to that was a partner with Baker, Donelson, Bearman & Caldwell PC, serving as managing partner in the Knoxville and Nashville offices. He has represented clients across a broad range of industries, from engineering to financial services to software development. James earned his law degree in 1974 from the University of Tennessee, where he graduated Order of the Coif. In 1975, he received his master of laws in taxation from the University of Florida while also serving as an instructor at the University’s law center.

The Memphis-based immigration law firm of Siskind Susser PC recently announced that Bryant Stevenson has joined the firm as an associate. A 2004 graduate from the Cumberland School of Law in Birmingham, Stevenson will practice exclusively in immigration matters.

Wendee M. Hilderbrand has joined the Nashville office of Bass, Berry & Sims PLC as an associate in the Litigation Practice Area. She received her law degree in 2004 from Vanderbilt University Law School where she was a Dean’s Scholar, as well as special project editor and author for The Vanderbilt Law Review. Prior to joining the firm, Hilderbrand was an associate at Branham & Day PC.

Bass, Berry & Sims PLC announced that Angela Humphreys Hamilton, Paige Waldrop Mills and W. Brantley Phillips Jr. have been named members in the firm’s Nashville office, and that Catherine McCormick Wilson has been named a member in the Memphis office.

Hamilton serves in the corporate & securities and health care practice areas. She received her law degree, cum laude, in 1996 from the University of Tennessee College of Law, where she was recognized as the College of Law’s top graduate and elected to the Order of the Coif.

Mills is a member of the litigation, intellectual property and technology practice areas. She has extensive experience in the litigation of commercial and employment disputes, as well as tort and insurance matters. She earned her law degree from the University of Tennessee College of Law in 1993.

Phillips is a member of the litigation practice area. In addition to general business litigation, his practice includes campaign finance and various state and federal regulatory proceedings. He received his law degree with honors in 1997 from Washington & Lee University School of Law.

Wilson is a member of the commercial transactions and real estate practice area. Her legal experience includes work with residential and commercial real estate and commercial loan transactions. She earned her law degree, cum laude, from the University of Tennessee College of Law in 1995 where she was selected a member of Phi Kappa Phi.

Dr. Kent Cox and Drew McElroy were reappointed by the Supreme Court to three-year terms to the commission to administer the Tennessee Lawyers Assistance Program. New members on the commission, with terms that expire June 1, 2008, are Judge Ben Hooper II of Newport; Kenneth Shuttleworth, Elizabeth Collins and Carolyn S. Watkins, all of Memphis; H. Thomas Parsons of Manchester; and Judge Bratten Cook II of Smithville.

Christopher A. Hall was appointed chair of the commission. In the order, the court expressed gratitude to Stephenson Todd, who served as chair of the commission since 1999.

The Knoxville law firm of Stone & Hinds PC announced that Janet Edwards has become a shareholder. A 1991 graduate of UT College of Law, Edwards has been associated with the firm since 2000. Mark E. Brown and Michael B. Menefee are new associates. Brown is a 2001 graduate of the Southern Illinois University School of Law and Menefee is a 2002 graduate of the UT College of Law.
**Actions from the Board of Professional Responsibility**

**Clarification**

The May 2005 *Journal* included a description of Memphis attorney Emilia Green Ballentine's suspension from the practice of law. Information provided by the Board of Professional Responsibility indicated that Ballentine was accused of continuing to practice law at the firm of Suskind Susser while her license was "in a continuous state of suspension." A spokesman for the firm denies that Ballentine was working for Suskind Susser during this time and reports she was terminated in early 2003, months prior to her suspension.

**Reinstated**

Maria Stephanie Mitchell, an attorney in Eagan, Minn., has been reinstated to the practice of law after complying with Rule 21 as required by the Board of Professional Responsibility.

**Suspended**

On May 12, the Supreme Court of Tennessee suspended the law license of Joseph L. Hornick for a period of 45 days beginning July 1. The court acted pursuant to a petition for discipline filed against Hornick by the Board of Professional Responsibility. The board charged Hornick with neglect, failure to act with reasonable diligence and promptness in filing a client's divorce papers, paying the client's court costs and then misinforming his client regarding the payment, and for making false and misleading statements to the board. Hornick agreed to a conditional guilty plea in exchange for a 45-day suspension and the use of a practice monitor for one year. During the suspension period Hornick may not use any indicia of lawyer, legal assistant or law clerk or maintain a presence where the practice of law is conducted. He must notify all clients, counsel and opposing counsel of suspension. Finally he must deliver to all clients any papers or property to which they are entitled.

**Censured**

Chattanooga attorney Howard Brownlow Barnwell received a public censure from the Board of Professional Responsibility on May 16. Barnwell voluntarily dismissed a case he was handling for a client and then failed to re-file the case within the one year permitted by the savings statute. The board determined that Barnwell’s conduct violated DR 1-102(A)(1)(6), DR 6-101(A)(2) and DR 7-101(A)(1)(3) of the Code of Professional Responsibility. A censure declares the conduct of the lawyer improper but does not limit that lawyer’s right to practice law.  

**CONVENTION**

(Continued from page 9)

"What is the impact of Blakely on sentencing in Tennessee?" Young won for his article, "Can you protect your client’s trademark from cyber mud slingers?"

The Joe Henry Award is given each year to the lawyer who writes the best article in the *Journal* and to encourage practicing Tennessee lawyers to write scholarly yet practical articles. This year's competition was judged by Drowota, Swanson and UT's Dean Thomas Galligan.

In Haltom's inaugural speech, he outlined his plan for this year to "stand up and deliver for the American legal system" (for details, read President's Perspective, page 3). Harris Gilbert and Cindy Wyrick will lead the new Public Education Committee, while Andy Branham will team up with Tennessee Lawyers Association for Women President Linda Warren Seely to develop plans to help lawyers deliver legal aid to the poor.

Haltom also recounted his history with TBA conventions. His family and his wife's family, the Swaffords, have attended nearly all the TBA conventions since he and Claudia were married in 1981. He says upon marrying, he was told that "when you are a Swafford, attending the TBA convention is not optional." Lawyers Claude and Howard Swafford of Jasper are his in-laws.

"My kids don’t know you can take a vacation without wearing a name tag," Haltom said.

At the Bench-Bar Luncheon, legal affairs writer and lawyer Mark Curriden told the story of an innocent black man found guilty of a brutal rape of a white woman in Chattanooga in 1906. The case is the only one ever to be tried directly in the U.S. Supreme Court and what ensued was a whirlwind of groundbreaking legal action. The case is documented in Curridan's book, *Contempt of Court*.

