

# Rooker Report

August 15, 1995

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## METRO SHARE OF LIT SURTAX WRITTEN OUT

Although it had every right to do so, the Metropolitan Government said it wasn't entitled to benefit from a recently passed state law designed to help finance legal aid for the poor.

And to correct a three-year old ordinance that enabled such a capitalization, an amendment was approved by the Metro Council forfeiting the county's \$10 share of the hike.

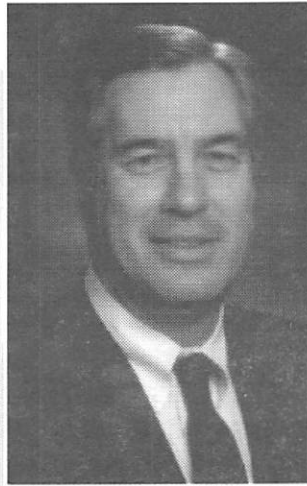
That means that privilege taxes collected on cases filed in both Circuit and Chancery courts now total \$37.50 instead of the \$47.50 being charged since the state law went into effect on July 1.

"It also means that a lot of customers are entitled to refunds," said Circuit Court Clerk Richard Rooker, noting that the amendment was retroactive to July 1.

The state law was enacted to help offset existing and proposed federal cutbacks to the nation's legal aid programs. It called for a \$10 increase in the state's portion of litigation taxes with all of the surcharge being earmarked for legal aid to the poor.

But because of a 1992 ordinance requiring Metro to collect taxes equal to the state portion, the increase here was doubled.

In amending the ordinance, the council allowed for future flexibility by requiring changes by resolution.



JUDGE EVERETT

*"It will unify  
the courts and  
standardize  
jurisdiction."*

## The Changing Judiciary

## Probate or Circuit, It's Everett's Court

When the Davidson County Probate Court becomes the Seventh Circuit Court three years from now – compliments of the state legislature – don't look for any dramatic transformations.

In all likelihood, you won't notice any changes at all, despite the court's new classification elevating it to equal status with the county's other six civil courts of record.

The court will retain exclusive jurisdiction over the probate of wills and all matters related to estate administration; and drunken driving cases are almost certain to remain there because of an associated public service program for offenders that functions most efficiently with applied continuity.

Heir to the new circuit title is the honorable James R. Everett Jr., who has reigned over the county tribunal since 1982.

(See EVERETT'S COURT, Page 2)

## New civil rules focus on process

Plaintiffs in civil lawsuits now may ask defendants to waive service of process as a means of reducing litigation expenses, the state supreme court has decided.

As an alternative to the customary service of process, defendants must comply with written waiver requests or become liable for subsequent costs attached to the service.

The new procedure was one of two changes to the state's rules of civil procedures, effective July 1. The other revision extends from six months to a full year the time limit for reissuing process to keep a case active. Plaintiffs can no longer rely

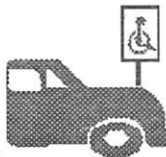
upon the original filing date to toll the running of a statute of limitations unless initial process has been issued in a timely manner.

In revising the rule on service of process, the court noted that "an individual, corporation, or association that is subject to service...has a duty to avoid unnecessary costs of serving the summons."

After making formal request for the waiver, the plaintiff "shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the

(See CIVIL RULES, Page 2)

## INSIDE



With higher fines now on the books for violating handicapped parking restrictions, Metro gets green light for hiring disabled volunteers to help with enforcement.

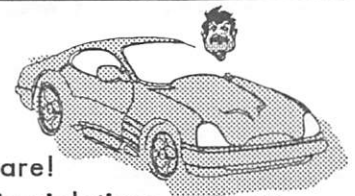
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## Motorists Under Glass



Drivers beware! Certain traffic violations can now cost you up to \$500 in fines. Metro designated seven traffic offenses as being serious enough to warrant the steeper penalties.

Page 3



## Judge's Trash Was No Treasure For Finder

One man's trash is not *always* another man's treasure, as suggested in that old familiar wheeze.

