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TENNESSEE BAR JOURNAL
MAY 2019 VOLUME 55, NO. 5

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The Tennessee Bar Journal is listed in the Index to Legal Periodicals. Tennessee Bar Journal, ISSN 0497-2325, is published by the Tennessee Bar Association at 221 Fourth Ave. N., Suite 400, Nashville, TN 37219-2198, (615) 383-7421, monthly. Periodicals Postage Paid, Nashville, Tenn. Subscription price: $60 per year. Members: $22 per year. Individual issues: $10 per copy. Back issues sold on an “as available” basis. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Tennessee Bar Association, its officers, board or staff.

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Branding Matters

In the mid-1990s, there was one thing in common among the National Hockey League’s San Jose Sharks, Anaheim Mighty Ducks and New York Islanders; the National Basketball Association’s Vancouver Grizzlies, Charlotte Hornets, Detroit Pistons and San Antonio Spurs; the National Football League’s Miami Dolphins and Jacksonville Jaguars; and Major League Baseball’s Arizona Diamondbacks, Seattle Mariners, Florida Marlins and Tampa Bay Devil Rays: they all incorporated teal in their respective logos. Teal was all the rage in the 1990s and is the iconic color of that decade.

It should be no surprise that the current Tennessee Bar Association logo and its teal color scheme was launched 24 years ago in 1995. The TBA used a square-looking logo design for about 15 years prior to the current logo. One of our goals for this bar year was to modernize the logo and the branding of our association. Thanks to the hard work of branding professionals, our staff and an ad hoc committee, we are on track to unveil the TBA’s new logo in the near future.

Why Is This Important?

Launching a new logo may seem like a simple concept. However, branding is not simply a new logo. The new logo is only part of the equation. The TBA’s new look will be part of a broader branding effort that will reflect the core values of our association. Our goal is for our brand to communicate what we stand for as an association and tell the story of the TBA. Branding uses tone, logo, color scheme and identity to align what we want people to think about the TBA with what people actually do think about the TBA.

Keeping and Retaining Membership

Younger lawyers are not joining bar associations in the same numbers as those lawyers from past generations. Young lawyers will move to other organizations if they do not immediately see the benefits of bar membership, so bar associations must work harder to show value to newest members. Branding is the first impression the TBA will have on prospective members. A strong brand will convey the importance of the TBA’s mission, policies and services. Branding also gives insight into the TBA’s values and benefits.

Marketing Efforts

A great brand creates a clear message and gives the TBA its personality. This will make it easier for our staff, sections and committees to continue their great work and promote their various activities throughout the year. Strong branding will create a message that could be used to support our membership initiatives.

Employees and Members Become Promoters

A modern brand and clear messaging will allow our staff and members to become brand advocates. It will create opportunities for staff and members who will be proud to share content. The TBA will benefit from increased reach when the new look and message of the TBA is shared across various social media platforms.

The new branding will be a reflection of the TBA. At the beginning of the bar year, I said that we would embrace modernity while respecting tradition. The new logo and tone created by the branding effort will not only honor the history of our proud association, it will also tell the story of where we are going in the future. Enjoy the ride.

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Pannu’s Pairings: British Columbia’s Okanagan Valley

I mentioned in the August 2018 issue of the Tennessee Bar Journal that I would be saving Burgundy’s Côte de Beaune for my final article as TBA president because Burgundy was my first wine love. You may have noticed throughout the bar year that I have a certain affinity for wines from France. For my second to last article as TBA president, I wanted to bring your attention to the most under-the-radar wine region in the world: British Columbia’s Okanagan Valley. British Columbia, Canada, is where yours truly was born and raised.

B.C. wines do not have much of an export market because production is small and Canada consumes most of these wines domestically. Within B.C.’s wine growing region is the Okanagan Valley, about 400 KMs from Vancouver. There are nearly 200 wine producers in the 200 KM (124 mile) stretch of this valley full of vineyards. There is not a particular wine style or typical grape varietal in this region. The winemaking styles, soil profiles and grape varietals are incredibly diverse. They are still figuring out what wines work best in this region. This should not be surprising as it took the Cistercian monks almost 800 years to figure out what wines worked the best in Burgundy, France.

My favorite wineries in the Okanagan Valley include 50th Parallel Estate Winery, Haywire Wines, Culmina Vineyards, Burrowing Owl, Popular Grove Winery and Summerhill Pyramid Winery. If you have the opportunity to taste these wines, you will likely be somewhere in Canada. For appropriate pairings, ask the winery directly or consult with the undoubtedly friendly sommelier at your favo(u)rite Canadian restaurant.

Grapes on vines in the Okanagan Valley of British Columbia, Canada.
YOU NEED TO KNOW
FOR THE RECORD

Sherie Edwards

Students from Harpeth Hall, dressed for their roles of witnesses, await the final round in the State High School Mock Trial Championship in Nashville. Photos by Mindy Thomas.

AGATHOS CLASSICAL SCHOOL TOPS IN MOCK TRIAL FOR SECOND YEAR

Maury County’s Agathos Classical School again claimed the championship title at the Tennessee State High School Mock Trial Competition March in Nashville for the second year in a row. Agathos sent two teams to the state competition this year, and its “Team G” was the winning squad. Harpeth Hall of Nashville met Agathos in the final round and took home the second place trophy.

Agathos qualifies to compete at the National High School Mock Trial Competition May 16-18 in Athens, Georgia.

Supreme Court Justice Cornelia A. Clark presided over the final round. Jason Whatley and Cori Ricci were the attorney coaches for the winning team. Christy Crider was the attorney coach for Harpeth Hall.

The competition, which is hosted by the TBA Young Lawyers Division, brings together 14 teams from across the state. Murfreesboro lawyer Rob Sands is chair of the YLD’s Mock Trial Committee, and Knoxville lawyer Kati Sanford Goodner is vice chair.

This year’s qualifying schools were Agathos Classical School, Beech High School, Chattanooga Southeast Tennessee Home School Association, Coffee County Central High School, Dobyns-Bennett High School, Farragut High School, Harpeth Hall, Jefferson County High School, Signal Mountain High School, St. Mary’s Episcopal School, University School of Nashville and Westminster Academy.

Members of the Agathos Classical School’s team celebrate with Supreme Court Justice Connie Clark, who judged the final round.

YOUR TBA
Edwards to Lead TBA in 2021
Sherie Edwards of Brentwood was elected vice president of the Tennessee Bar Association. She will ascend to president-elect in 2020 and lead the organization as president for the 2021-2022 bar year. Edwards is vice president of corporate and legal for State Volunteer Mutual Insurance Company in Brentwood and has been involved with the TBA for a long time. She served as treasurer from 2012 to 2017, membership chair from 2017 to 2019 and was a section chair from 2005 to 2007 and again in 2011-2012. She is a member of the Access to Justice Committee, the Attorney Well-Being Committee, and was in the 2010 TBA Leadership Law class. She is a 1996 graduate of the Nashville School of Law and earned her master of business administration from Vanderbilt University in 2012.

The following candidates also won their respective races: Rachel Moses, governor, Fourth District; Trey Thatcher, West Grand Division governor, Position 2; and Jamie Durrett, Middle Grand Division governor, Position 2.

TBA Membership Renewal Now Open
The Tennessee Bar Association’s online renewal program for 2019 – 2020 is now open. Membership includes three pre-paid CLE credits (a $150 value) plus discounts on courses, free online legal research (with an annual value of $995) and timely information through TBA Today, the TBA Law Blog and continued on page 6
U.S. District Judge Pamela Reeves became the chief judge of the Eastern District of Tennessee, the first woman to do so. Reeves also made history in 1998 as the TBA’s first woman president. Celebrating with her are, from left, former TBA President Buck Lewis, Malinda Lewis, former TBA President Charles Swanson who is married to Reeves, TBA President-elect Sarah Sheppeard, Laura Tarpley and former TBA President John Tarpley. Photo by Pam Simpson, judicial assistant to Chief Judge Reeves.

NEWS
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the Tennessee Bar Journal.

ACCESS TO JUSTICE

Gala Honors
International Paper, Hospital

The East Tennessee Children’s Hospital (ETCH) and International Paper were both honored for their commitment to pro bono services during the 13th Annual Corporate Counsel Pro Bono Initiative Gala in Nashville April 6. The event was jointly sponsored by the Tennessee Bar Association and the Association of Corporate Counsel, and in partnership with the TBA Access to Justice Committee.

ETCH was honored for its medical-legal partnership with Legal Aid of East Tennessee (LAET). The award was accepted by Alex Brinson, ETCH Family Services attorney. International Paper was recognized for the pro bono efforts of its legal department. Sharon Ryan, senior vice president, general counsel and corporate secretary, accepted the award.

The gala, which was held at the Pinnacle at Symphony Place, featured remarks from Eve Runyon, president and CEO of the Pro Bono Institute.

HELP4TN Day Kicks Off Month of Free Legal Resource Events

The Third Annual HELP4TN Day was April 6, kicking off a month of more than 100 events and activities aimed at bringing free legal resources to Tennesseans in need. The Tennessee Supreme Court launched the effort at a press conference and Pro Bono Summit, hosted by its Access to Justice Commission.

“In the past 10 years, we have seen Tennessees go from having a somewhat dismal record on access to justice to regularly being listed among the top 10 states nationally. “Justice Connie Clark, who is the Supreme Court’s liaison to the Commission, said. “This is the direct result of groups and attorneys coming together to solve this problem. Access to Justice is a priority across the state, and we are making a difference in the lives of Tennesseans.”

