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In fiscal year 2017-2018, the Tennessee legislature appropriated more than $994 million to the Tennessee Department of Corrections (TDOC) and just over $1 billion was included in the budget for 2018-2019. TDOC’s statistics show that the total felon inmate population was 26,998 in 2008 and increased nearly 12 percent to 30,161 in 2017. The male inmate population increased 8.4 percent during this time frame, while the female population increased a staggering 58 percent during this same period. TDOC reports that its operations allow for a capacity of only 23,106 inmates.

Cyntoia Brown recently made national headlines when Gov. Bill Haslam granted clemency and commuted her life sentence. Ms. Brown is scheduled for release on supervised parole later this year after serving 15 years in prison. Ms. Brown’s story is an example of harsh sentencing in our state. She was serving a life sentence for killing a man who paid her for sex when she was only 16 years old. Her life sentence meant that she would have been required to serve at least 51 years before being eligible for parole. While her crime was horrific, she was only 16 years old at the time. In prison, she earned a high school diploma as well as an associates’ degree from Lipscomb University. In granting her clemency, Gov. Haslam noted, “Transformation should be accompanied by hope.”

In Georgia, Republican Governor Nathan Deal pursued a comprehensive criminal justice reform package to control the growth of the state’s prison population and reserve prison for only the most violent criminals. When Gov. Deal took office in 2011, Georgia was already spending more than $1.2 billion on its prisons and was slated to construct two new prisons at a cost of more than $500 million. Recommendations for the criminal justice reform package in Georgia came from a committee of judges, lawyers and law enforcement officials appointed to come up with solutions. These stakeholders and the state’s lawmakers always maintained that public safety was of the utmost importance throughout the process. The steps taken in Georgia saved taxpayers almost $270 million over five years. The state also supported the creation of specialty courts that required participants to work, seek treatment and stay sober.

The Tennessee Bar Association has the opportunity to contribute to Gov. Lee’s criminal justice reform initiative. We must work with other legal groups such as district attorneys general, public defenders, judges, legislators, representatives from the governor’s office, academics, and criminal law bar organizations to discuss ideas and find common ground. Some of these groups cannot take official positions on some of these issues. However, the Tennessee Bar Association is in a unique position to facilitate conversations around criminal justice reform. There is a role we can play to advance meaningful reforms in Tennessee and we will work...
Some of issues that we can address include:

- **Sentencing:** Sentencing guidelines for nonviolent crimes and defendants with no history of violent offenses can be examined. Discussions should take place about increasing parole opportunities, reviewing the threshold that elevates a crime from misdemeanor to felony and providing judges more discretion to deviate from minimum mandatory sentences based on unique circumstances.

- **Juveniles:** Juveniles commit more crimes and have a high recidivism rate after being exposed to the adult criminal system. Juvenile offenders must be held accountable but at the same time recognizing they are not adults.

- **Specialty courts:** Specialty courts are designed to rehabilitate defendants and reduce recidivism. Drug courts, veterans courts, youth courts and other specialty courts have been successful in other states but need adequate funding as well as experienced staff and judges. Discussions should take place about the efficacy of specialty courts, especially in the case of nonviolent crimes.

- **Mental Health:** According to Mental Health America, Tennessee is ranked 41 out of 50 states for providing access to mental health. Conversations should be considered about recognizing mental health issues and providing inmates with mental health treatment after incarceration.

- **Transition back to society:** Helping inmates to prepare for life outside of prison, and preventing recidivism are important. We need ideas on how to increase job training and remove barriers to employment.

**Pannu’s Pairings – The Viennese Heurigen**

During the Habsburg reign over the Holy Roman Empire, wine production was heavily regulated and subject to exorbitant taxes. This changed in 1784 when Emperor Joseph II issued a decree known as the “Josephinische Zirkularverordnung,” granting winemakers the privilege of selling wine they produced themselves without taxes and a tradition was born. Winemakers opened up wine taverns throughout Vienna, Austria, known as “heurigen.” Today, hundreds of heurigen still exist in Vienna and in the eastern part of Austria, particularly in the famous winegrowing state of Burgenland.

Heurigen are mostly located on the outskirts of the Vienna where vineyards exist within its city limits and are usually in a courtyard setting. These taverns are rustic and cozy, serving young wines (less than a year old) and traditional cuisine such as roast pork, meatloaf, cold cuts, blood sausage, schmalz, pickled vegetables and potato salad. These traditional foods pair well with the Austrian white varietal Grüner Veltliner and domestic red varietals Zweigelt, Blaufränkisch and Sankt Laurent.

Heurigen operate seasonally with unpredictable open and closure times. Traditionally, the winemaker will place a bundle of pine on its front entrance to signify the Heurigen is open. I enjoy strolling through the neighborhoods in which several Heurigen are present and picking the locations that appear most cozy to me. The Grinzing neighborhood in Vienna’s 19th district is the best-known area to experience the Heurigen tradition but has too many tourists these days. The Nussdorf neighborhood, also in the 19th district, also has plenty of Heurigen and tends to be more popular with the locals. My favorite Heurigen are Kierlinger and Matthias Getzinger in Nussdorf and Zahel in Mauer Bei Wein.

WRITE TO THE JOURNAL! Letters to the editor are welcomed and considered for publication on the basis of timeliness, taste, clarity and space. They should include the author’s name, address and phone number (for verification purposes). Please send your comments to Suzanne Craig Robertson at srobertson@tnbar.org.
YOU NEED TO KNOW
FOR THE RECORD

COURTS
Poll: Faith in U.S. Supreme Court Reaches Decade Low The U.S. Supreme Court has been the most trusted branch of government among voters for more than a decade, but a new poll shows faith in the court is now near its lowest, Fox News reports. When asked which of the three branches of government they trust the most, 35 percent of voters choose the U.S. Supreme Court, down from 45 percent in 2017. The poll found the court’s most well-liked member to be Justice Ruth Bader Ginsburg.

Court: Employer Had No Duty to Use AED to Assist Employee The Tennessee Supreme Court recently ruled that an employer is not liable for workers’ compensation benefits for not using an available automated external defibrillator (AED) to assist an employee who suffered a non-work related medical emergency. An AED is a medical device that delivers an electric shock to the heart to restore a normal heart rhythm after the heart suddenly stops beating or starts beating irregularly. Tennessee has statutes that encourage businesses to acquire AEDs and provide immunity from civil liability under certain conditions. Justice Sharon Lee wrote the unanimous opinion.

GENERAL ASSEMBLY
Legislators File Bills to Gain Control Over Tennessee Attorney General State lawmakers are proposing various changes to the way they interact with the state attorney general, Nashville Post reported last month. Rep. Mike Carter, chair of the Civil Justice Subcommittee, filed a resolution proposing an amendment to the state constitution that would give the General Assembly confirmation authority over the attorney general. Currently the Tennessee Supreme Court appoints the attorney general for an eight-year term. Carter’s bill would empower the legislature to veto the high court’s pick. Another proposal from Sen. Bo Watson and Rep. Bill Dunn would continue on page 6

HENLEY AWARDED TBA YLD CASA VOLUNTEER OF THE YEAR
Gail Henley of Madisonville was awarded the 2018-2019 CASA (Court-Appointed Special Advocates) Volunteer of the Year Award by the TBA Young Lawyers Division. Now in its 15th year, the award is designed to recognize the outstanding efforts of a CASA volunteer who goes the extra mile in his or her work with a CASA program in Tennessee.

Henley, who was nominated by CASA Monroe’s Executive Director Alisa Hobbs, has been a volunteer with the organization for 10 years.

“Gail has been one of the most reliable, effective advocates in our organization,” Hobbs wrote in her nomination. “She will turn 80 next year and is planning to retire from most of her activities … yet, true to her commitment to the children she serves, she said, ‘I’m not leaving CASA until I resolve my two cases. I will not give them up to someone else.’”

Hobbs says Gail’s first case was one of her most challenging, following three children through 10 placements and driving nearly four hours to see them. In another case, her child’s mother was living in a tent and Gail not only got her into a shelter, but she spent the night in the shelter with her. She has also procured computers for five of the children in her cases, when they needed them for school.

“She became like a grandmother to all her children,” Hobbs wrote. “They love her.” As a role model for other volunteers, Gail is often asked to mentor new advocates on their first case.

“Not only does Gail serve as an advocate,” Hobbs continued, “but she is a reliable volunteer for all our fundraisers, which is so important to the sustainability of CASA Monroe.”

Gail Henley was presented the CASA Volunteer of the Year Award earlier this year. From left: Jennifer Sneed, YLD Children’s Issues Committee vice chair; Henley; YLD President Christian Barker; and CASA Monroe’s Alisa Hobbs. Photo by Katharine Heriges.
NEWS
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give the legislature the ability to intervene in legal proceedings to defend the constitutionality of a contested statute or to diverge from the advocacy of the attorney general or a district attorney general.

TBA Offers Weekly Legislative Updates Via Livestream, TBA Today. The TBA launched a series of weekly legislative video updates in February, which are livestreamed most Thursdays via Facebook while the Tennessee General Assembly is in session, as well as bringing you weekly round-ups of bills impacting the legal community each Friday in TBA Today. To receive notifications of important legislative developments, subscribe to TBA Impact at https://p2a.co/C99tVM1.

YOUR TBA
Grey at Public Service Lunch: Protect Those Who Seek Justice “We need to protect those individuals who seek justice,” Robert Grey Jr. said in his keynote speech at the TBA’s Public Service Luncheon Jan. 19 in Nashville. “It’s not just an idea — it is a reality that we need to make happen.” A former American Bar Association president, Grey is the president and executive director of the Leadership Council on Legal Diversity, and a member of the board of the Legal Services Corporation. “Lawyers are the trustees of our legal system,” he told the packed room. “We didn’t ask for that role, but we assume the responsibility when we take the oath.” The luncheon also celebrated the TBA’s Public Service Award honorees and capped off the TBA’s Leadership Conference, which included programming about Young Lawyers Division initiatives, legislative tools and resources, and more. Meeting at the two-day conference were the House of Delegates, TBASCUS, committee and section leaders, YLD, the Law Student Diversity Leadership Institute, and the Board of Governors. See more photos at www.tba.org/node/105392 and watch the proceedings at the luncheon in a video posted to the TBAs YouTube channel.

Judge Reeves Honored at TBA Event The Tennessee Bar Association honored U.S. District Judge Pamela L. Reeves of Knoxville during the ABA Midyear Meeting in Las Vegas in January. Joining in support for the event were the University of Tennessee College of Law, the University of Memphis Cecil C. Humphreys School of Law, Belmont University College of Law and Vanderbilt University Law School. See more photos at www.tba.org/tba-honors-judge-reeves-at-aba-reception.

