

**LOWER COURT CASES
LACK JURY 'APPEAL'**

Plaintiffs find juries to be tough sells when it comes to appeals from General Sessions Court.
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**E-X-P-A-N-D-I-N-G
TRENDS**

Statistical information on settlement conferences and general sessions appeals become part of monthly recap.
Back cover.



Rooker Report

February 1998

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Requests Range from Traditional to...Well, Non-Traditional

JUDGE HAS 'HANDLE' ON NAME CHANGES



PROBATE JUDGE FRANK CLEMENT

When Probate Judge Frank Clement is not busy determining equitable distribution of estates or sentencing DUI offenders, chances are you will find him presiding over yet another important function of less repute.

Few people realize it, but Davidson County's probate judge each year changes more names than a preacher.

Folks of all ages, from all walks of life and compelled by a variety of personal reasons file name-change petitions in Clement's court on a regular basis. It is his sworn duty to consider their wishes,

provided they meet legal criteria.

During the 1997 calendar year, 183 such people asked Clement to give them or someone in their family a new identity, giving impetus to a once-rare phenomenon that seemingly has become as common as male baldness and cosmetic surgery.

Clement has obliged most, but not all, petitioners. And, because of the unusual circumstances attached to one of the requests, a denial landed him on the front page of a local newspaper when the state court of appeals overturned his decision.

(See NAME CHANGES, Page 3)

So, HERE WE GO INTO SIXTH YEAR; HAPPY READING

When the Rooker Report made its debut five years ago this month, there were skeptics who questioned whether there would be enough information to sustain a monthly publication.

To those people especially, welcome to our 61st consecutive issue without a single blank page.

This issue kicks off our sixth year of spanning the communicative gap between the civil courts and the people who utilize their services.

And we trust that each edition has been both informative and entertaining. For these are our two primary objectives as we strive to keep our diverse reader base abreast of events affecting the operations of the circuit court clerk's affiliated departments.

Through statistics, words and graphics, our goal is to present a balanced overview each month of the civil, probate and traffic courts in an effort to promote a better understanding of what -- and who -- makes those segments of the judicial system function.

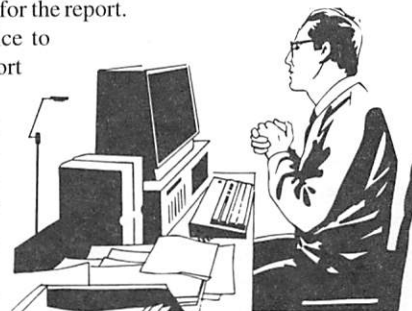
Produced totally in-house, the newsletter is distrib-

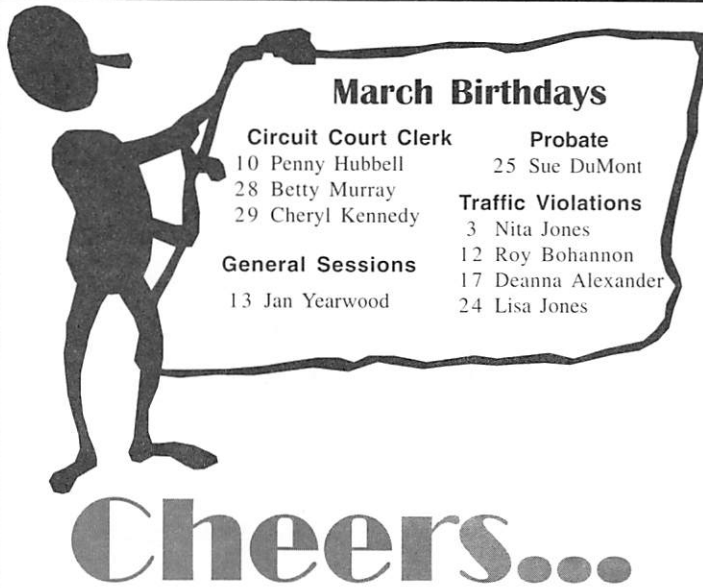


uted primarily via countertop display in each of the clerk's four departments -- circuit court, general sessions civil, probate and traffic violations. There is no charge for the report. And because it is offered strictly as a service to those doing business with the courts, the report is not offered through subscription.

