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- $15.2 Million Jury Verdict for Cody Wade: Dresden, Tennessee
- $6.5 Million Jury Verdict for Dorothy Flency: Nashville, Tennessee

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“If you’re going through Hell, just keep going . . .
There’s angels everywhere to pull you back on your feet.”

As implausible as it sounds, a source of comfort to lawyers struggling with the pressures of the practice of law was inspired by an Irish toast combined with a quote from Winston Churchill.

The toast is “May you be in Heaven five minutes before the devil knows you’re dead.” Churchill is attributed with saying “If you’re going through Hell, keep going.” According to Wikipedia, citing a 2006 article in Country Weekly by Alanna Horner, these two quotes merged to form the title of the 2006 Rodney Atkins number one country hit “If You’re Going Through Hell (Before the Devil Knows)” written by David Berg, Sam Tate and Annie Tate.

It’s a song about things going wrong in life, and then getting even worse; about hopelessness and despair and hitting rock bottom.

However, the lyrics then take a positive turn:

But the good news
Is there’s angels everywhere out on the street
Holding out a hand to pull you back up on your feet . . .

Then the song advises:

If you’re going through Hell
Keep on going, don’t slow down,
If you’re scared don’t show it.
You might get out before the devil even knows you’re there.

It’s a fun tune with a strong message of hope. Work through the dark days to the daylight on the other side. I find it to be relevant to the very serious topic of attorney wellness. (Now admit it, would you have ever had read this far if the headline mentioned attorney wellness?)

Attorney despair? Maybe so. We all have those difficult times that are situational, such as two major trials back to back. What a source of stress looming, appearing larger and more daunting every day. That’s when Rodney Atkins’ song encourages us to just keep moving. It will get better soon. But what if you can’t see that light at the end of the tunnel?

The literature is replete with advice about fixes: work-life balance, meditation, good nutrition and exercise. Many lawyers find substantial benefit from these conscious decisions to improve their lives. That’s a great thing. And then there are the rest of us who don’t eat kale or do yoga or make smoothies with berries and spinach; whose lunch is either something fried or a diet soda and vending machine fare. And we will tell you that, while the lawyer’s life is stressful, we thrive on stress. We love to close that big deal or win that trial. Of the lawyers I spoke with in preparing to write this column, the prevailing attitude was that the stress monster can be a killer, but that “It won’t happen to me.” Yet most know someone who has really hit rock bottom, like license-losing rock bottom or worse.

In fact, the anniversary of the suicide of a colleague a number of years ago is part of the impetus for this column. He was low-key, meticulous, a good lawyer. I had no idea of his demons until one morning when I saw him drinking out of a brown paper bag from the lower left drawer of his desk as I walked past his open office door. Although, as a young lawyer, I ultimately mustered the nerve to mention it to his continued on page 4
senior partner, back in the ’80s, such things weren’t given much attention. Soon after, he took his life.

So how do we avoid succumbing to the stress monster? Search the TBA website for information about the great work being done by our Attorney Well Being Committee. Yes, you will find positive ideas for improvement. But being self-aware is difficult. The American Bar Association recently posted a video, available by searching “ABA speaking out to end stigma,” encouraging lawyers to speak out to end the stigma of mental health issues by contacting their state Lawyer Assistance Programs. ABA President Judy Perry Martinez ended the video with these words: “Seeking help is a sign of strength, not weakness. Please — Don’t wait.”

The Tennessee Lawyers Assistance Program is a great resource. Go to www.TLAP.org, which reads in part, “If you are concerned about yourself or about a partner, associate, colleague, bar applicant, law student or judge, help is available here. Schedule an appointment. … All calls are confidential and free.”

Who wants to admit “I think I might need help?” Well, the answer is that many bright people do make that admission, but not nearly enough lawyers.

We handle other people’s problems for a living. We aren’t supposed to have problems ourselves.

Well, that’s nonsense. We are human beings in a difficult job. And TLAP provides confidential help available with a mere call. I can’t overemphasize the importance of making a call about yourself or your partner, colleague or friend who is not in the same position you are to see the difficulty she is having. Those phone calls can save lives. Please help yourself or help a colleague before it’s too late.

As Rodney Atkins sings, be one of those “Angels in the street.”

SARAH Y. SHEPPEARD is a shareholder in the Knoxville office of Lewis Thomason and a Rule 31 Listed Mediator. You can reach her at SSheppeard@LewisThomason.com.
701 TAKE JULY BAR EXAM, 497 PASS

When the list of applicants who were successful on the July 2019 Bar Examination was released Oct. 4, the Board of Law Examiners also released statistical information about this class of test takers.

It reports that 701 applicants (both first time and those repeating) took the test with 497, or 70.9 percent, passing. Of the group, 580 were first-time test takers and 121 were repeat test takers. The percentage of repeaters who passed was 27.3 percent.

The law school with the best success rate for first-time takers was Belmont University College of Law with 97.2 percent of its students succeeding. The rest of Tennessee law schools’ pass rates, based on first-time test takers are: Vanderbilt University, 93 percent; University of Tennessee, 83.7 percent; University of Memphis, 81 percent; Duncan School of Law, 73 percent; and Nashville School of Law, 69 percent.

COURTS

Chancery Court Honored for Outstanding Service

The Davidson County Chancery Court Part III recently was awarded the 2019 Outstanding Community Service Award from the Southeastern Association of Area Agencies on Aging. The court was recognized for a statewide initiative designed to improve older Tennesseans’ lives. The program, the result of a settlement of two related cases, provides dental, transportation, housing and legal services. It is administered by Chancellor Ellen Hobbs Lyle with the help of Tennessee Commission on Aging and Disability and five nonprofit agencies: West End Home Foundation, HCA Foundation, Assisi Foundation, United Way of Greater Knoxville and the Memorial Foundation.

LAW SCHOOL

LSAT’s Analytical Reasoning Section to Be Revamped

Major changes are coming to the LSAT. Above the Law reports. Within the next four years, the current analytical reasoning section will be removed and replaced with something else to assess analytical reasoning abilities. Angelo Binno, a legally blind aspiring law student whose visual impairment prevented him from performing the drawing and diagramming that is often necessary to complete the exam, brought suit against the American Bar Association and the Law School Admission Council. Now after eight years of litigation the parties have settled. Binno and his co-plaintiff, Shelesha Taylor, who is also legally blind, will work alongside the council and Wayne State University Law School’s Disability Law Clinic to make the LSAT experience fairer for all.

Study: Minorities Lag in Law School Clinic Positions

According to a new study by the Clinical Legal Education Association, women have made great strides in breaking into law school clinical faculty, but black and Latino clinicians have made few gains over the past three decades. Law.com reports that that the percentage of female clinical faculty at law schools nearly doubled from 33 percent to 62 percent, while minorities increased from 11 percent to just 20 percent. The study recommended that law schools actively recruit minority clinicians, while at the same time ensuring that women are not disproportionately clustered in clinical positions — which often lack the same status and pay as doctrinal positions.

LAW PRACTICE

IT Report: Law Firms Need Better Cybersecurity Protection

Nashville-based legal IT consultancy LogicForce has released its latest Law Firm Cybersecurity Scorecard, a study designed to assess cybersecurity preparedness across the legal industry and educate law firms on data protection best practices. This year’s study found that many law firms fail to implement critical cybersecurity practices leading to failed client audits. See the study’s details at www.logicforce.com.

Amazon Enters Legal Services Arena

It is not hard to imagine a time when Amazon will offer all kinds of legal services to consumers, lawyer and technology expert Robert Taylor, who is also legally blind, will work alongside the council and Wayne State University Law School’s Disability Law Clinic to make the LSAT experience fairer for all.

continued on page 6
Mattel Inc’s “Career of the Year” Barbie is a judge, which comes with a black robe, a collar and a gavel. Judge Barbie comes in four different skin tones with four different hairstyles. Mattel’s marketing claims the dolls will “inspire girls to imagine everything they can become — like protecting the rights of others and ruling on legal cases!” Image courtesy of Mattel Inc.

Am Ambrogi writes in Above the Law. But that day may be closer now that the retail giant has launched a curated network of intellectual property law firms providing trademark registration services at pre-negotiated rates. The goal of the new “Amazon Intellectual Property Accelerator” is to help companies obtain protection for their brands quickly and easily. So far, 10 law firms have been approved to participate in the program.

Set fees include $500 for a trademark search, $600 for a trademark application and $1,800 for a comprehensive brand review. The client pays nothing to Amazon, instead contracting directly with the law firms. Amazon also says it will provide protection to participating companies selling items on its site even while applications are pending.

Report Looks at Impact of Millennial Attorneys The 2019 Millennial Attorney Report explores changing law firm dynamics and highlights generational differences between younger lawyers and their more experienced counterparts.

The report finds that millennials now make up the largest cohort of the legal profession and their unique working style has shifted workplace dynamics and brought major change to the field of law. Other major findings include: (1) work-life balance remains the top priority for millennial lawyers, (2) 45 percent of women strongly agree that law firm culture is sexist, and (3) 86 percent believe partnership in a law firm is less desirable than it was a generation ago.

Well-Being Groups Provide Guidance for Employers Many law firms and other legal employers know they should be watching for signs that an employee is experiencing impairment because of a substance use disorder, mental health disorder or cognitive impairment, but many still struggle with how best to respond.

A new resource from the ABA Commission on Lawyer Assistance Programs and the ABA Working Group to Advance Well-Being in the Legal Profession offers suggested guidelines for these situations. The “Well-Being Template for Legal Employers” is available for download (www.americanbar.org/groups/lawyer_assistance/working-group_to_advance_well-being_in_legal_profession) and can be tailored to meet the specific needs of any legal workplace.

Report: Lawyers Earning More in 2019 but Not All Benefiting In the decade since the Great Recession, wages for private lawyers have risen, with the average salary now at $144,230. However, digging deeper into a collection of data released in the last year-and-a-half shows the wealth is not being shared equally across gender, region, client type and practice areas, the ABA Journal reports.

CIVIL RIGHTS New Organization Brings Attention to Civil Rights Crimes in Tennessee Former TBA President and Alamo lawyer Jim Emison has launched “Tennesseans for Historical Justice,” a new organization dedicated to revealing historical truth regarding civil rights crimes in Tennessee and striving for restorative justice and healing. Emison was instrumental in bringing attention to the unsolved 1940 murder of civil rights activist Elbert Williams in Brownsville in his book Elbert Williams: First to Die. The group has applied for nonprofit status and is awaiting final approval. There are opportunities to volunteer with the group and support it financially.

