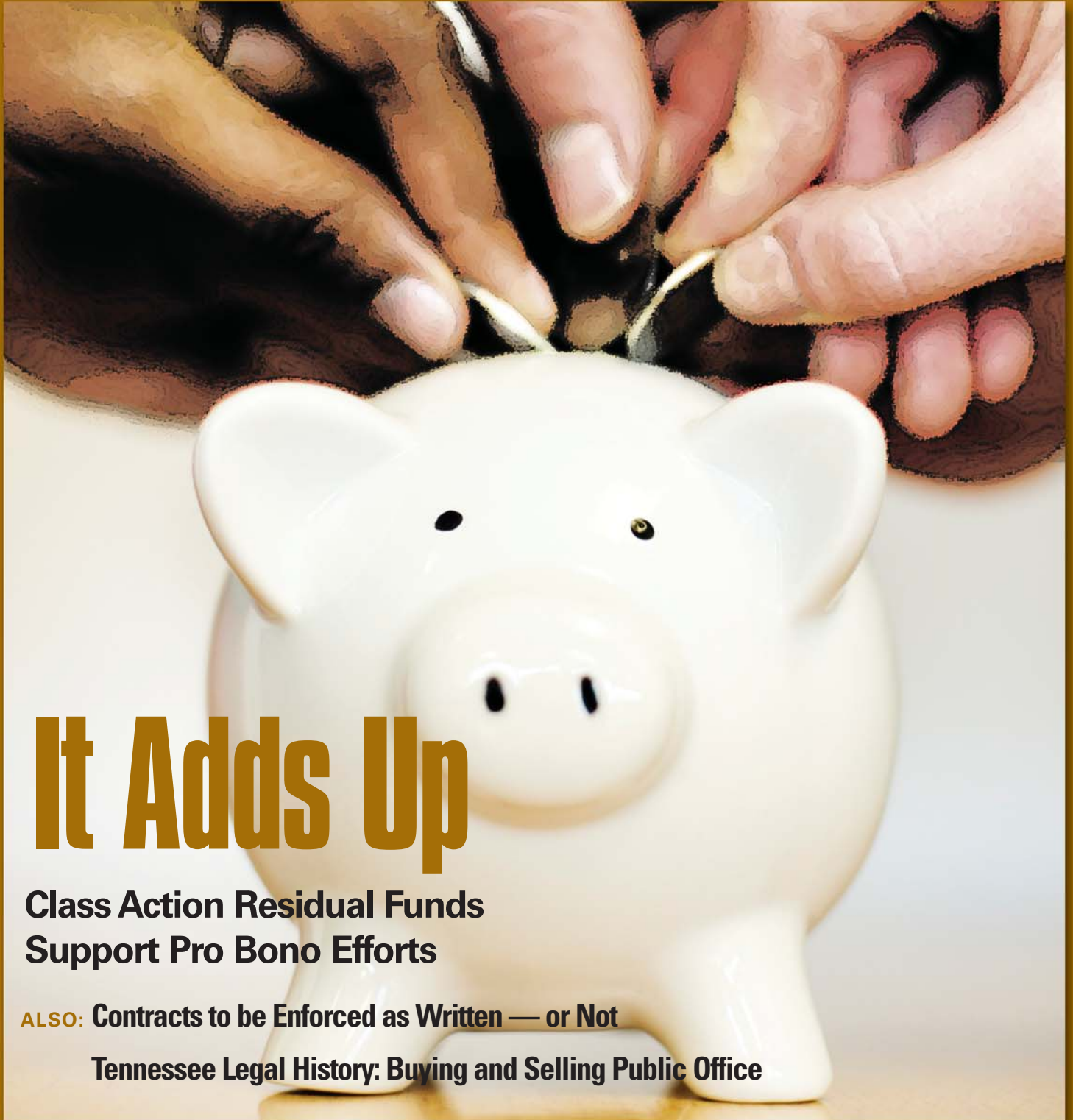


# TENNESSEE BAR JOURNAL

MARCH 2009 | VOLUME 45, NO. 3

TBA.ORG



## It Adds Up

**Class Action Residual Funds  
Support Pro Bono Efforts**

**ALSO: Contracts to be Enforced as Written — or Not**

**Tennessee Legal History: Buying and Selling Public Office**

# THE COMPLETE MEMBERSHIP

## MONEY SAVING BENEFITS

TBA members have access to a wealth of member benefits. Here's a sample of what you can expect with your membership.

