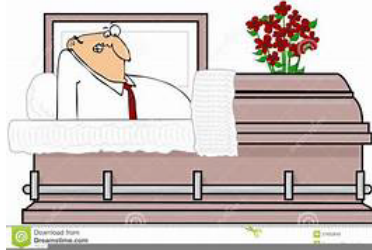




# FOUR WEDDINGS

and a

# FUNERAL



**2025 TMJC Spring Conference  
Franklin, TN  
April 11, 2025**

**2:45 – 3:45 p.m.**

**1 Hour Dual CLE**

**Judge Gregory D. Smith  
Pleasant View City Court  
331 Franklin Street, Ste. 1  
Clarksville, TN 37040  
931/647-1299  
[gregorydsmith.esq@gmail.com](mailto:gregorydsmith.esq@gmail.com)**

## **Speaker's Bio**

Gregory D. Smith, J.D., Cumberland School of Law, 1988, was first appointed the Municipal Judge for Pleasant View, Tennessee in 1997. He was the initial President of TMJA (the Tennessee Municipal Judges Association) from 2002-2004, which became TMJC about two (2) minutes before Judge Smith left office in 2004. From 2005-2009, he served on the Tennessee Court of Judiciary, the predecessor of the Board of Judicial Conduct. From 2018-2020, Judge Smith was President of TMJC. In 2013 and 2018, Judge Smith authored the Tennessee Municipal Judges Benchbook, which was cited by the Harvard Law Review in 2020.

Judge Smith is listed multiple times in Mid-South Super Lawyers and Who's Who In American Law. In 2019, Judge Smith was the feature of an article published in the ABA Journal. He is a Fellow of the Tennessee Bar Foundation. Judge Smith is on eight (8) Native American Tribal Supreme Courts in six (6) different states, and he is on the U.S. Department of the Interior's Court of Indian Appeals. On March 28, 2025, Judge Smith was the keynote speaker at the University of Texas School of Law at Austin's Texas Journal on Civil Liberties & Civil Rights' Native American Law Symposium (where Judge Smith's article is also the lead article for the Symposium's published law review edition). Judge Smith teaches Federal Indian Law for the Lincoln Memorial University School of Law in Knoxville. He also teaches Evidence and Ethics for the National Judicial College, which is part of the University of Nevada-Reno.

The high point of Judge Smith's legal and personal career resume occurred on October 15, 1988, when he married Cindy Luckett. Judge Smith got his bar results on his wedding day. He was so excited about getting married that Judge Smith didn't care if he passed the bar exam. (*He passed.*) Nobody except the immediate wedding party knew Greg passed the bar exam until after the bride and groom left the wedding reception. Now, almost 37 years later, Greg still thinks his October 15, 1988 focus was on the right issue – the **WEDDING!** He would do it the same today. Greg married “*so far out of his league*” that he almost left species. Greg doesn't renew his wedding vows. Cindy is not getting a second shot at that “***I Do***” question...too many people (including Greg) were shocked Cindy said yes, the first time!



## Introduction

It is public policy in Tennessee to support and encourage marriage.<sup>1</sup> “The number one cause of divorce is marriage.”<sup>2</sup> As noted by Justice William Koch, wedded bliss can tend to be ephemeral.<sup>3</sup> Conflicting parenting styles and financial issues can make “happily ever after” a short trip.<sup>4</sup> Time will tell if love is extortionate or merely extortion.<sup>5</sup> Some marriages begin to crumble in mere days.<sup>6</sup> Even wedding bliss that endured the passage of time can put the “Love Boat” on stormy seas.<sup>7</sup> While love can put together strange or unexpected partners, such as

<sup>1</sup> *Chase v. Chase*, 670 S.W.3d 280, 287 (Tenn. App. E.S. 2022).

<sup>2</sup> Christopher J. Mega, *Equitable Distribution in New York: Results and Reform: Commentary*, 57 Brooklyn L. Rev. 781, 781 (1991). See also, Ken Horoho & Harry J. Gruener, *The Ten Commandments for Prenups*, 18 Lawyer 13, 13 (2016).

<sup>3</sup> *Northcutt v. Northcutt*, 2007 Tenn. App. Lexis 683 (Tenn. App. M.S. 11/8/2007), at \*2.