YOUR PRACTICE
More than 50 Percent of Law Firms Offer Flexible Work Arrangements A new report shows that more than half of law firms in 2018 offered flexible work arrangements, the ABA Journal reports. Legal services provider Special Counsel produced the report, called the 2019 Salary Guide for Legal Professionals. Respondents also reported that 49.6 percent of firms offered paid maternity and paternity leave, 19.6 percent offered paid volunteer time and 13 percent provided on-site emergency child care.

LAW SCHOOL
Guthrie Reappointed as Vandy Law Dean Chris Guthrie has been reappointed to a five-year term as dean of the Vanderbilt Law School. He will begin his third term on July 1, Provost and Vice Chancellor for Academic Affairs Susan R. Wente announced in January. “During Dean Guthrie’s leadership, the Law School has made significant gains on strategic priorities, including the creation of new endowed scholarships; the expansion and diversification of the faculty; and the launching of new programs in social justice, law and finance, and law and innovation,” Wente said. Guthrie joined the faculty in 2002, served as associate dean for academic affairs under both of his predecessors and was named dean in 2009. 

ABOVE: Presenting at the TBA’s Leadership Conference were, from left, Laura Smith, Mikel Towe and Edd Peyton. BELOW, at the Public Service Luncheon, from left, Robert Grey Jr., Joycelyn Stevenson, Angie Bergman, Adrienne Kittos, Jason Pannu, Harris Gilbert, Amber Vargas, Jim Barry and Ashley Wiltshire. Photos by Barry Kolar.

Gathering during the ABA Midyear Meeting in Las Vegas were TBA members, from left, Sherie Edwards, Tasha Blakney, Joycelyn Stevenson, and Keith and Tracy Frazier.
Fisher Phillips recently named new partners across its offices, including Memphis attorney Courtney Leyes who represents employers throughout Mississippi and the greater Memphis-metropolitan area. Leyes focuses her practice on litigation related to discrimination and harassment in the workplace, wage and hour issues and Fair Labor Standards Act actions. She also is a frequent speaker on LGBT issues in the workplace.

Leitner, Williams, Dooley & Napolitan recently added four attorneys to its offices. Evan Vineyard joined the Chattanooga office where he will focus on general civil litigation. Larry Cheng and Darren Smith joined the Nashville office where they will focus on general civil litigation. Chris Sherman joined the Knoxville office and will split his practice between civil litigation and estate planning. He holds a master of laws in estate planning and has eight years of experience handling probate and fiduciary litigation, insurance defense and workers’ compensation.

Honorees of the Marion Griffin-Frances Loring Award in attendance at the 2019 Association of Women Attorneys banquet are from left: Ellen B. Vergos (1998); Linda L. Holmes (2002); Hon. Janice M. Holder (1999); Jocelyn Wurzburg (2019); Amy J. Amundsen (2007); Barbara Zoccola (2006); Hon. Claudia Halton (2018); and Blanchard E. Tual (1995), the only male honored in AWA history. Frances Loring, who died in 2009, was the first recipient of the award (in 1989) now named after her.

The Nashville lobbying firm Smith Harris & Carr is now Harris Frazier Government Relations. The name change reflects the addition of Meagan Frazier as a named partner. Frazier joined the firm in 2003 and became a partner in 2008. She has extensive experience with hospital, health care, business and transportation law. Lou Alsobrooks, the other attorney on staff, joined the office in 2013. He serves as the firm’s lead researcher, helping clients find answers to complex legislative and regulatory questions as well as helping them navigate the government procurement process.

Waller has elected five new partners. Caitlyn W. Page assists physicians, hospitals and health systems in mergers, acquisitions and joint ventures. Jonah L. Price handles domestic and cross-border acquisition financing, asset-based lending, working capital financing, corporate restructuring and bankruptcy proceedings. Stephen Quinn assists clients across the health care industry in complex mergers and acquisitions and securities and corporate governance matters. Wells Trompeter represents corporate clients in government investigations and civil and criminal enforcement actions. Joseph L. Watson is a commercial litigator with experience representing financial services institutions, real estate owners, developers and contractors.

Former Tennessee Gov. Bill Haslam appointed several members to the Governor’s Juvenile Justice Reform Implementation Council before leaving office. The group will monitor reforms recently enacted by the state legislature and continue working on new initiatives. TBA members among the council are state Sen. Ramesh Akbari, Stewart County General Sessions & Juvenile Judge Andy Brigham, Nashville attorney Cindy Chappell, Senior Advisor to the Governor Brandon Gibson, AOC General Counsel Rachel Harmon, Shelby County Deputy District Attorney General Ray Lepone, Deputy Counsel to the Governor Clark Milner and Right on Crime Director Julie Warren.

Nashville attorney Lauren Curry has been named a member at Sherrard Roe Voigt & Harbison. Curry has been with the firm since 2012 and focuses her practice on business litigation and insurance coverage disputes. Prior to graduating from Vanderbilt University Law School, she was a patrol officer and mounted horse patrol officer with the Metropolitan Nashville Police Department.
SUCCESS! continued from page 7

Police Department.

The Nashville Metro Council recently named 11 members to a citizen-led board that will review the actions of Nashville police. TBA members among the group are Bob Cooper and Matthew Sweeney. Cooper worked as legal counsel under former Gov. Phil Bredesen before serving as state attorney general from 2006 to 2014. He is currently a member of the compliance and government investigations practice group at Bass Berry & Sims. Sweeney is an attorney at Baker Donelson and has a background in white-collar criminal defense and class action and shareholder derivative litigation. He previously served as a Davidson County Circuit Court judge.

The 2019 Unity in Diversity Scholarship Banquet was held Feb. 7 in Memphis with a keynote address by former U.S. Secretary of Transportation Rodney E. Slater. Awards were presented to firms demonstrating a commitment to diversity and inclusion. Butler Snow was recognized in the large firm category. Spence Law Firm was recognized in the small firm category and International Paper was recognized in the corporate category. The event raised more than $90,000 to fund diversity scholarships and diversity initiatives.

Nashville lawyer Patricia Head Moskal, a partner with Bradley Arant Boult Cummings, was appointed to the 20th Judicial District Chancery Court in January. She replaces retiring Part I Chancellor Claudia Bonynman. Moskal has more than 30 years of experience as a trial and appellate lawyer handling business and commercial disputes.

Colleagues, friends and family recently celebrated the judicial service of Chancellor Bonynman at a reception in Nashville. Bonynman served on the chancery court for 15 years, winning election three times. Prior to taking the bench, she served as an assistant district attorney and as clerk and master for the court starting in 1989. She was the first president of the Lawyers’ Association for Women, an organization she helped found.

Bradley Arant Boult Cummings has elevated six attorneys in its Nashville office to partners. Kristi Wilcox Arth handles a wide variety of litigation and intellectual property matters. Marc Busson advises clients on a broad range of employee benefit and executive compensation matters. Alexandra Dugan represents financial services and mortgage company clients with compliance matters.

Lauren B. Jacques focuses her practice on assisting clients in the health care industry in a wide range of regulatory, operational and transactional matters.

Fritz Spainhour represents national and global life sciences and health care companies in litigation matters. In addition, Lauren P. Schick was named of counsel. She represents developers, landlords and tenants in a variety of commercial real estate and leasing-related matters.

Jenna Fullerton has joined the Chattanooga office of Miller & Martin. She previously served as law clerk for Judge Travis R. McDonough on the U.S. District Court for the Eastern District of Tennessee. At the firm, she will focus her practice on general civil litigation, commercial litigation, insurance litigation, intellectual property and white collar/corporate investigations. The firm also has named three attorneys in its Chattanooga office to membership.

Success! Firm was recognized in the areas of finance, real estate, commercial transactions, commercial leasing and general business planning.

Adams and Reese has elected two Nashville attorneys to partnership in the firm. Rob Breunig handles executive compensation and compensatory benefit plans and represents companies in mergers and acquisitions.

Kristina Montanaro Schrader serves as the Anti-Counterfeiting Team Leader. Her global intellectual property practice focuses on cybersecurity, entertainment and new media.

Nashville lawyer Michael S. Goode has joined Lewis Thomason as special counsel. He will focus his work on tax, business and estate planning matters. He also has extensive experience preparing estate and business succession plans and working with clients to find solutions to their wealth preservation needs.
Arnold is a member of the Lending Practice Group, representing lenders and borrowers. Warfield is a member of the Creditor Rights Practice Group.

Burr & Forman named three attorneys to partnership in the firm: Lindsey Arnold, Patrick Warfield and Taylor Johnson. Arnold is a member of the Lending Practice Group, representing financial institutions, private equity groups, specialty lenders and borrowers. Warfield is a member of the Creditor Rights & Bankruptcy Practice Group, where he focuses on complex commercial litigation, bankruptcy, landlord-tenant disputes and creditors’ rights matters. Taylor Johnson works in the Mobile, Alabama, office as a member of the Commercial Litigation Practice Group. She focuses her practice on complex business and insurance litigation and financial services litigation.

Burch, Porter & Johnson recently named two attorneys as members of the firm. Charles “Chas” Silvestri Higgins focuses his practice on commercial and business litigation, personal injury and medical malpractice litigation and white collar investigations. Gary S. Peeples focuses his practice on labor and employment law and commercial litigation.

The national law firm Gordon Rees Scully Mansukhani has opened an office in Nashville as part of an expansion push. The office is located at 222 Second Ave. South, Suite 1700, Nashville 37201 and can be reached at 615-772-9000. Partners from the firm’s Denver and Houston offices will manage and staff the office. Robert Blanchfield, formerly in private practice in the Nashville area, also has joined the office.

Long, Ragsdale & Waters has named four attorneys as shareholders in the firm. W. Michael Baisley has been with the firm since 2018. He focuses in the areas of business transactions, mergers and acquisitions, corporate law, real estate transactions and private securities. Kyle A. Baisley has been with the firm since 2016. He focuses on commercial business and real estate transactions, entrepreneurial law, securities law, estate planning and firearms law. Taylor D. Forrester has been with the firm since 2016. He focuses on zoning and land use, real estate development and finance, business transactions, and government relations and regulatory affairs.

Alexander Oaks Waters has been with the firm since 2013. He focuses on commercial real estate development, conservation easements, entrepreneurial law, franchise law and business transactions.

Franklin attorney Matthew Wright with Wright Law has been certified as a truck accident law advocate by the National Board of Trial Advocacy. Wright has served as lead counsel in numerous truck accident cases and as a frequent speaker to national trucking groups. He is a member of The Academy of Truck Accident Attorneys and chair of the American Association for Justice’s Trucking Litigation Group.

