

Summer - 2022

The Liaison



SMPA is an affiliated association of NALA - The Paralegal Association. SMPA welcomes new members. While our emphasis is on promoting paralegals in Tennessee, SMPA does not restrict membership by state of residence or employment and has welcomed paralegals from other states who wanted to take advantage of our membership benefits.

Membership in the Smoky Mountain Paralegal Association is open to paralegals, students in paralegal programs, attorneys, law firms, corporations and businesses promoting the paralegal profession, and educational institutions providing paralegal programs.



U.S. Supreme Court Associate Justice Howell Edmunds Jackson

Associate Justice Howell Edmunds Jackson (1832—1895) was the second person from Tennessee to be appointed to the United States Supreme Court. Appointed by President Benjamin Harrison, Justice Jackson served from 1893 to 1895. Justice Jackson studied law at the University of Virginia and the Cumberland School of Law. He held elected positions in the Tennessee House of Representatives, and the U.S. Senate until taking a position on the Sixth Circuit Court of Appeals. Justice Jackson was considered very knowledgeable in patent law at a time of significant industrial and manufacturing growth in America. Justice Jackson was opposed to secession but served the Confederacy as a receiver of impounded property during the Civil War. Justice Jackson died, possibly from tuberculosis, in August of 1895 in Nashville.



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Case in Review

In the Supreme Court of Tennessee Special Workers' Compensation Appeals Panel. June 21, 2021 Session. Brett Rosasco v. West Knoxville Painters, LLC. E2020-01656-SC-R3-WC. Filed November 18, 2021. Go to www.tsc.state.tn.us Enter E2020-01656-SC-R3-WC in the search box on the left.

- Do you agree with the ruling in this matter?
- Mr. Rosasco utilized a portable restroom that was located near his work site but

- not placed by his employer. Do you think the employer had any liability regarding this issue?
- Suppose Mr. Rosasco had used the building's facility and slipped and fell on a wet floor? Who would be liable?
- Suppose Mr. Rosasco had found a winning lottery ticket in the portable restroom? Do you think his employer would want to share the winnings?



"A workers' compensation injury is one that 'arises primarily out of and in the course and scope of employment.' Tenn. Code Ann. § 50-6-102(14). 'Arising out of' refers to 'a causal connection between the conditions under which the work is required to be performed and the resulting injury.' *Dixon v. Travelers Indem. Co.*, 336 S.W.3d 532, 537 (Tenn. 2011)." *See* also footnote 2 in the original opinion.

-Hon. William B. Acree, Sr. J., (Delivering the Opinion of the Court)

Legal Support Duties

- Visit the scene!
- Along with or at the direction of your supervising attorney, go to the scene where the subject incident happened.
 Bring a camera, measuring tape, sketch-pad, and simple compass.
- Take photos and make measurements of specific points of interest. How far was the portable lavatory from the work site?
- Interview witnesses. Who placed the lavatory in that location? Who exactly owned the lavatory? Site conditions? Hazards at site?

Tennessee Code Annotated §50-6-102 (14)(A-B)

- (14) "Injury" and "personal injury" mean an injury by accident, a mental injury, occupational disease including diseases of the heart, lung and hypertension, or cumulative trauma conditions including hearing loss, carpal tunnel syndrome or any other repetitive motion conditions, arising primarily out of and in the course and scope of employment, that causes death, disablement or the need for medical treatment of the employee; provided, that:
- (A) An injury is "accidental" only if the injury is caused by a specific incident, or set of incidents, arising primarily out of and in the course and scope of employment, and is identifiable by time and place of occurrence, and shall not include the aggravation of a preexisting disease, condition or ailment unless it can be shown to a reasonable degree of medical certainty that the aggravation arose primarily out of and in the course and scope of employment;
- (B) An injury "arises primarily out of and in the course and scope of employment" only if it has been shown by a preponderance of the evidence that the employment contributed more than fifty percent (50%) in causing the injury, considering all causes;

President's Message

SMPA was formed in 2005, and became an official NALA Affiliated Paralegal Association in January 2006. SMPA was created by paralegals dedicated to meeting the professional needs of not only East Tennessee paralegals, but also paralegals in other areas of the state and in other states. One of the goals of SMPA was to groom young paralegals to take over as leaders in our association.

We have reached the point in our association where we need those young paralegals to step up and become leaders. If this does not happen, the demise of SMPA is inevitable.

The last monthly CLE had three members in attendance in person.

SMPA held a social #networking event to gather and celebrate SMPA's first baby. Five members attended along with the guest of honor.

What is the solution to the lack of participation?

In an effort to find a solution, I recently sent a link for a survey of the membership to all members and it was posted on our social media accounts. There were a total of six responses received. SIX!

Why have you not declared for a position on the Executive Committee? Why haven't you volunteered to serve on a committee??

- Half of the responses to both of these questions was "time."

Being on a committee, or even the Executive Committee is not as time consuming as one would think. So what does being on the EC entail, exactly? Let's look at the Bylaws and break down each of the roles of the Executive Committee.

11.8 Parliamentarian.

The Parliamentarian shall attend all meetings and give opinions on parliamentary procedures upon request of the President. This officer shall be familiar with association Bylaws and NALA Bylaws, shall receive all proposed Bylaw amendments, and shall prepare Standing Rules and amendments to Standing Rules and Bylaws upon request of the Executive Committee. *Robert's Rules of Order Newly Revised* serves as parliamentary authority for items not covered by these Bylaws or the association Standing Rules. SMPA shall provide a copy of *Robert's Rules of Order Newly Revised* to the Parliamentarian.

- The Parliamentarian is appointed by the President.
- > Be an Active Member in good standing.
- Attend EC meetings (4) and the Annual Meeting. EC Meetings are currently held via Zoom for everyone's convenience. They have been averaging about an hour each. The Annual Meeting is on the 2nd Thursday in December.
- \triangleright Verify there is a quorum (1/10 of the membership with voting rights are in attendance.)

- Make sure the meetings are orderly.
- > The Parliamentarian does not vote at the meetings.
- This position is not very time consuming.