However, during the past year the report has been added to the circuit court clerk's internet web site where current and back issues are accessible worldwide. Back issues of original paper versions also are available upon request.

We appreciate your support and invite comments, criticism and suggestions.





As we watch loyal public servants retire after many years of devoted service to the government, we cheer -- not because they are leaving, but out of appreciation for their contributions. It is in that context that we utilize this section to acknowledge the careers of three such associates who ended their careers within the past month.

◆ **Anita Jones** said good-bye to fellow workers in the Traffic Violations Bureau on Feb. 4 after more than 22 years of service. The event was marked by an office retirement breakfast in the Ben West Building, attended by co-workers, judges and friends.

◆ **James Utley**, a court officer for Criminal Court Judge **Randall Wyatt**, closed out a 31-year public service career on Jan. 30. He was the dean of court officers with 28 years in the judicial system. **Timothy Wayne Dickerson**, formerly of the public defender's office, has some big shoes to fill.

◆ The Metro Property Appraiser's Office feted veteran secretary **Jo Ann Hix** with a retirement party on Feb. 13. Jo Ann most recently served as secretary to **George Rooker Jr.**, manager of assessments. Her successor in that post is **Mitzi Cripps**, wife of deputy probate clerk **Will Cripps**.

◆ General Sessions Judge **John Brown** has hired **Tony Caroll**, a former envelope company employee, as a court officer replacement for **Earnest Hickerson**, who retired last month. And Judge **Phil Sadler** has reassigned his son **Jim (Schley) Sadler** to his probation staff and hired former Metro Councilman **Ludye Wallace Sr.** to fill the court officer vacancy.

◆ Look for another sequel to the movie spoof *Police Academy*, now that **Kelly Hollingsworth** has signed on as a recruit. Just teasing. Kelly's presence in the Traffic Violations Bureau's data processing department will be missed following her Feb. 13 resignation date. She traded in her keyboard for a police uniform after four years in the computer room.

Meanwhile, some other traffic bureau employees celebrated big events since our last issue.

◆ **Elaine Howell** became a grandmother for the first time, compliments of son **Trey Howell** and his wife **Becky**. The couple presented Elaine with 7-pound, 8-ounce **Billy Hugh Howell IV** on Feb. 6.

◆ Bureau business manager **Phil York** and wife **Linda** celebrated their 33rd wedding anniversary on Jan. 30. The couple embarked on a weekend retreat to the Smoky Mountains to get in some (what else?) shopping.

◆ And **Monty Russell** returned to work following complications from recent back surgery.

◆ The **Nashville Bar Association** is continuing its search for a replacement for **Allan Ramsaur**, who resigned as executive director to accept a high-ranking position with the **Tennessee Bar Association**. Anyone interested in the job has until Feb. 20 to make application to the local bar.

Council Asks Feasibility Report

SATURDAY COURT? Judges Object

Two Metro Councilmen recently sponsored a non-binding resolution asking that General Sessions judges consider the feasibility of holding court on Saturday.

At-large representatives Phil Ponder and Vic Varallo were acting upon requests from constituents, some of whom have objected to the inconvenience of appearing in court during the work week and to the amount of time involved because of crowded dockets.

It didn't take long for the judges to respond.

In a letter to the council earlier this month, presiding judge Sue McKnight Evans and fellow judge Mike Mondelli, chairman of the court's traffic committee, requested the resolution be withdrawn.

Their letter noted that two new courts will come into existence in September, helping to relieve existing docket crunches. And they cited these reasons as well:

1. "We presently have a committee studying how our current docket system may be revised and updated effective September 1, 1998 so (as) to equalize the growing caseload among eleven (11) judges and (to) be more convenient to citizens of the community."