"The rule of law was at stake in this country," Curriden said to the group of judges and lawyers, noting that between 1882 and 1944 there were 4,708 lynchings in the United States.  

— Suzanne Craig Robertson  

Compiled by Stacey Shrader from information obtained from the Board of Professional Responsibility of the Tennessee Supreme Court.
THE BLAKELY FIX

New Tennessee law restores judicial discretion in criminal sentencing

By David L. Raybin
“The disposition and treatment of those who commit crimes and have to be punished therefore is always a delicate and difficult question. It should be a source of genuine satisfaction to the people of Tennessee that we have discovered and have in successful operation a system that comes as near solving that perplexing problem as any that has yet been tried.”
— Gov. James Beriah Frazier (1903)

“The Task Force charged with making Tennessee’s criminal sentencing guidelines conform with the Supreme Court ruling has come up with what I think is a very practical, common-sense solution that leaves discretion in the hands of the judges and keeps intact the structure that we have developed in our state.
— Gov. Phil Bredesen (March 4, 2005)

Introduction
On June 7, Gov. Phil Bredesen signed into law remedial legislation that restores a judge’s ability to impose the full range of sentences in criminal cases. Because the statute takes effect immediately this article was drafted to provide a timely guide to the new procedures. The full text of the Blakely-compliant amendments to the Sentencing Reform Act of 1989 (widely known as “the Blakely fix”) appears at http://www.tba.org/news/PC0353.pdf.

One of the hallmarks of our system of jurisprudence is the incremental development of the law by appellate courts — a process that is less

(Continued on page 16)
than perfectly predictable. This is demonstrated by a string of United States Supreme Court cases that altered our understanding of the role of the trial court to find facts that could increase a sentence beyond the statutory mandated minimum,1 which struck down the mandatory provisions of the federal sentencing guidelines, is the latest in a line of recent Supreme Court cases expanding the reach of the Sixth Amendment Jury Trial Clause.2

Blakely concerns statutes that entitle a defendant to a penalty no higher than a designated sentence unless certain specified findings of facts are made. Typically these “findings of fact” involve a determination of often-contested enhancements that justify — and under some schemes require — a greater sentence above the legislatively mandated, designated sentence. Blakely made clear that these enhancements could no longer be determined by a judge but were the province of a jury as required by the Sixth Amendment.

It is the concept of “entitlement” that dictates an inquiry as to whether the statutory scheme creates an entitlement to a specific designated sentence in the absence of additional fact-finding. The designated sentence may be the minimum sentence point in a range, as in Tennessee, or it may be the lesser of two sentencing ranges, as in Washington state. It is also immaterial if enhancement to greater points in the range is mandatory such as the federal system, or discretionary, such as the departure ranges in Washington state. The important thing is that none of the laws in the Blakely/Booker line of cases allowed a sentence any higher than the designated sentence (or range) without additional judicial findings.

Under the Tennessee Sentencing Reform Act of 1989 a defendant was entitled, as a matter of law, to a sentence at the presumptive, statutory minimum for all but Class A felonies (and then at the mid-range) when he or she began the sentencing hearing. In the absence of proof of enhancement factors at the end of the hearing, the defendant was still entitled to the presumptive sentence.

It is true that the 1989 Tennessee statutes certainly did not mandate an increased sentence. The question however was not what sentence was required but what the statute forbids. Under any of the sentencing structures examined in the recent string of Supreme Court cases, whenever a higher sentence is forbidden, absent a finding of fact (other than prior conviction), that fact must be admitted by the defendant or established to a jury beyond a reasonable doubt.

As long as Tennessee's statutes designated sentences above which judges were not permitted to go without additional fact-finding, Tennessee did not have an advisory guidelines system. Instead, it had a system with the very same constitutional flaw that the U.S. Supreme Court found in Blakely, Ring and Apprendi, and in the federal guidelines prior to the court's remedial fix in Booker. It mattered not that the Tennessee enhancement factors were less rigid than the federal “point system” or that the Tennessee judge had the discretion to impose the minimum notwithstanding the enhancement factors. The Tennessee defendant had an entitlement to the statutory presumptive sentence and the Sixth Amendment cases prohibited enhancement factors from increasing the sentence unless found by a jury. Thus, non-prior-conviction-related enhancement factors could not apply to the sentences imposed under the 1989 Sentencing Reform Act. The judge was effectively limited to the presumptive sentence.

In light of the obvious defect in our law the governor appointed a task force of judges, attorneys, and government officials to recommend legislation to remedy our statutes. The proposal — called the Blakely fix — was accepted by the Governor and has just become law.

A. The central premise of the 2005 legislation

The new legislation makes no changes to the existing sentencing ranges of punishment that are determined by the number and types of prior convictions. What has changed is the manner of fixing the length of sentence within the range.

Booker confirmed that removing all entitlements to a specific sentence “determinate starting point,” beyond which a judge could not go without additional fact-finding, renders a sentencing guidelines system advisory and thus constitutional. To achieve this goal, the new Tennessee legislation removes the prior rule, that absent an enhancement, a judge may not impose a sentence that exceeds the presumptive sentence at the bottom of the range (or in the middle of the range for Class A felonies). Now the judge may sentence anywhere within the appropriate range and defendant is not entitled to the minimum as a matter of law. There is, however, a subtle but important “entitlement” that remains and that Booker allows.

Booker found unconstitutional the mandatory sentence calculation provisions of the federal statute. Sheared of the mandatory language, the entire federal sentencing system then became advisory. The only remaining “entitlement” however was that the federal judge was still required to consider all the factors

David Raybin is a member of the Nashville firm of Hollins, Wagster, Yarbrough, Weatherly & Raybin. He served as an advisor to the Governor's Task Force, which drafted the 2005 remedial legislation addressed in this article. He previously served as a member of the Tennessee Sentencing Commission and chaired the Substantive Law Subcommittee that drafted the Sentencing Reform Act of 1989. He also drafted the Tennessee death penalty statute in 1976 and assisted in drafting the 1982 Judge Sentencing Act. He is the author of Tennessee Criminal Practice and Procedure (West 1984). He may be reached via the addresses available on the Web site www.hwylaw.com.
but sentencing within statutory ranges was now discretionary and there was no presumptive starting point. The new Tennessee legislation proposed by the Governor's Task Force similarly allows for sentencing guidelines but also requires the judge to consider the advisory guidelines, but, as noted, does not contain any mandatory entitlement to a minimum sentence. This, then, is a sentencing system that retains our familiar advisory guidelines, which should pass constitutional muster.