11.7 Academic Outreach Director.

The Academic Outreach Director shall automatically be the chair of the Academic Outreach Committee and shall be in contact with schools with paralegal programs within the East Tennessee area to promote SMPA, assist with the needs of the school, and volunteer to speak at school programs. This officer shall oversee the Mentor Program, seeing that each new student is assigned a mentor and make periodic contact with student members. The Academic Outreach Director shall also oversee the student scholarship application and distribution process.

- ➤ Be an Active Member in good standing.
- Attend EC meetings (4) and the Annual Meeting. EC Meetings are currently held via Zoom for everyone's convenience. They have been averaging about an hour each. The Annual Meeting is in December, on the 2nd Thursday.
- ➤ Visit the local paralegal classes in person or Zoom and promote SMPA and its benefits.
- Assign student members a mentor.
- ➤ Promote the student scholarship and present the award to the winner at our Annual Meeting.
- ➤ This position is a little time consuming.

11.6 NALA Liaison.

This officer shall be a NALA active member, shall be familiar with the NALA Bylaws, shall receive minutes of all NALA meetings, and shall represent the association at the NALA annual meeting of affiliated associations. In the event the NALA Liaison is unable to attend the NALA annual meeting of affiliated associations, the association may designate another NALA active member to serve as its' representative. This officer shall report bi-annually on association activities to the NALA affiliated associations director on forms provided by NALA headquarters, and shall report all officers' names to NALA headquarters and the NALA affiliated associations director.

This officer may submit items the association wishes discussed to the NALA Affiliated Association Director and shall participate in discussion sessions at the NALA annual meetings. A report to the association members on the NALA annual meeting will be required.

This officer shall, within sixty days of passage, notify the NALA Affiliated Associations Director of any changes in the association's bylaws. This officer shall be the main contact between NALA and the association. This officer shall be a member of the governing body of this association.

- ➤ Be an Active Member in good standing.
- ➤ Be an Active Member of NALA in good standing.

- Attend EC meetings (4) and the Annual Meeting. EC Meetings are currently held via Zoom for everyone's convenience. They have been averaging about an hour each. The Annual Meeting is in December, on the 2nd Thursday.
- > Prepare and send various reports to NALA throughout the year.
- ➤ Attend the NALA Conference (paid for by SMPA).
 - o Attend the Affiliated Associations meeting at the conference and prepare a report about the meeting.
 - Represent and promote SMPA at the Affiliate Association Showcase. (Think standing/sitting behind/at a table decorated and give away swag and collect ideas and swag from other affiliated associations.)
 - Attend CLE sessions at the conference and prepare a report of the conference for SMPA.
- This position can be time consuming, but only around July with the NALA Conference.

11.5 Treasurer.

The Treasurer shall automatically be chair of the Finance Committee, which shall prepare a budget for the ensuing fiscal year to be adopted by the membership at the annual meeting. (Budget shall be submitted to the Executive Committee prior to presentation at annual meeting.) The Treasurer shall deposit all funds and make all disbursements, subject to approval of the Executive Committee and as provided in the budget. Any extraordinary expenses must be approved by the Executive Committee before obligation to pay. The Treasurer may be bonded (premium paid by association). All disbursements of association funds must be by association check signed by the Treasurer of President. This officer shall submit a written financial report at each regular meeting to be attached to official minutes as part of permanent record. The Treasurer is also responsible for keeping a current roster of membership and reporting the membership annually to NALA with the renewal fee for continued affiliation with NALA.

- ➤ Be an Active Member in good standing.
- Attend EC meetings (4) and the Annual Meeting. EC Meetings are currently held via Zoom for everyone's convenience. They have been averaging about an hour each. The Annual Meeting is in December, on the 2nd Thursday.
- ➤ Prepare a report for the EC Meetings showing the current status of our financial situation (where we are on the budget).
- > Pay the bills, collect the money.
- Collaborate with the President and prepare the next year's budget.
- > This position can be somewhat time consuming.

11.4 Secretary.

The Secretary shall automatically be co-chair of the Nominations/Elections/Credentials Committee. The Secretary shall be responsible for minutes for all meetings and keeping permanent minutes. This officer shall assist the President in any way including giving notice of meetings. Association minutes of any meeting shall be available to the NALA President upon request.

- > Be an Active Member in good standing.
- Attend EC meetings (4) and the Annual Meeting. EC Meetings are currently held via Zoom for everyone's convenience. They have been averaging about an hour each. The Annual Meeting is on the 2nd Thursday in December.
- Take minutes at these 5 meetings for presentation to the EC and publication to the membership in *The Liaison*.
- ➤ Keep the official copies of the Officer Reports from the EC Meetings on a jump drive.
- This position is not very time consuming.

1.3 Second Vice President.

The Second Vice President shall automatically be chair of the Membership Committee and shall be charged with the responsibility of developing programs to encourage membership in the association. This officer shall receive applications for membership and present names of new applicants to the Executive Committee for acceptance or rejection. Upon approval of membership, applications shall be signed by this officer and delivered to the treasurer with dues payment. The Second Vice President shall work with her national counterpart (NALA Second Vice President) to encourage membership in NALA.

- ➤ Be an Active Member in good standing.
- Attend EC meetings (4) and the Annual Meeting. EC Meetings are currently held via Zoom for everyone's convenience. They have been averaging about an hour each. The Annual Meeting is on the 2nd Thursday in December.
- Process renewals and new member applications.
- Chair the membership committee promote SMPA to paralegals and paralegal students for membership.
- > Promote membership in NALA.
- This position is a little more time consuming.

11.2 First Vice President.

The First Vice President shall preside and shall assume all duties assigned to the President in the President's absence. This officer shall automatically be chair of the Educational Programs Committee. These duties shall include planning seminars and workshops and working with NALA in the event of co-sponsorship of any programs. The First Vice President shall also be responsible for fulfilling the educational requirements under Article VI, Section 6.1 of these Bylaws and shall report such education meetings to the NALA Liaison. The First Vice President shall work very closely with the President in preparation for the impending election to President.

