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G-Bar News

PRESIDENT'S ARTICLE

By: E. Grantland Burns

There is a Baby Changing Station hanging on the wall in the men's room at the Fourth Circuit. Hmm . . . United States Marshals may prevent us attorneys from bringing cell phones and Diet Cokes into the building (and they did), but presumably if you want to bring a baby, that's okay.

While in Richmond, I had the privilege of watching Ken Starr argue to the panel as I waited for my case to be called. He brought an entourage of about 20 lawyers with him (I guess in case a rumble broke out).

Our next Bar luncheon is on Tuesday, November 30 at the Hyatt. I specifically mention that it will be at the Hyatt mostly as a reminder to myself, in that I have been known to show up at the wrong location for Bar luncheons previously.

- Compassionate and sensitive to all people regardless of their station in life;
friendly, unassuming, humble with a warm, genuine and abiding faith in all people;
strong personal values, optimism and faith;
positive diplomacy that works to minimize conflict and resolve disputes in the least hostile manner;
unshakable integrity, coupled with an instinct for fairness;
dedicated to community interest, public service and improvement of the community;
loves the practice of law and pursues the practice as a service to people;
dedicated to the improvement of the legal system and justice for all people; and
widely respected and admired by peers for personal and professional achievement.

This year's recipient of the Tommy Thomason Award will be Stephen Henry. Steve worked in the Public Defender's office for several years before entering private practice representing employees in employment cases, as well as handling civil rights, personal injury, domestic, and criminal matters.

While the calendar year is winding down, the Bar is gearing up for a strong finish to 2004, including a visit from the Court of Appeals, a judicial reception, the Bar luncheon (at the Hyatt), a six-hour CLE, our Memorial Service, our annual meeting, and the best Christmas party you'll attend this year.

174th edition

October 2004

- Reception with S. C. Court of Appeals—November 16, Greenville Country Club, 6—9 p.m.
Tommy Thomason Award Luncheon—November 30, Hyatt at 12:30 p.m.
Annual GCBA CLE—December 3, County Square
Christmas Party—December 9, Greenville Country Club, 7—10 p.m.
Memorial Service—December 16, Greenville County Courthouse, 4:00 p.m.

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Verdicts

Caption: Gaysha Neal v. Katie Johnson
Case No.: 2003-CP-23-5814
Attorney for Plaintiff(s): Randall Chambers
Attorney for Defendant(s): Russell Harter
Cause of Action: Automobile accident
Verdict: Plaintiff; \$0 actual damages

Caption: CIT Equipment Rental and Finance v. Pamela Tribble
Case No.: 2002-CP-23-8223
Attorney for Plaintiff(s): Bonum Wilson
Attorney for Defendant(s): Lee Daniels
Cause of Action: Debt Collection
Verdict: Plaintiff

Caption: Deborah Leake Redd f/k/a Deborah R. Leake and James Leake v. J. C. Williams d/b/a Atlas pest Control Co.
Case No.: 2003-CP-23-3759
Attorney for Plaintiff(s): David Armstrong
Attorney for Defendant(s): Russell Harter
Cause of Action: Damages
Verdict: Defendant

Caption: James M. McCullough, et al v. Larry G. Shaw, et al
Case No.: 2003-CP-23-7156
Attorney for Plaintiff(s): W. H. Ehliens, II
Attorney for Defendant(s): Russell Harter
Cause of Action: Premises liability
Verdict: Defendant

Greenville County Bar Association— Nomination for Officers

Nominations for the offices of the GCBA may be submitted to Jennifer E. Johnsen, past President. Names must be submitted by November 19, 2004, by email to jjohnsen@gwblawfirm.com or by mail to P. O. Box 10589, Greenville, SC 29603. Offices include President, President Elect/Vice President, Secretary and Treasurer. Officers will be elected at the Annual Meeting to be held on Thursday, December 16 at Chip Price's Office following the Memorial Service.

Family Court Liaison Report

Present: Judge Aphrodite Konduros, Judge Timothy Brown and Judge R. Kinard Johnson, Jr., Paul Wickensimer, Saralyn Evans, Bobbie Hill, Members from the Upstate Fatherhood Coalition, John Chambers, Wally Mullinax, Catherine Christophillis, Dianne Riley, Jim Sarratt, Tom Traxler, Joe Ramseur and Christine Howard.