Lauren Poole, an associate attorney at Taylor, Pigue, Marchetti and Blair received the 2018 Nashville Bar Journal Contributor of the Year Award at the association’s annual meeting in December. Poole, who was recently named co-chair of the publication’s Editorial Committee, practices civil litigation, including bankruptcy and creditors’ rights at her firm.

Quintairos, Prieto, Wood & Boyer, the nation’s largest minority and women owned law firm, has opened offices in Memphis and Nashville. The new offices will be co-managed by partners Howard B. Hayden and Minton P. Mayer, who were previously partners at Wiseman Ashworth Law Group in Nashville. Also joining the Nashville office is Pamela Bagley Webb, who previously served as litigation counsel to GuideOne Insurance Company, and associate Kimberly Sterling, formerly of Wiseman Ashworth.

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A number of Tennessee lawyers have been named new fellows of the American Bar Association. These inductees include Sheri A. Fox and Don W. Poole of Chattanooga; Amy Everhart and James G. Martin III of Franklin; Katherine Sanford Goodner of Knoxville; David T. Black of Maryville; William D. Massey and Henry C. Shelton III of Memphis; and Reynolds Davies Jr., Angela Humphreys and Randall L. Kinnard of Nashville.

Bass, Berry & Sims has added Cheyne Harris to its Memphis office as an associate and Ryan A. Lee to its Nashville office as of counsel. Harris will practice in the area of real estate, construction, financial services and debt financing transactions. Lee will advise clients on various construction-related litigation matters.

The firm also recently elected new members. TBA members among the group are James Polk Moneyhun Jr. in the Knoxville office, Jonathan E. Nelson and Shannon Wiley in the Memphis office, and Timothy J. Browne and Katie Day in the Nashville office.

Moneyhun focuses his practice in public finance matters and property tax abatement, tax increment financing and other governmental incentives to promote economic development. Nelson represents companies in business disputes including cases breach of contract, shareholder derivative actions, breach of fiduciary duty and commercial torts. Wiley focuses her practice on health care regulatory and transactional matters with a specific emphasis on the pharmaceutical industry. Browne counsels clients in the areas of professional sports, media, entertainment, technology, marketing and advertising. Day handles a variety of financing transactions, including construction and acquisition financings.

The Washington County Bar Association recently elected new officers for 2019. TBA members among them are President Brandy Balding with Hancock, Daniel & Johnson; President-Elect Lindsay Daniel with East Tennessee State University; Vice President Jesse Campbell with the Law Offices of Seaton & Bates; and Secretary Darcee Kubisiak, attorney at law. Board members include Andrew Cunyngham, Laurel Farrell, Solange McDaniel, Richard Phillips, Tom Smith and Morgan Taylor.

Nashville lawyer Michelle Poss was elected president of the Conservator...
ship Association of Tennessee Board of Directors. She focuses her practice on conservatorships, wills and estates, elder law issues and Social Security disability claims.

Stuart A. Burkhalter has been named a member of the law firm of Riley Warnock & Jacobson, where he will focus his practice on complex commercial litigation, employment issues, commercial real estate and intellectual property litigation. He also frequently represents health care providers in managed care disputes and other litigation.

Leah A. Greene and Kendra A. Lyons have joined the Memphis office of Butler Snow. Both will practice in the firm’s Business Services Group. Greene will focus on health care transactions and regulatory matters. Lyons will work in the areas of health care, medical malpractice defense, labor and employment, and professional liability defense.

The firm also recently announced the addition of eight attorneys in its Nashville office. Tara L. Blake, Katelyn E. Marshall and Matthew P. Smith have joined the Pharmaceutical, Medical Device and Healthcare Litigation Group. Hannah Kay Hunt, Terrence M. McKelvey and Elizabeth W. Morton have joined the Commercial Litigation Group. Remington A. Shepard has joined the Business Services Group where he will handle corporate finance, securities and mergers and acquisitions. Former Tennessee Department of Commerce Assistant Attorney General Benjamin A. Whitehouse has joined the Regulatory and Government Relations Practice Group where he will focus on general insurance and captive insurance matters.

The firm also announced that the Legal Aid Society of Middle Tennessee and the Cumberlands has named Erin Palmer Polly as chair of its 2019 Campaign for Equal Justice. Polly focuses her practice on commercial litigation, civil rights, professional liability and general litigation in the Nashville office. She is a longtime participant in the Legal Aid Society’s Volunteer Lawyers Program and received the Pro Bono Leadership Award in 2014 for her work with the organization. Hudson Cook has promoted Erica Kramer to an equity partner of the firm. Kramer, who works in the Ooltewah office, focuses her practice on consumer financial services and regulatory compliance matters including the Military Lending Act, the Servicemembers Civil Relief Act and the Americans with Disabilities Act. Gearhiser, Peters, Elliott & Cannon has promoted Justin B. Faith to be a member of the firm. Faith practices in the areas of commercial litigation, estate administration, construction matters, employment law, personal injury cases and municipality law. He is active in the TBA Young Lawyers Division and is a 2018 graduate of the TBA Leadership Law program. Stites & Harbison has promoted Brenton Lankford and Sean Ritchie to member in the firm’s Nashville office. Lankford practices in the field of domestic relations. Ritchie is a registered patent attorney with a focus on chemical, life sciences and materials science technologies. The firm also announced that Nashville attorney John Wingo has been named a fellow of the Litigation Counsel of America. This peer-selected and invitation-only society recognizes attorneys for their accomplishments in litigation as well as their ethical reputation. Wingo focuses on business transactions and commercial litigation defense work.

PASSAGES

HENRY MARTIN “MARK” HARTZOG died Jan. 15. He was 78 years old. A TBA Senior Counselor, he also was the senior member of Hartzog & Silva PLC in Franklin. Hartzog graduated from Georgia Institute of Technology and entered the U.S. Marines. After the Vietnam war, he attended and graduated from the University of Tennessee College of Law. Following graduation, he moved to Franklin and joined the firm of Dave Alexander. He served for 17 years as legal counsel for the Williamson County Board of Realtors, was a partner with Heritage Title & Escrow Company and was active on the boards of various banks and civic clubs. Memorial donations may be made to Habitat for Humanity, Friends of Radnor Lake, Monroe Carell Jr. Children’s Hospital at Vanderbilt, First Presbyterian Church Franklin or First Presbyterian Church Nashville.

Longtime Cookeville attorney L. DEAN MOORE died Jan. 13 at the age of 77. After graduating from the University of Tennessee College of Law, Dean entered the U.S. Army and served in the JAG Corps. He was stationed in Washington, D.C., for three years and then returned to Tennessee. He joined the firm of Moore, Rader, Fitzpatrick and York, where he practiced until his death. Moore was active in the Jaycees and Rotary as well as the Bryan Symphony Orchestra. Memorial donations may be made to the Cookeville First United Methodist Church, 165 East Broad St., Cookeville 38501.

ROY PATRICK NEUENSCWANDER died Jan. 13. He was 70 years of age. Neuenschwander grew up in Knoxville and graduated from the University of Tennessee College of Law in 1973. He practiced law for four decades as a solo practitioner, focusing on general litigation and disability issues.

Longtime Knoxville lawyer GARY W. WRIGHT died Jan. 21 at the age of 66. A 1977 graduate of the University of Tennessee College of Law, Wright started his legal career as a prosecutor for the National Labor Relations Board. In 1983, he joined Wimberly Lawson Wright Daves & Jones in its Morristown office. He later joined the firm’s Knoxville office and served for several years as the firm manager. Wright practiced labor and employment law for decades before retiring to Taos, New Mexico. Memorial donations may be made to the First Presbyterian Church of Taos, 215 Paseo Del Pueblo Norte, Taos 87571.
DISABILITY INACTIVE

Stewart County lawyer Billy Dudley Cobb was placed on disability inactive status by the Tennessee Supreme Court on Jan. 25 for an indefinite period of time. Cobb may not practice law while on inactive status. He may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

Davidson County lawyer John Lee Kennedy was placed on disability inactive status by the Tennessee Supreme Court on Jan. 25 for an indefinite period of time. Kennedy may not practice law while on inactive status. He may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and she is fit to resume the practice of law.

Monson may not practice law while on inactive status. She may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

REINSTATED

The Tennessee Supreme Court reinstated Maury County lawyer William Clark Barnes Jr. to the practice of law on Jan. 25. Barnes was suspended on March 31, 2015, for three years with six months to be served on active suspension and the remainder to be served on probation. Barnes filed a petition for reinstatement and a hearing panel of the Board of Professional Responsibility found that he had complied with the terms and conditions of the suspension.

As a condition of reinstatement, the court directed Barnes to engage a practice monitor for one year and enter into a new, two-year monitoring agreement with the Tennessee Lawyers Assistance Program.

On Jan. 23, the Tennessee Supreme Court reinstated Davidson County lawyer Jamaal L. Boykin to the practice of law. Boykin was suspended on June 19, 2018, for two years with six months to be served on active suspension and the remainder to be served on probation. Boykin filed a petition for reinstatement on Dec. 28, 2018. The Board of Professional Responsibility found that the petition was satisfactory and recommended that the court reinstate him.

Williamson County lawyer Stephen Paul Brink was reinstated to the practice of law on Jan. 4 after being on inactive status since Dec. 17, 2013. The Board of Professional Responsibility found that the petition was satisfactory and recommended that the court reinstate him. The court issued the reinstatement order on Jan. 23.

DISCIPLINARY

Disbarred

Lewis County lawyer Larry Joe Hinson Jr. was disbarred by the Tennessee Supreme Court on Jan. 9. The order also dissolved a temporary suspension entered against him on Oct. 18, 2018. The court noted that Hinson acknowledged his misconduct and consented to disbarment.

William Lawrence McKinney, a resident of Los Angeles, was disbarred from practicing law in Tennessee on Jan. 4 following disbarment by the Supreme Court of California. The Tennessee Supreme Court on Jan. 9.

The court noted that Hinton acknowledged his misconduct and consented to disbarment.

William Lawrence McKinney, a resident of Los Angeles, was disbarred from practicing law in Tennessee on Jan. 4 following disbarment by the Supreme Court of California. The Tennessee Supreme

Compiled by Stacey Shrader Joslin from information provided by the Board of Professional Responsibility of the Tennessee Supreme Court. Licenses and disciplinary notices are included in this publication as a member service. The official record of an attorney’s status is maintained by the board. Current information about a particular attorney may be found on the board’s website at www.tbpr.org/for-the-public/online-attorney-directory.
Court directed McKinney to show why reciprocal discipline should not be imposed in Tennessee. He did not respond. The court determined that McKinney should be disbarred and made the action retroactive to June 23, 2017 – the date the California court imposed disbarment.