- ➤ Be an Active Member in good standing.
- Attend EC meetings (4) and the Annual Meeting. EC Meetings are currently held via Zoom for everyone's convenience. They have been averaging about an hour each. The Annual Meeting is on the 2nd Thursday in December.
- > Schedule the monthly CLE meetings and obtain prior approval for credit with NALA.

- ➤ Chair the membership committee. The committee plans the Annual Seminar and Annual Meeting.
- This position is a little more time consuming.

11.1 President.

The President shall preside over the Executive Committee and membership meetings. The President shall appoint a Parliamentarian and special and standing committee chairpersons as provided by these Bylaws. The President shall pass files to successor immediately upon installation and shall ensure all other officers' and chairpersons' files are passed to respective successors. The President shall be ex-officio (non-voting) member of all committees except the committee on nominations and elections.

- ➤ Be an Active Member in good standing.
- Attend EC meetings (4) and the Annual Meeting. EC Meetings are currently held via Zoom for everyone's convenience. They have been averaging about an hour each. The Annual Meeting is on the 2nd Thursday in December.
- > Previously hold an officer position on the EC.
- ➤ Preside over the EC Meetings and the Annual Meeting.
- > This position can be time consuming.

Participating on a committee is not as time consuming as being the Chair of a committee.

The following committee chairs serve according to their duties as officers of the association:

Academic Outreach Committee (Academic Outreach Director)

Educational Programs Committee (First Vice President)

Ethics Committee (President and Second Vice President)

Executive Committee (President)

Finance Committee (Treasurer)

Membership Committee (Second Vice President)

Nominations/Elections/Credentials Committee (Secretary)

Resolution Committee (NALA Liaison)

State and Local Bar Associations Committee (President)

The President shall appoint the following standing committee chairs:

Audit Committee

Community Outreach Committee

Nominations/Elections/Credentials Committee (Co-Chair Parliamentarian)

Publications Committee

Resolution Committee (Co-Chair Parliamentarian) Web Manager

How can we improve SMPA?

There were only 5 responses.

- 1. More people need to want to be involved; the dance people do everything and it's not sustainable.
- 2. Better involvement.

How does SMPA get its members to be more involved?

SMPA offers social #networking events throughout the year. These events vary in location, day, and week to encourage participation.

SMPA participates in community outreach. Our members are encouraged to participate in these endeavors. Our most successful community outreach is sponsoring the Ronald McDonald House.

3. More in demand CLE.

SMPA offers 11 CLE during their regularly scheduled monthly meetings.

We offer a minimum of 7 CLE at our Annual Seminar.

Earning an ACP designation is equal to 20 CLE.

NALA offers webinars and on-demand webinars for CLE.

4. Unsure.

The bottom line is we cannot continue as an association without your involvement. I personally do not want SMPA to fail. I encourage each one of you to become more active in SMPA. If you don't know how or where to begin, ask. Ask me or any current or former member the Executive Committee whatever questions you have. We are here to help.

We cannot continue without you.

SMPA EXECUTIVE COMMITTEE MEETING

Tuesday, July 26, 2022, 6:30 p.m. Location: Zoom

Meeting Minutes

The third quarter meeting of the 2022 Smoky Mountain Paralegal Association's Executive Committee occurred on Tuesday, July 26, 2022, at 6:30 p.m. The attendees included: Kati Wheatley, ACP, President; Kate Harris, CP, Academic Outreach Director; Stephanie Lee, ACP, Treasurer; Shelia Williams, ACP, NALA Liaison; Brittni Cochran, CP, Parliamentarian; and Kelley Myers, ACP. Parliamentarian Brittni Cochran announced that a quorum was present, and President Kati Wheatley called the meeting to order at 6:36 p.m. In the absence of Secretary Katy Mitchell, Kati Wheatley asked Shelia Williams to record the minutes for this meeting.

Approval of EC Minutes from April 26, 2022

Kate Harris made a motion to approve the minutes of the April 2022 EC meeting as printed in *The Liaison*, Summer 2022. Stephanie Lee seconded the motion. All present approved, and the motion passed.

Officer Reports

First Vice President: Kati Wheatley reported that the seminar brochures went out. NALA approved 9.0 hours of CLE; however, they did not approve *The Ethics and Logistics of Working Remote & Tools and Tips to Find People* as meeting the ethics CLE requirement. Kati reminded us to submit questions with registration forms for Mr. Campbell to build his presentation around.

Second Vice President: This office remains unfilled. Kati Wheatley reported that the website shows 86 members; however, the Treasurer's report shows 37 active, four students, and seven sustaining members have actually paid. This is a result of allowing members to renew at different times during the year based on when they initially joined. This practice is not in accordance with SMPA's bylaws and rules of procedure and is gradually being corrected. Kati presented the idea of combining the First and Second Vice President offices as NALA has done in recent years. The idea was discussed and all agreed to think about it for next meeting.

Treasurer: Stephanie Lee provided a written report which is attached to the original of these Minutes. The \$190 deposit of "\$50 for RMC fundraiser; \$140 deposited in 2022 for 2021 RCD" was discussed. Stephanie explained that the money was received and used in 2021, but was not deposited until 2022. The "Non-Member CLE" item was discussed, and the decision was made to add an account to make that a budgeted item next year.

Academic Outreach: Kate Harris, provided a written report which is attached to the original of these Minutes. She will resume class visits next month and reach out to Darin Devault (UT) regarding the status of UT's online paralegal studies program.

NALA Liaison: Shelia Williams reported on the NALA Convention and the new NALA officers elected. She will have access to all conference presentations and will download materials and presentations for the CP prep classes. She discussed the Affiliates Award presented to Kelly Myers. Shelia will send what she presented about Kelley to Bill for the next *Liaison*.

Community Outreach Committee: Ronald McDonald House has requested our association visit the house and possibly provide some things needed for back to school. Some of the requests include umbrellas and snacks. Kate will work on getting this out on social media.

CP Review Class: One member from the Spring study group successfully completed the knowledge exam and will take the skills exam in July. The question was raised about using the recordings from the NALA convention. Shelia Williams will look into that.

Publication Committee: Bill is asking for submission by August 8 on the topic of "what SMPA means to me."

