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Spring Forward

As we transition to spring and enter the home stretch of my year as president, I am delighted to highlight two exciting new programs that we will be launching at the Tennessee Bar Association.

Reporters Workshop

The Tennessee Association of Broadcasters and the Tennessee Bar Association along with its Communications Law Section are hosting what we hope to be the first of many Reporters Workshops on May 17 and 18 in Nashville. The workshop is inspired in part by a similar program The Florida Bar has been hosting for more than 25 years. Paul McAdoo, who is producing our Reporters Workshop, co-chaired the Florida program in 2009 and approached me with the idea last spring.

Journalists, regardless of medium, are invited to apply for the workshop. Twelve journalists will be selected for the program.

The participants will spend two days learning about a variety of topics to help them in their crucial work for our democracy. Three keynote panels are planned for the workshop: Access to Public Records and Meetings, An Inside Look at Investigative Journalism, and Covering the Courts: a View from the Bench. Other topics that will be discussed are: Defamation and Privacy Law, The Reporter’s Privilege, Access to Courts, Political Broadcasting Law, and Lawyers and the Media.

Confirmed speakers for the workshop include Jamie Satterfield, Knoxville News Sentinel; Jeremy Finley, WSMV in Nashville; Judge Stephen W. Sword, Knoxville Criminal Court; Marc Perrusquia, director of the University of Memphis’s Institute for Public Service Reporting; Deborah Fisher, executive director of the Tennessee Coalition for Open Government, and Lee Pope, Tennessee Office of Open Records counsel, in addition to the members of the TBA Communications Law Section’s Executive Council.

Practice Management Tools for Solo and Small Firm Lawyers

Research performed by our Evolving Legal Markets (ELM) Committee revealed that lawyers across our state are not prepared for the modernization of law practice and not learning skills related to technology for project and practice management. This still unnamed program is in its preliminary stages, but we are planning a training course similar in format to our wildly successful TBA Leadership Law (TBALL) program that would be specifically geared toward our solo practitioners and small firm lawyers.

This type of educational training is being implemented across various other professional fields besides law practice. For example, Nashville-based Rainmaker Companies offers an in-depth training program for accountants that incorporates technology with coaching, work assignments, and trainings on business development. The Tennessee Bar Association has an opportunity to be a leader in this area for the legal profession.

Our program will teach the participants about practice and project management, business development and marketing, infused with new technology and legal innovations that could help their practices grow and run more efficiently. The goal of the program is for participants to benefit organizationally and financially from the use of modern technologies. The initial plan is to run the program for four months with one session being held each month. Stay tuned for more details as the program is further developed.

Pannu’s Pairings – Champagne

While “champagne” is a term often used...
to describe all sparkling wine, to be true Champagne, the wine must come from the small region of Champagne, France. The Champagne region is located in the northeast of France and can be reached via high-speed train from Paris in approximately 40 minutes.

The most popular grape varietals for Champagne are Chardonnay, Pinot Noir and Pinot Meunier. Generally speaking, these grapes are blended together in ratios that depend on the “house style” of the particular Champagne house.

The distinction between a Champagne house and Grower Champagne is an important concept in this region. Champagne houses tend to be large-scale operations focused on consistency by blending grapes, blending vintages, and blending vineyards in an effort to create the same taste or “house style” for every bottle produced, year after year. You may recognize popular Champagne houses such as Veuve Clicquot, Taittinger, Moët & Chandon and Ruinart. Grower Champagne producers, on the other hand, both grow grapes and produce wine from those grapes with a focus on more single-varietal, single-vintage and single-vineyard Champagne. Grower Champagne is rare and difficult to find. Two Grower Champagne producers that you might be able to find in the United States are Geoffroy and Egly-Ouriet.

Some terms to look for on Champagne labels are blanc de blancs and blanc de noirs. Blanc de blancs generally means the Champagne was made from Chardonnay grapes, a white grape varietal. Blanc de noirs generally means the Champagne was made from the red grapes Pinot Noir and/or Pinot Meunier. For blanc de noirs, the grape skins are removed from the juice after the grapes are pressed so that the red pigment from those grape skins do not impart color to the Champagne.

Another important concept in Champagne is vintage versus non-vintage (NV) Champagne. Champagne is unique in that it allows the producer to blend various vintages (years) together in an effort to achieve a “house style” that can be replicated year after year. You will not see the year or “vintage” listed on the bottle. Vintage Champagne, on the other hand, is exactly what you expect: the Champagne was produced entirely from the harvest of the same year or the same “vintage.” You will see the year listed on the bottle, such as Dom Perignon 2009, for example.

Wine Pairings: Champagne pairs very well with appetizers such as oysters, shrimp, fried calamari and smoked salmon. I also love pairing Champagne with potato chips and buttered popcorn. Try it! Champagne pairs well with creamy cheeses such as brie. I also think Champagne deserves a place at the dinner table with your main courses. Try pairing Champagne with smoked turkey or roast ham at your next holiday meal.

The scholarly and interesting historical articles by Russell Fowler are a highlight of each issue of the Journal. It is good for the profession to know something about the context in which they live and work.

– Judge Robert Lanier, Memphis

Editor’s note: Russell Fowler writes the Journal’s standing column, “History’s Verdict,” and other historical features, including a feature in this issue.
YOU NEED TO KNOW
FOR THE RECORD

YOUR PRACTICE
Demand to Increase for Attorneys Practicing Elder Law

As the U.S. population continues to get older, more attorneys are entering the field of elder law or expanding their practices to provide elder law services, the ABA Journal reports.

The U.S. Census Bureau projects that by 2035, for the first time in American history, there will be more adults age 65 and older than children.

"As the American population grays, the need for attorneys who understand the unique aspects of planning for the elderly and people with special needs will grow," says Michael J. Amoruso, president of the National Academy of Elder Law Attorneys.

Medicare and Medicaid issues, long-term care planning, age discrimination disputes, veterans benefits, guardianship issues, inheritance disputes and elder abuse, among other categories, are areas that will need significant legal attention in the coming decades.

Blue Book Honors 19th Amendment

The 2019-2020 edition of the Tennessee Blue Book will be dedicated to the 100th anniversary of the ratification of the 19th Amendment granting women the right to vote, Tennessee Secretary of State Tre Hargett has announced.

Initially introduced to Congress in 1878, the 19th Amendment was not submitted to the states for ratification until 1919 and was ratified by three-fourths of the states a year later. Tennessee ratification on Aug. 18, 1920, was the last state needed to amend the Constitution.

Published by the Secretary of State’s office once every two years, the Tennessee Blue Book serves as a state and government manual for Tennessee. It includes information on Tennessee state history and government, biographies of elected and appointed state officials, elections results, census data and more.

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LAW SCHOOLS
ABA Grants Full Approval to LMU Duncan School of Law
The American Bar Association in March granted full approval to Lincoln Memorial University Duncan School of Law. The ABA granted LMU Law provisional approval in 2014. “Over the last 10 years, our school has managed to hit a few potholes along the path to full approval by the American Bar Association, so success is all the sweeter,” said Gary Wade, vice president and dean of the school. Last year the school failed to meet ABA accreditation standards, but was later able to resume its “provisional approval” status.

UT Law, UT Martin Partner for Law Degree Program
The University of Tennessee College of Law has launched a partnership with the University of Tennessee at Martin to expand the 3+3 law degree program. Students will complete three years of general education and upper-division courses before they take the law school admissions test in their junior year. Provided they are successful and meet law school admission standards, students will begin their legal studies during their senior year of undergraduate school and complete both undergraduate and juris doctor degrees in six years. Students who participate in the 3+3 program at UT Martin will still earn an undergraduate degree from that institution.

Clothes Closet to Help Students Transition to the Profession
Lincoln Memorial University Duncan School of Law recently announced the opening of the school’s “Career Closet.” Suits, shoes, and briefcases, all donated by the local legal community, are now available to law students free of charge. This is an effort to address challenges faced by many of the school’s first-generation students. For more information, contact Career Service Director Allison Starnes-Anglea.

CRIMINAL LAW
Tennessee Innocence Project to Focus on Wrongful Convictions
A new nonprofit with offices in Nashville will focus on litigating wrongful convictions and obtaining exonerations, as well as training law students and attorneys about how to work such cases, the Nashville Scene reported. The Tennessee Innocence Project (TIP) launched in March and is spearheaded by Nashville attorney Jessica Van Dyke. It is not officially affiliated with the Innocence Network, but Van Dyke said staff from the national program have been involved in helping the TIP get up and running.

JUDICIARY
ABA Issues Guidance on Judges Performing Same-Sex Marriages
The American Bar Association Standing Committee on Ethics and Professional Responsibility released on Valentine’s Day a formal opinion giving judges guidance related to their options for performing same-sex marriages under the Model Code of Judicial Conduct. The formal opinion differentiates between the obligations of a judge whose performance of marriages is either mandatory or optional.

In either case, Formal Opinion 485 said the Model Code of Judicial Conduct is violated “by refusing to perform marriages for same-sex couples while agreeing to perform marriages of opposite-sex couples.” If a judge is not obligated to perform marriages, the judge “may decline to perform all marriages for members of the public” while maintaining that prerogative for “family and friends,” the opinion said. Still, the judge must be consistent and not discriminate based on sexual preference in performing those specific marriages.

YOUR TBA
Community Leaders Address TBALL Class
The 2019 Tennessee Bar Association Leadership Law (TBALL) class met recently for its “Issues in Community Leadership” session in Memphis. Shelby County Mayor Lee Harris was a featured speaker to the class’s meeting at Burch Porter Johnson. The class has also heard from Casey Shannon and Tommy Pacello, Monica Wharton, Judge Tim Dwyer, Jaxon Wexler and W. J. Michael Cody. The class also took a guided tour of the National Civil Rights Museum.
Bradley Arant Boult Cummings attorney Racquel Martin has been selected as a fellow to the 2019 National Employment Law Council (NELC) Academy. Founded in 1995, NELC is a non-profit organization charged with enriching minority bar members who represent management in the field of labor and employment law. Martin works in the firm’s Nashville office as a member of the Labor and Employment Practice Group.

Former Butler Snow partner Beth Sims has joined FB Financial as the new general counsel. She replaces longtime executive Tara Lay, who has joined the Nashville office of Burr & Forman and will practice in the Intellectual Property Group. Lay previously worked remotely from Nashville for Carolinas-based McNair Law Firm. She was brought onboard as part of Burr & Forman’s acquisition of that firm. Lay is a registered U.S. patent attorney and practices in the areas of patents, copyright and trademarks.

North Carolina Supreme Court Senior Associate Justice Paul Newby, left, celebrates with newly sworn-in Chief Justice Cheri Beasley, and Associate Justice Robin Hudson. Beasley, a University of Tennessee College of Law graduate, is North Carolina’s first African-American woman to serve as chief justice. Photo courtesy North Carolina Judicial Branch.

Will Martin, who has retired. Sims joined Butler Snow in 2012 after working for Miller & Martin. She rose to head Butler Snow’s securities team where she focused on securities laws, banking and mergers and acquisitions. Before attending law school, she worked as the access to justice coordinator at the Tennessee Bar Association.

