

# the Journal

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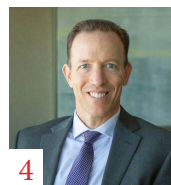
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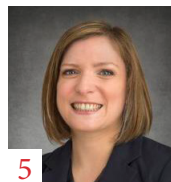
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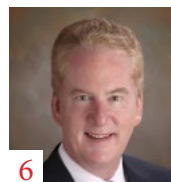
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# It's Not an Adventure Until...

**T**he past few months have illuminated the best of TDLA and the outstanding character of its members. Leading up to Memorial Day Weekend last year, we were making final preparations for our Annual Meeting that was scheduled to be on September 13, 2023 at beautiful Fall Creek Falls State Park. Then, on September 7, 2023, we received the tragic news of Nathan Shelby's death. Nathan at the time was the President-Elect, slated to become President in just a few days.

To allow time to process and grieve, the Annual Meeting was rescheduled for November 29 through December 1, 2023. Then, just days before the meeting was to begin, we were notified that Fall Creek Falls State Park would be unable to accommodate our meeting due to a severe drought causing a water shortage at the hotel. Thus, at the last minute, the meeting was moved to Henry Horton State Park. Through all of this, TDLA members and our gracious sponsors adjusted.

To quote Yvon Chouinard, founder of Patagonia, *"It's not an adventure until something goes wrong. ... The whole purpose of an adventure is to gain some spiritual or emotional insight. When you compromise the process, you compromise the gain."* We were on an adventure, and because of it TDLA is stronger and blessed with opportunities for growth.

The Annual Meeting kicked off with the Leadership Conference organized by the then President, Hannah Lowe. At the Leadership Conference, past, present, and future TDLA leaders met to brainstorm, share ideas, and conduct strategic planning for the future. During the Annual Meeting, the Emerging Leadership program was launched. Through that program, TDLA members have the opportunity to learn and develop leadership skills and earn recognition for their participation in TDLA activities.

Nathan's legacy was on full display during a specially scheduled memorial held prior to the awards dinner. Together, we reflected, grieved, laughed, and cried. At the conclusion of the memorial, the Nathan E. Shelby Emerging Leaders Award was launched. Honoring Nathan's strengths in identifying and mentoring young lawyers, the award "will be given to an emerging TDLA leader and participant in the TDLA Emerging Leaders Program, who has demonstrated development of leadership skills through participation in multiple TDLA events." A.J. Parker was the inaugural recipient of this award.

Our valued sponsors were an integral part of the Annual Meeting. We had a record number of sponsors in attendance, who pivoted along with the rest of

*continued on page 19*

## DRI STATE REPRESENTATIVE

# Continue to Lead

**T**hank you to Lynn Lawyer for her service as our DRI State Representative for the last three years. In October 2023, I took over from Lynn as Tennessee DRI State Representative. TDLA leadership (Hannah Lowe, Michael Haynie, Mary Gadd) attended the DRI Annual Meeting in San Antonio, TX in October 2023, to meet with our colleagues from other DRI-affiliated State and Local Defense Organizations (SLDOs) and share ideas and learn from each other. Highlights included a session on succession planning for SLDOs and a beautiful evening reception at the Alamo.

I am looking forward to networking with other DRI members at the Southeastern Women's Litigators Conference (SEWL) in Nashville in March 2024. Find out more information on the events page on TDLA's website. In May 2024, our Southern region will join forces with the Southeastern region for a regional meeting in Washington, DC, and we look forward to strengthening our ties with other SLDO leadership from across the South and Southeast. TDLA leadership is also excited to attend the DRI Annual Meeting in Seattle, WA in October 2024. If you are interested in attending SEWL and/or the DRI Annual Meeting in 2024, we would love to hear from you.

DRI continues to lead the defense bar in 2024 with first rate seminars, exceptional CLE programming, and opportunities for networking. Of note, DRI will be in Nashville in June for the 2024 Insurance Bad Faith and Extra-Contractual Liability Seminar, 2024 Young Lawyers Seminar, and 2024 Diversity for Success Seminar (June 12-14, 2024).

DRI also continues to act as the Voice of the Civil Defense Bar through the work of its Center for Law and Public Policy, which is dedicated to countering the negative impacts of a well-organized and well-funded plaintiffs' bar. TDLA is currently looking for a member to represent Tennessee in DRI Center's State Legislation and Rules Task Force, which was created to facilitate advocacy efforts between the Center and SLDOs. If you are interested in joining the Task Force, please reach out to me or Mary Gadd for more information.

If you are a TDLA member but not a member of DRI, I would love to talk to you about DRI's membership benefits.