Unfinished Business

Website: Calendar still has issues. Kati will work on those.

Lunches at monthly meetings: The monthly meetings have been via Zoom, since discontinuing lunches at monthly meetings. Attendance via Zoom is good.

New member applications without an actual application: This problem has been resolved.

New Business

Confirm President for 2023: Kati Wheatley left the Zoom meeting while remaining EC members discussed her continuing in 2023 as President of SMPA. Kati was unanimously confirmed.

Leadership Training: Shelia Williams opened discussions regarding offering a leadership training program to educate members regarding the duties and responsibilities of the EC officers. The goal would be to train others to be future SMPA leaders. Kate Harris suggested hi-lighting an EC member on social media once a month.

Increasing Membership: A discussion occurred regarding ways to increase membership. Kate Harris suggested a reward for referring new members. Kate will try to get a survey on social media.

Schedule Next Meeting: The next EC meeting was scheduled for Tuesday, October 25, 2022, at 6:00 p.m. via Zoom.

Adjournment:

With no further business, President Kati Wheatley adjourned this meeting at 7:40 p.m.

Respectfully submitted,

Shelia Williams, ACP
Shelia Williams, ACP
Acting SMPA Secretary



SMOKY MOUNTAIN

PARALEGAL ASSOCIATION

www.smparalegal.org



Presents Its

2022 Annual Seminar October 21 – 22, 2022

Safety:

All social distancing restrictions and personal protection equipment requirements imposed on the date of the seminar by local, state, and national governmental and health authorities, and The Read House will be implemented and strictly followed by all sponsors, presenters, and attendees.



The Read House 107 West MLK Blvd Chattanooga, TN 37402 423.266.4121 www.thereadhousehotel.com



Seminar Highlights

SMPA proudly presents its 2022 Annual Seminar to be held at The Read House in Chattanooga, Tennessee. Our topics this year include suggestions from previous seminar surveys. The CLE portion of the seminar will be held in the Chestnut Room and will provide quality continuing legal education topics from leaders in their respective fields.

We will have a fun and enjoyable Friday evening buffet dinner and will include networking and socializing while participating in a variety of Halloween themed games. Don't forget to wear your favorite costume for the Costume Contest! Please feel free to bring a guest for a nominal fee.

We encourage all members to attend and invite non-member paralegals. The registration form may also be found on our website at www.smparalegal.org.

After the seminar, you may want to visit the local attractions in the Chattanooga area!



CLE Credit

CLE Credit: This seminar meets the requirements of the NALA Certifying Board for 9 credits (including 1.5 Ethics) toward maintenance of the CLA/CP/ACP designations.

Friday, October 21, 2022

Registration 8:00 – 8:45

Welcome 8:45 – 9:00

Kati Wheatley, ACP

SMPA President

The Ethics and Logistics of Working 9:00 – 10:30
Remote & Tools and Tips to Find People
Bill Dean
LBMC Information Security

Break 10:30 – 10:45

Probation, Recidivism, and Reentry 10:45 – 12:15

Mandy Palmiter, Federal Probation

Lunch 12:15 – 1:30 (Boxed Lunch Included)

What Does a Forensic Psychologist do as a Trial
Consultant? 1:30 – 3:00
Dr. David Ross
University of Tennessee, Chattanooga

Break 3:00 – 3:15

*Ethics 3:15 – 4:45

Andrew B. Campbell, Esq.
Disciplinary Counsel – Litigation
Board of Professional Responsibility of the
Supreme Court of Tennessee

Dinner and Social 6:30 – 8:00

*Please submit your questions to be answered during this session with your registration form.



You are invited to join us 6:30 p.m. – 8:00 p.m. inthe Crutchfield Room for a delicious buffet dinner and social including a variety of Halloween themed games and a Costume Contest!

Dinner will include a Garden Green Salad, Springer Mountain Farms Chicken Breasts, Atlantic Spiced Salmon, Herb Roasted Baby New Potatoes, Wild Rice Pilaf, Grilled Asparagus with Tomato Balsamic, Roasted Broccoli with Shaved Parmesan, and New York Style Cheesecake with Berries and Whipped Cream for dessert.

This is an ideal time to network, socialize, get to know your fellow SMPA members, guests, and enjoy great food.

Saturday, October 22, 2022

Welcome 8:30 – 8:45

Kati Wheatley, ACP

SMPA President

Appellate Court Primer 8:45 – 10:15

Erin Rust, Esq.

FDSET

Break 10:15 – 10:45

What is a Federal Defender and What do They Do? 10:45 – 12:15 Presita West, Esq.

Dismissal 12:15 – 12:30





Registration Form

Name:						
(Please include designation if applicable)						
Firm/Employer:						
Address:						
Email:						
*Please email your registration form to: firstvice@smparalegal.org along with any questions you want answered during the session						
presented by Andrew B. Campbell, Esq. Disciplinary Counsel – Litigation						
Board of Professional Responsibility of the Supreme Court of Tennessee*						
Registration Fees: ☐ Members \$175.00						
□ Student Member \$75.00						



□ Non-member/Walk-In \$185.00

☐ Friday CLE only \$120.00

☐ Friday CLE & Buffet/Social \$175.00

☐ Guest - Friday Night Buffet & Social \$50.00

Guest Name: ____

□ Saturday CLE only \$60.00

*Payable by cash, check, or debit/credit card

Registration includes 9 hrs. CLE, course materials, morning and afternoon snacks, lunch on Friday, and Friday night buffet.

Guest Policy: No unregistered attendees are allowed in the CLE portion of the seminar. Adult guests are allowed to attend the Friday night social at the fee outlined above.

Cancellation/Walk-In Policy: Cancellations are subject to a \$25.00 administrative fee until September 21, 2022. After that date, no fees are refunded for cancellations. Walk-Ins are welcome provided space is available. Anyone who has registered but has not paid by October 5, 2022. will be considered a Walk-In.

