

LAW MATTERS

May 2016

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May 17, 2016 Membership Meeting and One Hour General Credit CLE

11:15 a.m.
Registration/buffet opens
11:45 a.m.
Announcements
12:00 Noon
CLE Begins

For the Public Good: Nashville's Pro Bono Community

Presenters:
**Andrew Branham, Casey Gill Summar and
D. Billye Sanders**

**B.B. King's Jazz Club
152 2nd Avenue North**

(Central Parking across the street at 2nd and Commerce. Entrance on Commerce)

Cost:

Members: Lunch \$25/CLE \$15
Nonmembers: Lunch \$30/CLE \$25

*Reservations must be made by Friday, May 13, 2016, at close of business.
Register Online at www.law-nashville.org.

Pay online with PayPal, pay by check, or pay at the door. Prepayment preferred.
You will be invoiced for unused reservations. Make checks payable to:
LAW, P. O. Box 190583, Nashville, TN 37219

LAW CALENDAR OF EVENTS

May 17, 2016 11:30 am
May Membership Meeting & One Hour General Credit CLE

May 19, 2016 5:30 pm
Lawyers for Littles—Bowl for Kids Sake 2016

May 31, 2016 6:00 pm
Networking Happy Hour "Meet the New Board"



(From L) Margaret Behm, Recipient of the Martha Craig Daughtrey Award, Immediate Past President Abby Sparks and Laura Baker, Recipient of the Rising Star Award.

PRESIDENT'S MESSAGE

by Yanika C. Smith-Bartley



Dear Friends,

I am excited to embark on this new journey of presidency with LAW. However, I must admit that the most intimidating part of this role for me is having to write you all a message every month. That said, here I am, writing my first message.

First, I want to thank you for this opportunity -- Thank you for having confidence in my ability to lead such an esteemed group of women. LAW's legacy speaks for itself and I graciously take on my charge to lead this organization. Secondly, I want to thank the Board and my co-chairs, whose names you will find elsewhere in the newsletter. With their leadership and support, I am certain that we have a great year ahead of us. I also want to thank my company, Asurion, for giving me the flexibility that allows me to serve in leadership roles within LAW and other organizations. I will use this flexibility judiciously in the next 12 months to ensure that I can give LAW all of the attention it deserves. In that same vein, I must also thank my husband, Brian (who I am sure will not read this newsletter), in advance, for bearing some of my load with our two boys, Grayson (4) and Harper (2), in the coming year while I attend events and activities for and on behalf of LAW. Last, but certainly not least, I want to thank our Executive Director, Melanie Gober Grand. I have relied on Melanie's guidance and wisdom in my other roles within LAW and I will continue to do so (more than ever) in this next year.

In this next year, my goals are simple (easy to sum up), yet complex (a lot of hard work from others will be needed to make them a reality). First, I want to continue the momentum of all of the wonderful ideas and efforts already underway, namely, the planning of the Marion Griffin Women's Symposium¹ and the launch of our new website. Secondly, I want to be sure that we are more intentional about sharing and documenting LAW's history, which includes the history of our leadership. Sometimes we take for granted what members know about LAW and who they know within LAW. If you are a new lawyer, new to the city or even just new to LAW, joining LAW without all of the historical knowledge can be intimidating. So to the extent we can make it easy for new members from a historical perspective, let's do so. It can be as simple as providing more context in the newsletter, in your conversations or during our programs (i.e., when mentioning the Marion Griffin Women's Symposium, providing more context on the background and purpose of it).

Finally, as I have shared with Melanie, the Board, and my co-chairs, my overarching goal for the year is to incorporate diversity of ideas and thought leadership within the organization. Just because we've always done it a certain way, doesn't mean we have to continue doing it that way. While we want to maintain the traditions of LAW when it makes sense to do so, we also want to see some fresh ideas and fresh perspectives. It is my desire that new ideas and new perspectives will also bring new faces -- a growing and diverse membership. To that end, if you have any ideas that you would like to share with me, please e-mail me at: law.mgc.president@gmail.com.

In closing, I thought it would be great to share some of me with you in a fun way. On the next pages, you will find 25 fun facts about me that you may not already know.

Thanks in advance for your support, I am looking forward to a great year!

¹See article on pp. 13 regarding Background & Purpose of the Marion Griffin Women's Symposium.

2016-2017 LAW BOARD OF DIRECTORS

Yanika C. Smith-Bartley, *President*
Elizabeth Sitgreaves, *President-Elect*
Leighann Ness, *Secretary*
Mandy Floyd, *Treasurer*
Mary Katherine Bratton, *2nd Year Director*
Lynn Lawyer, *2nd Year Director*
Susan Neal Dickerson, *1st Year Director*
Lynne Ingram, *1st Year Director*
Lora Fox, *Archivist*
Marnie Huff, *Archivist*
Rebekah Baker, *Newsletter Editor*
Ashonti Davis, *Newsletter Editor*
Sherie Edwards, *Newsletter Editor*
Camille Webb-Steward, *Newsletter Editor*
Abby Sparks, *Immediate Past President*