Learn more at www.tnhistoricaljustice.org.

A new mural of U.S. Supreme Court Justice Ruth Bader Ginsburg was unveiled in Washington, D.C., in September in the 1500 block of U St. Northwest. The mural was painted by artist Rose Jaffe. The building is owned by Flock DC, a newly launched umbrella organization for three local real estate firms. Photo: The Hill.
**YOU NEED TO KNOW**

**SUCCESS!**

Former TBA president and Sevierville attorney Cynthia Richardson Wyrick was sworn in as a U.S. magistrate judge for the Eastern District of Tennessee on Sept. 30. She was appointed to the post by Chief Judge Pamela L. Reeves, who is also a former TBA president, to replace former Magistrate Judge Clifton L. Corker, who was appointed a federal district judge in July. Wyrick will serve in the court's Northeastern Division in Greeneville. Wyrick, a University of Tennessee College of Law graduate, has been a member of the law firm of Ogle, Wyrick & Associates in Sevierville since 1996. She has also served as the city attorney for Pigeon Forge. Photo by Mary Dohner-Smith.

Bass, Berry & Sims recently announced new leadership for its private equity teams. Angela Humphreys and Ryan Thomas have been appointed co-chairs of the Healthcare Private Equity Team. Thomas also will serve as chair of the general industry Private Equity Team. The teams are designed to bring attorneys from numerous disciplines together to provide legal assistance throughout the lifecycle of an investment. Humphreys also serves as chair of the firm’s Health Care Practice and the Health Law and Life Sciences Committee of the ABA’s Business Law Section. Thomas is active in the Association for Corporate Growth and the ABA’s Mergers and Acquisitions Committee.

Former FedEx Express litigation chief Connie Lewis Lensing has joined the Nashville office of Bradley Arant Boult Cummings. Lensing served as senior vice president at FedEx Express for almost 30 years. She also led the environmental, risk management and compliance groups. At Bradley, she will serve as counsel in the Litigation Practice Group. Lensing pioneered the “in-housing” of litigation for corporate legal departments. She has been active in the U.S. Chamber of Commerce’s Institute for Legal Reform, International Association of Defense Counsel, Lawyers for Civil Justice, Tennessee Trial Court Vacancy Commission and Leo Bearman Sr. American Inn of Court.

Frost Brown Todd, which has offices in Nashville, recently announced it will undergo a 12-month voluntary tracking process developed by Diversity Lab to gauge its commitment to diversity. The Mansfield Rule 3.0 measures whether the firm has affirmatively considered at least 30 percent women, lawyers of color, and LGBTQ+ lawyers for leadership and governance roles, equity partner promotions, senior lateral positions and formal client pitch opportunities. This year, Diversity Lab will look at the inclusion of lawyers with disabilities. The review will wrap up in July 2020.

The YWCA of Knoxville and the Tennessee Valley has named Joy Radice, associate professor and director of clinical programs at the University of Tennessee College of Law, as its 2019 Tribute to Women Award winner in the education category. Radice was selected for her dedication to the legal profession, pro bono work and extensive research on overcoming legal obstacles created by a criminal record.

Gerard Stranch, managing partner of Nashville-based Branstetter, Stranch & Jennings, has been named as counsel for the class in the pending multi-district national opioid litigation in Cleveland, Ohio. More than 1,500 cases involving states, counties, cities and other entities have been consolidated into the class with plaintiffs.

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.
alleging manufacturers misrepresented the risks of the drug and distributors failed to monitor suspicious orders. Stranch is one of six attorneys advising the class.

The ABA Death Penalty Representation Project has recognized supervisory assistant federal defender Kelley J. Henry with the 2019 John Paul Stevens Guiding Hand of Counsel Award. The group honored Henry for leading a “ground-breaking challenge to the state’s execution protocol, developing new scientific evidence on the possibility of torturous executions that has shaped similar lawsuits across the country.” Henry works in Nashville representing men and women on death row.

The Nashville office of Gordon Rees Scully Mansukhani has hired attorney Julie-Karel Elkin as senior counsel. She joins the firm’s Business Transaction and Commercial Litigation practice groups, where she will handle business transactions, commercial litigation, advertising and e-commerce. She previously worked at Spicer Rudstrom. The office also announced it has moved from downtown Nashville to Williamson County. The new address is 3401 Mallory Ln., Ste. 120, Franklin 37067. It can be reached at 615-772-9000.

New York-based law firm Barton LLP opened an office in Nashville with veteran Nashville attorney Marc Dedman as its new partner in charge. Dedman most recently served as managing partner for Spicer Rudstrom. With roughly 40 attorneys, Barton bills itself as a boutique, high-touch firm. It has signed a short-term lease inside Gulch Crossing at 1033 Demonbreun St., Nashville 37203. Dedman can be reached at mdedman@bartoneseq.com or 615-340-6790.

Former magistrate and chancery court judge James McSween Jr. has received the 2019 Cocke County Citizenship Award, which recognizes and honors a deserving person who demonstrates care for the community and its citizens. It also encourages volunteerism, philanthropy and community involvement. McSween graduated from the University of Tennessee College of Law in 1953 and began practicing law in 1954. In 1962, he was appointed to serve as a part-time U.S. commissioner, later renamed magistrate judge. In 1967, he was named chancellor of the former 13th Chancery Division.

Bryan College in Dayton has named its new Stepheл Center for long-time supporters Jackie and Glenn Stepheл. The building, will house the admissions, advancement and marketing departments. Glenn Stepheл served as a member of the college board for 16 years, as chair of the board for seven years and as legal counsel to the college. A graduate of the University of Tennessee College of Law, he later served as a member of the TBA House of Delegates and was appointed by President Gerald Ford to the first board of directors of the Legal Services Corporation. Stepheл currently serves as president of several private family foundations.

The Tennessee Supreme Court has chosen Davidson County Chancellor Anne Martin to oversee the Business Court Docket Pilot Project. She succeeds Judge Joe Binkley and Chancellor Ellen Hobbs Lyle. The pilot program was established in 2015 and 136 litigants have requested transfers to the specialized docket. Martin began hearing cases on Nov. 1. She has served as chancellor since 2018 and previously worked at Bone McAllester Norton and Dodson Parker & Behm.

Former TBA President and Alamo lawyer Jim Emison has launched Tennesseans for Historical Justice, a new organization dedicated to revealing historical truth regarding civil rights crimes in Tennessee and striving for restorative justice and healing. Emison was instrumental in bringing attention to the unsolved 1940 murder...
of civil rights activist Elbert Williams in Brownsville in his book Elbert Williams: First to Die.

Gary Wade, the dean of the Lincoln Memorial University Duncan School of Law in Knoxville, will step down at the end of the school year. Wade gained recognition as the youngest mayor of Sevierville and later rose to become a chief justice of the Tennessee Supreme Court. He has also been a private attorney, alderman and city law director.

Nashville attorney Phillip Miller has been accepted into the Baylor University Executive LLM program and received the Baylor Law Dean’s Scholarship for his participation. He will pursue a degree in litigation management. The program, taught by top litigation management experts, is designed for working professionals. Miller will continue his personal injury law practice as well as his speaking and trial consultant work while working on his degree.

Allison Starnes-Anglea, director of career services at the Lincoln Memorial University Duncan School of Law, recently hosted a successful orientation for second-year law students. The inaugural program, developed by Starnes-Anglea, covered resume drafting and networking skills. Attending law students also received a complimentary professional headshot to aid in their job searches. This announcement previously ran in the October issue of the Tennessee Bar Journal with the wrong photo. We apologize for the error.

Kate Prince, the TBA’s leadership development & innovations coordinator, is transitioning to the newly created position of digital media and leadership development coordinator. She will work in producing the daily TBA Today newsletter with Barry Kolar and Stacey Shreader Joslin, who has increased her duties to include writing for TBA Today. Prince also hosts the TBA Podcast network, which includes the BarBuzz, Sidebar and HealthyBar programs, and she will continue to coordinate the TBA Leadership Law Program (TBALL). She will also lead the TBAs social media efforts on Facebook, Twitter, Instagram and LinkedIn, which had been coordinated by Katharine Heriges, who recently left the TBA after four years to become a political consultant with Participant LLC.

Patricia E. Adrian and W. Bradley Gilmer have joined the Memphis office of Harris Shelton Hanover Walsh as members. Adrian’s practice focuses on residential and commercial real estate, economic development, business and commercial transactions. She previously was a partner at Farris Bobango. Gilmer has 18 years of experience in representing doctors, hospitals, nursing homes and other health care providers in medical malpractice cases and investigations. He previously worked with Baker Donelson’s health care liability group.

Amber Griffin Shaw, longtime law partner of J. Houston Gordon at the Gordon Shaw Law Group, and Carly Mills, a former associate with Gordon Shaw, have joined Harris Shelton. Shaw joins as a member and will continue to focus on personal injury, fraud, class action, products liability and business litigation cases. Mills joins as an associate and will handle criminal defense, personal injury, probate and wills. Both will serve in the firm’s new Covington office, located at 114 West Liberty Ave., Ste. 202, Covington 38019. The office can be reached at 901-476-7100.

Stites & Harbison has welcomed Mary Lu Noah to its Nashville office. She will serve in the firm’s Real Estate & Banking Service Group where she will handle real estate and environmental issues. Prior to joining Stites & Harbison, Noah was assistant district counsel for the U.S. Army Corps of Engineers in the Nashville District where she was the primary real estate and natural resource attorney for three years. During law school, Noah focused on environmental and international law, completing internships with U.S. Environmental Protection Agency, U.S. Department of State and the United Nations.

Elbert Williams

Carrington Fowler
died July 20 at age 96. A graduate of the University of Virginia School of Law, Fowler served in the U.S. Army during World War II. Following the war, he practiced law in Memphis, and in 1963, was appointed to the Shelby County General Sessions Court. He subsequently won two elections to the post and was elected president of the Tennessee General Sessions Judges’ Association. Though not deaf himself, Fowler was active in the deaf community, coaching deaf recreational basketball and softball teams, teaching sign language and serving as chair of the Interpreting Service for the Deaf.