Return Form and Payment To:

Smoky Mountain Paralegal Association P.O. Box 445 Knoxville, TN 37901

Hotel Registration Instructions:

The Read House 107 West MLK Blvd Chattanooga, TN 37402 423.266.4121 www.thereadhousehotel.com

The Read House has reserved a block of Deluxe 2 Queen Bed sleeping rooms in the Manor Building for the SMPA Seminar at a price of \$159.00 per night until September 20, 2022. You may share a room at no additional cost.

Deluxe Double Queen

Featuring two queen beds with plush bedding, the Manor Building Deluxe Double Queen rooms boast sophisticated furnishings. Room highlights include a 50" flat screen TV and mini-fridge. These room are also outfitted with all standard in-room amenities.



After September 20, 2022, reservations will be accommodated based on availability and the best available rate.

Reservations may be made by calling The Read House 423-266-4121 and letting the operator know you are with SMPA.

MOBILE MEALS

Summer & Fall Schedule



August 26th 2 Volunteers Needed!

September 2nd Kathy Herd & Kelley Myers

September 23rd 2 Volunteers Needed!

October 28th Kathy Herd & Kelley Myers

November 4th Kelley Myers & Kati Wheatley

December 23rd Kathy Herd & Kelley Myers





UPCOMING MONTHLY CLE TOPICS



AUGUST 11, 2022
SEARCH AND SEIZURE LAW
TIM ARRANTS, ESQ.
MYRICK LAW FIRM

SEPTEMBER 8, 2022 WHAT IS HIPAA REALLY? RACHEL HURT, ESQ. ARNETT, DRAPER & HAGOOD

OCTOBER 13, 2022
THE ROLES OF THE PARALEGAL IN CAPITAL CASES
NANCY HERNANDEZ, FDSET

NOVEMBER 10, 2022
ADOPTION LAW
N. DANIEL ROBERTS, ESQ.
LAW OFFICE OF N. DANIEL ROBERTS

DECEMBER 8, 2022
ANNUAL MEETING



SMOKY MOUNTAIN PARALEGAL ASSOCIATION

STUDENT SCHOLARSHIP APPLICATION

P.O. Box 445 Knoxville, TN 37901 www.smparalegal.org

AN AFFILIATE OF NALA - THE PARALEGAL ASSOCIATION

SCHOLARSHIP

The Smoky Mountain Paralegal Association ("SMPA") is pleased to award a student scholarship in the amount of \$800.00. Funds are to be used to pursue a paralegal education. The check will be made payable directly to the scholarship recipient.

REQUIREMENTS

To be an eligible applicant, one must be enrolled as a student in a paralegal program at an educational institution that is an existing SMPA Sustaining Member or be a current SMPA Student Member. An eligible applicant must also have completed six (6) hours of study in his or her major and be in good academic standing.

An application must be complete and have the following supporting documentation attached:

- Current College Transcript (evidencing paralegal/legal studies course(s) completed);
- 2. Academic Recommendation Letter;
- 3. Personal Recommendation Letter; and
- 4. One page, double-spaced, essay explaining why you have chosen the paralegal profession and why you should be awarded the SMPA Student Scholarship.

Applications complete with all supporting documentation must be postmarked by April 1st and be mailed to:

The Smoky Mountain Paralegal Association
ATTN: Scholarship Committee
P.O. Box 445
Knoxville, Tennessee 37901

Incomplete applications will not be eligible for consideration.

SELECTION PROCESS

The SMPA Student Scholarship will be awarded without regard to race, color, national origin, religion, gender, sexual orientation, age, genetic information, or disability. Rather, the SMPA Student Scholarship recipient will be awarded based on evaluation of essay response, financial need, scholastic achievement(s), participation in campus and paralegal program activities, and community service.

A downloadable version of this SMPA Student Scholarship Application is available at www.smparalegal.org.





SMOKY MOUNTAIN PARALEGAL ASSOCIATION

STUDENT SCHOLARSHIP APPLICATION

P.O. Box 445 Knoxville, TN 37901 www.smparalegal.org

AN AFFILIATE OF NALA - THE PARALEGAL ASSOCIATION

		APPLICANT IN	FORMATION				
Full Name:					Date:		
_	Last	First		M.I.			
Address: _							
	Street Address				Apartment/Unit #		
_	City			State	ZIP Code		
Phone:	5,		Email:				
THORIE.							
		EDUCA	TION				
High Schoo	l:	Address	:				
	ated:		:				
Attending (:				
	iduate:		<u> </u>				
Completed	Credit Hours:	Type of	Degree or Certificate:				
		ENADI OVA AFA	UT LUCTORY				
		EMPLOYMEN					
					ie:		
					or:		
Job Title: Date of Emplo		ment:	Salar	y:			
Previous Er	nplover:			Phon	e:		
					or:		
					y:		
_					, ₋		
ADDITIONAL INFORMATION							
Have you	assumed personal responsibi	lity for financing your paralega	l education? Y	es 🗆 No 🗆]		
Please Exp	lain:						
Current Household Income: Nu			Number of Depen	Number of Dependents:			
Please list all special achievements, either academically or within your community, including volunteer work, awards, and/or honors that you have received:		Please list all grants, scholarships, and/or financial assistance for which you have applied and/or received during the current academic calendar year:					
		_					

<u>NOTE</u>: Application and complete package of supporting documentation must be postmarked on or before April 1st. Incomplete applications will not be eligible for consideration. Supporting documentation to be attached to this application includes: (1) Current College Transcript, (2) Academic Recommendation Letter, (3) Personal Recommendation Letter, and (4) Essay. Please see Page 1 of this application for additional information regarding the SMPA Student Scholarship, eligible applicant and submission requirements, and the selection process. A downloadable version of this application is available at www.smparalegal.org.

Member Spotlight

Bill Minks, Paralegal

I was born and raised in the South. South Jersey, near where George Washington crossed the Delaware River during the Revolutionary War. As a boy I remember the cicadas singing on warm summer nights, or maybe those were police sirens? Instead of banana pudding, we had cannoli. Instead of saying, y'all, we said "you's" which is the plural form of you. *-Where you came from is irrelevant, what you achieve matters!*

Not surprisingly, I joined the Navy straight out of high school to get the......well, get out of New Jersey. I was stationed in Washington State, where I met and married my wife, Leslie. We have two grown sons, William, and James. After leaving the Navy I worked in the fire service in Washington as a firefighter and fire inspector. After obtaining my B.A. from Washington State University and desiring to work with people who could read above a sixth grade level, I enrolled in the University of Washington's Paralegal Studies Program. -Not satisfied or happy where you are, don't sit and grumble, work to improve your skills and make a change for the better!