Committee Co-Chairs

Arrangements
Kimberly Silvus

Breakfast Committee
Erin Palmer Polly/Sara Anne Quinn

Community Relations
Tracy Alcock/Kristen Cass

Diversity
Kyonzte Hughes-Toombs/Nicole Lytle

Domestic Violence
Allison Cooley/DarKenya Waller

Health & Wellness
Casey Parker/Phylinda Ramsey

Judicial Appointments & Elections
Christen Blackburn/Caroline Hudson

Legislation & Litigation
Brenda Gadd/Chambre Malone

Long Range Planning
Jennifer Moreno

Marion Griffin Women's Symposium
Meera Ballal/Laura Smith Tidwell

Membership
Shellie Handelsman
Judge Joyce Grimes Safley
Martha Trammell

Mentoring
LaTonnsya Burney/Kimberly Faye/Nina Kumar
Jenny Moreno/Rachel Stutts

Networking
Brooke Coplon/Tara Ladd
Jennifer Lankford

Practicing Parents
Emily Warth

Programs
Kristi Arth/Jessica Ehsanian
Doreen Farthing/Lyndsie Schmalz

Publicity/Social Media/Technology
Kimberly Faye
Hannah Lanford

Solos
Mollie Gass/Nikki McCain

Executive Director
Melanie Gober Grand

LAW Matters is a monthly publication of the Lawyers' Association for Women, Marion Griffin Chapter, P. O. Box 190583, Nashville, Tennessee, 37219. Voicemail: 615.708.1827; Fax: 888.834.7370; www.law-nashville.org. To submit articles for the June issue, contact, Rebekah Baker at rebekah.a.baker@tn.gov.

25 FUN FACTS ABOUT NIKKI

1. I'm my paternal grandmother's 96th grandchild. I have a huge family! Family reunions are a blast.
2. I'm a first generation college grad and I was #2 in my college graduating class at Fisk University.
3. Going to law school at Vanderbilt was an experiment (long story), I've been practicing almost 14 years now.
4. I won a scholarship to study US Arab relations in Syria and Jordan in 1993. I still know some Arabic.
5. I'm lucky in love and blessed in life- I've been married for 7 years to my husband, Brian, and we have two wonderful boys- Grayson (4) and Harper (2). They are very active little boys – they jump off and on anything and everything.
6. I've never had an alcoholic drink. Coffee and chocolate are my vices, give me a salted caramel mocha and I'm in heaven.
7. I'm a spa connoisseur. Last year I did 3 spas in 3 days in Scottsdale Arizona.
8. I'm a huge football fan- go Buckeyes and Browns.
9. The only sport I played in school was powder puff football. See #8.
10. I've run four half marathons and hope to run a full marathon one day. I ran the first one in 2006. Before then, I was not much of an athlete. See #9 I ran my last one in 2013 and haven't done much since then.
11. I'm originally from Cleveland, Ohio, but I've lived in Nashville for over 20 years now. #8 was probably a dead giveaway that I'm originally from Cleveland.
12. I love beaches and pools, but I don't know how to swim. Probably not a good mix.
13. I love being creative - interior design and event planning give me a natural high and I used to be really good at drawing/art, but haven't had time for it in years.
14. I love to laugh - if you know me, you know that. Comedy shows are the best.
15. Spelling errors are my pet peeve (but I make them "to" ☺)
16. I love math, computers, and new technology (Apple is my brand and we have 8 active Apple devices in my house).
17. My friends call me or text me when they want an answer to something- they know I won't stop until I find the answer #Google See #16
18. I used to think I was a summer girl, but I realized I like early fall better. Sweaters and boots are great.
19. I love to cook when I have time. I never have time, so I never cook. ☺ But I am a foodie. So I like to new try new restaurants. This could be bad – See #10
20. Television relaxes me- I love reality shows involving dancing and/or singing and TV crime/mysteries (*American Idol*, *So You Think You Can Dance*, *48 hours* and *Dateline* are some of my faves.
21. My favorite movies are love stories. *The Notebook*, *Pretty Woman* and *Dirty Dancing* are at the top of my list.
22. I didn't get my driver's license until I was 20. I perfected bumming rides until then. If Uber were around back then, I probably would have never gotten my license!
23. I'm the oldest child of two girls and my parents have been married 41 years.
24. Since I was 14, I've always had a job - I've been a grocery store cashier, a preschool teacher, a construction worker and an airline baggage handler to name a few. So I have a lot of great stories.
25. Some things on my resume:
 - Lawyers Association for Women, Marion Griffin Chapter, Past Treasurer (2 terms); Past Newsletter Editor (2 terms); Past Co-Chair, Minority Outreach Committee; Past Co-Chair – Mentoring Committee
 - Nashville Bar Foundation Fellow, 2014
 - NPT, Board Member (2015 – current)
 - Named “Top Forty Under 40,” Nashville Business Journal, March 2013
 - Nashville Electric Service, Vice-Chairman, Electric Power Board; Chair, Employee Relations Committee (2010 -2014)
 - Nashville Bar Association, Member; Past Secretary; Diversity Committee Member
 - Napier Looby Bar Association, Member; Past Secretary
 - Coach for Harpeth Hall High School (Nashville) Mock Trial Team at district and state levels

- Bethlehem Centers of Nashville, Past Board and Executive Committee Member
- Harry Phillips American Inn of Court, Alumnus
- Young Leaders Council, Alumnus
- Alpha Kappa Alpha Sorority, Inc. – Tennessee Connections Coordinator (2011 -2012); Kappa Lambda Omega Chapter, Member; Past Parliamentarian and Executive Committee member (2006 – 2008)
- Tennessee Bar Association Leadership Law Program, Alumnus (2008)
- TIPS Trial Academy, Attendee (March 2006)

LAW Annual Banquet Recap

Approximately 150 LAW members and guests mixed and mingled in the pre-function area outside the Davidson Ballroom in the Music Center on April 20th while waiting to honor the 2016 recipients of the Judge Martha Craig Daughtrey Award and the Rising Star Award.

