The right referral gives peace of mind to your client. And you.

Over 1000 lawyers and law firms have referred their clients, family members, and friends to our firm.

Here's How To Get Started

1. We provide a TIMELY, free consultation to your referred client, family member, or friend.

2. We PROMPTLY let you and your referred client know if we are a good fit for the case. IF FURTHER INVESTIGATION IS REQUIRED, WE DO IT.

3. If the case has merit and we can help, we take on the case. You can RELAX, knowing your referred client is in good hands. And your client can focus on healing.

Can we help you? Call us at 615.742.4880 or send an email to referral@johndaylegal.com.

Tennessee ethics rules permit the payment of referral fees in contingent fee cases.
## ARTICLES

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beware ERISA Preemption: Why it is Important to Know if Your Client's Benefit Plan is Subject to ERISA by Eric Buchanan and R. Chandler Wilson</td>
<td>8</td>
</tr>
<tr>
<td>Legislative Update 2021 by John Griffith, Mark Chalos and Lauren Brinkley</td>
<td>13</td>
</tr>
<tr>
<td>Attorney Fees - LEGAL FICTION - Marital Debt by George D. Spanos</td>
<td>14-19</td>
</tr>
<tr>
<td>Admitting Summary Evidence at Trial by Eddie Schmidt</td>
<td>28-30</td>
</tr>
<tr>
<td>The Bare Bones of Bankruptcy: What Every Personal Injury Attorney Should Know Part 1 of 3 by Joshua Cantrell</td>
<td>36-38</td>
</tr>
<tr>
<td>AAJ - Optimizing Expert Reviews by Christopher T. Nace</td>
<td>31</td>
</tr>
<tr>
<td>Book Review: The Way of the Trial Lawyer Beyond Technique by Rick Friedman by Randy Kinnard</td>
<td>40-41</td>
</tr>
</tbody>
</table>

## FEATURES

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TTLA Officers &amp; Board of Governors</td>
<td>4</td>
</tr>
<tr>
<td>From the President</td>
<td>5</td>
</tr>
<tr>
<td>2021 - 2022 Calendar of Events</td>
<td>6</td>
</tr>
<tr>
<td>TTLA Awards &amp; Recognitions</td>
<td>10-11</td>
</tr>
<tr>
<td>TTLA Past Presidents</td>
<td>19</td>
</tr>
<tr>
<td>TTLA Sustaining &amp; Life Members</td>
<td>20</td>
</tr>
<tr>
<td>TTLA Partners</td>
<td>22-23</td>
</tr>
<tr>
<td>TTLA Membership Information</td>
<td>24-26</td>
</tr>
<tr>
<td>Firm Spotlight: Lieff Cabraser Nashville</td>
<td>33</td>
</tr>
<tr>
<td>AAJ Update</td>
<td>34-35</td>
</tr>
<tr>
<td>LIFT</td>
<td>42</td>
</tr>
</tbody>
</table>
BOARD OF GOVERNORS

DISTRICT #1
Olen Haynes, Jr., Johnson City
Amy Johnson, Knoxville
Johnathan Minga, Johnson City

DISTRICT #2
Alison Hotz Ankrom, Knoxville
Melissa Ball, Newport
Brad Burnette, Knoxville

DISTRICT #3
Tim Crosby, Chattanooga
Hudson Ellis, Chattanooga
Jim McKoon, Chattanooga

DISTRICT #4
Michelle Benjamin, Winchester
Brent Burks, Chattanooga
Jeff Rufolo, Chattanooga

DISTRICT #5
Phil Elbert, Nashville
George Spanos, Nashville
Gerard Stranch, Nashville

DISTRICT #6
Stan Davis, Nashville
Jason Denton, Lebanon
Jonathan Williams, Nashville

DISTRICT #7
Jim Higgins, Nashville
Justin Hight, Hendersonville
Peter Olson, Clarksville

DISTRICT #8
Patrick Ardis, Memphis
Jeff Boyd, Jackson
Chad Graddy, Memphis

DISTRICT #9
Eric Espey, Memphis
Chris Gilreath, Memphis
Chuck Holliday, Jackson

AT LARGE
Joe Bednarz, Jr., Nashville
Trudy Bloodworth, Nashville
Kenneth Byrd, Nashville
Audrey Dolmovich, Chattanooga
Jay Kennamer, Chattanooga
Annette Kelley, Chattanooga
Holland Matthews, Columbia
Chadwick Meyers, Nashville
Michael Pence, Nashville
Corey Shiple, Greeneville
John Spragens, Nashville
Ali Tonn, Hendersonville
Tim Roberto, Knoxville
Tiffany Carpenter, Memphis
Mike Williamson, Clarksville

PRESIDENT
John Griffith, Franklin
Griffith Law, PLLC
256 Seaboard Lane, Suite E-106
Franklin, TN 37067
www.griffithinjurylaw.com
john@griffithinjurylaw.com
615.807.7900

IMMEDIATE
PAST PRESIDENT
Matt Hardin, Nashville
Matt Hardin Law PLLC
207 23rd Avenue North
Nashville, TN 37203
www.matthardinlaw.com
matt@matthardinlaw.com
615.200.1111

PRESIDENT ELECT
Tony Seaton, Johnson City
Law Offices of Tony Seaton, PLLC
118 East Watauga Avenue
Johnson City, TN 37601
www.tonyseaton.com
ony@tonyseaton.com
423.282.1041

VICE PRESIDENT/EAST
Danny Ellis, Chattanooga
Truck Wreck Justice
1419 Market Street
Chattanooga, TN 37402
www.truckwreckjustice.com
danny@truckwreckjustice.com
423.265.2020

VICE PRESIDENT/WEST
Carey Acerra, Memphis
Jehl Law Group
5400 Poplar Avenue, Suite 250
Memphis, TN 38119
www.jehllawgroup.com
cacerra@jehllawgroup.com
901.322.4232

VICE PRESIDENT/MIDDLE
Mark Chalos, Nashville
Lieff Cabraser Heimann & Bernstein
150 4th Ave. N., Suite 1650
Nashville, TN 37219
www.lchb.com
mchalos@lchb.com
615.313.9000

SECRETARY
Brandon Bass, Nashville
Law Offices of John Day, PC
5141 Virginia Way, Suite 270
Brentwood, TN 37027
www.johndaylegal.com
bbass@johndaylegal.com
615.742.4880

TREASURER
Troy Jones, Knoxville
Law Office of Troy B. Jones
418 S. Gay Street, Suite 204
Knoxville, TN 37902
www.troybjoness.com
roy@troybjoness.com
865.456.5901

PARLIAMENTARIAN
Caroline Ramsey Taylor, Nashville
Whitfield, Bryson & Mason LLP
518 Monroe Street
Nashville TN 37208
www.whitfieldbryson.com
ndreinwbmllp.com
615.921.6500

AT LARGE EXECUTIVE APPOINTEES:

Audrey Dolmovich, Chattanooga
Eric Buchanan & Associates, PLLC
414 McCallie Avenue
Chattanooga, TN 37402
www.buchanandisability.com
adolmovich@buchanandisability.com
877.634.2506

Jim Higgins, Nashville
The Higgins Firm
525 4th Avenue South
Nashville, TN 37210
www.higginsfirm.com
Jsh@higginsfirm.com
615.353.0930

George Spanos, Nashville
Rogers, Kamm & Shea
2205 State Street
Nashville, TN 37203
www.thewindinthewillowslaw.com
g.spanos@thewindinthewillowslaw.com
615.320.0600

PRESIDENT APPOINTED
Michael Beehan, Clinton (Eastern)
Josh Cantrell, Franklin (Middle)
Nora Taube, Memphis (Western)
GET IN THE GAME!

About 9 years ago, my son (then age 9) signed up to play football for the Franklin Cowboys. At the very beginning of that season, I had been out of town for 3 weeks attending the Trial Lawyers College hosted by Gerry Spence. Upon my return about 2 weeks after the start, I remember watching the practices and meeting his “coach” upon my return. To my horror, the practices were scream fests consisting of the coach gathering the players around him for 30 minutes and chastising them for making mistakes and not executing properly. I eagerly asked to the coach if I could help and was met with a condescending “No, I got this.”

As the season went on and the embarrassing losses mounted, the parents collectively complained louder and louder. At the end of each loss, the coach would again gather the dejected young boys and berate them on how poorly they performed. As a parent I was conflicted. On one hand, you teach your kids that you don’t quit. You don’t leave your team behind. You have their back. On the other hand, you have a “leader” and influencer upon your child who is arguably causing psychological harm to your child by calling them “losers” and other demoralizing behaviors. I was seething inside.

After that 0-8 season (even before it was over), I vowed to get off my butt and do something about it. Although I played football in my college days, I was not arrogant enough to think that alone would guarantee that I would be a good coach. I bought books on coaching and devoured them. I attended a coaching seminar put on by the renowned youth football coach Dave Cisar. And I came out of the gate running. I became their coach the following year with most of those same boys and we went from 0-8, to 9-2, with the final loss coming in the final playoff game. That entire season was one of mine and my son’s most fond memories of his childhood.

We are fooling ourselves if we don’t think our attitudes are important. Every year there are those who sit on the sidelines and complain about what needs to be done and more loudly about what is not being done. It is wise to be aware of the wide spectrum of what is going on all around. However, you can only sit on the sidelines for so long without getting in the game.

We have been pro-active in our legislative efforts with pushing bills but we can, and must do better. It is easy for many to sit back and question why we don’t get this done or that done. What direction should TTLA take in the future to even better serve our members? What new initiatives should be started that will leave the organization in a better place than it was just a short while ago? It is time for you to step up and to act. If not you, then who? Don’t be one of those who sit on the sidelines and just complains. Anyone can do that. Let’s step up and pull this load together.

Every year presents different challenges. The bustle of spring is upon us. For TTLA, the spring always brings times of frustrated consternation by the myriad and onslaught of bills filed in the legislature. The far reaching effects of bad bills is omnipresent, and daunting at times. Running a lawfirm and keeping up with all of the dangerous bills filed is a constant game of whack a mole.

Thankfully, our lobby team is second to none and ever vigilant. However, these guys can’t do our work alone; it takes our direct involvement and reliance upon the valuable relationships we have formed as members with our representatives. In the past quarter, I am personally thankful for all of you in TTLA that have not sat back and complained, but have actively stepped up to the plate to do your part. I would be remiss if I did not personally thank past Presidents Matt Hardin, Eric Buchanan and Bryan Smith for their willingness to drop everything and get involved with their knowledge on diverting bad bills for the people of Tennessee. Also, Brandon Bass, Mark Chalos, and Carey Acerra have gone over and above the call of duty. I am extremely thankful for you all.

If you care about the future of your practice and what is currently happening around you, then it is your time. It is time for you to get in the game. Many hands make light work. We need your involvement for the survival and flourishing of the rights of Tennesseans in their quest for justice. Won’t you join us?

And I promise to be right there with you.
TENNESSEE TRIAL LAWYERS ASSOCIATION

CALENDAR OF EVENTS

2021

APRIL 8 • Family Law Seminar | Nashville .................................................. Online via Zoom
APRIL 22 • Executive Comm., Board of Governors Meeting & LIFT .................. Online via Zoom
MAY 13 • Circle of Advocates Dinner ........................................................ Maggiano’s, Nashville
MAY 18 • Medicare/Medicaid Update ......................................................... Online via Zoom
JUNE 16-18 • 2021 Annual Convention ...................................................... Peabody Hotel, Memphis
SEPTEMBER 30 • 6th Annual Paralegal Seminar ........................................ Drury Plaza Hotel, Franklin
DECEMBER 2-3 • Annual Review & Ethics ................................................ Carnegie Hotel, Johnson City

2022

JUNE 15-17 • 2022 Annual Convention ...................................................... TBD
DECEMBER 1-2 • Annual Review & Ethics ................................................ Carnegie Hotel, Johnson City

You can advertise in the
THE TENNESSEE TRIAL LAWYER MAGAZINE

TTLA knows that a very important component to a thriving and successful practice is your ability to build connections and relationships with other lawyers and potential clients. TTLA is committed to providing our members with quality resources and tools to do that very thing.

For more detailed information, rates and cut-off dates, please contact Theresa Grisham at tgrisham@ttla.org
WHY THE KEENAN TRIAL INSTITUTE?

Purpose – To instruct lawyers in all aspects of the plaintiff’s case, from intake through trial.

Method – 24 different courses taught in 2-3 day courses of small groups requiring role playing participation.

Track Record – Over 5,500 students, over 1,300 graduates, over 275 master graduates.

Unsurpassed – There is no other trial training institution or school that offers such comprehensive training with such outstanding results.

Motto – “Amat Victoria Curam!” (Victory loves preparation!)