Attention Attorneys: Please note that the next meeting will be December 17, 2004. There will be no November meeting.

If you are interesting in finding out about the Upstate Fatherhood Coalition, please call Kelly Walker at 467-1306.

The next pretrial conference date will be December 17, 2004, at 10:00 a.m. and 11:00 a.m. You will be sent notices soon. Please do not bring clients to the meetings and specify who you represent on your brief.

In the event you have a 15-30 minute temporary hearing that needs to be continued due to lack of service, please call the presiding Judge's secretary to inform them of the cancellation and send a letter to docket to remove the case from the schedule and then send another hearing request to docket to get the case rescheduled. Faxing the letter and hearing request is acceptable.

The Age of Majority for Child Support for South Carolina is 18 or graduation from high school. A court may order college support, *West v. West*, 309 SC 28, 419 SE2d 804 (1992); *Risinger v. Risinger*, 273 SC 36, 253 SE 652 (1979).

The next Family Court Liaison meeting will be **December 17, 2004 at 1:00 p.m. in the Conference Room in the Judge's Hallway.** Anyone who is unable to attend these meetings but has issues they would like addressed may contact the following lawyers: **Christine M. Howard** (282-8575); **Wallace A. Mullinax** (233-4351); **Robert M. Rosenfeld** (235-9613); or **Thomas W. Traxler** (242-3566).

Announcements

Please join the Greenville County Bar Association in presenting the Tommy Thomason Award to Stephen Henry at The Hyatt on Tuesday, November 30, 2004, at 12:30 p.m. Judge Kittredge will preside. Cost is \$25. Menu is Grilled Marinated Breast of Chicken Dijon. (Vegetarian option available upon request.) Please send check to GCBA, P. O. Box 10145, Greenville, SC 29603 by Tuesday, November 23, to reserve your place.

The Greenville County Bar Association will hold its Annual Memorial Service on Thursday, December 16, at 4 p.m. at the Greenville County Courthouse. This year, we will remember the following attorneys: Ralph Bailey, Rodney Culbertson, Jr., Susan "Gina" Johnston, John P. Mann, Larry McDonald and James "Jim" Pressly, Jr..

Please mark your calendar now for this important date, and join the bar at Chip Price's Christmas Party that evening for the Annual Meeting.

Wyche Burgess Freeman & Parham, P.A. is pleased to announce that 13 attorneys from the firm have been selected by their peers for the 2005-2006 edition of The Best Lawyers in America. James T. Warren, III; Lesley R. Moore; Marshall Winn; Frank S. Holleman, III; Eric B. Amstutz; Henry L. Parr, Jr.; Carl F. Muller; Cary H. Hall, Jr.; Wallace K. Lightsey; James M. Shoemaker, Jr.; James C. Parham, Jr.; C. Thomas Wyche; and for the 10th time over a span of 20 years—David L. Freeman.

Nexsen Pruet is pleased to announce that Victoria L. Eslinger has won the Compleat Lawyer Platinum Award from the University of S. C. School of Law. The firm also announces that Rusty Infinger and Tom Stephenson of the Greenville Office have been selected for the 2005-2006 edition of The Best Lawyers in America.

Roe Cassidy Coates & Price is please to announce that it has been selected to be a member of the International Society of Primerus Law Firms.

Elmore & Wall is pleased to announce that Mason A. "Andy" Goldsmith, Jr., has been named Chairman of the Construction Law Section of the South Carolina for 2004-2005. Also, L. Franklin Elmore was selected for inclusion in The Best Lawyers in America 2005-2006.

McNair Law Firm is pleased to announce that 18 of its attorneys have been selected by their peers for inclusion in The Best Lawyers in America including Cort Flint of Intellectual Property Law.

The firm of Swagart, Walker & Reibold announce a change in the firm name to Walker, Martin & Reibold. The firm is located at 75 Beattie Place, Suite 910, Greenville, SC 29601.

Ashmore Leaphart & Rabon, LLC announces that C. Diane Smock, formally of counsel to the firm, has moved to inactive status with the S. C. Bar. Ms. Smock will continue to provide mediation services in conjunction with Ashmore Leaphart & Rabon, LLC at 601 E. McBee Ave., Suite 200, Greenville, SC 29601.