I applied for a paralegal job with the City of Tacoma Prosecutor's Office, with very minimal qualifications, and was hired. The City of Tacoma is the third largest city in Washington and city leaders believed in strong proactive law enforcement which resulted in a very fast-paced, high volume, crushing caseload. Some newly hired paralegals never returned to work after their first day on the job, which moved me up on the hiring list. -Never underestimate yourself. Perseverance and determination are keys to success. I have worked with many people who were "qualified" but never put forth the effort or commitment to support the organization.

After five very busy years and an empty nest, Leslie and I decided we needed a change in latitude, so I took a job with the Federal Defender's Office in sunny Fort Myers, Florida. The Federal Defenders are a fantastic group of extremely professional and dedicated people and I learned much from working with them, especially how to manage large cases using various ESI software programs and related technologies, skills that have served me well. -Embrace change! New technology increases efficiency and allows you to do more and be more valuable to your firm.

I now work in the U.S. Attorney's Office here in Knoxville and love it! My personal advice to paralegals is to push yourself and take on difficult overwhelming assignments. Even if you make mistakes, you will learn valuable skills and garner respect from your co-workers. Do not be afraid to challenge yourself. *-People who never challenge themselves will never fail and never accomplish much of anything.* It's okay to make mistakes if you learn from them.

Searching for Significance by Janie M. Shelton, ACP

SUMMER UNDER THE STARS

Summer under the stars. Sounds magical and even romantic. Who doesn't like summer? Yes, it is hot and humid, but there is just something about summer that we all love. Maybe it's those special memories we have of summers gone by. I'm sure all of us have fond memories of summer, especially when we were young. And most of us, if you're not real young, had three full months to cajoy the lazy, hazy, crazy days of summer. Summers always seemed to last a good, long time back then. We would have a nice, long break from school to enjoy all that summer had in store for us to partake in. And, I partaked alright! (Ok, for you nerds, partook.)

What are some of your favorite summertime activities? Here are some suggestions to hopefully spark your memory from your childhood, or even from recent summers: Swimming down at the swimming hole or pool in your town; staying out all day, sometimes until dark, on our bikes with the neighborhood kids, summertime movies, catching fireflies, picnics, ice could femonade, popsicles, watermelon, 4th of July fireworks, family vacations, softball/baseball games, and oooh homemade ice cream.

The list could go on and on. I'm sure you can add to the list as well. I'm going to add one more pastime to my list. Laying in the cool evening grass under the stars. As kids, we weren't too concerned about grass stains or bugs. We just loved laying down outside at night looking up at all those bright, twinkling stars on a clear summer's night, dreaming of innocent childhood notions.

What about now that we're adults? As paralegals and legal assistants, we spend most of our time being organized, thorough and efficient, right? Right! Even in our home life, we tend to be overly precise in everything we do, just because we are so attuned to it. It's time to let the lazy, hazy, crazy days of summer take you back to your childhood and enjoy summer under the stars.

I'm sure we all need a break to experience summer's carefree tranqui

Motivating Quote for the Motivated

"If people sat outside and looked at the stars each night, I'll bet they'd live a lot differently."

Bill Watterson, American cartoonist and author of the comic strip, Calvin and Hobbes







Shurtleff v. City of Boston, Massachusetts, 142 S.Ct. 1583 (2022)

The separation between church and state as outlined in the Establishment Clause and the Free Exercise Clause of the First Amendment to the U.S. Constitution can be, and often is, a contentious area of American law. Suppose a group of students wishes to conduct a group prayer outside or inside the school before or after classes? Would the school have the authority to allow or prevent this activity? Are tax dollars allowed to be utilized for students or staff at private or parochial schools? Could a church group be allowed to use or lease a public school facility after hours to conduct worship services? Could a state or local government prevent a group of citizens from conducting public prayers in front of, or inside a courthouse, city building, airport, or city park?

Many of the Establishment Clause cases originate in the educational arena. However, in *Shurtleff* the issue resulted when a group named Camp Constitution wanted to raise a flag on a flagpole adjacent to Boston City Hall. At first this would appear to be a violation of the Establishment Clause. However, raising a special flag at this location has been a practice for several years. The process begins with a written request that would then be approved and scheduled for a date and time by the City of Boston.

Harold Shurtleff, the director of Camp Constitution requested permission to raise a Christian flag and the city refused, the first refusal of a private flag raising, based on the Establishment Clause. There are three flagpoles at this location flying the American flag, Commonwealth of Massachusetts flag, and on the third flagpole the City of Boston flag. For several years Boston has allowed groups to raise a flag on this third flagpole honoring various entities including, foreign nations, the gay pride flag, emergency service workers, and a community bank flag.

However, Mr. Shurtleff's request was denied by Boston's Property Management Department out of fear that this flag would violate the First Amendment's Establishment Clause. The city did give Mr. Shurtleff and his organization permission to assemble and hold a ceremony without the raising of a flag. Mr. Shurtleff and Camp Constitution filed a lawsuit with the U.S. District Court. That Court granted summary judgment in favor of the city. The U.S. First Circuit Court of Appeals affirmed the District Court's decision and Certiorari was granted.

The United States Supreme Court in a unanimous decision held that Boston's flag program did not express government speech and therefore the city violated Camp Constitution's free speech rights enumerated in the First Amendment. Why? The city never controlled the actual flag raising or the meaning of any flag being raised. Only dates and times of the ceremony were controlled by the city. Therefore, the message that the flag and its group expressed was not a city or government endorsement. The city had no written policy of what or which type of flag could be raised and did not preapprove any of the flags. As long as a group sought approval and completed the required form, they could raise their flag.

