The Governor's Council for Judicial Appointments

State of Tennessee

Application for Nomination to Judicial Office

Name: Frank S. Cantrell

Office Address: 22 N. Front St, Suite 1100
(including county) Memphis, Shelby County, TN 38103

Office Phone: (901) 255-3424 Facsimile: (901) 843-2924

INTRODUCTION

The State of Tennessee Executive Order No. 41 hereby charges the Governor's Council for Judicial Appointments with assisting the Governor and the people of Tennessee in finding and appointing the best and most qualified candidates for judicial offices in this State. Please consider the Council's responsibility in answering the questions in this application questionnaire. For example, when a question asks you to "describe" certain things, please provide a description that contains relevant information about the subject of the question, and, especially, that contains detailed information that demonstrates that you are qualified for the judicial office you seek. In order to properly evaluate your application, the Council needs information about the range of your experience, the depth and breadth of your legal knowledge, and your personal traits such as integrity, fairness, and work habits.

This document is available in word processing format from the Administrative Office of the Courts (telephone 800.448.7970 or 615.741.2687; website www.tncourts.gov). The Council requests that applicants obtain the word processing form and respond directly on the form. Please respond in the box provided below each question. (The box will expand as you type in the document.) Please read the separate instruction sheet prior to completing this document. Please submit original (unbound) completed application (*with ink signature*) and any attachments to the Administrative Office of the Courts. In addition, submit a digital copy with electronic or scanned signature via email to debra.hayes@tncourts.gov, or via another digital storage device such as flash drive or CD.

THIS APPLICATION IS OPEN TO PUBLIC INSPECTION AFTER YOU SUBMIT IT.

PROFESSIONAL BACKGROUND AND WORK EXPERIENCE

1. State your present employment.

Deputy Director/General Counsel; Memphis Area Legal Services, Inc.; 22 N. Front St., Suite 1100, Memphis, TN 38103

2. State the year you were licensed to practice law in Tennessee and give your Tennessee Board of Professional Responsibility number.

1979; 006661

3. List all states in which you have been licensed to practice law and include your bar number or identifying number for each state of admission. Indicate the date of licensure and whether the license is currently active. If not active, explain.

Tennessee. License is active. See date and number above.

4. Have you ever been denied admission to, suspended or placed on inactive status by the Bar of any state? If so, explain. (This applies even if the denial was temporary).

No

5. List your professional or business employment/experience since the completion of your legal education. Also include here a description of any occupation, business, or profession other than the practice of law in which you have ever been engaged (excluding military service, which is covered by a separate question).

1979-1983- Associate at Weintraub, DeHart, et al.

1983-1987- Solo law practice

1987-1989- Associate at Shields, Carlyle & Velander

1989-2001- Partner at Jackson, Shields, Yeiser & Cantrell

2001-2004- Solo mediation and arbitration practice (I continue to do mediations and arbitrations)

2004-present- Memphis Area Legal Services, Inc. (hired as a staff attorney; promoted to General Counsel; then promoted to Deputy Director)

1979-1992- Adjunct Professor, Legal Method, Memphis State University School of Law

2002-2008- Adjunct Instructor, Employment Law, Webster University

2015-Present- Part Time Faculty, Mediation, University of Memphis School of Law

I also had partial ownership interests many years ago in a dry cleaners and a hair salon, but I did not manage them except to provide occasional guidance or in temporary situations when the managers were not available.

6. If you have not been employed continuously since completion of your legal education, describe what you did during periods of unemployment in excess of six months.

Not applicable

7. Describe the nature of your present law practice, listing the major areas of law in which you practice and the percentage each constitutes of your total practice.

My present law practice is with Memphis Area Legal Services, Inc. (MALS). The major areas where I handle cases are consumer law (90%), employment law (5%) and education law (5%). I also supervise managing attorneys and staff attorneys who practice in those areas and in the areas of housing, family, benefits, tax, and elder law. Our practice at MALS involves both trial practice and transactional work.

8. Describe generally your experience (over your entire time as a licensed attorney) in trial courts, appellate courts, administrative bodies, legislative or regulatory bodies, other forums, and/or transactional matters. In making your description, include information about the types of matters in which you have represented clients (e.g., information about whether you have handled criminal matters, civil matters, transactional matters, regulatory matters, etc.) and your own personal involvement and activities in the matters where you have been involved. In responding to this question, please be guided by the fact that in order to properly evaluate your application, the Council needs information about your range of experience, your own personal work and work habits, and your work background, as your legal experience is a very important component of the evaluation required of the Council. Please provide detailed information that will allow the Council to evaluate your qualification for the judicial office for which you have applied. The failure to provide detailed information, especially in this question, will hamper the evaluation of your application.

1979-1983- As an associate in a medium-sized firm setting, I represented management in labor and employment matters in state courts, including the Circuit Court of Shelby County, and federal courts, and before administrative bodies. It was both a national practice that took me to

many other states and a local practice in the Memphis area. I appeared, tried cases, and argued before state and federal trial courts, appellate courts, and administrative bodies. I handled nonjury and jury cases (primarily nonjury), and wrote briefs and other legal pleadings of every description. I frequently represented clients with cases before the National Labor Relations Board, the Mississippi Workers' Compensation Commission, the Arkansas Workers' Compensation Commission, and the Equal Employment Opportunity Commission. I also represented employers in negotiating collective bargaining agreements. I represented clients in arbitrations and in mediation before Federal mediators. I counseled and trained clients on how to comply with the law to avoid legal problems. I drafted employment policies, employee handbooks, collective bargaining agreements, and other documents for clients. I normally acted as lead counsel, but sometimes assisted the more experienced attorneys on their cases.

1983-1987- In a solo law practice, I continued to do all of the above and also had a general litigation practice. While my practice has always been primarily civil law, during this period I also handled General Sessions Court level criminal cases. And, I did divorces, contract and tort litigation, business negotiations, etc. I represented plaintiffs and defendants, individuals and businesses. I handled generally anything that came in my door.

1987-1989- Joining a small firm, as an associate, I continued to do all of the types of work that I had done before in both of the previous settings. Again, I was normally lead counsel, but also assisted the partners with their cases.

1989-2001- As a partner in a small employment law firm, that grew while I was there from 5 lawyers to approximately 11, I once again represented management in all types of cases, in a trial practice. I had also developed a fairly large regional workers' compensation defense practice, frequently trying cases throughout West Tennessee. We also had a national practice. By this time, in addition to my own caseload, I was doing quite a bit of supervision of less experienced attorneys who would handle cases under my leadership. I was usually lead counsel in my cases, with assistance from less experienced attorneys. Or, I would sit as second chair in order to supervise and develop the less experienced attorneys.

2001-2004- Once again in a solo practice, I focused exclusively on ADR and training. I served as a mediator and arbitrator. I qualified to join the Federal Mediation and Conciliation Service (FMCS) panel of approved labor arbitrators and joined other panels as well. I arbitrated cases in many states, including Tennessee, Georgia, Alabama, North Carolina, Florida, Illinois, and Nebraska. I also qualified to become a securities arbitrator with the New York Stock Exchange and the National Association of Securities Dealers, then with the merged arbitration service of FINRA. I have served as arbitrator in several of these cases, including two which went to full hearing. I was also on the panel of the National Arbitration Forum where I served as an arbitrator in credit card disputes.