Rules & Case Selection
Openings & Order of Proof
Focus Groups
Voir Dire
Depositions
Witness Prep
Mediation & Settlements
Trial
Damages
Employment
Admitted Liability & Car Crash Litigation
Women’s Summit

Advanced Voir Dire
Advanced Mediation
Cross Exam
Closing Liability
Black Letter Law
Advanced Witness Prep
Trial Management
Advanced Focus Groups
Advanced Depositions
Advanced Opening
Direct Exam
Seeing is Believing

“It is the only system that works and the defense fears! It is a system where the truth matters and you get to be yourself, not what someone else wants you to be. It is a system that puts you back in touch with the law and gives purpose to your practice.”
Danny Ellis, TN

“You will learn what they did not teach you in law school.”
Russ Thomas, TN

JOIN US TODAY!

www.keenantrialinstitute.com
Register Today - 1-877-484-2055
Beware ERISA Preemption: Why it is Important to Know if Your Client’s Benefit Plan is Subject to ERISA

by Eric Buchanan and R. Chandler Wilson, Eric Buchanan & Associates, PLLC

I. Introduction: What is ERISA?

If your client obtained his or her insurance coverage at work, outside a few exceptions, any claim under that policy is preempted by the Employee Retirement Income Security Act of 1974 (ERISA). For example, if your client has work-related health insurance that paid for medical treatment for his or her injuries in a tort case you are working on, any claim for those benefits, and any claim by the insurance company to recover those benefits fall under ERISA. Similarly, if your client files a claim for long-term disability benefits, life insurance, or similar benefits, the rules governing that claim and any denial of that claim fall under ERISA, if the insurance was provided through work.

Backing up, ERISA is a comprehensive Federal statute that applies to most claims related to employee benefits and pensions. Congress passed ERISA in response to a significant perceived problem, that employee benefits were subject to varying, and often conflicting state laws, and that state laws did not adequately protect employee’s rights. Employees often had significantly different rights depending on the state in which they worked, while large, multi-state companies often had conflicting obligations.

Congress also perceived problems involving possible corruption and self-dealing involving large pension plans. To provide Federal oversight of employee pensions and uniform national standards, Congress enacted ERISA to regulate employee pension plan. At the last minute, Congress amended ERISA to include other employee benefits, including such employee welfare benefits as health care coverage, long-term disability insurance, life insurance and similar benefits provided to employees by private employers. Thus, ERISA applies to two broad categories of employment benefits, pension benefits and welfare benefits.

Congress did write into the statute some exceptions to its reach. For example, plans maintained by government employers are exempt from ERISA. Church plans are generally exempt as well, but they may voluntarily “opt-in” to ERISA. Finally, courts have recognized a “safe harbor” exception that while hard to meet, can exempt an employer plan from ERISA. We will address those specific exceptions in future articles.

Several sources govern the practical effects of ERISA’s control. The intent of Congress in enacting ERISA was to protect the “interest of participants in employee benefit plans . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts...” 29 U.S.C. § 1001(b). ERISA draws heavily from trust law as well as contract law, and instructs the Courts to fill in gaps by developing a common law of ERISA. Congress authorized the Department of Labor to issue regulations governing the processing of ERISA claims and it has created and revised the guidelines several times.

So not only does ERISA cover most employee benefits, there are reams of authority that govern, or could affect, how to handle the claim and how the claim will be decided.

II. Why is it important to know early on whether ERISA applies?

Because of this complexity, driven by the many authority-sources, practicing in this area of the law throws up many unexpected hurdles between employees (and their attorneys) and their insurance benefits or their ability to keep their benefits. If ERISA applies, and it often does, you have to be very careful.

For example, ERISA limits the remedy of a claim in a benefits case to the benefits that should have been paid under the plan, plus (maybe) attorneys’ fees, but precludes other state law remedies, such as claims for bad-faith failure to pay an insurance claim, or fraud, and ERISA precludes punitive damages or other state law remedies. ERISA § 502(a)(1)(B). See also, Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 144 (1985). It also often precludes many protections afforded

continued to page 9
to plaintiffs by state law, such as the “made whole” doctrine. *Marshall v. Emps. Health Ins. Co.*, No. 96-6063, 1997 WL 809997, at *4 (6th Cir. Dec. 30, 1997) (Recognizing that the “made whole” rule may be overcome if the ERISA plan states that the participant’s right to be made whole is superseded by the plan’s subrogation right).

ERISA also lives in its own world of civil procedure, where ordinary rules do not ordinarily apply. For example, a claimant must first present all evidence to the insurance company and appeal all of the insurance policies internal appeals before filing a suit. Once a suit is filed, a claimant usually may not submit more evidence, and generally no discovery is permitted regarding the merits of the claim; a court instead reviews only those documents that were considered by the insurance company.

Additionally, when reviewing the limited record, the courts generally decide most claims under a deferential standard of review to the decision made by the insurance company. In broad strokes, the courts hold that laws that provide additional remedies or causes of action outside ERISA are still preempted, while state laws that regulate insurance in other ways may not be. So not only do you have an “unfair” standard to fight, ERISA cuts out the potential for getting bad-faith penalties.

If ERISA applies, most claims will be litigated in federal court (except for claims limited to claims for benefits over which state courts have concurrent jurisdiction), and if a plaintiff files a claim that is properly preempted by ERISA, the defendant may remove the claim to federal court without regard to the well-pled complaint rule. 29 U.S.C. § 1132(e).

With all that potential baggage, you absolutely need to know on the front end what you are getting yourself into when taking on a case that involves ERISA benefits. All that said, you can successfully litigate ERISA claims, when you become knowledgeable of ERISA’s procedures, and we will get into some of the key strategies and practical tips in another article.

III. Conclusion

Plaintiffs can and do successfully litigate ERISA claims, but it ties their attorneys’ hands by limited damages and by laying out complicated and pitfall-laden rules from many sources. Thus, whenever an employee benefit is involved, you must know at the onset whether ERISA applies so you can plan accordingly.

ABOUT THE AUTHORS

**Eric Buchanan** represents disabled people and other policyholders across the United States in both ERISA and non-ERISA disputes, focusing primarily in the areas of disability, life, and health insurance. Eric served as President of the Tennessee Trial Lawyers Association from 2015 to 2016 and is a lifetime member of that organization.


Eric graduated from the Washington and Lee University School of Law *magna cum laude* in the top 10% of his class. While in law school he was inducted into the Order of the Coif as well as the Omicron Delta Kappa honorary leadership fraternity. Eric is a graduate of the Virginia Military Institute and served as an officer in the U.S. Navy from 1989 to 1994, where he served as a naval aviator (pilot), plane commander, and mission commander of P-3C Orion aircraft.

**R. Chandler Wilson** graduated from the Washington and Lee University School of Law in 2015. During law school, he participated in the John W. Davis Moot Court Competition. In his third year of law school, he worked at the Community Legal Practice Center where he represented low-income clients in the Rockbridge County, Virginia area in a variety of civil matters, focusing on child custody cases.

Chandler loves to see his hard work positively impact his clients and their families. Prior to law school, he attended the University of Florida and graduated *cum laude* in 2012 with a major in history and a minor in anthropology.

Chandler enjoys spending his free time with family and friends, playing the guitar, playing golf, and working with computers.
UT Receives $1 Million Gift From Chattanooga Law Firm

A $1 million gift has been made to the University of Tennessee in the name of the Chattanooga-based law firm of Summers, Rufolo and Rodgers, P.C.

The College of Law will receive $900,000 to support the Center for Advocacy and Dispute Resolution, the Legal Clinic, the Douglas Blaze Professorship and scholarships for students interested in pursuing legal careers in advocacy, one of the college’s primary areas of concentration.

The University of Tennessee at Chattanooga political science department will establish a scholarship with the remaining $100,000.

College of Law Interim Dean Doug Blaze said he hopes the gift will act as a challenge to others to offer additional funds to the university.

“We are incredibly grateful for our partnership with Summers, Rufolo and Rodgers and the support the firm and its members have given the College of Law over the years,” Dean Blaze said. “This gift will advance our students’ understanding and appreciation of advocacy within the legal system.”

In recognition of the gift, the College of Law Room 338 will be named the Summers, Rufolo and Rodgers Courtroom.

The Summers, Rufolo and Rodgers law firm was founded in 1969 by University of the South and College of Law graduate Jerry H. Summers. Attorney Summers is a lifelong resident of Chattanooga.

JOHN J. HOLLINS JR.

The national publication Best Lawyers in America recently named attorney and author John J. Hollins, Jr. the 2021 Tennessee Family Lawyer of the Year.

Hollins is a partner with Thompson Burton, PLLC Law Firm with offices in Franklin and Nashville, Tennessee. For more than three decades, Hollins has been a successful domestic relations trial attorney who practices primarily in Williamson and Davidson counties. Hollins settles the majority of his cases through mediation.

In 2020, the American Institute of Family Law Attorneys listed Hollins as one of the ten best family law attorneys in Tennessee. He was also named a Top 100 family law attorney by The Mid-South Super Lawyers. Hollins has also been a Fellow in the American Academy of Matrimonial Lawyers since 2011. He served on the Board of Professional Responsibility for six years. He has been recognized as the “Best of the Bar” in the Nashville Business Journal.

A native Nashvillian, Hollins is a graduate of Montgomery Bell Academy, Auburn University and The University of Tennessee College of Law. He is deeply involved in his church and community, serving as an Elder at First Presbyterian Church of Nashville, and has participated in mission trips with First Presbyterian Church to Jamaica for eight years. He has also been involved in Habitat for Humanity build projects in Nashville.

Hollins enjoys spending time with his wife, Laura, and his 20 year old twin daughters, Meredith and Emily.
Attorney Phillip H. Miller was awarded a Master of Laws in Litigation Management during the February 8, 2020 commencement ceremonies at Baylor University.

In addition to successfully completing the LL.M. program, during his time in the program, Miller performed specialized research into Juror Centered Case Assessment.

The Executive LL.M. program at Baylor Law is the first Master of Laws program in the country designed exclusively for lawyers who direct litigation strategy, to teach a concrete and practical framework to create and execute a successful, value-based litigation management game plan for high-volume and high-stakes dockets. Additional information about the Executive LL.M. Program at Baylor University can be found here: https://llm.baylor.edu/.

Miller is an expert in the areas of depositions, moderating focus groups and developing effective trial strategies. A respected speaker and trial consultant, he is certified as a civil trial specialist of the National Board of Trial Advocacy for his extensive background in representing injured persons in personal injury cases. He has served as a course advisor or faculty member for more than 50 national programs.

A current member of the Board of Trustees of AAJ’s National College of Advocacy, Miller is a past board member of the American Society of Trial Consultants, and a past president of the Tennessee Association for Justice (TAJ). He is a member of the Nashville Bar Association, the Tennessee Bar Association, the American Bar Association, the American Society of Trial Consultants, the American Association for Public Opinion Research, and the Tennessee Trial Lawyers Association.

Miller is the author of two books: “Advanced Depositions: Strategy and Practice” (published by Trial Guides) and “Focus Groups – Hitting the Bullseye” (published by AAJ Press). He received a B.S. degree and a Master’s in Public Administration degree from Pennsylvania State University. He holds his law degree from the Nashville School of Law.

Miller’s firm is located at 631 Woodland Street in Nashville, Tennessee. Visit www.philliphmiller.com for more information.

---

Whitfield Bryson LLP and Greg Coleman Law, both of which have offices in Tennessee, are joining forces to create a southeast regional personal injury practice that will operate as Whitfield Coleman & Bullock. The merger is part of the global merging of Whitfield Bryson LLP, Greg Coleman Law, Milberg Phillips Grossman LLP and Sanders Phillips Grossman LLC, which are combining to form Milberg Coleman Bryson Phillips Grossman PLLC (“Milberg”). Whitfield Coleman & Bullock will serve as the injury arm of the firm. “This merger will only continue to allow us to help those in need, and we are excited for the opportunity to continue our work of bringing justice to Tennesseans and beyond,” said John Whitfield of Whitfield Bryson LLP. Nashville attorney John Whitfield and Knoxville-based attorney Tina Bullock, will head up the injury practice.

Whitfield Coleman & Bullock will continue the efforts of Whitfield Bryson and Greg Coleman Law of representing individuals injured through no fault of their own in both Tennessee and surrounding areas. Whitfield Coleman & Bullock will represent plaintiffs in motorcycle wrecks, car wrecks, trucking wrecks, medical malpractice, wrongful death, and product liability cases. “We have always felt that it is our calling to help people and change lives with a fearless and relentless approach,” said Greg Coleman of Greg Coleman Law. “This merger with highly skilled and likeminded litigators furthers that mission and allows us to expand our reach both at home and abroad.”

Milberg is set to be a game-changer in the area of complex litigation. The combination of four leading plaintiffs’ firms gives Milberg expanded ability to prosecute cases not only domestically but worldwide. Milberg will represent plaintiffs in antitrust, securities, financial fraud, consumer fraud, automobile emissions claims, data breach claims, defective drug and devices claims, catastrophic environmental claims, consumer class actions, and injury-based torts. While the merger will allow additional cases by creating synergies within the group, it will also bolster the local injury practices in Tennessee.
INTRODUCING

FORGE CAPITAL

Built for Trial Lawyers

SERVICES CREATED FOR CONTINGENT FEE ATTORNEYS AND THEIR FIRMS

Attorney Planning & Retirement Solutions through Forge Flex™

MSA & Lien Solutions

Back Office Solutions:

HR
CFO
Benefits
Insurance

Specialty Lending Solutions

Solutions tailored to meet your personal and business needs—let us help!

FORGE CAPITAL

866-683-6743
FORGECAP.COM

Forge Consulting is a national insurance agency. We analyze but do not provide investment, legal or tax advice. Advocacy Wealth, a Registered Investment Adviser, offers financial planning. Advocacy Trust offers fiduciary services. Forge is the parent company of both Advocacy subsidiaries.

