



ROOKER

APRIL 2012

REPORT

A MONTHLY PUBLICATION OF THE DAVIDSON COUNTY, TENNESSEE CIRCUIT COURT CLERK'S OFFICE

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NASHVILLE BAR ASSOCIATION CELEBRATES ANNUAL LAW DAY

NO COURTS
NO JUSTICE
NO FREEDOM



On Monday, April 30th, the Nashville Bar Association held its annual observance of Law Day by hosting a luncheon at the downtown Renaissance Hotel featuring U.S. Senator Lamar Alexander as the keynote speaker. A large crowd of local judges, lawyers and other interested citizens was in attendance. The theme of this year's celebration was "No Courts, No Justice, No Freedom," which highlights the crucial role of courts and the need to foster a better understanding of the judiciary. Senator Alexander recounted the events that led to the early removal of former Tennessee governor Ray Blanton and the role of the Tennessee Constitution in that historic event.

Tennessee Supreme Court Chief Justice Cornelia A. Clark served as this year's statewide chair for the event. "Law Day gives us a chance to recognize the many profes-

sionals who work within the judicial system and the importance of having a fully funded court system," Clark said. "Our courts carry out the laws enacted by our government and ensure that all people are treated fairly under those laws."

Envisioned in 1957 by then American Bar Association President Charles Rhynes as a special national day to mark the nation's

commitment to the rule of law, the first Law Day was established by President Dwight D. Eisenhower the following year. Law Day was made official in 1961 when Congress issued a joint resolution. Law Day provides an important opportunity for Tennesseans and all Americans to reflect on the unique elements of our legal and judicial system and to celebrate the rule of law and foster greater understanding of the American judicial system.



Nashville Bar Association President John Kitch (right) greets U.S. Senator Lamar Alexander at the Law Day Event

QUOTE OF THE MONTH

"Laws are a dead letter without courts to expound and define their true meaning and operation."

ALEXANDER HAMILTON

American Statesman
1757 - 1804

COMING IN THE NEXT ISSUE

Public Chapter 1039 takes effect on July 1, 2012, and will increase filing fees for all new civil legal actions filed in our office. Our next issue will provide a detailed report.

NEW ANNUAL REPORTING REQUIREMENT FOR COURT-APPOINTED CONSERVATORS IN PROBATE COURT

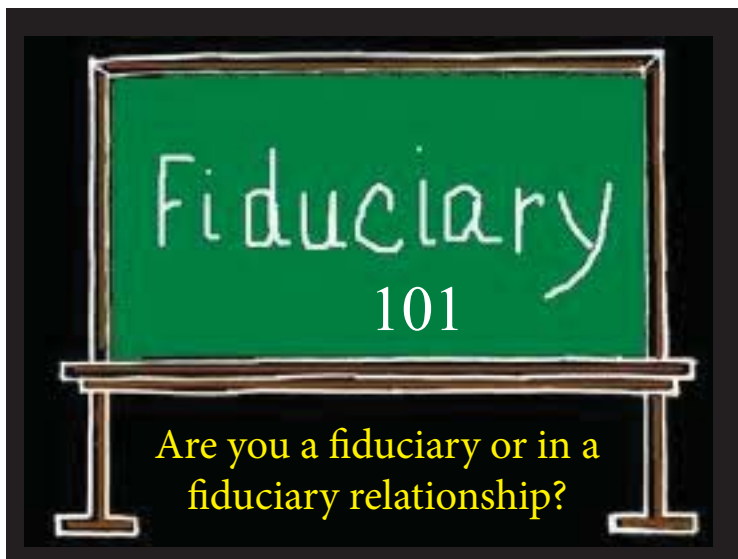
In Tennessee, a conservatorship is a court supervised legal proceeding wherein the court appoints a person or persons to provide partial or full supervision, protection and assistance of the person or property, or both, of a disabled person. The person appointed is called the conservator and acts as an agent of the court. The person who is the subject of the proceeding is often referred to as the respondent or a ward of the court. Some conservatorships last indefinitely or for many years such as one for an elderly person with dementia. Others may only last for a temporary period of time such as one established for someone recuperating from a closed head injury in an accident. On average about 200 petitions to establish a conservatorship are filed each year in the Davidson County Probate Court.

It has been a long standing practice in Davidson County that all persons serving as a conservator for a disabled person under the supervision of the Probate Court must file an annual status report listing the address of the ward and confirming that the disabled person is still in need of a fiduciary for a stated mental and/or physical condition. The Probate Court has now added a new reporting

requirement to be included in the annual status report. Effective immediately, conservators must now include in their annual status report a declaration that they are aware of the disabled person's right to have a hearing on the issue of disability. The declaration must also expressly state that if the conservator becomes aware of any improvements in the mental and/or physical condition of the ward that might warrant either the modification or termination of the conservatorship, then the conservator promises to notify the Court immediately of such changes.