Tara Lay has joined the Nashville office of Burr & Forman and will practice in the Intellectual Property Group. Lay previously worked remotely from Nashville for Carolinas-based McNair Law Firm. She was brought onboard as part of Burr & Forman’s acquisition of that firm. Lay is a registered U.S. patent attorney and practices in the areas of patents, copyright and trademarks.

Lewis Thomason has named four new shareholders. Brian S. Faughnan, in the Memphis office, focuses his practice on employment litigation and appellate litigation. J. Wallace Irvin, in the Nashville office, focuses his practice on construction law with an emphasis on representing architects and engineers against professional liability allegations. Whitney Henry Kimerling, in the Nashville office, regularly represents businesses and individuals in a variety of litigation-related practice areas as well as representing financial institutions in loan transactions and counseling small business clients.

Christopher B. Sullivan, in the Memphis office, handles civil and criminal litigation, including medical malpractice defense, health care liability and fraud, transportation and personal injury.

FordHarrison recently named two attorneys in its Memphis office as partners in the firm. Frank L. Day Jr. devotes his practice to helping clients accomplish business objectives through employment law litigation and counseling. Russell W. Jackson represents management in employment-related matters. He also works closely with employers to ensure compliance with complex laws governing the employment relationship.

Amber Griffin Shaw has joined the law firm of Harris Shelton as a member and will manage the firm’s new office in Tipton County. Shaw, who has made Covington her home for the last nine years, previously was a member of the Gordon Shaw Law Group where she practiced with J. Houston Gordon. The move comes as Gordon begins winding down his practice for retirement. Shaw will continue to focus on catastrophic personal injury, fraud, class action, products liability and business litigation cases. The new Harris Shelton office is located at 114 West Liberty Ave., Ste. 202, Covington 38019 and can be reached at 901-476-7100.

Memphis Mayor Jim Strickland presented the city’s 2019 Luminary Awards to 10 women who have made an impact on the growth and progress of the city. Among the group is retired Memphis lawyer and current Rule 31 Mediator Jocelyn Wurzburg, who was recognized for her longtime civil rights activism and legal work.

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SUCCESS! continued from page 7

The Nashville law firm of Gullett Sanford Robinson & Martin has added William C. Scales Jr. to its office as an associate attorney. He will practice in the firm’s Litigation and Employment Law sections focusing on commercial contract disputes, business litigation and non-compete litigation. Prior to joining GSRM Law, Scales was with another Nashville firm and a partner at Whitfield & Eddy Law in Des Moines, Iowa.

Gov. Bill Lee has announced new members of the Governor’s Council for Judicial Appointments, as well as the appointment of Adams and Reese attorney Gif Thornton as the council’s chair. The council is responsible for recommending candidates to the governor to fill vacancies for Tennessee’s appellate courts. Other TBA members serving on the council are Sarah K. Campbell with the Office of the Attorney General, David Golden with Eastman Chemical Company, Rosemarie Hill with Chambliss Bahner & Stophel, Michelle Long with the Tennessee Department of Health and Cheryl Rice with Egerton, McAfee, Armistead & Davis.

Dwight E. Tarwater, former general counsel to Gov. Bill Haslam, has rejoined his former law firm in Knoxville. With his return, the firm also has changed its name from Paine Bickers to Paine, Tarwater and Bickers. Tarwater was one of the founding members of the firm when it was established in 1987. In 2014, he joined the Haslam administration and served as general counsel through the former governor’s final term. Back in private practice, he will focus on trial and appellate defense work in the fields of mass tort, product liability, pharmaceutical and commercial law.

Legal Aid of East Tennessee has named three new members to its board of directors. Ashley E. Bentley is an attorney with Kizer & Black Attorneys in Maryville where she focuses on domestic relations and family law, adoptions, juvenile issues and criminal defense. Katherine Priester is clerk and master for Sullivan County, a post she has held since 2013. Prior to her appointment, she practiced law as a sole practitioner in Kingsport for more than six years. Amy Kathleen Skelton practices law with her father at the Law Office of Mark A. Skelton in Rogersville. She focuses on family law, estate planning and probate. She also serves as municipal judge for Surgoinsville and Church Hill.

Bass, Berry & Sims has hired William “Trey” L. Moore III as senior public policy counsel. He will represent clients before the Tennessee General Assembly and the executive branch. He also will advise companies, organizations and associations on state legislative and regulatory issues. Prior to joining the firm, Moore served as vice president of government relations at Acadia Healthcare and as a lobbyist with BlueCross BlueShield of Tennessee.

Harrison D. McVier III, CEO of Memphis Area Legal Services, has retired after leading the organization for more than 20 years. During his tenure, MALS’ budget nearly doubled, staff grew to 50, the firm created new partnerships with Methodist Le Bonheur Children’s Hospital and the University of Memphis Cecil C. Humphreys School of Law, and new programs addressing the needs of homeless veterans and seniors were launched. At the Tennessee Bar Association, McVier has served on the Access to Justice Committee and as a member of the House of Delegates.

Patrick Hillard has joined the Memphis law firm of Burch, Porter & Johnson as an associate. He will focus on commercial and business litigation. Hillard recently graduated from the University of Memphis Cecil C. Humphreys School of Law where he was a Hefr Presidential Scholar.

Batson Nolan, with offices in Clarksville and Springfield, has hired Kiel Kovalcik as a new associate. He will focus on litigation and insurance defense work. Kovalcik graduated from Belmont University College of Law in 2018. Prior to joining the firm, he was a law clerk for the 21st Judicial District in Williamson County. He also served in the U.S. Marine Corps where he was an infantry rifleman and completed a tour to Afghanistan.

Mozianio “Trey” S. Reliford has joined Neal & Harwell as an associate. He has experience in complex white collar and regulatory defense, securities, antitrust, employment and intellectual property law. Reliford previously was an associate at Paul, Weiss, Rifkind, Wharton & Garrison in New York City, where he represented financial and technology companies in commercial and securities litigation. He also served as a law clerk to Tennessee Supreme Court Chief Justice Jeffrey S. Bivins and as a legal intern in the Nashville District Attorney’s Office. He earned his law degree from Stanford Law School in 2015.

Butler Snow lawyer Benjamin A. Whitehouse has been named to Captive Review’s 2019 Ones to Watch list. He is one of seven industry professionals named to the annual list, which includes regulators, lawyers and insurers who have risen to prominence in their fields. Whitehouse is a member of Butler Snow’s business department and practices in the Regulatory and Government Relations Practice Group. He focuses on general insurance and captive insurance matters.

The first class of “Leadership Tennessee NEXT” has been announced. TBA members among the group are Jamie Ballinger with Baker Donelson in Knoxville and Tim Hughes with the Tennessee Alliance for Legal
The Knoxville office of Leitner, Williams, Dooley & Napolitan recently made two personnel announcements. Alyssa Y. Minge, who has been with the firm since 2009, was promoted to membership in the firm and was named assistant managing member of the Knoxville office. Minge maintains a broad insurance defense practice, practicing in the areas of professional liability, products liability, motor vehicle accident/transportation, workers’ compensation, premises liability and complex litigation.

The firm also has hired M. Patrick O’Neal, who will focus on general liability, professional liability, product liability and workers’ compensation. Originally from Mississippi, O’Neal graduated from the University of Mississippi School of Law in December 2015.

PASSAGES

Chattanooga litigation lawyer MICHAEL ALAN ANDERSON died Jan. 22 at the age of 58. He received his law degree from the Cumberland School of Law at Samford University in 1985 and began his legal career in Birmingham, Alabama. He later returned to Chattanooga, becoming a partner with Gearhiser, Peters & Horton. In 1995, he became a founding partner of Horton, Maddox & Anderson and worked there until 2010 when he joined Patrick, Beard, Schulman & Jacoway as a partner. The family requests that donations be made to the McCallie School, 500 Dodds Ave., Chattanooga 37404; Chattanooga Endeavors Inc., 2007 East 27th St., Chattanooga 37407; or McKamey Animal Center, 4500 North Access Rd., Chattanooga 37415.

Memphis lawyer and TBA Senior Counselor SAM F. COLE JR. died Feb. 22 at the age of 82. Following graduation from Rhodes College, Cole enlisted in the U.S. Air Force and was assigned to Holloman Air Force Base in New Mexico where he was in charge of laboratory testing for chimpanzees flying into space. After an honorable discharge, Cole returned to Memphis and obtained his law degree from Memphis State University (now the University of Memphis). He entered law practice with his father Sam F. Cole Sr. and practiced general civil law from the late 1960s until shortly before his death. In lieu of flowers, the family requests that donations be sent to Calvary Friends of Music, 102 N. 2nd St., Memphis 38103.

Sevier County lawyer HERBERT DENNIS JARVIS JR. died Feb. 6 at the age of 79. He graduated from the University of Tennessee College of Law in 1963 and began practicing law, representing State Farm and Tennessee Farmers Insurance for more than 40 years, and the City of Sevierville and Sevier County School Board for more than 30 years. He was a member of the American Board of Trial Advocates as well as the American, Tennessee and Knoxville Bar associations. He served in the 134th Air Refueling Group of the Air National Guard, attaining the rank of major and serving as a JAG officer. In lieu of flowers, donations may be made to the St. Jude’s Children’s Research Hospital, 501 St. Jude Place, Memphis 38105.

RUSSELL B. SUGARMON JR., a former Memphis judge, state senator and civil rights leader, died Feb. 18 after a long illness. He was 89. Sugarmon graduated from Rutgers University and Harvard Law School and spent two years in the military. Following his discharge, he returned to Memphis to begin his legal career. Sugarmon was a founding partner of Ratner, Sugarmon, Lucas and Willis, the first integrated law firm in the city and state. Sugarmon and his partners also were instrumental in filing the lawsuit that led to desegregation of Memphis city schools. In 1959, he became the first African-American to make a serious bid for city office when he ran unsuccessfully for public works commissioner. In 1966, he became the second African American since Reconstruction to be elected to the state legislature. He served there from 1967 to 1979. In 1976, Sugarmon was named a referee for Memphis Juvenile Court and served there until he was appointed to the general sessions court bench in 1987. He served on the bench until his retirement in 2006. Memorial donations may be sent to the local Alzheimer’s Association, 699 Oak Leaf Office Lane, Ste. 105, Memphis 38117.

ROBERT L. “BOB” WALTERS of Rockwood and Chattanooga died Jan. 29. He was 92 and a TBA Senior Counselor. Born in Iowa, Walters was a U.S. Army veteran who served in occupied Japan and later during the Korean War. After the war he attended the Drake University School of Law, graduating in 1955. His first job was with the Iowa Securities Department where he served as superintendent of securities. He later moved to New York City to work as an attorney in the civic affairs department of the New York Stock Exchange. Walters returned to Iowa to become vice president of securities law compliance with Provident National Assurance Company. When the company was sold to Provident Life Insurance Company, Walters moved the law department to Chattanooga. He became assistant general counsel and remained in that position until he retired in 1990. In lieu of flowers, memorials may be made to the First Christian Church of Rockwood, 328 W. Rockwood St., Rockwood 37854.