## SAVE ON SHIPPING

Save from 5 to 21 percent off select FedEx Express® services and 4 to 12 percent off select FedEx Ground® services.

## DISCOUNTS AT OFFICE DEPOT

Receive discounts on most office supplies from Office Depot. Order by fax, phone, internet or in person.

## BANKING PRODUCTS

First Tennessee is committed to adding value to the legal community with special rates, waived fees and cash back on products and services.

## TBA MEMBER INSURANCE SOLUTIONS

TBA Lawyers Professional Liability Insurance Solutions program, administered by Clay & Land Insurance, provides Tennessee Bar Association members with the most comprehensive and fairly priced professional liability coverage available.

## SAVINGS ON AUTO INSURANCE

The Tennessee Bar Association has partnered with GEICO Auto Insurance Company to offer you competitive products and services. In addition to the savings that GEICO policyholders have always enjoyed, eligible TBA members will receive a members-only discount of 8% on auto insurance premiums.

## ONLINE DATA BACKUP SOLUTION

i365 helps you stay compliant as it backs up your online data quickly and securely. TBA members get 10% off.

## ENHANCED RESEARCH TOOLS

Do your legal research with Fastcase. Get court opinions, statutes, regulations, constitutions and court rules from all 50 states as well as opinions from the U.S. Supreme Court and all Federal Courts of Appeal, free with TBA membership.

To find out more or sign up for a benefit, visit **TBAlink** at [www.tba.org/tbinfo/main](http://www.tba.org/tbinfo/main). Or contact the TBA at (800) 899-6993 or [membership@tnbar.org](mailto:membership@tnbar.org)

# TENNESSEE BAR JOURNAL

MARCH 2009 VOLUME 45, NO. 3

## JOURNAL STAFF

**SUZANNE CRAIG ROBERTSON**, Editor  
[srobertson@tnbar.org](mailto:srobertson@tnbar.org)

**LANDRY BUTLER**,  
Publications & Advertising Coordinator  
[lbutler@tnbar.org](mailto:lbutler@tnbar.org)

**BARRY KOLAR**, Assistant Executive Director  
[bkolar@tnbar.org](mailto:bkolar@tnbar.org)

## EDITORIAL BOARD

**ANDRÉE SOPHIA BLUMSTEIN**, Nashville, Chair  
**WADE V. DAVIES**, Knoxville  
**KATHRYN REED EDGE**, Nashville  
**SUZANNE LANDERS**, Memphis  
**LAURA A. STEEL**, Kingsport  
**JONATHAN O. STEEN**, Jackson  
**MATTIELYN WILLIAMS**, Nashville  
**DONALD F. PAINE**, Editorial Board  
Member Emeritus, Knoxville

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

POSTMASTER: Send address correction to *Tennessee Bar Journal*, 221 Fourth Ave. N., Suite 400, Nashville, TN 37219-2198.

© COPYRIGHT 2009 TENNESSEE BAR ASSOCIATION

ADVERTISING POLICY: While the *Tennessee Bar Journal* attempts to confine its advertising to legitimate business endeavors, the statements and material appearing in the advertisements are solely the responsibility of the advertiser. *The Journal* and the Tennessee Bar Association do not directly or impliedly endorse, support or vouch for the authenticity of any representation made in any advertisement appearing herein. *The Journal* does not intend to accept any advertising material that is false and misleading. *The Journal* reserves the right to refuse an advertisement it deems inappropriate.

CHANGE OF ADDRESS: If your address has changed, please notify the Tennessee Bar Association at 221 Fourth Ave. N., Suite 400, Nashville, TN 37219-2198, so your address will be updated for the *Tennessee Bar Journal* and other TBA publications.