Best,  
Hannah Lowe

*HANNAH LOWE has practiced insurance defense litigation since 2011 and currently works for Farmers Insurance Exchange Claims Litigation Department, Tennessee Branch Legal Office. Hannah is originally from England, but has lived in the United States since 2003. She graduated from the University of Tennessee College of Law in 2010. She may be reached at h.lowe@farmersinsurance.com*

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\* Deceased

# Tennessee Handicap Act

## DID THE TENNESSEE SUPREME COURT MAKE A MISTAKE OF LAW IN *BARNES V. THE GOODYEAR TIRE AND RUBBER COMPANY*?

**Y**es, it did. Nearly 24 years ago, in *Barnes v. The Goodyear Tire and Rubber Company*,<sup>1</sup> the Tennessee Supreme Court addressed the meaning of Tenn. Code Ann. § 8-50-103(b). This section, formally known as the Tennessee Handicap Act,<sup>2</sup> generally makes it illegal to discriminate against a handicapped person “based solely upon any physical, mental or visual handicap[.]” Inexplicably, the Tennessee Supreme Court in *Barnes* abandoned the “based solely upon” standard of the statute and substituted a “but for” standard in its place. What makes this even more bizarre is that it was not necessary for the *Barnes*’ Court to address the appropriate standard to reach its decision in that case.

### BACKGROUND OF BARNES

Larry Barnes (“Barnes”) began his employment with the Goodyear Tire and Rubber Company (“Goodyear”) in 1970. During his tenure with the company, he held different positions, and in 1987, Barnes was commended for his outstanding performance as a Process Control Operator.

In 1989, Barnes was diagnosed with Bell’s Palsy which is a condition of the nervous system affecting facial muscles. Barnes suffered from slurred speech, paralysis of the facial muscles and paralysis of his

right eye. After being off work for about six weeks, Barnes returned to work, but he was still suffering from the effects of Bell’s Palsy. Barnes’ co-workers ridiculed him by making gestures concerning his appearance and making “hideous remarks” in conversations with him.

In October of 1989, Barnes shift was changed as part of a reorganization. Then, Goodyear began implementing a reduction in force in August of 1990. In September of 1990, Barnes was called into his supervisor’s office and told he was being laid off. At trial Barnes testified:

I said, “Why am I being laid off? Is it because of my job performance, my attitude, my attendance? In response to this question Barnes testified his supervisor said, “Naw.” Barnes then inquired, “is it because I had Bell’s Palsy? Barnes testified his supervisor said, “That’s right.”<sup>3</sup>

In September of 1991, Barnes filed suit against Goodyear pursuant to Tenn. Code Ann. § 8-50-103. In May of 1996, a jury found that Goodyear perceived Barnes as being handicapped or disabled, and that Barnes sustained an adverse employment action because of this perception. The jury awarded damages of \$150,000.00 for back pay and \$150,000.00 for humiliation and



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embarrassment. Thereafter, both sides timely appealed. The Court of Appeals reversed the jury finding of liability. The Tennessee Supreme Court granted review.

### THE TENNESSEE SUPREME COURT'S ANALYSIS

The Tennessee Supreme Court defined the issue for review as follows: "Whether the Plaintiff proffered any material evidence during trial which would support the jury's finding of handicap discrimination."<sup>4</sup> After identifying the issue to be decided the Court quotes from the Tennessee Handicap Act ("THA"),<sup>5</sup> including the language "based **solely** upon any physical, mental or visual handicap."<sup>6</sup> In the next paragraph it identifies the elements a plaintiff must prove to establish liability under the THA. Those elements are "(1) that the individual was qualified for the position; (2) that the individual was disabled; and (3) that the individual suffered an adverse employment action **because** of that disability."<sup>7</sup> Note, the Tennessee Supreme Court's description of the third element does not say, **solely because** of. The word "solely" is missing from the description of the third element.

In describing the proof necessary to satisfy the third element, the Tennessee Supreme Court states that "the analysis further requires a claimant to establish that a prohibited motivation made a difference

in the adverse employment decision." The Tennessee Supreme Court describes this causation standard as, "but for" causation. "But for" or "makes a difference" causation is a substantial departure from "solely because of."

In *Barnes*, the Tennessee Supreme Court provides no reason why it chose the lesser standard of "but for" over the stricter statutory requirement of "solely because of." It does not say, for example, that the statute is unclear, ambiguous, or in conflict with another statute. It seems that the Tennessee Supreme Court simply read the THA without the word "solely" in the statute.

Also, the *Barnes* Court had no reason to undertake an analysis of the third element because Barnes had direct evidence of intentional discrimination<sup>8</sup>. Barnes' supervisor unequivocally told Barnes that he was being terminated because of his Bell's Palsy. This admission gave Barnes the necessary proof to establish that Goodyear terminated him solely because of his disability. Under existing precedent, the burden would then shift to the employer to "proffer a non-discriminatory reason which, when standing alone, would have induced the employer's action."<sup>9</sup> Goodyear sought to establish that the nondiscriminatory reason was the reduction-in-force. But the jury chose not to believe Goodyear and Barnes prevailed at trial.

The Tennessee Supreme Court followed the burden shifting analysis using the "but for" standard. It correctly recognized that "[r]eweighting the evidence of this case and re-assessing the witnesses credibility is simply beyond the purview of [the] Court." It then reinstated the jury's verdict in favor of Barnes, which was the correct decision.