Vanderbilt University law professor and former athletic director, vice chancellor for student affairs and general counsel DAVID WILLIAMS II died Feb. 8 after suffering an aneurysm. He was 71. The son of a Tuskegee Airman and a Detroit public school teacher, Williams was the first black athletics director hired by an SEC school. He served in that position 16 years before stepping down on Jan. 31. He had planned to continue teaching at the law school and launching a new Sports, Law & Society Program, which would explore the impact of sports on social change. Williams earned his bachelors and masters in education degrees from Northern Michigan University. He then completed a joint Law and M.B.A. degree from the University of Detroit and a master of law in taxation from New York University. In lieu of flowers, the family requests donations be made to the Perry E. Wallace Memorial Fund, 102 N. 2nd St., Memphis 38103. In lieu of flowers, the family requests donations be sent to the Willard E. Wallace Jr. Scholarship Fund, Calvary Friends of Music, 102 N. 2nd St., Memphis 38103. In lieu of flowers, the family requests donations be sent to the Calvary Friends of Music, 102 N. 2nd St., Memphis 38103. In lieu of flowers, the family requests donations be sent to the Samaritan Health Services of Rockwood and Chattanooga, 328 W. Rockwood St., Rockwood 37854.

In lieu of flowers, the family requests that donations be sent to the Perry E. Wallace Memorial Fund, 102 N. 2nd St., Memphis 38103. In lieu of flowers, the family requests donations be sent to the First Christian Church of Rockwood, 328 W. Rockwood St., Rockwood 37854.
Jr. Basketball Scholarship at Vanderbilt. Williams often said his greatest accomplishment was reuniting Vanderbilt with Wallace, the SEC’s first black basketball player, after years of friction. Donations may be mailed to Vanderbilt University Gift and Donor Services, PMB 407727, 2301 Vanderbilt Place, Nashville 37240 or online at vu.edu/wallacescholarship.

Memphis attorney and TBA Senior Counselor GEORGE ARTHUR WILLIAMS died Feb. 2 at Morning Pointe Assisted Living Center in Brentwood. He was 95. Williams served in the U.S. Army Air Corp during World War II before enrolling at the Memphis State University-Southern Law University. He passed the bar in 1949 and was licensed in 1950. With partner Jack Gillespie, they developed a successful insurance agency, Executive Underwriters, which operated for several decades in Memphis and Denver. Donations may be made in his honor to the Alzheimer’s Association-TN Mid-South Chapter, 225 N. Michigan Ave., Floor 17, Chicago, Illinois 60601 or online at http://act.alz.org/goto/georgewilliams.

Johnson City lawyer HARRY CURTIS WILLIAMS died on Dec. 19, 2018, at the age of 80. He was a Bristol native and had been a resident of Johnson City since 1973. After graduating from high school, Williams joined the U.S. Air Force, where he served for six years. He later graduated from the University of Tennessee College of Law and moved to Johnson City where he spent his career practicing both corporate and private law. Memorial contributions may be made to Boy Scouts of America Troop #37 c/o Brad Johnson, Munsey Memorial United Methodist Church, 201 S. Roan St., Johnson City 37601.

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Stacey Shrader Joslin
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REINSTATED
Williamson County lawyer Emily Pouzar Jenkins was reinstated to the practice of law effective Feb. 1. Jenkins sought reinstatement after being on inactive status since May 4, 2005. She filed a petition for reinstatement on Feb. 1. The Board of Professional Responsibility found that the petition was satisfactory and recommended that the court reinstate her. The court issued the order on Feb. 8.

On Feb. 21, Davidson County lawyer Ashely Denise Preston was reinstated to the practice of law, retroactive to Feb. 23, 2016. Preston was suspended by the Tennessee Supreme Court on Oct. 20, 2017, for four years, with two years to be served on active suspension.

Davidson County lawyer Joanne Fellers Sowell was reinstated to the practice of law effective Feb. 14, the date on which she filed a petition seeking reinstatement from inactive status. Sowell had been placed on inactive status on May 5, 1997. The Board of Professional Responsibility found that her petition was satisfactory and recommended that the court reinstate her. The court issued the order on Feb. 25.

DISCIPLINARY
Disbarred
Sullivan County lawyer Howard Robert Clyde Orfield was disbarred by the Tennessee Supreme Court on Feb. 19. The court also directed Orfield to pay $1,000 in restitution to a client and consult with the Tennessee Lawyers Assistance Program to determine if a monitoring agreement is appropriate. Orfield previously was suspended in 2017 for three years, with 90 days to be served on active suspension and the rest on probation. He has not been reinstated from that suspension. In imposing the disbarment, the court found that Orfield ceased communicating with a client and failed to perform services for which he was paid. Though he later offered to refund the full balance of the fee paid by the client, he has not done so. The court determined that his actions violated Rules of Professional Conduct 1.3, 1.4, 1.5, 1.6, 3.2, 8.1 and 8.4 (a) and (d).

Suspended
On March 3, the Supreme Court of Tennessee suspended Wilson County lawyer Daphne Michelle Davis from the practice of law for three years and directed her to pay restitution of $1,500 to a former client. The court acted based on three complaints. In the first complaint, the court found that Davis missed a court date in general sessions court resulting in a $25,151.50 default judgment against her client. After appealing the case to circuit court, she unilaterally cancelled a mediation and failed to inform her client of the new hearing date. Then on the day of the hearing, Davis failed to appear and the appeal was dismissed. She then did not inform her client about the dismissal. In the second case, Davis promised to refund a fee to her client but failed to do so until the client filed a complaint with the Board of Professional Responsibility. Finally, in a third case, Davis failed to appear on the day of the hearing, cancelled a mediation which the client did. Thereafter, Davis did not respond to inquiries by the Board of Professional Responsibility. The court determined her actions violated Rules of Professional Conduct 1.2(a), 1.3, 1.4, 1.5 (a) (b) and (f), 1.16 (d) and (f), 3.2, 8.1 (b) and 8.4 (a) (b) (c) and (d).

The Tennessee Supreme Court suspended Williamson County lawyer Matthew David Dunn from the practice of law on Feb. 14 for failing to respond to the Board of Professional Responsibility.

Compiled by Stacey Shrader Joslin from information provided by the Board of Professional Responsibility of the Tennessee Supreme Court. License 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.
Regrettably, a misconduct complaint. The suspension will remain
in effect until dissolved or modified by the court.

On Feb. 8, the Tennessee Supreme Court suspended
Shelby County lawyer Earl Frank Johnson
from the practice of law for six months
and required that he submit to an evaluation by the
Tennessee Lawyers Assistance Program. The court acted based
on a complaint of misconduct alleging
Johnson appeared in general sessions court
on behalf of a client when his law license
was administratively suspended. Johnson
entered a conditional guilty plea admitting
to the misconduct. The court determined that
his actions violated Rules of Professional
Conduct 5.5, 8.1 and 8.4 (a) and (d). Johnson
was suspended in August 2012 for non compliance with
CLE requirements. In November 2012, he
was suspended again for non compliance
with mandatory IOLTA reporting requirements
and non payment of the annual registration fee. To date, he
has not requested, nor been granted, reinstatement from
these suspensions. Sumner County lawyer
Randy Paul Lucas
was suspended from
the practice of law on
Feb. 8 for three years,
with six months to
be served on active suspension and the
remainder to be served on probation. The court
also directed Lucas to engage a practice monitor during the
probationary period. The action was taken after the court found
that Lucas agreed to represent a client in a personal injury case
but failed to take any action on the client’s behalf, thereby
allowing the statute of limitations in the case to expire. The court also found
that Lucas failed to maintain consistent communication with
and made repeated misrepresentations to his client. The
court determined that
these actions violated Rules of Professional
Conduct 1.1, 1.3, 1.4, 1.8 and 8.4 (a) (c) and
(d). Lucas entered a conditional guilty plea in the matter and
made a payment to the affected client as compensation for his loss.

On Feb. 27, the Tennessee Supreme Court denied the request of Davidson
County lawyer Brian Phillip Manookian
for dissolution of a temporary suspension. Manookian
was suspended from the practice of law on
Sept. 21, 2018, after the court found that
he posed a threat of substantial harm to
the public. Manookian
filed two petitions for
dissolution, one in September 2018 and
one in January 2019. After holding hearings
on both requests, the Board of Professional
Responsibility recommended that the
motions be denied. In both cases, the court
adopted the board’s recommendation.

Censured
Davidson County lawyer Terry Renease Clayton
was censured by the Tennessee Supreme
Court on Feb. 19. In addition to imposing the
discipline, the court
directed Russell to engage a practice monitor at her own
expense and meet with the monitor on a monthly basis for one
year to review basic office procedures. The court found that
while administratively suspended for CLE non compliance, Russell
accepted a flat fee
to prepare divorce documents for a pro se divorce and failed
to enter into a written agreement for the non refundable fee. Russell agreed to
a conditional guilty plea acknowledging her conduct violated
Tennessee Rules of Professional Conduct
1.4 (a) (5), 1.5, 5.5 and
8.4(a).

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.
COVER STORY

20 YEARS OF HOPE Tennessee Lawyers Assistance Program Celebrates Lives Saved

By the Hon. Janice M. Holder
The Tennessee Lawyers Assistance Program (TLAP) is a free, confidential assistance program that provides consultation, referral, intervention and crisis stabilization for law students, bar applicants, lawyers and judges who are experiencing substance use disorders, stress or emotional health issues.

TLAP has been helping the Tennessee legal profession for 20 years, and it is difficult to remember a time when the program did not exist. But for many years before its establishment, local assistance programs filled the need for lawyer assistance in Tennessee.

Lawyer Assistance Before TLAP
TLAP had several predecessors. The first known lawyer assistance program in Tennessee, Nashville Lawyers Concerned for Lawyers (NLCL), was created by the Nashville Bar Association in 1982. Its purposes were to assist impaired attorneys and judges and to protect the interests of clients and the general public from harm caused by impaired attorneys and judges.

The NLCL was concerned about the confidentiality of its work and whether it was required to report ethical violations of the attorneys and judges it assisted. The NLCL therefore requested a formal opinion from the Tennessee Board of Professional Responsibility concerning this issue. In response, the Board of Professional Responsibility issued Formal Ethics Opinion 83-F-48. This opinion interprets DR-103 to relieve members of the Nashville Bar Association’s Lawyers Concerned for Lawyers Committee from their obligation to report ethical violations while attempting to assist attorneys with alcohol or drug abuse problems.

In 1984, the Tennessee Bar Association formed a task force to investigate

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and make recommendations regarding the formation of a statewide lawyers’ assistance program. In 1987, Tennessee Lawyers Concerned for Lawyers (TLCL), a committee of the Tennessee Bar Association, was formed to provide statewide assistance to lawyers and judges who demonstrated problems with alcohol or other drugs.

The Memphis and Shelby County Bar Association established the Memphis Lawyers Helping Lawyers (LHL) committee in 1987. The Knoxville and Chattanooga Bar Associations also formed committees. Although these programs received the wholehearted support of their respective bars, they lacked sufficient funding, an adequate number of volunteers, and program directors to coordinate and carry out the objectives of the programs.