Securities and Insurance Products are NOT insured by the FDIC, nor by any other Federal or State Government Agency, are NOT a Deposit of and are NOT Guaranteed by a Bank or any Bank Affiliate, and MAY lose value.
THE TENNESSEE 112TH GENERAL ASSEMBLY & THE 2021 ELECTION

Tuesday January 12, 2021 officially marked the start of the 112th Tennessee General Assembly. The Senate & House re-elected Lt. Governor Randy McNally (R – Oak Ridge) and Speaker Cameron Sexton (R – Crossville) to serve two more years in their leadership positions. The only major change was the newly elected Speaker Pro tempore of the House Rep. Pat Marsh (R- Shelbyville), who is replacing the former Speaker Pro Tempore Bill Dunn who retired last year. The Senate re-elected Sen. Ferrell Haile (R-Gallatin) as Speaker Pro Tempore.

In the House, Speaker Sexton split apart the Judiciary Committee into two standing committees: Civil Justice and Criminal Justice. There are 2 subcommittees of the Civil Justice committee. Civil Justice Subcommittee & Children and Family Affairs Subcommittee.


The 112th regular session began on Monday, February 8. The annual State of the State address was held for the first time in history in the War Memorial Building so that the members could appropriately spread out due to covid-19. Governor Bill Lee laid out his 41.8-Billion-dollar budget plan to the General Assembly at that time.

The bill filing deadline was a little later this year due to the special session on education in January and the ice storm that hit middle Tennessee in mid-February. There were 1600 bills filed this year. Many of those bills would potentially affect you and your clients. The TTLA legislative committee and lobby team are hard at work educating legislators so that they understand the impact certain legislation will have on the civil justice system.

John Griffith, TTLA President
Mark Chalos, TTLA Legislative Chair
Lauren Brinkley, TTLA Legislative Counsel
Attorney Fees - LEGAL FICTION - Marital Debt

by George D. Spanos

Should attorney fees be classified as marital debt? Concerns between the two are not new ground in Tennessee Law. However, fees have been prevented from such a classification due to an unnecessary legal fiction created by the Court. The question whose time has come is WHY? Tennessee Courts have been clear in stating “[a]ttorney fees incurred by each party are not marital debt” and “an award of attorney fees is alimony in solido.” Alimony is codified under T.C.A. §36-5-121. Specifically, T.C.A §36-5-121(d)(5) and T.C.A. §36-5-121(h)(1) specifies the utilization of alimony in solido as the method to award attorney fees.

Since attorney fees are awarded as alimony in solido, the same statutory factors are weighed in contemplating attorney fees as are all types of alimony. Need is the significant factor in contemplating an award of attorney fees as the Court has found that an award of attorney’s fees is proper when one spouse is disadvantaged and does not have sufficient resources with which to pay their attorney’s fees.

Unlike attorney fees, marital debt is not defined by statute but is a creation of case law. It was ultimately defined by the seminal Tennessee Supreme Court’s decision of Alford v. Alford, 120 S.W.3d 810 (Tenn. 2003), which stated that “[w]e now hold that ‘marital debts’ are all debts incurred by either or both spouses during the course of the marriage up to the date of the final divorce hearing.” Alford, 120 S.W.3d at 813; Emphasis Added. While marital debt was never explicitly defined until this 2003 decision, the Alford decision did agree with prior decisions in that “marital debts are subject to equitable division in the same manner as marital property. Id. Ultimately, there is no given reason for why marital debt, while now defined by case law, has no codified definition. Marital property is defined, and the definition of marital appears to parallel to that definition.

Unlike attorney fees, marital debt has evolved under the case law. First, in 1973, the Court of Appeals clearly held that “[t]he trial judge must consider all relative facts including the obligations of both parties in awarding alimony and adjusting property interests.” Sixteen years later, the Tennessee Court of Appeals expanded upon how marital debt should be classified and divided, and the term marital debt was expressly defined by the Tennessee Supreme Court’s 2003 decision in Alford v. Alford. The Alford decision also affirmed the factors to consider as to the division of marital debt:

(1) the debt’s purpose;
(2) which party incurred the debt;
(3) which party benefitted from incurring the debt; and
(4) which party is best able to repay the debt.

These four factors are congruous with the statutory factors listed in T.C.A. §35-5-121(i) that Courts are required to weigh when considering alimony. For instance, T.C.A. §36-5-121(i)(8) instructs Courts to take into account “[t]he provisions made with regard to the marital property, as defined in § 36-4-121.” Already, we see that the division of assets and marital debt of a marriage are factors in determining the appropriateness of alimony.

Additionally, the first alimony factor aligns with the elements of marital debt allocation as it takes into account an obligor’s ability to pay support and a recipient’s need for support. This completely aligns with the fourth Alford factor which considers a party’s ability to repay the debt. Additionally, a plethora of alimony factors relate back to this fourth Alford factor:

- T.C.A. §36-5-121(i)(2)- Parties’ education, training, and need to improve their earning capacity.
- T.C.A. §36-5-121(i)(4)- The age and mental condition of each party.
- T.C.A. §36-5-121(i)(5)- The physical condition of each party including any disability or incapacity that they may have.
- T.C.A. §36-5-121(i)(6)- The extent it would be undesirable for a parent to seek employment out of the home as they will be a custodian of a minor child of the marriage.
- T.C.A. §36-5-121(i)(7)- The separate assets of a party.
- T.C.A. §36-5-121(i)(10)- The tangible and intangible contributions of each party to the marriage and the same contributions a party made to their spouse’s education, training or increased earning capacity.
- T.C.A. §36-5-121(i)(11)- The fault of the parties.

continued to page 15
These factors are all necessary considerations a Court would also use to reconcile and allocate marital debt. While fault would appear to be the one factor that should not be considered in dividing assets and debt based on the very clear holdings in this State, who incurred the debt, why it was incurred, and who it benefitted all relate back to fault. Additionally, debt does arise from dissipation which is often tied to fault.

In light of the Alford holding, are attorney fees accrued during a divorce proceeding not marital debt? Often times, attorney fees are not paid in full as they accrue and remain unpaid at the time of a divorce proceeding. If marital debts are debts incurred by either or both spouses during the course of the marriage up to the date of the final divorce hearing, is it anything more than legal fiction to require Courts to ignore this obligation when dividing the marital estate?

A legal fiction is defined by Black’s Law Dictionary as

An assumption that something is true even though it may be untrue, made esp. in judicial reasoning to alter how a legal rule operates; specif., a device by which a legal rule or institution is diverted from its original purpose to accomplish indirectly some other object.

LEGAL FICTION, Black’s Law Dictionary (11th ed. 2019)

Clearly, if attorney fees accrue during a divorce proceeding and exist at the time the Court enters a Final Decree of Divorce, they meet, without question, the definition of a marital debt. It is easy to point to T.C.A. §36-5-121(d)(5) and T.C.A. §36-5-121(h)(1) to support the separation of attorney fees and marital debt. However, attorney fees are only awarded as alimony in solido. Alimony in solido is therefore merely the mechanism in which attorney fees are awarded to a disadvantaged party. It appears solving the problem of how attorney fees are defined in relation to marital debt will require that marital debt be defined by statute as well.

Quite simply, Alimony in solido should no longer be a shield to prevent attorney fees from being considered marital debt; otherwise inequitable results occur. The Courts of this state have long held that “[a] typical purpose of such an award [of alimony in solido] would be to adjust the distribution of the parties’ marital property.”11 Logically, this would also be true for marital debt. After all, “[a] spouse with adequate property and income is not entitled to an award of additional alimony to compensate for attorney’s fees and expenses.”12 The only way to contemplate an award of attorney fees is to review the totality of that spouse’s assets, liabilities, and attorney fees. Furthermore, [Attorney fee] awards are appropriate, however, only when the spouse seeking them lacks sufficient funds to pay his or her own legal expenses or would be required to deplete his or her resources in order to pay these expenses.

Citations omitted

Again, a Court’s decision whether to award outstanding attorney fees are considered in the entire scope of the totality of a party’s assets and debt. The only separation between the two is case law stating that attorney fees are not marital debt and are awarded as alimony in solido. Marital debt and how alimony are paid are clearly not comparable, but are in fact paradoxical terms resulting from the legal fiction we have created.

WHY DOES IT MATTER?

There are several practical reasons to make this change. First, attorney fees clearly meet the definition of marital debt. It seems to be nothing more than a legal fiction that prevents their consideration at this time. The Courts already look at the division of property, the totality of each spouse’s net marital estate, and consider a number of factors that align with the Alford factors in assigning marital debt. This legal fiction serves no legitimate or logical purpose.

Second, the purpose of hiring an attorney is (or should be) to ensure a fair and complete adjudication of divorcing spouses’ marital estate and help promote what parents believe is the best interest of their minor child(ren). In the context of marital debt, how are attorney fees incurred for this purpose not a benefit to the marital estate? Establishing all the assets and liabilities of the marital estate, ascertaining the proper valuations of the non-liquid assets, determining income streams for both spouses, and promoting a permanent parenting plan the Court can adopt for the minor child(ren) are certainly not detrimental to the marriage. Accomplishing these prerogatives is certainly a benefit to Judges, who are the ultimate arbiters of these matters.

Finally, consider the number of cases where traditional alimony may not be appropriate, but specific conduct of one party causes a substantial and inappropriate increase in their spouse’s attorney fees. I am sure that most every attorney and/or Judge in this State has had situations where equity would require attorney fees be taken into account but alimony is not supported by the requisite statutory factors. While there are many ways to reach this type of inequitable result, a few examples are descriptive of the problem.

For instance, consider a case where parties have significant assets such that neither will have a need for support post-divorce. Alimony would thus not be appropriate. However, there are a number of similar cases where a spouse attempted to hide assets, lied about adultery, and/or obstructed discovery,
resulting in the other spouse to incur significant, unnecessary fees due to the inappropriate conduct and dissipation. The innocent spouse should get some relief for these enhanced, accrued attorney fees by considering them in the division of marital property.

In addition, when spouses who are both employed, earn commensurate income, and equitably share in the marital estate, the same issues would exist as in the previous case. Again, ongoing, periodic, monetary support would not meet the factors, but should the Court not consider outstanding attorney fees in the distribution of assets and liabilities?

Finally, consider marital agreements that waive an award of attorney fees. Attorney fees can still arise in these cases. Frequently, this occurs when parties simply do not follow the terms of the marital contract. If there is delay, obstruction, dissipation, or other misconduct, should the Court not consider accrued fees when considering how to divide marital property and debts?

This brings us back to our initial inquiry: why do we not consider attorney fees to be marital debt? The only answer that appears in our case law is simply that we just do not do it that way. Courts simply point to T.C.A. §36-5-121 where attorney fees are awarded as alimony *in solido*, while ignoring long held findings that a typical purpose of alimony *in solido* would be to adjust the distribution of the parties’ marital property.

**WHAT OPTIONS ARE THERE?**

Clearly the support statute was in place long before marital debt was defined by the Tennessee Supreme Court, but should the way we have always done something stand in the way of equity? The oft-stated reasoning – that the support statute states that attorney fees are awarded as alimony *in solido* – does not necessitate a continued legal fiction existing between accrued attorney fees and marital debt. Attorney fees are not alimony *in solido*. Attorney fees are awarded as alimony *in solido*. Alimony *in solido* is thus simply the mechanism by which attorney fees are awarded to a needy spouse. Even if accrued attorney fees are classified as marital debt and taken into consideration in the equitable distribution of property, the Court can simply assign them to the party that accrued said fees, or the Court can order that the attorney’s fees, or a portion of them, be paid with marital assets. If, on the other hand, the Court finds that an award of attorney fees is appropriate, the Court can then award alimony *in solido* for the appropriate amount pursuant to the factors. In other words, the two are not mutually exclusive and the legal fiction maintaining this exclusivity is not necessary or appropriate. Rather, because divorce Courts are courts of equity, it makes more logical sense to give the Court maximum flexibility to adjust the equities as the nature of the case requires.

Alternatively, the most effective and authoritative change would be to make the change by new legislation. The necessary changes begin with T.C.A. §36-4-121, the property division statute. It is time that we codify what case law has long instructed Courts to do: (1) define marital and separate debt, (2) clarify that attorney fees are in fact marital debt, (3) allocate marital debt equitably, (4) provide for the payment and satisfaction of marital debt. The definition of marital debt provided through case law is consistent with the definition of marital property and these goals can be achieved by amending the current code, beginning with T.C.A. §36-4-121(a) as follows:

(a)(1) In all actions for divorce or legal separation, the court having jurisdiction thereof may upon request of either party or on its own initiative, and prior to any determination as to whether it is appropriate to order the support and maintenance of one (1) party by the other, equitably divide, distribute or assign the marital property between the parties without regard to marital fault in proportions as the court deems just based on the factors set forth in subsection (c). In addition, the Court shall allocate responsibility of paying the marital debt in proportion as the Court deems just based on the factors set forth in subsection (g)(3). The Court can also order the payment of all or a portion of the marital debt from the marital property prior to distribution of the marital property to the parties.

(2) In all actions for legal separation, the court, in its discretion, may equitably divide, distribute, or assign the marital property in whole or in part, or reserve the division or assignment of marital property until a later time. If the court makes a final distribution of marital property at the time of the decree of legal separation, any after-acquired property is separate property. In addition, the Court shall allocate the responsibility of paying the marital debt as set forth in subsection (g). The Court can also order the payment of all or a portion of the marital debt from the marital property prior to distribution to the parties. If the court makes a final distribution of marital debt at the time of the decree of legal separation, any after-acquired debt is separate debt.