This central premise of the 2005 remedial legislation is reflected in the following emphasized portions of Tenn. Code Ann. § 40-35-210 as amended:

(a) At the conclusion of the sentencing hearing, the court shall first determine the appropriate range of sentence.

(b) To determine the specific sentence and the appropriate combination of sentencing alternatives that shall be imposed on the defendant, the court shall consider the following:

1. The evidence, if any, received at the trial and the sentencing hearing;
2. The presentence report;
3. The principles of sentencing and arguments as to sentencing alternatives;
4. The nature and characteristics of the criminal conduct involved;
5. Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;
6. Any statistical information provided by the administrative office of the court as to sentencing practices for similar offenses in Tennessee; and
7. Any statement the defendant wishes to make in the defendant's own behalf about sentencing.

(c) The court shall impose a sentence within the range of punishment determined by whether the defendant is a mitigated, standard, persistent, career, or repeat violent offender. In imposing a specific sentence within the range of punishment, the court shall consider, but is not bound by, the following advisory sentencing guidelines:

1. The minimum sentence within the range of punishment is the sentence which should be imposed because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications.
2. The sentence length within the range should be adjusted as appropriate by the presence or absence of mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.
3. The sentence length within the range should be consistent with the purposes and principles of this chapter.
4. When the court imposes a sentence, it shall place on the record either orally or in writing what enhancement or mitigating factors it considered, if any, as well as the reasons for the sentence in order to ensure fair and consistent sentencing.
5. A sentence must be based on evidence in the record of the trial, the sentencing hearing, the presentence report, and the record of prior felony convictions filed by the district attorney general with the court as required by § 40-35-202(a).

The heart of the 2005 legislation is contained in this passage: "In imposing a specific sentence within the range of punishment, the court shall consider, but is not bound by, the following advisory sentencing guidelines." This is clearly the post-Booker federal formulation that creates a guideline system mandating that the judge consider specific guidelines. This formulation is critical since it assures that all judges will use an identical process of arriving at a sentence without creating an entitlement to a presumptive sentence or, for that matter, any specific sentence.

The next two critical passages are: "(1) The minimum sentence within the range of punishment is the sentence which should be imposed because the general assembly set the minimum length of sentence for each felony class to reflect the relative seriousness of each criminal offense in the felony classifications," and "(2) The sentence length within the range should be adjusted as appropriate by the presence or absence of mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114.

These two sentences look superficially similar to our old presumptive minimum sentence and the previous method of application of enhancement and mitigating factors. These new provisions were intentionally drafted to mirror the former statute but without the entitlement to a mandatory, presumptive minimum or mid-range sentence. As explained in the introduction to this article, it is an entitlement to a specific mandatory sentence that triggers the Sixth Amendment when judicial fact-finding is necessary to increase the sentence above the mandatory figure. The new statute contains no such requirement that avoids the flaws in statutory schemes condemned by the federal courts.

Tennessee's history of sentencing reform did not begin in 1989. Rather, the legislative history dates back to the Sentencing Reform Act of 1982. The 1982 sentencing provisions contained our now-familiar "ranges," determinate sentences, and judicial sentencing. Previously, we had indeterminate sentences imposed by a jury.

The 1982 law was landmark legislation but what was missing from the scheme was the notion of a "starting point" in the sentencing process. Sentencing practices became totally disparate because the 1982 law was enacted without the benefit of prison population projections and other tools to assess the impact of such a major sentencing alteration. It was, quite simply, a shot in the dark.

(Continued on page 20)
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Mark your calendars now for a new YLD Transactional Law CLE coming to a city near you this summer! The six-hour seminar will provide basic information and resources to non-litigating attorneys. Topics will include contract drafting, estate planning, mediation, intellectual property, real estate transactions and business entity formation. Stops are planned in Knoxville (July 26), Memphis and Nashville (July 27) and Chattanooga (July 28).

Learn the Basics of Elder Law

TennBarU is again teaming up with the TBA Elder Law Section and the National Academy of Elder Law Attorneys to present this program that covers the breadth of elder law. Now a nationally recognized event, this year’s Elder Law Forum will be held Aug. 19-21 at the Gaylord Opryland Hotel in Nashville.
Within a few years our prisons were filled to capacity, producing riots that destroyed millions of dollars of property. Our Department of Correction was under a state of crisis.

Among other reforms enacted in 1985, the General Assembly created the Tennessee Sentencing Commission that drafted the 1989 Sentencing Reform Act. The 1985 statutory mandates are contained within the 1989 law. Tenn. Code Ann. § 40-35-102(5) recognizes that “state prison capacities and the funds to build and maintain them are limited.”

Presumptive sentencing was the cornerstone of the 1989 law. This doctrine promoted far greater uniformity of sentencing since, if everyone started at the same place, there was a much better chance that everyone would end at a similar place. Presumptive sentencing was no longer possible in this post-Blakely world. But because of its critical importance, the 2005 Task Force proposal continues to provide that the minimum sentence is the appropriate “starting point” albeit in an “advisory” way.

To avoid “sentence creep” the new Act also provides that the Administrative Office of the Courts will begin maintaining statistics as to sentencing practices in Tennessee. While designed to assist trial and appellate judges in assessing sentences in individual cases, a solid statistical base will also alert us to local jurisdictions that drastically deviate from the norm. Presumably, such deviations can be promptly remedied before we once again reach a state of crisis.

B. Enhancement factors

In light of the repeal of the presumptive sentence concept, the enhancement factors have been modified. The primary alteration is in the introductory language to amended Tenn. Code Ann. § 40-35-114, which now provides: “If appropriate for the offense and if not themselves an essential element of the offense, the court shall consider, but is not bound by, the following advisory factors in determining whether to enhance a defendant’s sentence.” It can be seen that this provision mirrors the earlier statute that an enhancement factor may not be utilized if it is also an essential element of the crime.

The introductory sentence to the enhancement factor’s statute also requires that the judge consider the enhancement factors but makes the factors “advisory” in nature. This is in keeping with the Booker doctrine that a trial judge can be made to consider a number of factors as long as the judge is not bound by the factors themselves. In short, this is another instance of having a uniform sentencing procedure so that all judges go through the same process of arriving at a sentence.

The final alteration to the enhancement factor statute was a rewording of many of the factors themselves. The task force took the opportunity of this revision process to modify some of the language of the prior factors to make them clearer and more consistent. In general, however, the enhancement factors are similar to prior law.