2. "Saturday is a Sabbath day for the Jewish community and, since Judge Leon Ruben is of the Jewish faith, we would have to obtain a special judge to hold his docket when he would be scheduled to hear any cases on Saturday. The court would have to schedule all cases for litigants of the Jewish faith to a Monday through Friday schedule."

3. "The General Sessions Court docket that impacts the most citizens of the community is the Metro Traffic docket in the Ben West Building. We may have 5,000-8,000 traffic cases on a given week. If a Saturday docket were held, there would be some cost and space issues involved. The Clerk's office, the Police Department, and General Sessions Court must pay overtime for the personnel to staff this new docket. On Saturdays, we have Defensive Driving Classes in the Ben West Building and we do not have any other suitable space to handle the classes. On an annual basis, over 20,000 traffic offenders attend our Traffic School classes in the Ben West Building at nights on Monday through Friday and on Saturdays during the day."

4. "In addition to overtime for court related personnel, conducting dockets on Saturday in the Courthouse would necessitate the increased cost of security for the building since other Metro offices are closed."

The council is expected to act on the resolution at its next meeting.

Meantime, the consulting team selected to study the courthouse and court system in general held its kick-off meeting this month. The team is made up of representatives from the firms of Gresham Smith, Spillis Candela, Justice Planning Associates and Moody Nolan, Ltd.

The team will evaluate the county's existing judicial facilities and potential sites for a new courts building based on a comprehensive needs assessment, according to project manager Peter Heidenreich.

...Tears

Martha Hardcastle Warfield, 72, wife of attorney **Charles H. Warfield**, passed away at her home on Jan. 21. She was a civic leader and former chairwoman of the Tennessee Alcoholic Beverage Commission. She will be missed.

Frank Mondelli, 89, brother of retired General Sessions Judge **Les Mondelli** and uncle of Judge **Mike Mondelli** and probation supervisor **Les Mondelli Jr.**, passed away last month in Scranton, Pa. It was the second family loss for the Mondelli family in a one-month period.

GENERAL SESSIONS APPEALS

WHEN IT COMES TO AWARDING DAMAGES, JURIES PROVING TO BE LESS GENEROUS

John Q. Doe wasn't pleased with the \$1,491 judgment he received in General Sessions Court for damages sustained in an auto accident.

So, he pursued other legal remedies he thought would right the unacceptable fate he had been handed. He appealed his case to Circuit Court and asked for a jury of his peers to determine a more just amount.

To his disappointment, however, the jury proved to be less generous than the judge who originally heard the case and determined that he was entitled to only \$620 -- an \$871 loss. Not to mention trial expenses.

Chances are, Doe's pursuit of what he deems an equitable recovery has come to an end. It would seem that only pride and principle would justify the expense of further appeals.

The question of whether Doe made the correct decision is not open for debate. He exercised his legal right to due process and the gamble did not pay off. Pure and simple.

A close examination of court records would indicate that the outcome of Doe's appeal fits a developing pattern of conservatism on the parts of juries in all areas of civil litigation.

Because of fairly recent changes in state guidelines requiring all able-bodied citizens to serve when called, jurors today are generally more informed, more intelligent and represent a greater cross-section of community genre than their predecessors. They also have greater insight into the workings of the judicial system as a result of increased media coverage of legal proceedings (i.e., the O. J. Simpson trial, People's Court and Court TV).



Consequently, today's jurors are better mentally equipped to understand the intricate details of complicated disputes and to apply a dollar value accordingly. For those reasons, the trend in recent years has shifted from high dollar verdicts to a more conservative reflection of community attitudes.

That trend is exemplified not only in civil cases originating in circuit court, but in appeals from the lower court system which provides no jury resolution.

Statistics compiled for the month of January (and introduced on the back cover of this month's report as a continuing

service) provide a window to that theory. In every appeal heard by a jury during the month, the amounts of judgments granted to plaintiffs by the lower court were not only reduced, but in dramatic proportions -- one from \$7,000 to only \$1,500, another from \$7,700 to \$5,000.

