



U.S. News & World Report - Best Lawyers® "Best Law Firms" for 2022 Has Been Announced!

Kennerly Montgomery has been recognized in fourteen practice areas in the Knoxville Metropolitan Region.



The "Best Law Firm" distinction is awarded only to firms that have attorneys recognized in the most recent edition of **U.S. News & World Report - Best Lawyers®**. If you missed the announcement of our inclusions in that recognition, please [click here](#).

Knoxville Metropolitan Tier 1

Construction Law
Employee Benefits (ERISA) Law
Litigation - Construction
Litigation - ERISA

Knoxville Metropolitan Tier 2

- Family Law
- Litigation - Bankruptcy
- Litigation - Insurance
- Tax Law
- Trusts & Estates
- Workers' Compensation Law - Claimants

Knoxville Metropolitan Tier 3

- Appellate Practice
- Employment Law - Individuals
- Insurance Law
- Personal Injury Litigation - Plaintiffs

NIL: Considerations for Student-Athletes

Reece Brassler, Esq.

Approximately six months into the Name, Image, and Likeness (“NIL”) era of the NCAA, we now have a snapshot of what NIL agreements between NCAA athletes and third-parties will look like and the legal concerns surrounding those deals. We have seen agreements ranging from [autograph signings at local businesses](#) and [apparel and merchandise sales to non-fungible token \(“NFT”\) artwork auctions](#) and the [launch of a cryptocurrency](#).



Regardless of the route taken, athletes who intend to profit from their NIL must carefully consider the personal and professional ramifications of these newfound opportunities, including the risk to their amateur status (and thus eligibility), the possibility of personal liability, and the protection of their brands.

Maintaining Amateur Status

Possibly the most important consideration for college athletes contemplating NIL agreements is to protect their amateur status and eligibility by complying with state laws and NCAA regulations. In May 2021, Tennessee passed [NIL legislation](#) with a web of requirements that untrained entrepreneurs may not be equipped to navigate given their hectic athletic and educational obligations. Further, while the NCAA has stated it will not destroy the eligibility of athletes complying with state law, this is a temporary policy that could be altered at any moment. Athletes seeking NIL endorsements need to constantly monitor the rules and regulations in place to ensure compliance and maintain their amateur status.

Liabilities

Another important consideration for student-athletes seeking NIL endorsements is the possibility of personal liability for certain business ventures. Athletes may want to consider forming an entity to manage their business ventures in order to shield themselves from liability. For instance, an athlete hosting a training camp may be sued for any injury incurred at that camp, but having the camp run by the athlete’s company can protect the athlete from personal liability.

Intellectual Property

Finally, as athletes begin to build their brand and profit from their NIL, it is vital to protect that brand by shrewdly negotiating contracts to limit their liability and risk, as well as to retain as much control of the NIL rights as possible. Athletes can further protect their brand and increase their ability to profit therefrom by acquiring legal protection of their

intellectual property. Many athletes have begun selling merchandise bearing their NIL and logos. As an athlete's popularity increases, so too does the likelihood that a third-party will try to capitalize on that popularity by selling counterfeit goods bearing an athlete's intellectual property. Athletes who fail to put the proper protections in place *before* their intellectual property is stolen may drastically reduce the value of their brand and their ability to protect it.

Don't Be Afraid To Seek Guidance

Given the web of requirements surrounding NIL laws and the demanding schedule of student-athletes, seeking guidance from legal professionals concerning the nuances of the law, the implications of NIL agreements, and strategies to protect and grow a brand is a prudent decision. Kennerly, Montgomery & Finley, P.C. is here to offer invaluable guidance to student-athletes navigating the uncharted realm of NIL.

Kennerly Montgomery Not Just National Recognition



Nineteen of our attorneys received 74 accolades across 34 categories in Cityview Magazine's Top Attorneys in Knoxville for 2021.

Cityview's ratings are based on votes by our peers in the Knoxville bar, with the top vote in each category denoted with a Golden Gavel. Ashley N. Trotto received the Golden Gavel in Employee Benefits/ERISA - Defense and Jonathan H. Peyton received the Golden Gavel in Real Estate Finance & Development.