**Suspended**

On Jan. 24, the Tennessee Supreme Court suspended Memphis attorney Gerald Stanley Green from the practice of law for six months, with 30 days to be served on active suspension and the remaining five months to be served on probation. As a condition of probation, Green must complete certain continuing legal education and engage the services of a practice monitor. The court suspended Green based on three complaints that he did not adequately communicate with clients, failed to diligently represent clients and practiced law in Mississippi without complying with that state’s pro hac vice admission rules. The court found that he violated Tennessee Rules of Professional Conduct 1.3, 1.4, 5.5, and 8.4(a) and (d). Green had appealed the Board of Professional Responsibility’s disbarment recommendation to the Supreme Court, but the court upheld the action based on Green’s long history of disciplinary problems.

**Censured**

On Jan. 16, William Jeffrey Barnes of Boca Raton, Florida, received a public censure from the Tennessee Supreme Court for actions taken between May 2011 and August 2017. In nine foreclosure actions in state and federal courts in Tennessee, Barnes filed an affidavit that he was admitted to practice pro hac vice and had sent copies of the court filings to the Board of Professional Responsibility. However, the materials were not sent and the pro hac vice registration fee was not paid on time. His actions were determined to violate Rules of Professional Conduct 3.3, 3.4(c) and 8.4(c).

Campbell County lawyer Donald Brent Gray was censured on Jan. 23 for actions associated with representation of an indigent criminal client. Gray was appointed to the case and was required to represent the client throughout the proceedings, including any appeals, until the case had been concluded or he was granted permission to withdraw. Following the general session court proceedings, Gray improperly advised the client that he could no longer represent him unless a $10,000 retainer fee was paid. The client paid $2,750 toward the fee though no written fee agreement was signed, and Gray did not deposit the funds into his trust account. Gray also failed to inform the circuit court that he had been appointed to represent the client. The Board of Professional Responsibility determined that he violated Rules of Professional Conduct 1.4, 1.5, 1.15, 1.16(c), 3.3 and 8.4(a)(c)(d). He also was directed to reimburse the client the $2,750 fee.

Knox County lawyer Jere F. Ownby received a public censure from the Board of Professional Responsibility on Jan. 14 for failing to respond to a disciplinary complaint and not timely notifying a client, opposing counsel or the court that he had been suspended on July 7, 2017. The board determined that this conduct resulted in harm to all parties. His actions were determined to violate Rules of Professional Conduct 8.4(d), 8.4(g) and 8.1.

On Jan. 23, Davidson County lawyer Pamela Anderson Taylor received a public censure from the Board of Professional Responsibility for failing to respond to requests for information, comply with discovery deadlines and expedite litigation. She also was found to have issued a subpoena in noncompliance with applicable law. Her actions were determined to violate Rules of Professional Conduct 3.4(c) and 8.1(b).

**Administrative Suspensions**

Notice of attorneys suspended for, and reinstated from, administrative violations – including failure to pay the Board of Professional Responsibility licensing and inactive fees, file the required IOLTA report, comply with continuing legal education requirements, and pay the Tennessee professional privilege tax – is on the TBA website at www.tba.org/directory-listing/administrative-suspension-lists.
New tax law? Really? Really. The children’s dependency deductions are gone. What’s next? The Child Tax Credit (CTC) helps fill that gap. The cool thing about credits is that they are dollar for dollar reductions of tax, not a reduction of taxable income. This means that the parents’ marginal federal income tax rate does not impact the value associated with the reduction.
Accordingly, Tennessee’s permanent parenting plan form is likely to be amended. While parents cannot share the CTC, the associated tax benefits can be transferred to the alternate residential parent under certain circumstances, including by use of IRS Form 8332. We are talking about real money here, up to $2,000 per year per child. This article is written with the perspective that parents will want to collectively take advantage of the biggest financial benefit available from the new laws. For more details on the new tax law, see “Elimination of the Alimony Deduction: A Tax Break for Some, a Hike for Others”, by Marlene Moses and Manuel Russ, Tennessee Bar Journal, January 2018, Vol. 54, No. 1.

Attorneys are advised to read instructions for IRS Form 833 (https://www.irs.gov/pub/irs-pdf/f8332.pdf) and related pages, including Publication 501, Dependents, Standard Deduction and Filing Information (when the revised version is issued), as well as Publication 504, Divorced or Separated Individuals (also not yet updated as of date of writing). All IRS publications are available as PDFs online. IRS publications offer easy explanations. Remember that it is important to always consult with your client’s CPA or tax professional. The details matter!

**TCJA Suspended Personal Exemptions**

There have been many changes to child-related tax benefits. One of the biggest being recent suspension of all personal exemptions under the Tax Cuts and Jobs Act (TCJA). Not some, all. The TCJA is effective for tax years beginning Jan. 1, 2018, through Dec. 31, 2025, when the law sunsets. Elimination of personal exemption deductions began with tax year 2018.

Prior law entitled a parent to an exemption deduction for himself or herself and for each child. The exemption amount was $4,050 per person. In claiming two children, for example, the parent’s exempt amount from income was $4,050 for each person or $12,150 (3 x $4,050). The parent’s income was lowered by the exempt amount, resulting in reduced tax liability. That's gone now. No personal exemptions remain. The gap left by eliminating the children’s dependency deductions, however, has been filled by the CTC. In some cases the increase in standard deduction can help fill the gap as well.

**Still Determine Personal Exemption for Other Tax Benefits**

Although the personal exemption deduction is no longer available, the analysis remains important. It is still necessary to determine which parent is eligible to claim the children. Why? Because the result translates into eligibility for other tax benefits — namely, Head of Household filing status and the Child Tax Credit.

The TCJA increased the standard deduction for Head of Household, increased the CTC amount, and increased the income limitations. With a little guidance during settlement proceedings, parties can use their parenting plan to reap the greatest tax benefits.

**Settling Tax Issues in the Parenting Plan**

When settling and mediating a parenting plan agreement, by assisting parents with addressing three key tax questions:

1. Which parent files as Head of Household?
2. Which parent claims the Child Tax Credit?
3. Which parent claims the Dependent Care Credit?

A case example at the end of this article applies each step to a parenting plan settlement.

Let’s begin with the standard deduction.

### 1. **Which Parent Files as Head of Household?**

What benefit does filing for Head of Household status bestow? The standard deduction for Head of Household in 2018 is $18,000 — that’s a meaningful subtraction from income (up from $9,350 in 2017). It is also substantial compared to the standard deduction for filing Single, which in 2018 is $12,000. The news gets even brighter. Higher
earners can also claim the deduction now. The TCJA increased income limitations to $200,000 AGI for Single Head of Household filers and $400,000 for Married Filing Jointly. (Compare that to the $75,000 AGI income limitation for 2017.)

Requirements for Head of Household
To file as Head of Household, the parent must be “considered unmarried” (or is separated, as noted below). Additionally, the parent must have paid more than half the household expenses in 2018 with a “qualifying person” (the child) living with him or her in that home for more than half the year. That’s all well and good. But what if the divorce is still pending after Dec. 31, 2018?

If the spouses lived separately in 2018, then a parent may still be “considered unmarried” for purposes of the Head of Household standard deduction. The general requirements for filing while still legally married are:

- The parties do not file a joint return;
- The parent paid at least half what the residence cost for that tax year;
- The spouses did not live together at all during the second half of the year (separated all six months);
- The child, step-child or foster child lived mainly in that home with the filer for at least half the year; and
- The child can be claimed as the filer’s dependent.

Exceptions may apply to the parents’ circumstances.

Under IRS rules, the “custodial parent” is the one with whom the child lived for the greater number of nights during the year. This parallels the primary residential parent (PRP) designation in Tennessee family law. Therefore, the custodial parent, or PRP, may claim the children for Head of Household filing status to obtain the $18,000 standard deduction if that amount exceeds the PRP’s itemized deductions.

What if parents shared equal overnights with their child? As a general rule, the custodial parent in that instance would be the one with the higher AGI. (There are exceptions, such as parents who work nights.) See chart on facing page.

Family lawyers should know that the financial difference between filing Head of Household and filing Single depends on the parent’s income and marginal tax rate. As the chart above describes, for a parent earning $40,000 per year, the difference in filing status results in a tax savings of $802 per year. For the parent earning $75,000 per year, being able to file as Head of Household can save $2,712 per year.

2. Which Parent Claims the Child Tax Credit?
Here’s where the Child Tax Credit comes in. The CTC for 2017 was $1,000 per child. That doubled for 2018 and later years — the credit is now $2,000 per child. Although this is a dollar-for-dollar credit against the filer’s tax liability, be mindful the CTC begins to phase-out for unmarried taxpayers with an AGI of $200,000. When the parent’s AGI reaches the $200,000 income threshold, the credit is reduced by $50 for each $1,000, or fraction thereof, exceeding the threshold amount. For example, a PRP of one child with an AGI of $206,000 would see the $2,000 maximum credit reduced by $300 for a CTC total of $1,700.

Transfer of Child Tax Credit to Non-Custodial Parent
The Child Tax Credit could be transferred to the non-custodial parent as the alternate residential parent (ARP) using IRS Form 8332 — “Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent.” The PRP completes Form 8332, not the ARP. For settlement purposes, Form 8332 could be used to release the entitled parent’s claim to the CTC for one or more of the children, allowing the ARP to claim the CTC for that child. This transfer does not entitle the ARP to file as Head of Household or to claim the Dependent Care Credit.

Tread lightly. As the final example illustrates, transferring the CTC might
not be beneficial to the recipient parent. Crunch the numbers.

3. **Which Parent Claims the Dependent Care Credit?**

Lastly, there is the Dependent Care credit to consider. The DCC is also a dollar-for-dollar credit against the claiming parent’s tax liability. However, this credit is only available for work-related child-care actually paid (emphasis on “work-related”). In the case of divorced or separated parents, only the custodial parent (the PRP) is eligible to claim this child care credit.

The maximum child care credit for 2018 is $3,000 per child multiplied by 20 percent based upon the custodial parent’s income. Remember: the DCC is not available to the ARP. This is true even when the CTC is transferred to the ARP with Form 8332.

**One option?** Given only the custodial parent can claim the Dependent Care Credit, the parties may agree to the PRP

continued on page 18
paying for child care, claiming the credit, and including the care cost in their child support calculations. In other words, the PRP could pay for child care directly while the ARP’s payments are calculated to include an amount sufficient for the PRP to recover funds spent directly on work-related child care.