The Memphis and Shelby County Bar Association's LHL committee enjoyed success due in large measure to the support and participation it received from attorneys and judges in the Memphis area. In addition, the Memphis and Shelby County Bar Association provided funds to hire a part-time director, freeing the committee members from much of the day-to-day administration of the program and adding an additional layer of confidentiality.

All programs used the medical model, which recognizes that alcoholism or addiction to other drugs is a disease caused by any number of factors but evidenced by the excessive use and abuse of alcohol or other drugs. Unlike many earlier programs in other parts of the country, these programs used what was referred to as “a broad brush” approach to lawyer assistance. Instead of limiting its programs to issues of alcohol and drug abuse, these programs were also designed to address other mental health issues affecting members of the legal profession.

In 1993, with the Tennessee Bar Association's approval, the TBA's Lawyers Concerned for Lawyers Committee submitted to the Tennessee General Assembly a draft of a statute that would provide immunity to the lawyer assistance programs, their volunteers, and the persons who provide information to the programs and would protect the records of those programs from disclosure. The TLCL recognized that complete confidentiality was necessary to encourage lawyers and judges to seek assistance. The General Assembly enacted Tennessee Code Annotated § 23-4-101, et seq., which gave immunity to the volunteers and individuals providing information to the committees and confidentiality to those persons acting in good faith and without malice.

Tennessee has what some states call “a belt and suspender” approach to immunity and confidentiality. Not content with a legislative enactment, the programs also sought protection from the Supreme Court. In 1993, the Tennessee Supreme Court adopted Rule 9, Section 28, authorizing any bar association or other approved entity to establish an impaired-lawyers program and granting the same privileges and immunities to the impaired-lawyers programs as granted to communications to the Board of Professional Responsibility, its committee members, or disciplinary counsel relating to lawyer misconduct or disability. Rule 9, Section 28, also relieved members and staff or agents of an impaired-lawyers committee from the duty to report possible ethical violations uncovered as a result of their work.

Despite the encouragement of the legislature and the Supreme Court, the Tennessee programs continued to suffer from a lack of funding, which prohibited the hiring of a statewide director, and the lack of a sufficient number of volunteers with the time, interest and willingness to serve. It was clear that more was needed. The TBA's Tennessee Lawyers Concerned for Lawyers Committee petitioned the Tennessee Supreme Court to establish a Tennessee Lawyers Assistance Program with the necessary funding to adequately staff and serve the needs of the members of the legal profession in Tennessee, their clients and the general public.

TLAP: The Back Story

While the evolution of TLAP is interesting, the back story is even more so. From my work on the Memphis LHL Committee, I realized that lawyer assistance is crucial to the profession. After all, we had the Tennessee Lawyers' Fund for Client Protection to assist clients when the actions of attorneys caused harm to those clients, but we had no statewide program to prevent lawyers from malfeasance before harm was done. So I advocated for the creation and funding of a statewide
organization. With fewer than two years in my tenure as a justice, I realized that my voice alone might not be sufficient. I asked Michael J. Crowley, one of the founders of the Texas Lawyers’ Assistance Program, to speak to the members of the Supreme Court during our 1998 annual August retreat. His eloquent presentation resulted in one question from the Court: “How fast can we get this done?”

The speed at which we responded was almost unnerving. I became the Supreme Court’s liaison to the committee drafting the rule that we would adopt and to the commission we would ultimately form. At that point, the Court also made the decision to fund TLAP with a fee assessed against each licensed attorney. Before the completion of the rule that would create the Commission, the Court approved a $10 fee to be added to the annual fee collected by the Tennessee Board of Professional Responsibility.

On Sept. 24, 1998, we appointed a committee consisting of W. Stephenson Todd Jr., Paul C. Ney Jr., Judge Robert L. Childers, Kathryn Reed Edge, A. Randolph Sykes, Judge William B. Cain and Allen F. Ramsaur to “draft a document establishing a statewide commission, draft a ‘position available’ notice requesting applicants for the position of director and to interview persons interested in the position, and to draft a brochure to be included in the annual fee statement outlining the program and the necessity for an additional sum to be added to the fee.”

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On Jan. 7, 1999, the Tennessee Supreme Court adopted Rule 33 of the Rules of the Supreme Court of Tennessee. Rule 33 established a statewide Tennessee Lawyers Assistance Program, created a commission to carry out the purposes of TLAP, and formally assessed each lawyer in the state of Tennessee a fee to fund the program.

Initially, TLAP was considered to be an entity separate from state government. On July 1, 2002, however, TLAP was fully integrated into the judicial branch of state government, operating as an agency within the Administrative Office of the Tennessee Supreme Court. A formal evaluation by the American Bar Association’s Commission on Lawyer Assistance Programs resulted in its recommendation for an increase in the assessment to adequately fund TLAP. Effective Jan. 1, 2004, the fee assessed for the operation of TLAP increased to $20.

**TLAP Personnel**

Robert E. Albury Jr. was hired as executive director in August 1999 and served in that capacity until his resignation in May 2006. Robert is a lawyer, a licensed drug and alcohol addiction counselor, and has worked in the treatment and addiction-counseling field for a number of years.

Laura McClendon Gatrell, M.A., LEAP (Licensed Employee Assistance Professional), was hired as deputy director in March 2001. She became the acting director in May 2006 and was appointed executive director in July 2006. Laura’s qualifications include 18 years as a drug and alcohol counselor, trainer and educator, as well as an employee assistance counselor.

Emily McClendon Lacey was hired in 2005 and became the program manager in January 2006. Emily is trained as a QPR gatekeeper specializing in suicide prevention, is a certified mental health first aid provider, and is a certified recovery specialist. Emily also oversees compliance management of TLAP monitoring agreements and volunteer coordination.

Theodore (Ted) Rice was hired as deputy director in October 2006. Ted’s qualifications include a master’s of education in human developmental counseling, a board certified counselor, licensed professional counselor, mental health service provider and certified employee assistance professional. He is also a crisis-intervention specialist.

Kim Williams was hired by TLAP in April 2015. She is a certified mental health first aid provider and is also a QPR gatekeeper trained in suicide prevention. She recently completed her training to become a certified recovery specialist.

Lindsey Herren O’Connell joined in November 2018. Lindsey is a licensed master social worker (LMSW) with a master’s in clinical social work. Lindsey’s clinical specialties include somatic and attachment-focused eye movement desensitization and reprocessing, trauma and addiction treatment, and mindfulness-based therapies. Lindsey is also a certified veterinary social worker, focusing on animal-assisted therapy and utilizing the human-animal bond to promote healing.

In April 2018, Laura McClendon Ga-
Laura Gatrell and Ted Rice

TLAP services address a range of health and personal issues, such as:

- Depression & Suicide
- Grief and Loss
- Stress & Burnout
- Substance Abuse
- Process Addictions
- Balancing Practice and Family
- Anxiety
- Anger Management
- Cognitive Impairment

Other services include Consultations, Crisis Stabilization, Assessments, Referrals, Interventions, Education, Peer Support Services, ABA Networking & Outreach, Anonymous Support Groups and more. Call (615) 741-3238 or (877) 424-8527.

trell retired as executive director. Ted Rice served as acting director until his appointment as executive director in July 2018.

The decision to staff TLAP with mental health professionals who are not trained as lawyers has provided an additional dimension to the program that has benefited the lawyers in Tennessee who seek the services of TLAP.

**TLAP Clients**

TLAP filed its first annual report with the Supreme Court in 2006. TLAP's 2006 Annual Report reflected that 55 percent of intake calls pertained to issues of “chemical dependency,” a decrease from 66 percent in TLAP's first year of operation. Thirty percent of the calls related to “mood disorder, compulsive behaviors, including sex, gambling, spending, eating, codependency, and stress management, burn-out and work-related issues.”

In 2018, 12 years later, 33 percent of intake calls pertained to substance use disorder (formerly referred to as chemical dependency), and 56 percent pertained to behavioral health issues such as depression and anxiety. The other 11 percent of intake calls presented with issues such as marital conflict, financial distress, performance productivity, cognitive impairment, stress, eating disorder, domestic abuse and compulsive behaviors. These statistics have remained steady for the last four years and reflect TLAP's success as a full-spectrum, behavioral health service for Tennessee's legal profession.

In 2018, TLAP opened 236 new client files and reopened 28 client files for a total of 264 cases. Approximately 39 of those referrals were from the Board of Professional Responsibility. TLAP was able to assist more than 50 percent, a statistic that has remained consistent over the years. One hundred percent of students and bar applicants referred by a law school or Board of Law Examiners were assisted by TLAP.

During TLAP’s existence, slightly less than half of its clients have resided in Middle Tennessee with the Western and Eastern Divisions sharing relatively equal numbers of the remaining percentage of clients. In 2006, approximately 75 percent of referrals were male. In 2018, 62 percent of TLAP referrals were male and 38 percent were female.

In 2018, 62 percent of TLAP's referrals were lawyers, 34 percent were law students or bar applicants, and 4 percent of all referrals pertained to members of the judiciary.

**Conclusion**

TLAP operates as its creators envisioned. It contributes to the protection of the public and improves the integrity and reputation of the legal profession. Statistics support that assistance to an affected lawyer often prevents future ethical violations, thereby reducing the number of disciplinary actions. I am proud that TLAP has become a model for assistance programs serving lawyers and judges across this nation and commend TLAP, its staff, and its wonderful volunteers for their excellent work performed across the state.

**JANICE M. HOLDER** served as a Circuit Court Judge for the Thirtieth Judicial District at Memphis and then as a justice of the Supreme Court of Tennessee. While a member of the Supreme Court, she served as its liaison to TLAP for 16 years. She is a member of the ABA Commission on Lawyer Assistance Programs and a past member of its Advisory Committee. She currently chairs CoLAP's Collaboration with State LAPs Committee. Justice Holder is a Rule 31 Listed Mediator and serves on the American Arbitration Association's Panel of Arbitrators.
Judicial Warfare and the Triumph of Equity

Courtney v. Glanvil (1615)

By Russell Fowler

The High Court of Chancery was born in the Middle Ages to provide relief from the inflexibility of the common law courts, which could only act upon property, or in rem, usually through the award of a money judgment for compensation. Chancery’s body of jurisprudence, “equity,” was forged to remedy frauds, mistakes and various hardships the law courts could not adequately address, often remedied by Chancery acting directly upon the person through subpoena, injunction and contempt powers.

For a time, the two systems operated in harmony. Chancery Court was seen as an aid, not a rival, and the common law judges were regularly invited to sit in on the chancellors’ proceedings to offer advice and even approve of the intervention of equity. This cooperation was so strong that the Parliament of 1400 mandated that the judges spend less time at Chancery.¹

During the reign of Henry VIII, however, hostility arose between the law courts (chiefly the Court of King’s Bench) and Chancery. This acrimony was just as much between the lawyers as the judges, for although lawyers practiced in both courts, specialization developed and hence competition between the “attorneys at law” and their Chancery counterparts, the “solicitors in equity.” Matters were made worse by the pomposity and lack of legal knowledge of Cardinal Wolsey, the Lord Chancellor.²

Yet upon Wolsey’s fall from power, the
new Chancellor, Sir Thomas More, a lawyer of awesome legal and political talents, brought order to equity jurisprudence and strove to make peace with the law courts. Most particularly, More laid down fixed rules governing when injunctions would issue against the commencement of common law actions and execution of judgments at law that offended good conscience.3

Nevertheless, by the early 1600s and the reign of James I (of King James Version of the Bible fame), there was renewed tension that was part of a larger conflict between a Crown asserting absolute authority resting upon a theory of Divine Right and a Parliament seeking limits on royal power through the common law. The judicial front in the escalating political war was led on the parliamentary side by Sir Edward Coke (pronounced Cook), the Lord Chief Justice, and on the King's side by Lord Chancellor Ellesmere.