Johnson City lawyer Samuel Burkhead Miller
died Aug. 25 at the age of 93. Miller earned his law degree from the University of Tennessee College of Law in 1951. He practiced law for more than 55 years, first with the law firm of Cox, Epps, Taylor, Miller & Weller and then with its successor firms, now Weller Miller Carrier & Hickie. After retirement, he continued providing legal services to select clients as a sole practitioner. Among his many contributions, Miller served on the Tri-City Airport Commission, was instrumental in development of Johnson City as a regional medical hub, served on the board of several health care companies, and was a member of the city’s Health & Education Facilities Board for many years. He also was a key advisor to the city on the structuring of bond issues that were critical in the creation of and continuing operation of the Mountain States Health Alliance. In lieu of flowers, memorial donations may be made to church’s youth ministry.
DISABILITY INACTIVE

The law license of Shelby County lawyer Deidre Lynn Smith was transferred to disability inactive status on Sept. 6. Smith may not practice law while on inactive status. She may return to the practice of law after reinstatement, which requires a showing of clear and convincing evidence that the disability has been removed and she is fit to resume the practice of law.

REINSTATED

On Sept. 19, the Tennessee Supreme Court reinstated the law license of Davidson County lawyer M. Andrew Davidson County the law license of M. Andrew Davidson County the law license of M. Andrew

He had been suspended on March 9, 2018, for failure to respond to the Board of Professional Responsibility. On July 10, 2018, the disciplinary complaint was resolved, negating the need to continue the suspension. The reinstatement was made retroactive to July 10, 2018.

Greene County lawyer Edward Lee Kershaw was reinstated to the practice of law on Sept. 6 after completing a four-month suspension. Kershaw served one month on active suspension and three months on probation. He then filed a petition for reinstatement, which the Tennessee Supreme Court found to be satisfactory.

San Mateo, California, lawyer Stephen Royce Mills was reinstated to the practice of law in Tennessee on Sept. 27. Mills had taken inactive status in July 2009 and received a suspension in November 2018. He petitioned the court to reinstate him on Sept. 10. The Board of Professional Responsibility reported that Mills complied with all requirements for reinstatement and the petition was satisfactory. The reinstatement was made retroactive to Sept. 10.

The Tennessee Supreme Court reinstated the law license of Kurt Joseph Pomrenke on Sept. 27. Pomrenke had been suspended on March 15 after the Virginia State Bar Disciplinary Board suspended him for nine months. Pomrenke filed a petition for reinstatement, which the Board of Professional Responsibility found satisfactory.

The state Supreme Court reinstated the law license of Rutherford County lawyer Walter Alan Rose on Sept. 27 with the condition that he enter into a monitoring agreement with the Tennessee Lawyers Assistance Program, work with a practice monitor and complete six additional continuing education hours. Rose had been suspended in January 2017 for a period of three years, retroactive to Oct. 30, 2015.

DISCIPLINARY DISBARRED

The Tennessee Supreme Court disbarred Jennifer Elizabeth Meehan on Sept. 20 based on her conviction for bank fraud in federal court. The court reports that Meehan served as president of a sorority’s housing board overseeing construction and furnishing of a new sorority house at the University of Alabama. During this work, she mishandled funds, including using false documents to open unauthorized banking accounts, submitting false invoices and moving funds to a personal account. After Meehan pleaded guilty to bank fraud, the U.S. District Court for the Northern District of Alabama sentenced her to six months in prison and ordered her to pay restitution. The Tennessee Supreme Court initiated reciprocal action and the Board of Professional Responsibility recommended a disbarment. On appeal, the Davidson County Circuit Court held that the BPR’s decision was arbitrary and imposed a five-year suspension. The Supreme Court reversed that decision and affirmed the BPR’s recommendation.

On Sept. 25, the Tennessee Supreme Court prohibited Kentucky lawyer Cassidy Teater from practicing law in the state, a move the court called “tantamount to disbarment.” In addition, the court ordered her to pay restitution to two clients as a condition of reinstatement. While living in Nashville, Teater represented two individuals in the U.S. Immigration Court. After accepting payment for the cases, she ceased communicating with the clients and failed to perform the services.

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.
Upcoming Programs

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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.

Faculty Highlight

Brian Faughnan will be coming to a city near you with the popular course, Ethics Roadshow 2019. See inside for more details on dates and locations!

Brian S. Faughnan is a shareholder with the Tennessee law firm of Lewis Thomason in its Memphis office. In addition to the area of lawyer ethics and professional responsibility, Brian maintains a civil litigation practice focused on business and commercial litigation, and appellate litigation. Brian is listed in The Best Lawyers in America (Appellate Law, Ethics and Professional Responsibility Law, and Litigation-First Amendment) and was named Appellate Practice “Lawyer of the Year” in Memphis by that publication in 2017. Brian is also listed as a “Super Lawyer” by Mid-South Super Lawyers, and has an AV rating from Martindale Hubbell. Brian is a frequent author and speaker on ethics and professional responsibility issues. He is a co-author of the book Professional Responsibility in Litigation, the Second Edition of which was published by the ABA in April 2016. He shares his thoughts on legal ethics, professional responsibility, and other aspects of the law of lawyering at www.faughnanonethics.com. He is the secretary of the Association of Professional Responsibility Lawyers, and has been the chair of the TBA’s Standing Committee on Ethics and Professional Responsibility since 2009.

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Tennessee Court of Appeals Boot Camp

November 6 in Nashville, Tennessee Bar Center, Nashville
9 a.m. - 3:15 p.m.
Credits: 1 Dual, 5 General

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

For attorneys interested in: Appellate Practice

The Court of Appeals is unfamiliar territory for most lawyers, and success in this court requires not only thorough preparation but mastery of oral and written advocacy as well. This boot camp allows lawyers to observe oral arguments in real cases being presented to the court, followed by analysis and discussion on preparation, tips and considerations for deciding to seek review in the Supreme Court. Lunch will be provided, allowing networking opportunities with colleagues who share this focus.

Speakers: Leslie Price, Mary Wagner

FRESH COFFEE
With every CLE program

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.

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Tennessee Fall FastTrack

November 8 in Nashville
Tennessee Bar Center
8:30 a.m. - 5 p.m.
Credits: 3 Dual, 12 General

$445 Section Members
$470 TBA Members
$640 Nonmembers (includes TBA Complete Membership)

Don’t miss this opportunity to register and plan for 15 hours of CLE in one day!

This annual staple offers tips and updates in diverse areas of law, designed to be relevant to a wide range of practice areas. The program will provide you with 7 hours of live general credit and 8 prepaid credits to complete online anytime — at home or on your mobile device; allowing you to customize your learning to your schedule and fulfill all your Tennessee CLE requirements for the year.

How it works:
After registering, you will receive 8 hours of prepaid credit to use immediately on any of the 250 plus online programs, or at any live CLE presentation. When you attend the program on Nov. 8, you will earn your 7 live credits. Please use the prepaid credits by June 30, 2020. Have more questions? Email Section Coordinator Jarod Word.

Speakers: James Romer, Cynthia Greene-Campbell, Timothy Chinaris, Steven Christopher, Timothy Kaltenbach, Melanie Lane, Sean Martin, Hon. Shayne Sexton

Administrative Law Annual Forum

November 15 in Nashville
Tennessee Bar Center
9 a.m. - 12:15 p.m.
Credits: 1 Dual, 2 General

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

For attorneys interested in: Administrative Law

Administrative law attorneys across the state have already marked their calendars for this annual forum presented by the TBA Administrative Law Section. This three-hour program will include one ethics hour and two hours devoted to developments in the practice area and the law.

Meet Local Networking Event: This year’s program features a Meet Local breakfast networking event for government and public interest attorneys. This is a free event and will provide attendees with light breakfast options and a chance to network with others. Please join us to share news and updates from your department, find out what is happening with others — or just enjoy time with colleagues and friends.

Speakers: Christy Allen, Laura Chastain, Tom Lee, Travis Brandon, Bill Penny

Register today at cle.tba.org
Immigration Law Fall Forum

November 22 in Nashville, Tennessee Bar Center
12 p.m. - 3:45 p.m.
Credits: 3 General

For attorneys interested in: Immigration Law
The TBA’s Immigration Fall Forum includes some of the most relevant topics in today’s constantly changing immigration landscape. Presented by experienced leaders and judges in the field, the CLE sessions will focus on how to get information from the government, how to litigate in immigration court, and how to litigate immigration issues in federal court.

Speakers: Chay Sengkhounmany, Robert Free, Terry Olson, Charles Pazar, Allison Wannamaker

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

The Ethical Campaign

December 2 in Nashville, Tennessee Bar Center
8:30 p.m. - 11:45 a.m.
Credits: 3 Dual

For attorneys interested in: Ethics
This advanced-level program for state and local lawmakers, judges, candidates for executive, judicial or legislative positions, campaign chairs and campaign treasurers and their counsel will include all aspects of the law and ethics of election for office. The program will include the ethical issues involved in compliance with election law provisions required by the ethics rules, compliance with campaign finance practices, conformity with the “Comprehensive Governmental Ethics Reform Act,” and an analysis of the provisions of the Code of Judicial Conduct and Rules of Professional Conduct provisions touching on elections.

Breakfast will also be provided.

Speakers: Lucian Pera, Guilford F. Thornton Jr., Stephen Zralek

$145 TBA Members
$320 Nonmembers (includes TBA Complete Membership)

Free WiFi

With every CLE program

REGISTER TODAY AT CLE.TBA.ORG
Ethics Roadshow 2019

December 9 in Nashville,
Tennessee Bar Center
9:30 a.m. - 4:15 p.m.
Credits: 5.75 Dual

For attorneys interested in: Ethics. Leadership Skills

Develop leadership skills, build characteristics of effective leadership, and identify strategies to overcome challenges. Brought to you by leadership professionals, Buck Lewis, Douglas Blaze and William Lockett. Leadership explored through an interactive curriculum designed to look at the challenging characteristics needed in today’s leaders. The Leadership Academy will put you with today’s leaders to be mentored, challenged and encouraged. Attendees will view and discuss Ted Talks on Everyday Leadership, Grit and Leaving a Legacy. Academy faculty will help you identify leadership characteristics and barriers. Attendees will gain insight from one another as well as from our faculty.

Executive lunch will be provided.

Speakers: Douglas Blaze, George Lewis III, William Lockett Jr.