Tennessee lawyers were invited to participate in HELP4TN Day activities, and to volunteer beyond April. Events were organized to bring attention to the ongoing need for free and low-cost legal services and highlight the groups that provide these services to disadvantaged Tennesseans. Opportunities included volunteering to help clients in need through Tennessee Free Legal Answers (TFLA) or at a local legal clinic. HELP4TN Day is a joint effort by the Tennessee Supreme Court’s Access to Justice Commission, the Administrative Office of the Courts, Tennessee Alliance for Legal Services and the Tennessee Bar Association.

COURTS

Supreme Court Adopts Changes to Rule 7

After opening the issue up to public comment earlier this year, the Tennessee Supreme Court has officially adopted amendments to Rule 7, which governs the admission and licensing of attorneys in the state. Changes include edits to the rules governing students attending non-American Bar Association accredited law schools, approval of law schools seeking ABA accreditation and more. The rule went into effect in March. The court received comments from deans, clinic directors and law school faculty members.

Reeves Named Chief Judge

District Judge Pamela L. Reeves became the chief judge of the Eastern District of Tennessee on April 1, succeeding U.S. District Judge Thomas A.

A delegation of eight lawyers from Tennessee met with lawmakers in Washington, D.C., in April for “ABA Day on the Hill.” U.S. Rep. David Kustoff speaks with TBA President Jason Pannu, President-elect Sarah Sheppeard and other members of the group. They also met with Reps. Scott DesJarlais, Steve Cohen and Tim Burchett, and Senators Marsha Blackburn and Lamar Alexander. Main topics were increased funding for the Legal Services Corporation and maintaining the Public Service Loan Forgiveness Program. Photo by Brad Lampley.
Varlan, who has held the chief judgeship for the past seven years. Reeves is the first woman to hold a district judgeship in the Eastern District of Tennessee and becomes the first woman to hold the district’s chief judge position in the court’s 222-year history. She was nominated to her judgeship in 2013, confirmed unanimously by the U.S. Senate in 2014. She received her law degree from the UT College of Law in 1979, and she practiced law in Knoxville until her appointment. She served as the first female president of the TBA from 1998 to 1999.

Moskal is New Chancellor TBA President Jason Pannu presented Chancellor Patricia Head Moskal with a gavel on behalf of the Tennessee Bar Association March 28 during her Investiture Ceremony in the Davidson County Chancery Court. Moskal is a former partner at the law firm of Bradley where she served as a litigator for more than 30 years. She replaces former Chancellor Claudia Bonnyman, who recently retired.

FAMILY LAW Court Adopts New Rule Addressing Collaborative Family Law After opening the issue up to public comment in 2017, directing the Alternative Dispute Resolution Commission to provide comment in June 2018 and holding hearings in October 2018, the Tennessee Supreme Court has officially adopted Rule 53, which addresses the practice of Collaborative Family Law. The rule proposal was initially put forth by the TBA in June 2017. It went into effect immediately.

YOUR PRACTICE Survey: Millennials OK with Less Money for Less Work, More Flexibility In a recent survey of millennial lawyers, nearly half say their workloads have increased in recent years, and about 1 in 4 say they would take less money in exchange for either a more flexible work schedule, more time off or a cut in billable hours, the ABA Journal reported. The survey of more than 1,200 lawyers in law firms was conducted in conjunction with Above the Law. It also found that more than 45 percent of female attorneys believe there is inherent sexism in the profession and 56 percent strongly agreed there is a gender pay gap.

HONORING COMMITMENT CELEBRATING SERVICE CORPветATE COUNSEL PRO BONO INITIATIVE GALA

Tennessee Supreme Court Justices Roger Page and Connie Clark, at left, gather with CCPBI Gala honorees from International Paper, East Tennessee Children’s Hospital and Legal Aid of East Tennessee, along with keynote speaker Eve Runyon and CCPBI co-chair Andy Branham.

THANK YOU TO OUR 2019 GALA SUPPORTERS

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Special Thanks to Bass, Berry & Sims for Hosting the 2019 Gala.

Joseph Kwon has joined the DeSalvo Law Firm, a Nashville entertainment and intellectual property firm. A graduate of the University of Tennessee College of Law, Kwon first worked as a policy coordinator at the Tennessee Immigrant and Refugee Rights Coalition where he worked with state and local governments on immigration and civil rights. At the DeSalvo Law Firm he will focus on legal services for businesses, entrepreneurs and those in or related to the entertainment industry.

D. Bryan Thomas, a partner in the Nashville office of Bradley Arant Boult Cummings, has been selected as a fellow of the Construction Lawyers Society of America (CLSA), an invitation-only association of lawyers focusing on construction law and related fields. Thomas advises clients on a range of projects, including industrial and power plant construction, hydro, solar and wind energy projects; multifamily and commercial construction; and residential construction.

The Mid-South Commercial Law Institute has named its officers and directors for the year. TBA members among the group are Nashville lawyer Gulam R. Zade with LOGICFORCE, who will serve as president, and Chattanooga attorney Jeffrey W. Maddux with Chambless, Bahner & Stophel, who will serve as immediate past president. Board members include Memphis lawyer Doug Alrutz with Wyatt, Tarrant & Combs and Chattanooga lawyer Amanda Stefan with Farinash & Stefan. The TBA partners with the nonprofit institute to hold a two-day seminar on commercial and bankruptcy law in Nashville.

Laura Bailey was recently promoted to principal attorney and senior vice president of legal operations at The Crone Law Firm, an employment law firm in Memphis. Bailey earned her law degree from the University of Memphis Cecil C. Humphreys School of Law in 2008 and worked for a number of firms in the Memphis and Jackson areas before joining The Crone Law Firm. She has extensive experience in employment, personal injury and worker’s compensation law.

Nashville lawyer Lisa Bashinsky has joined the law firm of Gullett Sanford Robinson & Martin (GSRM Law) as an associate attorney. She will practice in the firm’s Business & Corporate Section with a focus on providing legal representation to businesses, entrepreneurs and professionals with business transactions and commercial needs. Prior to joining GSRM Law, Bashinsky was an attorney at Hall Booth Smith. She earned an undergraduate degree in psychology, a master’s degree in education and a law degree from Vanderbilt University.

Frost Brown Todd recently announced its 2019 leadership appointments for its various offices. In Nashville, member Mekesha Montgomery will chair the Manufacturing Industry

To submit career moves, awards, appointments and other notable achievements to Success!, TBA members may go to the online submission form at www.tba.org/success. Your entry will appear online at www.tba.org/success/news after approval, and in the next available print edition. News is subject to editing and pictures are used on a space-available basis. Save photos as a tiff or jpeg (with no compression), minimum resolution 200 dpi, and at least 1”x1.5”.

Success! is compiled by Stacey Shrader Joslin and Linda Murphy. If you have questions, contact Linda at lmurphy@tnbar.org. For information on paid advertisements, please contact Stacey at advertising@tnbar.org.
Butler Snow attorney Joseph F. Welborn III has been named a fellow of the American College of Trial Lawyers. The induction ceremony took place at the spring meeting of the college in California. Welborn has more than 27 years of trial experience in business and commercial litigation including shareholder, merger and acquisition, banking, contractual, real estate, intellectual property and business tort disputes. He also is experienced in representing individuals and businesses in civil rights litigation as well as catastrophic personal injury and wrongful death cases.

Jennifer M. Eberle has joined the Nashville law firm of Kinnard, Clayton & Beveridge where she will represent plaintiffs in medical malpractice actions, products liability and other personal injury cases. Eberle previously was a partner with Hall Booth Smith where she handled medical malpractice and liability defense for health care providers. A native of Clarksville, she received her law degree from the University of Memphis School of Law.

Butler Snow attorney John Wingo, who completed two terms of service and rotated off the committee. Myers is a registered U.S. patent attorney and a member of the firm’s Intellectual Property & Technology Service Group. His practice focuses on counseling clients on patent infringement, patent validity and patentability. With an academic background in chemistry, he primarily works with clients in the life sciences, including a wide variety of chemical and pharmaceutical arts.

Whitney Horak, managing associate attorney at the Adelman Law Firm in Memphis, is now a certified professional in healthcare risk management. Administered by the American Hospital Association, the CPHRM designation is the health care industry’s premier certification for the risk management profession. In her current role at the firm, Horak focuses on medical malpractice, long-term care and aging services, representing health care providers in abuse and neglect, negligence, patient rights, wrongful death and breach of contract cases.

The Nashville law firm of Stites & Harbison recently elected Richard Myers Jr. to its six-member Management Committee for a two-year term. He replaces John Wingo, who completed two terms of service and rotated off the committee. Myers is a registered U.S. patent attorney and a member of the firm’s Intellectual Property & Technology Service Group. His practice focuses on counseling clients on patent infringement, patent validity and patentability. With an academic background in chemistry, he primarily works with clients in the life sciences, including a wide variety of chemical and pharmaceutical arts.

Franklin lawyer DOUGLAS MURREY FISHER died April 7 at the age of 91. A 1952 graduate of Vanderbilt Law School, Fisher cofounded the Nashville firm Clement, Sanford & Fisher, and later Howell & Fisher PLLC. He served as an aide to Govs. Clement and Ellington. He was an inaugural member of the Nashville School of Law Board of Trust, teaching civil procedure there for seven years, and was named NSL’s Distinguished Faculty Award in 1997.

Knoxville lawyer JOHN MCREYNOLDS JR. died April 1 at 78. He earned his law degree from UT College of Law. After serving in the Air Forces’ Judge Advocate Corps., he returned home where he practiced law for 45 years. Donations may be made to the Lisa McReynolds Memorial Scholarship Endowment at UT, or the Pat Summit Foundation.