Parenting Plan Example Under New Tax Law

The Facts: Mary Smith (Mother) is an attorney with Smith & Associates earning a $200,000 annual salary. Joseph Smith (Father) works for Memphis Bank at a salary of $75,000 per year. Both are 42 years old with many working years ahead. They have three children: Sarah (age 12), Ben (age 10) and Taylor (age 2).

Mother pays $300 per month for the children’s health insurance. She also pays work-related child care for their two-year-old, Taylor, at $1,200 per month. Father works a reduced schedule so he can be home with all of the children after school. Therefore, there is no work-related child care for the two older children.

As PRP, Father has primary custody of the three children. Based upon their current parenting plan, Father has 225 overnights per year and Mother has 140 overnights per year.

Tax Options: In the 2017 tax year, Father would have been entitled to personal exemptions for himself and all three children at $4,050 each or $16,200 (4 x $4,050). With personal exemptions eliminated in 2018, the analysis is as follows:

Who Files as Head of Household?
As the primary residential parent for all three children, Father is entitled to claim the children for Head of Household filing status. This gives him the $18,000 standard deduction.

Who Claims the Child Tax Credit?
With an income of $75,000 per year, Father is eligible to receive the credit in the amount of $2,000 per child. His total

Availability of Child Tax Credit Depends on Adjusted Gross Income of a Parent

<table>
<thead>
<tr>
<th>Parent 1</th>
<th>Parent 2</th>
<th>CTC Available Per Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted Gross Income</td>
<td>$20,000</td>
<td>$225,000</td>
</tr>
<tr>
<td>Adjusted Gross Income</td>
<td>$100,000</td>
<td>$150,000</td>
</tr>
<tr>
<td>Adjusted Gross Income</td>
<td>$200,000</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

*Above based on both Parent 1 and 2 filing Single or Head of Household
CTC is $6,000 for the three children, per year.

Option: Under these facts, Form 8332 could be used to release a claim to the exemption for one or more of the children, allowing Mother to claim an exemption for the child (or children) and claim the associated CTC. But is this prudent?

Outcome: If Father agrees to transfer the CTC to Mother, her benefit would also be $2,000 per child or $6,000 for all three children. That might work for 2018, although it’s a close call. Transferring the CTC to Mother would not bestow the greatest tax benefit on the parties if her income exceeds the $200,000 AGI threshold in 2019.

Consider the credit phase-out for unmarried taxpayers with an AGI of $200,000, and credit reduction by $50 for each $1,000, or fraction thereof, exceeding the threshold amount. If Mother’s AGI were $320,000 or above and Father wanted to give her the exemption for all three children, she would receive no benefit at all.

Here’s the math: $320,000 - $200,000 threshold limit = $120,000 divided by $1,000 = 120 x $50 = $6,000 - $6,000 tax credit = $0 allowable tax credit. That’s zero tax benefit for both parents. Furthermore, Form 8332 does not allow Mother to claim either Head of Household filing status or credit for child care.

The chart on left is offered to provide additional reference while not describing the example immediately above:

Who Claims the Dependent Care Credit?
Mother is paying $1,200 per month for child care. As the ARP and noncustodial parent, she cannot claim the Dependent Care Credit. Consequently, she gets no tax benefit. Father is the PRP and custodial parent, but he is not actually paying for work-related child care. So he gets no tax benefit either. Both parties lose, which means the family loses.

Option: If Father directly pays $1,200 per month for child care, then he can claim the DCC. Parents may agree to adjust their child support calculations and increase the ARP’s monthly payments by the same amount.

Here’s the math: The DCC maximum is $3,000 per child x 20 percent based on Father’s $75,000 AGI. Thus, he would receive an additional $600 tax credit for child care.

The landscape for child-related tax benefits has changed significantly. Read the IRS publications noted at the outset. Prepare to guide clients through different tax scenarios using their proposed parenting plan. Parents need to know the consequences of their decisions. Encourage all parties to collectively embrace the greatest financial benefit available to them under the new tax law.

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MILES MASON SR. practices family law in Memphis and is a graduate of the University of Memphis Cecil C. Humphreys School of Law. He authored the Forensic Account Deskbook, published by the American Bar Association Family Law Section. A second edition will be released this spring.
Many different ethical issues can arise when a lawyer is an estate planning practitioner. Generally, clients tend to be older, financially established and perhaps have a blended family. Clients will often request the lawyer to prepare documents for multiple members of the family or even a family business. Sometimes, the clients rely heavily on someone else to communicate information to the lawyer. These types of scenarios lead to numerous ethical issues.
Conflict of Interest

The lure of multiple representations can present a tempting prospect. An increased fee without dealing and consulting with another lawyer, especially in a circumstance where the client is encouraging it in order to economize fees, have cohesive plans and to help resolve issues, is hard to oppose. The risks of trying to serve more than one client are considerable.

What is the first step in avoiding a conflict of interest? Every law office should devise a conflict of interest procedure and system. Even the law office which has only one attorney may fail to remember having represented a person a few years back when a new party approaches the attorney for assistance. The attorney may have spent several valuable hours on the matter before realizing there is a conflict with a former client. These expended, unbillable hours can be costly to a solo practitioner.

The conflict of interest system can range from a high-tech software program to a card file. However, even the most expensive system is of no assistance if the procedure is not followed or the system is not maintained. The value of the system is actually dependent upon the efficiency of the user. Conflicts need to be checked prior to the attorney accepting the legal project, and checking the request for conflict should be an automatic initial response to a new file.

What information needs to be contained in the system? Every conflict of interest system ought to include every client represented by the attorney and in addition to the client, all other protected persons, such as spouse, partners, shareholders, directors and officers of corporations. If additional parties are brought into the matter at a later time, they should be added to the list as well. Also include all names such as the former or maiden name of a client should this client's name change at a later time, as well as any other pertinent parties.

When a lawyer joins a law firm or simply creates a partnership with another lawyer or lawyers, or when two law firms combine, it is absolutely critical each lawyer provide a complete list of past and present clients which is then merged into a master list, so conflicts can be checked. Similarly, when new staff members are hired who may have worked for other law firms, they should check the law firm's list of clients to see whether by working on a case for the lawyer a conflict could develop from data obtained while working at the previous firm.

Identifying potential conflicts of interest before they occur is essential since one of the crucial elements in the practice of law is loyalty and independent judgment to the client. A breach of these key elements can result in a bar disciplinary action or a legal malpractice action. By its very essence, a conflict of interest will imply the attorney is unable to have complete loyalty or provide independent judgment to the client, because of prior knowledge acquired from another client which may work to the detriment of the current client. The Tennessee Rules of Professional Conduct (ORPC) can be instructive to the lawyer in recognizing potential conflicts of interest and in what types of circumstances a conflict may arise. In particular, Rules 1.7 through 1.11 and the comments thereto address conflicts of interest and an attorney's responsibility to the client when such a conflict arises.

Conflict claims arise in a variety of ways. They often take place when an attorney has performed extensive work on behalf of many members of the same family, frequently in the context of doing continued on page 22
work for a family company and then attempting to perform work for one or more of the family members in their estate planning. The other way a conflict occurs is when a husband and wife come in together and it is a blended family with children from previous marriages or relationships. Husband and wife appear to agree on the division of the property, but when the spouse dies, the surviving spouse does not want to share the estate with the children from the previous marriage or the children do not want to share the estate with the stepparent.

There was a recent published opinion discussing the conflict of interest issue. It is a good example of how a conflict can arise. Scott Hudson died intestate in 2005 with only two heirs, his wife (Letty) and his son from a previous marriage (Kyle). When Mr. Hudson died, he left an estate consisting of various assets located in a number of countries, totaling multiple millions of dollars. Letty was appointed the administrator of the estate.

Letty hired a firm that had done work for the primary disputed asset in the probate case, a bus company. The firm entered its appearance in the case as the “attorneys for the administrator.” However, the firm in some pleadings noted they were counsel for the estate by its administrator or simply “attorneys for the estate.” As the case became more adverse between Letty and Kyle, it became apparent the firm was advocating Letty’s position that she owned 100 percent of the bus company instead of 50 percent as Kyle asserted, allowing Letty to dissipate the estate’s assets and allowing Letty to withhold assets from Kyle. Eventually, Letty was removed as administrator and a neutral party was appointed administrator. The estate, Kyle and even Letty, filed a legal malpractice action against the firm.

Although the court chastised the lawyers for the lack of an appellate record, it determined there was a factual question of whether the firm had a conflict of interest in this litigation. The firm attempted to argue they only represented Letty and relied on their engagement letter. However, the engagement letter failed to define the scope of employment and did not state the purpose for Letty retaining the firm. The trial court had agreed with the firm that they represented Letty only and had no duties to the estate or Kyle, thus granting the firm’s motion for summary judgment. The appellate court reversed and remanded the matter for further proceedings.

**Engagement Letter**

One of the most important points to take away from the *Estate of Hudson* case is the engagement letter. A trusts and estates practitioner must clearly and specifically define the client and scope of services to be performed in the firm’s engagement letter.

The engagement letter should identify the client whose interests are being represented. Equally as important is to specifically clarify whose interests are not being represented by the attorney. Identification is key in the estate planning field to avoid the misunderstandings by relatives of the client that the attorney is not the “family” lawyer.

Making the scope of the work performed under the terms of an engagement letter as wide ranging as possible is a natural response. This is often based upon the unwise theory a far-reaching engagement letter will create additional legal work. In fact, an engagement letter with a loosely defined scope of the work covered does little more than expose an attorney to potential liability well outside the range of services the attorney intended to perform. Rule 1.2(c) provides for a lawyer to reasonably limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent, preferably in writing.

**Inadequate Facts/Discovery**

Issues arise when there are not documents showing an adequate inquiry was made and then detailing that inquiry into the testator’s mental capacity. The estate and trust practitioner must develop questions to ask the client which show the client’s general awareness of the client’s heirs and assets. Some practitioners video their clients to show mental capacity.

With regard to assets, relatives, etc., the better practice is to create a questionnaire the client completes and signs.

The attorney must make sure there is documentation that inquiry was made regarding undue influence. The practitioner must meet with the testator alone. The attorney needs to develop a list of standard questions, so the attorney is confident there has been no undue influence.

Standard inquiries often get overlooked when the practitioner is representing friends and/or family. The best recommendation would be not to act for family or friends, but should the practitioner decide to go forward, be particularly vigilant about recording the answers to all of the inquiries to insure capacity, assets, beneficiaries and undue influence.