KNOXVILLE
December 4
UT Conference Center Room 413AB
9 a.m. - 12:15 p.m.
Credits: 3 Dual

CHATTANOOGA
December 5
The Chattanoogan Hotel - Ballroom 1
9 a.m. - 12:15 p.m.
Credits: 3 Dual

MEMPHIS
December 9
Holiday Inn at the University of Memphis
9 a.m. - 12:15 p.m.
Credits: 3 Dual

NASHVILLE
December 10
Millennium Maxwell House - Grand Ballroom East
9 a.m. - 12:15 p.m.
Credits: 3 Dual

JACKSON
December 18
Jackson Chamber of Commerce
9 a.m. - 12:15 p.m.
Credits: 3 Dual

JOHNSON CITY
December 18
ETSU Millennium Centre
9 a.m. - 12:15 p.m.
Credits: 3 Dual

KNOXVILLE
December 4
UT Conference Center Room 413AB
9 a.m. - 12:15 p.m.
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9 a.m. - 12:15 p.m.
Credits: 3 Dual

For attorneys interested in: Ethics Law

What to expect when you’re expecting. 2019 is almost over and more than just time is moving fast. The pace of change is rapid, including in the area of legal ethics. As a result, the future is nigh but also now. As this goes to press, there are now a handful of states that have either already adopted, or are seriously considering, fundamental changes to the ethics rules that will fundamentally reshape the landscape for legal services. These changes have at their core re-examination of rules regarding how lawyers and people who aren’t licensed to practice law interact, including RPC 5.4 and RPC 7.2. This year’s Roadshow will offer a crash course in what all of this about, and what you can expect as to these potential fundamental changes to the landscape.

Speaker: Brian Faughnan
December CLE Blast:
Last-Minute CLE 2019

Earn up to 15 hours of CLE before December 31

Up to 7 Hours of Live CLE (Dec. 10, 16, 17, 18 and 31)
Up to 12 Hours of Live CLE (Dec. 30)

Take as many or as few hours as you need!
The Dec. 31 CLE deadline is quickly approaching. This popular program offers all-day CLE options, both general and dual credit, on multiple days in December.

JOHNSON CITY December 10
NASHVILLE December 16, December 17,
December 18, December 30, December 31

CLE Ski - 2020

January 25-30, 2020
Snowmass, CO

Credit: 3 Dual, 12 General

$795 TBA Members
$860 Nonmembers (includes TBA Complete Membership)

- Complete all 15 hours of CLE
- Beautiful ski resort setting
- Quality continuing legal education sessions
- Ethics credit
- Plenty of time for sessions and skiing

A TBA Tradition

The Stonebridge Inn is located in the heart of Snowmass Village, one of Colorado’s premier ski resorts. Just ten miles southwest of Aspen, The Stonebridge Inn is central to four remarkable ski areas: Snowmass, Aspen Highlands, Aspen Mountain and Buttermilk.

As Snowmass premiere slope side resort, this luxurious ski lodge and condominium resort combines the amenities and services of an upscale hotel with all the comforts of home. Please join us for the opening reception on Saturday January 25, to kick off this year’s program.
You asked.
We listened.

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Rates could be as much as 30% less than what you’re paying today!

Open enrollment ends December 1, 2019 for 2020 plan year coverage.

TBAInsurance.com
800.347.1109
for which she was paid. The court determined her actions violated Rules of Professional Conduct 1.1, 1.3, 1.4, 1.5, 1.16, 3.2 and 8.4(a).

SUSPENDED
Knox County lawyer Thomas F. Mabry was suspended from the practice of law for two years on Sept. 23. The Tennessee Supreme Court found that Mabry failed to communicate with clients and provide competent representation. The court determined that his actions violated Rules of Professional Conduct 1.1, 1.2, 1.4, 5.5(1) and 8.4.

Davidson County lawyer Andrew Harrison Maloney was immediately suspended from the practice of law on Sept. 18 after the Tennessee Supreme Court found he misappropriated funds and posed a threat of substantial harm to the public. The court also precluded Maloney from accessing any of his trust accounts or opening any new trust accounts. The suspension will remain in effect until dissolution or modification by the court. Maloney may request dissolution or modification of the suspension.

CENSURED
The Tennessee Supreme Court censured Davidson County lawyer Scott David Johannessen on Oct. 1. The court found that after Johannessen assisted a client in preparing an appellate brief to be filed in the U.S. Court of Appeals for the Sixth Circuit, he filed pleadings on behalf of a second client that had interests materially adverse to those of the first client. His actions were determined to violate Rules of Professional Conduct 1.9(a) and 8.4(a).

ADMINISTRATIVE SUSPENSIONS
Notice of attorneys suspended for, and reinstated from, administrative violations — including failure to pay the Board of Professional Responsibility licensing and inactive fees, file the required IOLTA report, comply with continuing legal education requirements, and pay the Tennessee professional privilege tax — is on the TBA website at www.tba.org/directory-listing/administrative-suspension-lists.
Kiss paper checks goodbye
You deserve a payment solution that doesn’t leave you waiting and wondering.

LawPay

Paper checks are notoriously unreliable. They get lost in the mail, they get tossed in the laundry, and they carry a lot of sensitive information around with them wherever they go.

LawPay changes all of that. Give your clients the flexibility to pay you from anywhere, anytime. Most importantly, we ensure you stay in compliance with ABA and IOLTA guidelines.

It’s easy to get started
888-628-5662 or visit lawpay.com/tba
The probate statutes are tucked under the hood of Titles 30-32 and, for the most part, are simple and short. A lawyer inexperienced in probate because of just beginning practice or being asked to help a friend or associate can quickly grasp the wheel of the code and adequately navigate his or her client through the administration of a simple estate. However, while the typical probate road is normally smooth travelling, the administration of an estate can be complex and along this road are some sneaky potholes that jar even the most experienced lawyers.

So let’s pave your way with the five most frequent ones we see in Probate Court in Davidson County and how to avoid them:
Throwing Off Your Alignment: Real Property

The most common pothole on the probate highway we encounter is a misunderstanding of who owns the decedent’s real property upon death. While Tenn. Code Ann. § 31-2-103 vests the personal property of a decedent with the personal representative (sometimes I’ll abbreviate as “PR” for efficiency) of the estate for the PR to utilize and distribute, it directly vests the real property in the heirs of an intestate estate (no Last Will and Testament) or the beneficiaries of the decedent’s will in a testate estate. In other words, the real property is not owned by the estate and the PR has limited authority over that real property.

There are two major exceptions in the statute and some optional duties to the real property given to the PR by another statute, all of which will be discussed later, but this initial distinction is crucial and often mistaken.

One frequent mistake we see from this distinction is a motion filed by the personal representative in his/her fiduciary capacity to approve a purchase and sale agreement for the real property not in the probate estate, and the contract is either in the name of the estate and signed by the PR, or just in the name of the PR as a fiduciary. However, the PR does not have standing to appear before the probate court on real property vested in the heirs/beneficiaries and this contract could be a nullity as “you cannot convey what you do not own.”

Not only could this jolt a PR trying to sell the decedent’s real property, it can have a retroactive negative effect as well, like running over a pothole on the way home without incident but waking up the next morning to a flat tire. Our court heard a petition to reopen an estate which, fortunately, was joined by all potential interested parties. It stated that five years prior, after the estate had been initially opened, the four children and only heirs of the decedent decided to quitclaim the real property to a grandchild of the decedent but reserve a life estate to themselves. However, the quitclaim deed was signed by the PR of the estate as “legal administrator” granting, selling, and conveying “all the rights, title, interest, claim, or demand that the Estate … may have,” but the real property was vested in the heirs, not the probate estate.

Five years later, the heirs desired to sell it but the title company questioned the legal status of the property. Since all were on board, it was not a difficult proceeding, but the case was a wake-up call as to a sudden crack in the chain of title if those preparing the deed did not understand the ownership of the real property as dictated by the vesting statute.

*continued on page 16*
The personal representative, however, is given some statutory, optional responsibilities to the real property even when it is vested in the heirs/beneficiaries. Tenn. Code Ann. § 30-2-323 is a one paragraph statute that allows the PR, in his or her discretion, “to advance or to pay as an expense of administration the reasonable costs of routine upkeep of any real property” including “utility services, day-to-day maintenance, lawn care, and insurance premiums,” but the statute limits that upkeep to only four months after decedent’s death. However, this statute specifically prohibits the PR from paying the mortgage, real estate taxes, major repairs, or extraordinary expenses of the real property at any time, which makes sense since the estate does not own the property. It is the vested owners and not the PR that have three choices if a mortgage is involved: pay the mortgage and keep the property, sell the property and keep the net proceeds, or let it go to foreclosure. Tenn. Code Ann. § 30-2-323 does clarify though that these limitations can be overridden by the terms in the will (for example, the will can direct the PR to pay any outstanding mortgage with estate funds), and they only apply when the real property is not part of the probate estate (the vesting exceptions discussed below bring the real property into the probate estate).

This lesson was learned by the former PR in In re Estate of Schorn, in which the Court of Appeals affirmed the trial court’s equitable award of $6,500 instead of the PR’s request of $19,958.48 for his work on the house. The court ruled he proceeded at his own risk since he had no authority as PR over the real estate. Beware, however, of other unexpected detours in this vesting route: In the case In re Estate of Idell, the sole beneficiary was a minor son. The real property was vested immediately in the son upon death of his mother, and later the real property was foreclosed upon. In litigation brought by the now adult son, the PR argued the real property was not in the estate and therefore he had no duty regarding it. However, the Court of Appeals affirmed the trial court, invoking the doctrine of “Guardian de facto or de son Tort” where “One may be treated as a constructive guardian, or guardian de son tort, and may be compelled to account for the property as if he were a guardian in fact where, being guardian by nature, he takes the possession and administration of his ward’s property. Based on specific facts that were extensive, the court awarded damages against the PR for failure to perform the duties required of him even though the property was not in the estate.

Other obstacles encountered have been mistakes in determining the ownership of the real property in the first place. For example, the court ruled in In re Estate of McCants that while the decedent owned the corporation as a sole shareholder and the corporation owned real property, the decedent’s actual ownership was a personal property interest in the stocks of the corporation, so the real property did not vest in the heirs of the decedent. In In re Estate of Culp, the real property was left to a trust for the benefit of certain persons until they reached age 30, which they had reached when the decedent died. The court ruled the beneficiary of the estate was the trustee for the trust, not the beneficiaries of the trust, even though the purpose of the trust (they reached the ending age) was no longer needed. The real property therefore vested in the trustee, not the trust beneficiaries, and not the estate.