Knoxville lawyer ARTHUR G. SEYMOUR JR. died March 11 at the age of 74. Seymour received his law degree from the University of Tennessee in 1969. After serving his country in the U.S. Army for two years, he returned to Knoxville and began practicing with Frantz, McConnell & Seymour — the law firm founded by his grandfather Charles Milne Seymour. For nearly five decades, he maintained a broad and diverse practice, trying civil cases in both state and federal courts. He was a member of the International Association of Defense Counsel, the National Association of Railroad Trial Council and the American College of Trial Lawyers. Memorial contributions may be made to the University of the South, 735 University Ave., Sewanee 37383 or to St. John’s Cathedral, 413 Cumberland Ave., Knoxville 37902.

Knoxville lawyer ROBERT “BOB” STIVERS died March 31 at 73. A 1969 graduate of the UT College of Law, he practiced law for 50 years. He was president of the Oak Ridge Bar Association and was a member of the Hamilton Burnett American Inns of Court. In lieu of flowers, “take a kid fishing,” or contribute to Central United Methodist Church or a favorite charity.

Memphis attorney JERRY FRANCIS TAYLOR died March 1 at the age of 84. After graduating from Memphis State University, Taylor joined the U.S. Air Force where he developed an interest in the law while working in the Judge Advocate General’s office. Upon his return home, Taylor enrolled in the University of Tennessee College of Law. Following graduation in 1963, he began practicing law in Memphis. Taylor worked for a number of Memphis law firms handling personal injury, criminal and domestic relations cases. Memorials donations may be made to Central Church, 2005 E. Winchester Blvd., Collierville 38017.

Jackson lawyer EDWIN EARLE WALLIS JR. died March 7 after a long illness. He was 70. A graduate of Vanderbilt University and the Vanderbilt University Law School, Wallis practiced law in Nashville for several years. He then moved to Jackson and worked for 42 years at the law firm of Moss Benton & Wallis. He maintained a general law practice with a focus on litigation, insurance, employment discrimination and transactional law. Memorial donations may be made to the Mid-South Transplant Foundation, 8001 Centerview Parkway #302, Cordova 38018 or the charity of the donor’s choice.
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YOU NEED TO KNOW LICENSURE & DISCIPLINE

DISABILITY INACTIVE

The Tennessee Supreme Court transferred the law license of Florida lawyer Robert Mark Morgan to disability inactive status on March 20. Morgan may not practice law while on inactive status. He may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

The law license of Davidson County lawyer Lawrence Doyle Wilson was transferred to disability inactive status on March 12 after the Tennessee Supreme Court found he was incapacitated from continuing the practice of law. Wilson may not practice law while on inactive status. He may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and he is fit to resume the practice of law.

REINSTATED

Atlanta attorney Aminah Maurita Collick was reinstated to the practice of law on Feb. 14. Collick filed a petition for reinstatement after being on inactive status since May 15, 2013. The Board of Professional Responsibility found that the petition was satisfactory and recommended that the court reinstate Collick. The court issued the reinstatement order on March 8.

The Tennessee Supreme Court reinstated Shelby County lawyer Gerald Stanley Green to the practice of law effective Feb. 24. Green was suspended on Jan. 24 for six months, with 30 days to be served on active suspension and the remainder to be served on probation with conditions. Green subsequently filed a petition for reinstatement and the Board of Professional Responsibility found that the petition was satisfactory. The court issued the reinstatement order on March 15. He will remain on probation until July 24, during which time he must engage a practice monitor and take a minimum of eight hours of continuing legal education on the topics of law office management, client communication and client relations.

Alabama attorney Alice Howze Martin was reinstated to the practice of law on March 18 after being on inactive status since Feb. 11, 2013. Martin filed a petition for reinstatement on March 18 and the Board of Professional Responsibility found the petition satisfactory. The court issued the reinstatement order on March 28.

DISCIPLINARY Disbarred

Florida lawyer Thomas Patrick Cooper was disbarred from the practice of law on March 5. In July 2018, the Tennessee Supreme Court suspended Cooper after his plea of nolo contendere to one count of grand theft and one count of defrauding a financial institution in Broward County, Florida. On Aug. 9, 2018, the Board of Professional Responsibility filed a petition for final discipline recommending disbarment. In imposing the discipline, the court found that Cooper violated Rules of Professional Conduct 8.4(a), (b), (c) and (d). The court also stipulated that Cooper must comply with the conditions imposed on him in the Florida case before seeking reinstatement.

On March 29, the Tennessee Supreme Court ordered the disbarment of Jason R. Grubb, an attorney licensed in Tennessee, retroactive to May 18, 2016. The court imposed the discipline following similar action by the Supreme Court of Appeals of West Virginia. The West Virginia court acted after Grubb pleaded guilty to violating federal laws requiring the collection, accounting and paying of employment taxes. On Feb. 8, the Tennessee Supreme Court entered a notice of reciprocal discipline directing Grubb to demonstrate why the discipline imposed in West Virginia should not be imposed in Tennessee. Grubb filed a response, but according to the court, failed to demonstrate that reciprocal discipline was unwarranted.

Shelby County lawyer Martin Alan Weiss was disbarred on March 26 for misappropriating funds from 18 personal injury settlements. The Tennessee Supreme Court ordered the disbarment of Jason R. Grubb, an attorney licensed in Tennessee, retroactive to May 18, 2016. The court imposed the discipline following similar action by the Supreme Court of Appeals of West Virginia. The West Virginia court acted after Grubb pleaded guilty to violating federal laws requiring the collection, accounting and paying of employment taxes. On Feb. 8, the Tennessee Supreme Court entered a notice of reciprocal discipline directing Grubb to demonstrate why the discipline imposed in West Virginia should not be imposed in Tennessee. Grubb filed a response, but according to the court, failed to demonstrate that reciprocal discipline was unwarranted.

Compiled by Stacey Shrader Joslin from information provided by the Board of Professional Responsibility of the Tennessee Supreme Court. Licensure 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.
Licensure & Discipline

continued from page 11

Court found that when distributing settlement funds to clients, Weiss withheld funds to pay what each client owed to the clinic where they had been treated. But then, instead of paying the money to the clinic, Weiss kept the money for his personal use. Weiss entered a conditional guilty plea admitting that his actions violated Rules of Professional Conduct 1.2(a), 1.4, 1.5(c), 1.15(a) and (d), 8.1(b) and 8.4(a) and (c). In addition to imposing the discipline, the court ordered Weiss to make restitution in the amount of $57,769, obtain an evaluation by the Tennessee Lawyers Assistance Program, and enter into a TLAP monitoring agreement if appropriate. In light of the disbarment, the court dissolved a temporary suspension imposed on Weiss in June 2018 for posing a threat of substantial harm to the public.

Suspended

The Tennessee Supreme Court suspended Kurt Joseph Pomrenke on March 15 for a period of nine months. The action was taken after similar discipline was imposed by the Disciplinary Board of the Virginia State Bar. Pomrenke, a Virginia juvenile and domestic relations district court judge, was charged with violating Canons 1, 2A and 2B of the Virginia Code of Judicial Ethics for engaging in conduct that reflects adversely on a lawyer’s honesty, trustworthiness or fitness to practice law. Pomrenke also was found guilty of criminal contempt of court and served a two-month prison sentence. His actions related to attempts to influence witnesses in a criminal trial involving his wife. On March 12, the Tennessee court entered a notice of reciprocal discipline directing Pomrenke to demonstrate why the discipline imposed in Virginia should not be imposed in Tennessee. On March 14, Pomrenke responded that he would not contest the discipline.

Censured

On March 25, Davidson County lawyer Erich Webb Bailey was publicly censured by the Tennessee Supreme Court for failing to (1) communicate with a client and (2) appear in court when the matter was set for a hearing. Bailey entered a conditional guilty plea admitting violations of Rules of Professional Conduct 1.3, 1.4 and 8.4. In addition to imposing the censure, the court directed Bailey to enter into a monitoring agreement with the Tennessee Lawyers Assistance Program. Bailey had been suspended in July 2017 for noncompliance with a previous TLAP monitoring agreement. After imposing the censure and conditions, the court lifted the suspension and reinstated Bailey to the practice of law.

Jerry D. Holmes Jr., a Tennessee licensed attorney residing in North Carolina, was publicly censured by the Tennessee Supreme Court on March 28. The Board of Professional Responsibility filed a petition for discipline concerning one complaint of misconduct after finding that Holmes prepared and sent an email in which he improperly designated himself as an attorney while administratively suspended in Tennessee. Holmes agreed to a conditional guilty plea acknowledging his conduct violated Rules of Professional Conduct 7.1 and 8.4.

Florida lawyer Thomas W. Thompson was publicly censured by the Tennessee Supreme Court on March 25 for practicing law while suspended. Thompson was suspended in August 2016 for failing to comply with continuing legal education requirements. While suspended, four lawsuits were filed in Tennessee naming him as attorney for the plaintiffs. The lawsuits were prepared and filed by Thompson’s nonlawyer staff without his knowledge. Thompson entered a conditional guilty plea admitting that his actions violated Rules of Professional Conduct 5.5(a) and 8.4. As a condition of the censure, Thompson agreed to withdraw from all Tennessee cases.

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.


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Register now at tba.org/convention2019
STAY RELEVANT

Data Can Help Lawyers Thrive in the Changing Marketplace

By Reem Blaik
The digital age has changed the practice of law as we know it. The rapid rise and growing use of technology influence client expectations which, in turn, impact the business practices of the private sector legal services industry. With a few simple clicks of a button, for example, a user can create an online will or incorporate their business for under $100. How do attorneys stay relevant during such taxing times?