After amending this section *supra* in order to mirror the existing language pertaining to marital property, inserting a new subsection (g) as set forth below and renumerating the remaining displaced subsections would be appropriate:

(g)(1)

(A) “Marital debt” means all debts, other than debt incurred to pay for attorney fees and expenses in connection to the proceedings, incurred by either or both spouses during the course of the marriage up to the date of the final divorce hearing for the proceedings. In the case of a complaint for legal separation, the court may make a final disposition of
the marital debt either at the time of entering an order of legal separation or at the time of entering a final divorce decree, if any. If the marital debt is divided as part of the order of legal separation, any debt acquired by a spouse thereafter is deemed separate debt of that spouse. All marital debt shall be valued as of a date near as possible to the date of entry of the order finally dividing the marital debt.

(B) In addition, marital debt includes unpaid attorney fees and expenses incurred in the proceedings through the entry of a final decree including any matters brought pursuant to Tenn. R. Civ. P. 59.

(2) “Separate debt” means all debts incurred by either spouse prior to the date of their marriage. Property acquired by a spouse after an order of legal separation where the court has made a final disposition of the marital debt.

(3) In making an equitable division of marital debt, the Court shall consider the following factors:

   (1) the debt’s purpose;
   (2) which party incurred the debt;
   (3) which party benefitted from incurring the debt; and
   (4) which party is best able to repay the debt.

(4) In making the determination of the payment of unpaid attorney fees and expenses, the Court shall consider the factors of (g)(3) and the amount of attorney fees and expenses each party has incurred and paid during the proceedings, and whether the attorney fees and expenses are reasonable after applying the factors set forth in Supreme Court Rule 8, RPC 1.5.

(5) The Court can order the payment of all or a portion of marital debt from the marital property without allocation to either party.

By amending T.C.A. §36-4-121 as set forth above, the definitions of marital and separate debt maintain their definitions under case law and mirror how marital property is treated in divorce and legal separation proceedings, which case law has tried to do as well. Additionally, Courts gain a powerful equitable remedy by now being able to account for attorney fees in the division of assets, consider fees that have been satisfied by each party through divorce and legal separation proceedings, and satisfy outstanding marital debt, including attorney fees from marital property.

Conversely, the final evolution between marital debt and alimony would then be to modify T.C.A. §36-5-121. This would require T.C.A. §36-5-121(h)(1) be modified by adding a new subparagraph (2) that reads as follows:

(1) Alimony in solido, also known as lump sum alimony, is a form of long term support, the total amount of which is calculable on the date the decree is entered, but which is not designated as transitional alimony. Alimony in solido may be paid in installments; provided, that the payments are ordered over a definite period of time and the sum of the alimony to be paid is ascertainable when awarded. The purpose of this form of alimony is to provide financial support to a spouse and/or enable the court to equitably divide and distribute the marital property. In addition, alimony in solido may include attorney fees, where appropriate.

(2) In addition, alimony in solido may be awarded for attorney fees and expenses incurred in the proceedings through the entry of a final decree including any matters brought pursuant to Tenn. R. Civ. P. 59. When determining whether attorney fees and expenses should be awarded as alimony in solido to one party, the Court shall consider the following:

   (a) The factors enumerated under T.C.A. §36-5-121;
   (b) The amount of attorney fees and expenses incurred and paid by each party; and
   (c) Whether the attorney fees and expenses requested are reasonable applying the factors set forth in Supreme Court Rule 8, RPC 1.5.

Again, this provides Courts with another equitable remedy by clarifying how attorney fees should be considered as case law. The definition of marital debt will now be codified, as has been the definition of marital property. Attorney fees can then be included by courts as part of the global division of assets and liabilities or provide for their satisfaction as alimony. Finally, we would now codify what case law has long instructed — that alimony in solido is to be used to help equitably divide and distribute marital property and debt.

In some cases, Courts may be able to allocate attorney fees solely as debt and satisfy their payment with marital property. In other cases, Courts may only have alimony in solido as an available remedy to satisfy attorney fees. Under either scenario, Courts having tools available to make an equitable division has been accomplished. If both options are available, then the party in need simply has an election of remedies to choose from and
advocate for. When the Court has equitable powers there should not be limits as to what it is able to do.

Our goals as attorneys and the goals of our judiciary should be to advance the law. Amending T.C.A. §36-4-121 and §36-5-121 does just this. We have accepted the legal fiction that attorney fees cannot be marital debt, despite fitting within the current definition of marital debt, solely because case law explains how attorney fees should be paid. The law of this State has continuously progressed and evolved as it pertains to marital debt. We have not seen a similar evolution with attorney fees. While this statutory change will help attorneys, it allows Courts to more effectively protect and provide for litigants going through divorce matters. The next measure of progress and evolution is for the definition of marital debt to be codified and finally provide a basis of what attorney fees are - marital debt, in order for Courts to have multiple remedies in considering attorney fees in divorce and legal separation proceedings to protect parties going through a difficult time in their lives.

ABOUT THE AUTHOR

George D. Spanos was raised in Memphis, TN, graduated from the University of Tennessee at Chattanooga with honors, and has lived in Nashville since obtaining his undergraduate degree. He worked in business acquisitions for Dell, Inc. for four years, when he began attending the Nashville School of Law. Upon beginning law school, Mr. Spanos began working at this firm as a paralegal, where he was able to bolster his legal education with practical experience. Mr. Spanos has been married for over fifteen years and is the father of two children.

Having worked for Ms. Rogers and the firm while he attended law school, Mr. Spanos gained valuable insight and significant experience in the practice of law prior to his graduation and subsequent admission to the Bar. Since being licensed as an attorney, Mr. Spanos continues to hone his legal knowledge and trial skills.

He has focused his career on practicing all aspects of family law, including divorce and legal separation, marital contracts, allocation of parental responsibility (custody) actions, child support and spousal support modifications, post decree parenting time disputes, and appeals, as well as probate matters. Mr. Spanos specializes in complex litigation issues, including high asset divorces and high conflict child custody or parenting time disputes.

Additionally, he took part in the Family Law Trial Advocacy Institute which is sponsored by the Family Law Section of the American Bar Association (ABA) and the National Institute for Trial Advocacy (NITA). This annual program is an intensive 8-day trial advocacy and education course where participating attorneys receive hands on training from leading family law trial lawyers and judges across the nation.

Also, Mr. Spanos has provided legal services to the community by chairing and coordinating the Williamson County Mock Trial Competition since 2016. Mr. Spanos sits on the Executive Board of the Tennessee Trial Lawyers Association and has also chaired the Association’s Domestic Legislation Committee since 2018, where he helps review proposed changes to family law statutes and meets with legislators to ensure laws are fair to all Tennesseans. Additionally, he is the co-chair of the Tennessee Trial Lawyer’s Domestic Law Seminar, which provides continuing legal education for attorneys across Middle Tennessee.

He has also written several scholarly articles on family law matters and has presented on different family law subjects to other practicing attorneys.

It was his honor to be selected, from a large number of attorney applicants, as one of the select members of the Nashville Bar Foundation’s Leadership Forum’s 2017-2018 class. He has been named a Rising Star by SuperLawyers and a top 10 attorney under the age of 40 by the National Academy of Family Law Attorneys.

Mr. Spanos is a passionate advocate and is committed to reaching amicable resolutions for his clients. Going through a divorce or child custody proceeding is one of the most difficult times in anyone’s life, and he works with his clients to tailor his representation to each client’s unique situation. He is also a trained Rule 31 Family Law Mediator, who not only settles many of his own cases but mediates for other attorneys and helps them to resolve their client’s family law matters as well. He prefers to help clients reach favorable agreements without the need for expensive, emotionally taxing court battles; however, Mr. Spanos has successfully tried multiple contested trials when settlement was not possible.
TTLA Past Presidents

Walter Buford
Joe W. Henry, Sr.
J. D. Lee
James F. Schaeffer, Sr.
Charles R. Terry
C. Allen High, Sr.
Sidney W. Gilreath
Ralph I. Lawson
William L. Underhill
Robert J. English
Julian P. Guinn
Dennis L. Tomlin
Jerry H. Summers
T. Robert Hill

Gary R. Gober
Olen G. Haynes
Robert T. Keeton, Jr.
Clinton H. Swafford
John T. Milburn Rogers
John A. Turnbull
Ronald J. Berke
Arnold Goldin
Thomas L. Reed, Jr.
Gary R. Brewer
J. Houston Gordon
Robert M. Garfinkle
Donna R. Davis
Jeffrey A. Garrety

John A. Day
J. Anthony Farmer
James O. Lockard
William E. Farmer
Steven W. Terry
Jeff Bloomfield
J. Mark Rogers
J. Randolph Humble
T. James Emison, Jr.
Randall L. Kinnard
Jim Bilbo
Ricky Boren
John Pellegrin
Stephen T. Greer

R. Sadler Bailey
Daniel L. Clayton
Wayne A. Ritchie
Phillip H. Miller
B. Keith Williams
Bryan Capps
Bryan Smith
Jon Peeler
Eric Buchanan
Thomas Greer
Bruce Fox
Cameron Jehl
Matt Hardin

Footnotes:
1. Rountree v. Rountree, 369 S.W.3d 122, 134 (Tenn. Ct. App. 2012); Citations Omitted
9. T.C.A. 53-6-121(1)(I)
Sustaining Members

We acknowledge the following members who support the Tennessee Trial Lawyers Association through the sustaining membership category. Each of these members contributes financially in addition to their regular dues. Without their support, it would be impossible for our Association to carry on its programs.

Adkins, Micah
Brentwood, TN
Agee, Jr., V. Neal
Lebanon, TN
Ashworth, Larry D.
Nashville, TN
Benjamin, Michelle M.
Winchester, TN
Berke, Marvin B.
Chattanooga, TN
Bilbo, Jimmy W.
Cleveland, TN
Elbert, Philip N.
Nashville, TN
Fox, Bruce D.
Clinton, TN
Fusner, Jr., George R.
Brentwood, TN
Gardner, David S.
Nashville, TN
Givens, Aubrey T.
Madison, TN
Harber, John K.
Knoxville, TN
Hughes, J. Marshall
Nashville, TN
Johnson, III, John R.
Memphis, TN
Kelly, F. Dulin
Hendersonville, TN
Long, Thomas J.
Collierville, TN
Marshall, Steven Eric
Sevierville, TN
Matthews, Richard T.
Columbia, TN
Moore, Rick L.
Tullahoma, TN
Nichol, H. Douglas
Knoxville, TN
Oakes, David V.
Paducah, KY
Pryor, Vic
Jacksboro, TN
Roth, James M.
Atlanta, GA
Shoemaker, H. Lynn
Kingsport, TN
Sir, Martin Stephen
Nashville, TN
Smartt, Keith Sullivan
McMinnville, TN
Tayip, Bawer Jamil
Nashville, TN
Waldron, R. Steven
Murfreesboro, TN

Life Members

Adams, Morgan
Law Offices of Morgan G. Adams
Bailey, Gina
Bailey, John
Law Office of John Michael Bailey
Bailey, R. Sadler
Bailey & Greer, PLLC
Brewer, Gary
Brewer & Terry, PC
Buchanan, Eric
Eric Buchanan & Associates, PLLC
Campbell, Damon
Conley, Campbell, Moss & Smith
Cremins, William
William C. Cremins, PC
Dalton, Joseph
Law Office of Joseph M. Dalton, Jr.
Daniel, Lundy
Daniel Law Firm
Day, John
Law Offices of John Day, PC
Farmer, J. Anthony
Law Offices of Tony Farmer and John Dreiser
Fraley, Raymond
Law Office of Raymond W. Fraley, Jr.
Garrety, Jeffrey
Law Office of Jeffrey A. Garrety, PC
Gilbreath, Sidney
Gilbreath & Associates
Gober, Gary
Law Office of Gary Gober
Gordon, Houston
Law Office of J. Houston Gordon
Harris, John
Schulman, LeRoy & Bennett, PC
Haynes, Sr., Olen
The Haynes Firm
High, David
High Law Office
Hill, T. Robert
Hill Boren, PC
Humble, Randy
Humble & Tipton
Kinnard, Randall
Kinnard, Clayton & Beveridge
Lynch, Bob
Law Office of Bob Lynch, Jr.
Massey, Robert
Law Offices of Robert D. Massey
McMahen, John
McMahen Law Firm
Nippert, Alfred
Nippert & Nippert
Parker, E.L.
E. L. Parker, III, Attorney at Law
Pellegrin, John
Pellegrin Law Office
Pryor, Sr., Robert
Pryor, Flynn, Priest & Harber
Ritchie, Wayne
Ritchie, Dillard, Davies & Johnson PC
Rogers, Helen
Rogers, Shea & Spanos
Rogers, J. Mark
Circuit Court, 16th Judicial District
Seaton, Anthony
Law Offices of Tony Seaton, PLLC
Smith, William Holt
Law Office of William Holt Smith
Summers, Jerry
Summers, Rufolo and Rodgers
Swafford, Clinton
Swafford, Peters, Priest & Hall
Turnbull, John
Circuit Court, 13th Judicial District
ANNUAL CONVENTION
“Hear from the Experts”