## BOARD OF GOVERNORS

**BUCK LEWIS**, Memphis, President; **GAIL VAUGHN ASHWORTH**, Nashville, President-Elect; **SAM ELLIOTT**, Signal Mountain, Vice President; **MARCIA EASON**, Chattanooga, Immediate Past President; **MARK WESTLAKE**, Nashville, Treasurer; **JASON PANNU**, Nashville, Secretary; **CYNTHIA WYRICK**, Sevierville, East Tennessee Governor; **BARBARA HOLMES**, Nashville, Middle Tennessee Governor; **CARL CARTER**, Memphis, West Tennessee Governor; **FRANK JOHNSTONE**, Kingsport, Governor/1st District; **JACK H. "NICK" MCCALL JR.**, Knoxville, Governor/2nd District; **CHRIS VARNER**, Chattanooga, Governor/3rd District; **BOBBY HIBBETT**, Lebanon, Governor/4th District; **JACKIE DIXON**, Nashville, Governor/5th District; **PATRICK CARTER**, Columbia, Governor/6th District; **JONATHAN STEEN**, Jackson, Governor/7th District; **JASON CREASY**, Dyersburg, Governor/8th District; **DANNY VAN HORN**, Memphis, Governor/9th District; **JANE POWERS**, Crossville, Speaker/House of Delegates; **MICHELLE SELLERS**, Jackson, President/TBA Young Lawyers Division; **DAVID CHANGAS**, Nashville, President-Elect/TBA Young Lawyers Division; **JUDGE BILL ACREE**, Union City, President/Tennessee Judicial Conference; **GREELEY WELLS**, Kingsport, President/District Attorneys General Conference; **DAVID DOYLE**, Gallatin, President/District Public Defenders Conference; **BILL HARBISON**, Nashville, General Counsel.

## TENNESSEE BAR ASSOCIATION STAFF

**ALLAN F. RAMSAUR**, Executive Director; **BARRY KOLAR**, Assistant Executive Director; **SHARON BALLINGER**, Receptionist; **ANGELA BIANCHI**, A/V Webcasting Coordinator; **KAISHA BOND**, CLE Coordinator; **LANDRY BUTLER**, Publications Coordinator; **THERESE BYRNE**, Director of Continuing Legal Education; **ANJANETTE EASH**, Access to Justice Coordinator/Youth Court Coordinator; **MINDY FULKS**, Curriculum Development Coordinator; **SARAH HAYMAN**, Committees & Sections Coordinator; **PAM JOHNSON**, Financial Administrator; **JENNY JONES**, Executive Assistant; **MONICA MACKIE**, Leadership Law Director; **COLLEEN O'CONNELL**, Membership Director; **LYNN POINTER**, Programs Administrator; **SUZANNE CRAIG ROBERTSON**, Editor, *Tennessee Bar Journal*; **APRIL SCHMITZ**, Accounts Receivable/Customer Service Coordinator; **STACEY SHRADER**, Media Relations and Young Lawyers Division Director; and **BRITT SIMONSON**, CLE Coordinator.





## A Salute to 'Short-Building' Lawyers

Lawyers, like kids, say the darndest things. During one of our TBA House of Delegates meetings, one of the House members explained to me that country lawyers call city lawyers like me, "tall building lawyers," meaning of course, that we practice law in tall buildings and implying, quite accurately, that we tall-building lawyers have gaps

*"There is no more sure tie between friends than when they are united in their objects and wishes."*

— Cicero.

the size of Humvees in our understanding of the everyday life of small-town lawyers.

For example, the night after the January Pro Bono Awards Luncheon, when we honored 39 firms that had adopted written pro bono plans, a self-styled country lawyer said to me, "I don't have a written pro bono plan. My pro bono plan is resisting the temptation to lock the door." It's true, even

judicial district to deal with the burdens of appointed criminal cases and to meet the tremendous needs for pro bono volunteers in their counties and districts. Public defenders quickly develop conflicts of interest and the burdens of an appointed criminal case can materially impact the ability of a country lawyer to make a living.

Short-building lawyers also have to worry about —

- how to combat the TV advertisers
- all the ways the recession has impacted rural areas more profoundly
- whether their clients can pay what it costs to provide first-class service
- how to find top-notch help in small towns and how to keep it
- how to keep your game face on 24/7, even when you are at Kroger
- how to return all calls instantly and deal with the walk-ins
- how to handle a divorce or write a will when you know everybody in the family and everybody in the family knows you and every action has a ripple effect in someone's life
- how to balance the need to do public service work and take care of staff and family
- what do you do on your first death penalty case when your client wants death
- should you really call an expert about the significance of the spots on a Holstein calf.