The legal industry's focus on evolving legal technologies and business practices is warranted. However, the ever-increasing emphasis on the future of the legal industry tends to obscure what is currently going on in the marketplace for Tennessee legal services. This article contributes to the understanding of Tennessee's current legal marketplace by taking a hard look at the data on this subject, as well as national legal industry data. Specifically, it analyzes three years of legal trend studies that aggregated data on legal professionals and consumers from the United States. It then compares this data to a survey that collected data on attorneys from Tennessee.

This article concludes that technology usage is, and will continue to be, an integral part of the contemporary practice of law. Technology alone, however, will not be the sole impetus of change. Rather, new business models will continue to transform the legal industry. In order for attorneys to maintain their position in the legal industry, they must become change adapters and counselors of customer service.

I. The Current State of the Legal Industry

The current state of the legal industry is markedly different from how society has portrayed it in the common tale. Traditional consumers of legal services are demanding better, faster and cheaper legal services. Moreover, clients expect greater customer service because of the increased availability and affordability of online legal services. As a result, alternative legal service providers — many of which take advantage of the technologies discussed below — are increasing their efficiency while decreasing their costs. And this affects attorneys, too.

Although many things have changed in the legal industry, the fundamental services that attorneys provide have remained constant. That is, attorneys still (1) counsel on substantive issues and (2) assist with process navigation. In other words, clients continue to need help with the “it depends” legal issues, and with resolving these issues according to established legal procedures.

Admittedly, though, technology is increasingly affecting the second service of process navigation. According to Joshua Lenon, Lawyer-in-Residence at Clio, a leading legal software provider, “the processes lawyers help navigate … are going to change and become tech processes,” thus becoming similar to the other innumerable technological processes clients have in their lives. In other words, alternative legal service providers are streamlining process navigations online, for example, making it easier to file a lawsuit or prepare legal documents.

For so long, the tried-and-true business structure of law firms was so dependable, but this quality seemed to slip away from the industry overnight. These issues, however, have been festering for a while now, and it is up to attorneys to address the aftermath. Although some attorneys and law students may think technology has “disrupted” traditional legal practices for the worse—it is better to characterize these technologies as useful project management tools that can assist in addressing the industry’s current economic trends. In turn, adopting more efficient business models can free up more time in attorneys’ schedules—thus increasing their ability to serve more people. Moreover, Lenon advises attorneys to become experts on adapting to new technological processes and “counselors-at-law,” thus delivering maximum solutions and client satisfaction.

II. Legal Services Technologies

Legal services technologies are part and parcel of the current state of the legal industry. In place of “human handcrafted” legal services, the trend is now shifting towards more sophisticated technology-based production. Technologies — including e-discovery, machine production, and online dispute resolution, to name a few — are changing the landscape of the legal industry. Moreover, artificial intelligence (AI) is reducing the amount of time and money spent on litigation. This, in turn, helps attorneys strengthen their legal project management skills by allocating resources more efficiently—thus working better, faster and cheaper.

III. Comparing Tennessee Technology and Business Practices to the National Average

Now that the foundation of the changing legal market and the rise of technology continued on page 16
have been discussed, this part analyzes how Tennessee attorneys use legal service technologies, and how their usage measures up to national averages and client expectations. Moreover, it explores data on attorney income, hourly rates, and hours worked by analyzing legal trend studies from 2016, 2017 and 2018. These studies collected aggregated and anonymized data on nearly 70,000 legal professionals and nearly 1,500 consumers from the general population. This part then compares the national data to a 2018 Tennessee Bar Association (TBA) survey that collected the data of more than 1,200 Tennessee attorneys. It is important to note that the aggregation and anonymization processes used by Clio reduced the impact of self-reporting biases and small sample sizes, as compared to the TBA survey that relied exclusively on the limited responses of Tennessee attorneys. Although the two datasets are not completely comparable, this article is a starting point for getting a sense of what is happening in the legal industry on a state and national levels.

A. National Data

The national data analyzed in this article are derived from Clio Legal Software, a service that publishes yearly reports on U.S. legal trends. Attorneys and law firms from 90 countries use Clio. To produce its yearly reports, Clio uses aggregated and anonymized data from its opted-in U.S. clients’ usage activity, surveys U.S. law firms and legal professionals, and surveys U.S. consumers who recently hired a lawyer or dealt with a legal issue. This section focuses on Clio’s data concerning electronic services, emerging technology and business practices.

1. National Data: Electronic Services

After analyzing this data, one thing is clear: Technology is transforming the expectations of clients. As stated by Lenon, “What we’ve seen is just the beginning of the impact. … Clients are frustrated with the process as it exists. As they see other uses become more user-friendly, they will demand the same [from attorneys].” Specifically, clients have shown significant preference for electronic payments and client portals, with 38 percent of consumers favoring electronic payments. Furthermore, electronic payment methods increase the likelihood of attorney retention: 50 percent of clients are more likely to hire an attorney who takes electronic payments. In addition, electronic payments help with timely client payments. When clients used electronic payments, Clio observed a 35 percent reduction in average payment times (as compared to check payments). Thus, clients are expecting more user-friendly legal services.

2. National Data: Emerging Technologies

In addition to online payments, clients have also shown interest in emerging technologies. Recently, clients have been more open to working with virtual attorneys, AI tools and remote attorneys. Thirty-two percent of clients believe that virtual attorneys are a good idea. Twenty-four percent of clients agree that AI and chatbots are useful legal tools. Thirty-one percent of clients prefer never to meet with their attorneys in person. Moreover, 14 percent of clients prefer to text or email their attor-
ney's. Similarly, millennial clients prefer to virtually communicate with their attorneys, with 19 percent preferring texting or email communications. In addition, 30 percent of millennial clients prefer to use technology to exchange legal documents with their attorneys. Thus, the days of long, costly phone calls and in-person meetings may be winding down.

With the rise of these legal service technologies come business-related benefits and issues. With regard to the benefits, an attorney’s online presence can encourage business. In 2017, Clio found that traditional advertising (i.e., billboards, television, radio and yellow pages) was less effective than referral building and online marketing. Sixty-two percent of consumers asked friends and family for recommendations when searching for attorneys. Referrals and online presence, however, are not the only things clients take into account when deciding whether to hire an attorney. With the first factor being the most significant response, clients also consider the following when retaining an attorney: (1) quick responses to the client’s first call or email; (2) free initial consultation offers; (3) flat-rate pricing options; (4) electronic means of payment; (5) text messaging communication; and (6) aesthetic websites.

With regard to these issues, some attorneys struggle with configuring technology. Although the average full-time attorney aims to bill eight hours a day, attorneys end up billing only 2.4 hours a day on average. So where do the other 5.6 hours go? Many attorneys still report spending several hours on administrative and business development tasks. Specifically, 11 percent of non-billable tasks are spent configuring technology.

Even considering the issues of configuring technology, the billable hour is still alive and well. Despite the national trend toward alternative fee arrangements, the billable hour is still the most common pricing structure. In 2018, the average attorney's billable rate was $267 per hour. The average full-time attorney worked 49.6 hours per week. As reported by the Bureau of Labor Statistics in 2017, the average annual wage of an attorney in the United States was $119,250.

What Do All These Names Mean?
Legility, Axiom, Latitude, Attorneys on Demand, Docketly and LexisNexis are companies that offer supporting legal services to law firms.

Legility and Axiom provide consulting, legal talent, technology and solutions.
Latitude provides as-needed attorneys and paralegals.
Attorneys on Demand and Docketly provide appearance attorneys that attend court hearings.
LexisNexis provides legal research and analytic functions.

B. State Data
In 2017, the TBA’s Special Committee on the Evolving Legal Market (ELM) helped commission a survey to Tennessee attorneys. The purpose of this survey was to gather data on economic status, technology, and new business models to gain a better understanding of the practice of law in Tennessee. Then-president Lucian Pera directed the ELM to submit a series of questions for the TBA’s biennial Membership Survey.

Of the roughly 20,000 Tennessee attorneys, a total of 1,210 attorneys — both TBA members and nonmembers — participated in the survey. TBA aspires to continue this survey and encourages all Tennessee attorneys to participate in next year’s membership survey. By analyzing this report, the insights gained about electronic services, emerging technologies and business practices can help attorneys and the TBA better serve Tennessee’s legal market.

1. State Data: Electronic Services
Rather than focusing on the payment aspect of electronic services, as Clio’s report did, the TBA survey brought into focus other services like online filing and online dispute resolution. The data suggests that some Tennessee state courts are not in step with general client demands for user-friendly legal services. Although online filing systems are used in nearly 40 percent of TBA members’ counties, nearly 57 percent of nonmembers reported that their counties did not have an online court filing system such as the one available in federal court.

Besides online filing, the TBA survey also inquired about online dispute resolution. Although Tennessee attorneys regularly use technology, like social media platforms and electronic devices in their legal practices, not many use online dispute resolution services. Of the handful of Tennessee attorneys who do use arbitration, fewer than 2 percent use online dispute resolution, and fewer than 5 percent advise their clients to use it. Those attorneys who do use online dispute resolution primarily work at larger firms and are within the highest income brackets.

2. State Data: Emerging Technologies
Tennessee attorneys appear to be fundamentally in line with client expectations for technology-integrated services. Generally speaking, the vast majority of Tennessee attorneys have a positive outlook on legal services technologies. That is, about 82 percent of TBA members and 76 percent of nonmembers reported that the use of legal technology tools had a
positive impact on their practice. Specifically speaking, as compared to the 24 percent of U.S. clients who agree that AI and chatbots are useful legal tools, more than 50 percent of all Tennessee attorneys accept the usage of AI tools in legal practice. Namely, over half of TBA members and nonmembers stated that they would use AI tools to conduct legal research. Only a few Tennessee attorneys, however, actually use AI tools, because of their perceived high costs. Moreover, other supporting legal services, such as Legility (formerly Counsel on Call), Latitude and Axiom, are not widely used by Tennessee attorneys. Instead, attorneys use services like Attorneys on Demand, LexisNexis and Docketly.