A male member of a public service cleaning crew learned that lesson the hard way. His would-be "treasure" turned out to be a ticket to trouble.

It seems that the worker, whose identity is unimportant, came across a blank check while emptying a waste basket in General Sessions Judge Mike Mondelli's office in the Ben West Building.

The following day, a First American Bank teller telephoned the judge's secretary and said a man had, moments earlier, presented a check on Mondelli's account in the amount of \$25. Payment was denied, the teller said, because there was no signature on the check and because the account had been closed.

Secretary Sue Bryant immediately reported the incident and security guard Frank Halliburton and Louis Washburn of the court's probation department hurried to the nearby bank and took the suspect into custody.

Mondelli swore out a warrant charging the cleaning man with theft.

The judge, who only recently moved into the Ben West office, said he was reorganizing his files when he came across an old checkbook from an account that had been closed for about five years. Before tossing the checks into a trash can, he said he attempted to tear up all the old blank checks but "I must have missed one."

Mondelli thought it strange that the suspect made out the check for such a small amount. "I suppose he figured a larger amount might be too suspicious and that he would have a better chance of getting \$25," the judge said.

At any rate, the disposal slipup has been extremely grating on Mondelli, who, among other things, was summoned by the sheriff's office to prosecute the case on the wrong date. "They called and said to be there on July 28," said the judge, who dropped everything to make the appearance only to learn that the case was scheduled for August 28.

And guess which judge is scheduled to hear criminal cases on that date?

## Everett's Court: Circuit Court Status Due in '98

(From Page 1)

Only the second judge to occupy the court since its inception, Everett has been an innovator of unique solutions with a talent for successfully selling his ideas for implementation. As a result, the court has assumed an expanded role, its own probation department, and a broad jurisdictional base that requires the services of both civil and criminal clerks.

If the court has increased in importance as a social watchdog, much of the credit goes to Everett's initiative. Because of his high profile persona, he is more identifiable than the court he rules, a fact supported by repeated references to "Everett's Court."

Since assuming the judgeship in 1982 when he was selected by voters to replace retiring judge Shelton Luton, the personable Everett has displayed a penchant for tackling the toughest of assignments with a brash resolve.

He started his own probation department for persons convicted of drunken driving, sentencing them to public service work in lieu of jail time, thereby satisfying legal obligations while saving the government labor costs. The program allowed Everett to expand his staff to include an independent probation office to oversee the project, which continues to grow in census.

When Everett was assigned to preside over a recent high-profile vehicular homicide case involving a young, pregnant woman, he chose to select a jury from another county rather than consider a change of venue.

It was the first time a jury was bused from one county to another and sequestered for the duration of a trial. Some seasoned court observers still marvel at the uniqueness of the procedure.

Among his other endeavors, Everett supported efforts to have his court reclassified, predicated on his belief that it would "unify the courts and standardize jurisdiction" while eliminating confusion over the specific roles of the courts.

The change also means that the state, rather than Metro, will pick up the tab for the judge's annual salary.

## Civil Rules (From Page 1)

request is sent." The defendant is entitled to an extra copy of the notice and a prepaid means of compliance in writing, the court said. But if a defendant fails to comply with the waiver request, "the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown."

The new state court rule is in line with one currently in use by the federal courts.

"The incentive for defendants to waive service is found both in the expanded time for service of a motion or answer and in the sanction of shifting costs expended in perfecting traditional service," commented the high court's advisory commission.

## STATE GIVES GREEN LIGHT TO HIRING HANDICAPPED PARKING ENFORCERS

Now that Metro government has positioned itself to inflict greater monetary punishment on motorists who violate handicapped parking restrictions, the next obvious step is to enhance surveillance of the often-abused reserved zones.

Conveniently, the state legislature has made that possible without putting a strain on existing labor forces assigned to that area of enforcement.

Shortly after the Metro Council doubled handicapped parking fines to \$100 last Spring, state lawmakers cleared the way for compensated volunteers to supplement current policing staffs. All it takes now is for the council to approve such a program and funding to pay for it.