In administering an estate, claims arise when distributions are made without ensuring adequate money is in the estate to pay the taxes or creditors’ claims. The attorney needs to err on the side of caution when making an interim distribution. Estate taxes can generate ethical issues in these two areas: 1) where the personal representative believes the attorney is going to make sure the estate taxes are handled — the estate tax issue should be addressed in the engagement letter; and 2) if the attorney is handling the estate taxes, the attorney should double check the availability of the deceased spouse’s unused exclusion portability and be aware of the amount and the time limitations.

The estate and trust practitioner must make sure all heirs are notified. The attorney needs to double check any distributions from the estate include all who are entitled to that distribution and the portion that heir is entitled. In other words, disclose, document and confirm!

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Failure to Follow Client’s Instructions

Issues arise when the attorney’s notes taken from the meetings do not agree with the drafted estate planning documents and there is no documentation showing the client instructed the attorney differently after the initial consultation. The estates and trusts practitioner needs to make and take the time to compare the draft estate planning documents with the notes taken during the consultations. Fortunately, this issue is one of the easiest to prevent. The attorney must document the work performed for the client. Then, the attorney needs to confirm the information the client provided, the advice given to the client, the client’s instructions and what steps were taken on those instructions. This can be done in the attorney notes, a reporting letter or a confirming email. Taking the time to make detailed dockets, such as “telephone conference with client regarding the following changes to the will” can prevent an error. In other words, document everything! A paper trail can help refresh the practitioner’s memory as to why the document was drafted in this manner.

Proofreading can be tedious, but it is extremely important in estate planning. This requires double checking the math and making sure 100 percent of the estate is accounted for in the testamentary documents. Additionally, the attorney needs to double check beneficiaries and what their distributions will be. One of the most tedious tasks is proofreading the drafted estate planning documents for ambiguities in the wording and double checking to make sure all necessary provisions and/or clauses are included.

Conclusion

With the changing demographics of the population at large, there is more work in estate planning than ever, and at the same time, more exposure to a malpractice claim or an ethical violation. This risk of a legal malpractice claim cannot be totally eliminated. However, the risk can be reduced by improving communications with the client and documentation of all work performed for the client.

ALISON A. CAVE is senior vice president of claims with Oklahoma Attorneys Mutual Insurance Co. She graduated from the Oklahoma University College of Law. Cave began her career as a law clerk for Justice Yvonne Kauger. She has received the OBA President’s Award and the Mona Salyer Lambird Spotlight Award.

This article was originally published in the December 2018 Oklahoma Bar Journal, Vol. 89, page 6, and is used with permission.

Note

Blount on the Run

William Blount is one of the most important figures in Tennessee history. He had been a leader in North Carolina, serving in the Continental Congress and in the Constitutional Convention of 1787, and thus he signed the U.S. Constitution. As governor of the Southwest Territory appointed by President Washington in 1790, he was the key player in maneuvering the territory into statehood in 1796. When Blount became one of Tennessee’s first two U.S. senators the same year, he commanded a powerful political faction and owned millions of acres through shrewd speculation.1

As territorial governor, Blount had been a dutiful Federalist. Once in the Senate, however, he switched to the Jeffersonian Republicans, the party of most Tennesseans.2 Hence, his relationship with George Washington cooled. Blount’s personal finances also turned downward as land values plummeted because of rumors that Spain was about to transfer New Orleans and Florida to France.3

The U.S. and Spain had entered into “Pinckney’s Treaty” in 1795. The popular accord set the border between American and Spanish territory, precluded the incitement of the Indians and guaranteed free navigation of the Mississippi.4

Unlike Spain, France had no obligation to keep the river open. Even the possibility of the loss of navigation made Western land, such as Blount’s, fall in value. Tennessee was in an uproar at the economic threat. The only hope was that Great Britain, the leading nation in an ongoing war with France, would seize New Orleans and Florida. The peace treaty signed with Britain following the Revolution recognized American rights to navigate the Mississippi.5

The Conspiracy

John Chisholm, a Knoxville tavern keeper, who had served as a business agent for Blount, hatched a plot to have the Cherokees and frontiersmen invade poorly defended Florida. This force would then turn the Spanish province over to the British. In payment, Britain would name Chisholm superintendent of Indian affairs.
and promise that the port of Pensacola would remain open. Chisholm went to Philadelphia to present his plan to the British ambassador and seek financing, but got no commitment. However, the ambassador sent Chisholm to London. After consideration, the British government rejected the risky idea.6

In Chisholm’s absence, Blount took control of the project. If successful, the scheme would allow him to sell land at a profit and prevent bankruptcy.7 As things stood, it was feared senatorial immunity was all that would keep him out of debtors’ prison.8 Moreover, the adventure would make him a hero in Tennessee. After consultation with another large-scale land speculator, Dr. Nicholas Romayne, in New York, the intrigue grew to not only capturing Florida but also New Orleans. Blount himself would lead the forces against New Orleans and Chisholm those against Pensacola.9

Romayne was dispatched to London to advance the cause as Blount continued to organize while following Romayne’s advice “to appear a pure, dignified political character.”10

On April 1, 1797, Blount wrote an indiscreet letter detailing the plot to James Carey, an Indian interpreter, to enlist him to obtain the Cherokees’ involvement, explaining that Blount “probably shall be at the head of the business on the part of the British.”11

As for any grievances the Cherokees had against whites that might discourage their cooperation, Blount instructed Carey to blame former President Washington. Carey was also urged to be careful, “for discovery of the plan would prevent the success, and much injure all the parties concerned.”12

He closed: “When you have read this letter over three times, then burn it.”13

The Conspiracy Exposed
An intoxicated Carey allowed the letter to fall into the hands of James Byers, the operator of the trading post at Tellico Blockhouse. Byers gave the letter to Col. David Henley, a War Department agent in Knoxville and Blount’s “mortal enemy.”14 Henley forwarded it to President Adams in Philadelphia. Adams recognized that implementation of the plan would violate the treaty with Spain and could lead to war with Spain and France. After the attorney general advised the president the conspiracy constituted a crime, Adams sent the letter to Congress.15

On July 3, Blount was strolling out of the Senate chamber when he encountered the president’s secretary bearing a message. Blount asked what the message was. The secretary replied that it was “confidential and secret” and pushed on past. A few moments later, Blount returned to find that the clerk was reading aloud his letter to Carey. When asked by Vice President Thomas Jefferson, the presiding officer of the Senate, if he had written the letter, a visibly shaken Blount said he would have to consult his records. Blount was given until the following day to answer.17

Blount sent a message to the Senate on July 4 that was read to the body by Tennessee’s other senator, William Cocke. In it he asked for more time and said he never intended any letter “to injure the United States.”18

Blount then panicked. He rushed to Philadelphia’s harbor and chartered a vessel to take him to North Carolina. Not liking his answer and learning of his impending flight, the House and Senate created investigatory committees and sent officers to arrest him, but because his pursuers did not know what he looked like, Blount disembarked from the docked boat as the wrong man was detained.19

On July 7, a furious Blount appeared before the Federalist dominated Senate with two lawyers. The Senate voted to authorize its committee to seize Blount’s correspondence (it had already seized his luggage on the boat) and demanded that he answer whether he wrote the letter. Blount’s counsel requested a three-day continuance. The Senate agreed to one day if Blount posted $20,000 bond. He secured sufficient sureties and was released.20

The next day, Senator Cocke identified Blount’s handwriting and the Senate expelled Blount from the Senate with a vote of 21 to 1, with Cocke voting with the majority. Although expelled, both houses of Congress were determined to proceed with impeachment. The Senate required continued on page 26
him to post a new bond to secure reappearance at trial. This bond was forfeited as he raced to Tennessee on horseback, using back roads to avoid capture.21

Safety in Tennessee
As George Washington was calling for his punishment and First Lady Abigail Adams wished the nation had a guillotine for the conspirators,22 Blount arrived in Knoxville, his home and Tennessee’s capital city. There he was greeted by jubilant celebrations. His Tennessee allies, such as Andrew Jackson, had published defenses of the ex-Senator portraying him as a victim of partisan politics who was only trying to save Tennessee from economic collapse.23 Although Blount never publicly admitted that he wrote the letter, he did so in private and offered the excuse that he had forgotten about the treaty with Spain.24

The General Assembly was ready to reelect Blount to the Senate, but he declined. When the Senate’s sergeant-at-arms arrived in Knoxville with a warrant for his arrest to produce him for trial, the U.S. marshal and state authorities refused cooperation. The Senate official, nevertheless, was entertained at Blount Mansion before heading home. “Some of the citizens accompanied him a few miles from town, where, assuring him that William Blount could not be taken from Tennessee as a prisoner, bade him a polite adieu.” 25

Blount was next elected to the State Senate and was unanimously elected speaker.26 There, in December 1798 and Jan. 1799, he acted as presiding officer and prosecutor in the impeachment trial of his old enemy, Judge David Campbell of the Superior Court. Campbell was charged with improperly dismissing a slander suit brought by Blount against another enemy.27 Despite the questionable process and Blount’s conflict of interest, Campbell avoided removal by one vote.28

While Campbell’s impeachment trial was taking place, Blount’s impeachment trial, with Vice President Jefferson presiding, was held in Philadelphia without Blount’s presence. His lawyers convinced the Senate it did not have jurisdiction because impeachment did not apply to senators, and, even if it did, he was no longer a senator.29 The charges were dismissed on Jan. 11, 1799, by a vote of 14 to 11.30

Blount died suddenly on March 21, 1800. He was buried at the First Presbyterian Church Cemetery in Knoxville. Leadership of his political faction fell to his loyal protégé, Andrew Jackson.31

RUSSELL FOWLER is director of litigation and advocacy at Legal Aid of East Tennessee (LAET) and since 1999 he has been adjunct professor of political science at the University of Tennessee at Chattanooga. He served as the law clerk to Chancellor C. Neal Small in Memphis and earned his law degree at the University of Memphis in 1987. Fowler has many publications on law and legal history, including many in this Journal.

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Upcoming Programs

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<td>Federal Law Forum</td>
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Faculty Highlight

Celeste Simmons Bradley
Blue Cross Blue Shield of Tennessee

Celeste Bradley is the Associate General Counsel at Blue Cross Blue Shield of Tennessee. A trusted advisor to internal clients including Human Resources staff, Senior Executive team, Social Media and Digital Marketing, she provides sound legal advice while mitigating any legal risks; partnering with business units to develop strategies for success while remaining compliant with applicable laws and regulations. Bradley also develops training strategies for management staff regarding legal implications and risk avoidance; as well as litigates and manages outside counsel on employment cases.