Although Tennessee attorneys have a favorable view of legal services technologies, the cost of technology training is a significant issue. In Tennessee, the cost of training is the primary deterrent for greater legal technology usage. Nevertheless, legal services technologies have the potential to assist attorneys increase the quality and efficiency of their services. Tennessee attorneys likely appreciate this fact, as over half of all survey respondents listed that substantial cost benefits would encourage them to adopt more technology into their practice.

3. State Data: Business Practices

The TBA data suggests that Tennessee attorneys mainly rely on referral building for acquiring clients but, unlike the Clio data, the same cannot be said about online marketing. Specifically, 89 percent of TBA members and 80 percent of nonmembers get their legal business from referrals. Turning to online marketing, only one-third of TBA members place advertisements in lawyer directories or social media sites. Furthermore, over half of all TBA survey respondents reported that their firms do not use online advertising on social media sites or search engines.

The state and national data on pricing structures is more comparable. Like the national data, hourly billing is still the most widely used pricing structure in Tennessee. Most TBA members (68 percent) reported that they billed clients at an hourly rate, with an average billing rate of $274 per hour. This hourly rate is 2.6 percent higher than the average national billing rate. Nonmembers, however, aligned more with the national trend toward alternative fee arrangements and used different pricing structures. Fifty seven percent of nonmembers reported that they used flat-rate pricing. Those nonmembers who used hourly billing rates had an average billing rate of $215 per hour. This hourly rate is 19.5 percent higher than the average national billing rate.

The TBA data suggests that Tennessee attorneys work fewer hours than the average attorney, who worked 49.6 hours per week. TBA members reported working an average of 43.9 hours per week. Of these hours, around 65 percent were billable hours. Nonmembers reported slightly fewer hours than TBA members, working an average of 42.4 hours per week. Of these hours, around 51 percent were billable hours. Despite the national trend toward alternative fee arrangements, the vast majority of respondents do not provide the option of using alternative fee arrangements.

The TBA data suggests that Tennessee attorneys may earn more than the average attorney. However, the available figures compare wages to income. As stated above, in 2017 the average annual wage of an attorney in the United States was $119,250. During that same time, the annual net personal income average (including bonuses and excluding taxes) of TBA members was $173,167. Of nonmembers, the annual net personal income average was $107,024. It

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### Upcoming Programs

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<td>Intellectual Property Blast</td>
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<td>Entertainment &amp; Sports Law Annual Forum</td>
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<tr>
<td>Communications Law Forum</td>
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<td>YLD Deposition CLE</td>
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<td>Criminal Law Basics</td>
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<td>Real Estate Essentials</td>
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<td>TBA Annual Convention</td>
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<td>Summer CLE Blast</td>
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<td>FastTrack General Solo; Memphis</td>
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<td>Saturday Ethics</td>
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<td>FastTrack General Solo; Nashville</td>
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<tr>
<td>FastTrack General Solo; Knoxville</td>
<td>August 23</td>
<td>12 Gen., 3 Dual</td>
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<tr>
<td>Court Square Series: Coming Sept.-Oct.</td>
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<td>CLE SKI Seminar</td>
<td>Jan. 25-30, 2020</td>
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### Faculty Highlight

**JOSH WALLIS**

He will be speaking at the LGBT Law Annual Forum in June.

*Josh Wallis* has worked at The Landers Firm PLC in Memphis since 2013, practicing almost exclusively in the area of domestic law. He is a graduate of the 2018 TBA Leadership Law class and currently serves as co-chair of the LGBT Section of the TBA. Additionally, he serves on the board of the Memphis Bar Association, is co-chair of the CLE committee for the MBA, and is a member of the Mississippi Bar Association. In a previous life, he worked as an actor and enjoys performing in local theaters.

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**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
- Food
- Premium Coffee
- Internet

**REGISTER TODAY AT CLE.TBA.ORG**
Spring CLE Blast

May 7 in Nashville, Tennessee Bar Center
Program: 7 a.m. – 7 p.m.
Credit: Up to 11 Dual

$50 per hour/ Members
$75 per hour/ Nonmembers

For attorneys interested in: Ethics
Looking for CLE and fast? The TBA is hosting its annual Spring CLE Blast, offering programs from 7 a.m. to 6:45 p.m. on Tuesday, May 7, 2019. Earn up to 11 hours of dual CLE credit. You can create your own schedule; take as many or as few hours as you need.

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

Tax Law
3.50 General and 1 Dual (Ethics) Hours

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

Transaction Practice
5.25 General Hours

REGISTER TODAY AT CLE.TBA.ORG
Business Law Forum

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

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, Willa Kalaidjian

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

Intellectual Property Blast

May 10 in Nashville, Tennessee Bar Center
Program: 8:30 a.m. – 5:30 p.m.
Credit: 5 General, 3 Dual

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, Lauren Sherwood

$40 Hour/Section Members
$50 Hour/Members
$60 Hour/Nonmembers
Family Law Forum

May 15 in Nashville, Tennessee Bar Center
Program 8:30 a.m. - 3:45 p.m.
Credit: 5 General, 1 Dual
$265 Section Members
$290 Members
$465 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 General, 1 Dual
$170 Section Members
$200 Members
$375 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.

Reception will follow the program.
Speakers: Mary Lauren Teague, John Beiter, Page Kelley, Kent Marcus, Reid Waltz, Daniel Werly, Sara Anderson, Daniel Kustelski, Brian McEntee, Candice Reed, Rep. Rick Staples, Edward Leonard, Scott Ward, Jennifer Turnbow

17th Edition of the Alimony Bench Book
AVAILABLE NOW!

Brought to you by the TBA’s Family Law Section
Visit tba.org to get your copy today
Animal Law Forum

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

$220 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, Lauren Curry

Communications Law Forum

May 17 in Nashville, Tennessee Bar Center
Program: 9:00 a.m. - 12:15 p.m.
Credit: 3 General

$110 Section Members
$135 TBA Members
$310 Nonmembers (includes TBA Complete Membership)

For attorneys interested in: Communications Law
The Communications Law Section in its annual program will focus on the hot button issues related to the media and topics of interest to the communications bar at large, such as open government, lawsuits concerning speech and the reporter’s privilege, political broadcasting law, and lawyers and the media.

Speakers: Paul McAdoo, Charles Naftalin, Lucian Pera, Douglas Pierce
## Criminal Law Basics and Prison Tour

**May 22 in Nashville, Tennessee Bar Center**  
Program: 8:30 a.m. - 4:00 p.m.  
Credit: 5 General, 1 Dual  
$265 Section Members  
$290 Members  
$465 Nonmembers (includes TBA Complete Membership)  

**For attorneys interested in:** Criminal Law, Ethics  
This annual favorite features the intangibles for criminal law practitioners, including timely updates on both state and federal levels. We will cover appellate issues, attorney well-being and ethics, ending the day with a guided tour of the Riverbend Maximum Security Institution, presented by Warden Tony Mays and attorney David Raybin, who will discuss representing a death row inmate through execution. Don’t miss out on this unique, enriching CLE opportunity.  

**Forum reception will follow the program.**  
**Speakers:** Roger Nell, Perry Piper, David Raybin, Ted Rice

## Topgolf CLE: Estate Planning Tee Off

**June 19 in Nashville, Tennessee Bar Center**  
Program: 8:30 a.m. - 2:00 p.m.  
Credit: 3 General  
$170 Section Members  
$190 TBA Members  
$370 Nonmembers (includes TBA Complete Membership)  

**For attorneys interested in:** Estate Planning, Probate  
The TBA Estate Planning and Probate Section will host a CLE event at Topgolf Nashville on June 19. The program will feature 3 hours of CLE programming, focused on information relevant to new attorneys interested in Estate Planning and lawyers who desire to add this area to their practice. The CLE package includes breakfast, lunch, plus two hours of Topgolf after the presentations. Don’t miss this unique opportunity to build your practice knowledge and fine-tune your drive game, all in one day!  

**Speakers:** Newman Bankston, Michael Goode, David Parsons, Ashley Stearns
**Yoga, Mindfulness and Meditation in the City**

June 21 in Nashville, Wild Heart Meditation
Program: 8 a.m. – 5 p.m.
Credit: 4 Dual

$260 TBA Members
$435 Nonmembers (includes TBA Complete Membership)

**For attorneys interested in: Worklife Balance, Ethics**

Relax your mind, enhance your meditation skills and establish your daily practice beyond the law practice. Learn about the benefits of meditation and yoga and how they can improve attorney well-being and ultimately your client’s experience. This course is open to anyone in law practice who is interested in a better worklife balance; both new and experienced in yoga and meditation are welcome.

**Lunch catered by Sunflower Cafe**

**Speakers:** Joanna McCracken

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**LGBT Annual Forum**

June 21 in Nashville, Tennessee Bar Center
Program: 11:30 a.m. - 4:00 p.m.
Credit: 2 General, 2 Dual

$155 Section Members
$180 TBA Members
$355 Nonmembers (includes TBA Complete Membership)

**For attorneys interested in: LGBT Law**

This annual staple for LGBT advocates will be held to coincide with the Nashville Pride Festival. Stay tuned for more info!