You can see the entire list of [here!](#)

Creating Trusts in Uncertain Times

Michael R. Crowder, Esq.

In our **March newsletter**, we covered proposed tax plans that called for decreasing the estate tax exemption and increasing the estate tax rate. In the past couple of months, other changes were discussed by Congress that would have significantly impacted commonly used estate planning strategies such as Grantor Retained Annuity Trusts (GRATs) and sales to grantor trusts.



Fortunately, the most recent version of the spending bill out of Congress contains none of these proposed changes, so it seems we may be in the clear—for now. However, if anything is certain, it is that these are uncertain times.

Even without Congress' involvement, life is uncertain. Changes occur in your life and the lives of your loved ones such as marriage, divorce, birth of new family members, disability, death, or significant changes in financial net worth.

Tennessee law provides some tools that allow for grantors and beneficiaries to make changes to trusts when previously unforeseen circumstances are threatened or come to

pass.

For example, Tenn. Code Ann. § 35-15-111 allows for a trustee and the qualified beneficiaries of a trust to enter into a binding “nonjudicial settlement agreement” with respect to any matter involving a trust, to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court. The statute provides a non-exhaustive list of matters that nonjudicial settlement agreements may resolve, including (1) the interpretation or construction of the terms of the trust; (2) direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power; and (3) the criteria for distribution to a beneficiary where the trustee is given discretion. The Tennessee General Assembly just this year added the following to the list: the approval of investment decisions and the resignation and appointment of trust protectors/advisors and delineation of their powers and duties.

And yet, for better or worse, even the tools available to grantors and beneficiaries change. In 2019, for example, the General Assembly removed the requirement in Tenn. Code Ann. § 35-15-411 that, after the grantor’s death, a court determine that no material purpose of a trust is violated before said trust is modified upon the unanimous agreement of all qualified beneficiaries. The requirement that a material purpose not be violated still exists, but now only the trustee’s approval is required, not the court’s.

This year, the General Assembly re-worked the statutory authority for a trustee to “decant” (transfer) assets from a preexisting trust to a new trust. Among the changes, decanting now can limit or eliminate beneficiary income interests (except in certain circumstances where necessary for tax treatment) and accelerate the beneficial interest of a “future beneficiary” if the grantor is deceased.

When establishing a trust, the key is to allow for flexibility while also ensuring the grantor’s intent is effectuated, even after the grantor’s death. One way to do that is by including intent language or material purpose statements in the trust. Another option is to include powers in the trust document which allow for modifications to be made to the trust, rather than relying on the default powers provided under Tennessee law—which are always subject to change.

If you are considering establishing a trust, we’d be happy to help you think through these and other important issues. Give us a call at (865) 546-7311.

Congratulations from Kennerly Montgomery!

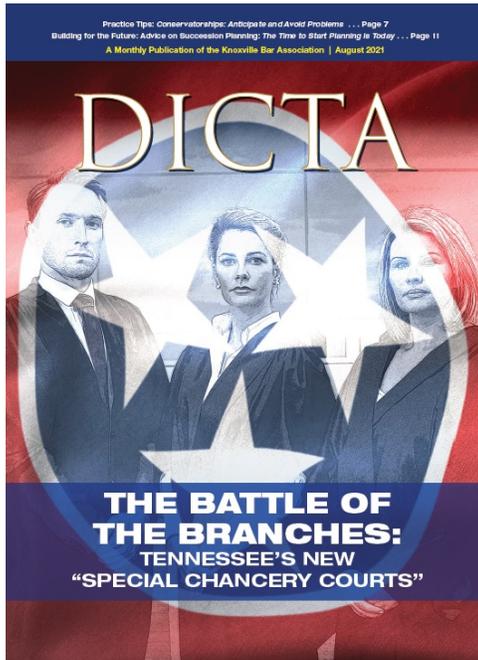


Rebecca C. Hanniford

Kennerly Montgomery congratulates first year associate, Rebecca C. Hanniford, in passing the July 2021 BAR exam. Calling Memphis home, she completed her undergraduate degree at the University of Tennessee-Knoxville, followed by attending the University of Tennessee Law School, where she graduated in May 2021.