June 16-18, 2021
Peabody Hotel
Downtown Memphis

John Griffith,
TTLA President
Phillip Miller,
TTLA Convention Chair

Schedule of Events

WEDNESDAY, JUNE 16
11:00a - 12:00p
LIFT Trustees Meeting — Sponsor

12:30p
REGISTRATION

1:50p - 2:00p
Opening Remarks - John Griffith, TTLA President

2:00p - 2:45p
Expert Testimony vs. Lay Opinion – Is There a Bias Against Experts — Phillip Miller

2:45p - 3:30p
Cross Examining a Frequent Flyer Professional Witness — Pat Malone

3:30p - 3:45p
BREAK

3:45p - 4:30p
Expert Prep Tips from an Expert Prep Expert — Andrew Caple Shaw

5:00p - 6:00p
President’s Reception

THURSDAY, JUNE 17
8:30a
REGISTRATION

9:00a - 9:45a
Cross Exam: Strike Like a Thunder Bolt! — Randy Kinnard

9:45a - 10:30a
Technically Complex Cases — Bart Eckhardt

10:30a - 11:00a
SPONSOR Meet & Greet

11:00a - 11:45a
Getting Dirty: Experts in Trucking — Morgan Adams

11:45a - 1:30p
Past Presidents’ & Awards Luncheon — Sponsored by

1:30p - 2:00p
TLAP – “Just Call Me and I’ll Be Around” — Judge John Everett Williams

2:00p - 3:00p
Becoming an Expert on Experts: The Roundup Case Review — Aimee Wagstaff & Jennifer Moore

3:00p - 3:15p
BREAK

3:15p - 4:00p
Neutralizing Defense Experts — Dorothy Clay Sims

4:00p - 4:45p
Legislative Update — John Griffith & the TTLA Lobbying Team

FRIDAY, JUNE 18
8:30a
REGISTRATION

9:00a - 9:45a
How to Best Present a Brain Injury Case — Dr. Randall Benson & Elian Dalaly, J.D.

9:45a - 10:15a
Are Your Medical Bills Reasonable? Hear from the Experts — Mark Guilford, ACCUMED Intel

10:30a
TTLA Elections & General Business Meeting

MAKE A RESERVATION:
1-800-PEABODY or online at https://reservations.travelclick.com/
95096?groupID=2454882
Sleeping room cut-off date – Friday, May 21, 2021 at 5pm
A SPECIAL THANK YOU

DIAMOND PARTNERS

Preferred Capital Funding
CASH ADVANCES TO PLAINTIFFS

Alli Moreland / 800-774-7106 / alli@pfcash.com

Forge Consulting LLC

Beth Allen / 866.68.FORGE / 706.856.2535 / ballen@forgeconsulting.com

Injury Finance
HEALTHCARE FUNDING EXPERTS

Joel Padgett / 270.670.2141 / j.padgett@injuryfinance.com
Jessica Burke / 720.420.8803 / j.burke@injuryfinance.com

GOLD PARTNER

Physician
Life Care Planning

Michael Cox / 979.204.7873 / michael@physicianlcp.com
TO OUR PARTNERS!

**SILVER PARTNERS**

- **case status**
  - Keith Lee / klee@casestatus.com

**HOUGH MEDICAL CONSULTING**

- Kenyetta Christmas / 678.814.8076 / houghmedical@gmail.com

**The Experts**

- **Robson Forensic**
  - Matt Kemp / 423.605.2983 / mkemp@robsonforensic.com

- Andy Muldoon / 423.308.6834 / amuldoon@thetrust.com

- **ZIPLIENS**
  - Dirk Morris / 423.763.8272 / dirk@zipliens.com

**BRONZE PARTNERS**

- **SmartAdvocate**
  - Nataliya Blidy / 1-877-GETSMART / salesteam@smartadvocate.com

- **Synergy Settlement Services**
  - B. Josh Pettingill / 615.814.0178 / josh@synergysettlements.com

- **Pacific Liability Research**
  - Steven Villarreal / 208.204.9674 / steven@pacificliability.com
MEMBERSHIP

Put it to work for you.
ttl.org

Check out these
MEMBERSHIP BENEFITS

**SERVICES**
TTLA plaintiff members are offered specialized listserves and document banks. With the listserves, members can instantly get assistance from other members on how to handle specific cases, answer complicated law issues and find experts.

**ADVOCACY**
TTLA is consistently representing the needs of your clients in the legislature and educating Tennesseans on the importance of the justice system. With the help of the Circle of Advocates, TTLA hires several top contract lobbyists who represent TTLA on Capitol Hill. TTLA sponsors proactive legislation to promote the civil justice system as well as opposes adverse bills.

**AMICUS**
TTLA Amicus Curiae Committee works to keep abreast of important judicial decisions. They review cases and file briefs involving civil issues that have a far-reaching impact beyond the isolated facts of the case. TTLA also provides a moot court experience for appellate cases.

**CONNECTING**
TTLA hosts local networking events across the state several times a year. These events give members a chance to socialize with attorneys and judges from their area.

**PARTNERS**
TTLA members have access to a variety of sponsor partners who can provide services specific to civil justice issues. These include expert witnesses, financial assistance, marketing and investigations.

**EDUCATION**
TTLA members receive a discounted rate on top-notch continuing legal education programs including an annual conference and statewide seminars, FREE past CLE materials three years back on the website, social media recognition in Trial Lawyer of the Week and featured member blogs.

**THE TENNESSEE TRIAL LAWYER**
Members receive *The Tennessee Trial Lawyer*, a publication filled with valuable information to improve your law practice. Articles from the top plaintiff attorneys in Tennessee are published in the valuable publication.
MEMBER APPLICATION

Member Information
Please complete all applicable sections for your level of membership and return the application to:
Tennessee Trial Lawyers Association
629 Woodland St. Nashville TN, 37206

(Please print or type)

<table>
<thead>
<tr>
<th>First Name</th>
<th>Middle Name or Initial</th>
<th>Last Name</th>
</tr>
</thead>
</table>

(Please indicate how you prefer to have your name appear on any printed nametag)

<table>
<thead>
<tr>
<th>Law Firm or Office Name</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Office Address</th>
<th>City/State/Zip</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Office Phone #</th>
<th>Office Fax #</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Cell Phone #</th>
<th>Email address</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Law School Attended</th>
<th>Bar Admit Date</th>
<th>BPR #</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Home Address</th>
<th>City/State/Zip</th>
<th>Home Phone #</th>
</tr>
</thead>
</table>

My practice is approximately _____% Plaintiff _____% Defense (If Defense: _____% Criminal _____% Civil).

Please indicate your gender (optional): □ Male □ Female

REFERRED BY: ________________________________

It is often important to identify members who are constituents in different legislative districts in order to more effectively communicate with lawmakers regarding civil justice issues. Your response here will be greatly appreciated.

State House Dist. #       State Senate Dist. #

(This information can be found on your voter registration card)

Political party affiliation (please check one): □ Democratic □ Republican □ Independent
SCHEDULE OF MEMBERSHIP LEVELS/DUES

Indicate your membership level and select the payment option that is most convenient for you.

(*Years in practice should indicate total number of years in law practice – in any state.) (**Paralegals applying for membership must be associated with a current TTLA plaintiff attorney member.)

<table>
<thead>
<tr>
<th>Membership Level</th>
<th>Monthly</th>
<th>Quarterly</th>
<th>Annually</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Member (in practice 0-3 years)*</td>
<td>$20</td>
<td>$60</td>
<td>$220</td>
</tr>
<tr>
<td>Regular Member 1 (in practice 4-9 years)*</td>
<td>$30</td>
<td>$90</td>
<td>$330</td>
</tr>
<tr>
<td>Regular Member 2 (in practice 10 + years)*</td>
<td>$50</td>
<td>$150</td>
<td>$575</td>
</tr>
<tr>
<td>Sustaining Member</td>
<td>$90</td>
<td>$270</td>
<td>$950</td>
</tr>
<tr>
<td>Season Pass Member</td>
<td>$150</td>
<td>$450</td>
<td>$1,650</td>
</tr>
<tr>
<td>Paralegal Member**</td>
<td>$15</td>
<td>$45</td>
<td>$150</td>
</tr>
<tr>
<td>Law Student</td>
<td></td>
<td></td>
<td>$25</td>
</tr>
<tr>
<td>Public Sector Member</td>
<td></td>
<td></td>
<td>$150</td>
</tr>
</tbody>
</table>

PAYMENT: Check Enclosed for $__________ (or) Charge to my □ Visa □ MasterCard □ American Express

Credit card enrollment in Tennessee Trial Lawyers Assoc. is maintained automatically until notice is received of the member’s intention not to renew.

Credit Card # ____________________________

Expiration Date _________________________

Name on the Card _________________________

- Membership dues payment to the Tennessee Trial Lawyers Assoc. (TTLA) may be tax deductible as ordinary and necessary business expenses subject to restrictions imposed as a result of the association’s lobbying activities.
- Sustaining Members in good standing are eligible for complimentary attendance at all CLE events sponsored by the association, with the exception of Annual Convention.
- Season Pass Members in good standing are eligible for complimentary attendance at all CLE events sponsored by the association.

VALIDATION:

(Your signature below authorizes TTLA to keep you informed of association programs and benefits via phone, fax, email and USPS unless TTLA is notified otherwise.)

ATTORNEY: I am a licensed attorney and subscribe to the purpose of the Tennessee Trial Lawyers Association. I hereby apply for membership.

Signature ____________________________________________

I was referred to TTLA by ________________________________

PARALEGAL: I hereby certify that I am a paralegal who is qualified through education, training and/or experience to perform substantive legal work under the direction of an attorney. The majority of my present work (over 50%) is on behalf of the plaintiff and is in accordance with the purpose of Tennessee Trial Lawyers Association.

(Signature - Paralegal Applicant) ______________________ (Signature - Attorney Sponsor) ______________________

Please return application and dues to:
TTLA · 629 Woodland Street · Nashville, TN 37206 · Phone (615) 329-3000 · Fax (615) 329-8131
Who needs affordable law firm financing?

The Facts

- **TTLA SBA Justice Loans** from $100,000 to $250,000 close in **under 45 days**.
- Borrow up to $5,000,000 for working capital
- Borrow up to $14,000,000 to purchase real estate for your practice
- Maximum Yearly interest rates capped at **2.75%** over prime for working capital, and **2.25%** over prime for real estate.

Modern litigation is expensive. Period. A TTLA SBA Justice Loan can be a life saver to **pay off existing expensive debt**, inject needed capital to expand your practice, or even purchase new office space.

The SBA Loan Group management team has **over 35 years experience** in legal funding and SBA backed lending.

**Make the call now**: 516-900-6905. A 10-minute conversation can determine if you qualify.
Admitting Summary Evidence at Trial

by Eddie Schmidt

Rule 1006 of the Tennessee Rules of Evidence provides as follows:

“The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals or duplicates shall be made available for examination or copying, or both, by other parties at reasonable times and places. The court may order that they be produced in court.”

Rule 1006 is a useful tool for condensing a lot of information in a way that is easier to digest by a jury of laypersons. Some examples of summary evidence:

- Attorney time records, Alexander v. Inman, 903 S.W.2d 686, 702 (Tenn. Ct. App. 1995);
- Bank records, U.S. v. Spalding, 894 F.3d 173, 184 (5th Cir. 2018);
- Business records, Fusear v. Cooper Const. Co., 211 S.W.3d 686, 693 (Tenn. 2007);
- Cell phone data and text messages, U.S. v. Dunnican, 961 F.3d 859, 873 (6th Cir. 2020);
- Check cashing habits, U.S. v. Thrower, 746 F. Supp. 2d 303, 306 (D. Mass., 2010);
- Drug investigative reports, Nichols v. Upjohn Co., 610 F.2d 293, 294 (5th Cir. 1980);
- Drugs purchased and administered, U.S. v. Moon, 513 F.3d 527, 545 (6th Cir. 2008);
- E-mails and DVD purchases, U.S. v. Gordon, 2019 WL 4308127 (D.C. Maine 2019);
- Financial records, U.S. v. Thompson, 518 F.3d 832, 858 (10th Cir. 2008);
- Financial transactions, U.S. v. Aubrey, 800 F.3d 1115, 1130-1131 (9th Cir. 2015);
- Luncheon bills and judicial appointments, U.S. v. Massey, 89 F.3d 1433, 1441 (11th Cir. 1996);
- Medical expenses and wage loss summaries, Harper v. Griggs, 2007 WL 486726 (W.D. Ky. 2007) at p. 3;
- Medicare billing records, U.S. v. Melgen, 967 F.3d 1250, 1260 (11th Cir. 2020);
- Personnel records, Martin v. Funtime, Inc., 963 F.2d 110, 115 (6th Cir. 1992);
- Phone records, U.S. v. Mitchell, 816 F.3d 865, 876-877 (D.C. Cir. 2016);
- Prescriptions, U.S. v. Behrens, 689 F.2d 154, 161 (10th Cir. 1982);
- Real estate holdings, U.S. v. Oros, 578 F.3d 703, 709 (7th Cir. 2009); and

The fundamental challenge to the trial lawyer is how to get the summary into evidence; or to put it differently, what is the foundation necessary in order to admit a summary into evidence. This article addresses this issue.