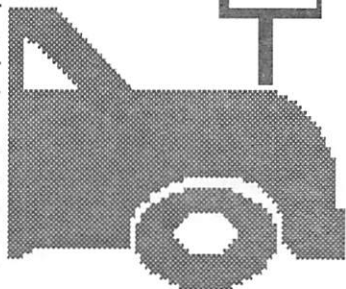
There has been no official announcement of plans to implement a so-called volunteer assistance program, but the enabling legislation didn't materialize by accident. And local government is cognizant of its responsibility in meeting mandates of the American Disability Act.

The new state law enhances compliance by providing compensation to those selected from among the county's disabled veterans or physically handicapped. In addition to providing training, the appointing agency is required to furnish uniforms with badges, police frequency two-way radios, motorized wheelchairs with front and rear lights, upkeep on all equipment issued and, of course, hourly wages.

Members of the special enforcement units would not be entitled to primary benefits extended to regular employees, but workers' compensation would be provided.

A member of such a special unit would not be considered a law enforcement officer and would have no arrest powers.

Watch for implementation of the program in the near future. The overall benefits easily outweigh the expense.



## ~~~~Pheeeew! ~~~~

Visitors at the Ben West Building one day last month probably thought there was a mad skunk on the loose. Make that a pack of mad skunks.

A foul stench permeated throughout the two-level structure, continually increasing in potency until most employees and customers were forced outside while government workers sought out the source of the aroma.

Most employees of the Traffic Violations Bureau were allowed to go home for the balance of the day and evening business activities were cancelled. Signs were posted stating that traffic offices were closed because of unhealthy environmental conditions.

Environmentalists confirmed that while the fumes were nontoxic in nature, inhalation could cause some people to become ill. Common symptoms were nausea and burning of the eyes.

## The 'Bouquet' Was Quaintly Potent

The rank odor was caused by trapped methane gas from sewage lines, held hostage inside the building by blocked air vents on the rooftop. A work crew doing repairs to the roof earlier in the week had sealed off the vents to prevent roofing materials from clogging them and had forgotten to remove the covers after completing the project.

Pressure from the vacuum allowed gas fumes from a nearby sewer line that feeds raw sewage into the city's water treatment plant to seep into the building's connecting pipes. Water and sewer personnel have since installed a check valve to (hopefully) alleviate future backup problems at that juncture.

Apparently, the skunks have now left the building. But employees are wondering if that will be the end of the problem.

# \$500 Traffic Ticket? New Codes Say Yes

Attention, John Q. Driver.

If you're on your way to court to challenge a traffic ticket, better take along your checkbook, just in case.

*"Just in case of what?"*

Just in case you are found guilty of violating one of the seven traffic offenses that now allows fines of up to \$500.

*"But that's ten times the maximum fine allowed by Metro codes, isn't it?"*

Well, yes and no. The maximum penalty for all Metro codes violations used to be \$50. Some of them still are that amount, but legislation passed earlier this year by the council increased most codes violations to \$500 -- among them seven specific traffic infractions.

*"Gulp! And my ticket is for one of them, right?"*

That depends. If you were cited for one of the following codes violations, a guilty verdict in court could cost you between \$25 and \$500:

**12.20.30 -- Driving too fast in a special speed zone.** This law applies to any area where official signs are posted, depicting safe maximum or minimum speeds. Construction work zones and school zones are good examples.

**12.68.030 -- Driving through a funeral procession.** No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are properly designated.

**12.68.110 -- Towing of vehicles.** It is unlawful to tow any motor vehicle upon any street or highway if the drawbar or connection exceeds eight feet from one vehicle to the other. And any vehicle being towed during a period between one-half hour before sun-

rise or after sunset must be lighted to where it is visible from the rear and on both sides from at least 100 feet away. The vehicle in tow must also be equipped with red stop lights.