Upon entering the ballroom, everyone was welcomed by a slide presentation featuring LAW's year in pictures. Outgoing President Abby Sparks welcomed the group. After the delicious dinner, Abby began the business meeting by providing a recap of the activities of the past year. Rebekah Baker presented the minutes from the 2015 annual meeting. Upon motion and a second to dispense the reading of the minutes, the minutes of the 2015 annual meeting were approved. Bekah then presented the Treasurer's Report in the absence of Treasurer, Liz Sitgreaves, and announced that LAW is in great financial shape. Abby then read the incoming slate of Board officers. After asking for any nominations from the floor (of which there were none) the slate was voted in to office by acclamation.

The tradition of highlighting the winners of the Diversity Committee essay contest was the next item on the program. Lagnajita Mukhopadhyay, a student from Hume Fogg Magnet School read her winning essay, "Why Not Women?" which is printed on page 11.

The next item on the program was the presentation of the Judge Martha Craig Daughtrey Award. Justice Connie Clark introduced Margaret Behm, highlighting the influence Margaret has had on women lawyers, women in general, and the community at large. Last year's recipient Judge Aleta Trauger presented the award to Margaret. After Margaret's acceptance speech, which is showcased in this issue on page 10, the group was surprised by a video of Judge Daughtrey, who was unable to attend this year's banquet due to her court schedule in Cincinnati. In her video Judge Daughtrey further expanded the list of Margaret's accomplishments.

After honoring Margaret, Abby Sparks called Laura Baker to the dais. Another video was shown, this time, the person on the screen was Liz Sitgreaves, the 2015 Rising Star Award recipient. Liz was attending the Tennessee Bar Association Leadership Law program in Memphis. She virtually presented Laura with her award. After Laura's acceptance remarks, the final business for the evening was the passing of the gavel from Abby Sparks to incoming President Nikki Smith-Bartley.

LAW would like to thank First Tennessee Bank, IPSCO and Brentwood Court Reporting Services for sponsoring the banquet, and helping to make it another successful event!





Photos by
Sara Gibbs Photography



Outgoing President Abby Sparks presenting a year-end review of LAW's board year 2015/2016.



Diversity Committee Co-chair LaTonnsya Burney announcing the 2015-2016 essay contest winners.



Lagnajita Mukhopadhyay reading her winning essay, "Why Not Women?"



Supreme Court Justice Connie Clark introducing Margaret Behm, recipient of the Judge Martha Craig Daughtrey Award.



2015 award recipient Judge Aleta Arthur presenting Margaret Behm with the 2016 award.



Remarks by Margaret Behm.



Judge Daughtrey's remarks to Margaret delivered by video.



Abby Sparks introducing Laura Baker, recipient of the Rising Star Award.



2015 Rising Star Recipient Liz Sitgreaves virtually presenting Laura Baker with the 2016 award.



Remarks by Laura Baker.



Outgoing president Abby Sparks passing the gavel to incoming President Nikki Smith-Bartley.



Presentation of gift to outgoing President Abby Sparks for a job well done!



From Left, Margaret Behm, Abby Sparks, Abby Sparks, Nikki Smith-Bartley, Justice Connie Clark and Judge Aleta Trauger.

Margaret Behm's remarks upon receipt of Martha Craig Daughtrey Award

Thank you **Justice Clark**. We are having a great journey together!

And thank you to LAW and those who nominated me. I love this organization and what it means to our community. I am deeply honored.

Thanks also to **Judge Trauger**. I attended a celebration of Judge Trauger on Friday night at Vanderbilt Law School. Her bio mentioned that she took over the men's restroom next to Blackacre with Judge Daughtrey's blessing, because there was only one toilet for all the women at the law school! It is still the women's restroom to this day. I am honored to be recognized with the two of you, along with your, as Gloria Steinem's 1983 book is entitled: "Outrageous Acts and Everyday Rebellions."

I want to recognize from the outset my partner in marriage and law, someone who always is there for my outrageous acts and everyday rebellions: Harlan Dodson. I'm so glad that he is joined by my daughter, Margaret, who will graduate from Vanderbilt Law School next month and her husband, Ben Baden... Thanks so much for the members of my firm and my friends for coming tonight.

I started my LAW journey because of Judge Daughtrey. In 1980, Cissy attended a women judges' conference in California. She was the only women judge in Tennessee, and so, she was the only Tennessee judge there. She was so impressed with how many judges in California were women, and she asked why? The response...we have a women's bar association. When she came back to Nashville, she implored us to get our act together, and so in the 900 square foot offices of Shipley & Behm, she met with a small group of us to organize LAW.