Unlike the cited case of John Q. Doe, who appealed as a prevailing plaintiff, the big winners in circuit court were those who had been bigger losers in General Sessions -- all defendants challenging the lower court judgments against them.

(As a side note, non-jury appeals fared no better. Of the three cases adjudicated by judges in January, only one resulted in a gain for the plaintiff, a \$71 improvement over the original amount.)

Our "Trends" section each month will chart the progress of both jury and non-jury appeals to reflect prevailing attitudes of those who determine the value of civil justice.

NAME CHANGES IN PROBATE: SOME YOU WOULDN'T BELIEVE

(FROM PAGE 1)

The case involved a request from the parents of a five-month old girl who wanted their daughter's surname to be different from their own. Although married, the parents had different surnames and were unwilling to accept either of four options --either of the two surnames or either of two hyphenated versions (mother first or father first). Instead, the couple asked that the little girl be given the Norwegian surname of the father's grandfather.

Clement, a stickler for protecting the well being of children in such matters, refused to approve the couple's request, declaring that it would not be in the child's best interest as defined by state law. But the appellate court disagreed and remanded the case to Clement, who will finalize the matter at a hearing on March 18.

The uniqueness of circumstances in that particular case might never be repeated, but the precedent set by the high court could have a bearing on other name-change petitions involving children, said Clement.

You may recall that one of Clement's first formal actions upon becoming probate judge in 1995 was amending procedural guidelines to require consent of both biological parents in child name-change petitions.

As for adults, the rules are less constrictive. But for a few exceptions, persons of legal age can obtain a name change simply by providing three acceptable forms of personal identification and swearing that they are not assuming a new identity to avoid creditors or law enforcement.

Clement admits the rules for adults need more teeth. But that is a matter for the state legislature.

"I have no mechanism for verifying the sworn statements of petitioners at this point," the judge explained. "All I can do is take their word that they're telling the truth." But Clement has implemented a safeguard of sorts. He retains all information provided by the petitioner, including a photo ID and birth certificate, "in case the FBI comes calling."

Although Clement maintains a solemn regard for name-change petitions, he admits that some of the cases make contact with his funnybone. Like the one in which a man wanted to be known by seven names.

"I told her four was my usual limit," Clement chuckled. "But she insisted on seven. And, since it was just a short time until Christmas, I granted her request."

Then there are the men who are going through sex change operations. "There have been at least 15 of those since I took the bench," Clement said, noting that in one particular case where the sex change was soon to be performed, "he/she was the best looking woman in the courtroom!"

It's all in a day's work for a judge who, himself, will get a name change in September. That's when Probate Court will become the Seventh Circuit Court-Probate Division.

But to litigants in his courtroom, the "sir" name will continue to be Clement.

TRENDS

DATA BANK

Statistics compiled for the month of January

CASE INFORMATION

Circuit Court

NEW CIVIL CASES FILED	220
CIVIL CASES CONCLUDED	474
NEW DIVORCE CASES FILED	280
DIVORCE CASES CONCLUDED	341

General Sessions Civil

NEW CASES FILED	3,160
EXECUTIONS ISSUED	23,234
JUDGMENTS COLLECTED	\$548,779
ORDER OF PROTECTION PETITIONS	168

Probate Court

NEW CASES FILED	160
CASES CLOSED	124

Traffic Violations

MOVING CITATIONS	23,923
PARKING VIOLATIONS	10,385
TOTAL FINES COLLECTED	\$334,955
NULLIFICATIONS	2,836
NULLIFICATION FEES COLLECTED	\$25,524

JANUARY JURY TRIAL VERDICTS

Week of January 5

CASE	TYPE	COURT		VERDICT
95C-446	PROPERTY DAMAGE	2ND	(P)	\$158,650
97C-1140	GSA AUTO	1ST	(P)	\$1,500
97C-1215-16-17	GSA AUTO	6TH	(P)	\$620
97C-1310	GSA NEGLIGENCE	2ND	(P)	\$5,000
96C-1981	AUTO ACCIDENT	5TH	(P)	\$1,200