2004-present- In a legal aid law firm setting, I began as a staff attorney in the consumer and housing law unit. I handle cases in most of the civil courts of Shelby County, including General Sessions, Circuit, Chancery, and U.S. District Court. When I was promoted to General Counsel, I added the responsibility of supervising the overall delivery of legal service to all of our clients. And, I represent the firm itself. I am also one of several managers who review applications for assistance received by our firm and decide which to accept and which to decline. As Deputy

Director, I am also involved in the administration of the firm. I continue to handle a case load, though it has been reduced in order to accommodate the need to supervise the other attorneys in their cases. I have also continued to serve as a mediator and arbitrator, separate from my employment with Memphis Area Legal Services, Inc., although my mediations now far outnumber the arbitrations.

In my career, I have tried dozens of cases and handled many appeals. I have done everything necessary in a case including initial interview and assessment, pleadings, written discovery and depositions, motions and memoranda, negotiation, mediation, trials and arbitrations, appeals, briefs, appellate oral argument, and enforcement of judgments. I have appeared in nearly every civil court in Shelby County. I have also tried cases in many of the other courthouses in West Tennessee. I have argued before the Tennessee Court of Appeals and the Tennessee Supreme Court.

9. Also separately describe any matters of special note in trial courts, appellate courts, and administrative bodies.

Among my cases of note:

F.H et al. vs. Memphis City Schools, et al., 764 F.3d 638 (6th Cir. 2014)- I am co-counsel with two attorneys under my supervision and two private attorneys. This is an impact case concerning issues including whether or not students with disabilities can sue for non educational injuries on the same basis as non disabled students; the scope of a settlement agreement reached in resolution of an administrative complaint; and whether or not such an agreement can be enforced in court without additional exhaustion. The District Court had dismissed our Amended Complaint. On September 4, 2014, the Sixth Circuit ruled in our clients' favor on all issues, reversed the District Court, and remanded the case for further proceedings. The Sixth Circuit held that our clients' §1983 claims do not arise under the Individuals With Disabilities Education Act (IDEA), and therefore, were not released by a settlement agreement reached in resolution of a due process hearing request. For the same reason, the Sixth Circuit also found that administrative exhaustion of these claims is not required. Finally, the Court of Appeals found that the language of the settlement agreement, as well as the 2004 Amendments to the IDEA, render the settlement agreement enforceable in the courts, and thus, that our breach of contract claim does not require administrative exhaustion. In addition to reporting in West's Federal 3d Reporter, this case was also chosen for publication in West's Education Law Reporter, and has already been cited twice by the Sixth Circuit in subsequent cases, by two Federal District Courts outside of the Sixth Circuit, in two Federal District Court cases within the Sixth Circuit, in four appellate briefs in other cases listed on Westlaw (including an *amicus* filed by the United States), and in ten separate secondary sources reported on Westlaw.

Reyes et al. vs. Leahy's Motel, Inc., et al., Shelby County Chancery Court No. 14-1253-2- In this case, filed August 19, 2014, we were successful in obtaining a restraining order and constructive trust to prevent the cutoff of utilities in near 100 degree temperatures for approximately 40 low income families living in a trailer park whose landlord had collected utility payments from them, but the landlord had failed to pay the utility bill. We attached the proceeds of the sale of the

trailer park real estate, which provided a fund from which the case can be settled.

Moore v. It's All Good Auto Sales of Memphis, Inc., 907 F.Supp.2d 915 (W.D. Tenn. 2012)- In this case, in which I was co-counsel (supervising another attorney in the case), the District Court adopted our argument concerning the use of Civil RICO and the common law theory of negligent misrepresentation in a suit against a used car dealer. In an opinion selected for publication, the Court allowed the case to proceed in the face of a motion to dismiss.

Auto Credit of Nashville v. Wimmer, 231 S.W. 3d 896 (Tenn. 2007)- On behalf of the Tennessee Alliance for Legal Services (TALS), I was one of the leaders on the team that researched and wrote the *amicus* of TALS on the issue of proper notice of sale under the Uniform Commercial Code. I received the B. Riney Green Award from TALS for my work in this case.

Jernigan v. Henry I. Siegel Company, et al., No. 02S01-9510-CV-00101 (Tenn. May 3, 1996)- This is one of a number of workers' compensation cases that I handled and that was appealed to the Tennessee Supreme Court. In this case, we were successful in obtaining a reversal of the trial court ruling and we assisted in establishing the level of proof required on the elements under Tenn. Code Ann. §50-6-242 (which allowed exceptions to the statutory caps on workers' compensation awards). I was lead counsel in this case at trial and on appeal.

Blocker v. MagneTek Triad, No. 92A03-9412-CV-452 (Ind. Ct. App. *appeal dismissed by consent* Nov. 8, 1995)- I represented the Defendant, a major electronics manufacturer, in this putative class action brought on behalf of former employees seeking "vacation pay" and liquidated damages under a state wage statute. We argued that the statute would be preempted by ERISA if interpreted as the plaintiffs maintained it should. While the preemption issue was on appeal, we successfully opposed class certification in the trial court. I was lead counsel in that case at the trial court and appellate levels.

10. If you have served as a mediator, an arbitrator or a judicial officer, describe your experience (including dates and details of the position, the courts or agencies involved, whether elected or appointed, and a description of your duties). Include here detailed description(s) of any noteworthy cases over which you presided or which you heard as a judge, mediator or arbitrator. Please state, as to each case: (1) the date or period of the proceedings; (2) the name of the court or agency; (3) a summary of the substance of each case; and (4) a statement of the significance of the case.

From 2001 to the present, I have served as a mediator in many cases, primarily (but not exclusively) in the area of employment law. I have also served as an arbitrator in approximately ten cases that went to full evidentiary hearing and several others that were determined by document review or settled in advance of hearing.

In the vast majority of the mediations, which have occurred throughout the period of 2001 to the present, I was jointly selected by the parties. In a few, I was chosen by the Equal Employment Opportunity Commission, through their pro bono mediation program.

I also served as a pro bono mediator through the Shelby County Citizen's Dispute mediation

program and through the Mediation and Restitution Reconciliation Services (MARRS) mediation program. On those occasions, I was appointed by the program.

In the arbitration cases, I am normally chosen by the parties under the procedures of the arbitration service utilized by the parties (e.g. FMCS, FINRA, the Forum, etc.). I have been chosen for two arbitrations by counsel for the parties, outside of any arbitration service.

My mediations involve the range of employment law (discrimination, workers' compensation, wage and hour, retaliation, etc.), family law, construction law, tort law, and general civil litigation. Those that I did through Shelby County Citizen's Dispute involved criminal complaints referred to the program by the court system in hopes of working them out without charging a crime (neighbor disputes, fights, vandalism, etc.). The MARRS mediations were referred by Juvenile Court and involved young people, without prior records, who had been charged with conduct such as shoplifting or vandalism. MARRS is a victim/offender process where the victim and the alleged offender meet face to face to discuss the situation and try to reach a resolution.

My labor and employment arbitrations normally have involved interpretation of a collective bargaining agreement or a challenge to an employee discharge. My securities arbitrations involve either customer allegations of wrongdoing by broker/dealers or allegations of failure of an employee to comply with a promissory note. I recently completed an arbitration concerning alleged unauthorized transactions on a bank account.

My only experience as a judicial officer came in sitting as a special judge in City Court for Judge Larry Potter on a couple of occasions in the 1980's.