**Speakers:** John Rice, Joshua Wallis, Jesse Ehrenfeld M.D, Maureen Holland, Chris Sanders
In 2018, the Tennessee legislature passed and then-Gov. Bill Haslam signed a legislative package that brought significant changes to Tennessee’s adoption code.\(^1\) The 2018 legislation is referred to by adoption practitioners as the “First in Adoption Act” (FIAA).

In 2019, the Tennessee Bar Association Adoption Section proposed two new adoption bills. The first bill was principally a corrections bill supplementing FIAA.\(^2\)

The second bill, however, introduced an entirely new concept to Tennessee adoption law by authorizing enforceable post-adoption contact agreements (PACAs).\(^3\) Both bills passed both chambers of the Tennessee legislature without opposition and were signed by Gov. Bill Lee on March 22, 2019. While the corrections bill is effective July 1, 2019, the PACA legislation became effective immediately upon the governor’s signature. The PACA legislation is a substantive change in Tennessee law that brings potential benefits to all parties to an adoption, but a Tennessee adoption practitioner must be fully aware of the implications of the new legislation before proceeding with a PACA for his or her client.
Legal Framework
The United States Supreme Court, in acknowledging the right of parents to make decisions for their children, has recognized that this fundamental right is the same for adoptive parents as it is for biological parents:

[A]doption is a means of family formation that is no less fundamental because it is characterized by choice and commitment rather than blood and procreation. … The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.4

It is clearly the case under Tennessee law that adoptive parents have the same rights to their adopted children as a biological parent has to a biological child.5 This would include the rights to make decisions regarding the upbringing of their child and the child’s contact with others.

Historical Treatment of PACAs in Tennessee
Since the legal relationship between the child and the child’s biological parents is terminated as a result of an adoption, any arrangement involving contact after the adoption of necessity involves the voluntary agreement of the parties. Since 1996, parties to an adoption in Tennessee have been able to enter into voluntary contact agreements, but by statute those agreements were not enforceable. In fact, former Tennessee law went so far as to say that “[a]ny provision in an order of the court or in any written agreement or contract between the parent or guardian of the child and the adoptive parents requiring visitation … shall be void and of no effect whatsoever.”6 That same statute, however, recognized the ability of adoptive parents to enter into “open adoptions” allowing visitation or other post-adoption contact between the biological family and the adopted child, while clearly stating that any such open adoption agreement cannot establish enforceable rights.7

The rationale for the traditional prohibition against enforceable PACAs is multilayered. For one, the historical concern over treating a child as a commodity in the laws of this and every other state prohibits the payment of money to a biological parent in exchange for his or her written consent to an adoption.8 A logical extension of this rationale suggests that adoptive parents should not be able to give a biological parent any consideration for their consent, and that would include a court-enforceable promise allowing post-adoption contact.

Moreover, as an adoption terminates an existing family and creates a new family, an enforceable contract allowing post-adoption contact by the biological family suggests tones of a custodial relationship between the parties. An adoption, of course, is not a custodial arrangement, and any inference of such is conceptually offensive to adoptive parents.

Finally, in many if not most adoption situations, there is a significant disparity between the adoptive parents and a biological parent when it comes to education, connections and financial resources. Because the parties are not similarly situated, giving a biological parent an enforceable PACA is viewed by many as an illusory arrangement, i.e., giving a biological parent a right that they realistically do not have the ability to enforce.

Rationale for Enforceable PACAs
There are public policy considerations that suggest the desirability of enforceable PACAs. Any attorney who has ever tried to mediate a contested termination of parental rights case will understand the value that an enforceable PACA brings to that arena. Heretofore, only a grandparent in a relative or stepparent adoption in Tennessee could maintain court enforceable contact with the adopted child after the adoption, and that only in specific circumstances.9 It is difficult to resolve a contested termination where by statute there is simply no common ground. A termination case is a “zero-sum” game where by definition there is a winner and there is a loser. However, the prospect of an enforceable PACA positions a biological parent to voluntarily relinquish rights to a child in exchange for an enforceable PACA.

Altogether separate from the arena of a contested termination, an adoption practitioner representing a biological parent in a voluntary placement can now provide a biological parent with an enforceable PACA to quell any concern that the adoptive parents are making representations about post-adoption contact that they do not intend to keep.

Scope of New Legislation
There is a broad range of items that can be addressed in an enforceable Tennessee PACA. New Tenn. Code Ann. Section 36-1-145(b) references without limitation “visitation with the child, contact with the child, sharing of information about the child, or sharing information about biological parents or adoptive parents.” The parties may permit contact under a
TENNESSEE PACA with not only a biological parent, but also with any “legal relative” as that term is defined in the Adoption Code.14

New Tennessee PACA Limitations
In considering the new PACA legislation there are several things that an adoption practitioner should keep in mind.

First, there is no requirement under the law for the parties in an adoption to enter into any kind of agreement addressing post-adoption contact.

Second, the new legislation does not eliminate the ability of the parties to enter into a written agreement that spells out expectations but by agreement has no enforcement mechanism. In other words, if you like the way you were doing PACAs before, you can continue to do so as long as your agreement is expressly designated as a moral agreement only and states that it is not intended to be legally enforceable.15

Third, if the parties agree to enter into an enforceable PACA under the new legislation, there are several points of particular interest to adoptive parents. For one, a birth parent is expressly prohibited from attempting to modify the agreement after it has been entered into.16 However, the adoptive parents — having the parental responsibility of identifying and pursuing the best interest of their child — can initiate a modification of the agreement if they conclude such to be in their child’s best interest. Moreover, and of fundamental value, is the fact that a violation of an enforceable PACA does not in any way threaten the status of the adoption itself. Even a willful violation of the PACA is then not a basis to set aside a surrender or a termination or an adoption decree itself.17

Enforcement Mechanism
Of particular interest is the way in which Tennessee PACAs under the new legislation can be enforced. In what appears to be first of its type legislation, the initial enforcement costs in a Tennessee PACA are shifted to the adoptive parents, and the courthouse is not the first stop in that enforcement process.

Instead, a birth parent seeking enforcement or an adoptive parent seeking modification must first deliver a letter to the other party “stating with reasonable particularity the enforcement or modification sought and reason for such request.”18

If the presenting issue is not satisfactorily resolved by the parties within 30 days thereafter, the adoptive parents then must obtain a written opinion from a licensed psychological professional as to the child’s best interest on the issues being raised, together with a resulting recommendation. If the parties are thereafter unable to reach agreement within the time specified in the statute, the parties must attend mediation to resolve the presenting issue. If there is still no resolution of the issue after up to two mediation sessions or if a party refuses to participate in mediation, the moving party then may petition the court for enforcement.19

Of particular note in this process is the fact that the adoptive parents must pay the costs associated both with obtaining the licensed professionals’ opinion and conducting the mediation process. This concept is without precedent but was included by the drafters in an effort to provide a meaningful remedy to an aggrieved biological parent. It is also intended to sober any adoptive parent who might otherwise enter into a Tennessee PACA without an actual intent to comply with its terms.

Should the enforcement process reach the stage of court enforcement, the court has discretion to tax court costs and attorneys’ fees to the parties based upon their good faith and means.20

While every adoption practitioner in Tennessee should be aware of the availability of court enforceable PACAs, they should not be entered into lightly, and it is likely the case that they will be the exception rather than the rule in Tennessee adoptive placements.

“Open adoptions” across the country and in Tennessee are growing in frequency, but not every open adoption will require an enforceable PACA, and even then that PACA may address limited issues of communication (such as pictures and updates, as opposed to actual contact with the child).21 It may well be that provisions involving actual contact with the child have more utility in a relative adoption context. Regardless, the new Tennessee PACA legislation advances this concept in a new and progressive way that is designed to protect adoptive placements, while simultaneously empowering biological parents who are making the extraordinary sacrifice of permanently releasing a child for adoption. 

MICHAEL S. JENNINGS is a partner in the Chattanooga firm of Samples, Jennings, Clem & Fields PLLC, where adoption law is the principle focus of his practice. He is a graduate of the University of Georgia School of Law and is a fellow in both the American Academy of Adoption and Assisted Reproduction Attorneys and the Georgia Council of Adoption Lawyers. Jennings has worked with enforceable PACAs in his Georgia practice since they became lawful in that state in 2013. He is the 2019-2020 chair of the TBA Adoption Law Section.

WILLIAM H. VETTERICK is an associate with Samples, Jennings, Clem & Fields PLLC, where he works extensively with adoption law issues. He is a graduate of the University of Tennessee College of Law, and a member of the Executive Council of the TBA Adoption Law Section.

NOTES
2. HB 0287 (Carter, R-Ooltewah), SB 0208 (Haule, R-Gallatin).
3. HB 0288 (Carter, R-Ooltewah), SB 0207 (Haule, R-Gallatin), added new §36-1-145 to the Tennessee Code.
is important to note, however, that 40 percent of TBA members and 52 percent of nonmembers either refused to answer this question, were retired, or are in judiciary positions.

IV. Conclusion

More than ever before, legal information and services are right at users’ fingertips. Although many of the technologies attorneys use have been around for a while now, the changes witnessed to date are only the beginning of the impact technology will have on the legal industry.

Technology usage alone, however, will not be an attorney’s only redeeming skill. Rather, attorneys must consider new business models that respond to client demands. Moreover, attorneys must continue to refine their roles as counselors-at-law, especially as they adopt new business models and embrace technological advances. This will allow attorneys to provide clients with quality solutions and superior customer service. After all, a discounted online will might sound appealing — but good service from a dynamic, all-serving counselor-at-law is good business.