Vesting Exception #1

The vesting statute of Tenn. Code Ann. § 31-2-103 has two major exceptions. The first exception allows the testator in estate planning to affirmatively direct real property be part of the probate estate and not immediately vested in the beneficiaries: “The real property of a testate decedent vests immediately upon death in the beneficiaries named in the will, unless the will contains a specific provision...
directing the real property to be administered as part of the estate subject to the control of the personal representative.” If the probated will has this provision, the real property does not vest in the beneficiaries of the will but instead is part of the probate estate under the control of the personal representative.

This exception could be a smooth highway for the estate attorney if all wills were the same and had language mimicking the statute, such as: “I give to my personal representative all real property which I may own at the time of my death and direct my personal representative to hold, administer, and distribute my real property as part of my probate estate.” However, most wills are not this nicely direct and for these estates this exception is a gravel road with only portions paved by the Court of Appeals. For instance, in the case In re Estate of Schubert, the Court of Appeals stated that the will’s language directing the real property “be given” to a specific beneficiary when he used “give, devise and bequeath” earlier for other property to reflect the decedent’s intent that the real property not vest directly to the beneficiary since the only way it can be “given” is if someone has it to give.

Another example is In re Estate of Mettetel, in which the testator specifically left his real property in Washington County to a son. The will later stated, “[A]ny real property which I own at my death is to be a part of my probate estate and treated as forming part of my personal estate for administrative purposes.” Seems like the magic language to bring the real property into the estate, right? Wrong. The Court of Appeals determined, based on the will as a whole, that the decedent intended the specific devise of the Washington County property to vest immediately to his son, but his real property in other counties was to be brought into the probate estate.

So how do you avoid these sneaky scenarios that could wreck your case? The above two cases were will construction cases in which the court had to determine the intent of the decedent by looking at the whole text of the will, so if you have ANY doubt on whether the language of the will brings the real property into the probate estate, file and serve a Petition to Constitute the Will and let the court give directions on the route of your estate administration at the beginning of your case instead of later being forced to reverse course and undo what was done.

### Vesting Exception #2

The second exception in the vesting statute allows the personal representative to grab the real property away from the vested owners and pull it into the estate to sell to pay debts of the estate when there is not enough personal property to do so. The statute refers to Tenn. Code Ann. § 30-2-401 et seq., which contains provisions where the PR, or a creditor, may file a Petition to Sell Land to Pay Debts, asking the court to bring the real property into the probate estate for the PR to sell due to the lack of assets to pay debts and expenses. If the court grants the petition, the vested heirs/beneficiaries no longer control the property, and the PR has authority to sell and maintain the property fully without the limitations of Tenn. Code Ann. § 30-2-323 discussed earlier.

While this exception seems simple enough, note the term “decedent’s obligations” in the vesting statute exception may not be as obvious as “debts and expenses” found in the Sale of Land to Pay Debts provisions. Consider the case of In re Estate of Nichols, where the decedent’s will left each daughter an annuity to be purchased by the estate, and the remainder of his property, including real property, to a trust. The estate did not have enough money to fund the annuities. The Court of Appeals affirmed the trial court, ruling the PR had to sell the real property to fund the annuities. Relying on established law, the court ruled the annuities were a charge against the real property of the estate because “a general pecuniary legacy followed by a gift of a combined residuary estate acts as a charge on both the personal property and real property.”

### Forcing a Quick Swerve: Paying Debts vs. Insolvency

Another frequent source of confusion that can detour an attorney is the difference between the aforementioned petition to sell property to pay debts and notice of insolvency. We often see a Petition to Declare the Estate Insolvent and... continued on page 18
Sell Real Property filed, but before the property is sold an insolvency declaration is usually premature. The statutory provisions for selling land to pay debts are separate and distinctive from the insolvency provisions.

As discussed earlier, Tenn. Code Ann. § 30-2-401 et seq. allows the personal representative or a creditor to file a petition (NOT a motion, a frequent mistake) to sell land to pay debts. The petition can be filed at any time, but doesn’t affect the creditors’ time period for filing claims. All interested parties (those with any interest in the property such as lienholders, vested owners, tenants, etc.) must be impleaded, but creditors of the estate do not need to be. No notice of insolvency needs to be made. This makes sense because at this stage, it is assumed that after the sale of the property all debts and expenses will be paid, so the creditors at this point are not threatened to lose money if the petition is granted. It is possible that after the net proceeds are realized from the sale the estate won’t be insolvent.

Tenn. Code Ann. § 30-5-101 et seq., however, defines the insolvency procedure, which is strikingly different from the provision in the previous paragraph. A notice of insolvency cannot be filed before time period for filing claims has ended. It is termed a notice of insolvency because a petition is NOT required; all that is required is a notice filed with the clerk stating the estate is insolvent. This notice, however, must include an accounting of assets that came into the hands of the personal representative and a plan of distribution of those assets by priority. Since it is possible they won’t be paid in full, creditors are allowed due process and notice must be sent by certified mail, return receipt requested, to each creditor that filed a claim against the estate. The notice has to include language stating that “Objections to this proposed plan of distribution must be filed with the clerk within thirty (30) days from the date of receipt of this notice.” If no objections are filed within those 30 days, the personal representative may distribute according to the plan of distribution and close the estate.

Simply wait until you sell the real property before filing a notice of insolvency if still needed.

Causing a Wreck: Bill Morris and Its Statutory Fix

In the August 2015 issue of this Journal, Eddy R. Smith wrote a piece titled “Strictly Speaking, When Is a Will Not a Will?” about the effects of the Tennessee Supreme Court case In re Estate of Chastain and the Court of Appeals case In re Estate of Morris. Josh A. McCreary followed up with a subsequent article in the September 2016 issue of this Journal titled “Execution of Last Will & Testaments: Revisted,” which discussed the then-recent amendment the General Assembly passed to “fix” the Morris ramifications. I encourage you to read their articles as well as follow-up cases, and I won’t try to rehash their thorough and excellent work. Generally speaking, Chastain held that the affidavit to prove a will is a different statutory provision and different legal document than the will itself, and based on that holding Morris invalidated a will where the witnesses only signed the affidavit. The statutory fix allows a procedure to validate those types of now invalid wills which were commonly done by filing under certain circumstances another affidavit to prove the will. The statutory fix, however, does not apply to a testator’s signature or for wills executed on or after July 1, 2016. Three years later, however, almost every week in our court, an attorney presents a will for probate where the witnesses only signed the affidavit or a combined attestation clause and affidavit. Unfortunately, the attorney’s journey to probate is halted until an additional affidavit to prove the will is submitted pursuant to the statutory fix. If you are using older templates or wills as a guide when you design your own wills, watch out! Make sure the witnesses and testator sign the actual will, and the witnesses...
sign a separate affidavit to prove the will.

So what do you do if the witnesses of your will only signed the affidavit, and your will was executed on or after July 1, 2016, which prevents the statutory fix from being utilized? We have heard attorneys in court attempt to distinguish these wills from the one in Morris, and some have brought the witnesses and the notary to court to support their arguments. Whatever you argue, however, avoid this pothole by asking for and preparing for alternative relief to open an intestate estate or probate a prior will, and prep your clients as to the possibility the will might be ruled invalid based on new law and caselaw.

Popping a Tire: Statute of Limitations for a Claim

Another bump in the road estate attorneys sometimes fail to navigate correctly involves the statute of limitations on a creditor’s claim against the estate. A creditor has a year from the death of the decedent to file a claim against the estate, unless it received actual notice from the personal representative, which the PR has a duty to send to all known or reasonable ascertainable creditors. If the creditor received actual notice from the PR, its timeline to file a claim is shortened to four months after the first publication of notice to creditors in a newspaper in the county of probate, which the clerk of the court has a duty to publish. Actual notice to the creditor is different from the published notice to creditors.

Frequently, we see exceptions to claims that state the first publication of notice to creditors was, say, July 1, 2018, the four month period ended on Nov. 1, 2018, and the claim was filed Dec. 1, 2018. Therefore, the exception argues, the claim is time-barred. But what about the actual notice sent to the specific creditor? If actual notice was not sent directly to the potential creditor and received, then that creditor has a full year after death of the decedent to file its claim, regardless of any notice to creditors in the paper. The published notice to creditors is merely the green light; the actual notice received by specific creditors is pushing the gas pedal to propel the four-month limitations period through the intersection to be relied upon as an exception argument.

However, pressing the gas pedal won’t do a thing if there is no gas in the car: the actual notice sent to a creditor must be very specific in its wording, otherwise it will not qualify as notice. In the Tennessee Supreme Court case Estate of Jenkins v. Guyton, the debtor and creditor reached an agreed order of judgment against the debtor of $141,781, with a stay of execution if the debtor paid $25,000 initially and then $2,500 monthly thereafter. When the debtor later died, his estate sent the creditor a letter informing him of the death, along with the required monthly payment, and continued thereafter to make payments. After the then six-month (four months now) from first publication claim period ended, however, the estate stopped making payments since the creditor failed to file a claim. He immediately filed one, and the estate filed an exception arguing it was time-barred. The Supreme Court, in this first impression case, determined the actual notice required to be sent directly to a creditor was not notice of the death and opening of an estate, but “must, at a minimum, include information regarding the commencement of the probate proceedings and the time period within which claims must be filed with the probate court.” The Supreme Court affirmed the lower courts in allowing the claim since it was filed within one year of death.

Don’t blow your potential exception: make sure to send each creditor a letter and copy of the published notice and file with your exception a copy of what you sent and when it was sent. Some attorneys send this by certified mail to confirm receipt.

Sending You on a Detour: New Laws

Probate statutes over the last several years have been tweaked or outright changed by the General Assembly, and most of the time these changes are effective as soon as the governor signs the bill. As a result, the templates attorneys have always used in their practice may be suddenly incorrect. It is never good to have a judge remind you in front of your client that your filing is wrong because of a change in law, especially when that change was a few years ago.

The most recent change that has regularly surprised unsuspecting attorneys was a new requirement signed into law on May 10, 2019, for petitions for letters testamentary or of administration to include the name, relationship, address and age of the proposed PR and a statement of any misdemeanors and felonies by that person and a statement on any sentence of imprisonment to the penitentiary. Petitions filed on May 9 without the requirement were fine, but those filed on May 13 (the next Monday) were not compliant with the law and letters could not be issued until the petition was amended.

To avoid these surprises, check the excellent website of the General Assembly, which has the text of introduced bills and amendments, and tracks the progress of the bills through the legislature. Go to http://www.capitol.tn.gov. I would suggest clicking in the top navigation bar “LEGISLATION” and then “BROWSE BILLS BY SUBJECT.” Choose a subject (Note: “Estates” and “Probate” are separate subjects and are distinctive; conservatorships are under the subject “Guardianships”) and then bookmark the resulting page or save it to your toolbar. I regularly check my bookmarked pages and know well in advance before a bill goes to the governor’s desk. For example, I am tracking a bill pending in the General Assembly now: House Bill 236/Senate Bill 399, which were deferred to 2020, will significantly increase homestead exemption if either is passed in current form.