While confidentiality limits much of what I can say about my mediation and arbitration cases, at least four of my arbitration decisions were published by C.C.H. and Westlaw. They are C-E Minerals and United Steelworkers of America, Local 234, 2003 WL 25880576 (C.C.H.) (March 18, 2003) (whether or not employees were entitled to receive vacation pay while on extended lay off), Cemex, Inc. and Local Lodge D-78 of the Cement, Lime, Gypsum and Allied Workers Division, 2003 WL 25880626 (May 6, 2003) (whether or not employee's absence from work supported termination of employment), Lyon Metal Products, L.L.C. and United Steelworkers of America, Local 1636, 2003 WL 26457219 (December 18, 2003) (whether or not employer had just cause for termination of employee for alleged drinking on company property during lunch hour), and ALLTEL Nebraska, Inc. and Communications Workers of America, 2004 WL 6224201 (January 16, 2004) (whether or not employer had just cause for termination of employee for alleged smoking). In addition, during 2004-2005, I served as the arbitrator in a public dispute, City of Port Richey and William Downs, FMCS File No. 04-02365. In that case, the former chief of police was challenging his termination by the city.

11. Describe generally any experience you have of serving in a fiduciary capacity such as guardian ad litem, conservator, or trustee other than as a lawyer representing clients.

Not applicable

12. Describe any other legal experience, not stated above, that you would like to bring to the attention of the Council.

Not applicable

13. List all prior occasions on which you have submitted an application for judgeship to the Governor's Council for Judicial Appointments or any predecessor commission or body. Include the specific position applied for, the date of the meeting at which the body considered your application, and whether or not the body submitted your name to the Governor as a nominee.

I submitted an application for a judgeship in Part 3 of the Chancery Court for the 30th Judicial District. The Governor's Council for Judicial Appointments met June 17, 2015. My name was submitted to the Governor as a nominee.

I submitted an application for a judgeship on the Tennessee Court of Appeals, Western Section. The Governor's Commission for Judicial Appointments met May 16, 2014. My name was not submitted to the Governor as a nominee.

I submitted an application for a judgeship on the Tennessee Court of Appeals, Western Section. The Governor's Commission for Judicial Appointments met November 12, 2013. My name was not submitted to the Governor as a nominee.

I submitted an application for a judgeship on the Tennessee Court of Appeals, Western Section. The Tennessee Judicial Nominating Commission met June 29, 2013. My name was submitted to the Governor on what was referred to as Panel B.

I submitted an application for a judgeship in Division 7 of the Circuit Court for the 30th Judicial District. The Tennessee Judicial Nominating Commission met February 12, 2004. My name was not submitted to the Governor as a nominee.

I submitted an application for a judgeship in Part 2 of the Chancery Court for the 30th Judicial District. The Tennessee Judicial Nominating Commission met September 23, 2002. My name was not submitted to the Governor as a nominee.

EDUCATION

14. List each college, law school, and other graduate school that you have attended, including dates of attendance, degree awarded, major, any form of recognition or other aspects of your education you believe are relevant, and your reason for leaving each school if no degree was awarded.

Memphis State University (now University of Memphis), 1976-79, J.D.; class rank 2 of 124; Comments Editor, Law Review; Moot Court Board and Moot Court National Competition Team; I received American Jurisprudence Awards in eight courses, as well as a West Publishing

Company Hornbook Award and a Corpus Juris Secundum Award.

Memphis State University, 1973-76, B.A.; Major in Political Science; *cum laude*

Southwestern at Memphis (now Rhodes College), 1971-72; I left in good standing to transfer to Memphis State University.

PERSONAL INFORMATION

15. State your age and date of birth.

62; April 5, 1953

16. How long have you lived continuously in the State of Tennessee?

52 years

17. How long have you lived continuously in the county where you are now living?

52 years

18. State the county in which you are registered to vote.

Shelby

19. Describe your military service, if applicable, including branch of service, dates of active duty, rank at separation, and decorations, honors, or achievements. Please also state whether you received an honorable discharge and, if not, describe why not.

Not applicable

20. Have you ever pled guilty or been convicted or are now on diversion for violation of any law, regulation or ordinance other than minor traffic offenses? If so, state the approximate date, charge and disposition of the case.

No

21. To your knowledge, are you now under federal, state or local investigation for possible violation of a criminal statute or disciplinary rule? If so, give details.

No

22. Please identify the number of formal complaints you have responded to that were filed against you with any supervisory authority, including but not limited to a court, a board of professional responsibility, or a board of judicial conduct, alleging any breach of ethics or unprofessional conduct by you. Please provide any relevant details on any such complaint if the complaint was not dismissed by the court or board receiving the complaint.

None

23. Has a tax lien or other collection procedure been instituted against you by federal, state, or local authorities or creditors within the last five (5) years? If so, give details.

No

24. Have you ever filed bankruptcy (including personally or as part of any partnership, LLC, corporation, or other business organization)?

No

25. Have you ever been a party in any legal proceedings (including divorces, domestic proceedings, and other types of proceedings)? If so, give details including the date, court and docket number and disposition. Provide a brief description of the case. This question does not seek, and you may exclude from your response, any matter where you were involved only as a nominal party, such as if you were the trustee under a deed of trust in a foreclosure proceeding.

Yes

Taylor v. Memphis Area Legal Services, Inc., et al, 2:12-cv-02467-JDT-tmp, filed June 15, 2012 in the United States District Court for the Western Division and dismissed February 27, 2014- I was a defendant in this suit brought by a pro se plaintiff against all four federally funded legal aid offices in Tennessee and another pro bono organization, as well as seven employees and one board member of those firms. The suit sought relief under 42 U.S.C. 1981, 1983, 1985, 18 U.S.C. 245, 18 U.S.C. 1512, 18 U.S.C. 1514, 42 U.S.C. 2000d, Public Law 93-355, Public Law 95-222, the First, Fifth, Thirteenth, and Fourteenth Amendments to the United States Constitution, torts, and other theories. The plaintiff appealed to the Sixth Circuit Court of

Appeals. On March 19, 2015, the Sixth Circuit affirmed the dismissal. On March 27, 2015, the plaintiff filed a petition for en banc rehearing, which was denied on August 20, 2015. On November 10, 2015, the plaintiff filed a petition for writ of certiorari to the United States Supreme Court. It has not been acted upon.

Frank Cantrell v. Vicki Cantrell, 160587, filed in 1998 in the Circuit Court for the 30th Judicial District. This was a divorce based on irreconcilable differences.

I was a party in either 2 or 3 cases in the 1980's, but they are so old that I have not been able to obtain exact information:

1) I filed suit for a fee once and agreed to submit it to the Memphis Bar Association Fee Dispute Committee.

2) I filed suit over a car accident when the other driver ran a stop sign and broadsided my car on the driver's side. I settled that case.

3) I was once contacted by a collection attorney over a credit card that my co-maker had agreed to pay. I believe that a suit was filed (but am not sure). I paid the balance when I learned that the co-maker had not paid.

Susan Cantrell v. Frank Cantrell, 66660, filed in 1979 in the Circuit Court for the 30th Judicial District. This was a divorce based on irreconcilable differences.

26. List all organizations other than professional associations to which you have belonged within the last five (5) years, including civic, charitable, religious, educational, social and fraternal organizations. Give the titles and dates of any offices that you have held in such organizations.

I am a member of Christ United Methodist Church. I am a member of the YMCA. I have held no offices in either organization.

27. Have you ever belonged to any organization, association, club or society that limits its membership to those of any particular race, religion, or gender? Do not include in your answer those organizations specifically formed for a religious purpose, such as churches or synagogues.

    a. If so, list such organizations and describe the basis of the membership limitation.

    b. If it is not your intention to resign from such organization(s) and withdraw from any participation in their activities should you be nominated and selected for the position for which you are applying, state your reasons.

No

ACHIEVEMENTS

28. List all bar associations and professional societies of which you have been a member within the last ten years, including dates. Give the titles and dates of any offices that you have held in such groups. List memberships and responsibilities on any committee of professional associations that you consider significant.