### WHY IS THIS MISTAKE OF LAW BY THE TENNESSEE SUPREME COURT IMPORTANT

One of the reasons this mistake is important is because it is rare that the Court departs from express language contained in the statute being interpreted. The Court has repeatedly held that every word contained in a statute must be presumed to have meaning and not treated as surplusage.<sup>10</sup> Although I sometimes disagree with decisions rendered by the Tennessee Supreme Court, this is the only case where I thought the Court got the law wrong. The most important reason that this mistake is significant is because it is being repeated by the lower courts, both state<sup>11</sup> and federal.<sup>12</sup> Interestingly, the Tennessee Pattern Jury Instructions does cite *Barnes*, but nonetheless, the instruction contains the statutory standard - "solely." The last reason that this decision is important is that we, as lawyers, cannot let this

*continued on page 13*

# What Could Have Been?

## THE COMPLEXITIES OF CALCULATING LOSS OF FUTURE INCOME

**I**n personal injury cases, analysis of “but-for” earning capacity is a critical factor in determining damages owed to the injured party. This complex assessment includes estimating income the injured individual would have earned had the injury never occurred. The analysis is based on the individual’s past earnings, present earnings, and expected or potential future earnings.

According to the Tennessee Pattern Jury Instructions, the trier of fact – and, by extension, any expert retained to evaluate economic damages – should consider “the plaintiff’s health, age, character, occupation, past earnings, intelligence, skill, talents, experience and record of employment” when evaluating the economic losses. A closer examination of this process reveals a myriad of intricacies that make the process far from straightforward.

### HISTORICAL EARNINGS AND CAREER TRAJECTORY

At the core of the “but-for” earning capacity analysis lies a meticulous examination of the injured party’s pre-injury earnings. Gathering data from employment records, tax returns, and financial documents provides a foundation for understanding the individual’s historical income. Complexities arise as one attempts to project the trajectory of the individual’s career had the injury not intervened.

Factors such as promotions, advancements, and changes in employment play a crucial role in shaping an individual’s earning potential. Evaluating the “but-for” scenario requires a nuanced analysis of the opportunities for career growth and progression that the injured party might reasonably have anticipated. Evaluating the individual’s upward mobility within their profession demands insight into the unique circumstances of the job market and industry-specific trends.

Further complicating factors arise in cases where the individual’s historical income was irregular (due to issues such as periods of unemployment, extended leaves of absence, self-employment, and gig/contract work) or non-existent (in the case of injury to a child, student, or otherwise unemployed individual). In a matter in which Elliott Davis was retained, the plaintiff was self-employed and had not filed tax returns within the five years preceding the incident. Elliott Davis turned to the next best available evidence of the plaintiff’s earnings – in this case, the individual’s bank statements – to determine the individual’s pre-incident earning history.

### EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

Educational background and professional qualifications are integral components of the “but-for” earning capacity analysis. Determining the impact of an individual’s education, training, and qualifications on



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future earnings and career advancement requires a forward-looking analysis, considering how various achievements may have translated into increased earning potential over time. Such an analysis may require the use of a vocational expert.

Importantly, authoritative guidance on the matter holds that an earning capacity analysis is based upon earnings that the individual could have earned, given the individual's education, qualifications, training, and experience, regardless of whether the individual was ever engaged in such employment. However, attorneys and experts should be wary that presenting an earning capacity analysis based on an individual's mere desire of attaining a particular job or position without sufficient supporting evidence could be considered speculative and unsupported.

In a matter in which Elliott Davis was retained, the plaintiff's employment history was in low-earning, unskilled positions. However, deposition testimony indicated that prior to the incident, the individual was planning to pursue a medical degree. Elliott Davis conducted multiple scenario analyses to evaluate the plaintiff's "but-for" earnings based on the

individual's prior employment and future anticipated employment. To perform our analysis, Elliott Davis considered both the employment history and the seemingly conflicting testimony. Without further corroborating evidence such as applications for enrollment in schools and testing history, Elliott Davis concluded that, in this instance, presenting such a scenario to the trier of fact could be considered unduly speculative. Elliott Davis put forth a report with an earning capacity analysis primarily based on the individual's established employment history, and the matter ultimately settled out of court.

### MARKET CONDITIONS AND INDUSTRY TRENDS

The dynamic nature of job markets and evolving industry trends adds another layer of complexity to the evaluation of an individual's "but-for" earning capacity. One must examine the job market conditions at the time of the injury and forecast how these conditions would have influenced the individual's career trajectory. Changes in demand for specific skills, technological advancements, and/or macroeconomic fluctuations may contribute to the uncertainty

surrounding future earning capacity.

### ELLIOTT DAVIS CAN HELP

The evaluation of "but-for" earning capacity in personal injury cases is a multifaceted process that requires a careful examination of an individual's past, present, and hypothetical future. Navigating through historical earnings, educational qualifications, market conditions, and economic factors demands a comprehensive approach. The complexities of this evaluation underscore the need for collaboration between attorneys and vocational and economic experts.

The skills, knowledge, education, experience, and training of economic experts, like the team at Elliott Davis, promote an accurate assessment of damages that may be owed to the injured party. Our team employs rigorous financial analyses and conducts thorough independent research to determine a plaintiff's "but-for" earning capacity. With our team's extensive experience, we can help you evaluate even the most complex cases.