Few Tennessee cases address Rule 1006. The most recent is Hatfield v. Allenbrooke Nursing and Rehabilitation Center, LLC, 2018 WL 3740565 (Tenn. Ct. App. 2018), spearheaded by Cameron Jehl. Hatfield involved nursing home malpractice resulting in catastrophic damages. At trial, the plaintiff called a forensic accountant who prepared summary charts to establish the nursing home was grossly understaffed. Overruling numerous objections, the Court allowed the testimony. On appeal, the Court acknowledged the dearth of Tennessee jurisprudence on the issue and looked to guidance from federal jurisprudence as the Tennessee Rule 1006 is identical to the Federal Rule of Evidence 1006. See Webb v. Nashville Area Habitat for Humanity, Inc., 346 S.W.3d 422, 430 (Tenn. 2011). Ultimately, the Court of Appeal found that the trial court did not abuse its discretion in allowing the summary evidence.

continued to page 29
Foundation for Admission

Admission of summary evidence under Rule 1006 requires four steps:
1. Voluminous documents;
2. Documents to be summarized must be admissible;
3. Opposing party must be given notice and an opportunity to review the underlying documents; and
4. Summary offered by person who prepared or supervised the summary.

Trial Court Discretion

First and foremost, the admission of summary evidence is a matter within the discretion of the trial court that is reviewable for an abuse of discretion. U.S. v. Williams, 952 F.2d 1504, 1519 (6th Cir. 1991); Commercial Bank & Trust Co. v. Children’s Anesthesiologists, P.C., 545 S.W.3d 470, 474 (Tenn. Ct. App. 2017). A trial court abuses its discretion when it applies an incorrect legal standard or reaches a decision contrary to logic or reasoning that results in an injustice. See Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001).

Voluminous Documents

The documents sought to be introduced through the summary must be voluminous. How large or voluminous must those underlying documents be? The answer is that the documents must be so voluminous that they “cannot be conveniently examined in court.” U.S. v. Seeling, 622 F.2d 207, 214 (6th Cir. 1980). Emphasis should be placed on the adverb “conveniently.” If one is practicing before one of the “let’s hurry up and get this over with” judges, one should emphasize the time that introducing the underlying documents will save the court, rather than the tedious process of going through each document page by page. This is a common rationale cited in federal appellate opinions in upholding summary admission.

Documents Must Be Admissible

The underlying documents of the summary evidence must themselves be admissible. If not, the summary is inadmissible. This point cannot be overlooked. “...Otherwise, this rule [1006] would tend to become a vehicle for the avoidance of all other evidentiary limitations.” See Harper v. Griggs, 2007 WL 486726 (W.D. Ky. 2007) at p. 3, citing White Industries, Inc. v. Cessna Aircraft Co., 611 F. Supp. 1049, 1070 (W.D. Missouri 1985). “It is clear that the proponent of the summary must establish that the underlying ‘writings, recordings or photographs’ are themselves admissible into evidence...” (omitting citations). Consequently, if one wishes to introduce a summary of the plaintiff’s medical bills, absent a stipulation, one needs to lay the necessary foundation through the presumption of T.C.A. § 24-5-113 or through testimony that the prescribed treatment and costs were “reasonable and necessary.” See Dedmon v. Steelman, 535 S.W.3d 431, 438 (Tenn. 2017). A summary of business records must satisfy Rule 803(6) of the Tennessee Rules of Evidence that requires five steps: 1) Record made at or near the time of event; 2) person recording information must have first-hand knowledge; 3) Person providing recorded information must have a business to record or transmit the information; 4) Business must have a regular practice of making such records; 5) The manner the information was recorded does not reflect a lack of trustworthiness. Arias v. Duro Standard Products Co., 303 S.W.3d 256, 263 (Tenn. 2010)(quoting Alexander v. Inman, 903 S.W.2d 686, 700 (Tenn. Ct. App. 1995).

Right to Notice and Review

The proponent of the summary evidence must make the documents available for examination or copying at a reasonable time. This element has two components. First, the proponent of the summary evidence must give notice of the intent to use the summary evidence. This notice requirement is considered to be “unequivocal.” See Air Safety, Inc. v. Roman Catholic Arch Bishop of Boston, 94 F.3d 1, 8 (1st Cir. 1996). The second component is that the party against whom the summary evidence is sought to be used has an absolute right to production of the material. See Square Liner 360°, Inc. v. Chisum, 691 F.2d 362, 376-377 (6th Cir. 1992). Ward v. Ward, 2002 WL 31845229 (Tenn. Ct. App. 2002) held admission of a summary of yearly expenses was in error when the party did not reveal and no longer possessed the underlying records.

Regardless whether the party against whom the summary evidence is to be used did not request the records in discovery, before or at trial, before the summary is to be offered, the party against whom the summary evidence is to be used must be offered the opportunity to review the underlying documents.

Pretrial Matter

As a practical matter, a trial lawyer that intends to use summary evidence should take the matter up either at the pretrial conference or in a pretrial motion in limine. Even if one gives opposing counsel adequate notice, it seems unlikely that an impatient trial judge is going to allow a recess so that opposing counsel can review the underlying voluminous records used in the summary evidence. See Tennessee Law on Evidence (5th ed.), Matthew Bender & Co. (2005), by Cohen, Shepherd & Pain, Section 10.06(5), pp. 10-23. Some time ago, I had a trial in which I gave defense counsel notice of my intent to use summary evidence, sent copies of the summaries with the underlying documents, and to which counsel had no objection. At trial when I sought to introduce the summaries, the trial judge refused because he either did not know about Rule 1006, did not understand it, or fundamentally disagreed with it. Lesson learned the hard way.
Summary evidence must be introduced through the testimony of the witness who either prepared the summary or supervised its preparation. See U.S. v. Thrower, 746 F. Supp. 2d 303, 307 (D. Mass. 2010) and U.S. Modena, 302 F.3d 626, 633 (6th Cir. 2002). Once admitted, summary evidence under Rule 1006 may go to the jury as any other exhibit. See U.S. v. Bray, 139 F.3d 1104, 1110 (6th Cir. 1998).

It is important to bear in mind that the summary offered under Rule 1006 is being admitted in lieu of the underlying records. This does not exclude the admission of the underlying records; Rule 1006 renders their admission unnecessary. See U.S. v. Bray, 139 F.3d 1104, 1111 (6th Cir. 1998).

There is a line of older cases in which the use of a summary or chart required a limiting instruction. There is a significant distinction between a summary offered under Rule 1006 and a chart offered under Rule 611(a) as a teaching or demonstrative tool. Pedological tools used under Rule 611(a) are illustrative and/or argumentative and their use may require a limiting instruction that such aids do not constitute evidence. Summary evidence admitted under Rule 1006 does not require a limiting instruction. See Gomez v. Great Lakes Steel Div., 803 F.2d 250, 257-258 (6th Cir. 1986).

The summary should be factual and accurately reflect the underlying documents. U.S. v. Bray, 139 F.3d 1104, 1110 (6th Cir. 1998). What about an objection that the summaries are misleading or argumentative? In the Hatfield case, defense counsel argued strenuously against the summary evidence on the basis that it merged into opinion testimony. Ultimately, a court allowed the evidence. To alleviate the Court’s concern about summary evidence being misleading or argumentative, one should point out that any flaws in the summary evidence can be exposed during cross examination of the witness that prepared the summary. U.S. v. Robinson, 439 F.3d 777, 781 (8th Cir. 2006) held admission of summary evidence was not an abuse of discretion since counsel could cross examine the preparer of the summary as to its inaccuracy. An objection to summary evidence offered under Rule 1006 goes to the summary’s “weight rather than its admissibility.”

**ABOUT THE AUTHOR**

**Eddie Schmidt**, originally from Louisiana, attended Vanderbilt undergrad and LSU Law School. In 1998 Eddie attended the Gerry Spence Trial Lawyers College and currently serves as a member of the teaching faculty. Eddie also regularly writes and speaks about trial practice. Eddie has tried all types of civil and criminal cases and obtained significant verdicts in medical malpractice, products liability, unfair trade practices and civil rights in both state and federal courts. He has a long history of strong beliefs in legal and ethical equality. Eddie is a long time supporter of TTLA and his law practice is currently in Nashville at www.eschmidtlaw.com. eddie@eschmidtlaw.com.
Optimizing Expert Reviews

By Christopher T. Nace

A plaintiff’s case often stands or falls with the strength of the expert. Whether you are asking for an intake review of a case’s merits to decide whether to move forward or looking ahead to deposition and trial prep, an expert’s initial review can be critical. And the cost and time associated with an expert review can mean that a second review is not feasible.

With so much riding on the initial review, it is important to package and send the case materials in a way that will maximize the expert’s results. As plaintiff lawyers, it does not benefit us to coerce a rosy review of a record, only to have an expert change her tune the day before her deposition. A little extra time preparing a review package can go a long way in assuring a thorough case review, as well as making sure your witness is not exposed to a damaging cross-examination later. Here are a few ways to optimize the file you send for review.

Organize medical records. This may seem obvious, but many lawyers forward the records exactly the way a hospital or other provider produces them. Some electronic records are neatly organized with PDF bookmarks. But if a record is not provided to you in an organized format, consider spending the time to put everything together in a useful way. Use tabs and indexes to organize your records the way a health care provider would look at them: admission record, discharge summary, operative reports, nurses’ notes, and doctors’ orders. This will encourage efficiency. Bates number the pages after organizing them.

Consider what you put in writing. While expert correspondence may not be discoverable in federal court, it is in many state courts. Assume your letter to an expert will be read to the jury. To that end, impress upon the expert that her review be honest and thorough. Encourage the expert to consider all points of view. This is good practice because it is certainly better to discover holes in a potential case at the initial review rather than later. It also bulletproofs your letter from mischaracterizations before a jury.

Consider a blind review. Not telling the expert whether you represent a plaintiff or defendant may result in a more thorough assessment. For example, with radiology experts, asking for a “blind read” of images can ensure you do not bias them.

Provide a summary or chronology. This can be particularly useful when sending voluminous records. Opposing counsel likely will use the chronology to cross-examine the expert, so keep it factual. A chronology can orient the expert to the events leading up to treatment, the sequence of events in a hospital, or what happened after a patient was sent home. Tie your chronology to Bates numbers so you are merely organizing facts that are contained in the record and not adding your impressions or thoughts.

Compile the most relevant records. To prevent an expert from spending unnecessary time sifting through a file for the pertinent information, pull out the records you believe to be most relevant to the evaluation. Using the same organization method mentioned above (tabs and Bates numbers), provide a compilation of select records. Send this in hard copy form, with a disc or thumb drive of all of the records so the expert still has access to everything in the file. This helps keep the expert focused but also protects her on cross-examination when asked what else she would have wanted to see.

Provide supporting documents. If you have journal articles, standards, depositions, pictures, or any other evidence that will support your expert’s opinions, provide those documents early. It may be preferable for your expert to do independent research, but if you are aware of documents that are relevant, send them early. If you want to be particularly careful, perhaps request a record review first, and send supporting documents only after that has been completed. Anticipate that the defense will ask if the expert would have liked to have seen “X” before forming an opinion.

Schedule a phone call with the expert to discuss findings. Be prepared to press the expert on possible defenses. Press her on causation. Press her on “judgment” calls. Ask about other possible outcomes. Check on time lines and windows of opportunity the defendant had to make a difference in the plaintiff’s outcome. Challenge your expert to be sure her opinions are thorough and reliable.

Expert testimony is often the most difficult hurdle to overcome. Use these tips to make sure your expert considers all relevant information, ensuring an unbiased opinion and comprehensive review.

Christopher T. Nace
is a partner at Paulson & Nace in Washington, D.C., and can be reached at ctnace@paulsonandnace.com.
ANNE C. POLAND, RN
Medical Record Review

Big Case with a mountain of medical records? Call me.

30 Years Experience
- Critical Care - 5 years
- Acute Care - 12 years
- Emergency Room - 8 years
- General Medical - 3 years
- Hospital Administrator - 4 years
- Registered Nurse
- Univ. of TN Critical Care Course
- Advanced Cardiac Life Support

408 Franklin Street
Clarksville, TN 37040
931-801-8756
anne@clarksvillelawyers.com

Did You Know...

WE’RE VERY SOCIAL!
Keep in touch and up to date with all of our latest news, events and campaigns. If you enjoy the regular and relevant updates, we welcome you to offer your comments, questions and thoughtful ideas into the conversation. Engage with us today!

facebook.com/accessstocourts

Ready for the spotlight? Share your achievements, blog posts and expertise with us, and we’ll feature you on Facebook! http://bit.ly/ttla-spotlight

JOIN THE TTLA WOMEN’S TRIAL LAWYER CAUCUS!
Interested in hearing about networking, referral, and mentorship opportunities for female trial attorneys and paralegals? Join TTLA’s new Women’s Caucus!

TENNESSEE TRIAL LAWYERS ASSOCIATION

Please contact Suzanne Keith (skeith@ttla.org) to be added to the Women’s Caucus listserv or Carey Acerra (cacerra@jehlawgroup.com) for more information.
SPOTLIGHT ON
LIEFF CABRASER NASHVILLE

INTEGRITY. TENACITY. RESULTS.

LIEFF CABRASER NASHVILLE’S lawyers have a fundamental commitment to integrity, tenacity, and results for all of our clients—children, families, taxpayers, investors, consumers, and employees, throughout Nashville and all of Tennessee.