I recently learned that I have been appointed to serve on the Alternative Dispute Resolution Commission, beginning in 2016.

Memphis Bar Association, 1979-Present (Currently a member in Labor & Employment Law Section and ADR Section) (Member, Board of Directors 2007, 2010, 2011; YLD Board of Directors 1983-1986, YLD Treasurer 1987; Labor & Employment Law Section Treasurer 2006, Secretary 2007, Vice Chair 2008, Chair 2009; ADR Section Secretary 2002-2004, Vice Chair 2004, Chair 2005)

National Bar Association, Ben F. Jones Chapter, 2002-Present (Member, Board of Directors 2014-Present) (By-Laws Committee Chair 2008)

Tennessee Bar Association, 2004-Present (Currently a member in Dispute Resolution Section)

American Bar Association, 2004-Present (Currently a member in Labor & Employment Law Section)

Memphis Bar Foundation, 2007-Present

Tennessee Bar Foundation, 2009-Present

Leo Bearman, Sr., American Inn of Court, 2005-Present (Currently, Emeritus Member) (Program Chair 2008-2010; Mentoring Chair 2007-2008)

Tennessee Alliance for Legal Services, 2008-Present (Board Member 2008-present) (Vice Chair 2011-2012; Chair 2013-2014)

Tennessee Association of Professional Mediators, 2013-Present (Board Member 2013-present)

Some dates above are approximate.

29. List honors, prizes, awards or other forms of recognition which you have received since your graduation from law school that are directly related to professional accomplishments.

2007- B. Riney Green Award, from the Tennessee Alliance for Legal Services for promoting inter-program cooperation and strengthening the provision of legal aid in Tennessee

2012- A.A. Latting Award for Community Service, from the Ben F. Jones Chapter of the National Bar Association

30. List the citations of any legal articles or books you have published.

Supreme Court Ruling Clarifies Role of Arbitration, The Daily News, Jan. 17, 2002, at 1

A Business Perspective of the "Reformed" Tennessee Workers' Compensation Law, (Co-Author) Mid-South Business Journal, Third Quarter 1986, at 21

Making it Look Easy – Ten Rules to Effective Legal Writing (2002)

A Manager's Guide to Tennessee Workers' Compensation Law (2d Ed. 1998)

So, You're In Human Resources, Now (1989)

Note, Directed Verdicts and New Trials-Their Relationship to the Right to Trial by Jury, 9 Mem. St. U L. Rev. 493 (1979)

Comment, Torts-Workmen's Compensation-Dual Capacity Doctrine Rejected, 8 Mem. St. U. L. Rev. 163 (1977)

31. List law school courses, CLE seminars, or other law related courses for which credit is given that you have taught within the last five (5) years.

10/14/2011- Everything I Know About Neuro-Science and Conflict Resolution, CLE, TALS

9/26/2012- Legal Services Technology Project Updates, CLE, TALS

10/09/2013- The Impact of the Repeal of the Attorney Fees Ban, CLE, TALS

10/18/2013- "I Couldn't Relate: Direct Examination & Bridging The Gap Between the Haves and Have Nots," Race, Class, & The Courtroom CLE, University of Memphis School of Law

9/10/2014- Great Cases in Legal Aid History, CLE, TALS

Fall, 2015- Mediation course, University of Memphis School of Law

32. List any public office you have held or for which you have been candidate or applicant. Include the date, the position, and whether the position was elective or appointive.

Not applicable

33. Have you ever been a registered lobbyist? If yes, please describe your service fully.

No

34. Attach to this questionnaire at least two examples of legal articles, books, briefs, or other legal writings that reflect your personal work. Indicate the degree to which each example reflects your own personal effort.

Attached are:

A Motion For Relief From Stay that I filed in the United States Bankruptcy Court for the Southern District of New York, that reflects solely my effort, with the possible exception of some legal research done by a law student

A legal writing guide that I wrote for law students and young lawyers that reflects solely my effort

ESSAYS/PERSONAL STATEMENTS

35. What are your reasons for seeking this position? ***(150 words or less)***

My interest in serving as a judge dates back to law school. As soon as I began reading cases, I realized that my talents were best suited for the role of a judge. In the 1980's, when interviewed by the Memphis Business Journal as (at that time) a young lawyer, I was asked my career goal and replied that I hoped to serve as a judge. I respected that role so much, though, that I realized that I needed tremendous experience before I sought it.

I understand law. It comes naturally to me, as do procedure, evidence, and writing. I can quickly assimilate facts. I appreciate the trial process. As an arbitrator, I consciously practice and enjoy the discipline of keeping an open mind throughout. I can make the decisions that need to be made. I understand the importance of every case to every person involved.

36. State any achievements or activities in which you have been involved that demonstrate your commitment to equal justice under the law; include here a discussion of your pro bono service throughout your time as a licensed attorney. ***(150 words or less)***

I have worked full time at Memphis Area Legal Services, Inc. (MALS), the legal aid provider for Memphis and the surrounding counties, for 11 years, on the front line of equal justice. The financial cost to me has been tremendous, but I do not regret a minute. I have also volunteered at the MALS Saturday Legal Clinic and in our fundraising campaign (neither of which is part of my job responsibility). I have accepted pro bono cases from the Community Legal Center. Prior to joining MALS, I volunteered considerable time in the Citizens Dispute and MARRS programs (see item 10 above). I donate money to equal justice organizations including MALS, the Community Legal Center, the Tennessee Alliance for Legal Services (TALS), and the Tennessee Justice Center. I served as chair of the board of TALS for two years, 2013 and 2014. See also awards listed in item 29 above.

37. Describe the judgeship you seek (i.e. geographic area, types of cases, number of judges, etc. and explain how your selection would impact the court. ***(150 words or less)***

The Circuit Court is a trial level court of general jurisdiction, more particularly described at Tenn. Code Ann. §16-10-101 et seq. In Shelby County, the Circuit Court does not hear criminal cases. The geographic area of the Thirtieth Judicial District is Shelby County, Tennessee. The court has nine judges who preside over the nine divisions.

My impact would be to apply my talents and hard work on behalf of the people of Tennessee by approaching their cases in a learned, respectful, scholarly, and compassionate way. I would bring diversity in practice experience, having represented clients from those in poverty to corporations listed on the Fortune 500. I could put myself in the shoes of every litigant and every attorney.

38. Describe your participation in community services or organizations, and what community involvement you intend to have if you are appointed judge? ***(250 words or less)***

The bulk of my participation is in activities sponsored by organizations or governmental entities in the law, legal system, or administration of justice. In addition to those noted in item 36 above, I volunteer at the University of Memphis School of Law assisting the trial and mediation teams in preparing for competition. I am active in the National Bar Association (Ben F. Jones Chapter) activities and support the organization's community endeavors, such as the doctors vs. lawyers

basketball game, mentoring, food drives, etc. I am active in the Memphis Area Legal Services, Inc. (MALS) fundraising campaign and in MALS community outreach.

My wife and I have taught children's Sunday school for the past eleven years. From 2010 through 2013, I served breakfast to underprivileged children at Cornerstone Prep, a school founded by our church, on Friday mornings throughout the school year. More recently, I have greeted students on many Friday mornings as they arrived at school.

I am mindful of Rules 3.1 and 3.7 of the Code of Judicial Conduct and would comply with the Code in considering community involvement. For instance, my fundraising activities for MALS would need to change. I would assess whether I should continue my role at the Tennessee Alliance for Legal Services. I would not allow extrajudicial activities to interfere or conflict with the obligations of judicial office. I would continue to focus my community service on activities that concern the law, legal system, and administration of justice. I would continue to teach Sunday School.