Current statutory law already provides that the disabled person may petition the court by any means at any time for a termination or modification of the conservatorship. This new local reporting requirement makes it clear and reaffirms to court-appointed conservators that they too have a fiduciary responsibility to keep the court informed when circumstances might warrant a termination or change in the conservatorship.

For those conservators who use the "Annual Status Report of the Fiduciary" form provided by our office both online and at our front counter, the new declaration language has now been added.



If not, then you more than likely have been in the past or will be in the future. As mentioned in the article above, a conservator can alternately be called a fiduciary. But not all fiduciaries are conservators. In fact, there are many types of fiduciaries and a multitude of fiduciary relationships.

fi·du·ci·ar·y [fi-doo-shee-er-ee]
 someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.

A fiduciary duty is a legal or ethical relationship of confidence or trust between two or more parties. Typically, a fiduciary prudently takes care of money for another person. In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests

confidence, good faith, reliance and trust in another whose aid, advice or protection is sought in some matter. The fiduciary is required to act at all times for the sole benefit and interest of the one who trusts, often called the principal or entrustor.

A fiduciary duty is the highest standard of care at either equity or law. A fiduciary is expected to be extremely loyal to the person to whom the duty is owed and cannot put his/her personal interests before the duty, and must not profit from this position as a fiduciary, unless the principal consents.

TYPES OF FIDUCIARY RELATIONSHIPS

- Conservators and legal guardians / wards
- Agents and brokers / principals
- Buyer agent (real estate broker) / buyer client
- Financial and investment advisor / advisee or client
- Executors and administrators / legatees, heirs and creditors
- Corporate directors and officers / company and stockholders
- Board of directors / company
- Retirement plan administrators / retirees and workers
- Priest / parishioner seeking counseling
- Promoters / stock subscribers
- Receivers, trustees in bankruptcy / creditors
- Governments / indigenous peoples
- Doctor / patient
- Teacher / student
- Trustee / beneficiary
- Lawyer / client
- Partner / partner
- Stockbroker / client
- Liquidator / company

The above list is not exhaustive, and the law may give rise to a fiduciary relationship and duty if the situation warrants.



This "fiduciary" thingy really complicates pillaging a corporation.

CIRCUIT COURT TRIAL VERDICTS APRIL 2012

JURY TRIALS

**IF CASE WAS
APPEALED FROM
GENERAL SESSIONS**

CASE	TYPE	COURT	CIRCUIT JUDGMENT	GEN. SESSIONS JUDGMENT	APPELLANT
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Week of April 16

10C-2023	AUTOMOBILE	6	PLAINTIFF \$13,682	N/A	
10C-1555	AUTOMOBILE	1	PLAINTIFF \$60,277	N/A	
08C-4154	AUTOMOBILE	8	DEFENDANT VERDICT	N/A	
08C-4257	HEALTH CARE LIABILITY	5	DEFENDANT VERDICT	N/A	

Week of April 23

10C-5008	BREACH OF CONTRACT	2	PLAINTIFF \$32,000	N/A	
09C-2281	HEALTH CARE LIABILITY	6	DEFENDANT VERDICT	N/A	

NON-JURY TRIALS

CASE	TYPE	COURT	CIRCUIT JUDGMENT	GEN. SESSIONS JUDGMENT	APPELLANT
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Week of April 30

11C-3843	CONTRACT	2	PLAINTIFF \$1,050	P - \$1,500	DEFENDANT
10C-203	FOREIGN JUDGMENT	2	PLAINTIFF \$84,057	N/A	
11C-5030	CONTRACT	1	PLAINTIFF \$2,299	P - \$1,202	DEFENDANT
11C-4589	CONTRACT	1	PLAINTIFF \$15,156 + ATTY FEES	P - \$16,748	DEFENDANT
10C-3909	FALL WHILE IN JAIL	2	PLAINTIFF \$6,126 + COURT COSTS	N/A	

SPECIALLY SET TRIALS (JURY & NON-JURY)

CASE	TYPE	COURT	CIRCUIT JUDGMENT	DATE OF TRIAL	JURY OR NON-JURY
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10C-2647	NEGLIGENCE / FALL	1	DEFENDANT VERDICT	4-10-12	Non-Jury
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**USE CASELINK TO ACCESS MORE DETAILED INFORMATION
ABOUT THESE CASES AND THOUSANDS MORE**

DEPARTMENTS BY THE NUMBER

April 2012

CIRCUIT COURT

	APR	YTD
New Civil Cases Filed.....	186	816
Jury Demand.....	74	359
Non-Jury.....	112	457
New Divorce Cases Filed	202	847
Domestic Petitions Filed	243	1,116
New Adoption Petitions	12	47
Civil Cases Concluded.....	213	876
Jury Demand.....	145	552
Non-Jury	68	324
Divorce Cases Concluded	191	748
Domestic Petitions Concluded	341	893