Attorneys are needed to serve as Judges in the Youth Courts in the Greenville County Schools. Hearings are held in 15 schools, twice a month. Hearing begin at 6 p.m. and run no later than 8:30 for middle schools and 9:00 for high schools. To volunteer, an attorney must go through training that lasts about one hour. A script is available. Please contact Nell Stewart at 232-3392 or by email at nel561stew@aol.com for more information.

Legal Staff Professionals of Greenville is pleased to welcome Sharon Inman, PLS, LSP of South Carolina Functional Director of Membership, as our guest speaker in November. Ms. Inman will be presenting a program designed to focus our members on what we expect from our association.

A study group for legal staff interested in taking the ALS (basic certification), PLS (advanced certification), or PP (professional paralegal) exams is being organized. Contact Fran Powell at 250-2288 or fran.powell@nelsonmullins.com.

LSPG extends an initiation to all legal staff to join us on the third Wednesday of each month at 12:30 at the Poinsett Club. Reservations may be made by contacting Tara Prevatte at 271-7940 or Tara@davidgreeneattorney.com.

Members of the Legal Auxiliary are reminded of the Holiday Benefit on Tuesday, December 7, 2004 from 10—noon at the home of Pat Jenkins.

Attorney Position Available: Small firm is accepting resumes for an attorney position. Firm practices in the areas of civil litigation, criminal, and real estate. Preference will be given to attorneys with experience. Salary is negotiable and will depend on qualifications and experience of the applicant. Please send resume to: Phillips Law Firm, 1425 Augusta Street, Greenville, SC 29605. Resumes may also be emailed to atty-jeff@bellsouth.net.

Advertisements

For rent—office space in the Historic Davenport Apartments, corner of Church and Washington Streets, across from the Federal Courthouse. This space is ideal for attorneys and is the only office space allowed within the Davenport. Convenient parking is available. Contact Bud Babb at 242-6360 to discuss your space needs, rates, to view the office space, etc.

Offices for rent—3 downstairs and 2 upstairs. Conference room, copier, fax and postage machines available. Ready by April 2, 2004. Rent negotiable. Contact 467-0100/230-8540.

Near Courthouse—408 N. Church Street. Offices, amenities, parking. Please call Stephen Yacobi— 242-3271 or Denby Davenport 242-5548.

For Lease: 119 Manly Street, one-half block from Bilo Center. Call John M. Dillard at (864) 834-0301.

For Lease: Several professional offices available along with shared facilities. 100 Williams St. at Pettigru. Call 242-5133.

Office building available for rent at 10 Brookside Circle. Call Jim Sarratt or Bill Clarke at 271-4100.

Office space for rent—Contact Kimberly Dunham or Stacy Greene at (864) 282-8686.

Office space available at 101 E. Camperdown Way. Call Rebecca or Tammy at 864-370-9771.

Office space available: 33 Wade Hampton Blvd., Greenville.

Lawyer and secretarial space available; Pettigru Street area; sharing fax, copier, and so forth; excellent parking; convenient location; \$550 a month; available November 1st; call 271-4360.

Office Suite for Lease:

Approximately 288 sq. feet of lease space available, reception area and one office. Prestigious downtown location with easy access to all downtown Courthouses. Free parking and easy access to I-385. Utilities include power and water. Access to two conferences rooms. Available of wireless/DSL Internet. Call John at 242-1114.

For lease—historic Pettigru area near Bilo Center. Renovated 119 Manly St., 10 rooms, 3100 sq. ft. \$8.52 per foot. \$2,200 per month net. 834-4415.

ADMINISTRATIVE ASSISTANT/LEGAL ASSISTANT
PROTECTION AND ADVOCACY FOR PEOPLE WITH DIS-
ABILITIES, INC.
3710 LANDMARK DRIVE, SUITE 208
COLUMBIA, SC 29204
FAX 803/790-1946

Legal Assistant needed to work with attorneys and lay advocates protecting the rights of individuals disabilities. Position located in Greenville office. Legal document preparation along with front desk and other clerical duties. Bachelor's degree or equivalent experience. Reply via mail, fax or e-mail to Anne Trice, Director of Administration (trice@protectionandadvocacy-sc.org). No phone calls please. EOE. Persons with disabilities are encouraged to apply.