I took a look at the founders of LAW that are always listed in the back of the LAW newsletter, which I so much appreciate. Of those 45 founders, over 25% of them became judges! In addition to **Justice Clark** and **Judge Trauger**, there are **Chancellor Claudia Bonnyman**, LAW's first President; Circuit **Judge Barbara Haynes**, who when becoming a General Sessions Judge in 1982 became the first woman to beat an incumbent in any office in a Davidson Countywide race; **Judge Marietta Shipley**, my former law partner and a leading proponent of mediation when it was not popular, who in 1990 became the first women to beat an incumbent circuit court judge in Tennessee; **Chancellor Rose Cantrell**, the first women to be appointed by a Governor to a trial judgeship in Davidson County; **Magistrate Judge Juliet Griffin**, the first woman President of the Nashville Bar Association; **Judge Patsy Cottrell**, the first woman to serve on the Court of Appeals, **Judge Carol Soloman**, who before she became a judge filed a lawsuit so her daughter could play baseball, **Juvenile Court Referee Mary Walker**, who co-founded Renewal House for crack addicted moms, General Sessions **Judges Penny Harrington** and **Sue McKnight Evans**, and **Chancellor Carol McCoy**, who recently announced her retirement from the Chancery Court, and who along with me encourages LAW members to apply for her vacant seat!

LAW certainly accomplished Cissy's goal of having more women attend judicial conferences with her!

When reading through this list of founders, it is impressive the journeys this small group has taken. So much has changed in the 35 years since LAW was formed. We had to figure out the system, the barriers and decide whether or not to remove the barriers or go around them. We had to figure out how to be good at our work and at home. We have experienced not only a revolution in the practice of law, but also, as Steinem's 1992 book is so aptly titled, a "Revolution from Within...a Book of Self Esteem". We had to gain confidence in ourselves before others would have confidence in us.

Of course, time won't permit me to mention all of remaining 32 founders, but imagine how our world has changed because of this small group:

Jeanie Nelson, after being named the first woman partner of a major law firm, and now after 16 years as CEO of the Land Trust of Tennessee, saved thousands of acres of land and 350 miles of watersheds in TN.

Abby Rubinfeld, who, having played basketball at Princeton, has throughout her career been a prominent civil rights lawyer focusing on LGBT and Aids-related issues, culminating in serving as co-counsel in the US Supreme Court case that brought full marriage equality to our nation.

Wendy Goggin, who grew up on a horse farm in Paris, Tennessee, became a top prosecutor, and since 2004 has kept us safe by serving as Chief Counsel to the Drug Enforcement Administration supervising over 135 attorneys and staff worldwide.

Susan McGannon, the Mother of the LAW breakfast, who is a nationally acclaimed municipal attorney and the principal reason why LAW exists today.

Mary Parker, who as early as 1982, co-founded with Ralph Nader the national Trial Lawyers for Public Justice, dedicated to creating a more just society.

Mariah Wooten, who has dedicated her entire legal career to justice for criminal defendants;

Mary Frances Lyle, who became the first women lobbyist of a state women's political caucus in the US, and in the early 1980s lobbied the passage in Tennessee of the marriage equality act regarding divorce which among many changes, recognized the value of the work of the homemaker; AND

Barbara Moss, who was the first and definitely most prominent of us to pioneer, embrace and continue to advocate for meaningful maternity, then paternity, then "parental" leave when we had our children.

I wonder what those of you who are starting out or those of you who have been at it for a while will say after a 35 year period if asked: what was your outrageous act and everyday rebellion?...what did you see that needed to change and what revolution will you have had from within to make sure you have the confidence to, as Gloria Steinem's 1994 book title says: "move beyond words"?

I would not have been here today had it not been for the inspiration of Judge Daughtrey, the encouragement of Harlan and the LAW culture that we are in this together.

I have loved this quote from Margaret Mead that is sort of my motto, and I'd like to close with it now:

"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has."

From all my heart, thank you, LAW.

LAW Diversity Committee Essay

Each year the Diversity Committee sponsors an essay contest for high school students (Grades 9 through 12) in the Metropolitan Nashville Davidson County school system. In celebration of Women's History Month, and as a component of the Lawyer's Association for Women's focus on social justice, this year the Diversity Committee presented the following topic and essay question.

TOPIC: Recently, the Defense Department opened all combat jobs to women without exception. The decision to open these jobs overturned a longstanding rule that restricted women from combat roles. The military has taken steps toward inclusiveness including racial integration and lifting the ban on homosexual individuals serving the country openly. There was push back during the process of allowing women in these roles. One belief was that allowing women to serve in combat positions could potentially weaken the armed forces.

Now that these positions have been open to women, there has been discussion concerning the Selective Service System. The Selective Service System maintains information on individuals that are subject to the draft. Currently, women are not required to register with the system and are not subject to the draft. Almost all male citizens that are 18-25 are required to register with the system and are eligible to be drafted if necessary.

ESSAY QUESTION: Considering all combat jobs have been open to women, should women be required to register with the selective service and be eligible for the military draft? In your essay, please state your position, address potential opposing views, and explain why you disagree with them.

The recipient of the second place \$150 scholarship was Amiya Nesbitt. The recipient of the first place \$250 scholarship was Lagnajita Mukhopadhyay. Both students attend Hume-Fogg Academic Magnet School.

Why Not Women?

by Lagnajita Mukhopadhyay
First Place Essay

In their eye-opening novel, Pulitzer Prize winning journalists Nicholas Kristof and Sheryl WuDunn describe women as taking up “half the sky”. This strong statement for equality elucidates my support for women in the Selective Service.

After years of women’s liberation, the road has finally been opened for women in terms of combat. This is why I am perplexed by the sudden halt in progress when it comes to women being required to sign up for the draft. More importantly, the motive behind the original institution of this draft for only men illustrates deep seeded gender discrimination in the part of the institutors. The basis of their argument from the beginning is troubling, and it leaves me with a bad taste in my mouth. How can so many esteemed politicians and astute philosophers put in place such a restriction against women, a draft that is only for men? Even more alarming is the continued stronghold on these values and ideas, ones that have persevered through the countless fights for equality against gender bias.

