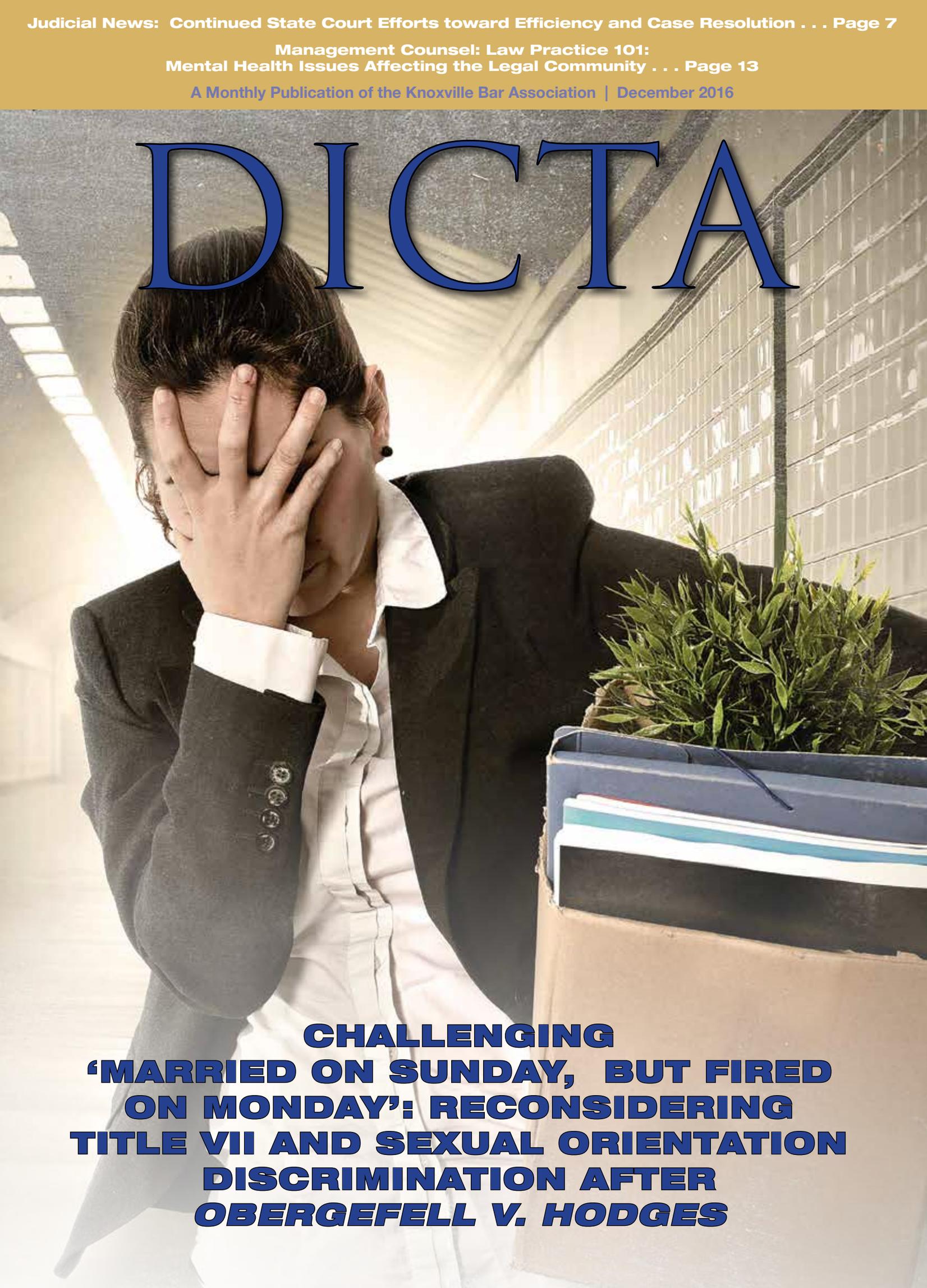


DICTA

A woman in a dark business suit and white shirt is walking in a hallway. She is covering her face with her right hand, suggesting distress or embarrassment. She is carrying a large cardboard box filled with office supplies, including a potted plant and several folders. The hallway has a tiled floor and a wall with a grid pattern.

**CHALLENGING
'MARRIED ON SUNDAY, BUT FIRED
ON MONDAY': RECONSIDERING
TITLE VII AND SEXUAL ORIENTATION
DISCRIMINATION AFTER
*OBERGEFELL V. HODGES***

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CONTINUED STATE COURT EFFORTS TOWARD EFFICIENCY AND CASE RESOLUTION

As I began to think about this article, I decided to find a nice quiet space where I could brainstorm about the weighty issues facing the bar. The office tends to be a bit hectic so I turned to the luxurious confines of my home office (a.k.a the kitchen table). As I opened my laptop and sat down to write, I was immediately interrupted by my 11 year old triplets who were engaged in a heated “raslin”¹ match over my iPhone. The tween years have hit my household hard and the kids have become obsessed with the idea of owning a smartphone. In fact, the kids recently began issuing warnings that my failure to purchase smartphones will likely stunt their technological growth and cause irreparable harm. I asked my wife “where did they come up with this stuff? I never promised them a smartphone!” My wife explained that several of their friends already have smartphones. It appears that my kids’ expectations are being set by what they experience in their daily lives.