GENERAL SESSIONS CIVIL

	APR	YTD
Total New Cases Filed	4,274	16,671
Civil Warrants	2,045	8,565
Detainer Warrants	1,137	3,824
Recovery Warrants.....	20	76
Pet for Order of Protection.....	317	1,138
Emergency Committals	653	2,588
Other.....	102	480
Executions Issued.....	3,642	16,417
Garnishment Payments	4,375	18,448
Judgments Collected.....	\$970,869	\$4,068,722

PROBATE COURT

	APR	YTD
Total New Cases Filed	158	685
Total Cases Closed	166	682
Probate Will	85	305
Probate Will for Muniment of Title.....	2	19
Letters of Administration.....	21	98
Small Estate Affidavits.....	23	98
Conservatorship.....	15	76
Guardianship of Minor.....	2	13
Name Change	6	43
Trust Matters.....	2	11
Other Miscellaneous	2	22

TRAFFIC VIOLATIONS BUREAU

	APR	YTD
Total Traffic Violations	11,020	42,429
Moving Citations	7,127	27,965
Parking Citations.....	3,893	14,464
Environmental Citations.....	229	921
Total Fines Collected	\$382,173	\$1,761,596
Nullifications.....	576	3,112
Nullification Fees Collected	\$6,905	\$37,325
*Credit Card Payments	3,252	12,073

CLERK & MASTER NOW OFFERS ONLINE ACCESS TO PDF IMAGES OF PLEADINGS IN CHANCERY

The Office of the Davidson County Clerk & Master now provides the ability to view and print pleadings in a PDF format as part of their new online tool called Chancery CIA (i.e., Chancery Information Access). CIA is available 24 hours a day, 7 days a week to provide access to Chancery Court filings. Currently only cases from January 1, 2009 to present are available for viewing and printing in a PDF format. In addition, in order to access the PDF images, one must register with the Clerk & Master's office at the rate of \$45 every three months.

In order to register, contact Vicki Bailey at 862-5712.

SUPREME COURT RULES THAT EMAILS CAN SATISFY WRITING REQUIREMENT IN PROPERTY INTEREST TRANSFERS

In an opinion filed April 24, 2012, the Tennessee Supreme Court held for the first time that emails are sufficient to satisfy the Statute of Frauds. In the case of *Earline Waddle v. Lorene Elrod* (a copy of which can be obtained at www.tncourts.gov), the high Court held that the Statute of Frauds applies to settlement agreements requiring the transfer of an interest in real property and that the emails, along with a legal description of the property contained in the cross-claim, satisfy the writing requirement imposed by the Statute of Frauds.

SUPREME COURT MAKES RULE CHANGE REGARDING CLE CREDITS

The Tennessee Supreme Court recently changed Rule 21 regarding mandatory continuing legal education. Attorneys will now receive continuing education credits at no cost for pro bono legal and mediation services as outlined in Rule 21.

The change will allow more attorneys and mediators to get CLE credit for their volunteer efforts that are helping citizens receive free legal assistance. The rule was changed to further the Tennessee Supreme Court's goal of ensuring all Tennesseans have access to justice.

The Access to Justice campaign was created in Dec. 2008 by the Tennessee Supreme Court.

APRIL 2012



AUTO ACCIDENT

	APR	YTD
Total Cases Tried	3	17
Plaintiff Verdicts	2	10
Defendant Verdicts	1	7
Other/Under Adv	0	0
Jury Trials	3	12
Non-Jury Trials	0	5
Appeal from G.S.	0	1
Plaintiff Verd.	0	1
Def. Verdict	0	0
Other/None	0	0

CONTRACT

	APR	YTD
Total Cases Tried	4	17
Plaintiff Verdicts	4	15
Defendant Verdicts	0	2
Other/Under Adv	0	0

HEALTH CARE LIABILITY

	APR	YTD
Total Cases Tried	2	9
Plaintiff Verdicts	0	1
Defendant Verdicts	2	5
Other/Under Adv/Hung	0	3

MISCELLANEOUS

	APR	YTD
Total Cases Tried	3	23
Plaintiff Verdicts	2	17
Defendant Verdicts	1	5
Other/Under Adv	0	1

IN MEMORIAM

DEPUTY CLERK JILL OLIVERIUS

It is with sadness that we note the loss of Circuit Court Deputy Clerk Jill Oliverius. Jill passed away on April 11th at Hendersonville Hospital surrounded by family after having suffered an apparent cardiac incident a few days before. Jill joined the office of the Circuit Court Clerk in 2004. She initially worked in our Circuit Division and most recently in our Probate Division performing a wide variety of clerical duties, including pleading entry, front counter customer service and assistance with appeals. "Jill was a wonderful person, a great employee and a good friend to her co-workers," said Circuit Court Clerk Richard Rooker. "She will be missed by her courthouse family and everyone else whose life she touched."



A floral wreath in memory of Jill hung on the door of our Probate Division in the Metro Historic Courthouse

ROOKER REPORT

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KYLE SOWELL Editor



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please call Dart Gore at 880-3309