C. Appellate review

The Act makes two alterations to Tenn. Code Ann. § 40-35-401 and Tenn. Code Ann. § 40-35-402, which are the statutes governing sentencing appellate review. First, the previous ground for appeal that the “enhancement and mitigating factors were not weighed properly” has been deleted from the brace of appellate review statutes. Given that the trial court no longer “weighs” these factors, there is no longer a necessity of having this process reviewed on appeal.

The defense and state appellate review provisions both now contain a new ground for appeal that the “sentence is inconsistent with the purposes of sentencing set out in §§ 40-35-102 and 40-35-103.” Arguably, this has always been the law given that appellate courts frequently cite to these purposes in sentencing reviews. However, it is entirely appropriate for this ground to be expressly stated in the statutes since the sentencing purposes and considerations have taken on a greater significance given that they are part of the required sentencing process under this new act.

Under the federal sentencing system, as revised in Booker, a federal judge has the discretion to impose any “reasonable” sentence as high as the statutory maximum penalty for the offense of conviction as long as the judge considers the guidelines and designates statutory factors. The standard for appellate review under the federal system is also one of “reasonableness.”

The Tennessee Task Force opted to retain our stronger standard of appellate review which is de novo with a presumption that the determinations made by the trial court are correct. This important appellate standard ensures the possibility of greater uniformity of sentencing throughout Tennessee. In the final analysis, appellate review is what enforces the sentencing structure crafted by the legislature.

D. Alternative sentencing and probation eligibility

The new act contains two important provisions addressing alternative sentencing and probation eligibility. The first alteration is an amendment to Tenn. Code Ann. § 40-35-102(6), which rewrites that provision in its entirety:

6. A defendant who does not fall within the parameters of subdivision (5) and who is an especially mitigated or standard offender convicted of a Class C, D, or E felony should be considered as a favorable candidate for alternative sentencing options in the
absence of evidence to the contrary. A court shall consider but is not bound by this advisory sentencing guideline.

The original language of Tenn. Code Ann. § 40-35-102(6) created a “presumption” that an individual was a favorable candidate for alternative sentencing options for those convicted of Class C, D or E felonies. Because alternative sentencing options might dictate the length of the sentence (such as split-confinement options) there was a concern that this “presumption” might create a constitutionally suspect entitlement. To avoid even the possibility of a Sixth Amendment flaw, the “presumption” was altered to a required “consideration” that mandates consideration of the minimum sentence without the corresponding “presumption.”

The new legislation also amends Tenn. Code Ann. § 40-35-303(a) by increasing the eight-year probation eligibility cap to 10 years, which is a significant improvement. Trial judges will now have greater flexibility in permitting a defendant to be on probation where a longer sentence is justified by other factors. The new act retains the identical exclusions from probation eligibility for certain extremely serious offenses.

E. Modifications to range determinations

The new act does not alter the procedures for sentencing into higher ranges. Defendants will continue to receive a sentence in the higher ranges depending on the number and types of prior convictions with one minor alteration. Prior law under Tenn. Code Ann. §§ 40-35-106(b)(4), 40-35-107(b)(4) and 40-35-108(b)(4) contained a “24-hour exception” to the range determination. Multiple non-violent felonies committed within the same 24-hour period were counted as a single prior conviction. Thus, an auto burglary and the separate theft of a purse in the vehicle were to be considered as a single prior conviction.

The new act makes some minor changes to the “24-hour exception” in Tenn. Code Ann. §§ 40-35-106(b)(4), 40-35-107(b)(4), and 40-35-108(b)(4) which are now identically worded as follows:

Except for convictions whose statutory elements include serious bodily injury, bodily injury or threatened serious bodily injury or bodily injury to the victim or victims, convictions for multiple felonies committed within the same twenty-four (24) hour period constitute one (1) conviction for the purpose of determining prior convictions.

The prior “24-hour exception” not only required that the offenses occur within 24 hours but that the multiple felonies must also have been “part of a single course of conduct.” Arguably the 24-hour exclusion was too subjective with the added “single course of conduct” concept and thus the concept was eliminated as a limitation on the 24-hour exception, which effectively works in favor of the defendant.

In addition, prior law looked to the defendant’s “acts resulting in bodily injury or threatened bodily injury to the victim or victims” that dictated those felonies which would count as a separate crime of violence even though committed in the same 24 hours. The new formulation does not depend on subjective “acts,” but looks instead to objective “statutory” elements in determining whether the offense involves “serious bodily injury or threatens serious bodily injury to the victim or victims.”

F. Community corrections

Community corrections is a probation-like program designed for serious felony offenses. If the defendant violates the terms of his or her community corrections program, the court may remove the defendant from participation in the program in a proceeding similar to the revocation of probation.

Revocation of community corrections differs from the revocation of regular probation in that, in the case of community corrections, the “court may re-sentence the defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum sentence provided for the offense committed, less any time actually served in any community-based alternative to incarceration.” Given that the defendant is subject to a greater sentence than he or she originally received, this “resentencing” is unquestionably a sentencing determination subject to the Blakely requirements. Accordingly, the act amends the community corrections’ revocation procedure to the extent that “resentencing shall be conducted in compliance with § 45-35-210.” This amendment conforms the “resentencing” for community corrections sentences to the general sentencing provisions for felony offenders. Thus, the resentencing provision of community correction complies with the dictates of Blakely.

G. Effective date provisions and retroactivity

The act contains specific provisions regarding the effective date and limited retroactivity:

SECTION 18. This act shall apply to sentencing for criminal offenses committed on or after the effective date of this act. Offenses committed prior thereto shall be governed by prior law, which shall apply in all respects. However, for defendants who are sentenced after the effective date of this act for offenses committed on or

(Continued on page 31)
There are a number of risk factors that contribute to the frequency of malpractice claims and ethics complaints. Obviously, the most significant and easily identified risk factor is the absence of good practice management systems. By that I mean client screening procedures, calendar systems, conflicts checking, client communication, file management and file closing procedures. But the existence of good practice management systems does not in and of itself guarantee that you or your firm is protected from ethics complaints and malpractice claims. The financial health of a law firm, its leadership and management, the quality of its relationships with clients and staff and even the way it compensates its partners are as critical to avoiding malpractice as are procedures and systems.

This article discusses five “cultural” factors, and their indicators, that may be creating malpractice exposure for your firm. It will suggest the particular practice systems that may fail as a result of the presence of each cultural factor and provide suggestions for how to address each factor to reduce the potential for trouble.