Due to each court's history and the political leanings of the judges, Chancery was associated with royal prerogative and the common law courts with parliamentary rights.4 Or, as was said, the common law became “the ground the rebels stand on”5 while, in contradic-
tion to Magna Carta, Ellesmere declared: “The monarch is the law.”6 Although the original battlefield of the rebellion was in the courts, Coke chose the wrong cases to fight over. For in each of these cases, despite Ellesmere’s questionable view of royal supremacy: “Almost always, on the particular facts, Ellesmere was on the side of justice, the equitable side.”7

**Judicial Warfare**

In *Courtney v. Glanvil* (1615)8 Courtney agreed to purchase from Glanvil a jewel for £360 that was only worth £30. When discovering the fraud, Courtney refused to pay and Glanvil won a judgment in the law court for the unfair price and collected his judgment. Courtney ran to Chancery for help. Chancellor Ellesmere declared the contract void due to fraud and decreed that Courtney should get his money back and the jewel returned to Glanvil, but Glanvil refused and the Chancellor sent him to jail for contempt. Glanvil's lawyer then obtained a writ of habeas corpus from Chief Justice Coke, who admitted equity was on Courtney’s side, but he ruled that the law court judgment must stand, and he freed Glanvil.9

In *The Earl of Oxford's Case* (1615)10 Merton College held a lease to Covent Garden for 72 years. Fifty years into the lease, the college sold its interest to the predecessor of the Earl of Oxford. When the leasehold increased in value, the college claimed its conveyance was illegal under an Elizabethan statute outlawing the transfer of college land, and the college took physical possession of the property. The Earl of Oxford brought an ejectment action, but the judge held for the college. The Earl turned to Chancery, and Ellesmere found that the college's claim was inequitable.11 In doing so, the Chancellor presented his famous justification for his court:

> The cause why there is a Chancery is, for that men’s actions are so diverse and infinite, that it is impossible to make any general law which aptly meet with every particular act, and not fail in some circumstances. The office of Chancellor is to correct men’s consciences for frauds, breach of trust, wrongs and oppression, of what nature soever they be, and to soften and mollify the extremity of the law.12

In a number of smaller cases Chief Justice Coke advised successful lawyers in his court to assert res judicata when his judgments were attacked in Chancery and to avail themselves of writs of habeas corpus against Chancery contempt sanctions imposed on their clients. “Habeas corpus review struck at the heart of the Court of Chancery’s in personam power.”13 He also denounced the Chanceller’s power to decree specific performance. Coke “contended that a decree of specific performance was always unjust to the defendant because it deprived him of his election either to pay damages or fulfil his promise.”14

In one case, a law court plaintiff lured a defendant’s key witness into an alehouse during trial and the plaintiff thereby won. Yet Chancellor Ellesmere enjoined the plaintiff from collecting his judgment. An angry Coke counseled the plaintiff’s lawyer to bring criminal charges against the defendant under a medieval law,15 forbidding the impeachment of a royal court’s judgment in another tribunal.16 It was further rumored that in the *Courtney v. Glanvil* case, Coke had urged a jury to return an indictment against Courtney’s lawyer and a Chancery clerk for violating the statute. When the jury refused, he threatened to jail the jurors.17

One disreputable litigant even sought Ellesmere’s indictment.19 Coke also stated he would not hear arguments from any lawyers who had sought equitable relief from a judgment of a law court.20 It was all-out judicial war: “There were instances in which Ellesmere issued injunctions against the carrying forward of cases in the law courts, and others in which Coke continued on page 22.
Courtney v. Glanvil
continued from page 21

issued writs or judgments designed to thwart the Chancellor's decrees."21

Finally, in *Colt and Glover v. The Bishop of Coventry* (1616)22 the claimants disputed the right to control revenue from a church office. Colt and Glover asserted their right by law against the Bishop who answered that he was granted control by the King himself. Then King James sent a letter to the law judges commanding them not to hear the case. Chief Justice Coke defiantly responded in a letter co-signed by all twelve law court judges: "That in case any letters come unto us contrary to law, that we... go forth to do the law, notwithstanding the same letters."23

Royal Intervention

With "judgments and decrees flying back and forth like missiles,"24 *Courtney v. Glanvil* became the vehicle for appeal. Chancellor Ellesmere asked the King to intervene.25 James was furious. His Attorney General, Francis Bacon, urged James to act, saying Coke's actions were an "affront... to your high Court of Chancery," which is the court of your absolute power.26 He also counseled to use the courthouse, which is the court of your absolute authority.27

The King commanded the judges and the Lord Chancellor to appear before him. As they fell to their knees, James denounced Coke's letter and "with a violent gesture"28 tore it into pieces. He then asked if the twelve law court judges would follow his future orders to refrain from hearing cases. Eleven promised to obey. Coke would not. On his knees he said: "When the case shall be, I will do that which shall be fit for a judge to do."29

On March 19, 1616, James referred the legal question of which court is supreme and predominacy of our Chancery.30 Aftermath

On July 26, James issued a royal decree focusing on court procedure, not political philosophy. In it the Lord Chancellor was ordered to give unto our subjects upon their several complaints such relief in Equity (not withstanding any former proceedings at the Common Law against them) as shall stand with the true merits and justice of their cases, and with the former ancient and continued practice and precedency of our Chancery.31

The principle of absolute monarchy the ruling served did not survive.32 The judicial principle of *Courtney v. Glanvil* did.

The rule is that equity is supreme. "Equity conquered common law."33 When legal requirements conflict with equity, equity prevails, and this is still true today within separate courts of law and equity or those with merged jurisdictions applying both systems, for without this principle equity is rendered useless. More important than protecting jurisdictional turf of courts, equity "follows the law" but will act when the law fails or is inadequate under the rules of equity jurisprudence.34

Aftermath

Before 1616 was over, Coke would be dismissed as Chief Justice, but he moved to Parliament to continue the battle.35 Ellesmere died the following year36 and Francis Bacon became Lord Chancellor, only to be forced from office for taking bribes, although he said the "gifts" did not affect his judgment.40 Bacon went on to win lasting fame as a philosopher and scientist.

The concept of absolute monarchy vanished with the execution of England's next king, Charles I, following a bloody civil war. For a time following the war, it looked as if Chancery might be abolished because it was so associated with absolute monarchy. But Chancery and its equity were too ingrained in the English legal system to be done away with.41 With the peace, Chancery business grew with the rise of British commerce and empire as did its power and popularity. Moreover, its equity jurisprudence, fortified by *Courtney v. Glanvil*, spread throughout the English-speaking world and gave the greatest meaning to the maxim: "Equity will not suffer a wrong without a remedy."42

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. See endnotes on page 31
### Upcoming Programs

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<td>3 Gen.</td>
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<tr>
<td>LGBT Law Annual Forum</td>
<td>June 21</td>
<td>2 Gen., 2 Dual</td>
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<tr>
<td>Yoga, Mindfulness and Meditation in the City</td>
<td>June 21</td>
<td>4 Dual</td>
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<tr>
<td>Annual Health Law Forum and Primer</td>
<td>Nov. 16-18</td>
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### Faculty Highlight

**Joan Heminway**

She will be speaking at the Business Law and Animal Law Forums in May:

**Professor Heminway** brought nearly 15 years of corporate practice experience when she joined the faculty of the UT College of Law in 2000. She was an attorney in the Boston office of the firm of Skadden, Arps, Slate, Meagher & Flom LLP from 1985 through 2000, working in the areas of public offerings, private placements, mergers, acquisitions, dispositions and restructurings. She teaches primarily in the areas of corporate governance, corporate finance and securities regulation. She has served as an expert witness and consultant on corporate finance and federal and state securities law matters and is a frequent continuing legal education presenter on business law issues. She serves on the Executive Committee of the TBA Business Law Section and is a former chair of the Corporate Law Committee of the Business Law Section of the Boston Bar Association. Professor Heminway also has represented clients pro bono on political asylum applications, landlord/tenant appeals, social security/disability cases, and not-for-profit incorporations and related corporate law issues.
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

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.

Producer: Charlotte Knight Griffin
Speakers: Steven Christopher, Stephanie Coleman, Stewart Harris

Local Government Forum
April 11 in Nashville
Tennessee Bar Center
Program: 9 a.m. – 4:30 p.m.
Credit: 4 Gen., 2 Dual

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

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
4 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
Disability Law Forum

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

$220 Section Members
$245 TBA Members
$420 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Disability Law, Ethics

The TBA Disability Law Section is offering a stacked program for its annual forum, 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. The section’s chair-elect John Dreiser of Farmer & Dreiser will present a session on LTD/STD for SSD practitioners. 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.

Speakers: Christopher George, Philip Burnett, John Dreiser, Kimberly Joseph, Hon. Robert Martin, Emma Drozdowski Webb, Michael Williamson

Litigation & Appellate Forum

April 18 in Nashville, Tennessee Bar Center
Program: 9 a.m. – 3:00 p.m.
Credit: 4 Gen, 1 Dual

$220 Section Members
$245 TBA Members
$420 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Litigation, Ethics, Appellate

The TBA’s Litigation and Appellate Sections have collaborated to offer a full day CLE containing essential and useful material for litigators and appellate practitioners alike. Details on specific sessions are coming soon. Secure your spot and register to attend today!

Networking lunch provided.

Speakers: Mary Taylor Gallagher, Tiffany Fox, T. Leigh Hearn-Rushton, Sarah Miller, Edmund Sauer
Immigration Law Forum

April 25 in Nashville, Willis Center
Program: 9:00 a.m. – 4:15 p.m.
Credit: 5 Gen. 1 Dual

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

For attorneys interested in: Immigration

This 6 hour CLE will focus on a variety of issues facing immigration, family, criminal, corporate counsel, employment and business law attorneys. The first three morning sessions will address family immigration and court issues. Speakers include representatives from the U.S. Citizenship & Immigration Services, the U.S. Immigration & Customs Enforcement’s Office of the Principal Legal Advisor and the U.S. Immigration & Customs Enforcement’s Enforcement and Removal Operations. The afternoon sessions will focus on labor employment immigration issues. Hear from representatives of the Migrant and Seasonal Farm Worker Program (MSFW) H2A and H2B visa program, a Wage Hour Investigator of the Chattanooga Field Station and finish the day with an ethics CLE dual representation employment immigration hour.

Networking lunch provided.

Speakers: Terrence Olsen, Daniel Andrade, Catherine Chargualaf, Charles Pazar, Bruce Buchanan

Dispute Resolution Forum

April 26 in Nashville, Willis Center
Program: 9:30 a.m. – 4:30 p.m.
Credit: 2.75 Gen, 3.75 Dual approved for 6.5 CME hours

$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 and delve into ethical issues that often arise for advocates and mediators.