May your ride down the probate highway be smooth and incident free! continued on page 20
Founders’ Award winner from Nashville sports and business before graduating as the Rocket Docket and has briefed Judge Kennedy on thousands more probate hearings. He graduated from Vanderbilt and worked in sports and business before graduating as the Founders’ Award winner from Nashville School of Law in 2011.

NOTES

1. For simplicity, this article assumes the decedent owned at least a portion of real property in fee simple without tenancy by the entirety (which is never part of the estate) or joint tenancy (which has right of survivorship, but that right can be destroyed. See Bryant v. Bryant, 522 S.W.3d 392, 413–14 (Tenn. 2017). Note: there are bills pending before the General Assembly (HB546/SB554) addressing the Bryant decision.

2. From now on, I will just say heirs/beneficiaries, as heirs are only distributees of an intestate estate and beneficiaries can be distributees of either a testate estate or intestate estate.

3. Local Rule 39.07(a)(4) in the 20th Judicial District requires contracts to sell decedent’s real estate and beneficiaries can be distribu-


5. Id. at *7.


7. Id. at *3 (quoting Am Jur 2d Guardian and Ward § 3 (1968)).


9. Id. at 6-7.


11. Id. at *3.


15. Id. at *5.


23. Id. at (b)(3).

24. Id. at (b)(1). Implicate: “To bring (someone) into a lawsuit; esp., to bring (a new party) into the action.” Black’s Law Dictionary (11th ed. 2019).


27. Tenn. Code Ann. § 30-5-103(a). This is required even if accountings were waived by court order initially since waivers can only be for solvent estates. See Tenn. Code Ann. §§ 30-2-301(a) (inventory); Tenn. Code Ann. §§ 30-2-601(a)(4) (accountings).


37. Chastain, 401 S.W.3d at 620.


41. Id. at (d).

42. Id. at (b)(1)(A). If the actual notice was received within the last sixty days of the four month period, the creditor is allowed sixty days from receipt regardless of the end of the four-month period. Id. at (b)(1)(B).


44. Estate of Jenkins v. Guyton, 912 S.W.2d 134 (Tenn. 1995).

45. Id. at 138.

46. Id.

47. See In re Estate of Burns, No. W1999-01888-COA-R3-CV, 2001 WL 687055 (Tenn. Ct. App. June 18, 2001)(Remanded to trial court to determine when actual notice was received since it was not in the record).


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One Giant Leap for Music Copyright Laws

By Monique Brown

In 2018, the Copyright Act finally entered the digital era. Musicians and other industry professionals have long called for amending the Copyright Act to address and incorporate new technology and industry trends into antiquated copyright laws. Congress finally responded to their requests with the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (MMA).

The MMA combines three previously introduced bills: the Classics Protection and Access Act (Classics Act); the Musical Works Modernization Act (MWMA); and the Allocation for Music Producers Act (AMP Act).

The MMA accomplishes three goals. First, it extends certain federal copyright protections to sound recordings made prior to 1972. Second, it updates the way digital music providers obtain mechanical licenses. Third, it codifies a process for record producers and engineers to receive a portion of royalties for the sound recordings they helped to create.

Classics: Pre-1972 Recordings

The Classics Act provides certain federal copyright protections for sound recordings made prior to 1972. To understand the Classics Act, it is important to understand the distinction between a copyright for a
The lack of complete protection for publicly, such as in a retail store or restaurant, of sound recordings; in other words, the Sound Recording Act did not grant public performance rights to owners of sound recordings; in other words, the Sound Recording Act did not grant public performance rights to owners of sound recordings.8

Prior to 1972, sound recordings were not eligible for federal copyright protection; therefore, federal law did not protect recording artists.7 This lack of federal protection for sound recordings led recording artists to seek protection through an inconsistent patchwork of state laws that provided state-level copyright protection for sound recordings.8

Congress extended certain copyright protections to sound recordings in 1971 with the Sound Recording Act of 1971.9 The amendment was not retroactive; therefore, pre-1972 sound recordings still lacked copyright protection.10 Furthermore, the Sound Recording Act did not grant public performance rights to owners of sound recordings; in other words, the owner of a sound recording was not compensated when the recording was played publicly, such as in a retail store or restaurant.11 The lack of complete protection for sound recordings was partially rectified in the 1990s, when Congress passed laws granting public performance rights to sound recordings that were transmitted via digital audio.12

The lack of protection for pre-1972 sound recordings negatively affected older recording artists. Legacy artists like Darlene Love, Mary Wilson of the Supremes, Dionne Warwick, and Smokey Robinson all attended committee hearings in support of the Classics Act. In Mr. Robinson’s testimony before the Senate Judiciary Committee, he highlighted the disparity between

Musical Works Modernization Act: Licensing

Title I of the MMA streamlines the licensing process for digital music providers. “If a third party wants to use a copyrighted work in a particular way, he or she must ordinarily seek permission from the copyright holder; in the music industry, such permission is often referred to as ‘licensing.’”18 In the context of the music industry, a “mechanical license” permits audio reproductions of musical compositions; for example, an artist who wants to release a cover song must obtain a mechanical license from the composition’s copyright holder.19 These licenses are referred to as “compulsory” licenses because they don’t require permission from the copyright holder; as long as the composition has already been distributed to the public, the person wishing to obtain a mechanical license can do so after paying a royalty at a rate established by the government.20

Under the pre-MWMA statute, licensees could obtain mechanical licenses on a song-by-song basis by serving a Notice of Intent (NOI) on the copyright holder — or the Copyright Office, if the copyright holder could not be located — within 30 days of making or before distributing the recording.21 Under the MWMA, the Copyright Office will continue to accept NOIs for recordings on physical media, like CDs and vinyl records, but will not accept NOIs for digital phonorecords of a musical work; licenses for those types of works will now be handled through the newly established Mechanical Licensing Collective Inc. (MLC), a nonprofit designated by the Register of Copyrights to administer the new blanket licensing system.22

Instead of obtaining mechanical licenses on a song-by-song basis, the MWMA gives the authority for the MLC to issue blanket mechanical licenses to digital music providers.23 A “blanket license” means that digital music providers will be able to obtain one license from the MLC and, in exchange, use all compositions subject to compulsory licensing.24 Digital music providers that obtain blanket licenses will be required to report and pay royalties to the MLC each month.25 The MLC will also be responsible for establishing a public database identifying the copyright owners of compositions, and to pay royalties to these owners.26 Unclaimed royalties will be distributed on a pro rata basis.27

As a result of the new blanket licensing system, digital music providers will get the benefit of reduced transaction costs, and songwriters will (hopefully) receive more “fair and timely payment” when their compositions are used on digital services.28 The MWMA also benefits digital music providers because it limits their liability for copyright infringement. Under the MWMA, after a digital music provider obtains a blanket mechanical license from the MLC, they will be immune from lawsuits alleging unauthorized reproduction or distribution.29 This will likely end the recent spate of lawsuits against digital

continued on page 24
music providers, such as the 2017 class action suit against Spotify. The suit, which was settled for $43.4 million, was a result of two class action lawsuits against Spotify for distributing copyrighted music without proper mechanical licenses.

The MWMA also made various changes to the operation of the courts responsible for establishing royalty rates for certain types of music licenses. The Copyright Royalty Board (CRB) is a board composed of three copyright royalty judges “who determine rates and terms for copyright statutory licenses.” The CRB sets royalty rates for mechanical licenses, as well as public performances of sound recordings via satellite radio and certain subscription music services. Previously, the CRB used a four-factor statutory standard to determine the appropriate royalty rates. Under the MWMA, the CRB will instead apply a willing buyer/willing seller rate based on open market rates. Additionally, the two largest performing rights organizations, ASCAP and BMI, are subject to a 1940s consent decree; under that decree, if a licensee cannot agree with either ASCAP or BMI on a public performance fee, they can ask the “rate court” — one of two judges in the Southern District of New York — to determine a reasonable fee. Before the MWMA, ASCAP and BMI were assigned to the same judge on an ongoing basis. Under the MWMA, random judges from the Southern District of New York will be assigned to preside over rate court petitions.

**AMP Act: Music Producer Rights**

Title III of the MMA is the Allocation of Music Producers Act, which codifies the process by which producers and engineers can receive royalties for songs they helped to create. Under the AMP Act, recording artists who agree to allocate a percentage of their royalties to a producer can send a “Letter of Direction” to SoundExchange, a nonprofit collective rights management organization designated by Congress to collect and distribute digital performance royalties for sound recordings. SoundExchange will then distribute the designated percentage of royalties to the producer. For sound recordings fixed prior to Nov. 1, 1995, SoundExchange will allocate 2 percent of royalties to be distributed to producers involved in the creation of a song, even if no one sent a letter of direction. For the producer to qualify for this exception, the following requirements must be met:

1. The producer has made reasonable attempts to contact and request a letter of direction from the featured recording artist without affirmation or denial;
2. SoundExchange has attempted to contact the recording artists and notify them of the producer’s request; and
3. SoundExchange has not received an objection by the recording artist within 10 business days of the first distribution of royalties to the producer.

**Critics**

Though the MMA has gained major support from most musicians and the performing rights organizations, it does not fix all the problems in the music industry. Skeptics of the MMA are mostly concerned about the complexity of the MLC legislation. SESAC publicly announced its opposition to the bill’s creation of the MLC and even offered a proposed compromise. SESAC proposed that the MLC only be responsible for building and managing a comprehensive song and recording database. SESAC owns Henry Fox Agency, which collects and distributes mechanical licensing fees on behalf of music publishers. Though they received backlash from songwriters because of their financial interest in opposing the MLC, SESAC insisted that they are “wholeheartedly in support of the MMA’s goals.”

One major issue lies in one of the primary functions of the MLC. The MLC creates a safe harbor for digital streaming services that bars lawsuits against them after Jan. 1, 2018. This eliminates the songwriter’s right to sue infringers for statutory damages, attorney’s fees, or to seek an injunction. The part of this provision that is the most concerning is that it bans suits that could have occurred prior to the MMA being signed into law. “[C]ourts have long held that an infringement claim is a property right that vests at the time of the infringement — whether a lawsuit has been filed or not.” So the fact that this bill
is retroactive “may very well be unconstitutional.” It also puts songwriters in a vulnerable place against the large, digital streaming giants. Critics attest that this safe harbor provision explains why Spotify is a major supporter of the MMA.