Week of January 12

CASE	TYPE	COURT		VERDICT
96C-3579	PRODUCT LIABILITY	5TH		DEFENDANT
96C-4386	GSA AUTO	1ST	(P)	\$4,902
93C-3203	AUTO ACCIDENT	6TH		DEFENDANT
96C-4357	MED. MALPRACTICE	2ND	(D)	DIRECTED
96-C3250-97C-9	AUTO ACCIDENT	3RD		HUNG JURY
97C-960	AUTO ACCIDENT	6TH		DEFENDANT

Week of January 26

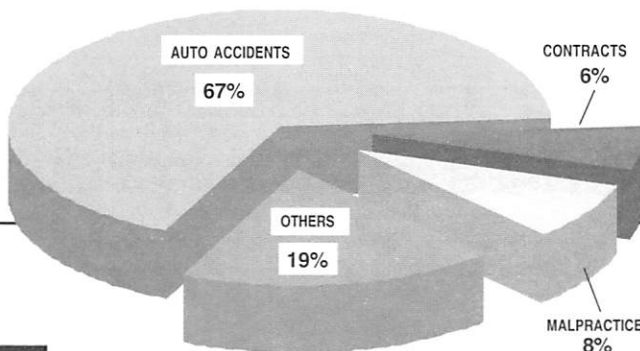
CASE	TYPE	COURT		VERDICT
95C-3592	EMOTIONAL DISTRESS	3RD		DEFENDANT
96C-3716	AUTO ACCIDENT	5TH	(P)	\$12,168
97C-1213	AUTO ACCIDENT	1ST	(P)	\$200
96C-656	AUTO ACCIDENT	1ST	(P)	\$600

Rooker Report

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Richard R. Rooker Circuit Court Clerk
Gene Baker Editor



1997 JURY TRIAL RECAP

AUTO ACCIDENTS

CASES TRIED	92
PLAINTIFF VERDICTS	66
DEFENDANT VERDICTS	22
NO VERDICT	4
GENERAL SESSIONS APPEALS (INCLUDED IN TRIAL TOTALS)	9
PLAINTIFF VERDICTS	6
DEFENDANTS	3

CONTRACTS

TOTAL CASES TRIED	8
PLAINTIFF VERDICTS	6
DEFENDANT VERDICTS	2

MALPRACTICE

TOTAL CASES TRIED	11
PLAINTIFF VERDICTS	2
DEFENDANTS	6
NO VERDICT	3

OTHERS

CASES TRIED	26
PLAINTIFF VERDICTS	10
DEFENDANTS	12
NO VERDICT	4

JANUARY SETTLEMENT CONFERENCES

Total Cases Considered	18
Auto Accidents	11
Negligence	2
Assault	1
Store Injury	1
Wrongful Death	1
Condemnation	1
Indecent Exposure	1

DISPOSITIONS

Settled	6
Pending settlement	5
Trials with jury verdicts	1
Dismissals	3
Summary judgments	0
Pre-conference settlements	3
Non-suits	0
Bankruptcies	0

*GENERAL SESSIONS APPEALS

JURY

CASE	TYPE	GS JUDGMENT	APPEALED BY	CIRCUIT JUDGMENT
97C-1140	AUTO	(P) \$7,000	(D)	(P) \$1,500
97C-1215-16-17	AUTO	(P) \$1,491	(P)	(P) \$620
97C-1310	NEGLIGENCE	(P) \$7,700	(D)	(P) \$5,000
96C-4386	AUTO	(P) \$7,075	(D)	(P) \$4,902

*CASES ALSO LISTED IN 'JURY TRIAL VERDICTS' SECTION.

NON-JURY

CASE	COURT	TYPE	GS JUDGMENT	APPEALED BY	CIRCUIT JUDGMENT
97C-1693	1ST	CONTRACT	(P) \$2,500	(D)	NO AWARD
97C-1774	5TH	LEASE	(P) \$348	(P)	(P) \$419
97C-1861	5TH	PROP. POSS.	PLAINTIFF	(D)	DISMISSED