*The information provided in this communication is of a general nature and should not be considered professional advice. You should not act upon the information provided without obtaining specific professional advice. The information above is subject to change.*



- IN LOVING -  
*Memory*



**TDLA President-Elect  
Nathan E. Shelby**  
October 5, 1979 — September 6, 2023





**W**hen we rescheduled our Annual Meeting in 2023 due to the death of our beloved TDLA President Elect Nathan Shelby, we knew we wanted to honor Nathan with a memorial at the rescheduled meeting. On November 30, 2023, Nathan's family, friends, and colleagues joined together in celebration of Nathan's life. Nathan was our President Elect, our colleague, and most importantly our friend. We loved him and we miss him.

One of Nathan's greatest strengths was in identifying and mentoring young lawyers to fulfill their potential as effective civil defense lawyers, and as emerging leaders in TDLA. Nathan saw the value of young lawyers participating in our group, and enthusiastically encouraged the young lawyers in his firm to attend our events and to get involved in and develop as emerging leaders in TDLA. His mentorship of young lawyers in his firm and in TDLA is his legacy.

At the memorial, we heard from Nathan's associates, partners, and friends, who all shared their memories and stories. We laughed and cried together. We were happy to welcome Nathan's wife Ashley Shelby to join us. I was pleased and honored to award Nathan's associate A.J. Parker with the inaugural Nathan E. Shelby Emerging Leaders Award, which will be given each year to an emerging TDLA leader and participant in the TDLA Emerging Leaders Program, our leadership development program. I cannot think of a better way to continue to honor Nathan's legacy every year by recognizing our TDLA emerging leaders.

Nathan is gone, but his larger-than-life personality lives on in our memories of him. In addition to being a leader in TDLA, he was a leader in his community, where he coached baseball on the weekends. TDLA will continue to honor his legacy by identifying and mentoring our young lawyers to develop as leaders in TDLA and in their communities. Nathan was a zealous advocate for his clients, but he was a friend to so many, including many attorneys from the plaintiff's bar. I encourage all of us to honor Nathan's legacy by remembering that we are human beings first and lawyers second, and it is in our friendships and relationships with others where we make the greatest impact.

*If you or any of your friends/colleagues need additional assistance dealing with grief and the loss of a loved one, please consider contacting the Tennessee Lawyers Assistance Program (TLAP), which is available to support lawyers across the state of Tennessee and can be reached at <https://tlap.org/> or 615-741-3238 or toll free at 877-424-8527.*

## NEW BILL AMENDS FILING DEADLINE FOR FIRST REPORT OF INJURY

It was a relatively quiet legislative session for workers' compensation. Aside from a few bills extending sunset clauses, substantive changes to the law have been minimal.

There is one bill of note, HB1694/SB2094, which Governor Lee signed on March 7, 2024. The bill amends when the First Report of Injury must be filed as set forth in Tennessee Code Annotated section 50-3-702(a). Currently, a First Report of Injury must be filed within fourteen days of an accident resulting in death or personal injury resulting in the injured worker's not returning to work within seven days of the accident. In all other cases, the First Report of Injury must be filed on or before the fifteenth day of the month following

the date of injury.

HB1694 simplifies when a First Report of Injury must be filed. Specifically, the bill provides that the First Report of Injury in all cases must be filed no later than fourteen calendar days after the earlier of the date the employer is notified of the accident or the date the employer has knowledge of the accident. There would no longer be two different deadlines, depending on the severity of the claim.

Further, the bill addresses concerns about the employer's ability to comply with the deadline. The filing deadlines in the current version of Tennessee Code Annotated section § 50-3-702(a) do not account for when an employer knows about the accident so as to trigger the filing of a First Report of Injury. According to the bill, the fourteen-day deadline for filing a First Report of Injury is based on the date the employer knows about the accident, rather than the date of the accident. This should improve an employer's ability to comply with the filing deadline.

HB1694 also amends Tenn. Code Ann. § 50-6-205(d)(1), which currently provides that an employer who controverts a claim after paying temporary disability benefits must file a notice of controversy within fifteen days of the due date of the first omitted payment. The bill eliminates reference to the "notice of controversy," as the Bureau of Workers' Compensation has merged that form with the Notice of Denial. Per the bill, the employer would instead "electronically file the required information with the administrator within fifteen (15) calendar days of the due date of the

first omitted payment."

The effective date of HB1694 is July 1, 2024.

## BUREAU OF WORKERS' COMPENSATION LAUNCHES REWARD HONOR ROLL.

As part of the REWARD Program, the Tennessee Bureau of Workers' Compensation is implementing the REWARD Honor Roll for Employers. The REWARD Program (Return Employees to Work and Reducing Disabilities Program) is a free program administered by the Tennessee Bureau of Workers' Compensation to improve return-to-work outcomes for workers' compensation claims. Employers whose return-to-work programs meet certain criteria are recognized and receive additional benefits via the Honor Roll.

According to the Bureau, "[t]he comprehensive program appeals to employers and other interested groups who are new to adapting worksites to workers injured on the job and to those who have experience in return-to-work initiatives. Newcomers receive a free toolkit on how to establish a return-to-work program, access to a free 20-hour training program, and the ability to network and collaborate with other employers to learn and develop. Employers with experience in return-to-work programs receive access to new research and developments in the field, access to the Reward Support Group, and can be featured on the REWARD Honor Roll."