There is no denying that music, TV shows, movies and social media aimed at tweens play a major role in shaping their young lives and in forming their expectations of the world. In most tween entertainment all of the “cool kids” own smartphones and they’re not afraid to use ‘em. The expectations and demands of my children’s generation are vastly different from anything I could have ever imagined growing up in the 1980’s.

This led me to think about practicing law in the modern era and the heightened level of expectations and demands that clients place upon attorneys and the judicial system. Clients come to us with built-in expectations, some of which are founded on their own day-to-day experiences. Many clients are fed a daily dose (some might argue an overdose) of instant gratification and immediate responses from social media outlets like Facebook, Twitter, Instagram and Snapchat. For better or for worse, modern life moves at a lighting-fast pace. Clients expect that attorneys and the court system will keep up with this pace when handling their legal problems. Some have expressed concern that if attorneys and the courts do not evolve and change to become more efficient, clients will lose faith in our legal system. The stakes are high and the very future of our democracy may depend on how we resolve the issues of efficiency and speed in resolving cases.

Identifying the difficult challenges and issues faced by the legal system and the pitfalls that lie ahead are meaningful steps in the right direction. Most all can agree that our society is in a constant state of evolution and that our legal system must also continue to evolve along with society. However, reaching a consensus on the best ways for our courts to meet modern challenges is still up for debate.

Some scholars argue that in order to obtain increased efficiency in case resolution, the state courts must adopt rules of procedure that are much more in line with the Federal Rules of Civil Procedure. Such changes would include mandatory use of status conferences and scheduling orders with set trial dates and discovery deadlines for all cases. Those against such measures argue that the Tennessee Rules of Civil Procedure already provide for voluntary use of scheduling conferences and scheduling orders. Many attorneys and judges in fact already effectively use such rules in appropriate cases. They further argue that mandating use of such rules in all cases may actually have a chilling effect on litigation and discourage many from utilizing the state courts.

Others scholars argue that in order to reach higher rates of efficiency in resolving cases, the courts should adopt time standards which would provide guidelines to the trial judges regarding the length of time certain categories of cases should take to reach resolution. Those in opposition to this idea argue that each case presents its own unique set of facts and challenges and that trial judges should not be handcuffed by a set of arbitrary deadlines. They further point out that trial judges are elected

by their constituents and they argue that trial judges should be afforded freedom and flexibility to manage their dockets as they see fit.

Still others argue that the current rules are adequate and the focus should be on better education efforts for attorneys and judges. Proponents of these measures argue that we need to educate attorneys and judges on the importance of prompt case resolution and inform them of best practices while providing them with access to the tools necessary to carry out those best practices.²

While the debate over these proposed solutions continues, some courts have moved forward and taken action by revising local rules in an effort to address efficiency and case resolution. For example, on August 1, 2016, the Knox County Chancery Courts adopted Rule 24 of the Local Rules of Practice for Knox County Chancery.³ Among other things, this new rule provides that “[i]f no action has been taken in a case for a period of at least one (1) year, the Court may dismiss the case. At least thirty (30) days prior to dismissal, the Clerk and Master shall send written notification to attorneys of record and to each unrepresented party of the pending dismissal.” It is important to note that the language used in Rule 24 is “may” and not “shall” so dismissal of cases is not mandatory.

Rule 24 went into effect on August 1, 2016 so the practical impact of this rule is not yet clear and several questions abound. Will it be used as a tool to simply clean up old, dormant cases that just need final orders? Will it become a minefield of potential liability for attorneys who do not take “action” on a case within one year? Because the term “action” is not defined it is unclear what steps practitioners must take in order to prevent dismissal of a case. Are attorneys required to file some type of pleading within one year? This could be particularly interesting given the fact that most discovery is not filed in Chancery Court.⁴ If attorneys do not satisfy the “action” requirement through court filings, then how will the courts monitor whether attorneys have taken any “action” on a case? How will this rule work when a Federal Bankruptcy Stay is issued? The answers to these questions and many more will likely unfold as Rule 24 is utilized by the Knox County Chancery Courts in the coming months.

While legal scholars debate these important issues, I am faced with my own lofty debate. Does the financial cost of buying 3 smartphones outweigh my desire to avoid the pain of tween iPhone drama? I may need to hire a lawyer.

¹ Also known as wrestling for those who do not speak the native language.

² The scope and length of this article precludes an in depth analysis of all potential solutions that have been proposed. The author does not seek to offer opinion or weigh the pros and cons of the various recommendations. Instead, the purpose of this article is to merely present the issues for further investigation and discussion among members of the bar.

³ RULE 24. CASE MANAGEMENT

(A) DISMISSAL OF DORMANT CASES. If no action has been taken in a case for a period of at least one (1) year, the Court may dismiss the case. At least thirty (30) days prior to dismissal, the Clerk and Master shall send written notification to attorneys of record and to each unrepresented party of the pending dismissal.

(B) NOTICE OF ENTRY REQUIRED. If the case is dismissed pursuant to this Rule, the Clerk shall mail a copy of the order dismissing the case for lack of prosecution to attorneys of record and to each unrepresented party.

(C) CURRENT ADDRESS ON FILE TO BE USED. For all purposes of sending notice and copies of orders pursuant to this Rule, the Clerk shall use the mailing address for attorneys of record and each unrepresented party then current with the Court, given or provided by Local Rule 4, and shall not be responsible for further investigating the whereabouts of any party or attorney.

⁴ See Rule 8 of Local Rules of Practice for Knox County Chancery.