**Short-term view**

**Cultural indicators:** You are practicing threshold law. Your practice is riddled with unhappy and overly demanding clients. You are frequently frustrated and pressed for the time and energy to adequately serve your client base. You spend little time in your own or other lawyer professional development; you don’t know where your practice is headed or if you want to be practicing at all.

**Malpractice exposure:** A short-term view typically leads to:
- Poor client-acceptance habits
- Too many open files
- Procrastination, resulting in client neglect
- Poor client communication
- Underdevelopment of younger lawyers, possibly leading to retention issues
- Failure to adequately train and supervise non-legal staff
- No plan for future firm management and client transition

**Risk avoidance:**
- Define policies and procedures for client acceptance, work allocation and client communication.
- Monitor attorney workloads.
- Have a plan for how to deal with unhappy clients and ensure your employees follow it.
- Adequately train and properly supervise legal and non-legal staff.
- Delegate work to associates and staff as is appropriate.
- Establish a plan for transitioning clients and management responsibilities to the younger partners as older partners slow down and retire.

**Office-space sharers d/b/a a law firm**

**Cultural indicators:** There are no shared goals for the firm; no leader has emerged; or worse, you are a group of partners that refuses to be managed. Your practice management systems are stand-alone systems (i.e., you don’t share calen-
dars, case management, conflicts systems or trust accounts). Every lawyer does what she wants to do; there is no accountability to others in the firm.

Malpractice consideration: Office sharers d/b/a law firm typically:
- Have little to no firm management structure
- Have little to no consistent practice management structure.
- Have an “it’s about me” mindset
- Fail to establish, enforce or comply with operational policies designed to protect the firm from risk, particularly if they impinge upon individual lawyer performance
- Do not pay attention to or address the “risky” behavior of other lawyers

Risk avoidance:
- Develop firm goals that are shared by and compatible with the professional goals of all partners.
- Develop and instill by example an “it’s about the firm” or, preferably, “it’s about the client” mentality rather than an “it’s about me” mentality.

- Establish, enforce and comply with policies that will minimize exposure to malpractice and ethics violations
- Elect a leader and agree to be managed.
- Centralize your practice management systems and procedures.

Fiscal irresponsibility
Cultural Indicators: You are deeply in debt; you have no idea of where your income goes and are living hand-to-mouth. You are not able to “get” the good cases or manage the good cases you do get because of the “dog cases” you are stuck with. You grab the most lucrative files for yourself; you settle too quickly. Your firm’s monthly cash flow is strained; you sometimes are not able to meet payroll and you may have “borrowed” from client funds to bridge the gap.

Malpractice consideration: A strain on a lawyer’s personal finances can expose the rest of the firm to malpractice because lawyers living hand to mouth:
- May not comply with a client acceptance/case screening policy resulting in a practice with unprofitable cases
- May procrastinate and fail to communicate because the client and/or case are unpleasant and/or unprofitable
- May hoard work
- May demonstrate impaired judgment
- Can lead to the mismanagement of trust account funds

Risk avoidance:
- Live within a personal budget.
- Hold back a certain percentage (10 to 15 percent) of firm monthly revenue until you have accumulated sufficient cash to fund one month of firm expenses.
- Pay partners a reasonable draw monthly and distribute excess profits quarterly.
- Pay draws and excess profits based on net income (i.e., do not borrow to fund partner draws).
- Amortize large one-time expenditures over your fiscal year (i.e., professional malpractice insurance, depreciation).
- Review each potentially new case based on its merit, value and resource requirements.
- Put in writing the terms of engagement, scope of services and fee arrangement and have the client sign it.
- Profitably staff and supervise cases.
- Establish good client billing and collections procedures.
- Properly close the file.

Eat-what-you-kill philosophy
Cultural indicators: Compensation system rewards personal performance only. Work is hoarded; no time is spent in business development or the nurturing of young lawyers. Client relationships are tentative. The firm is (Continued on page 24)
Malpractice exposure: An eat-what-you-kill philosophy often leads to:
- Poor utilization of legal and non-legal staff
- An unwillingness to transition work to junior partners or associates, leaving no time for developing new work from new or existing clients
- Flat or declining profitability which is the basis for concern about the future of the firm
- Lawyer defections, exposing the firm to neglect of client matters resulting in malpractice claims and ethics violations

Risk avoidance:
- Lawyers should be rewarded for their marketing and client development activities; mentoring of young lawyers; participation in management and practice area profitability — in addition to personal performance.
- Implement technology and automation systems that will centralize calendar, conflicts and client billing systems; expedite the work flow and improve internal communication.
- Give younger lawyers as much substantive work as they can handle to further develop their skills; set goals for their development; mentor, supervise and train them.
- Communicate to young lawyers what it means to be a partner or shareholder in your firm; the personal and professional qualities the firm looks for; the performance factors needed to be a successful firm owner.
- Be sure that lawyer partings are as amicable as possible, keeping the client’s interests a priority in the transition.

Relationships, trust and integrity
Cultural indicators: Personal agendas take priority over firm interests; there is a history of individual violations of trust among the partners and associate staff; support staff morale is low; the firm has a high employee turn-over rate; personal and professional conflicts are not addressed; lawyers and clients are defecting; too many closed doors and secret lunches.

Malpractice consideration: Absence of trust and integrity leads to:
- A stressful working environment; that, when coupled with a heavy workload, may result in lawyer and staff burnout, depression and/or substance abuse
- The risk of client neglect as a result of frequent employee turn-over
- Poor attorney-client relationships due to the firm being too internally-focused
- Inability to reach consensus and effectively address and resolve firm issues

Risk avoidance:
- Be a person of integrity.
- Be personally fiscally responsible.
- Be honest.

Rose

Suzanne Rose is a practice management specialist in Brentwood, focusing exclusively on the legal industry. She has served as the risk manager for Tennessee lawyers on behalf of the Tennessee Bar Association and its endorsed malpractice insurance provider. She has 12 years’ experience in law firm management and provides consulting services to respondent lawyers at the request of the Board of Professional Responsibility and has authored several online ethics courses for the TBA. She may be reached at swrose@comcast.net.
• Be consistent.
• Pick your battles.
• Speak your mind.
• Confront and solve problems as they arise.
• Be willing to find an alternative solution for an issue if doing so is in the best interest of the firm.
• Regularly communicate with your partners and staff.
• Be a firm of integrity.
• Effectively communicate the firm’s mission, strategic plan and expectations to legal and non-legal staff.
• Be consistent and disciplined in ensuring performance expectations are met.
• Be relationship-focused.
• Allow anyone the freedom to discuss firm matters, regardless of how the information may affect others or themselves.
• Establish adequate practice management systems to support the caseload.
• Establish adequate risk management systems to avoid malpractice and minimize “worry” that something is going to fall through the cracks.