39. Describe life experiences, personal involvements, or talents that you have that you feel will be of assistance to the Council in evaluating and understanding your candidacy for this judicial position. ***(250 words or less)***

I would like to emphasize my gifts in legal research, analysis, and writing. While I was still a law student, I was approached by the faculty at the Memphis State University School of Law and invited to teach Legal Method. I think that says something about their assessment of my talents in the areas of research, analysis, and writing. In every firm setting in which I have worked, I have always been a "go-to" person for assistance in these areas.

40. Will you uphold the law even if you disagree with the substance of the law (e.g., statute or rule) at issue? Give an example from your experience as a licensed attorney that supports your response to this question. ***(250 words or less)***

I would certainly follow the oath of office in upholding the Constitution of the United States of America and the Constitution of the State of Tennessee. And, I would never consider disregarding the law simply because I disagree with it. If my duties called upon me to render a judgment on whether or not a statute or rule is enforceable, I would make that decision based on my obligations as a judicial officer and without regard for any personal agreement or disagreement that I might have.

As an attorney, I also took an oath about supporting the Constitutions and I place that oath above my personal views to the point where I cannot think of an example where I had difficulty meeting that oath because of any personal disagreement with the law. I have no interest in imposing my personal views on anyone. I have had no problem arguing for the extension, modification, or reversal of existing law or the establishment of new law, when permitted.

REFERENCES

41. List five (5) persons, and their current positions and contact information, who would recommend you for the judicial position for which you are applying. Please list at least two persons who are not lawyers. Please note that the Council or someone on its behalf may contact these persons regarding your application.

A. Sarah H. Norton; Attorney at Law; Chief Counsel-Labor and Employment Law, International Paper Company;
B. Kirk Bailey; Memphis Chairman, Pinnacle Financial Partners;
C. Ann Jarvis Pruitt; Attorney at Law; Executive Director, Tennessee Alliance for Legal Services;
D. Bobby W. Dyer; CEO & President, Dyer's Employment Agency, Inc.; 23
E. M. Rush O'Keefe, Jr., Attorney at Law; Senior Vice President and General Counsel, FedEx Express;

AFFIRMATION CONCERNING APPLICATION

Read, and if you agree to the provisions, sign the following:

I have read the foregoing questions and have answered them in good faith and as completely as my records and recollections permit. I hereby agree to be considered for nomination to the Governor for the office of Judge of the [Court] Circuit Court for the Thirtieth Judicial District of Tennessee, and if appointed by the Governor and confirmed, if applicable, under Article VI, Section 3 of the Tennessee Constitution, agree to serve that office. In the event any changes occur between the time this application is filed and the public hearing, I hereby agree to file an amended questionnaire with the Administrative Office of the Courts for distribution to the Council members.

I understand that the information provided in this questionnaire shall be open to public inspection upon filing with the Administrative Office of the Courts and that the Council may publicize the names of persons who apply for nomination and the names of those persons the Council nominates to the Governor for the judicial vacancy in question.

Dated: November 27, 2015.

/s/ Frank S. Cantrell
Signature

When completed, return this questionnaire to Debbie Hayes, Administrative Office of the Courts, 511 Union Street, Suite 600, Nashville, TN 37219.

THE GOVERNOR'S COUNCIL FOR JUDICIAL APPOINTMENTS
ADMINISTRATIVE OFFICE OF THE COURTS

511 UNION STREET, SUITE 600
NASHVILLE CITY CENTER
NASHVILLE, TN 37219

TENNESSEE BOARD OF PROFESSIONAL RESPONSIBILITY
TENNESSEE BOARD OF JUDICIAL CONDUCT
AND OTHER LICENSING BOARDS

WAIVER OF CONFIDENTIALITY

I hereby waive the privilege of confidentiality with respect to any information that concerns me, including public discipline, private discipline, deferred discipline agreements, diversions, dismissed complaints and any complaints erased by law, and is known to, recorded with, on file with the Board of Professional Responsibility of the Supreme Court of Tennessee, the Tennessee Board of Judicial Conduct (previously known as the Court of the Judiciary) and any other licensing board, whether within or outside the State of Tennessee, from which I have been issued a license that is currently active, inactive or other status. I hereby authorize a representative of the Governor's Council for Judicial Appointments to request and receive any such information and distribute it to the membership of the Governor's Council for Judicial Appointments and to the Office of the Governor.

Frank S. Cantrell

/s/ Frank S. Cantrell
Signature

November 27, 2015
Date

006661
BPR #

Please identify other licensing boards that have issued you a license, including the state issuing the license and the license number.

HEARING DATE AND TIME: October 31, 2012 at 10:00 a.m. E.T.
OBJECTION DEADLINE: October 24, 2012 at 4:00 p.m. E.T.

MEMPHIS AREA LEGAL SERVICES, INC.
FRANK S. CANTRELL
109 N. MAIN, SUITE 200
MEMPHIS, TN 38103
(901) 255-3424 Telephone
(901) 843-2924 Facsimile
Email: fcantrell@malsi.org

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
	:	
Hostess Brands, Inc., *et al*[1].	:	Case No. 12-22052 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	

MOTION OF LORAINE GARMON
FOR RELIEF FROM STAY PURSUANT TO 11 U.S.C. § 362(d)
AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001

To the Honorable Robert D. Drain,
United States Bankruptcy Judge

Loraine Garmon ("Ms. Garmon"), by and through counsel of record, as creditor hereby moves pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001 for an order substantially in the form annexed to this Motion as **Exhibit A**, for relief from the stay in this matter as to her claims, which are fully covered by insurance.

[1] The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Hostess Brands, Inc. (0322), IBC Sales Corporation (3634), IBC Services, LLC (3639), IBC Trucking, LLC (8328), Interstate Brands Corporation (6705) and MCF Legacy, Inc. (0599).

BACKGROUND

1. On January 11, 2012, the Debtors commenced their reorganization cases by filing voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code. The Debtors' Chapter 11 cases have been consolidated and are being administered jointly for procedural purposes only.

2. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On January 18, 2012, the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an official committee of unsecured creditors, pursuant to section 1102 of the Bankruptcy Code (the "Creditor Committee"). On January 30, 2012, the U.S. Trustee amended the membership of the Creditors Committee.

4. Founded in 1930, Hostess is one of the largest wholesale bakers and distributors of bread and snack cakes in the United States. The Debtors operate 36 bakeries, 565 distribution centers, approximately 5,500 delivery routes and 570 bakery outlet stores throughout the United States.

5. Ms. Garmon, a former employee of Hostess Brands, Inc. and/or Interstate Brands, filed timely claims against both such debtors, listed in the Court's Claims Register as Claim Numbers 318[2], 408, and 409.

[2] Debtors objected to Claim No. 318 in Omnibus Objection No. 2, filed August 21, 2012, on the grounds that it had been amended by Claim Nos. 408 and 409 which would survive that Objection. Ms. Garmon did not file a response to that Objection, based upon the representation in the Objection that Claim Nos. 408 and 409, as Surviving Claims, would not be affected. The Objection to Claim No. 318 was sustained by Order of this Court dated September 26, 2012.

6. By the provisions of 11 U.S.C. §362(a), all persons are enjoined and stayed from commencing or continuing any suit against the Debtors, subject to relief that can be granted from the stay, pursuant to 11 U.S.C. § 362(d).

JURISDICTION

7. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157(b)(2)(G) and 1334(b). Motions to terminate, modify or annul the automatic stay are core proceedings under 28 U.S.C. § 157(b)(2)(G).