<sup>4</sup> See e.g., *Pitcavage v. Pitcavage*, 11 N.E.3d 547, 551 (Ind. 2014).

<sup>5</sup> *United States v. Creech*, 913 F.3d 780, 782 (10<sup>th</sup> Cir. 1990).

<sup>6</sup> *Pooley v. Pooley*, 157 N.W. 129, 130 (Iowa 1916).

<sup>7</sup> *Stigall v. Stigall*, 277 N.E.2d 802, 808 (Ind. 1972).

the convict that seduces the juror,<sup>8</sup> high expectations at a wedding alter are seldom fully proven correct – even in strong marriages.<sup>9</sup> With compromise,<sup>10</sup> open eyes,<sup>11</sup> and useful wedding education,<sup>12</sup> marriages succeed both mentally and physically.<sup>13</sup>

## **Wedding I: The Basic Plan**



Weddings are usually happy,<sup>14</sup> but stressful, events.<sup>15</sup> Tenn. Code Ann. § 36-3-301(a)(1) allows municipal judges and former municipal judges, (both elected and appointed), to solemnize marriage ceremonies in any county in the State of

---

<sup>8</sup> See United States v. Wilson, 493 F. Supp. 2d 453, 459 (E.D.N.Y. 2006).

<sup>9</sup> Branscheid v. Branscheid, 67 P. 812, 813 (Wash. 1902).

<sup>10</sup> See Edward A v. Xixi A, 54 Misc. 3d 1207(A) (N.Y. County Sup. Ct. 2016), at \*12 and Umudumova v. Seremak, 1999 Conn. Super. Lexis 366 (Conn. Super. 2/11/1999), at \*10.

<sup>11</sup> Mangum v. Mangum, 2022 Tenn. App. Lexis 428 (Tenn. App. E.S. 11/7/2022), at \*26.

<sup>12</sup> See generally, Tiffany L. Clyde, *et al.*, *The Effects of Premarital Education Promotion Policies on U.S. Divorce Rates*, 26 Psych. Pub. Pol. and L. 105 (2020), *discussing how Tennessee and other states address premarital counseling education requirements.*

<sup>13</sup> See generally, Cong. Hearings, *Benefits of a Healthy Marriage*, HRG-2004-FNS-0007 (5/5/2004), *discussing how several cities, including Chattanooga, Tennessee, how marriage education programs have helped low-income families strengthen families.*

<sup>14</sup> Chelsey Nelson Photography LLC v. Louisville/Jefferson Cty. Metro Gov't, 479 F. Supp. 3d 543, 549 (W.D. Ky. 2020).

<sup>15</sup> Nicholle M. v. O'Malley, 2024 U.S. Dist. Lexis 135019 (N.D. Cal. 3/6/2024), at \*19.

Tennessee.<sup>16</sup> It is the obligation of the parties to obtain a marriage license *before* the wedding according to Tenn. Code Ann. § 36-3-103(a).<sup>17</sup> A copy of the wedding license and basic instruction rules are attached as “Ex. A” to this paper. There is no specific formula required to perform the ceremony, except for the parties declaring that they accept each other as husband and wife according to Tenn. Code Ann. § 36-3-302(a). If these requirements are met, a presumption of legitimization is created.<sup>18</sup> Then, the judge has three (3) days to return the marriage license to the county clerk or the judge is guilty of a Class C misdemeanor according to Tenn. Code Ann. § 36-3-303(a). The failure to timely return the license to the county clerk by the judge does not invalidate the marriage.<sup>19</sup> On the other hand, the failure of the officiant to be a judge or former judge is a non-waivable requirement – even if the officiant later becomes a judge.<sup>20</sup> The county clerk will file a marriage certificate pursuant to Tenn. Code Ann. § 36-3-304.

---

<sup>16</sup> Tenn. Code Ann. § 36-3-301(k), which says, “The judge of the municipal court of any municipality, whether elected or appointed, and any former judge of the municipal court of any municipality shall have the authority to solemnize the rites of matrimony in any county of the state.

<sup>17</sup> *Accord, Stovall v. City of Memphis*, 2004 Tenn. App. Lexis 536 (Tenn. App. W.S. 8/20/2004), at \*7-\*8

<sup>18</sup> *Gamble v. Rucker*, 137 S.W. 499, 499 (Tenn. 1911).