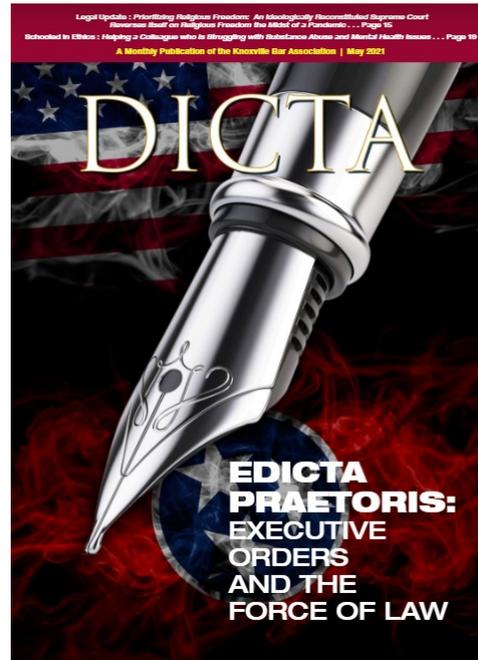
To garner experience, Rebecca has worked at various law firms since 2015 and joined KMF as a summer associate in 2020, continuing as a clerk during her final year of law school. Rebecca assists shareholder Jonathan Peyton in representing lenders and borrowers involved in FHA-insured multifamily real estate loan transactions, including financings under HUD’s Section 232, 221(d)(4), and 223(f) programs, as well as HUD’s 202 and 811 grant programs.

Recent Publications



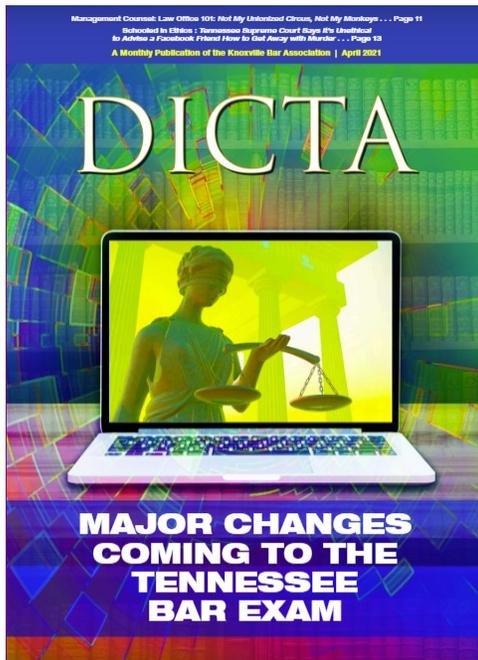
Eddy R. Smith

"The Time To Start Planning Is Today"



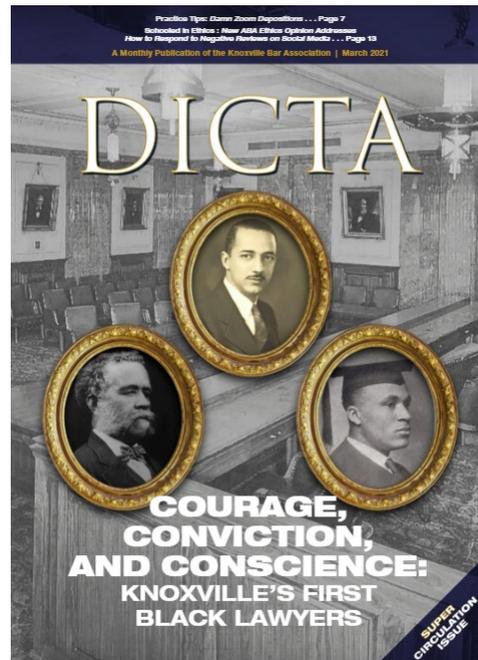
Eddy R. Smith

"Planning For The day Your Practice Ends"



Kathy D. Aslinger

"My Unusual Journey to ERISA Attorney"



Ashley N. Trotto

"So, You're A Retirement Plan Fiduciary"

DISCLAIMER

This newsletter is published to provide general information and education to our clients and friends about topics of interest. It is intended to be informational and

does not constitute legal advice. It also may be considered to be “attorney advertising” under the rules of certain states.