FACTS IN SUPPORT OF REQUESTED RELIEF

8. On May 8, 2009, Ms. Garmon filed a timely Charge of Discrimination with the Equal Employment Opportunity Commission (EEOC). A copy of that Charge is attached to this Motion as **Exhibit B**. The Charge was assigned No. 490-2009-01821 by the EEOC. The Respondent named in the Charge is Interstate Brands Corporation, which is the entity that had issued Ms. Garmon's Separation Notice in 2009.

9. On September 28, 2011, the EEOC found reasonable cause to believe that the Respondent had discharged Ms. Garmon and denied her a reasonable accommodation because of her disability in violation of the Americans With Disabilities Act Amendments Act (ADAAA). The EEOC further found reasonable cause to believe that Ms. Garmon was discriminated against on the basis of her sex in violation of Title VII of the Civil Rights Act of 1964, as amended (Title VII). A copy of that Determination is attached to this Motion as **Exhibit C**.

10. Following the Determination, the EEOC attempted conciliation with the Debtors as required by Section 706(b) of Title VII and the ADAAA. While that process was pending, the Debtors filed the petitions commencing this bankruptcy proceeding. Thereafter, by Notice dated

January 23, 2012, the EEOC determined that conciliation had been unsuccessful. A copy of that Notice is attached to this Motion as **Exhibit D**.

11. On May 9, 2012, the EEOC issued a Notice of Right to Sue, based on Conciliation Failure. A copy of that Notice of Right to Sue is attached to this Motion as **Exhibit E**.

12. In order to determine whether or not to Ms. Garmon has grounds for relief from the automatic stay in this matter, counsel for Ms. Garmon inquired of counsel for the Debtors as to whether or not the Debtors had Employment Practices Liability Insurance (EPLI) that would cover Ms. Garmon's allegations. The policy kindly produced by counsel for the Debtors as the applicable policy reflects a "Continuity/Retroactive Date" of 02/03/2009. A copy of the relevant portions of that insurance policy are attached to this Motion as **Exhibit F**.[3]

13. Because the policy produced by the Debtors had a "Continuity/Retroactive Date" of February 3, 2009 and because the allegations in Ms. Garmon's EEOC charge included events occurring October 27, 2008 and March 3, 2009, counsel for Ms. Garmon requested the policy that was in effect for the period of 1/1/2008 to 2/2/2009. Counsel for the Debtors has confirmed that the policy in effect for that period is identical to the policy previously produced.

14. The applicable policy provides a separate EPLI limit of liability of $20,000,000 (and a policy aggregate limit of $40,000,000). Although there is a Retention/Deductible listed of $500,000, there are "Financial Insolvency" provisions in the policy as follows:

a) In Section 2 (h) of the Employment Practices Liability (EPL) Coverage Section of the policy, "Financial Insolvency" of the insured Company (the Debtors here) is defined

[3] Portions of pages 3 and 6 of the policy, not relied upon by Ms. Garmon in this Motion, have been modified or deleted by Policy Endorsements. Specifically, subsection (m)(6) on page 3 and portions of the first and third paragraphs at the top of page 6 have been modified by Policy Endorsements. While not attached to this Motion, those Policy Endorsements and the entire policy, including all endorsements, can be provided to the Court upon request.

to include, "(ii) the filing of a petition under the bankruptcy laws of the United States of America."

b) Section 5 of the EPL Coverage Section of the policy, states, "[I]n the event that the Company [the Debtors here] is unable to pay the applicable Retention amount due to Financial Insolvency, then the Insurer shall commence advancing Defense Costs and pay any other covered Loss within the Retention…."

15. The combined effect of the limits of liability and the provision for payment of the Retention by the insurer in the event of a bankruptcy is that coverage, defense, and payment of Ms. Garmon's damages would be accomplished without the use of any funds of the Debtors.

LEGAL AUTHORITY FOR REQUESTED RELIEF

16. According to 11 U.S.C. § 362(d), "On request from a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—(1) for cause …."

17. If the proceeds of a liability insurance policy are not property of a debtor's estate, those proceeds can be paid out by the insurer without violating the automatic stay. In re Global Holdings Ltd., 469 B.R. 177, 187 (Bankr. S.D.N.Y. 2012). The proceeds of a liability insurance policy that provides coverage both for the debtor and its directors and officers[4] are not property of a debtor's estate except, perhaps, to the extent that "depletion of the proceeds would have an adverse effect on the estate to the extent the policy actually protects the estate's other assets from diminution." In re Global Holdings Ltd., 469 B.R. 177, 191 (Bankr. S.D.N.Y. 2012) citing In re Downey Fin. Corp., 428 B.R. 603 (Bankr. D. Del. 2010). Here, there is no such danger for at

[4] The EPLI policy here includes coverage for the Directors and Officers. See **Exhibit F,** Section 2 (g), (k), and (l) (page 3).

least three reasons: 1) the $20,000,000 limits of liability ($40,000,000 aggregate) are not threatened by Ms. Garmon's claims (according to the claims filed with this Court, the Debtors' liability to Ms. Garmon at that time was just over $450,000); 2) the proceeds of an EPLI policy of a debtor are of no value to the estate except as they are used to pay covered claims (which actually reduces demands on the estate); and 3) even a complete depletion of the proceeds of an EPLI policy would not result in diminution of the estate's other assets as any remaining claimants would simply have claims against the estate, the same as they would have if the EPLI policy proceeds had never been called upon.

18. It is likely unnecessary to even decide whether or not the proceeds of the EPLI policy are assets of the estate, since cause exists to lift the stay. In re Global Holdings Ltd., 469 B.R. 177, 191 (Bankr. S.D.N.Y. 2012). While this Court uses the 12-point test articulated in Sonnax Indus., Inc. v. Tri Component Prods Corp., 907 F.2d 1280, 1286 (2d Cir. 1990), not all of the factors apply in every case, and cause is a broad and flexible concept determined on a case-by-case basis. In re M.J & K Co., Inc., 161 B.R. 586 (Bankr. S.D.N.Y. 1993).

19. Among the factors (numbered here as they are in Sonnax) met in the present case are: 1) Relief from the stay will result in partial or complete resolution of the issues. 2) Ms. Garmon's discrimination case has no connection with the bankruptcy case and coverage, defense, and payment of her claims, from insurance proceeds purchased by the Debtors for that very purpose will not interfere with the bankruptcy case. 4) Under 28 U.S.C. 157(b)(5) cases with tort type damages, including cases under Federal discrimination statutes (In re Ice Cream Liquidation, Inc., 281 B.R. 154, 162 (Bankr. D. Conn.), are to be tried in the district courts. 5) Under the terms of the policy, the Debtors' insurer has assumed full responsibility for defending (and paying) the claims of Ms. Garmon. 7) Litigation of this case in the Western District of

Tennessee would not prejudice the interest of other creditors. 10) The interests of judicial economy and the expeditious and economical resolution of litigation are served by having Ms. Garmon's case filed and heard in the Western District of Tennessee, where she resides, where she was employed by the Debtors, where the cause of action arose, and where all or nearly all of the witnesses and exhibits can be accessed. 13) The impact of the stay on Ms. Garmon is tremendous in that it prevents her from resolving and being compensated for a claim that is totally covered by insurance proceeds purchased by the Debtors for this very purpose.