Being an American woman, it is hard for me to stomach the fact that we have been secluded from such a crucial government institution. In fact, as a result of Selective Service, men get certain benefits from this government, such as employment and scholarships. This shows that women are indirectly deprived of this fundamental right. Many say that forcing women to sign up for the draft takes away the desires of some to remain an honorable civilian, me being one of these people. I do not want to wake up one day and be told that I have to go to war because truthfully, I would not want to go. But can we extend this same desire to men? In this case, what happens to the men that wish to stay a civilian, not a soldier? This question reveals the true reason behind employing only men for the draft: to provide them with extra benefits, not to protect the women at home.

Another argument against women in the Selective Service is the possible physical incapability of women. This to me seems baseless when one looks at the millions of women in the labor force, working heavy labor jobs such as agriculture. Is it right to put women in these conditions all while saying they do not have the physical ability for war? This argument does not represent the tenets of democracy; instead it fosters the presence of hypocrisy. It leaves me wondering which values are truly practiced and not just preached and which ones are just masks to hide years of ongoing discrimination.

Many people think that the restriction on women is necessary so that while the men are at war, the women can keep the house and take care of the children. But this is taken for granted and only applied to Selective Service and not other aspects of life. For example, there are many households where both men and women work, and even some households where the women work while their husbands stay at home. This disconnect divulges a huge gap that is still widening in the United States today.

All in all, not requiring women to enroll in Selective Service is a blatant case of gender discrimination and a violation on fundamental rights. In the novel previously discussed, Kristof and WuDunn talk about turning “oppression to opportunity” in the case of women and their rights. In my opinion, including women in the process of Selective Service alongside men does just this, giving us the sky we so rightfully deserve.



Upcoming Monthly Membership Meetings

May 17, 2016—One Hour General Credit CLE “For the Public Good: Nashville’s Pro Bono Community”

More than one million Tennesseans have incomes below 125 percent of the federal poverty level, and a recent legal needs study reveals that these poorest Tennessee families are experiencing between one and three civil legal problem a year. Legal aid programs around the state are unable to meet this overwhelming need with limited staffs, and pro bono programs trying to fill the gap simply do not have enough resources or volunteer lawyers. LAW wants to help bridge this gap by providing information on many of the pro bono opportunities available to practicing lawyers in and around Nashville. Panelists: For the Tennessee Bar Association, Corporate Counsel Pro Bono Initiative: Andrew Branham, Co-Chair and Founder of the Corporate Counsel Pro Bono Initiative; For the Volunteer Lawyers & Professionals for the Arts (“TNVLA”): Casey Gill Summar, Co-Founder and Executive Director of the Arts & Business Council; For the Tennessee Supreme Court Access to Justice Commission Initiative: Billye Sanders, Attorney. (She recently completed a seven-year term on the Access to Justice Commission.)



Andrew Branham



Casey Gill Summar



Billye Sanders

June 21, 2016—One Hour General Credit CLE “Annual Legislative Update”

LAW looks forward to its June membership meeting when Mandy Haynes Young and Erica Bell Vick will deliver the Annual Legislative Update on what took place on The Hill during the 109th Tennessee General Assembly. Mandy is a partner at Butler Snow where she practices in the areas of governmental relations, healthcare and insurance law. Erica is Senior Public Policy Advisor at Bass Berry & Sims.



Mandy Haynes Young



Erica Bell Vick

Background and Purpose of Marion Griffin Women's Symposium

In 2011, LAW, along with several other women's legal entities and bar foundations, received a *cy pres* award from a pharmacy class-action settlement. The settlement agreement contemplated the *cy pres* distribution of those funds "for the general benefit of and advancement of women." LAW's membership voted to create and host the Marion Griffin Women's Symposium in furtherance of the intent of the *cy pres* award.

The purpose of the Marion Griffin Women's Symposium is to advance and educate women in the legal profession within Nashville's legal community. The symposium will feature a keynote speaker and several breakout sessions, which will address current legal and societal issues impacting women. The symposium also will provide a unique collaborative forum and networking opportunity for symposium attendees, inclusive of local women lawyers and law school students.

We are excited that Vanderbilt Law School has agreed to partner with LAW to host the Symposium. The Symposium Steering Committee is busy planning.

ADMINISTRATIVE LAW IS NOT FOR SISSIESⁱ

An Introduction to the Administrative Procedures Division Central Panel of Administrative Judges Tennessee Department of State Part I

© Judge Joyce Grimes Safley 2016

The TENNESSEE UNIFORM ADMINISTRATIVE PROCEDURES ACT, T.C.A. §4-5-101, *et seq.*, was enacted in 1974.ⁱⁱ The Administrative Procedures Division, Central Panel of Administrative Judges was created at that time so that State agencies could have an independent, central panel of Administrative Judges preside over State Agency cases. The Administrative Procedures Division (APD) is contained within the Tennessee Department of State in the Legislative branch of Tennessee state government. Central Panel Administrative Judges are appointed by the Secretary of State.