DESPITE THE UNIQUE and unprecedented challenges presented by 2020, our firm has continued to create ways to support the city of Nashville and our wider communities, with a special focus on children and families, both through the law and out in the wider world, close to home and nationwide.

THIS YEAR OUR ATTORNEYS have worked on cases around faulty car seats that threaten the safety of babies and young children, vaping addictions and their direct health impacts on our most vulnerable school children and teens, the nationwide opioids crisis and its attendant widespread losses to taxpayers, and unfair and deceptive business practices around vacation timeshares, along with many other noteworthy and important cases.

LIEFF CABRASER MAINTAINS an ongoing commitment to support the Nashville community through community service. We organize donation drives for Youth Villages, which serves children exiting the foster care system; we participate in Legal Aid clinics and Hands On Nashville volunteer projects; following the devastating tornado that hit Nashville and Middle Tennessee in March of 2020, we founded the Trial Lawyers Community Relief Fund at The Community Foundation of Middle Tennessee to offer financial support to those in need of tornado relief (and other catastrophes in the future); and, we supported Nashville’s Equity Alliance with a $25,000 contribution in 2020 to support the local organization’s passionate effort to eliminate racial injustice.

Mark P. Chalos
PARNTER

Kenneth S. Byrd
PARNTER

Andrew Kaufman
PARNTER

Christopher E. Coleman
ASSOCIATE

Hannah Lazarz
ASSOCIATE

NASHVILLE
SAN FRANCISCO
NEW YORK
MUNICH
lieffcabraser.com

Attorneys at Law
222 2ND AVE. SOUTH, STE 1640, NASHVILLE, TN 37201
I am writing to provide a snapshot of some of the urgent advocacy issues we’re working on.

**Ending Qualified Immunity**

In a positive first step toward ending qualified immunity, the House passed comprehensive policing reform legislation, the George Floyd Justice in Policing Act (H.R. 1280), on March 3 in a vote of 220 in favor to 212 opposed.

As you know, qualified immunity is a court-made doctrine that provides state actors such as police officers, prison guards, and other government agents with broad immunity for violating constitutional and civil rights.

Members of AAJ and state TLAs represent many of the families directly impacted by police violence. AAJ supports the George Floyd Justice in Policing Act (GFJPA), as a path toward decreasing incidents of police violence by increasing accountability for victims and survivors of brutal police misconduct.

The legislation to reform policing includes provisions to ban chokeholds and no-knock warrants. In addition, the current version of the bill would:

- require use of body cameras by all uniformed federal officers with the authority to conduct searches and make arrests.
- require use of in-car video camera recording equipment for federal law enforcement agencies.
- create a national police misconduct registry to help ensure that repeat offenders cannot transfer to other agencies to hide from previous reprehensible conduct.
- allow for public access to the collected data.
- eliminate qualified immunity against certain law enforcement officers.

**Two More Changes Needed**

We also support the following:

1. **Completely Abolish the Doctrine of Qualified Immunity:** The current GFJPA overturns qualified immunity only for certain law enforcement officers; it must also explicitly do so for other state actors and government agents.

2. **Hold Law Enforcement Employers Publicly Accountable for Employees’ Actions:** Private sector employers are responsible for the unlawful acts of their employees under the doctrine of respondeat superior; so too must employers of law enforcement officers be held accountable for an officer’s actions. Congress must ensure that the promises of the 14th Amendment are truly available and can be realized by all Americans.

**Qualified Immunity and AAJ State Affairs**

Many states are using the 2021 legislative sessions to enhance accountability. The tragic murder of George Floyd put a spotlight on qualified immunity. As of March 5, 2021, AAJ’s State Affairs
Department is tracking 70 bills that address, in some way, police brutality or misconduct in the states, including efforts to end qualified immunity.

AAJ State Affairs is tracking these issues, and others, and is working with the TLAs to protect your practices. If you have any questions about specific legislation, please reach out to state.affairs@justice.org.

**Forced Arbitration**

Another bill introduced in the last Congress and reintroduced in the current session—as was the GFJPA—is the Forced Arbitration Injustice Repeal Act (FAIR Act).

Senator Richard Blumenthal (D-CT) introduced the FAIR Act on March 1, 2021, in the Senate. The bill has 39 original cosponsors. The House bill was introduced in February with 155 original co-sponsors. In addition, on February 11, the U.S. House Judiciary Committee held a hearing on forced arbitration called “Justice Restored: Ending Forced Arbitration and Protecting Fundamental Rights.” Witnesses included Professor Myriam Gilles and Gretchen Carlson in support of enacting the FAIR Act.

Forced arbitration and qualified immunity are just two issues in a legislative and regulatory portfolio that covers dozens more. AAJ tracks and reads several hundred bills each congressional session.

**AAJ Legal Affairs**

**2020 Amicus Curiae Briefs Recap**

AAJ’s amicus curiae program did not slow down in 2020, despite case delays and other challenges posed by the pandemic. AAJ filed a total of 16 amicus curiae briefs in 2020, focused on 11 different issue areas important to AAJ and state TLA members’ practices. The most frequent topics covered were arbitration and preemption, with three amicus briefs filed on each.

Six briefs were filed in the U.S. Supreme Court, five in the U.S. Courts of Appeals, and five in state supreme courts (MA, FL, CT, UT, and GA). AAJ partnered with outside groups on 12 of the briefs, including Public Justice and the ACLU. AAJ is grateful to have also partnered with the following TLAs on amicus briefs throughout the year: Florida Justice Association, Massachusetts Academy of Trial Attorneys, Georgia Trial Lawyers Association, and the Utah Association for Justice. Two amicus briefs have already been filed in 2021, and it is anticipated that four more will be filed in the next few weeks. AAJ is awaiting the Supreme Court’s ruling in an important personal jurisdiction case, Ford Motor Co. v. Montana 8th Judicial Dist. Court and Ford Motor Co. v. Bandemer (U.S. 19-368; cases consolidated).

AAJ amicus briefs are available at: www.justice.org/amicusbriefs. For more information about AAJ’s amicus curiae program, please contact legalaffairs@justice.org.

**Fighting for You and Your Clients**

Thank you for your continued support. Despite these difficult times, AAJ continues to fight all attempts to deny access to justice. We will keep you informed about important developments and welcome your input. You can reach me at advocacy@justice.org.
It’s inevitable. At some point in your personal injury career, you will get that dreaded notice from Federal Bankruptcy Court that the defendant in your case just filed bankruptcy. Alternatively, your client comes to you and says they need to file or, even worse, already filed. What do you do now? Is your client’s personal injury case now worthless? Can you proceed? Is it even worth pursuing?

Bankruptcy can be an intimidating and scary area of law for those who do not regularly practice it. While you likely will not be the one filing the bankruptcy, there is vital information you need to discuss with your client and his bankruptcy attorney. If certain information is left off, your client’s personal injury case could be negatively impacted and maybe dismissed.

Below are the bare bones you need to know in order to effectively represent your client. However, you should always have a local bankruptcy attorney in your rolodex to walk you through these issues when they arise. There are many forms of bankruptcy, but the top two (Ch. 7 and Ch. 13) are the most common in your typical personal injury case. They are:

Chapter 7 - Asset Liquidation
Chapter 13 - Repayment Plan (Individuals and Married Couples)
Chapter 11 - Large Reorganization (Businesses)
Chapter 12 - Family Farmers
Chapter 15 - Foreign Cases
Chapter 9 - Municipalities

Chapter 7 Bankruptcy

Chapter 7 bankruptcy allows individuals to liquidate their assets to pay their existing debts. A court appointed Trustee reviews the estate of the debtor to determine if there are assets worth liquidating. The majority of Chapter 7 cases are “no asset” cases. The debtor still receives a discharge from his debts because most debtor’s assets will fit under their state’s allotted exemptions shielding their assets from liquidation.

Chapter 13 Bankruptcy

Chapter 13 Bankruptcies are repayment plans primarily for individuals and married couples. The debts are usually paid back over a three-to-five-year period with the Debtor’s disposable income. Proceeds from a personal injury settlement or verdict must be disclosed and almost always have to be paid into the case. A Trustee is appointed to receive payments and pay creditors.

What Happens if my Client Files Bankruptcy?

The bankruptcy code defines a claim as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” Your client’s personal injury claim is an asset that requires disclosure in his bankruptcy case (both Ch. 7 and 13).

However, just because your client is required to disclose his personal injury claim does not mean he will lose his entire settlement/verdict to his bankruptcy; nor, does that mean you are now working pro bono. Tenn. Code Ann. § 26-2-111(2) allows a debtor to exempt part of his personal injury settlement or verdict. The exemptions are:

- $7,500 per person in personal injury recoveries.
- $10,000 in wrongful death recoveries.
- The total exemption may not exceed $15,000.

If your client does not list it and exempt it, he may lose his right to pursue it in state court proceedings. Defendants have successfully argued that a Debtor/Plaintiff is judicially estopped from pursuing his state court claim due to his failure to list it in his bankruptcy petition. While some courts will allow your client to amend his petition to add the claim as an asset, some have not and it is not worth the risk.

When your client files bankruptcy, the trustee holds all the decision-making power over your client’s estate which includes his personal injury claim. While a trustee usually gives you a lot of leeway, he has the power to decide the demand amount and what the case will settle for if he wants that much control.

continued to page 37
Both the bankruptcy court and the trustee have to approve you to continue representing your client in his Bankruptcy. Below are the minimum steps you, your client, and the bankruptcy attorney should take to make sure both the bankruptcy case and your case continue without issue.

**Statement of Financial Affairs**

The Statement of Financial Affairs (SOFA) is filed in every bankruptcy petition. It is a list of questions that, when answered, give a snapshot of the debtor’s financial affairs over the last few years. Questions 9 and 15 are relevant to your client’s personal injury claim and it is imperative that your clients know to fill these out.

Question 9 asks “within one year before you filed for bankruptcy, were you a party in any lawsuit, court action, or administrative proceeding?” If you have already filed suit for your client, he needs to ensure the bankruptcy court is aware.

Question 15 asks “within one year before you filed for bankruptcy or since you filed for bankruptcy, did you lose anything because of theft, fire, other disaster or gambling?” If this is a car wreck case or any type of case involving damage to your client’s property, both real and personal, the safest thing to do is provide the information here. Remember, if you take a case and your new client informs you he is currently in bankruptcy, this question requires him to amend the SOFA and list the new loss.

**Schedules B and C**

The bankruptcy schedules are a more detailed breakdown of the debtor’s financial status. Your client is required to list all his personal property assets on Schedule B. This includes his pending personal injury claim. Schedule C is where the debtor can use his state allotted exemptions to keep some of his property from going to his creditors. (See above for Tennessee’s current exemptions for personal injury claims). This is where your client could make a mistake and become judicially estopped from pursuing his state court claim.

**Motion to Employ**

As stated earlier, the Trustee and Bankruptcy Court now call the shots. When your client files either the Chapter 7 or 13 bankruptcy, you should file a motion with the bankruptcy court asking permission to continue representing your client in his personal injury claim. Check your local bankruptcy court’s website because many times they have templates for this application. As always read the local rules in case there are specific requirements.

**Motion to Substitute Trustee as Party in State Court Case**

The moment your client files his bankruptcy case, his estate is now in the hands of the Chapter 7 or 13 Trustee. This means that the appropriate party for the state court case is now the Trustee. If a motion to employ is not filed and the Trustee is not notified of the personal injury case, the Bankruptcy Court could dismiss your client’s bankruptcy case for defrauding his creditors.

**Motion to Approve Settlement Proceeds**

Once your client agrees to a settlement or a verdict is rendered, you must file a Motion to Approve the settlement/verdict proceeds. In this motion you will outline at a minimum:

- The suggested settlement amount;
- The requested attorney fee (which should have already been addressed in your Application to Employ);
- The suggested amount being paid to the Trustee; and
- The Debtor’s exempted amount in Schedule C.

**Checklist**

- Statement of Financial Affairs lists personal injury case (Question 9 on SOFA)
- Statement of Financial Affairs lists property loss (Question 15 on SOFA)
- Pending personal injury claim is listed on Schedule B
- Pending personal injury claim is exempted on Schedule C
- File Motion to Employ you as personal injury attorney
- File Motion to Substitute Trustee as Party in personal injury case (State Court Filing)
- File Motion to Approve Settlement Proceeds

The next article on The Bare Bones of Bankruptcy will discuss the steps to take when the personal injury defendant files bankruptcy.

**ABOUT THE AUTHOR**

Joshua Cantrell serves as an Associate Attorney at Griffith Law in Franklin, TN. He joined the firm in December 2017 as a Case Manager while completing law school and began practicing law in October 2019.
He is a summa cum laude graduate of Bryan College with a B.S. in Business Management. He received his law degree from Nashville School of Law in May 2019 graduating number seven in his class.

From 2007 to 2013, Joshua served in both the Army and Army National Guard as a paralegal. From 2011 until joining Griffith Law, Joshua served as paralegal and office manager for a consumer bankruptcy firm where he dealt with clients directly in their bankruptcy cases.

Joshua currently serves as Chairmen of the Membership Committee for the Tennessee Trial Lawyers Association and as the Middle Tennessee Young Lawyers Representative for the TTLA Board of Governors. He is also an active member of the Williamson County Bar Association and the American Association for Justice.