Considering all the benefits of returning injured employees to work, the REWARD Program is certainly a valuable tool. More information about the program, including the criteria for Honor Roll, is available on the Bureau's website.



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mistake go unrectified.

The legislature chose the word “solely,” and the Tennessee Supreme Court abused its authority by ignoring the most critical word contained in the statute. To be sure, I do not believe any of the five justices<sup>13</sup> who signed this unanimous opinion intended to usurp the legislative branch’s authority. Notwithstanding my belief, the *Barnes* decision materially reduced the proof necessary to prove discrimination under the Tennessee Handicap Act in derogation of the statute.

This situation must be remedied. One way to address this issue would be for the Tennessee Supreme Court to withdraw *Barnes* as a published decision. Another way to address this issue is for the legislature to re-enact the Tennessee Disability Act, specif-

ically overruling the *Barnes* decision. Finally, we as lawyers can advocate that *Barnes* is wrongfully decided. This mistake of law in *Barnes* should not go uncorrected.

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1. 48 S.W.3d 698 (2000) abrogated by *Gossett v. Tractor Supply Co., Inc.*, 320 S.W.3d 777 (Tenn. 2010).

2. § 8-50-103(b) There shall be no discrimination in the hiring, firing and other terms and conditions of employment of the state of Tennessee or any department, agency, institution or political subdivision of the state, or of any private employer, against any applicant for employment based solely upon any physical, mental or visual disability of the applicant, unless such disability to some degree prevents the applicant from performing the duties required by the employment sought or impairs the performance of the work involved. Furthermore, no blind person shall be discriminated against in any such employment practices because such person uses a guide dog. A violation of this subsection (b) is a Class C misdemeanor.

3. This would constitute direct evidence of discrimination under the statute.

4. 48 S.W.3d at 705.

5. The THA is now referred to as the Tennessee Disability Act.

6. 48 S.W.3d at 705 (emphasis added).

7. *Id.* (emphasis added).

8. Remember that the Court defined the issue as “[w]hether the Plaintiff proffered any material evidence during trial which would support the jury’s finding of handicap discrimination.”

9. *Wall v. Trust Co. of Ga.*, 946 F.2d 805, 809 (11th Cir. 1991).

10. *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 526 (2010).

11. *Oates v. Chattanooga Publishing Company*, 205 S.W.3d 418, 424 (Tenn. Ct. App. 2006).

12. *Chapman v. Olymbec USA, LLC*, No. 18-CV-2842, 2023 WL 2394568, at \*9 (W.D. Tenn. Mar. 7, 2023).

13. Justice Holder delivered the opinion of the Court, in which Justices Anderson, Drowota, Birch, and Barker joined.

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*J.E. "BUDDY" STOCKWELL was appointed by the Tennessee Supreme Court in July 2020 as executive director of the Tennessee Lawyers Assistance Program (TLAP). He comes from south Louisiana where he has been a volunteer and program monitor for the state's Committee on Alcohol and Drug Abuse and the executive director of Louisiana's comprehensive Judges and Lawyers Assistance Program (JLAP) peer professionals' program. He is a certified clinical interventionist through "Love First" training at the Betty Ford Center and has personally been in recovery from alcoholism for over 38 years. Stockwell earned his law degree from LSU Law School in 1993. He practiced in both large and small firm settings, including a solo practice in Baton Rouge where he focused heavily on domestic litigation. Read more about him at [tba.org/Stockwell](http://tba.org/Stockwell).*

**S**uicides continue to devastate our legal profession here in Tennessee. As one would both compassionately expect and solemnly respect, most cases are not publicized, and the most intimate facts and circumstances of suicide deaths often remain untold. We continue to suffer these losses nonetheless, and each occurrence devastates families, friends, peers and the profession.

The truth is that we in the legal profession are at a greater risk for suicide than those in the general population, simply because we suffer such high rates of depression and substance use disorders.

In 2016, the watershed study "The Prevalence of Substance Use And Other Mental Health Concerns Among American Attorneys" revealed a 30% depression rate and 20% problematic alcohol use rate.<sup>1</sup> A year later in 2017, an American Bar Association (ABA) Taskforce published "The Path to Lawyer Well-Being," a report that included a "clarion call" to all stakeholders in the profession, encouraging everyone to implement better strategies to promote lawyer well being and reduce our odds of developing a mental health issue.<sup>2</sup>

It is the beginning of a courageous and much needed sea change. In just the last five years, and as never before, lawyers have been

empowered to speak candidly and openly about the pressure of the practice and how it can harm many of our peers. Consequences range from being miserable in the practice all the way to losing one's life via suicide or substance use poisoning.

The jury is in and the verdict is clear. Self-care is critically important in today's fast-paced profession. If we are to attenuate our high rates of mental health issues, our corporate culture must mandate self-care.

As for reducing suicides, self-care is important but we must also care for our peers who may be suffering, especially those at risk for suicide. This will require normalizing the protocol of asking a distressed peer if they are okay, and also clearly asking if they are having thoughts of self-harm.