So, if the flag raising ceremony was not endorsed government speech, the city's refusal to let Camp Constitution fly their Christian flag violated the First Amendment's Free Speech Clause. Justice Breyer in his opinion succinctly stated that when the government encourages freedom of expression, the First Amendment discourages stifling expression based on conflicting, minority, or controversial viewpoints. Furthermore, the opinion does not specify which countries flags were raised in Boston but, what if naturalized citizens representing Saudi Arabia, Afghanistan, or Vatican City previously raised flags at this location? Since they are theocratic nations, would or did the city object? Was the city endorsing a specific bank over other banks when it allowed a community bank to fly a flag?

The District Court held that flying private flags from this location amounted to government speech. See *Shurtleff*, 142 S.Ct. 1583 at 1589. However, the U.S. Supreme Court disagreed, holding that when the government speaks on its own behalf, through an elected or appointed representative, or by issuing a directive, report, or policy, it must measure its words so as not to violate the Establishment Clause. The promotion of one religious viewpoint or an endorsement of a specific religion over another would be prohibited by the government. Conversely, when a private viewpoint is presented, the government may not stifle or prohibit the expression solely because it is religious or deemed to be offensive. For an interesting example brief, *Matal v. Tam*, 137 S.Ct. 1744 (2017).

In *Tam* an Asian-American artist wanted to patent the name "Slant" for his musical group to ameliorate the offensive term used to denigrate people of Asian ancestry. The Patent and Trademark Office denied his request because the name was disparaging and by issuing a patent, the government would be converting the name "Slant" into government approved speech. The Court disagreed holding that converting private speech into government controlled speech, through the issuance of a trademark or copyright, would result in government endorsement and censorship by designation. Thus, any novel, writing, speech, or expression would be censored or, endorsed by the government if it received patent, trademark, or copyright protections.

When the government does not speak for itself, it must be extremely careful not to censor other speech by private groups or individuals. As the concurring opinions stated, this will lead to favoritism and censorship. The city allowed a plethora of other groups and causes to raise a flag and in essence, make a statement. Then, when Camp Constitution desired to raise a flag and honor the contributions of Christianity, the city denied the request suddenly characterizing the flagpole as a government forum. Government can't have it both ways. It is easy to see how this led to a violation of free speech.

The government does have its own free speech rights and regularly uses those rights to promote and fund programs for public services and even public education. However, government must not prevent or censor private speech. The recent controversies about teaching CRT in public schools is a good example. The government (local school boards) has the authority to design and implement curriculum. However, parents and taxpayers may also object to what, when, and how materials are taught in public schools. In short, the government cannot pick and choose what viewpoints are correct or allowed.

In *Shurtleff*, the city, by previous approvals, characterized the flagpole as a public forum for all to use thus creating a private speech authorized by the city. Then when Camp Constitution requested to raise their flag, the request was denied which stifled free speech. Surely it would appear that the city was being cautious not to violate the Establishment Clause and did not harbor any animus toward Camp Constitution. However, between 2005 and 2017, several flags were authorized to be raised without the city interjecting or complaining. At least one of these flags, to commemorate the Bunker Hill Battle has a large cross insignia. See *Shurtleff*, 142 S.Ct. at 1611, Appendix to Opinion of Gorsuch, J.

Then in October 2018, after Camp Constitution filed its lawsuit, the City of Boston promulgated a new written policy prohibiting flags that are offensive, inappropriate, discriminatory, prejudicial, or religious. As stated in the concurring opinion by Justices Alito, Thomas, and Gorsuch, the city was now prohibiting speech that some might consider offensive further antagonizing the First Amendment's prohibition on banning such speech. Brief *Lemon v. Kurtzman*, 403 U.S. 602 (1971) then carefully read the concurring opinion in *Shurtleff* authored by Justices Gorsuch and Thomas, *Shurtleff*, 142 S.Ct, at 1603. This is an absolutely scathing response directed at the City of Boston and their attempt to justify the denial of Camp Constitution's free speech accessibility.

The First Amendment's Free Speech and Establishment Clauses are areas of the law that confound lay persons and jurists alike. By trying to err on the side of caution, officials in Boston's Property Management Department and Boston's Law Department were mistaken. Prohibiting religious expression in all forms and areas of government may amount to censorship and discrimination. The discriminatory attitudes modern cities are trying to avoid may result when confusion, and overcaution are exercised.

Questions to Consider:

- When a foreign dignitaries visit the United States, their national flag is flown at Blair House, a government owned residence used to accommodate guests of the President. Suppose the nation in question is a theocracy. Blair House is a government owned building. Does this endorse a specific religion?
- Regardless of how or when you became a United States citizen, there is only one national flag that represents the United States. Boston allowed groups to raise the flags of foreign countries representing groups living in the city to celebrate the diversity of Boston's citizenship. Do you think that is appropriate?
- In his concurring opinion Justice Kavanaugh stated that the government does not violate the Establishment Clause when it treats religion equally with secular programs. Do you agree with this opinion? Can you identify any exceptions to this opinion?
- Brief *Kennedy v. Bremerton School District*, 597 U.S. ____ (2022). This recently (June 27, 2022) decided case comports with *Shurtleff*.

Baby Cooper's Law

By: Christina Wilkerson, Smoky Mountain Process and Legal Services

An average of 39 children die per year after being left in hot vehicles. In 2022 alone 13 children including one in Tennessee have died of vehicular heat stroke. Children are not the only victims. In the 8 years I have been working towards legislation to end hot car deaths we have had all kinds of animals from dogs both pets and police dogs, which are the most prevalent to llamas to monkeys, and even a bear. The Federal Legislation that hopes to end these preventable and senseless deaths is called Baby Cooper's Law.

Baby Cooper's Law (BCL) is a Federal Initiative to end hot car deaths by giving uniform charging statutes across all 50 states, national parks, military bases, and Indian reservations. Additionally, BCL would provide protection from criminal prosecution for rescuers who break a window to affect a rescue. Most importantly BCL would require left life alarms in all new vehicles by 2026 and all vehicles by 2030. While some vehicle manufacturers have already instituted these alarms, these alarms are based on pressure sensor readings and as a result there have been many false alarms much like the seat belt/airbag alarms people have come to be irritated by when placing something in their front seats and there have now been several cases where children have been left and no alarms sounded because the alarms had been disabled. It is my personal mission to see this legislation to the end. It is needed and long past due.