REEM BLAIK is a third-year law student, the executive editor of the Vanderbilt Journal of Entertainment & Technology Law, and a research fellow for the Program on Law and Innovation (PoLi) at Vanderbilt University Law School. As a fellow to this program, Blaik conducts research on the changes in the private sector legal services industry. The article was made possible by PoLi.

NOTES

The author would like to thank Kate Prince, Lucian Pera, Joshua Lenon, Erin Walker and J. B. Ruhl for their assistance in publishing this article.

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CN100699_2021-2019

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NOTES

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Exclusive Jurisdiction of Juvenile Court

Family law practitioners should be aware of a bill currently making its way through the General Assembly this session that would alter the jurisdiction of child custody in a small but significant way. At the time this article was composed, the proposed legislation had been passed by the full House, and the Senate Judiciary Committee recommended it for passage by the full Senate and placed it on the Senate’s upcoming calendar.

In all likelihood, it will become law in short order. (Readers can follow its progress at http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB0719&GA=111.)

As practitioners are aware, a circuit court will have jurisdiction to adjudicate a divorce proceeding and, during that process, make dispensation for the care and custody of any minor children that result from that marriage through a permanent parenting plan that is incorporated into the final divorce decree. Continuing forward during the minority of those children, the circuit court would generally retain jurisdiction to modify the permanent parenting plan as is appropriate based on changes in the circumstances of the parties and/or the children as long as the parties continue to reside within the jurisdiction.1

However, the General Assembly has granted the juvenile courts of Tennessee the “exclusive original jurisdiction” to adjudicate matters of dependency and/or neglect of any minor children within their jurisdiction that have been so mistreated.2

How is one to proceed when, for example, there is the credible allegation that one of the parents is using illegal drugs in the presence of or during the parenting time with the minor children? Should this be filed pursuant to the continuing jurisdiction of the circuit court which permits the court to both award “custody and control of such child or children … as the welfare and interest of the child or children may demand” and the “decree shall remain within the control of the court and be subject to such changes or modification as the exigencies of the case may require”?3 Or should the attorney file in the juvenile court since allegations of drug use and the concurrently unsuitable environment it creates for children fall within the parameters of a “dependent and neglected” child which the juvenile court is required to handle?4

Two 2018 cases highlighted the difficulties in dealing with this issue effectively. The two cases have the same general facts, but two different panels of the Court of Appeals reached opposite conclusions.

Two 2018 cases highlighted the difficulties in dealing with this issue effectively. The two cases have the same general facts, but two different panels of the Court of Appeals reached opposite conclusions.
planning on moving back to New Jersey where he found better employment and, ultimately, based on a totality of the circumstances, the court determined that a change in custody was warranted and awarded the father primary residential parent status. In reviewing the case, the Court of Appeals determined that the trial court had reached the proper conclusion based on all the factors outlined in Tenn. Code Ann. § 36-6-106(a) and affirmed the ruling of the trial court. Importantly, in this case, the mother never argued that the matter should have been transferred to the juvenile court due to what were, essentially, allegations that the minor children were dependent and/or neglected due to her conduct. Consequently, the Court of Appeals was silent as to that issue in the Haak case.

In the matter of Cox v. Lucas, the Court of Appeals was presented with largely similar circumstances. Mr. Cox, the ex-husband of Ms. Lucas, filed an emergency petition for relief, including a change of custody, with the Circuit Court based in large part on the allegations of drug related activities on the part of Ms. Lucas. Ms. Lucas filed a motion to dismiss with the trial court for lack of jurisdiction, said motion was denied, and it was the sole issue before the Court of Appeals for consideration on appeal. As Ms. Lucas raised the specific issue of subject matter jurisdiction, whereas Ms. Haak did not, the Court of Appeals analyzed the competing jurisdictional claims of the parties. The court reviewed other cases where the appellant had similar arguments to that of Ms. Lucas, namely that the allegations in the petition to modify custody were, in fact, allegations of dependency and/or neglect and the circuit court lacked subject matter jurisdiction. The court made clear that such a determination is done on a case-by-case basis and, in Cox, the court concluded that the majority of the allegations that Mr. Cox made in his petition should be characterized as dependency/neglect related as opposed to simply a post-divorce modification. Based on this conclusion, the Court of Appeals reversed the decision of the trial court and granted Ms. Lucas’ motion to dismiss based on a lack of subject matter jurisdiction.

As noted, the important distinction in the Haak decision versus the Cox decision was the relief sought by the parties. Based on the case law, it is entirely possibly that if Ms. Haak had raised the issue of subject matter jurisdiction, she would have prevailed as well.

Nonetheless, in order to address this apparent discrepancy in the two panels of the Tennessee Court of Appeals, the General Assembly has introduced legislation in the 2019 session. That proposed legislation, House Bill 854 and Senate Bill 719, would allow “a court to exercise domestic relations jurisdiction regardless of the nature of the allegations unless and until a pleading is filed or relief is otherwise sought in a juvenile court invoking its exclusive original jurisdiction over proceedings in which a child is alleged to be … dependent and neglected.”

If the bill becomes law, then this particular situation would be largely avoided in the future. A petition for change of custody in the trial court, even if some or all of the allegations in the petition that served as the factual basis for the change of custody contained conduct that amounted to dependent and/or neglectful acts, would remain in the trial court as long as there was no intervening action filed in the juvenile court that would then supersede the jurisdiction of the trial court. Clearly, a moving party seeking a change that had filed in the circuit court would have little incentive to then file a competing action in juvenile court. However, this bill still leaves open the possibility, which can be utilized even without the change, that the respondent may file a competing action in juvenile court, what would essentially be a counter-petition, for dependency and/or neglect, and then the juvenile court would take jurisdiction and stay any proceedings on any actions in the circuit court.

The ultimate take away for the family law practitioner here is the proposed change does clarify the existing situation and allows for a reduction in duplicative litigation by permitting petitions of this nature to go forward in the circuit court absent some intervening petition in juvenile court. However, it does not entirely foreclose the possibility that the juvenile court will ultimately have jurisdiction of the matter.

MARLENE ESKIND MOSES is the principal and manager of MTR Family Law PLLC, a family and divorce law firm in Nashville. She is a past president of the American Academy of Matrimonial Lawyers. She has held prior presidencies with the Tennessee Board of Law Examiners, the Lawyers’ Association for Women and the Tennessee Supreme Court Historical Society. She is currently serving as a vice president of the International Academy of Matrimonial Lawyers. The National Board of Trial Advocacy has designated Moses as a Family Law Trial Specialist.

MANUEL BENJAMIN RUSS earned a bachelor of arts from Johns Hopkins University, a master of arts from University College London, and a law degree from the Emory University School of Law. He is in private practice in Nashville focusing primarily on criminal defense.

NOTES
6. Id. at p. 2-5.
7. Id. at p. 5-15.
8. Id. See page 5, Issues Presented.
10. Id. at p. 4.
11. Id. at p. 7-10.
12. Id. at p. 10-12.
Fault Allocation Against the Plaintiff and Its Impact on the Noneconomic Damages Cap

The adoption of the Tennessee Civil Justice Act of 2011 meant the words “noneconomic damages” formally entered the lexicon of Tennessee tort lawyers. The phrase has, of course, a comprehensive, statutory definition, but suffice it to say that “noneconomic damages” are awarded for human losses and do not include medical bills, lost earnings or earning capacity, or property damage.

The General Assembly determined, subject to eight exceptions, that the human losses in personal injury and wrongful death cases could not have a value of more than $750,000. Predictably, (a) the constitutionality of the limitation on the right to trial by jury is being challenged; and (b) the legislature is starting the process to amend the state constitution to specifically give it the power to limit the right of juries to award noneconomic or punitive damages.

The jury is not told about the limitation on their traditional power. Instead, if the jury’s award exceeds the damages cap, the judge has the duty to reduce the award and enter a judgment for noneconomic damages that does not exceed the applicable cap.

One question: If a plaintiff is found to be partially at fault for causing her injuries, should the trial judge apply the fault percentage to the noneconomic damages as determined by the jury before or after reducing the noneconomic damages to the capped amount?

An example will help explain the issue. Assume Mary is severely injured in a truck crash. A jury determines her human losses are $1 million. No exception to the damages cap applies. She is found 10% at fault in causing the crash. Assuming the trial judge otherwise approves of the verdict, should she (a) apply the noneconomic damages cap, reduce the award to $750,000, then apply the comparative fault percentage and reduce it again by $75,000 (10% of $750,000) for the fault of the plaintiff, making the judgment for noneconomic damages $675,000; or (b) apply the fault percentage against the $1 million (reducing the award to $900,000) and then cut the award to the cap ($750,000)?

The difference? $75,000 at 10% fault, a differential that increases as the fault of the plaintiff increases. Under the hypothetical, Mary would receive $750,000 in noneconomic damages if the rule described in (b) was applied until her fault reached 25%. Between 26 and 49% fault, her recoverable noneconomic damages would fall below the cap of $750,000. For example, if Mary’s fault was 49%, her noneconomic damages recovery under the rule described in (b) would be $510,000. If the rule described in (a) was applied when Mary’s fault was pegged at 49%, her noneconomic damages recovery would be $382,500 — a difference of $127,500 as compared with her recovery under the rule as applied in (b).

The correct rule to apply under Tennessee law is (b) — the fault percentage is applied to noneconomic damages as awarded by the jury before further reducing the jury’s award to the mandated cap. The Tennessee Court of Appeals has held “that, in personal injury cases, the trial court should first reduce the jury’s award of non-economic damages by the percentage of comparative fault, and then, if the adjusted award is still above the statutory
cap, the court should reduce the award further to comport with the cap. This result is consistent with a prior holding addressing interaction of comparative fault and the caps imposed under the Governmental Tort Liability Act.