Over half of the States in the United States use the "Central Panel of Administrative Judges" system, with cities such as Chicago, the District of Columbia, and New York City also using a Central Panel system for administrative hearings. Other States may use Administrative Judges employed by and attached to individual state agencies, or a "combination approach" where there are panels that hear more than one state agency's cases, but do not hear the wide variety of cases heard by the Tennessee's and other States' Central Panel Judges. There are a few State agencies in Tennessee that have elected to utilize agency-employed Administrative Judges for specific hearings rather than to utilize the Central Panel of Administrative Judges.ⁱⁱⁱ

The Central Panel Administrative Judges within the Department of State hear around seventy (70) different types of cases for various State Departments, State Agencies, Cities such as Metro-Nashville and Chattanooga, and some Counties within the State. Each Central Panel Administrative Judge actually hears approximately 450 hearings per year, which is known as a "high volume" caseload.^{iv} All of these cases are conducted "on the record" with a court reporter. Additionally, the Central Panel Judges are all Rule 31 trained Mediators who conduct mediations in various cases as needed, primarily Special Education (IDEA) cases, Civil Service and Board of Appeal Cases, and Environmental Cases.

The Central Panel Administrative Judges also preside over many cases sitting with Boards or Commissions, such as the Child-care Agency Board, Board of Appeals (State Employee disciplinary cases), the Board of Medical Examiners, the Board of Veterinary Examiners, the Nursing Board, other Health Related Boards, the Accountancy Board, the Motor Vehicle Commission, etc.) In cases in which the Central Panel Judges preside over Board or Commission cases, the Board or Commission is the decision-maker in the case, with the members "voting" on the decision. The cases are akin to Jury trials, with the Administrative Judge

ruling on pre-hearing motions, giving Board or Commission “Opening Charges”, conducting the contested case or trial, and ruling on objections, procedural matters, and evidentiary matters during the case. The Judges again “Charge” the Board or Commission prior to presenting the case to the Board or Commission for deliberations. Such cases involve expert witness testimony, require pre-hearing orders, scheduling orders, and rulings on preliminary motions (including dispositive motions, evidentiary rulings on motions *in limine*, etc.). See T.C.A. §4-5-301(1).

The rest (approximately 50%) of the Central Panel’s cases are “Bench Trials”. See T.C.A. §4-5-301(2). The Central Panel Administrative Judges hear and decide many cases sitting alone (such as Teacher Licensing cases, Commerce & Insurance Securities, Real Estate, and Licensure cases, Abuse Registry cases, Tennessee Human Rights Commission Cases, Civil Service Cases, Special Education (IDEA and §504) cases, Environmental cases, TennCare Medical Necessity Appeals, Department of Safety Forfeiture Cases, Healthcare Certificate of Need Cases, etc.). The Central Panel Judge issues a written order in each of these cases. In addition to the usual pre-hearing motions, including dispositive motions, these cases require the Administrative Judge to issue Initial Orders containing the decision in the case, stating findings of fact, conclusions of law, and the ultimate decision. T.C.A. §4-5-314(b). Initial Orders issued by the Administrative Judges, Central Panel, are published on UNIVERSITY OF TENNESSEE COLLEGE OF LAW’S website.

The cases, whether Bench Trials, or Cases in which the Administrative Judge sits with Boards or Commissions, may vary from simple cases with *pro se* parties which conclude in an hour or so; or may, in complicated cases such as Certificate of Need Cases, Special Education (IDEA) Cases, certain Environmental, and Board or Commission Cases, take several weeks to conclude.

Due Process/Constitutional Issues

Licenses or permits granted by the State of Tennessee are property interests. The U.S. Constitution, and also the Tennessee Constitution, dictates that “no State shall deprive any person of life, liberty, or property, without due process of law.”^v A professional license is property. T.C.A. §4-5-307 requires that in a contested case, all parties shall be afforded the opportunity for a hearing after reasonable notice. Thus, if the State takes any action against an individual’s professional license, the party holding that license (or in some cases, the party who has been denied the license) must receive due process.

Due Process requires reasonable notice and an opportunity to respond to the charges and to be heard, prior to any action being taken. For this reason, when the State or any government agency seeks to deny, revoke, place on probation, suspend, or otherwise limit any professional license or permit, the person seeking the license or permit, or holding the license or permit must be given due process.^{vi}

While the “facial Constitutionality” of a Statute cannot be determined in an Administrative Case by a Central Panel Administrative Judge, the Judge can rule on whether or not a Statute, Rule, or Regulation has been applied constitutionally and in keeping with Due Process. *Richardson v. Tennessee Board of Dentistry*, 913 S.W. 2d 446 (Tenn. 1995) (Facial challenges to the constitutionality of a state or federal statute may not be determined by an administrative judge; however, constitutional challenges to the application of a statute to a case may be resolved by the administrative judge, and an Administrative Judge may address the constitutionality of an agency’s Procedure, Rule or Regulation.)^{vii}

Pre-Hearing Matters

Generally, after a case has been docketed, the Administrative Judge will set up a pre-hearing teleconference, and will then issue a Pre-Hearing Order. The Pre-Hearing Order will set the matter for hearing, supply the parties with instructions and deadlines for filings in the case, and may include a scheduling order for discovery, expert witness disclosures, dispositive motion deadlines, etc.^{viii}