Many people have said to me over the last eight years, "I could never forget my child." I am inclined to believe that is true as being someone that has never understood the excuse "I was so busy or stressed I forgot." until I didn't. Once upon a time, for about two months I wanted to believe this couldn't actually happen to someone that was stressed out and overworked. I wanted to believe that because the alternative of believing a man, a friend I thought was a wonderful guy and father would never purposely leave his beautiful 22-month old son in a car to die. It was really unfathomable that my good friend Justin Ross Harris could be so cold and calculating that he could put his sweet boy in the backseat of a vehicle strapped down in his car seat, drive ¾ of a mile from a Chick-fil-A restaurant or about a minute and a half on a hot June morning in Georgia and leave him there all day baking in the hot sun in a stifling vehicle to die.

It was incomprehensible that Ross could go back to the vehicle at lunch and throw a bag of lightbulbs in the car and not see Cooper. In the end it was all totally unbelievable that Ross could have gotten into that same vehicle at 4:30 p.m. after Cooper died which was described by prosecutors as an excruciating and torturous death, not smell anything or notice Cooper especially given that Ross never rolled the windows down until he drove a full two miles before he "noticed" Cooper's little lifeless body in the back seat.

It was all so inconceivable because I wanted to believe my friend wouldn't kill his child. As the evidence mounted and it became clear that Ross did in fact intend to be rid of Cooper, I had no choice to believe what was staring me in the face. Meanwhile others including Ross's family started floating a phenomenon called "Forgotten Baby Syndrome" as a defense for their reprehensible actions. Meanwhile, I felt I had failed to recognize in my friend something so awful and sinister that I had failed Cooper. I had to do something so that Cooper's death would not be in vain. Two months after Cooper's death, I began to research all that I could get my hands on about vehicular heatstroke deaths of children and animals.

Not long after discovering that the prevailing thought process of the general public and advocacy groups was something called "Forgotten Baby Syndrome," I wanted to know for myself what it was. I found out that simply put, "Forgotten Baby Syndrome" is being so stressed out and distracted that one forgets something like dropping their child off at daycare or the babysitter. In less than six months I knew what I thought of "Forgotten Baby Syndrome" and that it was simply an excuse most of the time for a neglectful parent to get out of criminal repercussions for killing their child. Don't mistake me for someone who isn't compassionate. I am and do believe accidents can happen. However, anyone who knows me knows I love children and animals. Most know I would never intentionally hurt or kill either and would be devastated if I did.

That said, if it was my negligence that caused the death of a child; say for example I was talking on the phone, texting, or just not paying attention and I ran over a child, legally I would still be responsible and should be charged. Yet when a parent/caregiver, the very person that should be most responsible for the safety of their child leaves them in a hot car, it's always an "unfortunate accident" and it goes uncharged. Many advocacy groups and a lot of people over the years including my former friend's family have tried to convince me it's not the same while citing some really great statistics that "prove" they're right and children left in hot cars is just an unfortunate accident 80 percent of the time and no one is really to blame. However, there is a big problem with their numbers. Their numbers ONLY count the children that die.

When one looks at not just the children who die hot car deaths but also the children that are rescued and the circumstances under which they're left, a funny thing happens to those numbers. Looking at the whole picture of deaths and rescued children which required years of research both prior to Cooper's death as well as after, I learned that 82 percent of the time that a child is left in a hot car it is absolutely intentional. Nine percent are children who get into an unlocked car to play, get overcome by the heat, and can't get out and the last nine percent is accidental when its established that other mitigating factors such as mental health issues and stress could actually contribute to a person leaving their child behind. Realizing this fact, I came to the conclusion that passive alarms that alerted others to a child's presence would be necessary to save lives, so I embarked on the journey to establish a federal law to require those alarms.

That journey came to include legislation for the uniform charging and protections for rescuers as over the course of time people have still evaded prosecution after their kids have died hot car death including my former friend whose conviction was recently overturned by continuing to proclaim and perpetuate "Forgotten Baby Syndrome." Conversely, people have been charged with everything from vandalism to attempted Grand Theft Auto for breaking car windows to save lives.

In the eight years since the inception of BCL, when I'm not chasing defendants, and witnesses to serve Process on, I have been to Capitol Hill twice, written over 140 letters to Congressmen and Congresswomen, and petitioned the National Highway and Transportation Safety Administration (NHTSA) in an attempt to start saving these children as well as the differently abled, the elderly and animals from the perils of being left hot vehicles. In the early days of BCL, I was lucky enough to get the ear of Sen. John McCain in 2015 but left D.C. without a sponsor when the senator needed me to revise the legislation to be more fair-minded and applicable under a certain set of circumstances. Leaving capitol hill feeling a little dejected, I was also encouraged as the senator had told me he would entertain a meeting with me when I had managed to revise the legislation.

Unfortunately, it would be announced later that year Senator McCain was ill and he would pass away later in 2018. In 2017, I began begging only to get there and meet with the Congressman's aide who would inform me that Congressman Duncan wanted to give me a meeting, but the congressman would be announcing his retirement which made it basically a wasted trip. In the meantime, every summer, some dedicated volunteers and I maintain the "Help Support and Enact Baby Cooper's Law" page on Facebook where we keep running totals on hot car deaths, rescues, and where we give tips on recognizing heat stroke in children and dogs, primers on what to do if you find a child or animal in a hot care. We also live stream on Facebook the hot car challenge where we put ourselves in a hot car to show those watching the effects to bring awareness.

We even had General Hospital star Maurice Bernard do a PSA for us. With the Covid-19 pandemic while we have seen yearly hot car deaths decline to 24 last year from their all-time high of 53 in 2018, and 2019. However, the numbers are slowly creeping back up and there is work left to be done until the numbers are zero. Last summer we were lucky enough to start talks again with legislators in Congress who we now have tentatively set meetings with in early 2023 during another trip to capitol hill. Hopefully, the third time's the charm.

SMPA would like to thank its Sustaining Members







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