The Texas Lawyers Assistance Program recently produced a very powerful video centered on trying to reduce suicides. Its title says it all: "Just Ask: How We Must Stop Minding Our Own Business in the Legal World."<sup>3</sup> Suicide is a very painful topic, but I nonetheless encourage everyone to watch this video. You will hear from suicide survivors and learn more about how we can do our best to help prevent suicides.

There is also a plethora of information about depression and suicide on the extensive website



[www.lawyerswithdepression.com](http://www.lawyerswithdepression.com), founded by lawyer and nationally recognized depression survivor, Dan Lukasik. On that site you will find the article entitled “Do You Ever Really Know the People You Practice With?” written by Ohio attorney Tabitha Hochscheid, which centers on the suicide of her law partner, Ken Jameson, a “universally respected, consummate professional” who by all outward appearances seemed to be enjoying life.<sup>4</sup>

According to Hochscheid, no one suspected that Jameson, a “self-confessed perfectionist,” was suffering from depression. But in April of 2011, Jameson suffered a pinched nerve in his back and underwent surgery in May. He seemed to be recovering well, but on May 22, without warning, Jameson took his own life. According to Hochscheid, “As the next few days unfolded, details began to surface. Following the back procedure he checked in with people at the office and seemed like his old self. He visited his mother and called his best friend. But all the while, Ken was

meticulously planning to take his own life. People were in a state of shock and disbelief.”

In hindsight, Hochscheid’s law firm sees warning signs: “It’s easy now to look back and see the signs of Ken’s depression (sleep deprivation, self-criticism, a feeling of letting others down, a search for answers and inability to allow others to help) and to wonder what, if anything, could have changed the outcome. Time, however, does not give us this luxury and these questions will never be answered. The best that can be done is to acknowledge that Ken’s illness, depression, can be deadly.”

In 2014, CNN published an article “Why are Lawyers Killing Themselves” that focuses on lawyer suicide.<sup>5</sup> There is also a tremendous amount of information at the National Suicide Prevention’s “988 Suicide & Crisis Lifeline” that can be accessed at [www.suicidepreventionlifeline.org](http://www.suicidepreventionlifeline.org).

Suicide risk factors that particularly affect lawyers and judges include mood disorders such as depression and anxiety disorders, alcohol and

substance disorders, hopelessness, aggressive tendencies, job or financial loss, loss of relationship, lack of social support and sense of isolation, and the stigma associated with asking for help.

Suicide warning signs include thinking or talking about things such as wanting to die, feelings of hopelessness or having no reason to live, feelings of being trapped or in unbearable pain, and being a burden to others. Also, beware of behavior that includes increased use of alcohol or drugs; being anxious, agitated or reckless; sleeping too little or too much; withdrawing or isolating from others; showing rage or talking about seeking revenge; or displaying extreme mood swings.

All the while, the underlying, disconcerting truth is that no one is immune to depression, alcoholism, addiction or other mental health challenges that can lead to suicide. We can’t predict who will be beset with suicidal ideations any more than we can conclusively predict the incidence of cancer or diabetes.

What we certainly can do, however, is better arm ourselves with

knowledge that helps us identify even subtle signs that a peer may be suffering. Lawyers are very high functioning and exceptionally skilled at hiding any weaknesses. Of course, this skill is very productive in the practice of law, but it can be devastatingly harmful in the realm of mental health. Isolation is a destructive trap and it fuels depression and substance use issues.

We can be ready to confidently step up, act and support a peer who we are worried about. There is a recognized approach to fighting suicide called QPR (Question, Persuade, Refer). QPR is essentially the CPR (Cardio Pulmonary Resuscitation) of mental health and, just like learning CPR to address heart attacks, QPR requires a little bit of training.<sup>6</sup>

Unlike a physical CPR effort, a QPR intervention simply requires a specific type of active listening and support that allows a suffering person to feel heard and connected. Isolation allows a person to conclude that ending life is the only solution. Having someone willing to reach out and simply sit and listen with an open and compassionate heart is often the inflection point where a suicidal person finds a new kernel of hope.

QPR is not counseling or a treatment for someone who is suicidal. It is a simple intervention based in love and compassion that is designed to crack the isolation and favorably present an option of being referred to a mental health professional. The slightest ray of sunlight can make a huge difference.

All that said, myths and misunderstandings about suicide still abound. One highly prevalent myth is the belief that if someone is going to commit suicide, there is nothing anyone can do to stop them. On the contrary, suicide is considered one of the most preventable causes of death.

Sometimes people are fearful that asking someone about suicide will only make them angry and increase their risk of suicide. Actually, the opposite is true. In fact, asking someone about their suicidal intent has been shown to lower the person's anxiety, open up long overdue communications and lower the risk of an impulsive act.

The bottom line: we do not have to be mental health professionals to make a difference. But we will have to stop worrying about whether or not someone will be offended if

we ask them if they are thinking of harming themselves. We must stop "minding our own business" when it comes to this issue. Can we prevent all suicides? Of course not. Can we learn best practices and QPR to help reduce suicides as much as possible? Absolutely!