Tennessee Rules of Evidence and Tennessee Rules of Civil Procedure

The TENNESSEE RULES OF EVIDENCE and the TENNESSEE RULES OF CIVIL PROCEDURE do apply to Central Panel Administrative Hearings. See T.C.A. §4-5-312 and T.C.A. §4-5-313. Sometimes attorneys who are not familiar with Central Panel Administrative Hearings will mistakenly assume that standard “hearsay objections” and other evidentiary rules are not applicable to Administrative Hearings. This assumption would not be correct. See TENN. COMP. R. & REG. 1360-04-01-.01(3). See also *Yokley v. State Board of Education*, 305 S.W.3d 523, 526 (Tenn. 2009). (TENN. RULES OF CIV. P. apply to administrative hearings under the Tennessee UAPA such that the grant of a summary judgment by an Administrative Judge was proper); *Tenn. Environmental Council, Inc. v. Tenn. Water Quality Control Board (aka “The Tosh Farms case”)*, 254 S.W.3d 396 (Tenn. Ct. App. 2007), *perm. to appeal denied* (Tenn. 2008) (Administrative Judges decide all procedural issues in Administrative Cases pursuant to the TENN. R. CIV. P.)

Pitfalls for the Inexperienced Attorney Litigating Administrative Cases

Sometimes attorneys who have not tried Administrative Law cases will incorrectly assume that Administrative Hearings are “informal” discussions with the Judge, Board or Commission members. For this reason, they may not see the need to follow the

usual procedural and evidentiary rules, or pre-hearing order filing deadlines, etc. This assumption will not be helpful in winning the client's case.

One reason for this misconception is the evolution of Administrative Law over the forty (40) plus years since the enactment of the ADMINISTRATIVE PROCEDURES ACT in 1974. In the ensuing years, Central Panel Administrative cases have become more sophisticated and more complicated. Frequently there is attorney representation for all parties. The cases may involve multiple parties, including Intervenors. While *pro se* litigants appear frequently in "TennCare Medical Necessity Appeals"; in many Central Panel Administrative cases, the non-governmental party will be represented by counsel. Of note, a corporation or artificial entity *must* always be represented by an attorney in an administrative case.

To say that it is awkward and embarrassing for an attorney or a *pro se* litigant to appear at a formal administrative trial expecting to casually "chat" with the Judge, Board and/or Commission members about the case, is an understatement. Importantly, the unprepared Attorney does a grave disservice to his or her client. While Central Panel Judges are allowed to assist a *pro se* litigant in developing the record in cases such as TennCare Medical Necessity Appeals, a *pro se* litigant appearing before Board or Commission at an Administrative Hearing is at a distinct disadvantage.

The second most common pitfall for inexperienced Attorneys litigating Central Panel Administrative Cases, is failing to recognize that not only do relevant STATUTES, the TENNESSEE ADMINISTRATIVE PROCEDURES ACT, The UNIFORM RULES OF PROCEDURE FOR HEARING CONTESTED CASES BEFORE STATE ADMINISTRATIVE AGENCIES, TENN. COMP. R. 1360-04-01, *et seq.*, the TENN. RULES OF CIVIL PROCEDURE, and the TENNESSEE RULES OF EVIDENCE apply to such cases, *additionally, each agency and/or local governmental entity may have RULES, REGULATIONS, and POLICIES which are applicable and govern the case.* State agency RULES are set forth on the Tennessee Secretary of State's website: <http://sos.tn.gov/effective-rules>. Administrative cases for local governments frequently involve a City's charter provisions and local CITY COUNCIL RULES. Cities' charters and relevant RULES for Cities' Administrative Cases can usually be found on individual Cities' websites. A careful review and study of *all applicable law*, including relevant case law, is critical to winning an Administrative Case.

ⁱThe late Justice Antonin Scalia made this statement regarding Administrative Law during an address to the Duke Law School's student body. A. Michael Nolan, *State Agency-Based v. Central Panel Jurisdiction: Is There a Deference?*, 29 J. Nat'l Ass'n Admin.L. Judiciary (2009).

ⁱⁱThe Federal UNIFORM ADMINISTRATIVE PROCEDURES ACT for Federal Agencies was enacted in 1946.

ⁱⁱⁱAs examples, the Department of Children's Services employs agency Administrative Judges to hear "Indication" Administrative cases concerning child abuse and neglect. The Department of Finance and Administrative employs agency Administrative Judges to hear TennCare/Medicaid Eligibility Administrative cases which deal with financial and other technical requirements for TennCare/Medicaid eligibility.

^{iv}All cases do not go to hearing due to settlements, voluntary dismissals, etc. Accordingly, each Central Panel Judge's assigned caseload is actually greater than the cases which go to hearing. Additionally, Central Panel Administrative Judges frequently conduct mediations in cases, which is not reflected in their "hearing" caseload.

^v14TH AMENDMENT, U.S. CONSTITUTION; *See also* §8, TENNESSEE CONSTITUTION. (Deprivation of life, liberty or property under law; due process. That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.)

^{vi}Civil Service positions with government employers are also considered "property interests" subject to Due Process requirements.

^{vii}For an interesting discussion of the *Richardson* case and Constitutional issues that arise in Administrative Law Cases, *See* Mary Kay Foy, *The Authority of an Administrative Agency to Decide Constitutional Issues: Richardson v. Tennessee Board of Dentistry*, 17 J. NAT'L ASS'N ADMIN. L. JUDGES. (1997)

^{viii}The exceptions to the normal issuance of "Pre-Hearing Orders" for Central Panel Administrative cases are TennCare Medical Necessity Appeals and Department of Safety Forfeiture hearings. Due to the relatively short amount of time after these cases are docketed and set for hearing, Pre-Hearing Orders are not required nor are they practicable in these cases.