Join Celeste on May 3rd in Nashville where she will be speaking at the 23rd Annual Labor & Employment Forum.

REGISTER TODAY AT CLE.TBA.ORG
Adoption Law Forum

March 6 in Nashville, Tennessee Bar Center
Program: 12 – 3:15 p.m.
Credit: 2.5 General, 1 Dual

$130 Section Members
$155 TBA Members
$330 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Adoption Law, Family Law

This forum will feature speakers on a range of topics relevant to this program presented by the Tennessee Bar Association’s recently formed Adoption Law Section, focusing on changes to adoption law. Lunch will be included with registration, and the forum will be followed by a social hour.

Networking lunch provided.

Producer: Susan Kovac
Speaker: Douglas Dimond, Michael Jennings, Rachel Rieger, Helen Rodgers, Kevin Weaver, Jennifer Williams

Welcome to CLE for Tennessee.

This special section uses the icons below to indicate which amenities are included with featured CLE programs. The icons appear between the title and pricing information.

- Parking
- Premium Coffee
- Food
- Internet

TBA’s 1Click Series

The TBA’s 1Click series of CLE programs allows you to stay on top of practice developments with easy access to online programs. Look for sets of ethics programs and courses by practice area in our 1Click offerings.

Administrative Law Updates
3.5 General and 1 Dual (Ethics) Hours

Construction Law Updates
4.5 General and 1 Dual (Ethics) Hours

Corporate Counsel Updates
3.5 General and 1.5 Dual (Ethics) Hours

Creditors Practice Updates
2 General Hours

Criminal Law Updates
3.75 General and 0.75 Dual (Ethics) Hours

Elder Law Basics
3 General Hours

Environmental Law Basics
2.75 General Hours

Estate Planning Advanced
3.75 General and 1 Dual (Ethics) Hours

General Practice Updates
4.75 General

Health Law Basics
4 General Hours

Juvenile Law Updates
3 General Hours

LGBT Law Updates
2 General and 1 Dual (Ethics) Hours

Law Tech Updates
5.25 Dual (Ethics) Hours

Local Government Law
2.75 General Hours

Real Estate Advanced
3 General Hours

Running an Ethical Campaign
2.75 Dual (Ethics) Hours

Special Needs Trusts Package
2 General and 1 Dual (Ethics) Hours

Tax Law
3.5 General and 1 Dual (Ethics) Hours

Tort and Appellate
2.75 General and 1 Dual (Ethics) Hour

Transactional Practice
5.25 General Hours
Tort, Insurance & Appellate Practice Forum

March 21 in Nashville, AT&T Building
Program: 9 a.m. – 4 p.m.
Credit: 4 General, 2 Dual

For attorneys interested in: Torts, Insurance, Appellate Practice
This year join tort, insurance practice and appellate lawyers from across the state to learn about the topics that will impact your practice. You will hear about the latest updates in appellate law and the newest developments in tort and insurance practice.

Networking lunch provided.
Producer: Bobby Leatherman Jr.
Speakers: Kyle Wilson, Parke Morris, Joan Heminway, Robert Parsley

$265 Section Members
$290 TBA Members
$465 Nonmembers (includes TBA Complete Membership)

Corporate Counsel Forum

April 5 in Nashville, Tennessee Bar Center
Program: 9 a.m. – 4 p.m.
Credit: 5 General, 1 Dual

For attorneys interested in: Corporate Law, Ethics
This forum will feature speakers on a range of topics relevant to in-house counsel, including the latest in law department technology, dealing with immigration policies and managing a dual legal and business role.

Networking lunch provided.
Producer: Alicia Oliver
Speakers: Alicia Oliver, Norma Shirk, Andy Norwood, Paul Kruse, Jim Cartiglia, Vin Doung, Nora Katz, Sherie Edwards

$265 Section Members
$290 TBA Members
$465 Nonmembers (includes TBA Complete Membership)

REGISTER TODAY AT CLE.TBA.ORG
The 16th Annual Tennessee Bar Association Bankruptcy Forum will take place April 5-7, 2019, at the Hilton Garden Inn in Gatlinburg, Tennessee. Please make plans now to join us in this wonderful and relaxing setting for an informative, unique retreat that is applicable to a wide variety of bankruptcy attorneys. Ten hours of CLE credit are available for this program, including three hours of ethics.

This high-quality program will begin on Friday afternoon with two CLE sessions. First, there will be a presentation highlighting bankruptcy case law updates. The second session will feature an experienced panel of practitioners who will discuss important differences in bankruptcy practice across the three Grand Divisions of the state. Included in the cost of the program is a Friday evening dinner and networking reception. Attendees are welcome to bring guests to the reception for an additional $75 per guest.

On Saturday, attendees will be organized into small groups with a discussion leader drawn from a faculty of prominent bankruptcy judges. These small group discussions will focus on case problems that bring into focus recent developments in the law and real world problems that bankruptcy practitioners face. The judges will encourage the participants to analyze, discuss and argue different approaches to the case studies. There will be an optional group hike planned for Saturday afternoon.

Networking lunch provided.

Producer: Laura Ketcham
Speakers: Laura Ketcham, Lawrence Ahern III, Erika Barnes, the Hon. Suzanne Bauknight, the Hon. Paul Bonapfel, Joel Giddens, Gregory Logue, Michael McCormick, John Newton, the Hon. Shelley Rucker, the Hon. Charles Walker

Hilton Garden Inn, Gatlinburg
Credit: 7 General, 3 Dual

$495 Section Members
$525 TBA Members
$700 Nonmembers
(includes TBA Complete Membership)
Local Government Forum

April 11
Tennessee Bar Center
Program: 8 a.m. – 4:30 p.m.
Credit: 5 General, 1 Dual

$265 Section Members
$290 TBA Members
$465 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Government, Employment Law, Ethics

Government law is an ever-changing practice area with a unique blend of constitutional, statutory and case laws. This program will address intangibles of the practice area, along with topics such as ABC laws, government employment law, legal ethics in a government setting and more. A networking event will follow the program.

Networking lunch provided.

Speaker & Producer: Charlotte Knight Griffin
Speaker: Stephanie Coleman

Disability Law Forum

April 12 in Nashville,
Tennessee Bar Center
Program: 9 a.m. – 3 p.m.
Credit: 4 Gen, 1 Dual

$245 Section Members
$270 TBA Members
$445 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Disability Law, Ethics

The TBA Disability Law Section is offering a stacked program with a diverse lineup of speakers and topics, including Kim Joseph of the Tennessee Disability Determination Services. She is presenting a session focused on effective representation at DDS and will provide attendees with a much-needed Q&A period to ask those challenging questions. Additionally, the section’s chair Chris George of George & George will cover an hour of ethics, including how to handle ethical dilemmas and more. The day will end with Administrative Law Judge Robert Martin from the Office of Disability Adjudication and Review who will share his unique perspective as a former private attorney and current judge.

Networking lunch provided.

Producer: Chris George
Speakers: Christopher George, John Dreiser, Kimberly Joseph, the Hon. Robert Martin
Litigation Forum

April 18 in Nashville, Tennessee Bar Center
Program: 8:30 a.m. – 9 a.m.
Credit: 4 Gen, 1 Dual

$225 Section Members
$245 TBA Members
$420 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Litigation, Ethics
Mark your calendars now! Make plans to join us for the 2019 Litigation Forum! This year’s forum will include a Magistrate Judges panel, and session on social media in client intake, and review of the Business Court and much more.

Networking lunch provided.
Producer: Mary Taylor Gallagher

Immigration Forum

April 25 in Nashville, Tennessee Bar Center
Program: 8:30 a.m. – 9 a.m.
Credit: 5 Gen

$225 Section Members
$245 TBA Members
$420 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Immigration
Mark your calendars now! Make plans to join us for the 2019 Immigration Law Forum! This year's forum will feature representatives from several government agencies including USCIS, ICE, Department of Labor Wage Hour Audit, and Department of Labor H2B/H2A Units and many more.

Networking lunch provided.
Producer: Terrence Olsen
Speakers: Daniel Andrade, Catherine Chargualaf, Brandon Josephsen, Lance Butler, Randy Warren
Dispute Resolution Forum

April 26 in Nashville, Tennessee Bar Center
Program: 9:30 a.m. – 4:30 p.m.
Credit: 2.75 Gen, 3.75 Dual

$290 Section Members
$315 TBA Members
$490 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Dispute Resolution, Ethics, CME

The Dispute Resolution Annual Forum offers attendees a stacked program featuring accomplished professionals from the ADR vocation. Attendees will receive an update to arbitration and mediation case law, explore the possibilities of online dispute resolution, delve into ethical issues that often arise for advocates and mediators and much more.

Networking lunch provided.

Speakers: Stephen Shields, Robert Arrington, Larry Bridgesmith, Frank Cantrell, Cindy Ettingoff, Debra Fulton, Sandra Garrett, Steven Groom, Rachael Henry, Janice Holder, Joe Manuel, Robin Miller, Mary O’Mara, Patricia Vital, Jocelyn Wurzburg

23rd Annual Labor & Employment Forum

May 3 in Nashville, Tennessee Bar Center
Program: 8:30 a.m. – 3:45 p.m.
Credit: 5.5 Gen, 1 Dual

$290 Section Members
$315 TBA Members
$490 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Labor & Employment, Ethics

The TBA’s Labor and Employment Forum provides timely, specialized and practical information on a range of labor and employment law topics. The CLE sessions will focus on mediation and employment cases, accommodations in the modern era, case law updates, a judicial panel and a unique, interactive ethics session focused on attorney well-being and the power of laughter.

Networking lunch provided.

Speakers: Donna Mikel, John Bode, Celeste Bradley, Stanley Graham, Stephen Liston, Jon McCalla, Travis McDonough, Danny Norwood, Debra Norwood, Michael Russell
Business Law Forum

May 9 in Nashville, Tennessee Bar Center
Program: 9:30 a.m. – 4 p.m.
Credit: 5 Gen, 1 Dual

$265 Section Members
$290 TBA Members
$465 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Business Law
Originating in Wyoming in 1977 and spreading thereafter to all 50 states, including to Tennessee in 1994, the limited liability company (LLC) has become the most popular form of entity for newly created businesses in the United States. Particularly since the IRS’s adoption of “check the box” regulations 20 years ago, entrepreneurs are drawn to the LLC for its flexibility. State LLC Acts, including Tennessee’s, contain primarily default provisions and very few regulatory provisions. This makes the private ordering of the LLC through the drafting of the operating agreement absolutely essential to defining the rights and responsibilities of the LLC’s members.