Guest article—Which State’s Statute of Limitations governs? by Joseph S. Lyles

Recently, I was involved in a very interesting statute of limitations argument. Here are the facts:

The case arises from an automobile accident which occurred on August 12, 2003. The Defendant, who was a resident of South Carolina, was driving a Kia automobile in Tennessee. The Plaintiff was a passenger. The Defendant negligently lost control of the vehicle and struck a concrete barrier causing the vehicle to roll over several times.

On August 16, 2004, I instituted this action by filing a Summons and Complaint in the Court of Common Pleas on behalf of the passenger. Shortly thereafter, the lawsuit was served on the Defendant.

Defendant filed a Motion for Summary Judgment on the grounds that this action was barred by the operation of Tennessee’s one-year statute of limitations.

I prepared a brief that argued:

Plaintiff’s action is not barred by the Tennessee statute of limitations. Instead, South Carolina’s three-year statute of limits applies. In conflicts of law cases, such as this, the courts apply *lex fori*. *State v. Southern Farm Bureau Life Insurance Co.*, 265 S. C. 40 2, 219 S. E. 2nd 80 (1975). *Sawyer, Wallace & Co. v. Macaulay*, 18 S.C. 543, S.C., 1883. *Alexander v. Burnet*, 5 Rich. 189, S.C., 1851. *Levy v. Boas*, 2 Bail. 217, S.C. 1831. 16 Am. Jr. 2d Conflict Of Laws §§ 151-178. Under *lex fori* the law of the forum applies to procedural matters such as limitation periods. Further, if there is any doubt about which statute of limitations applies in a case, then the longer statutory limit applies. Vol. S. C. Juris. Limitation Of Actions § 3.

The Defendant urges the application of *lex loci*. South Carolina courts will not apply *lex loci* when doing so would violate South Carolina public policy. In South Carolina the Legislature has declared as public policy that tort suits should have a three-year statute of limitations. This suit was filed only one year and four days after the collision. Foreign law may not be enforced if it is against good morals or natural justice, or violates our public policy. *Boone v. Boone*, Op. no. 25283, Sup. Ct. (Filed April 23, 2001). Enforcing Tennessee’s one-year statute would thus violate the public policy of South Carolina.

Statutes of limitations are matters of procedure, not substantive law, or in the words of the relevant opinions, they are "matters pertaining to the remedy." Procedural issues are resolved by consulting the law of the forum. *Dawkins v. State*, 412 S.E. 2d 407; *Boudreau v. Baughman*, 322 NC 331, 368 S.E. 2d 849 (1988).

Even when, under South Carolina choice of law rules, the law of another state governs the existence of a cause of action and

the substantive rights of the parties, the law of the forum state governs with respect to the statute of limitations, which is a matter of procedure. The limitations law of the forum state is applied, regardless of whether the period is longer or shorter than under the law of the jurisdiction where the cause of action arose. Vol. 26 S. C. Juris. Limitation of Actions § 14. The majority of courts follow this rule.

In conclusion, the courts of South Carolina have clearly held that when a personal injury action is properly instituted here, that the law of *lex fori* is controlling in deciding the statute of limitations issues, regardless of where the cause of action arose.

As a result of this argument, opposing counsel withdrew his motion.

Practitioners should be aware that the residence of the defendant in Tennessee would have, in all likelihood, made it impossible for the Plaintiff to bring suit in South Carolina. You must be able to properly bring the action in South Carolina for the law of *lex fori* to apply. This doctrine applies to both tort and contract causes of action.

Article supplied by Joseph S. Lyles at jslyles@jslyles.com.

[Attorneys desiring to submit articles should send them to gbarnews@aol.com. The editorial staff will review them for value to the Greenville County Bar Association. Publication of any articles shall not be deemed an endorsement by the Greenville County Bar Association of any of the opinions expressed in such articles.](mailto:gbarnews@aol.com)

GCBA Annual CLE—December 3, 2004 will be held at County Council Chambers.

Check the website at www.greenvillecountybar.org under “Notices.” It includes 4 general credit hours and 2 ethics hours.