Against the backdrop of all the above, when a suicide occurs, we will surely support each other through the overwhelming shock, pain and sorrow. Please also keep in mind that TLAP provides professional clinical support in such cases, including onsite trauma debriefing sessions for law firms and courts that have been directly impacted by a suicide.

*For more information, contact TLAP at (615) 741-3238 or email to [tlap@tlap.org](mailto:tlap@tlap.org). Also, Tennessee's Suicide Hotlines are listed at [www.suicide.org](http://www.suicide.org). All calls to TLAP are confidential as a matter of law.*

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1. P.R. Krill, R. Johnson, L. Albert. "The Prevalence of Substance Use And Other Mental Health Concerns Among American Attorneys." *Journal of Addiction Medicine*, 2016 (20% alcohol abuse rate and 30% Depression Rate)

2. B. Buchanan, J. Coyle, et al. "The Path to Lawyer Well-Being Practical Recommendations for Positive Change." *ABA National Task Force on Lawyer Well-Being*, 2017.

3. The Disciplinary Board of the Supreme Court of Pennsylvania. "Just Ask: How We Must Stop Minding Our Own Business in the Legal World." (June 28, 2021). <https://youtu.be/Q0O3198ip0I>.

4. Tabitha M. Hochscheid. "The Suicide Of A Lawyer With Depression: Ken's Story." *Lawyers with Depression*. (Sept. 3, 2011). [www.lawyerswithdepression.com/articles/the-suicide-of-a-lawyer-with-depression-kens-story](http://www.lawyerswithdepression.com/articles/the-suicide-of-a-lawyer-with-depression-kens-story).

5. Rosa Flores, Rose Marie Arce. "Why Are Lawyers Killing Themselves?" *CNN*. (Jen. 20, 2014). [www.cnn.com/2014/01/19/us/lawyer-suicides/index.html](http://www.cnn.com/2014/01/19/us/lawyer-suicides/index.html).

6. To become certified in QPR, visit <https://qprinstitute.com>.

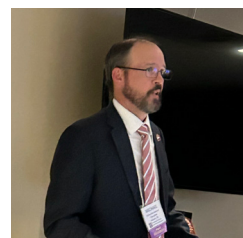


# Annual Meeting

**T**he Board was pleased to host our Annual Meeting and Awards Dinner event at Henry Horton State Park in Chapel Hill, TN this year. After a last minute change in venue

due to drought in Fall Creek Falls, members and sponsors made the sudden change to Chapel Hill, TN where we were met with the best in hospitality. Thank you to those members and speakers who were

able to make the quick change and a big shout out to sponsors for pivoting quickly as well! Congratulations to our new Board appointments and 2023 award winners!

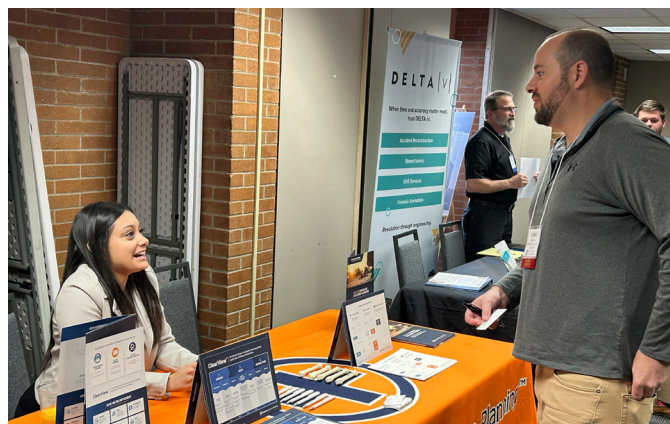




▲ **Scott Rhodes**  
*Defense Lawyer of the Year*

## ***TDLA Award Winners 2023***

**Christina Hadaway** ➔  
*Rising Star*





*continued from page 4*

us as the meeting was rescheduled and relocated. Our sponsors joined us during the service project and walked with us in an early morning rain. Please remember to use our sponsors whenever possible and thank them for being TDLA sponsors.

There are multiple opportunities to engage in TDLA in 2024. We recently held the annual Trial School on January 26 and 27. Looking ahead, the TDLA / ADLA Joint Summer Conference is scheduled for June 13-16, 2024 at the Perdido Beach Resort in Orange

Beach, Alabama. We are teaming up with Kentucky Defense Counsel for the 2024 Annual Meeting, which will be held October 9-11 in Lexington, Kentucky. Additionally, NEXT GEN Training and other educational webinars will be held throughout the year. Through these events, TDLA members can earn CLE credits and interact with each other and our sponsors.

I encourage each of you to engage in TDLA as much as possible. Please visit TDLA's website to explore all that TDLA has to offer, including the new Emerging Leaders program. We

all have something unique to contribute to TDLA, and through TDLA we each have the opportunity to grow professionally. The most exciting and meaningful opportunities I have had in my career can be directly linked to TDLA. I am thankful to be a part of an organization of amazing people and honored to serve as TDLA President.