20. The automatic stay in this matter is not designed to protect third parties, such as the EPLI insurance carrier. Tucker v. American Intern. Group, Inc., 745 F.Supp. 53, 63 (D. Conn. 2010). Neither the automatic stay nor a discharge injunction are designed to protect a third party insurer. Id. at 64. If it did, the insurer would be unjustly enriched by escaping liability that it was compensated to cover.[5] Id. at 65. Ms. Garmon should be permitted to pursue her claims, fully covered by the EPLI policy in the United States District Court for the Western District of Tennessee in order to prevent a windfall in favor of the EPLI insurance carrier. In re White, 73 B.R. 983, 985 (Bankr. D.D.C. 1987).

21. Because the Notice of Right to Sue was issued to Ms. Garmon by the EEOC after the commencement of this bankruptcy case, the time for filing suit is extended, pursuant to 11 U.S.C. § 108, until 30 days after notice of termination of the stay. Because of the relatively short time for filing suit under 11 U.S.C. § 108, Ms. Garmon requests that this court order that the 14-day stay of the order granting relief from the stay not apply in this case.

[5] As shown in Exhibit F, the Debtors paid nearly $300,000 for the most recent version of the EPLI policy, after the petition was filed in this case.

22. Pursuant to Local Rule 9013-1(a) Ms. Garmon respectfully requests that she be excused from filing a memorandum of law in that the statutory basis and legal authorities that support her requested relief are set forth in this motion.

23. Ms. Garmon waives the 30 day hearing provision in 11 U.S.C. § 362(e)(1).

RELIEF REQUESTED

24. Wherefore, Ms. Garmon respectfully requests that the Court enter an order pursuant to 11 U.S.C. § 362(d) and Bankruptcy Rule 4001 substantially in the form annexed to this Motion as **Exhibit A**, for relief from the stay in this matter as to her claims, which are fully covered by insurance.

Dated: Memphis, TN
October 9, 2012

Respectfully submitted,

/s/ Frank S. Cantrell
Memphis Area Legal Services, Inc.
109 N. Main, Suite 200
Memphis, TN 38103
(901) 255-3424 Telephone
(901) 843-2924 Facsimile
Email: fcantrell@malsi.org
Attorneys for Loraine Garmon

MAKING IT LOOK EASY – TEN RULES TO EFFECTIVE LEGAL WRITING

By Frank S. Cantrell

Legal writing is an art. Even art, however, has rules. After twenty-two years of law practice and thirteen years of teaching Legal Method, I think I know what some of those rules are. Perhaps more precisely, I now have the time to write them down.

Just as some people are born athletes, others are born writers. Carrying the comparison another step, the rest of us can improve our performance, be it athletic or literary, by learning, practicing, and following certain fundamentals.

In this article, I will briefly explore ten of the rules or fundamentals that, in my view, enhance effective legal writing. I confess that the number ten is arbitrary, but any number would be. Please note that of the ten that I have chosen, I make no attempt to rank them in order of importance.

RULE ONE – SAY ALL THAT YOU WANT TO SAY ABOUT A POINT AND THEN SAY NO MORE ABOUT IT.

This rule is actually two rules in one: 1) Say all you want to say about a point; and 2) Then say no more about it. I include them both in one, however, because the explanation of the first part of the rule does not make nearly as much sense standing alone as it does when considered with the second.

Good writing is orderly. It moves the reader along gently from point to point. The reader knows exactly where the writer is at any moment. In legal writing this is a must. As an illustration, I often told students and associates that the reader of a legal document should be able to pick a sentence from the document at random, read that sentence and a couple before or after it, look at a table of contents for the document, and know exactly where that passage fits in the table of contents.

This is one of many rules in legal writing that can be illustrated by thinking of how a road map corresponds with a trip. If you are on a trip, and know what road you are on and how far you are from the next town, you can obviously look at a road map and see exactly where you are. Not only that, you can also see everywhere that you have already been and everywhere that you will go on that trip. You can appreciate where you are in the context of the overall trip. For a traveler, this is quite a comfort. Imagine how disconcerting it would be for a traveler if places on the trip came up in a different order than they appeared on the map. Or, how confused the traveler would feel upon passing through a town for the second time on the way, thinking they had left that town miles behind. A reader of your document is entitled to no less comfort than that traveler.

This rule would seem, at first glance, to be easier to follow than to breach. I have found, though, both in reviewing work of associates and of students, that the opposite is apparently true. Often, the writer makes a point incompletely, moves to the next point,

and then commingles discussion of the earlier point. As the document progresses, the problem becomes cumulative. The result is that the reader is kept off-balance. Even if the document ultimately contains all of the information that it should contain, the lack of organization renders it ineffectual.

I even believe that I know the reason that this rule is so routinely broken. When we undertake legal writing, we have several points that we want to make. We feel passionately about each of them. We are anxious for the reader to get a look at our full arsenal, not just one weapon. In our minds, we are saying to the reader, "But that's not all" or "If you think that's something, just wait." The tendency, then, is to rush from point to point. When we do that, we instinctively recognize that we did not fully make the first point, so, as the work proceeds, we try to remedy that on the fly, sneaking in later what we should have said in the first place.

There are several ways to test for, and cure, this problem. Perhaps the most complete method is as follows: 1) Once you believe that you have finished your document (or a particular draft), number the points and subpoints that you are trying to make. In many documents, you will have already done this by drafting issues or argument headings. Say, for instance, that the document is a brief. Review the brief and write in the margin the number of the point or subpoint that is actually being addressed in each passage. Each time that there is a change in the point or subpoint that is being addressed, write the number of that point or subpoint in the margin. When you are done, find any passage where the number in the margin does not correspond to the issue or argument number under which it appears. Either justify why the passage is there (considering some explanatory note for the reader, unless the reason is obvious) or move it to appear under the issue or argument number where it belongs. This method also works with other documents, except, of course, that you may not have the luxury of the issue or argument headings.

RULE TWO – TELL THE STORY IN CHRONOLOGICAL ORDER AT LEAST FROM SOMEONE'S POINT OF VIEW.

We live in chronological order. Therefore, as readers, we best process a story in that same order. Events happened in a certain order and, when told, should be related in that order.

Sometimes, the order in which events occurred is not as important as the order in which a particular person learned of those events. In that instance, the story should still be told in chronological order, but from that person's point of view. Perhaps an example will help. If A is suing former employer B for wrongful termination and B is defending, in part, on the basis that A allegedly made a false statement on the employment application, what may matter most in the case is when B learned of the alleged false statement. If, for instance, B learned of it just before making the termination decision, then B's attorney may choose to tell the story in chronological order from B's point of view. If A believes that there is proof that B learned of the alleged false statement long before (or long after) the termination decision was made, now it is A's attorney who will

be anxious to tell the story in chronological order from B's point of view. If the story cannot be effectively told from some significant point of view, it may be time to reevaluate the strength of the writer's position.

RULE THREE – IF EITHER THE READER OR THE WRITER IS TO BE INCONVENIENCED, LET IT BE THE WRITER.

The reader is the customer, the audience. As writers, we want the reader to be able to complete the reading of our work and get our point, with a minimum of work and distraction on the reader's part. That may mean more work on our part. In fact, in some ways, there is an inverse correlation between the amount of work that we, as writers, do in putting the work together and the amount of work that the reader is required to do in reading it. Thus, references to earlier passages of the work should contain enough information for the reader to easily find the earlier passage, or not need to find it at all. Cases cited elsewhere or parties introduced elsewhere should be sufficiently identified or cross-referenced each time that they are discussed to enable the reader to continue without a frustrating search through the document.