Lunch provided.

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

May 1 in Nashville, Tennessee Bar Center
Program: 8:30 a.m. - 4 p.m.
Credit: 4 Gen, 1.5 Dual

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

For attorneys interested in: Criminal Law, Ethics
When practicing criminal law, it is important to stay on top of trends and developments in this ever-changing arena. This program will feature timely topics for those interested in the intangibles of the practice area. More info to come!

Networking lunch provided.
Producer: Roger Nell
Speakers: Perry Piper, David Raybin

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.
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
The TBA Business Law Section’s 2019 Annual CLE Forum will help business lawyers learn and refresh their knowledge about issues that may arise when drafting an LLC operating agreement. Topics will include an overview of the two extant Tennessee LLC acts and a comparison of those acts with the Delaware LLC Act; other distinctions of Tennessee law that impact the operating agreement; drafting key provisions, including distribution and allocation, employee and member compensation, and exit rights; and ethical considerations for lawyers drafting LLC operating agreements.

Lunch provided.

Speakers: Matthew Lyon, Alexander Davie, Van East III, Brian Faughnan, John Fuller, Joan Heminway, Justin Joy

Intellectual Property Blast

May 10 in Nashville, Tennessee Bar Center
Program: 8:30 a.m. – 4 p.m.
Credit: 5 Gen, 3 Dual
$40 Hour/Section Members
$50 Hour/Members
$60 Hour/Nonmembers

For attorneys interested in: Intellectual Property Law
This year’s Intellectual Property Blast will include presentations on patent, trademark, and copyright issues. Three hours of ethics will be offered. Practitioners may attend any or all of the presentations based on their learning needs. Sign up online to let us know you are coming. The registration desk will be open all day.

Lunch provided.

Speakers: Hemant Gupta, Andre (“A.J.”) Bahou, Scott Douglass, Bart Herbison, Edward Lanquist Jr., Ryan Levy, Melody McAnally, Gary Montle, Seth Ogden, Timothy Warnock
Family Law Forum

May 15 in Nashville, Tennessee Bar Center
Program TBD
Credit: 5 Gen, 1 Dual

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

For attorneys interested in: Family Law
This year’s Family Law Forum will dig deep into recent changes affecting the practice area, including high-profile cases, legislative updates, changes in domestic violence law and best practices in Juvenile Court. We will also have a renowned psychiatrist discussing The Scientific Basis for Parental Alienation. Don’t miss this opportunity to brush up on the intangibles, develop new tools and meet lawyers of a similar focus.

Networking lunch provided.
Producer: Susan Mackenzie
Speakers: Amy Amundsen, William Bernet M.D., Hon. Sheila Calloway, Kurt Myers, Amanda Thornton, DarKenya Waller

Entertainment & Sports Law Forum

May 15 in Nashville, Belmont University College of Law, Baskin Center
Program: 12:30 p.m. – 4:45 p.m.
Credit: 3 Gen, 1 Dual

$170 Hour: Section Members
$200 Hour: Members
$375 Hour: Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Entertainment Law
We invite you to join a distinguished group of speakers for an afternoon discussion of some of the most cutting-edge legal issues in the music and sports industries today. The panels have been carefully crafted to provide timely and practical information that will benefit practitioners of all levels, showcasing a wide array of areas, including an in-depth discussion of the practical impact of new music legislation, legal issues related to live music and merchandising, sports gambling topics, and attorney well-being. This is a program that you definitely don’t want to miss.

Forum reception will follow the program.
Speakers: Mary Lauren Teague, John Beiter, Dallas Kelley III, Kent Marcus, Reid Waltz, Daniel Werly, Sara Anderson, Daniel Kustelski, Brian McEntee, Candice Reed, Rep. Rick Staples
Animal Law Forum

May 17 in Nashville, Nashville Zoo
Program: 8 a.m. – 5 p.m.
Credit: 4 Gen, 1 Dual

$200 Section Members
$245 TBA Members
$420 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Animal Law
This unique opportunity will provide updates on trends and advancements in animal law while allowing participants to network and enjoy all of the fun and activities the zoo offers. We will be joined by the organization’s president and chief executive officer and the board’s general counsel, who will discuss conservation efforts and laws affecting procurement and care for zoo animals. Additional topics will include animal considerations in divorce and domestic law, ethics, legislative updates affecting the practice area and the humanization of animals. A midday lunch is included, with additional time to explore the zoo, the recently added Expedition Peru exhibit and new state-of-the-art veterinary medical space that also serves as a teaching center, where you can learn about the diagnosis, treatment and management of animal health. Don’t miss this chance to fulfill necessary CLE requirements while experiencing one of the top zoos in the nation.

Networking lunch provided.

Producers: Jay King, Shannon Romain
Speakers: Joan Heminway, Rick Schwartz, Robert Simpson

Communications Law Forum

May 17 in Nashville, Tennessee Bar Center

Top Golf: Estate Planning
Tee Off: June 19
Top Golf Nashville

Yoga, Mindfulness and Meditation in the City
June 21
Nashville

LGBT Annual Forum
June 21
Nashville
No state approved a spendthrift trust created by a settlor for his own benefit. In fact, one of the leading cases to that effect was from Tennessee. This began to change in the late twentieth century. The Black Monday stock market crash of Oct. 19, 1987, coupled with perceived rampant tort litigation, fueled a widespread desire to shelter assets from future unknown creditors. In 1989, the Cook Islands amended its International Trust Act to allow for asset protection trusts, i.e., trusts in which the settlor could be a beneficiary while retaining creditor protection. By 1992, many other countries had followed suit, and scholars estimate that over one trillion dollars exist in such offshore trusts. In 1997, Alaska became the first of 17 states to authorize a self-settled spendthrift trust, generally known as a Domestic Asset Protection Trust (DAPT). Tennessee joined the club effective July 1, 2007, with its version of a DAPT uniquely known as a Tennessee Investment Services Trust (TIST).3

Two of my columns in 2007 outlined the requirements and effect of the new statute* and listed potential creative planning uses,5 while also pondering the limits of such trusts against creditors.6 After more than two decades and thousands of such trusts created, there are no cases reported where a DAPT has been set aside and the trust assets made available to a creditor, provided the DAPT is done correctly. Stated more positively, the consensus is that a DAPT works when the settlor is a resident in a DAPT state, the settlor's transfer to a DAPT is not a fraudulent transfer, the settlor is not subject to personal jurisdiction in a non-DAPT state, and the creditor claim is either outside of bankruptcy or the transfer of assets occurred more than 10 years before commencement of the bankruptcy case.

Greater uncertainty exists regarding residents of non-DAPT states who create a DAPT in a state where a DAPT is authorized. Indeed, many DAPT states, including Tennessee, have benefited from the influx of funds from residents of non-DAPT states creating such trust in DAPT states.

Proponents of DAPTs created by residents of non-DAPT states cite the undeniable paucity of reported cases as evidence of their great acceptance and success. But the shortage may be the result of creditors settling or conceding rather than litigating. After all, litigation might encourage the debtor to file for bankruptcy with potential rights to a payment plan. Skilled attorneys preparing DAPTs on behalf of residents of non-DAPT states might create additional protections unnecessary for residents of a DAPT state. For example, if all the settlor's assets are put into an LLC before transferring the LLC interest to the DAPT, then creditors may find that the sole remedy available from successful litigation is a "charging order" on the LLC interest, providing the creditor only the member's share of cash flow, if any, rather than an interest in any of the underlying assets. Other such planning devices exist.7

The few reported cases are suggestive. continued on page 24
For example, the 

For example, the Huber case in 2013 addressed a choice-of-law issue. A Washington state real estate developer created a DAPT in Alaska in 2008 for the benefit of himself and his descendants at a time when he was a guarantor on numerous real estate projects and the real estate market was foundering. The DAPT was funded with a 99 percent interest in an LLC that owned valuable interests in several companies in Washington plus $10,000 cash. The Trustees were family members plus an Alaska trust company, and the only asset actually located and administered in Alaska was the cash. The settlor filed for bankruptcy in 2011. In 2013 the Bankruptcy court ruled the Alaska trust ineffective to prevent access by creditors, holding that (1) the transfer to the DAPT violated Washington state’s fraudulent transfer law; (2) the DAPT was created with the actual intent to defraud creditors within the meaning of Section 548(e) of the Bankruptcy Code; and (3) the laws of the state whose laws are selected by the settlor of a trust (here Alaska) will apply, so long as that state’s law does not violate a strong public policy of the state with which the trust has its most significant relationship (here Washington). The court held that since the primary contacts were in Washington, which had a statute expressing a strong public policy against self-settled trusts, Washington law would apply to vitiate the creditor protection terms of the trust. The third holding may have been unnecessary in light of the first two, but the court clearly wanted to make its point.

The recent case of Toni 1 Trust, also involving an Alaska DAPT, clarifies further. Montana resident Donald Tangwall sued his neighbors, the Wackers, but the Wackers counterclaimed, obtaining judgments in Montana courts not only against Donald but also against his wife Barbara and mother-in-law Toni. Shortly before the judgments were entered, Toni transferred Montana real property to an Alaska DAPT for her own benefit, known as the Toni 1 Trust, naming her son-in-law Donald Tangwall as a Trustee. Toni later filed for bankruptcy in Alaska, adding a Bankruptcy Trustee as another creditor. Not surprisingly, both the judgment creditor and the Bankruptcy Trustee obtained judgments in Montana finding that the transfers to the Toni 1 Trust were fraudulent. Undeterred, the Trustee filed an action for declaratory judgment in an Alaska state court, alleging that the Alaska DAPT statute granted Alaska state courts exclusive jurisdiction over any fraudulent transfer actions against the trust, and that under the Alaska statute, the statute of limitations had already run. The trial court dismissed the complaint, which was appealed to the Alaska Supreme Court.

Interestingly, the Alaska Supreme Court wrote (omitting footnotes):

Tangwall’s argument is not frivolous. He is correct that a judgment is void if the court that entered the judgment lacked subject matter jurisdiction over the case. Furthermore, [the Alaska statute] AS 34.40.110(k) purports to grant Alaska courts exclusive jurisdiction over fraudulent transfer claims against Alaska self-settled spendthrift trusts. And having reviewed the legislative history of AS 34.40.110(k), we have no doubt the Alaska legislature’s purpose in enacting that statute was to prevent other state and federal courts from exercising subject matter jurisdiction over fraudulent transfer actions against such trusts. The question, however, is whether AS 34.40.110(k) can achieve that intended result. We conclude that it cannot.

The Alaska Supreme Court quoted from an old U.S. Supreme Court opinion, Tennessee Coal, that under the Full Faith and Credit Clause of the U.S. Constitution, “jurisdiction is to be determined by the law of the court’s creation [here Montana], and cannot be defeated by the extraterritorial operation of a statute of another state [here Alaska], even though it created the right of action.”