Valuing relationships, being trustworthy and demonstrating personal integrity, though mentioned as the last cultural factors in managing risk, are the fundamentals to building a healthy law firm. A healthy law firm is fundamental to successfully managing risk. Lawyers must give more than lip service in their mission statement to the importance of these characteristics. They must demonstrate them every day in and outside the firm.

What about you, your practice … do any of these cultural indicators resonate with you? Is your firm exposed to potential problems because of the culture you and other firm owners have created? To find out, take a look at the 10 statements in the box, “Firm Culture Audit” on page 24. If your firm cannot affirmatively answer each of these statements, you have work to do. The future of your firm, its relationships, integrity and future will turn on whether or not you have the will to do it.
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 coverage of the Tennessee Bar Association annual conventions.

The TBA’s first convention was held in 1881, but the Tennessee Bar Journal (having not been invented yet) didn’t report on that one. The first convention coverage was in May 1965, the Journal’s first year, where it didn’t exactly “cover it” but did run two full pages of the program in advance. That year the convention was in Nashville at the Andrew Jackson Hotel. Speakers included TBA President Olin White, Nashville Mayor Beverly Briley, Nashville Bar Association President J. G. Lackey Jr., Gov. Frank Clement, American Bar Association President-elect Hon. Edward W. Kuhn, Chancellor William M. Leech, Charles E. Whittaker, retired justice of the U.S. Supreme Court, and Tennessee Supreme Court justices Weldon B. White and Hamilton S. Burnett.

The TBA Auxiliary hosted an “Old South Tea” at the Capitol, as well as a Ladies’ Luncheon and Show at Belle Meade Country Club, which was held at the same time as the Lawyers’ Luncheon.

In 1966, registration was $25, plus each of the activities were priced separately, including the Lawyer’s Luncheon for $4. The Ladies’ Cold Buffet was $2.75 and the Ladies’ Luncheon at the Pan-O-Ram Club was $4.

In August 1968, the TBA board voted to include a synopsis of annual convention business sessions in every August issue. This ran 29 pages that first year.

In May 1975, President F. Graham Bartlett’s president’s column, headlined “Speaking of Gals and Convention,” discussed the Annual Legal Secretary-Law Office Managers Institute (presums-

At the 1992 convention in Nashville, outgoing President Thomas C. Binkley hands over the most important tool of the presidency to President Paul Campbell III: the credit card. Photo by Julie (Warner) Swearingen.

(Continued on page 28)
Supreme Court Clerk A.B. Neil, left, gets ready to ride the rapids of North Carolina’s French Broad River during the 1990 TBA convention. Other crew members are Dana Herbert, Sally Rainey, Laddie Neal and Barbara DeWitt. Photo by Richard Bird.

In introducing the speaker for the 1988 Lawyers Luncheon, TBA President-elect Jack Wheeler, right, takes a few pot shots at columnist Lewis Grizzard, left, by pointing out that one of Grizzard’s ex-wives had written a book titled, Life With a Wild Bore. Outgoing president Jim Emison enjoyed the crossfire when Grizzard later countered by saying he “would never marry a literate woman again.” The luncheon was part of the 1988 convention, held in Memphis. Photo by Suzanne Craig Robertson.

Claudia Jack seems to enjoy the balloon creations made by this convention clown in 2001 during the Family Picnic at Riverfront Park in Nashville. Photo by Suzanne Craig Robertson.

It looks like Jonathan Steen, Charles Swanson and Bill Haltom (back, left) were left at the start during this 2002 Race Gestae in Chattanooga. Christie Sell, right, won overall and the female under 50 division. Photo by Barry Kolar.

Mr. and Mrs. Don Baker attended the barbeque buffet at the 1972 convention in Gatlinburg. The hats were part of the hoe-down theme — not sure about the glasses.

Alistair Cooke, the host of “Masterpiece Theater,” headlined the Judicial Luncheon in 1992. Here he talks with Jack Wheeler of Knoxville and Max and Sarah Bahner of Chattanooga. Photo by Julie (Warner) Swearigen.
ably the “gals”) and the TBA convention. That year it was in Gatlinburg and featured Dr. Irving Younger, famed teacher of evidence at Cornell University Law School.

Other famous speakers at conventions over the years have included Alistair Cooke, Tipper Gore, Lewis Grizzard, Wilma Dykeman, Harvard Law Professor Arthur Miller, Sen. Howard Baker, Jim Neal, Professor James W. McElhaney, Ralph Emery, Roy Blount Jr., Rep. Jim Cooper and Senate-hopeful Fred Thompson. Many Tennessee and U.S. Supreme Court justices have appeared at the convention, as well as several governors and mayors of most of the major cities in the state.

TBA conventions traditionally rotate around the state among each of the Grand Divisions. In 1990, the group ventured out of state for the first time, descending on Asheville, N.C. Since then the convention has been in Destin, Fla., twice.

Among the convention staples are the Lawyers Luncheon, lots of continuing legal education, a dance, the Young Lawyers Division’s Race Gestae, and other various sports competitions that have included tennis and golf tournaments. Sections, committees and the Board of Governors meet.

One main point of having a convention is to conduct the business of the association and a big part of that is the installation of the new president. This traditionally happens during the Lawyers Luncheon and includes the passing of a gavel and a ring, as well as the administration of the oath of office, usually given by a member of the Tennessee Supreme Court.

Look for coverage of this year’s convention — history in making — on page 8 of this issue.

— Suzanne Craig Robertson
The 2005 rule amendments

By Donald F. Paine

On July 1 some amendments to procedural rules became effective. I’ll mention the more important changes in the following paragraphs:

Rules of Civil Procedure

Rule 1 says these rules apply to Circuit and Chancery lawsuits, and not to General Sessions lawsuits unless that court by special act has concurrent jurisdiction. A new sentence applies Rule 69 governing execution on judgments to Sessions Court judgments.

Amendments to Rules 3 and 4 expand from 30 days to 90 days after issuance the time to serve a summons.

Rule 45 now allows a person served with a subpoena duces tecum to simply produce the documents accompanied by an affidavit of authenticity.

Discretionary costs can be shifted to the losing party on appeal under amended Rule 54.