*continued on page 11*



though my dad and my dad's dad grew up in Crockett County and even though I worked in my Grandma LaVerne's pecan grove for part of many summers when I was growing up, there is a lot that I could learn about the challenges faced by short-building lawyers.

For one thing, it is very difficult for a small number of lawyers in a county or

## PRESIDENT'S PERSPECTIVE *continued from page 3*



Greenholtz

entering private practice, he served as a law clerk to Tennessee Supreme Court Chief Justice William M. Barker. Hannah handles commercial and business disputes and product liability, employment, insurance, personal injury and transportation law. He received his law degree from the University of Tennessee in 1994. Sims focuses his work on consumer financial services, general business law and nonprofit organizations. He earned both his law



Hannah



Sims

degree and masters of business administration from the University of Tennessee in 1998. Prior to joining the firm, Sims clerked for Tennessee Court of Appeals Judge Houston M. Goddard.

**Jimmie Lynn Ramsaur** assumed the duties of criminal chief in Tennessee's Middle District U.S. Attorneys Office. She will serve as acting chief until final approval from the U.S. Department of Justice. The appointment by U.S. Attorney **Ed Yarbrough** comes as Criminal Chief **Eli Richardson** prepares to depart for an assignment in Eastern Europe.

**Ashley S. Rudy** has joined the Nashville law firm of Rudy, Wood & Winstead PLLC, where she will handle commercial and civil litigation, corporate law, contracts, estate planning, probate, real estate and commercial transactions. A Nashville native, Rudy received her law degree at the Nashville School of Law in 2008. 



Rudy

Sometimes it helps if a TBA president just says out loud how much we all appreciate small-town lawyers, and that we know that you face challenges that others in our profession do not face, and that many of the resources and privileges that we take for granted in the cities are not so easy to come by everywhere. Our best estimate is that 35 to 40 percent of the TBA's membership is located outside of the major cities. We should never forget, as former TBA President Larry Wilks taught us in 2006, to "Serve Every Lawyer Every Day."


That having been said, I think that it is also important for our profession to remain unified. We should never forget that there are core values that should bind all lawyers together.

These values include, but are not limited to:

- A belief that our dealings with one another and with courts must reflect honesty and integrity.
- A belief that although we owe our clients the duty of zealous representation, we can do so and be professionally courteous and civil to our colleagues at the same time.
- An insistence on judges who are learned in the law, fair in the application of the law, hardworking, and free from bias or influence.
- A belief in the rule of law — the notion that no one is above the law and that the law should be applied the same to the least of these as it is to those with power and influence.
- A belief that the criminally accused is entitled to effective assistance of counsel.
- A belief in equal access to justice. We believe that every Tennessean deserves their day in court. If at all possible, everyone should be represented by counsel in civil as well as criminal matters.
- A belief in the value of a quality legal education. We expect that our law schools will impart the

legal knowledge necessary for a foundation in the law as well as the research, writing, analytical, and advocacy skills that will be critical throughout a young lawyer's professional life. We expect our law schools to teach law students the ethical rules that govern our conduct.

These are not just the values of tall-building lawyers, or short-building lawyers, or plaintiff's lawyers or defense lawyers, or litigators, or intellectual property lawyers, or tax lawyers, or in-house corporate lawyers, or members of the judiciary. These are not just West Tennessee values or Middle Tennessee values or East Tennessee values. These are not just the values of young lawyers or senior practitioners.

These are the core values of our profession. We must remain united around them and unwavering in our defense of them. The Tennessee Bar Association welcomes, and strives to serve, and yes, *needs* each and every Tennessee lawyer. And, we must remember that, whether we practice in a small office in Bristol or a tall building in Memphis, the values that bind us together are a thousand times stronger than our differences. 

### LETTERS OF THE LAW

*continued from page 4*

and skill to be social change agents. Advancing diversity in the workforce as well as in our own profession is powerful change. We cannot ignore disability as an element of diversity. After all, any one of us can become a person with a disability through injury, accident, mental illness, substance abuse, or the aging process in general. Disability does pose limitations, but entering and thriving in a career for which we are qualified should not be one of them.

— *Andrea L. Cooper, Hermitage*