Networking lunch provided.
Speakers: Matthew Lyon

Intellectual Property Blast

May 10 in Nashville, Tennessee Bar Center
Program: 8:30 a.m. – 4 p.m.
Credit: TBD

$40 Hour: Section Members
$50 Hour: Members
$60 Hour: Nonmembers

For attorneys interested in: Intellectual Property Law
Mark your calendars for this event! More information on topics and schedule to follow. The 2019 Intellectual Property forum will include presentations on patent, trademark and copyright issues. Registration is open all day, allowing you to come and go for the topics you are interested in. Take as many or as few hours as you need. Pay only for the hours you attend.

Networking lunch provided.
Speakers: Hemant Gupta, Autumn Boyd, Edward Lanquist Jr., Seth Ogden
HONORING COMMITMENT
CELEBRATING SERVICE

CORPORATE COUNSEL
PRO BONO INITIATIVE GALA

The Pinnacle at Symphony Place
Downtown Nashville
Saturday, April 6, 2019, 6 p.m.

Featured Speaker – Eve Runyon, Pro Bono Institute

Sponsorship opportunities and tickets available now at www.tba.org.

CCPBI Legal Department Pro Bono Award honorees from Eastman and Legal Aid of East Tennessee with members of the Tennessee Supreme Court at the 2018 Gala.
Apparently, there is research that backs up this hunch, at least in part. And very thoughtful social scientists have provided framework for evaluating whether an apology will be effective.

I do not mean to discount the value of real remorse. Alan Ellis, one of the national gurus of sentencing, has interviewed distinguished federal judges all over the country about what is important at sentencing. In summarizing the interviews, Ellis emphasizes the importance of allocution and apology, but he notes the judges value sincerity more than anything. Judges often express the opinion that they can judge the sincerity of an apology at allocution.

A recent episode of the “Freakonomics Radio” podcast provides a fascinating perspective on the issues we face in sentencing and examines the social science and economics of apologies. The episode is called “How to Optimize Your Apology” and fulfills its promise of examining “the front lines of apology science.” I highly recommend listening to the entire episode because it contains examples of effective and ineffective apologies. The podcast includes the work of John List, an economist at the University of Chicago, who had the opportunity to run an apology experiment in the field for Uber (a company that has had plenty of opportunities to apologize). The story about how this came about is fascinating. Economist List found himself late for a speaking engagement because after 25 minutes of a 27-minute Uber ride, the confused driver passed the starting point again. List also just happened to be the chief economist for Uber and saw the opportunity to do a large-scale field experiment on the economics and effectiveness of apologies.

The researchers labeled several different kinds of apologies that are worth thinking about for lawyers:

- A status apology, which is simply an admission of incompetence with a request for forgiveness;
- A commitment apology, which contains an admission with a commitment to do better;
- An “offender-driven” apology, which stresses the effect on the offender and an explanation of the motivation and circumstances of the offender;
- An apology that costs the offender by including payment or restitution.

The Uber experiment concluded there was no significant good will produced by a simple apology. The apology had to have a cost. With Uber, that effective cost was a coupon. They also cautioned against over-apologizing and found that apologies could backfire, especially a commitment apology with an unfulfilled commitment.

A Rutgers sociologist interviewed on the podcast, Karen Cerulo, also categorized apologies using several factors, including whether the apology focuses on the offender, the victim or the context. She found that the most successful apologies start out by focusing on the victim, not the apologizer. One of the best points from the podcast is that an apology should focus very little on yourself or justifications. It
should end with a sincere expression of remorse and if possible be accompanied by some form of restitution. The successful formula:

1. Identify the victim and harm you caused.
2. Express remorse.
3. Make restitution.

Cerulo was most surprised with how few people make an effective apology. This supports my intuitive feeling that it is often better not to say anything. Talking about how difficult this situation has been on yourself and your family is likely harmful rather than helpful.

Cerulo points out that the least effective apology is the “offender-driven” apology in which the offender concentrates on themselves, context and motivation. This is too close to an excuse. She further warns against the non-apology often given by celebrities claiming they are sorry for the way they have treated others. An effective apology must be real. It has to show insight about the harm one has caused, and it is best to show tangible cost — such as extraordinary efforts to provide restitution. Otherwise, as in many areas of criminal law, it is best to keep one’s mouth shut.

An apology must be real. It has to show insight about the harm one has caused, and it is best to show tangible cost — such as extraordinary efforts to provide restitution. Otherwise, as in many areas of criminal law, it is best to keep one’s mouth shut.

WADE DAVIDES is the managing partner at Ritchie, Dillard, Davies & Johnson PC in Knoxville. He is a 1993 graduate of the University of Tennessee College of Law. The majority of his practice has always been devoted to criminal defense. Davies is a member of the Tennessee Bar Journal Editorial Board.

History’s Verdict continued from page 26

Notes
5. The academic work that lead to the Freakonomics interview can be found at Cerulo, Karen and Janet M. Ruane, “Apologies of the Rich and Famous: Social, Cultural and Cognitive Explanations of Why We Care and Why We Forgive,” Social Psychology Quarterly, 2014; 77: 2: 123-149.

Notes
3. See Broer at 23.
7. See Folmsbee at 128.
8. Miller at 190.
9. See Folmsbee at 128.
11. Masterson at 312.
12. Id. at 312.
13. Id. at 313.
14. Id. at 316.
15. See Id. at 317, Finger at 209; Broer at 24.
17. See Id. at 315-16.
18. Id. at 319.
19. See Id. at 320, Broer at 25.
20. See Id. at 312-22.
21. See Id. at 322-23; Broer at 25.
23. See Folmsbee at 130.
24. See Broer at 25.
26. Id. at 700.
27. Corlew at 131.
29. See Broer at 25; Folmsbee at 130-31.
30. Ramsey at 701.
31. See Corlew at 132; Broer at 27.
My Own Words

Many of you know that Justice Ruth Bader Ginsburg has become a bit of a celebrity. Her sharp wit and incredibly bright brain draw followers to her like moths to flame whether she’s sitting at the opera in Santa Fe or performing her duties on the United States Supreme Court. Given who she is and what her life experience has been, it makes sense that her book, *My Own Words*, which she wrote with the assistance of Mary Hartnett and Wendy W. Williams, would draw attention, interest, praise and appreciation.

Orderly as always, Justice Ginsburg has organized her book into five parts ranging from her early years, in which she shares some of her writings from as early as elementary school, through her later years while on the bench, about which she includes remarks regarding her relationship with Justice Antonin Scalia (whom she described as a good person with “some very bad ideas”) and the comic Scalia/Ginsburg one-act opera written by composer and librettist Derrick Wang.

But she has also taken time to focus on others — particularly women — who have made impressions on her and society — women such as Gloria Steinem (who later referred to Justice Ginsburg as a “superhero”), Sandra Day O’Connor (the first female Supreme Court Justice who taught Justice Ginsburg that she should “waste no time on anger, regret or resentment, just get the job done”), the five Jewish justices who preceded Justice Ginsburg to the Supreme Court, and Belva Lockwood (the first woman to be allowed admission to the Supreme Court bar). Each vignette is a worthy read and will give you a rich, appreciative glimpse into Justice Ginsburg’s world and world view.

You will find of particular interest the writings and speeches she has crafted during her time on the Supreme Court, including topics such as how the court actually and technically functions, as well as how she and her late husband, Martin Ginsburg, to whom she was notoriously devoted, worked together on a gender discrimination suit that she found so impactful that it ultimately molded her focus and guided her legal career. Also of interest are her eloquent remarks made both on the day that she was nominated to the Supreme Court (by President Bill Clinton) and on the day of her Senate confirmation hearings.

But the strength of the book, in this author’s opinion, comes from the glimpse given to the reader of who Justice Ginsburg really is — a calm ship in a chaotic, highly-political sea of a city, a woman of extreme patience, and an incredibly good legal strategist with a distinguished career full of legal achievement. Regardless of legal blows thrown or the swirlings of complex legal controversy, Justice Ginsburg has weathered it all using thoughtfulness, intellect, strategy and patience as the four corners of her compass.

Whether you’re a devotee or not, you will enjoy learning more about this bright, one-of-a-kind individual.

**SUZANNE LANDERS** is the senior lawyer and managing partner in The Landers Firm PLC in Memphis and a member of the *Tennessee Bar Journal* Editorial Board.
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able to handle work-life stress and thinking creatively." Study after study says these nonwork, fun activities can aid work performance, improve physical and mental health, reduce stress, improve focus and increase happiness.

We recently asked on Twitter what lawyers are doing for fun and stress-relief. Here are some of the responses:

Ben Rose displays his award-winning heirloom tomatoes, winners at a recent Williamson County Fair.

**Ben Rose** of RoseArters PLLC in Brentwood has been growing heirloom tomatoes for about five years. He says he got into gardening because he loves seeing what can grow with just a few ingredients and a little effort.

“I used to think all tomatoes were the same,” Rose, who has a statewide civil and criminal practice, says. “I was wrong. My plants are shipped live from California and are delightful. Plus, gardening is an excellent barometer for litigation — almost like a scheduling order. For example, I can grow 100 ears of corn in the time it takes to complete depositions in most cases! I have actually used that one before.”

“Swimming lets me get into my thoughts and wander,” **Laura Woods** says. “I often come up with ideas for work doing that. I love swimming because you must unplug (except for my waterproof iPod that plays my favorite podcasts while I log the laps). There is no answering this one email, or taking this quick call, or anything like that. It’s pure solitude and escapism.”

But swimming is not her only outlet. She’s also been playing the piano for 39 years. Woods, who is senior counsel at Eastman in Kingsport, says the piano forces her “to shut down and be captive in the moment. I’ve found that when my mind feels cluttered or I’m running ragged, and no one is getting my best, a few pieces on the keys do wonders for my soul. There is no multitasking when playing; it’s you, the music and the keys. It engulfs you.”

When she was in school, she would go into the music building on campus and play a few songs from time to time: “Not having a piano where I lived during those years really helped me understand how much it is part of my well-being.”

**STEVE GILLY**, of Stephen L. Gilly and Associates in Kingsport, writes, produces and co-hosts two podcasts about Appalachia, “bringing the folklore of Appalachia to the world, one tale at a time.” He worked in radio before going to law school and says he enjoys podcasting because it combines his interest in audio production with Appalachian history and culture.

“Not only does it provide a creative outlet,” he says, “it’s a great talking point with clients when I show them a recording studio in the back of my office!”

Check out Steve Gilly’s podcasts at @storyapalachia and @myapalachia.
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