Conclusion

Though not a perfect law, the MMA represents significant improvements to antiquated copyright laws. It will help musicians get paid in the digital era we now live in, afford legacy artists the federal protection previously denied to them, and codify the process for producers and sound engineers to receive royalties.

NOTES

3. Id.
4. Id.
5. Id. at 18.
8. Id.
14. Id.
15. Id.
20. Id.
21. Id. at 10.
23. Id.
24. Id.
Getting in Trouble by Accident, Part II

The mental element of a crime is often the most important element. Having a guilty mind is what can distinguish accidental conduct from the type of misconduct society wants to punish criminally. Two years ago this column looked at whether it is possible to commit a crime without meaning to do anything wrong.¹

Two important developments — one from the United States Supreme Court and one from the Tennessee legislature — call for a reexamination of the topic. On the federal side, the United States Supreme Court has made it more difficult to be convicted of a firearms offense without intentionally doing something wrong. A recently enacted Tennessee statute prohibiting “influencing” a domestic violence victim moves toward broader application because it dispenses with any coercion requirement.

Violation of Prohibition Without Knowing You Are Prohibited?

First, in *Rehaif v. United States*,² the United States Supreme Court addressed a conviction for possession of a firearm while unlawfully in the United States in violation of 18 U.S.C. § 922(g). Mr. Rehaif had entered the United States on a student visa. He didn’t make it in school, though, but continued to live in the United States. He also went target shooting at a gun range twice. Based on his violation of his visa requirements and target practice, he got himself convicted of a gun offense. The jury was instructed that the government did not have to prove that Rehaif knew that he was unlawfully in the United States. The government just had to prove that he overstayed his visa and during that time possessed a firearm.

The Supreme Court reversed, holding that it is an element that the defendant knew the status of being unlawfully in the country. Otherwise the defendant could be convicted of essentially innocent conduct. Justice Breyer’s opinion stresses the longstanding presumption that Congress intends to require a defendant to possess a culpable mental state regarding each element that criminalizes otherwise innocent conduct.³

This holding is important because 18 U.S.C. § 922(g) is a statute that is widely used — most often against felons in possession of firearms. The majority opinion indicates its holding will affect prosecutions for being a felon in possession of a firearm as well. Courts generally have not instructed juries that the defendant had to know that he or her status. The majority opinion argues that Congress would not have expected to punish one who received probation for a felony and didn’t know that the crime was a disqualifying offense that was punishable by imprisonment for more than a year.⁴

The application of *Rehaif* to prosecutions of felons in possession of firearms will be very interesting. The dissent raises the possibility that thousands of felons in possession convictions are now subject to challenge because courts did not instruct that the defendant had to know that he or she was a felon.⁵ The dissent also argues that scienter requirements have never been interpreted to apply to the defendant’s status. (The dissent also points out that Rehaif himself was explicitly told by the school that he could not lawfully remain in the country after failing out of school).

The main lesson from *Rehaif* is that the court continues to apply scienter requirements when it finds that otherwise innocent conduct could be criminalized.

‘Influencing’ a Witness Without Coercion

On the other hand, in its recent session the Tennessee legislature created a new offense...
prohibiting a defendant or agent from “influencing” a domestic violence victim.\textsuperscript{6} The new statute specifically dispenses with the “coercion” element that applies to witness tampering generally. Traditionally witness tampering has only applied when “coercion” was applied against the witness. Coercion is something that by its terms cannot be done without bad intent. Coercion means a threat was applied.\textsuperscript{7} The new version of the statute applies when a defendant or an agent influences a witness in a domestic violence case “by any means of persuasion that is not coercion.” If a domestic violence witness expressed hesitation about participating in a prosecution, and the defendant or anyone acting at the defendant’s direction said, “Maybe you should just not show up at court,” that would violate the statute.

But this is ultimately a statute that is unlikely to be violated by a defendant accidentally. There is an intent element — the intent to influence. And the subject of the influence further makes it clear that potentially accidental conduct is unlikely to be prosecuted. The influence has got to be to avoid testifying or withhold evidence. So it should be clear to a defendant charged with domestic violence that this type of influence is improper. But there is a gray area that is an important one for lawyers — whether defense counsel might “influence” a witness in a domestic violence case. There is an exemption for a lawyer doing investigation. “Nothing in this section shall operate to impede the investigative activities of an attorney representing a defendant.”\textsuperscript{8} But advocacy goes beyond “investigative activities.” What if a lawyer is retained to represent a defendant in a domestic violence case, and the complainant and defendant had been engaged in illegal conduct together? Would the new statute prohibit a lawyer from saying to a victim’s lawyer that the victim should consider whether he or she has criminal exposure as well? Perhaps suggest that the witness needed to take the Fifth? The point would be to influence the complainant not to testify. Because that is not investigation, and because the lawyer is ultimately acting at the direction of the defendant, in the words of the statute, I believe that otherwise legitimate discussion between counsel could be criminalized.

This is important not just philosophically, but as a practical matter. Anyone who does not just criminal work but domestic relations work needs to know about the “influencing” statute. It happens so often that complainants and defendants have contact, even when they are not supposed to, that this statute is going to be violated on a regular basis — I hope not by counsel. 4P

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— SUZANNE CRAIG ROBERTSON, Editor; Sept. 30, 2019
Eunice Carter: Trailblazing Lawyer

The streets were red with blood. The night sky was red with the flames of burning businesses and homes. The air was filled with smoke and screams. Horror and death had descended on Atlanta’s usually peaceful and prosperous Fourth Ward, the neighborhood where the city’s African American middle class resided and had their businesses.

Over two days in September 1906, white mobs of thugs armed with guns and clubs, perhaps 15,000 in all, were determined to obliterate this community. The organized invasion was most immediately sparked by false press reports of two white women being assaulted by black men. It also resulted from mounting resentment of black economic success in Atlanta and politicians and newspapers exploiting hate and fear.¹

The rampaging racists flooded into the ward killing anyone who stood in their path. Black passengers were dragged from streetcars to be bludgeoned to death, victims were hanged from lampposts and thrown from upstairs windows, homes invaded and burned, and businessmen and professionals were riddled with bullets while trying to defend their small shops and offices. Law enforcement was not to be found.²

William and Addie Hunton huddled and prayed with their two young children, including seven-year-old Eunice, in their house at 418 Houston Street as the sound of mayhem and murder drew ever closer and closer. A white friend had earlier burst in and offered to hide the family, but they stayed to guard their home. That appeared to be a fatal mistake when they heard the house next-door being overwhelmed.³
Then, suddenly, at 2 a.m., with an earth-shaking clap of thunder, the heavens opened and a mighty downpour began, dispersing the roving crowds soaked with rain and blood. The “Atlanta Race Riot of 1906” was over. At least a hundred were dead and more than 1,000 homes and businesses were burned. The police finally ventured into the ghastly scene and proceeded to arrest black men with firearms who were only trying to protect their families. The next day the state militia entered the streets. That was enough for the Huntons. They packed up and moved to Brooklyn.4

Education, Literature, Law and Politics

William was a devout Christian and International Secretary of the YMCA, regularly traveling the globe. Addie was a college professor, writer and lecturer on women’s and race topics. Accordingly, the Huntons were welcomed into the black intellectual community of New York.5 They naturally saw to it that their children received a good education, including schooling in Germany.6 The serious, no nonsense Eunice Hunton, born on July 16, 1899, in Atlanta, would go on to Smith College in Northampton, Mass., to major in government.7

In 1921, Coolidge became vice president (in 1923, president), and in 1921 Eunice graduated with honors with both bachelor's and master's degrees, achieved after only four years of study.11 As her mother and brother moved to the political left in the 1920s (her brother, Alpheaus, would become a Communist Party leader and imprisoned),12 and as most black Americans became Democrats in the 1930s, Eunice would never countenance leaving the GOP, the party of Lincoln and her revered Calvin Coolidge. Besides, she was a committed small-government, fiscal conservative in her own right.13

More importantly to Eunice, the upright Coolidge was a role model personifying the old New England virtues of humility, charity, frugality and civic obligation, attributes she so venerated. And, he introduced her to “the majesty of the law.”10

In 1935, amid national press fanfare, Thomas Dewey was named special prosecutor to attack organized crime in New York. He hired the always serious, “all business” Eunice Carter as an

Celebrated Crime Fighter

In 1935, amid national press fanfare, Thomas Dewey was named special prosecutor to attack organized crime in New York. He hired the always serious, “all business” Eunice Carter as an
assistant special attorney, the only woman and only black lawyer on his 20-lawyer team.\textsuperscript{20} Even though the pay was modest, it was an immensely prestigious appointment among lawyers.\textsuperscript{21}

Dewey’s first target was gangster Dutch Schultz. Eunice investigated the hoodlum’s activities in Harlem, but Schultz was murdered on the orders of the Mafia’s boss, Lucky Luciano.\textsuperscript{22} Dewey, therefore, targeted Luciano, but he was unable to find the provable link between criminal activities and the ruthless mobster.\textsuperscript{23}

Eunice believed the Mafia’s prostitution racket was the key. Initially, Dewey was reluctant to pursue prostitution, for he wanted his work viewed as gang busting not a morality crusade.\textsuperscript{24} With the evidence Eunice produced, however, Dewey was finally convinced.\textsuperscript{25}

Through Eunice’s supervision, and her own dangerous covert forays into the pool halls and bars of Harlem, proof was amassed from dozens of wiretaps in Manhattan and Brooklyn and hundreds of interviews, raids and arrests. It showed the Mafia was extorting hundreds of madams and prostitutes at Luciano’s direction.\textsuperscript{26}

As Dewey and Carter closed in on the ferocious Luciano, the children of the attorneys in the special prosecutor’s office were sent out of the state or country for safety.\textsuperscript{27} At his 1936 trial, Luciano was found to be operating a massive compulsory prostitution ring called “the Combination” and was sentenced to 30 to 50 years in prison.\textsuperscript{28} The news was sensational, and, for a while, Eunice Carter was one of the nation’s best-known lawyers.\textsuperscript{29} Dewey always gave her due credit for the victory.