**12.68.130 -- Driving on sidewalks.** No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.

**12.68.150 -- Putting glass, nails or other injurious materials on highways and clearing accident wreckage.** Three sections of this code have been attached to the new fine schedule. 1) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such highway. 2) Any person who drops or permits to be dropped or thrown upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed. 3) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

**12.68.180 -- Reckless driving.** Simply put, it is unlawful to drive in a wilful and wanton disregard for the safety of persons or property. Under the law, 15 miles per hour over the posted speed limit is considered wilful and wanton disregard and the burden of proof is on the driver to establish his innocence.

**12.68.200 -- Attempting to elude police officers.** Any driver of a motor vehicle who wilfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle, when given visual or audible signal to do so, shall be guilty of a misdemeanor. The signal given by a police officer may be by hand, voice, emergency light or siren.

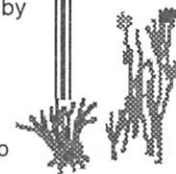
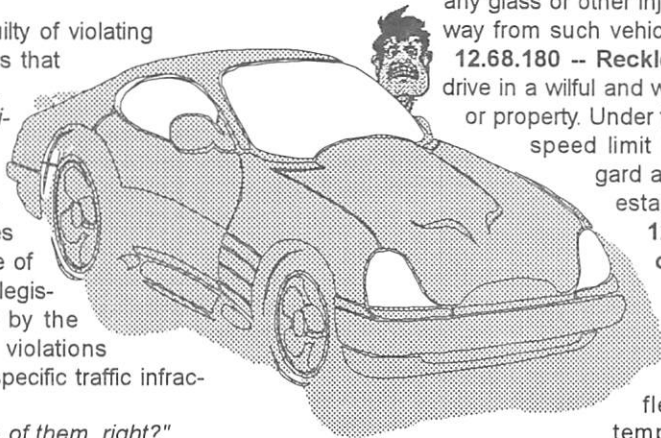
*"Wheew! Is that all of the \$500 violations?"*

That covers all the traffic codes amended by the council, yes.

*"Great. I'll remember those. The ticket I've got now is for running a stop sign. Am I lucky, or what?"*

Yeah, you're lucky. And so are the people who didn't get in your path.

Come to think of it, maybe the council didn't go quite far enough.



# \$ DATA BANK #

Statistics compiled for the month of July

### Case Information

#### Circuit Court

New Civil Cases Filed .....	293
Civil Cases Concluded .....	316
New Divorce Cases Filed .....	270
Divorce Cases Closed .....	341

#### General Sessions Civil

New Cases Filed .....	2,547
Executions Issued .....	2,132
Judgments Collected .....	\$517,141
Orders of Protection Petitions .....	207

#### Probate Court

New Cases Filed .....	166
Cases Closed .....	103
Cases Retired .....	263

#### Traffic Violations

Moving Citations .....	15,706
Parking Violations .....	8,168
Total Fines Collected .....	\$298,868
Nullifications .....	1,665
Nullification Fees Collected .....	\$14,985

### Circuit Court Jury Trial Verdicts

#### Week of July 10

Case	Type	Court	Verdict
94C-665	Auto/Appeal	5th (P)	\$27,120
93C-1157	Assault	2nd (P)	\$20,100
94C-3030	Damages/Murder	6th (P)	\$15,000,000
91C-501	Auto Accident	1st (P)	\$17,000
94C-166	Auto Accident	6th	Defendant
93C-2004	Slip & Fall	5th (D)	Directed

#### Week of July 17

Case	Type	Court	Verdict
92C-17	Auto Accident	6th (P)	\$72,817
94C-841	Auto Accident	5th (P)	\$9,000
91C-3018	Slip & Fall	3rd (P)	\$7,500
93C-3547	Auto Accident	2nd	Defendant

### Bench & Bar History Books Available

"Bench and Bar," a historical documentation of the court system evolution in Davidson County, by Nashville attorney David Rutherford, hard-back, \$15 per copy. David C. Rutherford, 214 Second Ave. S., Suite 400, Washington Square, Nashville, TN 37201-1476.