True, the referenced Court of Appeals decision is unreported and only one court that faced the issue has cited it with approval. But, (a) it is all we have to work with at the present time; (b) the Court of Appeals said that it was following what it found to be the majority rule as applied in other states; and (c) the result appears just, at least to this admittedly biased observer.

JOHN A. DAY is a plaintiff’s personal injury and wrongful death lawyer with offices in Brentwood, Murfreesboro and Nashville. He wrote this column while watching the sun rise over the Atlantic Ocean in Juan Dolio, Dominican Republic, debating whether he should return to Middle Tennessee. Good judgment did not prevail (again).

NOTES
3. If one of the four circumstances described in Tenn. Code Ann. § 29-39-102(d) occurs, Tenn. Code Ann. § 29-39-101(c) allows the cap on noneconomic damages to rise to $1,000,000. If one of the four scenarios described in Tenn. Code Ann. § 29-39-102(h) occurs, there is no cap on noneconomic damages.
5. The author is aware of at least one case working its way through the Tennessee Court of Appeals that will challenge the constitutionality of the cap on noneconomic damages. No appellate decision has, as of the date this column was written, addressed the substance of a constitutional challenge to the caps.
6. SBR0176 (by McNally) (“Authorizes the Legislature to limit the amount of noneconomic and punitive damages that may be awarded in civil actions and specifies that these limits do not diminish the right to trial by jury”).
8. Id.
Good Kids, Bad City

Three innocent men, wrongfully imprisoned for a combined 106 years — a dismal American record — walked free from a Cleveland, Ohio, courthouse in November 2014. Despite their innocence, they had been convicted of murder in 1975 based on the eyewitness testimony of a 12-year-old boy, allegedly coerced by police into fabricating his testimony.

The men were sentenced to “death by electricity.” The eyewitness, Ed Vernon, would eventually recant decades later, after the Ohio Innocence Project got involved in the case. But that might never have happened if Kyle Swenson, the author of *Good Kids, Bad City: A Story of Race and Wrongful Conviction in America*, hadn’t been laid off by the *Nashville City Paper* in 2010.

Allow me to explain. Kyle Swenson worked as a reporter for the *Nashville City Paper* until February 2010, when bottomline cutbacks forced him out. And as many readers of the *Tennessee Bar Journal* will already know, the *City Paper* itself would fold soon afterwards. Losing his job at the *City Paper* marked the second time Swenson had been laid off from a reporting post in his fledgling career. He was thinking of quitting altogether, maybe going to law school. Instead, he returned to his hometown, Cleveland, Ohio. In May 2010, Swenson took a job at the *Cleveland Scene*, then under the same ownership as its counterpart *Nashville Scene*.

Meanwhile, in Cleveland, Kwame Ajamu (born Ronnie Bridgeman) had been paroled, after 28 years in prison, and was looking for a way to impress upon someone — anyone — both his own innocence and, more urgently, the innocence of his brother, Wiley Bridgeman, and childhood friend, Ricky Jackson, both of whom were still in jail. Kwame had contacted a civil rights attorney, Terry Gilbert, about his prospects. Gilbert knew that Kwame had no chance in the legal system without new evidence, witnesses or information. So Gilbert suggested Kwame contact a reporter to do some digging. He suggested that Kwame call Kyle Swenson. For whatever reason, Swenson took Kwame’s phone call and agreed to hear him out.

In *Good Kids, Bad City*, Swenson cites a study that “puts the number of innocent inmates between 1 and 5 percent of all convictions.” But, as Swenson observes, “what frustrates a determination of the actual problem is the avalanche of frivolous claims … [it’s] like looking for a ‘meritorious needle in the meritless haystack.’” How could he be sure Kwame was telling the truth? There was something about Kwame’s demeanor in making his case — calm, fact-driven, methodical — that struck Swenson as believable. And Kwame’s obsession with liberating the two men left behind in prison was difficult to explain — unless Kwame really was innocent.

An almost trivial detail underscored that Ed Vernon’s testimony must be false. Vernon had claimed that he was riding a city bus home from school when a car pulled up to the driver’s side. He’d testified that he saw the Bridgeman brothers and Ricky Jackson in the car as the bus and the car made a left-hand turn. But on a cold day in March 2011, Swenson, standing next to Kwame, watched a city bus make the same turn — from a single turn lane. There was no way two cars could make the turn at the same time. In that moment, Swenson suddenly understood that what Vernon
described was impossible. And the terrifying inference knocked the breath from his lungs: the three men were innocent — and two of them were likely to die in jail.

In June 2011, Swenson’s long-form article on the case, “What the Boy Saw,” ran on the cover of the Cleveland Scene. The article exposed several inconsistencies in Ed Vernon’s story (Vernon declined to be interviewed for the article). While the article drew praise, nothing seemed to happen. A year and a half went by. Swenson took another journalism job in Miami. Then, in the fall of 2013, Swenson got a phone call from Brian Howe, an attorney at the Ohio Innocence Project. “Ed has recanted,” Howe said.

When the OIP first looked into the case, the legal task seemed insurmountable — there was no DNA evidence that could prove the men’s innocence. And under Ohio law, as with the national trend, a mere recantation was not enough. One study, cited by Swenson, found that “of the first 250 DNA exonerations, 190 involved eyewitnesses. In six of those cases, witnesses later came forward to recant, but judges in none of the six reversed the original conviction on the basis of the new testimony.” The Innocence Project attorneys had to come up with an angle. They argued that because Vernon was pressured and threatened by the investigating officers, the police coercion itself was exculpatory evidence that should have been provided to the men’s defense attorneys.

Of course, the key to the argument was Ed Vernon. Swenson’s telling of Vernon’s ultimate recantation reads like a liturgical celebration. Vernon’s pastor, Anthony Singleton, read the 2011 Scene article and recognized the Ed Vernon in it as the troubled former drug addict in his congregation. Singleton suddenly understood the demons Vernon had been living with for so long.

In one of many high drama moments in Good Kids, Bad City, Singleton’s outreach to Vernon — at death’s door, in a hospital gown — stresses that there is nothing inevitable about the exoneration of the innocent. Chance occurrences — a reporter taking a call, a pastor glancing at a magazine — may make all the difference.

Good Kids, Bad City deserves your attention. And not merely for the sadly familiar story it tells. It merits reading — dignified with a pair of eyes and a comfortable chair — for the way the story is told. As Swenson reflects: “we’re accountable for what we see in the world, and more importantly, we’re responsible for what we don’t see.” Choose to see this story.

ADOPTION
continued from page 22

5 See Tenn. Code Ann. §36-1-121(a): “The signing of a final order of adoption … establishes from that date the relationship of parent and child between the adoptive parent or parents and the adopted child as if the adopted child had been born to the adoptive parent or parents and the adopted child shall be deemed the lawful child of such parent or parents, the same as if the child had been born to the parent or parents, for all legal consequences and incidents of the biological relation of parents and children” (emphasis added).
6 Tenn. Code Ann. §36-1-121(f).
7 “[T]he permission or agreement to permit visitation or contact shall not, in any matter whatsoever, establish any enforceable rights in the parent or guardian, the siblings or other related persons.” Id.
11 F.S.A. §63.0427.
21 For suggested Tennessee PACA forms (both enforceable and non-enforceable versions), see those posted by adoption practitioner Dawn Coppock at dawncoppock.com.
The resort, once the largest health spa and summer retreat in Middle Tennessee, was “known as the ‘Queen of the Southern Spas’ during the late nineteenth and early twentieth centuries. On the western Highland Rim, the Hickman County resort’s temperate days, cool nights, and four mineral springs offered treatment for medical conditions ranging from iron-poor blood to gout, dyspepsia and yellow fever.”

It was not only a tad cooler there but easily accessible, too — the year before, the Nashville and Tuscaloosa Railroad Company had completed the line from Dickson to Centerville within one-half mile of the resort.

Imagine stepping off that train into the idyllic resort area with all the latest amenities, greeting lawyers from far-away Memphis or Knoxville and catching up on all the latest news that had occurred in the previous year. Every summer since, members of the association have gathered for a business meeting, education and socializing. The TBA’s annual convention is still a staple for the legal community.

Right This Way, Ladies
Fast forward to 1965’s Nashville convention where the TBA Auxiliary hosted an “Old South Tea” at the Capitol, as well as a Ladies’ Luncheon and Show at Belle Meade Country Club, which was held at the same time as the Lawyers’ Luncheon, which as you can guess, only involved men.

It’s a little different now, as the women are not carted off to a separate event while their husbands tend to the important work of the association. In fact, this year as in several years past, a woman, Sarah Y. Sheppeard, will be sworn in as president!

In 1966, registration for the Chattanooga convention was $25, with an extra $4 fee for the Lawyer’s Luncheon. The Ladies’ Cold Buffet was $2.75 and the Ladies’ Luncheon at the Pan-O-Ram Club on Lookout Mountain was $4. The prices this year are a tad higher, but the value is every bit as good or better.

The Same, Yet Different
Meeting-space options have steadily improved since those early days, what with the advent of air conditioning and more types of transportation. The annual convention now rotates locations from west to middle to east Tennessee and back again. This June it will be in Nashville, at the Renaissance Hotel, in the heart of downtown.

One thing that hasn’t changed is the importance and excitement of comrade-rie as the business of the association is conducted and bonds are strengthened. With today’s technology and conveniences, you don’t have to wait a year to keep up on the news of the association and your colleagues, but, as it was in 1881, it’s still good to see them in person and reconnect.

Learn more on page 13 and at tba.org/convention2019.

— Suzanne Craig Robertson

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