Michael Haynie

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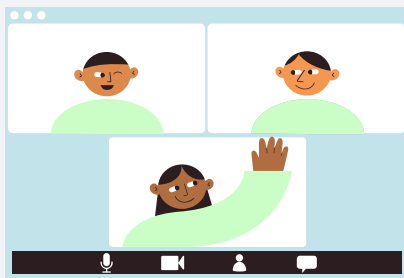
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is not transferable.*

## TDLA Membership Application

☐ I am a defense attorney and first time member of TDLA and I am a member of DRI.\*

☐ In-House Counsel (as defined below,\*\* please check if applicable)

☐ Young Lawyer (admitted to the bar for ten years or less)

☐ I am not a member of DRI, but I am interested in a DRI membership.

☐ Male ☐ Female Name \_\_\_\_\_

Title \_\_\_\_\_

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Primary area(s) of practice \_\_\_\_\_

*In order to maximize the educational and networking opportunities for its members, TDLA has established sections which focus more narrowly on specific practice areas. The list of these appears below. TDLA believes that belonging to one or more sections greatly enhances the value of your membership in TDLA and we encourage you to join those that interest you. Membership in a section is free of charge, requires no additional commitment or responsibility on your part, and you may belong to as many sections as you wish. Please indicate which sections you wish to join by marking the corresponding box(es) below.*

☐ Employment & Workers Compensation Section ☐ Professional Negligence & Healthcare Section ☐ Torts Section ☐ Young Lawyers Section

Number of attorneys in your firm ☐ 1-2 ☐ 3-10 ☐ 11-20 ☐ 21-50 ☐ 51-99 ☐ 100+

**Optional** TDLA is committed to the principle of diversity  
in its membership and leadership. Accordingly,  
applicants are invited to indicate which one of  
the following may best describe them:

☐ African American

☐ Asian American

☐ Hispanic

☐ Native American

☐ Caucasian

☐ Other \_\_\_\_\_

Date of birth \_\_\_\_\_  
month/day/year

Referred by \_\_\_\_\_

Name of referring TDLA Member attorney (if applicable)

*I devote 51% or more of my professional time to the representation of business, insurance companies or their insureds, associations or governmental entities in civil litigation. I have read the above and hereby make application for individual membership.*

Signature \_\_\_\_\_ Date \_\_\_\_\_ All applications must be signed and dated.

Please return application to:

TDLA

PO Box 282, Lookout Mtn, TN 37350

P: 423.314.2285

E: office@tdla.net | www.tdla.net

\* DRI = Defense Research Institute

\*\* In-house counsel is defined as a licensed attorney who is employed exclusively by a corporate or other private sector organization, for the purpose of providing legal representation and counsel only to that corporation, its affiliates and subsidiaries.

☒ I am a first-time DRI member **and** I am a member of my SLDO. **Note:** DRI will contact your SLDO to confirm your membership with them before processing. Categories for individual membership in DRI:

- ☐ Defense Attorney—\$285 USD/year  
☐ In-House Counsel—\$285 USD/year (as defined below\*\*\*)  
☐ Government Attorney—\$160 USD/year  
☐ Young Lawyer—\$165 USD/year (admitted to the Bar for five years or less). **Young Lawyers free registration for one seminar is valid for as long as you are a member of the Young Lawyers Committee.**

☐ National Foundation for Judicial Excellence (NFJE) Contribution—\$35 USD/year

☐ Male ☐ Female Name \_\_\_\_\_

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I am a member of a state or local defense organization.

☐ Yes ☐ No

Name of organization

**Tennessee Defense Lawyers Assoc**

☐ I am an armed services veteran.

Primary area(s) of practice \_\_\_\_\_

DRI encourages you to join committees to greatly enhance the value of your membership. Just check the boxes (no limit) on the Join a Committee form, last page.

Number of attorneys in your firm ☐ 1-2 ☐ 3-10 ☐ 11-20 ☐ 21-50 ☐ 51-99 ☐ 100+

**OPTIONAL**

DRI is committed to the principle of diversity in its membership and leadership. Accordingly, applicants are invited to indicate which of the following may best describe them:

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☐ Caucasian ☐ Multi-Racial ☐ LGBT ☐ Other \_\_\_\_\_

Date of birth \_\_\_\_\_  
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Referred by **Cate Dugan**  
Name of referring DRI Member attorney (if applicable)

I devote a substantial portion of my professional time to the representation of business, insurance companies or their insureds, associations or governmental entities in civil litigation. I have read the above and hereby make application for individual membership.

I authorize DRI to send me announcements via mail, facsimile and phone about its programs, services and all other offerings that may be of interest to me or my colleagues. I also consent to receipt of notices from DRI in electronic form, including email. I understand I have the right to withdraw my consent at any time.

Signature \_\_\_\_\_

Date \_\_\_\_\_

All applications must be signed and dated.

\* SLDO=State and Local Defense Organization

\*\* Non-transferable and expires 18 months after join date; excludes the Annual Meeting.

\*\*\* In-house counsel is defined as a licensed attorney who is employed exclusively by a corporate or other private sector organization, for the purpose of providing legal representation and counsel only to that corporation, its affiliates and subsidiaries.

† See reverse side for NFJE description and state disclosure information.

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