

DICTA



**A TENNESSEE
COURT IS
“IN BUSINESS”
FOR US ALL**

**SUPER
CIRCULATION
ISSUE**

By: Marshall H. Peterson
Holbrook Peterson Smith PLLC



INTRODUCING: SHERI A. FOX, ESQ.



Sheri A. Fox became Executive Director for Legal Aid East Tennessee (LAET) on January 1. LAET provides civil (non-criminal) legal assistance and representation at no cost to eligible clients in 26 East Tennessee counties. LAET also provides community education and outreach. LAET and its predecessor organizations have provided representation to low-income East Tennesseans since 1965.

LAET serves clients out of six offices located from the Tri-Cities to Chattanooga. It is a large geographic area with many thousands of individuals meeting the requirements for pro bono legal services. LAET, through its dedicated attorneys, staff, and pro bono volunteer attorneys, benefits around 14,000 individuals per year, ranging from obtaining Orders of Protection for victims of domestic violence to protecting families from being homeless. The annual economic benefit to our region from this work is more than \$26 million.

For the past 23 years, David Yoder has served as Executive Director of LAET. Mr. Yoder brought vision, stability, and inspired leadership to the role. At the end of 2015, he stepped down, and our new Executive Director assumed her role.

The Board of LAET appointed me Chair of the Search Committee to recommend a candidate for Board consideration.

The Search Committee included LAET board members and employees representative of the LAET geographic regions. A

consultant with experience in legal aid organization placements guided the nationwide search process. After considering dozens of applicants and two rounds of interviews, the committee made a unanimous recommendation of Ms. Fox, which the Board accepted.

Ms. Fox comes to LAET from 14 years in private law practice, a shareholder at Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (Baker Donelson). While at Baker Donelson, Ms. Fox amassed a wide range of litigation experience at both the trial and appellate levels in state and federal courts. She focused her practice primarily on products liability defense, commercial litigation, nursing home defense, and general litigation. She was active in the work of LAET during her years in private practice and, even before becoming a lawyer, when she was a summer intern in the Chattanooga office of LAET.

She says of that experience: "I was hooked right from the start; hooked not only by the important work being done, but also by the spirit and commitment of the people doing it."

That commitment to legal aid work continued in her law practice as she served on her firm's Pro Bono Committee, took pro bono cases, volunteered for various legal clinics, and worked on other LAET events. In recognition of her Pro Bono work, the Tennessee Supreme Court designated her as an Attorney for Justice.

Sheri Fox has many practice recognitions, as befitting an accomplished practitioner. Important as those are, what stands out are her enthusiasm, drive, creativity, and pragmatism. She assumes her responsibility with a solid management team, a dedicated board, community goodwill, a balanced budget, and a supportive network of partners throughout the state. Her passion for building on these strengths is inspirational.

As Chair of the Search Committee, my endorsement of Sheri Fox stems from viewing her as a leader, intent on making equal justice a community value. Please welcome Sheri A. Fox as Executive Director of LAET.



The KBA Judicial Committee has compiled an inclement weather policy list for all of the courts in our area as a resource for members. The list is available at www.knoxbar.org.



Reimbursement of Employee Expenses

I suspect that many of you reading this column, like me, were once employed as a “runner” for a law firm. As those of us who were runners know, the absolute best part about being a runner was the out-of-office runs which required the use of your personal vehicle. On those runs you got to be out of the office, free from the watchful eyes of any senior lawyers and, most importantly, you likely got a mileage check reimbursing you for the trip. For those of you saying “I was a runner and I didn’t get mileage checks,” you have my condolences. For those of you saying “we don’t pay mileage for out-of-office runs at our firm,” do not fear. As a general matter, employers are not required to reimburse their employees for any expenses incurred in connection with their work. However, just because employers are not required to reimburse employees does not mean that they shouldn’t.

While not required, employers are allowed to reimburse their employees for business expenses, including travel reimbursements and, in fact, are arguably encouraged to do so by the IRS. Thus, the primary reason employers should reimburse their employees’ expenses is that the IRS allows a business to deduct legitimate business expenses when calculating its income for tax purposes. According to IRS Publication 535, to be deductible, “a business expense must be both ordinary and necessary. An ordinary expense is one that is common and accepted in your industry. A necessary expense is one that is helpful and appropriate for your trade or business. An expense does not have to be indispensable to be considered necessary.”

Travel expenses are one of the most common legitimate business expenses claimed by employers. The easiest way to reimburse for miles driven by your employees is to use the IRS mileage rate that the IRS publishes annually.¹ The IRS rate is adjusted annually for inflation and takes into consideration the insurance, maintenance, licensing and fueling costs of vehicles. Because the IRS rate takes these considerations into account, employers do not have to document separate vehicle use costs. All that is required is that the employer maintain records of the dates, mileage and reasons for the business travel in order to establish the legitimacy of the tax-exempt reimbursement.

It is worth noting that the IRS rate is a guideline. Thus, employers are free to reimburse at a rate above or below the IRS rate. Employers reimbursing above the IRS rate must treat any amount paid above the IRS rate as taxable income. All mileage reimbursements paid at or below the IRS rate are tax free.

For employers who do not reimburse employee expenses, one potential pitfall is the Fair Labor Standards Act’s mandate that wages be paid “free and clear.” While the FLSA does not contain any rules mandating reimbursements, the FLSA requires that employers pay an employee’s wages unconditionally or free and clear. If an employee is required to return some portion of wages – whether directly or indirectly – and that “kickback” puts the employee’s hourly rate below the minimum wage, then the employer has violated the FLSA. In the context of expense reimbursements, the elements of an improper

kickback include the following: 1) the employee incurs an expense necessary to the performance of the employee’s duties; 2) the employer fails to reimburse the full amount of the expense; and 3) the unreimbursed expense reduces the employee’s actual compensation below the required minimum or overtime wages.²

For employers employing individuals at or near the minimum wage, it only takes a minor expense to create a problem. For instance, an employee working 40 hours a week making \$8.00 per hour needs to incur just 6 dollars per day in expenses for the kickback to take his or her wage down to the federal minimum wage. Thus, if you send that employee on a run to file a pleading at the Roane County Courthouse, a roughly 75 mile round trip excursion, you have just brought that employee below the minimum wage if you do not reimburse the employee for their travel expenses.

In conclusion, while the general rule is that an employer does not have to reimburse its employees for business expenses, it likely makes better business sense to do so. Not only will employee morale increase but the employer will receive a tax benefit at little to no additional cost to the employer. In addition, if the employer has any employees at or close to the federal minimum wage, by reimbursing expenses, the employer removes any chance that it may involuntarily reduce the employee’s earnings below minimum wage and thus incur potential FLSA liability.

¹ For 2016, the IRS standard mileage rate is 54 cents per mile for business miles driven. The standard rates can be found at: <https://www.irs.gov/uac/Newsroom/2016-Standard-Mileage-Rates-for-Business-Medical-and-Moving-Announced>

² See 29 C.F.R. § 531.35



About this column: “*The cobbler’s children have no shoes.*” This old expression refers to the fact that a busy cobbler will be so busy making shoes for his customers that he has no time to make some for his own children. This syndrome can also apply to lawyers who are so busy providing good service to their clients that they neglect management issues in their own offices. The goal of this column is to provide timely information on management issues. If you have an idea for a future column, please contact **Cathy Shuck** at 541-8835.