The Alaska Supreme Court continued (omitting footnotes):

Alaska Statute 34.40.110(k) crosses the limit recognized by Tennessee Coal: it purports to grant Alaska courts exclusive jurisdiction over a type of transitory action against Alaska trusts. We acknowledge that the analogy is imperfect; the Montana court’s judgment against Tangwall was based not on a fraudulent transfer cause of action created by an Alaska statute, but rather on a cause of action arising under Montana law relating to an Alaska trust. Nevertheless, Tennessee Coal controls. The Tennessee Coal court held that the Full Faith and Credit Clause does not compel states to follow another state’s statute claiming exclusive jurisdiction over suits based on a cause of action ‘even though [the other state] created the right of action.’ The clear implication is that the constitutional argument rejected in Tennessee Coal would be even less compelling were a state to assert exclusive jurisdiction over suits based on a cause of action it did not create. In seeking to void the Montana court’s judgment for lack of jurisdiction, Tangwall effectively argues that AS 34.40.110(k) can deprive Montana courts of jurisdiction over cases arising under Montana law. This is simply a more extreme interpretation of the ‘full faith and credit’ principle than the interpretation considered and rejected in Tennessee Coal.

The Alaska Supreme Court further held that the Montana court is not limited by Alaska’s statute regarding jurisdiction merely because the trust is governed by Alaska law. States [here Alaska] can declare exclusive jurisdiction over matters, but other states where courts can also establish personal jurisdiction [here Montana] are not required to follow that other state’s statute that claims exclusive jurisdiction. This is especially true of “transitory” matters, such as fraudulent transfer actions, as opposed to merely “local” matters.

In the end, Toni 1 Trust involved a blatant fraudulent transfer, and the outcome was entirely predictable and morally
correct. Still, the case firmly cements several propositions that may not have been as clear before. First, the statute of limitations for fraudulent transfers will not be determined solely by the law of the DAPT state. Second, if another state has personal jurisdiction over the settlor on account of significant contacts with that state, its courts may not recognize the spendthrift provisions of the DAPT, on grounds other than mere choice-of-law, such as the constitutional principle of full faith and credit. Third, if the trust property is located in the non-DAPT state, creditors are not required to file actions in the DAPT state.

It is doubtful that this case means that a DAPT will never work if the settlor is not a resident of a DAPT state, as one leading commentator suggested in Forbes Magazine. If there had been no fraudulent transfers in Toni 1 Trust, then neither the settlor’s residence in Montana nor Montana’s in rem jurisdiction over the Montana real property would provide Montana courts with jurisdiction over the Trust or the Trustee. Asset protection lawyers are still waiting for a case that completes the analysis of the application of the Full Faith and Credit Clause when there are no “bad facts.” In such a case, based on the Full Faith and Credit Clause, would an Alaska court have to yield to a Montana resident’s Montana judgment against the assets of an Alaska DAPT? Would a Montana court have to yield to the Alaska statute and exclusive jurisdiction of the Alaska courts? When such a case is presented and decided, it may be “the big one” that practitioners have pondered for years.

In any event, what many settlers really hope for, as previously discussed, is that the DAPT will at a minimum discourage creditors from filing any claims or at least encourage them to settle favorably.

As always, some may question the ethics of asset protection planning that can ultimately leave some legitimate creditors unpaid, but to the extent such planning is legal and avoids any hint of fraudulent transfers, it may be unethical not to counsel clients on the pros and cons of DAPTs as part of their overall risk management.

DAN W. HOLBROOK practices estate law with Egerton, McAfee, Armistead & Davis PC, in Knoxville. He is a fellow and regent of the American College of Trust and Estate Counsel, and is certified as an estate planning law specialist by the Estate Law Specialist Board Inc. He can be reached at dholbrook@emlaw.com.

NOTES
1. State ex rel. v. Nashville Trust Co., 190 S.W.2d 785, 28 Tenn. App. 388, 401 (1944). (“All the authorities say that one cannot create a spendthrift trust with his own property for his own benefit.” (citing prior Tennessee cases as well as treatises.) A son’s creditors collected against a trust created by his father where the son had expended his own funds to improve the father’s real property in anticipation and mutual agreement of the father’s later creation of the trust, thus becoming a self-settled trust to the full extent of the amount contributed by the son.
6. One immediately obvious limit of the TIST statute in 2007 was the lack of any exception for alimony or support obligations. The Tennessee legislature added both in 2013.
7. Several clever planning ideas in preparing a DAPT, especially for a settlor who is a resident of a non-DAPT state, include the following:
   1) Hybrid Trust. The settlor could avoid naming himself as a beneficiary at all, but rather name a “Trust Protector” who has the authority to add beneficiaries, including the settlor, preferably only upon the existence of some objective standards or other “acts of independent significance,” such as retirement from a risky profession, disability, divorce, insolvency, etc. Risk management might further suggest creating both a standard DAPT for some assets and a Hybrid Trust for other assets. On the other hand, under Tenn. Code Ann. §35-15-1202, a Trust Protector in Tennessee is a fiduciary, so it is not clear that a fiduciary for the existing beneficiaries could add beneficiaries without risk of a breach of fiduciary duty. See Steven J. Oshins, Esq., “The Hybrid Domestic Asset Protection Trust,” https://docs.wixstatic.com/ugd/b211fb_65208d809a2b4f168ad9c-ba63703f4e3.pdf.
   2) Limited Power of Appointment. The settlor could grant one or more named individuals a special or limited non-fiduciary power of appointment to appoint to the settlor and/or others. Absent collusion, courts typically have no jurisdiction over non-fiduciary exercises of powers of appointment.
   3) Third Party Trust. If prior to the settlor’s creation of a DAPT, a third party creates a spendthrift trust for the benefit of the settlor, funded modestly but significantly enough by the third party’s own assets, then the DAPT could authorize the holder of the non-fiduciary limited power of appointment to transfer assets from the DAPT to the third party trust, minimizing the argument that any part of the third party trust was self-settled by the settlor, absent collusion.
   4) Discretion to Spouse Only. If the DAPT permits distributions only to the settlor’s spouse, and the marriage is stable, the practical effect is to benefit the settlor only indirectly. In the event of death or divorce, one of the other techniques described above could then be employed.
   5) Offshore Trust Option. A DAPT may require the Trustee to transfer all assets to an offshore trust in the event of a significant liability challenge, potentially requiring the creditor to re-litigate in the offshore jurisdiction, perhaps already beyond that country’s statute of limitations.
11. U. S. Constitution, Article IV, Section 1. “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”
An Interview with Commissioner Greg Gonzales

Greg Gonzales is the 18th commissioner of the Tennessee Department of Financial Institutions. He began serving in this role in 2005, appointed by Gov. Phil Bredesen, and has enjoyed reappointment to the position by both Governors Bill Haslam and Bill Lee. He joined the Department as this writer’s assistant general counsel and has served in a number of roles, including general counsel and assistant commissioner, prior to his appointment by Gov. Bredesen to the top job. He had served under former commissioners Billy Adams, Jeff Dyer, Dennis Phillips, Talmadge Gilley, Bill Houston, Fred Lawson and Kevin Lavender, a career that spans almost 33 years with the Department.

Gonzales serves as Tennessee’s chief regulatory officer for all state-chartered depository and licensed non-depository financial institutions. He is unique among prior commissioners because he is also an attorney.

Born in Cookeville, Tennessee, Commissioner Gonzales graduated Cum Laude in Cursu Honorum with a bachelor’s degree from Tennessee Technological University in 1980. He served as a research assistant in 1980 to Sir Patrick Cormack (now Baron Cormack), a Conservative Party member of the British Parliament (1970-2010) and earned his law degree in 1984 from the University of Tennessee. When I found him in 1986, he was an assistant to the Honorable Al Gore, and he was happy to stop traipsing all around the state after the senator.

Gonzales is a past chairman of the Conference of State Bank Supervisors, the professional organization of state banking commissioners in the United States. For a number of years, he also served as a member of the board of directors of the Money Transmitter Regulators Association, an organization of a majority of the states that regulate funds transfer companies. He is the current chairman of the State Liaison Committee that incorporates the states’ supervisory perspective into the Federal Financial Institutions Examination Council. He has served on the U.S. Treasury’s Bank Secrecy Act Advisory Group and serves in Tennessee on the board of directors of the Financial Literacy Commission. In addition, under his leadership, the Tennessee Department of Financial Institutions is part of a pilot program called Vision2020, designed to streamline examination and licensing processes by remaking the existing Nationwide Multistate Licensing System into a common platform for non-bank regulation. Currently, Gonzales serves on a national task force studying how new technologies are affecting the U.S. payments systems.

An avid Chicago Cubs fan since the 1960s, Gonzales believes that this devotion “has taught him great life lessons in perseverance and that loyalty is eventually rewarded.”

I interviewed Commissioner Gonzales for this column on Feb. 1 and posed questions I thought might be interesting to lawyers.

KATHRYN REED EDGE: You have been appointed and reappointed to the commissionership by three governors and have worked in other positions under seven different commissioners before becoming commissioner in your own right. What keeps you in this job when there are a lot of other opportunities available to you?

GREG GONZALES: I sincerely believe that, for me, government work is a ministry. Government is ordained by
God, and ever since I was a child, I knew that I wanted to be involved in government service. It’s the job of government to represent and serve the people, and I have been blessed with that opportunity. I’m grateful to have been able to continue to do it for so long. I truly enjoy the work and the people I’ve worked beside, both in the Department and in the industry we regulate.

KRE: Commissioner, while you have a legal background, the commissioner’s role is not strictly a “legal position.” To my knowledge, all of your predecessors have been bankers or former bank examiners. What have been the most challenging legal issues you have faced as commissioner, as compared to banking industry-specific issues?

GG: It’s challenging to deal with some of our federal counterparts whose code word for “one size fits all” regulation is “consistency.” It leads to lazy regulation when you fall back on this easy way to look at industry innovation and challenges. We try to see each regulated company as an individual entity, each with its own risk profile and each with the possibility of great success if we don’t get in the way. For example, we have changed the way we look at enforcement actions. Instead of listing every picky policy deficiency that, in an ideal world, a bank might need to enhance, we focus on what really matters for that particular institution. Does it need capital? Is the bank at risk for experiencing a liquidity crisis? Are there management issues that are threatening the safety and soundness of the company? If the big issues are satisfactorily addressed, we can fix the little problems later once the crisis is over.

KRE: Have you managed to get your federal regulatory counterparts to buy into this philosophy?

GG: Working on it!

KRE: In what ways has being trained as a lawyer helped you perform your duties as commissioner?

GG: My philosophy is that rather than asking lawyers to drive policy decisions, the program folks in the Department need to decide what the best policies are to help us ensure that the companies we regulate are functioning in a safe and sound way. Once we establish policy, our lawyers review the processes to be sure that we are not violating any legal requirements. My professional background allows me to work with our program people and our lawyers to make sure there is a balance between what works and what’s legal — my job is to bridge any gap there might be. I’ve told our staff that in any precedent-setting decision, I want to be involved before the answer is “no.”

KRE: What do you want lawyers to know about representing their clients in matters before the agency?

GG: I’d say that we always assess issues brought to us by counsel by asking, “What’s the right thing to do?” We are always with the proponent if what he or she is asking us to do results in the best business outcome as long as it’s safe, sound and legal. We want to say “yes” and always strive to do that. If we cannot, we want to work with counsel and their clients to find a way to get to an answer we can both live with. It’s the opposite of that lazy regula-

KRE: Where do you think the financial services industry is headed in the next 10 years?