As the new comment to Rule 58 states, the revision allays concerns expressed by the Supreme Court in Binkley v. Medling, 117 S.W.3d 252 (2003). If you or I request on the first page of a judgment that the clerk mail all lawyers an entered copy with entry date (and we always should), what happens if the clerk doesn’t? The clerk’s dereliction no longer affects the time to file a notice of appeal. If you get in a jam, you may seek Rule 60 relief.

Rules of Criminal Procedure

The only change is revised Rule 31, requiring the judge to inquire in descending order about the charged offense and all lesser included offenses when a jury reports lack of unanimity.

Rules of Evidence

Rule 103 as amended provides for in camera review of allegedly privileged communications.

Rules of Appellate Procedure

An amendment to Rule 4 clarifies that a notice of appeal filed before a post-trial motion is deemed premature. The filing will be treated as filed on the date of entry of the order disposing of the motion.

Rule 25 as revised attempts to preserve the integrity of appellate records. As an amateur legal history buff who has spent many hours poring through such records, I applaud the Commission and Supreme Court and General Assembly for this amendment.

These amendments are effective July 1.

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.
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after July 1, 1982, the defendant may elect to be sentenced under the provisions of this act by executing a waiver of such defendant’s ex post facto protections. Upon executing such a waiver, all provisions of this act shall apply to the defendant.

SECTION 19. This act shall have no application to sentencing for persons convicted of murder in the first degree which shall be governed by the provisions of §§ 39-13-202—39-13-208.

SECTION 22. This act shall take effect upon becoming a law, the public welfare requiring it and shall apply as provided in section 18.

Unlike many criminal statutes that are designed to take effect on July 1 or even Jan. 1 of the following year, this act takes effect immediately. Because the act is more than “just” procedural and alters (potentially increasing) the potential punishment, it must apply only prospectively. Any other formulation would constitute an ex post facto law, which is absolutely prohibited by the federal and (our more strongly interpreted) Tennessee Constitutions. In light of these constitutional limitations the act applies only to crimes committed on or after the effective date.

The prospective application of this act is similar to the old Class X law and the 1982 sentencing law, which both applied only to crimes committed on or after the effective date of those statutes. The 1989 law was retroactive because there was an effective decrease in sentence lengths but for those defendants whose sentences were increased by the 1989 law the previous laws applied because of ex post facto concerns. Things got to the point where the judge had to figure sentences twice and then impose the lower sentence. Thus, the new act applies only prospectively.

The act contains an exception to the prospective-only rule for those defendants who wish to opt into the provisions of the Act. This probably will occur for those defendants who desire to take advantage of the 10-year probation eligibility provision. However, if a defendant desires to elect to be sentenced under the provisions of the act the defendant must execute a waiver of his or her ex post facto protections. If there is such a waiver, then “all provisions of this act shall apply to the defendant.” In other words the defendant cannot pick and choose which portions of the act will apply.

Lastly, the act contains a specific provision that the act has no application to death penalty cases, which continue to be governed by other statutes. Thus, the act applies to all felony offenses other than murder in the first degree.

H. Repealer provisions and severability clause

The act contains a number of repealer provisions that are necessary because of the transfer of the “hidden enhancement” factors from the specific statutes to the list of enhancement factors contained in newly drafted Tenn. Code Ann. § 40-35-114. The act also contains a standard severability clause. These provisions are not reproduced in this article.

Conclusion

The 2005 act was necessary in light of the Supreme Court’s Blakely decision. Blakely is a continuation of judicial precedent made clearer by hindsight, yet the application of this decision to each state’s sentencing structure must be resolved on a case-by-case basis, which depends on an interpretation of the intricacies of the sentencing laws of each jurisdiction.

In truth, it was not until Blakely that lawyers in Tennessee began immediately raising Sixth Amendment sentencing issues because of the obvious similarity of Washington law to our state. Gov. Bredesen should be commended for immediately creating a task force to propose remedial legislation.

The recommendation of the task force is now law and applies to all felony cases (Continued on page 32)
The Blakely fix

(Continued from page 31)

where the crime was committed after the effective date of the act. The new legislation strikes a middle ground between a totally advisory system and a rigid bifurcated hearing where the jury determines the existence of enhancement factors. This compromise retains much of our prior procedure without the constitutional flaws.

The act does not address consecutive sentencing. It was the consensus of the task force that Blakely only reaches a sentence for a specific criminal offense rather than impacting consecutive sentences for multiple offenses. As of the publication of this article, no Tennessee court has held that Blakely applies to consecutive sentencing under Tennessee law.

The act does not impact misdemeanors which are governed by Tenn. Code Ann. § 40-35-302. Although otherwise entitled to the same considerations under the Sentencing Reform Act of 1989, unlike a felon, a misdemeanor is not entitled to the presumption of a minimum sentence.9 Thus, Blakely has no application to misdemeanor sentencing in Tennessee.

The 1989 Sentencing Reform Act contained an unforeseeable flaw that — in light of Blakely and Booker — limited a judge’s ability to impose the full range of sentence in criminal cases. The new act remedies that defect while still retaining a significant measure of controlled discretion necessary for fair and uniform sentencing in Tennessee.

Notes

2. See generally, Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”); Ring v. Arizona, 536 U.S. 584, 589 (2002) (holding that “[c]apital defendants, no less than noncapital defendants … are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment”); Blakely v. Washington, 124 S.Ct. 2531, 2537 (2004) (“Our precedents make clear, however, that the ‘statutory maximum’ for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.”).
look at Ms. Schiavo’s case anew, without any regard to what may have happened in the state court proceedings, and that such review should be conducted before the case, and Ms. Schiavo, became moot.

“Because the judiciary is the least accountable branch of our government (rightfully), it must make a greater effort to stay within its constitutional boundaries.”

Of course, the courts did not do this. When making its decision after Congress passed the act, the District Court merely analyzed the claims using a preliminary injunction standard. Although the All Writs Act has been used by our judiciary to stop something as trivial as the merger of two corporations, the District Court held that it was powerless to use that act.

Many columns have been written regarding an independent judiciary and how it serves as a check and balance on the other two branches of government. Not one of those columns, including yours, mentions that the other two branches serve as a check and balance on the judiciary. As you noted, criticism of the judiciary is coming from more than what anyone would consider right wing fringe. None of the criticism I have heard has been vitriolic. Indeed, the legislative assistant’s comment (referred to in your column) regarding abolishing the lower federal courts is not vitriolic but reflects the constitutional check and balance for an overreaching judiciary. While such abolishment would indeed be a disaster, if that became reality, then things would have gotten so rotten that we, and they, deserved it (and shame on all bar associations if they fail to criticize a judiciary that brought us to that hypothetical point).