When Dewey was elected district attorney in 1937, he hired Eunice, a masterful lawyer in the courtroom, as New York’s first female assistant D.A.\textsuperscript{30} When nominated by the Republicans for president in 1944, Dewey made her one of his chief advisors, and she tirelessly campaigned with him across the country.\textsuperscript{31} Moreover, she used her influence to win adoption by the GOP of the strongest major party platform on civil rights up to that time.\textsuperscript{32} And, when speaking at Howard University, she condemned the treatment of women in the workplace as “one of the most vicious things in our economic and social order.”\textsuperscript{33}

Eunice resigned from the D.A’s office in 1945 and returned to private practice.\textsuperscript{34} After campaigning for Dewey again in 1948, she was active in the International Council of Women.\textsuperscript{35} In the 1950s, she served as president of the International Conference of Organizations and was a leader in the NAACP and YWCA.\textsuperscript{36}

On behalf of her causes, Eunice traveled America and the world. In doing so, she condemned all forms of organized evil she saw: fascism, communism, the Mafia and the KKK. After the Atlanta Race Riot of 1906 and Lucky Luciano, nothing frightened her.

Despite her fierce anti-communism, Eunice felt she never achieved her dream of being a judge because of her estranged brother’s well-known communism.\textsuperscript{37} Yet she was in constant demand as a speaker and the subject of press interviews until she died of cancer on Jan. 20, 1970, to be hailed as one of America’s greatest prosecutors, the woman who advanced the rule of law and made the case against the biggest gangster of all.\textsuperscript{38}
MUSIC MODERNIZATION
continued from page 25

31. Id.
34. Id.
35. Id.
37. Larsen, supra note 42, at 3.
38. Id.
41. Id.
42. Id.
43. Id.
47. Id.
48. Id.
50. Id.
A Nation of Immigrants

A vigorous debate over U. S. immigration policy has been raging for the last decade during the Obama and Trump Administrations. During that period, Congress has considered but not passed any changes to our immigration laws. President Trump made immigration a major issue during his 2016 run for the White House and has kept the issue in the limelight with his repeated calls for the construction of a wall on our Southern border.

This protracted discussion of immigration issues made me want to learn more about the history of immigration in this country. That’s why I was delighted to discover A Nation of Immigrants, one of several books written by John F. Kennedy before he was elected president in 1960.

Kennedy’s best known book is Profiles in Courage, for which he won the Pulitzer Prize in Biography in 1957. His first book — Why England Slept — was written in 1940 during his senior year at Harvard.

His third book — A Nation of Immigrants — was originally published by Harper & Row Publishers in 1964, the year after President Kennedy’s assassination, but it has been reprinted with additional material in 2008 and again in 2018 by HarperCollins Publishers.

You may ask, why did John Kennedy write this book? The answer is fascinating. He was asked to write it in 1958 by a man named Ben Epstein, who was the National Director of the Anti-Defamation League.

At that time, Kennedy was the junior senator from Massachusetts, but he had already staked out immigration as an issue of special concern. He had recently been awarded the Pulitzer Prize for Profiles in Courage and was being discussed as a likely contender for president in 1960. Even more importantly, he was the great-grandson of immigrants and had an enormous respect for the accomplishments of immigrants.

His book recounts the history of immigration to this country, as well as the evolution of the nation’s policy toward immigration. Kennedy discusses the three main reasons that people have come to America over the years: (1) search for religious freedom; (2) relief from political oppression; and (3) desire for economic opportunity. He traces the waves of immigration from before the American Revolution through the post-World War II period.

The book is filled with interesting facts and figures about the countries from which immigrants have come in the last three centuries. The book has separate sections on immigrants from England, Ireland, Germany, Scandinavia and southern European countries. It also contains 32 pages of photographs of immigrants and newspaper cartoons about immigration issues.

Recent media accounts have focused on the hardships faced by Mexicans and Central Americans during their trek to the United States and the horrible conditions they have faced during the detention, which follows their arrival in the United States. The conditions faced by these recent immigrants pale in comparison to the terrible conditions that European immigrants faced on the ships that brought them across the Atlantic Ocean to America as recently as a century ago, not to mention the squalid conditions on the lower east side of New York and the other slums in which they lived after reaching our shores, all of which are graphically described in Kennedy’s book.

By John F. Kennedy
HarperCollins | $14.99
2018 (revised edition)
Antipathy toward immigrants is not new. In the 1850s a political party (the American Party, sometimes referred to as the Know-Nothing Party) was formed to fight for immigration laws that would make it more difficult to enter this country. In 1882 Congress enacted the Oriental Exclusion Act, aimed at preventing Chinese immigrants from coming to the United States. After the First World War there was a movement to limit immigration in the name of “true Americanism” and “Nordic superiority.”

Beginning in 1882 with the Oriental Exclusion Act, Congress has enacted statutes addressing specific immigration issues, such as the exclusion of certain classes of “undesirables” (lunatics, convicts, idiots and polygamists) and the setting of health and literacy standards. The first codification of our immigration laws occurred in 1924, when Congress established ceilings on the number of immigrants that could be admitted each year from each country. These ceilings were based on the percentage of persons living in this country in the year 1920 who had come (or whose ancestors had come) from each country. This system was thus heavily weighted in favor of allowing more immigrants from northern European countries. The next major change in immigration law took place in 1952, when the quota system was essentially maintained.

In July 1963 President Kennedy proposed major revisions to the immigration laws. The text of his proposal to Congress is contained in Appendix D to his book. Sadly, he did not live to see his proposal enacted. However, his successor Lyndon Johnson was successful in pushing through the Immigration and Nationality Act of 1965, which phased out the nation-of-origin quota system and instituted the family unification policy now under fire from President Trump and others. The 1965 law, which was based on Kennedy’s proposals, is the foundation of our current immigration policy.

Kennedy wrote the text of A Nation of Immigrants in 1958 and was revising it at the time of his assassination in November 1963. The editors at HarperCollins and the staff of the Anti-Defamation League recently joined forces to update the book by adding several Appendices at the end. For example, Appendices B and B-1 contain a comprehensive 25-page chronology of immigration events and laws from 1607 to 2018.


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NOTES

1. Profiles in Courage tells the stories of eight U. S. Senators who took courageous stands on controversial issues, contrary to the views of their constituents and despite obvious danger to their political careers.

2. Why England Slept was written by Kennedy as a research paper during his senior year at Harvard, while he was visiting his father, who was at the time Ambassador to England. The book analyzes the reasons why England did not make more adequate preparations for the looming war in Europe during the 1930s.

3. The copyright in the book was and still is owned by the Anti-Defamation League.

4. When President Kennedy made a sentimental visit to Ireland in June 1963, he stood on the spot from which his great-grandfather Patrick Kennedy had embarked on his journey to America and said: “When my great-grandfather left here to become a cooper in east Boston, he carried nothing with him except a strong religious faith and a strong desire for liberty. If he hadn’t left, I would be working at the Albatross Company across the road.”

5. The 1964 edition of the book is the edition found at most public libraries. It has an introduction by Robert Kennedy, which contains the above quotation from his brother’s remarks in Ireland in 1963.

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The Court Clarifies the Oath

When those law school graduates who just passed the bar in July take their oath before the Tennessee Supreme Court this month, they will be pledging to do something a little different than you did. When you stood before the court with your right hand in the air, you swore or affirmed, among other things, to “truly and honestly demean myself in the practice of my profession to the best of my skill and abilities, so help me God.”

But now lawyers will agree to something else. On Sept. 16, the court amended Rule 6, Section 4 of the Rules of the Tennessee Supreme Court, changing the oath. Rule 6 is all about admission of attorneys, and the court has tweaked the agreement.

Now, new lawyers will say “In the practice of my profession, I will conduct myself with honesty, fairness, integrity, and civility.” That means about the same thing but is more direct, clear and specific.

Merriam-Webster defines “demean” as “to conduct or behave (oneself) usually in a proper manner” or “to lower in character, status or reputation.” That’s pretty vague! The new language of our oath sets out more clearly what is expected: You should be honest, fair, have integrity and be civil. It’s basically the Golden Rule.

“We as a court, and I personally, have witnessed the growing lack of civility in our practice and in our country,” Tennessee Supreme Court Chief Justice Jeff Bivins says. “Because of that, as leaders of the profession, we felt we needed to put more emphasis on civility … We felt like it was appropriate.” He said the hope was to highlight for lawyers that they should practice in a civil way.

Several other states have taken similar steps. Bivins says members of the court researched those oaths, revised and fine-tuned, and ultimately arrived at wording unique to Tennessee. At a monthly business conference they discussed and voted unanimously to change the oath.

Belmont Law Professor David L. Hudson Jr. wrote about civility in a recent ABA Journal article: “In the 1985 case In Re Snyder, U.S. Supreme Court Justice Warren Burger noted that everyone involved in the judicial process owes a duty of courtesy to all other participants. And as officers of the court, ‘the license granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice.’ When lawyers fail to follow this standard, they not only lower the bar for the profession, but they set themselves up for disciplinary action.”

If it’s been a minute since you stood before the court and swore your oath, you may want to skim through Rule 8: Rules of Professional Conduct. It’s long and quite detailed but it gets right to the point in Section 1:

Essential characteristics of the lawyer are knowledge of the law, skill in applying the applicable law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct and integrity, and dedication to justice and the public good.

Section 10 adds:

These principles include the lawyer’s obligation zealously to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

How to Live This Oath

In Robert Fulghum’s bestselling book, he explains that “how to live and what to do and how to be” he learned in kindergarten. You probably did too. But if you unlearned any of this through the years, here’s a refresher of part of his list:

• Share everything.
• Play fair.
• Don’t hit people.
• Put things back where you found them.
• Clean up your own mess.
• Don’t take things that aren’t yours.
• Say you’re sorry when you hurt somebody.
• Wash your hands before you eat.
• Flush.

(Those last two are not outlined by the court, but still good practices.)

By clarifying the wording in the oath, the court reminds you — in fact, has you — to tell the truth, be fair and nice. This applies all the way through your career. How hard can that be?

— Suzanne Craig Robertson

SUZANNE CRAIG ROBERTSON is editor of the Tennessee Bar Journal and a big fan of civility.

NOTES

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Compendium of Tennessee Tort Reform Statutes and Related Case Law, Eighth Edition attempts to gather all the Tennessee tort reform legislation signed into law since the beginning of the 106th General Assembly (January 2009) through the adjournment of the 111th General Assembly in the Spring of 2019, as well as the cases interpreting that legislation. It serves as a handy reference to make sure you have the most up-to-date information that can affect your tort practice.

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