At times, this rule actually carries over from document to document within the same case. Each document submitted should, within reason, be a freestanding work that can be read and appreciated without the reader being required to refer to other documents in the case. Picture if you will, that the judge has your brief in-hand to read on an airplane. The judge has brought the rest of the file on the plane, but it is in a carry-on that is under the seat. Ask yourself how many times you want the judge to be required to get to that carry-on in order to read your brief. The answer is "as few as possible." Of course, if the document is your reply brief, then it should not repeat everything that was in your initial brief. It and every document should, however, be written with an eye toward minimizing the number of times that the reader is forced to go to another document for critical information.

RULE FOUR – NEVER SAY ANYTHING THAT YOU DO NOT FULLY UNDERSTAND.

There are few things more difficult than admitting that you do not understand something. This includes admitting it to yourself. Yet, it is imperative to be willing to do just that.

In the legal profession this is even more difficult than it might be otherwise. Clients presume that we lawyers know all of the law and that they are simply hiring us to say what we already know. This means that they hesitate to pay us for educating ourselves. In fact, the rules of ethics limit what we can do in the nature of charging an "earn while you learn" fee. The truth, though, is that at the commencement of the case, few of us know anywhere near all of the law that we need to know in order to satisfy our duty to the client. Every area of law is fraught with terms of art, Latin phrases, intricate rules and exceptions, and complex theories. The sin is not in failing to understand everything at the commencement of the case, but it is in writing about it before we have

developed the necessary understanding. Because your mentor uses "to-wit" or "inter alia" is no reason for you to follow suit, until you know what in the world it means. If you do not understand all of the legal elements of a particular claim or defense, for instance, it makes sense to do something about it before you write about it. Before you admit or declare that your client is a "successor" to some other entity, find out what a successor is, even if it seems to make no difference in the case.

RULE FIVE – ANSWER QUESTIONS IN THE ORDER IN WHICH THE LOGICAL READER WOULD ASK THEM.

While not everyone thinks exactly alike, there is still, usually, an order in which a logical person would raise questions about a particular topic. As writers, it is our job to try to determine what that order is and answer those questions in that same order. This is crucial, because as long as the reader is troubled by an unanswered question, it will be difficult to get that reader to focus on the point that you are trying to make.

This rule also benefits from the road map analogy. On a road map, there are usually many routes to any destination, but very few that are direct. The reader, like the traveler, will quickly and instinctively, recognize whether or not the route that you have chosen is an effective one. If it is not, all of the time that the reader spends going "out of the way" will be subject to the distraction of wondering when the trip will get back on track. Try to find the direct route and stay on it.

RULE SIX – KEEP IT AS SIMPLE AS YOU CAN.

In keeping with this rule, I was tempted to just name it "Keep it Simple." I could not, though, because the law is not always a simple topic. I am reminded of the neurosurgeon's deposition that I once took where the doctor had just completed an intricate explanation of his patient's condition. I asked, "Doctor, for the benefit of the Court and the jury (and for me, although I did not say so), could you explain that in layman's terms?" He replied, "You've probably heard the old saying, 'it ain't brain surgery.' Well, this is." Law may not be brain surgery, but it can get complex.

This is all the more reason for us, as writers, to keep it as simple as we can. The law is already complicated enough without our help. In writing, we need to keep in mind the computer concept that we have all heard so many times, about how a computer can analyze complex problems by converting them to a series of questions (perhaps billions of them) that can be answered "yes" or "no." As legal writers, we want to do something like that. We want to take a complex legal question and divide it into a series of smaller questions that, if answered (in a certain order, you will note- See Rule Five above - Answer Questions in the Order in Which the Logical Reader Would Ask Them.) will lead the reader to an understanding of our position. Bear in mind that because our audience is usually composed of others in our field, our challenge is not as difficult as the neurosurgeon's was. And, despite the literal truth of what the neurosurgeon told me, I believe that a writer should try to explain complicated topics at the level of the intended audience, whatever that may be.

Keeping it simple can mean many things. Choose the simple word over the obscure or impressive. Use short sentences, when you can. Take the necessary time and effort to explain your point. Recognize that you may know the topic, especially the facts, better than the reader does.

RULE SEVEN – MAKE SURE THAT THE STRENGTH IS IN YOUR IDEAS, NOT JUST IN YOUR MODIFIERS.

I do not claim that I originated any of the rules that I discuss in this paper, but in most instances I cannot recall where I got them. In this case, though, I am almost certain that it came from my Legal Method professor, Joel Bunkley. Regardless of whether or not I am correct on the origin of the rule, it is an important one.

Words such as "laughable," and "ridiculous," have little place in legal writing. In the first place, if the opponent's position is laughable or ridiculous, then it will become obvious to the reader if you do even a creditable job of rebutting it. Secondly, these descriptions distract the reader and may even tempt the reader to come to the defense of your opponent. Third, these terms insult your opponent on a personal basis. Lastly, they question the intelligence of the reader.

To a lesser extent, even milder quantitative words, such as "very" and "extremely" should be used with caution. They tend to be conclusory, sometimes even lazy. The most powerful conclusions are the ones that the reader draws. In other words, don't just say it, demonstrate it.

RULE EIGHT – ENGAGE THE READER.

Please note that I did not say, "entertain the reader," although at times you may want to do that, too. The main point is that you want to make your work interesting enough the reader will want to finish it. Naturally, the level at which you engage the reader by entertaining will depend on the subject matter. There is more room to entertain in a tort case arising out of a food fight than there is in a death penalty appeal, but in both, the reader is a human being, who will be more likely to be convinced if they are engaged in what you are saying.

How do you do this? Well, now that may be difficult to describe. Perhaps an example will help. Say that you are rebutting a point that your opponent has made and you see where another court called that same point "Procrustean." If you were like I was, you do not know what that means. You certainly do not want to use the quotation without knowing what it means (See Rule Four above - Never Say Anything That You Do Not Fully Understand.). So, you look it up and find that it is a reference to a Greek mythological figure who used various painful contraptions to increase or decrease the height of his acquaintances so that they would fit his concept of ideal. In the right case, there is no harm in politely describing what you learned about Procrustes (admitting that you had to look it up, if you would like), perhaps in a footnote. Not only does this

engage the reader, but it also drives home, in memorable fashion, what that other court thought of your opponent's point of view.

RULE NINE – BE YOUR OWN TOUGHEST CRITIC.

I was told of one of the greats in the song writing business who would always give the following advice when asked to review another songwriter's work. "Find the weakest line," he would say, "and rewrite it." No matter how many times the song was brought to him, the advice would stay the same.

This writer understood what it meant to be your own toughest critic. Find your weak points and correct them before the reader (or your opponent) has a chance to do it for you. If you are glossing over a point, do something about it. Remember that you are often turning your work over to an adversary who gets paid to point out what is wrong with it. I do not contradict Rule Three (If Either The Reader Or The Writer Is To Be Inconvenienced, Let It Be The Writer.) when I say, make that reader's job as tough as you can.

RULE TEN – SWEAT THE DETAILS.

In legal writing, you are asking the reader, often a stranger, to trust you. At some point in the document, you will probably invoke that trust by asking the reader to accept your point of view over your opponent's, who is probably also a trustworthy person.

You need to earn that trust. One way to do that is to be reliable in every way. Get the citation form right; your reader may have been a law review editor. Submit your document on time. Be precise in the use of facts and figures. Never make a statement, of law or fact, that is not correct. If you don't know something, find it out. File a respectable looking document. Shepardize. Follow the rules. Your job is to become your reader's most reliable source for accurate information, and, ultimately, for the correct outcome in the case.

CONCLUSION

The above are a few of the fundamentals that I believe are worth your attention in the challenging field of legal writing. I hope that they help you to enjoy success.