GG: That’s a good question. Regardless of where technology takes us, we have to be able to regulate financial services that can be delivered almost instantly and anywhere. Regulation and legal structures will necessarily change, but innovation should enhance, not cause the loss of relationship banking. There should always be a way for bank customers to sit down with bankers across the table, whether in rural Tennessee or in a Nashville urban neighborhood, and talk about their financial well-being. Changing delivery mechanisms for financial services shouldn’t displace relationships.

KRE: I listened to the recordings of Governor Lee’s budget hearing — where you were first up because you’ve done this before — and your recent testimony before the Tennessee House of Representatives Banking and Investments Sub-Committee and wondered if you can sum up for our readers your essential messages.

GG: I was privileged to talk with...
Governor Lee and his staff and the members of the Banking sub-committee about a number of issues, so I’ll just hit the high points. We tell the financial institutions we regulate that there are three questions they should ask the agencies that regulate them:

We are actively engaged in handling consumer complaints to help assure that all of our regulated entities are treating consumers the way they should.

What are you trying to achieve? What’s the plan for achieving your goals and mandates? How is that plan going to affect my business?

Financial services businesses deserve answers to those questions. Our department seeks to establish a system of safe and sound financial services that allow those companies to serve their customers and put them in the best situation to succeed. There are four essential parts of that plan: applications, examinations, enforcement, and consumer protection.

We have established application processes for determining which financial services companies are permitted to do business in Tennessee or expand their businesses here. We examine those businesses on a periodic basis, and then throw a safety net over those companies that are experiencing problems so that we help them improve without over reacting with draconian policies that affect all financial institutions. We tailor our examinations and enforcement actions based on risk and focus our pre-examination reviews on emerging risks. In addition, we are actively engaged in handling consumer complaints to help assure that all of our regulated entities are treating consumers the way they should.

One of the biggest challenges is maintaining a highly skilled, experienced examination staff. It takes at least five years for an examiner to gain the necessary experience to be balanced and effective. With more and more industry consolidation, it is really important that, as examiners, we are able to assess risk in larger, more complex organizations. We also know that eventually there will be another economic downturn, and having examiners who have weathered at least one bad economic cycle is key to being sure that we are providing effective regulation.

KRE: Thank you, Commissioner. It’s always a pleasure to talk with you. On behalf of lawyers who routinely practice before you and your staff, thank you for your balanced approach to regulation and the respect with which you interact with us and our clients. I also join the entirety of the industry in thanking Governor Lee for reappointing you to this important role and in thanking you for being willing to stay — just like examiners need experience through both good and bad times, we need seasoned government leadership in these key positions.

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participated in the Constitutional Convention of 1787; initiator and co-author of the Federalist Papers, which were instrumental in the success of the post-convention ratification effort; President Washington's most trusted cabinet member as the country's first secretary of the treasury; financial genius whose ideas got the nation's economy off to a sustainable beginning; extortion victim in an extramarital affair with Maria Reynolds; founder of the Federalist Party and arch-enemy to Thomas Jefferson, James Madison, and their Republican Party; and, finally, fatality in the duel with Aaron Burr.

Amidst his subject's highly accomplished and dramatic life, Chernow highlights an important side to Hamilton's career that until now has received little attention. When he wasn't involved in military or political affairs, Hamilton was a spectacular lawyer recognized as being at the top of his profession in New York City, with an elite clientele and a well-earned reputation for frequent trial and appellate victories.

His path to becoming a lawyer and his sense of professional ethics are strikingly similar to those of Abraham Lincoln. Both Hamilton and Lincoln prepared to become members of the bar by instructing themselves (largely by reading Sir William Blackstone’s Commentaries on the Laws of England) without being trained in any type of clerking apprenticeship. After being admitted to the bar, both men maintained reverence for the law throughout their careers; became well known for charging extremely reasonable fees; had a flair for courtroom drama; had outstanding reputations for discerning the most important parts and principles in a case; were highly respected by the judges who presided over their trials; and on occasion took on pro bono cases.

With Hamilton's command of the tools in his lawyer's toolkit, Chernow explains how he put them to good use in his commercial and political activities:

• As a master draftsman, he drew up the charter for the Bank of New York that “was taken up as the pattern for many subsequent bank charters and helped to define the rudiments of American banking.”

• In advocating for ratification of the Constitution after the convention, he showed he “had the attorney’s ability to make the best case for an imperfect client,” and at the New York state ratification convention, he “cross-examined an opponent to the Constitution in prosecutorial style.”

• His Federalist Papers “showed special solicitude for an independent judiciary that had the power to check legislative abuses and laid the groundwork for judicial review.”

• As secretary of the treasury, he “quickly built an institutional framework consistent with constitutional principles … and converted the Constitution into a flexible instrument necessary for economic growth, activating three still amorphous clauses — the necessary-and-proper

Hamilton the Lawyer


By Ron Chernow
Penguin Press
clause, the general-welfare clause, and the commerce clause.”

- As President Washington pondered whether America should take a side in the war between England and France, in cabinet meetings, Hamilton “pummeled listeners with authorities on international law,” and also, in his successful advocacy for neutrality, according to Thomas Jefferson, “made a jury speech of three-quarters of an hour.”

- As House Republicans led by Madison opposed Jay’s Treaty and in their quest to derail it, sought access to Washington’s correspondence with John Jay, Hamilton invented executive privilege to protect the confidentiality of the president’s documents.

In summary, just as Pulitzer Prize-winning historian James McPherson has concluded that Lincoln successfully navigated the Civil War’s constitutional and political minefield only because of his superior legal skills, Pulitzer winner Chernow also has made a compelling case that Hamilton’s virtuoso talents as a lawyer played a major role in allowing the United States to move forward during its infancy with a workable Constitution, an independent judiciary, an expanding economy, a prudent foreign policy, and a strong presidency that could hold its own with Congress.

Notes
4. See Langbein at 329.
6. Id. at 284.
7. Id.
9. Rembar at 284; See Curzon at 110.
10. 1 Ch.Rep.6
11. See Curzon at 110.
12. Id. at 110-11.
14. Id. at 331.
15. Curzon at 111.
16. 27 Edw. 3.
17. Curzon at 111.
18. Langbein at 333.
19. Id.
20. Curzon at 111.
24. Id. at 284.
25. Curzon at 111.
26. Langbein at 333.
27. Id. at 333-34.
29. Id.
30. Langbein at 334.
32. Curzon at 111.
33. Rembar at 286.
34. Id.
35. Id.
36. See Langbein at 335.
37. See Curzon at 111.
38. See Langbein at 335.
42. See Henry R. Gibson, Gibson’s Suits in Chancery § 2.02 (8th ed. 2004).

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‘Get Busy Living or Get Busy Dying: You Have a Choice’

Ten years ago when Catherine Henry was 28, a “whitish blur” suddenly covered the center of both her eyes.

“I woke up one day and my vision was gone.” She tried to blink it away but nothing helped. “That was a dark and painful time for me,” she says of the six months and 17 doctors it took to finally get a diagnosis. “I’ll never forget it,” she says, remembering the neuro-ophthalmologist who told her that the good news was that her vision loss had “bottomed out” and she would likely not go totally blind, but the bad news, he said, was “that your optic nerve has atrophied and there is no cure.”

That day she learned about Leber’s Hereditary Optic Neuropathy (LHON), a genetic condition, rare in females. She retained some peripheral vision, but is legally blind.

Talking with this vivacious lawyer today, an assistant attorney general with the Civil Law Division of the Office of the Attorney General of Tennessee, you wouldn’t guess what her journey has been since 2009. At the time of the onset, she was between jobs with no real direction, she says, and upon getting the news, just wanted “to get under the covers and never get back out. I did not have the drive or motivation to rise to the challenge of living without my sight. I could not think of what I could possibly do for a living.”

Her mother eventually gave her some life-saving advice. She said, “You have to get busy living or get busy dying. You have a choice to make.”

“I had no idea how to take the first step toward rehabilitating my life,” Catherine says. “I cried out to God, Help me. I don’t know what to do.”

She soon learned about Tennessee’s Division of Rehabilitative Services and when her counselor there asked her what services she needed, all she could think of was the need to learn how to navigate the world, and possibly how to use a computer again to someday do clerical work. The assistive technology instructor they provided suggested that she could do much more, and didn’t want her to let her broadcasting degree go to waste. She asked Catherine what she had always wanted to do.

So, recalling the character Christine from episodes of “Night Court” she watched as a kid, she said, half-joking, “Well, I always wanted to go to law school. I love language. Lawyers read a lot, write a lot and speak a lot. I want to do that,” she told the instructor, who said, “You can do it!”

“She taught me that textbooks can come in digital form, and that there are some attorneys who are blind. When she said that someone like me had done it before, I knew I could do it.” Then she told Catherine that Belmont University was opening a law school the following fall.

“That person changed my life,” she says. “I have the life now I would never have imagined.”

Depending “completely on assistive technology,” she uses an iPad Pro with a keyboard in place of a standard computer. Its built-in screen reader software, called VoiceOver, reads everything out loud.

A large desktop video magnifier with a camera on it allows her to enlarge and access a few words at a time, when reading from paper is necessary. With all of that, she says, “very few things are completely inaccessible.”

How did she meet this challenge? Faith, determination and a belief in herself.

“It was crucial to believe in myself. I knew that if I stayed focused but patient, I could eventually do it. I had to stop thinking I needed to get everything right the first time,” she says. She tries to “remember that I’m still learning and growing.”

In 2016, Catherine married, and now she and her husband Jeff have a 19-month-old daughter, Lily, “the joy of her life.”

“I have the life now I would never have had, but for this happening to me,” she says. “It took me years to be able to say that. I’m not here despite it, but because of it.”

With assistive technology, Catherine Henry says “very few things are completely inaccessible.”

“I was not here despite it, but because of it.”

The second semester I made the dean’s list! I had gotten into the groove of learning by listening only.” She made the dean’s list every semester thereafter, graduating with honors in the top 10 percent of her class.

After passing the bar — which she took over four days with a reader and scribe — she worked for a nonprofit disability rights organization, because she wanted to give back what she had been given. Then in 2017 she began working in the AG’s Office, a job she clearly loves.

“I’m still so honored that I’m even here. It’s a dream I could never have envisioned for myself.”

She soon hired a tutor to read questions to her to study for the LSAT — for months. She was a self-described visual learner, so she had to acquire a different way of learning. Then she applied to Belmont’s inaugural class — and got in.

“It was crucial to believe in myself. I knew that if I stayed focused but patient, I could eventually do it. I had to stop thinking I needed to get everything right the first time,” she says. She tries to “remember that I’m still learning and growing.”

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John Day, a trial lawyer in Brentwood, is the author of Day on Torts: Leading Cases in Tennessee Tort Law, an essential resource for tort lawyers that summarizes the leading cases on over 300 Tennessee personal injury and wrongful death subjects. John is also co-author of Tennessee Law of Comparative Fault, the leading treatise on the subject. Every month, thousands of people turn to his Day on Torts blog for information on developments in the law of torts in Tennessee and around the nation.

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