Outside of the law, Joshua loves to travel and experience new foods and restaurants. In his spare time, he enjoys taking on small wood working projects and watching sports. He tries to live life by one of his favorite quotes from Siqi Chen. “Life is short. Do stuff that matters.”
Benefits, Inc is working with the Tennessee Trial Lawyer's Association to provide a full suite of employee benefits, and we would love for you to be a part of the TTLA benefits experience.

Benefits, Inc is offering comprehensive medical, dental, & vision plans to all association members & is a full service benefits firm.

There are 3 medical plans offered through the Cigna PPO Network. Dental & vision plans offered through Reliance Standard's Ameritas and VSP Network.

Firms across the state have taken advantage of this health insurance plan because of its’ rich benefits...NO deductible, low copays and a low out of pocket maximum of $2,000. There are no health questions, no pre-existing condition exclusions and guaranteed issue coverage. TTLA welcomes ALL, from the solo practitioners with no employees to firms that have hundreds of employees.

Upcoming entry is January 1st. More to come at the TTLA Annual Convention.

Call Susan Rodriguez 615.210.5732 - srodriguez@benefits-inc.com
Michael Curcio 615.708.2237 - mcurcio@benefits-inc.com
for more information!

“We are proud to partner with Benefits, Inc. to provide medical, dental, & vision benefits for our association. My own staff has been very well served by Benefits, Inc. and I hope all our members will consider joining this plan!”

-Current President John Griffith

“All of your help has been very appreciated. It is such a relief to us to know that you are helping sort out issues with providers.”

- Jonathan D. Lawrence

Special thanks to Suzanne Keith
Executive Director of TTLA
Contact Info:
615.329.3000
skeith@ttla.org
Imagine trying all your cases, arguing all your motions with your heart leading the way, instead of worrying about technique. How liberating would that be? In his latest book, *The Way of the Trial Lawyer Beyond Technique*, this is exactly what Rick Friedman teaches us to do. Lead with the heart.

As Rick points out, the best trial lawyers do not hide from their hearts, but instead grow comfortable with them and listen to them. Rick teaches how to cultivate a good heart, pay attention to it, and lead the jury with it. Charismatic lawyers are effective, but the kind of energy and emotion effective lawyers show goes beyond charisma. Persuasiveness dwells in the heart of the lawyer in command. “To speak from the heart, we must be emotionally honest, first with ourselves, then with our audience,” he says.

Rick demonstrates how the earnest trial lawyer loses interest in himself and puts his undivided attention on his audience. He speaks from his heart to the heart of his audience. There is no room for anything else.

After decades of practicing law, contemplating how he could improve himself, always striving to better himself, and finally finding the inner peace he longed for, Rick shares secrets to overcoming fear and feelings of inadequacy like no other trial lawyer ever has before.

We all have experienced self-pity, fear, insecurity, feelings of inadequacy. Rick shows how to conquer these emotions. As he personally has learned, the greatest sources of our suffering are the lies we tell ourselves. We have to stop telling ourselves lies. We have to stop believing them. Rather, we need to recognize bad emotions for what they are—drags on us. And snuff those emotions out and march ahead with confidence.

In one of the chapters called “The Dark Alley,” Rick tells us this story:

A police officer, walking the beat on a cold winter night, sees a man on his hands and knees on a sidewalk, under a streetlight. “What are you doing?” asks the police officer. “I am looking for my house keys,” says the man, looking up from the sidewalk and gesturing toward the front door of his house. The house looks prosperous, safe, and warm.

The police officer starts searching the ground himself. After a few minutes, he asks, “Where did you last have your keys?”

“Over there,” says the man, pointing to a dark alley that runs along-side the house. “I pulled them out of my pocket while I was walking home, and they slipped out of my hand.”

“If you dropped them in the alley, why are you looking out here on the sidewalk?”

continued to page 41
“The light is better here.”

Funny, but true. We all prefer to look for answers (keys) in places we are most comfortable looking. Unfortunately, most answers are not that easy to come by. We have to go into the dark alley - the place we have been avoiding all of our lives.

We've all seen rock stars perform in concert. They are not just voice-gifted entertainers. They entertain with their heart. They connect to their audience with heart. Rick says, “If we could bring the energy and power of a rock concert into a courtroom, we would win every time.”

His book shows that being kind, courteous and respectful to everyone is vital to effective leadership in the courtroom. Gone are the days of the arrogant, brow-beating lawyer. Mean, bullying lawyers are doomed to defeat. Furthermore, the most technically skilled lawyer does not always win. In fact, Rick says, “It is awfully common for the most technically skilled lawyer to lose.” Something else--besides skill--goes on in the courtroom. Some kind of invisible force or energy moves through the room, affecting the actions and decisions of everyone. And that energy can make the difference between winning and losing.

It’s difficult selecting which part of this book I like the most because I like them all. If forced to choose, I’d pick the many chapters on dealing with what Rick calls, “the uncomfortable parts of the case,” such as how to handle jurors’ commonly felt notion in a death case of “money won’t bring the dead person back.” Or in the soft tissue case, “there were no broken bones, so what’s the big deal?”

The last third of the book provides practical tips on how to lead with your heart during voir dire, opening statements, direct examination, objections, cross-examination, and closing in four different case scenarios: (1) Death of a six year-old child; (2) Soft-tissue injury; (3) Plaintiff with admissible burglary conviction; and (4) Plaintiff with poor job history. Rick shows you how to arm yourself with the right attitude going in, and how to handle the special challenges of cases like these. The practical tips alone in this part of the book are well worth getting yourself a copy.

The Director of the Institute for Justice Reform and Innovation at Drake University School of Law says this about Rick’s book:

For forty-five years as a trial lawyer, teacher of trial advocacy, and federal district judge, I have read every book on being a trial lawyer I could get my hands on. This book stands heads and shoulders above all of them. Unlike the others, Rick Friedman reveals the key to unlocking the psychological barriers that prevent 99.9 percent of trial lawyers from reaching their full potential.

Rick Friedman has stood on the shoulders of trial giants and indeed has seen further than any. In my view, it is akin to legal malpractice to go to a civil or criminal jury trial without mastering the concepts in this book, no matter how much or little trial experience you have. (Hon. Mark W. Bennett, retired US district judge)

All lawyers -- regardless of how long we have practiced -- suffer through spells of feeling stale. We can get a little rusty. This book will absolutely perk you up, remind you of why you always wanted to help people and be the very best at trial work you can be. And to be your personal best self. The book will provide you with methods of how to feel more relaxed and how to let your heart lead the way to victory.

I will keep Rick’s book on the shelf I call “My Favorite Books” and pull this treasure down for another read often. Once you read it, it’s quite possible that you will think that this is the best book for trial lawyers you ever read.

You can order this book on Trialguides.com.

ABOUT THE AUTHOR

Randy Kinnard is a Past President of TTLA. He represented Erin Andrews in her invasion of privacy lawsuit, handles all sorts of personal injury claims, and has tried over 250 jury trials in four decades.

Rick Friedman is a trial lawyer based in Bremerton, Washington. He is the author of Rules of the Road: A Plaintiff Lawyer’s Guide to Proving Liability (with Patrick Malone), Polarizing the Case: Exposing and Defeating the Malingering Myth, The Elements of Trial (with Bill Cummings), and Becoming a Trial Lawyer: A Guide for the Lifelong Advocate.
How Do I Make a Contribution to LIFT-PAC?

Joining Lawyers Involved for Tennessee is simple.

An ongoing, monthly contribution to LIFT via credit card or bank draft is the easiest way to provide your support. See suggested monthly contribution allocation or indicate your allocation below.

Yes, LIFT Can Count on Me!

| Advocate   | $500/mo. |
| Diamond Plus | $400/mo. |
| Diamond    | $300/mo. |
| Platinum Plus | $250/mo. |
| Platinum   | $200/mo. |
| Gold Plus  | $150/mo. |
| Gold       | $100/mo. |
| Silver Plus | $75/mo.  |
| Silver     | $50/mo.  |
| Copper     | $25/mo.  - Category for 1st Year Contributors Only |

(Referred by: ____________________________)

Federal Law Requires the Following Information:

Name
Occupation/ Employer/Law Firm
Address
City ___________________________ State ___________________________ ZIP ___________________________
Phone ___________________________ Fax ___________________________

Check here, if your contribution will be made from a partnership account.

Contributions made from partnership accounts are assumed to be paid from your portion of the assets. If this is not the case, state what portion will be charged to you, as well as what partners will be responsible for the remainder of the contribution:

$ ______________

Other monthly contribution allocation:

If you wish to contribute according to a formula that differs from the monthly allocation schedule set forth above, please indicate the amounts to be paid to each:

$ ______________ LIFT $ ______________ TTLA $ ______________ AAI-PAC

AAI-PAC acts as the collecting agent for LIFT and TTLA. Therefore, if this is a joint contribution, state-only contribution or AAI-PAC-only contribution, charges may appear on your account as “AAI-PAC” LIFT and/or TTLA will receive the full amount of the contribution so designated.

Suggested monthly contribution allocation:

| Advocate   | LIFT $300 | TTLA $150 | AAI-PAC $50 |
| Diamond Plus | $400 | $120 | $40 |
| Diamond    | $300 | $100 | $30 |
| Platinum Plus | $250 | $75 | $25 |
| Platinum   | $200 | $50 | $20 |
| Gold Plus  | $150 | $35 | $15 |
| Gold       | $100 | $25 | $10 |
| Silver Plus | $75 | $20 | $10 |
| Silver     | $50 | $15 | $5 |
| Copper     | $25 | $5 | $5 |

Payment Method:

Personal check is enclosed (payable to “LIFT”) Bank Draft (please complete requested info)

Bank Account Number ___________________________
Bank Name & Address ___________________________
Charge to: ___________ Visa ___________ MasterCard ___________________________
Credit Card Number ___________________________ Exp. Date ___________________________

Name (as it appears on account) ___________________________

Signature ___________________________

I request that monthly payments be deducted from my personal account according to the allocation schedule set forth herein to LIFT (State PAC), TTLA and AAI-PAC (Federal PAC). It is agreed that (a) each payment, upon being charged to my account by the respective bank or credit card company, shall be my receipt for payment of the designated contribution; (b) I reserve the right to revoke this authorization by giving written notice to the institution and authority to charge such drafts to my account shall cease upon delivery of written notice of revocation; and (c) if any such draft is dishonored, whether with or without cause, whether intentionally or inadvertently, no liability whatsoever shall attach.

FEC Disclaimer – Federal law requires political committees to report the name, mailing address, occupation and employer for each individual whose contributions aggregate in excess of $200 in a calendar year. Federal law prohibits federal political action committees from accepting corporate contributions. Contributions to political committees are strictly voluntary; no member will be subject to reprisal for declining to contribute. The contributions amount is merely a suggestion and each member is free to contribute more or less than that amount, although particular designations shall apply to those who contribute certain amounts.

IRS Disclaimer – None of these contributions is deductible as charitable contributions under federal law. Contributions to political committees are not tax deductible. The portion of your contribution paid to the TTLA, which is used for lobbying and political purposes, is not tax deductible. Contact TTLA (615) 329-3000 or refer to your TTLA dues invoice for the percentage of your membership dues that is tax deductible.

LAWYERS INVOLVED for TENNESSEE 629 Woodland St. Nashville, TN 37206
Phone: (615) 329-3000 Fax: (615) 329-8131
Right Now, Partnerships Are More Important Than Ever.

IF YOU HAVE A CASE IN KENTUCKY, WE WANT TO PARTNER WITH YOU.

HARE WYNN has more than 130 years of experience and a team of more than 65 lawyers, staff, and in-house experts ready to serve you. By partnering with us, you won’t have to put a hold on other cases or miss out on quality time with your family. As your ally, we’ll bear the burden, and you’ll see the results. With us in your corner, you have everything to gain.

Our team has significant experience litigating both personal injury and complex cases. We value our co-counsel relationships and have achieved these results and shared success by partnering with lawyers just like you. To us, it’s not about the size of the case, it’s about achieving justice for our clients and providing an exceptional experience along the way. Team up with us for a partnership that gets results. If you’d like to partner with us on a case, give us a call.

PARTNERSHIPS THAT GET RESULTS

$11M Settlement in TX – Trucking Accident
$8M Verdict in KY – Nursing Home Abuse
$1.25M Settlement in KY – Nursing Home Abuse
$7.5M Settlement in KY – Workplace Injury
$750M Settlement in MO – GMO Rice Contamination
$392M Settlement in TX – Whistleblower
$1.55M Settlement in KY – Trucking Accident
$25M Settlement in KY – Pharm. Consumer Protection
$4.5M Settlement in KY – Automotive Product Liability

HARE | WYNN
NEWELL & NEWTON
Lawyers Helping People—Since 1890

855-359-6555
hwnnjurylaw.com
Let us tell your client’s story loudly and clearly.

Let the disability team at Eric Buchanan & Associates, PLLC help your clients get the benefits they deserve.

- Erisa Long Term Disability
- Private Disability Insurance
- ERISA Welfare Benefits
- Health Insurance
- Life Insurance
- Long Term Care

Main Office: 414 McCallie Avenue, Chattanooga, TN 37402
intaketeam@buchanandisability.com
(877) 634-2506

www.buchanandisability.com