So why the passion from more than an intertemperate few? First, this was a death case, so passions have to be expected. Second, the general public inherently knew that if a death penalty conviction were at issue, and if such conviction came before a federal court with an Act of Congress mandating de novo review of the convict’s defenses, a stay of execution would have issued. Third, any lawyer who has practiced more than five years has seen judges step outside their actual authority (as promulgated in statutes, rules of evidence and rules of procedure) to engineer a result that the judge believed to be (and indeed may have been) right, even though the law wasn’t fully supportive.

The courts’ decisions in the Schiavo case were not void of any legal reasoning. However, sound legal reasoning was also available to issue a stay. Moreover, Congress handed the federal judiciary a specific act directed towards a specific individual which was signed into law under very extraordinary circumstances and which mandated a de novo hearing of the case (that the Congress did not mandate an injunction in the Act was quite appropriate, as mandating a judicial injunction might well be outside the constitutional boundaries of Congress). Given the circumstances, some sort of stay was necessary so that the court could review the facts before Ms. Shiavo died. That the judiciary failed to issue a stay of any type had the common sense earmarks that such failure was based not on its constitutional duty of enforcing Congressional intent, but on its collective opinion that Congressional action was specious and thus the judiciary was free to ignore it. No less a commentator than Catherine Crier, an attorney, declared that the courts have no obligation to follow a law that is clearly unconstitutional. No Ma’am, the Courts must either declare the law unconstitutional or follow it.

If indeed the Act was unconstitutional, then declare it so. If not, then the courts should have implemented the will of Congress, right or wrong, and taken such steps as necessary to be able to conduct a de novo trial of the claims. Because the judiciary is the least accountable branch of our government (rightfully), it must make greater effort to stay within its constitutional boundaries. When it fails, then we face no less a crisis than did the citizens of President Jackson’s day. For this, the judiciary is rightfully chastised. We can all hope that, in the future, the judiciary follows its processes and constitutional duties so that your concerns over the legislative assistant’s comments do not become a reality.

— Bobby Leatherman, Memphis

Assertion that large firms ask associates to lie about billable hours disputed

As the director of attorney recruitment for the largest law firm in the state of Tennessee, I read with interest the letter of Van R. Michael in your June 2005 edition (“Large firms are asking new associates to lie,” page 5). Mr. Michael asserts that large law firms are telling students that they will be “expected to bill clients for 70 hours each week.” He also states that of the rising law school graduates he had interviewed as potential associates, “most, if not all of them, had interviewed with one or more of the ‘hundred plus’ lawyer firms operating in our state.”

I take issue with Mr. Michael’s blanket assertion that large law firms encourage dishonesty. For example, at Baker, Donelson, Bearman, Caldwell and Berkowitz, our summer associates as well as lateral associates are told that upon becoming an associate with the firm, they would be expected to bill 1,800 hours each year in order to be eligible for a standard pay increase. In order to be
A
lthough Bill Haltom hasn’t been a real president and he doesn’t play one on TV, he is now starring in that role for the Tennessee Bar Association for the next year. And although he does have the ability to put out columns at a frenzied pace, we decided it was best not to bookend the Journal with All-Haltom-All-the-Time. In case you turn directly back here each month to get a laugh, and therefore missed President’s Perspective on page 3, that’s where you can find Mr. Haltom’s column now. Talk about movin’ on up — he jumped forward 31 pages with a single election.

The Journal has received so many requests from Haltom’s relatives, I mean readers concerned about missing “But Seriously, Folks!” we have consolidated them all into one, self-serving question: QUESTION: In light of Mr. Haltom going without humor for one year, I am wondering where I can read other things he has written. By the way, I love your magazine.

ANSWER: Why, that’s a good question, dear reader. Do not despair. In addition to the President’s Perspectives each month (which will in no way be humorous), Mr. Haltom will still write his weekly online column, “No Controlling Legal Authority,” available to TBA members at http://www.tba.org/.

You may also buy a copy of his new book by the same name at https://www.tba.org/TennBarU/bookstore.html.

And thank you for that unsolicited compliment.

— The editor

President and accounted for
It’s not funny and get used to it

3rd Edition Alimony Bench Book

The TBA Family Law Section is proud to announce the availability of the 3rd Edition Alimony Bench Book, a Tennessee Bar Association publication brought to you by the Alimony Committee of the TBA Family Law Section.

The 3rd Edition Alimony Bench Book includes cases that are current through December 31, 2004, and is available free in downloadable format on TBA’s web site at www.tba.org. A hard copy version of this publication may be purchased at $30 per book by contacting the Tennessee Bar Association at 1-800-899-6993, or in Nashville at 615-383-7421, or online at TBA’s online bookstore at www.tba.org.

The TBA would like to thank Alimony Committee Chair Amy Amundsen and the members of the committee for their hard work and commitment to this publication. The committee’s hope is that this book will assist judges in their attempts to award consistent alimony in cases across Tennessee.

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(Continued on page 36)
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eligible for our annual bonus pool, an associate must bill 1,900 hours and perform 100 hours of public service work. We are very proud of this public service component as it further underscores our commitment to the greater good of our communities. If one assumes that these attorneys take two-week vacations each year, this comes to between 36 and 40 hours each week, far shy of the 70 hours Mr. Michael sets forth in his letter.

Because no attorney can be productive 100 percent of the time, our attorneys expect to work more than 40 hours each week in order to reach their personal goals and ensure quality client service. I know from experience, most law students who have a desire to become true legal professionals, expect to work more than 40 hours per week. Our billable requirements, however, certainly give our attorneys ample time for family and community life. Our firm understands the importance of individuals maintaining a proper work/life balance and encourages our attorneys to maintain this balance in their own lives.

Our senior, named shareholders, Sen. Howard Baker and Lewis Donelson, built our firm on principles of ethics and service to the community. Their leadership to this day provides the foundation for the high personal and professional standards practiced by our attorneys.
In closing, the associates in each of our 10 U.S. markets understand the firm’s commitment to clients and attorneys alike. Baker Donelson’s exceptionally low attrition rate among its attorneys would belie the allegations of unethical or inhumane practices suggested in Mr. Michael’s letter.

— Sue S. Porter, Memphis

“[Associates] are told ... they would be expected to bill 1,800 hours each year ... This comes to between 36 and 40 hours each week, far shy of the 70 hours Mr. Michael sets forth in his letter.”
RIGHT IDEA, WRONG BAR

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