## Rooker Report

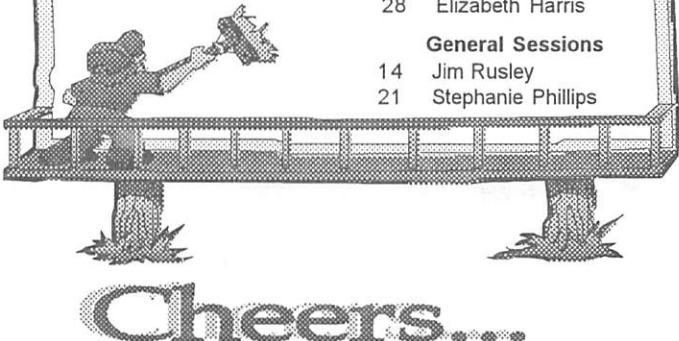
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Established by George L. Rooker (1929-1993),  
(Circuit Court Clerk, 1968-1993)

Richard R. Rooker ..... Circuit Court Clerk  
Gene Baker ..... Editor

### September Birthdays

<b>Circuit Court</b> 1 Danny Lamb 18 Diane Tucker 23 Candy Rucker  <b>Probate</b> 5 Anita Riggan 18 Bob Bradshaw Ricky Deatherage 28 Casey Gibson	<b>Traffic Violations Bureau</b> 5 Annette Wheeler 11 Bill Cartwright 15 Dickey Fuqua Earl Reed 20 Nancy Capps Anita Stewart 21 Tony Eden 22 Elaine Howell 27 Leslie Allumbaugh Don Rosso 28 Elizabeth Harris  <b>General Sessions</b> 14 Jim Rusley 21 Stephanie Phillips
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Congratulations to veteran attorney **George Linebaugh** upon being selected as a night court commissioner. Linebaugh was the overwhelming choice of General Sessions judges to replace **Joy Sims** following her resignation last month. Linebaugh twice was a candidate for a sessions judgeship, narrowly losing in both outings. His experience, temperament and legal knowledge at all levels of the judiciary make him an excellent choice for the commissioner's post, which will allow him to continue his private law practice...Church bells will ring next month for **Kelli Wilkerson**, minute clerk to **Circuit Judge Walter Kurtz**. The lucky groom will be **Michael Olin**, an advertising systems analyst for the Service Merchandise company. A reception will be held at Springhouse Golf Club following the Sept. 2 ceremony at Hermitage United Methodist Church. **Dr. Gary Speich**, minister of the church, will perform the wedding...This announcement will no doubt stir fond memories for deputy circuit court clerk **Barbara Eddings** and policeman hubby **David**, who will celebrate their 31st wedding anniversary on Sept. 12. "We met in July and got married in September," recalls a happy Mrs. Eddings. "They said it wouldn't last, but here we are... 31 years, three children and eight grandchildren later." And we're happy "they" were wrong...That smile on circuit file clerk **Danny Lamb's** face lately was put there by the arrival of a new, healthy granddaughter. **Kristina Denise Surret** made her debut on July 28 at Baptist Hospital, weighing 6 pounds, 13.5 ounces and measuring 19.5 inches in length. Mom **Penny** and dad **Steve** were proud to present Danny with his second grandchild...Hats off to General Sessions Judge **Gale Robinson** for the smooth manner in which he chaired business during his first year as presiding judge of the nine-division court. Robinson will relinquish the presiding role on Sept. 1 to Judge **Penny Harrington**...Metro patrolmen are excited about the department's recent purchase of two laser guns, the latest high-tech devices for detecting speeding vehicles. **Mark Byrne** of the motorcycle patrol unit recently demonstrated one of the guns for traffic violations bureau personnel, revealing an accurate detection range of 4,500 feet. The laser devices cost about \$5,000 each at this stage of production. State police currently have 10 of the guns in use... Metro Councilman **Vic Varallo**, a retired high school coach whose world class water skiing talents are well documented, realized another personal milestone this year when he was selected as the first member of the Tennessee Water Skiing Hall of Fame. Wanna bet the plaque he received doesn't end up on the wall at uncle Frank's restaurant?