Judge Joyce Grimes Safely is an Administrative Judge for the State of Tennessee, having received her appointment in September 2001. Prior to receiving her appointment she practiced civil litigation in state and federal courts and has been listed as a Rule 31 Mediator with the Tennessee Supreme Court since 2000. She has joined the LAW Board this year as a co-chair for the Membership Committee.

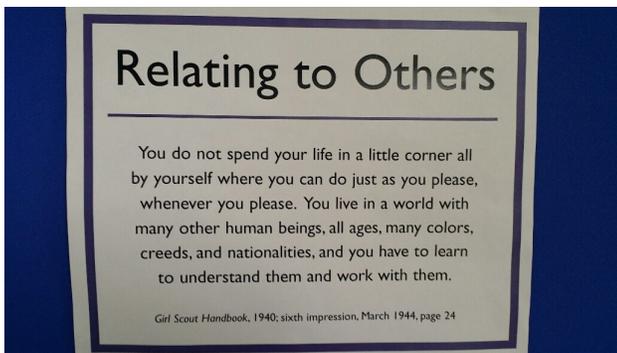
LAW Committee Corner

Recent Events Community Relations Committee

LAW / Girl Scouts – Win/Win negotiation event on April 23!

by Marnie Huff

As an LAW Community Relations Committee project in partnership with the Girl Scouts of Middle Tennessee, Tracy Alcock, April Jackson, Leigh Ann Roberts, Liz Sitgreaves, Joycelyn Stevenson, and Marnie Huff enjoyed teaching negotiation skills to 4th and 5th grade Girl Scouts. The girls earned the Girl Scouts' Win/Win negotiation patch. The girls' take-aways: 1) always prepare for negotiations; 2) think about what you actually want; 3) ask the other person what they want; 4) be friendly and make fair trades; and 5) it takes practice to be a good negotiator. Good advice for all of us.



Upcoming Events

May 19, 2016 Community Services Committee

LAWYERS FOR LITTLES - BOWL FOR KIDS SAKE 2016

Do you want to enjoy a fun night of bowling?
Do you want to spend time with fellow LAW members?
Do you want to raise money for Big Brothers Big Sisters of Middle Tennessee?
If you answered **YES** to any of these questions: You should join the LAW team at the upcoming Lawyers for Littles-Bowl for Kids Sake 2016!

When: Thursday, May 19, 2016—Registration begins at 5:30 p.m.

Where: Donelson Plaza Strike and Spare, 2710 Old Lebanon Road, Nashville, TN 37214

What: LAW is forming a team to BOWL and to raise money for the Big Brothers Big Sisters of Middle Tennessee. Our goal is to raise \$750 for the team. Each and every dollar benefits the children of Big Brothers Big Sisters. With our donations, the children are provided opportunities to succeed in school and in life.

How: 1) Visit our LAW for Littles Team Website: [Click Here for Team Website](#)
2) Click “Join Team,” and complete the information to register.
3) Email Tracy Alcock, Community Relations Co-Chair Tracy.Alcock@ag.tn.gov and let her know that you are signing up to be a team member.

Donate: If you cannot participate on the team, but you still would like to be involved, our LAW team would sincerely appreciate any donation that you can make towards our goal of raising \$750 to support Big Brothers Big Sisters of Nashville. We would appreciate any assistance you can give!

[Click Here to Donate Now](#)

Visit our Team Page and Select “Donate” to make a contribution to our team effort.

May 31, 2016 Networking Committee

Meet the new LAW board at the Pour House ay 6:00 pm. The Pour House is located at 730 8th Avenue South. The group will meet at the upstairs bar. Please register on the LAW website by May 27th so we can tell the restaurant how many folks to expect. Valet or self-parking available.

KUDOS

. . . to Hannah Lanford on her marriage to Blake Bernard at Southern Oaks Plantation in New Orleans on April 2nd.

. . . to Linda Knight and her husband, Richard Knight, on being chosen to be the Distinguished Alumni of the Year at their alma mater, Cumberland School of Law in Birmingham. This is the first time the school has ever given this as a joint award.

. . . to Kristi Arth and her husband Bill, on the birth of their first child, Liam

. . . to Marnie Huff who was honored for her pioneering and lasting contributions to the field of mediation as part of the celebration of Mediation Day. Marnie spearheaded formation of the Coalition for Mediation Awareness in Tennessee and is a Founding Member of the Tennessee Association of Professional Mediators. She was also honored by The Coalition for Mediation Awareness in Tennessee which presented the ninth annual Grayfred Gray Public Service in Mediation Award at the Lipscomb University Institute for Conflict Management.

. . . to LAW members listed in the Nashville Business Journal's list of the "Best of the Bar"

Anne Arney
Kathryn Barnett
Margaret Behm
Julian Bibb
Martha Boyd
Mark Chalos
Will Cheek
Miranda Christy
Lela Hollabaugh
Michele Johnson
Lauren Kilgore
Linda Knight
Ed Lanquist
Kim Looney
Anne Martin
Lynn Morrow
Barbara Moss
Andrea Perry
Erin Palmer Polly
Donna Roberts
Joycelyn Stevenson
Luther Wright
Tyler Yarbro

. . . to Bernadette Welch on her induction as a Fellow to the Tennessee Bar Foundation.