<sup>19</sup> *Aghili v. Saadatnejadi*, 958 S.W.2d 784, 788 (Tenn. App. M.S. 1997).

<sup>20</sup> See e.g., *Romanov v. Randall*, 2017 Ariz. Super. Lexis 219 (Ariz. Super. Pima Co. 10/19/2017), at \*3, \*6, and \*12-\*13.

It is important to remember that Tenn. Code Ann. § 8-21-101 and Tenn. Const. Art. VI § 7 bar a judge from receiving compensation for conducting a wedding.<sup>21</sup> Reimbursement of reasonable expenses is allowed.<sup>22</sup>



## **Wedding II: That's Awfully Big-'O-Me!**

Some marriages, even if properly conducted by the judge, are still invalid if prohibited by law pursuant to Tenn. Code Ann. § 36-3-306. The statute for weddings explicitly sets out that judges cannot knowingly marry two (2) mentally incompetent persons. If a judge knowingly violates this rule, the judge is guilty of a C misdemeanor and shall forfeit \$500 to the person suing the judge for violating the statute.<sup>23</sup> Oddly, the Legislature applies this harsh condition only in cases where ***both*** parties to the wedding are incompetent.<sup>24</sup> The most common example of a void marriage is one involving bigamy.<sup>25</sup> As shown below, using bigamy as a gift can make the grifter ... the ***griftee***.<sup>26</sup>

---

<sup>21</sup> Tenn. Op. Atty. Gen. 84-286, 1984 Tenn. AG Lexis 57 (1984). *Accord*, Tenn. R. Sup. Ct. 10, Canon 3.13(A). *But see*, Tenn. R. Sup. Ct. 10, Canon 3.12 and 3.13(B).

<sup>22</sup> Tenn. R. Sup. Ct. 10, Canon 3.14(A).

<sup>23</sup> Tenn. Code Ann. § 36-3-306.

<sup>24</sup> *Id.*

<sup>25</sup> See e.g., *Lindsley v. Lindsley*, 2012 Tenn. App. Lexis 128 (Tenn. App. E.S. 2/27/2012), at \*16-\*17. For a general discussion on bigamy, see 18 Tenn. Juris. § 4, *Capacity to Marry or Ratify Voidable Marriage*.

<sup>26</sup> See e.g., Jessica A. Clarke, *Identity and Form*, 103 Calif. L. Rev. 747, 784-785 (2015), discussing *Brown v. Herbert*, 850 F. Supp.2d 1240 (C.D. Utah 2012).

Arms v. Stanton, 43 S.W.3d 510 (Tenn. App. E.S, 2000),<sup>27</sup> in March of 1986, Husband married *Wife A*, and then in July 1986, Husband married *Wife B*.<sup>28</sup> Husband, seeking to avoid *Wife A* getting money, conveyed his interest in a house and twenty-seven (27) acres of land to *Wife B* in 1997.<sup>29</sup> In early 1999, problems in the relationship with *Wife B* arose and Husband kicked her out of the marital house.<sup>30</sup> As one might guess, *Wife B* was much aggrieved.<sup>31</sup> This property was in a donut hole shape with the home completely surrounded by property owned by a neighbor who tried several times to buy the donut hole.<sup>32</sup> *Wife B* contacted the neighbor and sold him “her property.”<sup>33</sup> At trial, *Wife A* gleefully testified that the first marriage was never dissolved.<sup>34</sup> The Tennessee Court of Appeals found that since the second marriage was void, Husband’s quitclaim deed conveyed any interest he had in the property to *Wife B* and husband could not “back door” his interest of a marital ownership right into a safety valve of keeping the property.<sup>35</sup> The idea for the conveyance was to cheat *Wife A* of any inheritance.<sup>36</sup> The Court of Appeals bluntly declared:

---

<sup>27</sup> The author was counsel for Mr. Stanton, the defendant.

<sup>28</sup> Arms, 43 S.W.3d at 511.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, at 512.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, at 513-514, parentheses added for clarity.

<sup>36</sup> *Id.*, at 511-512.

...we conclude that upon [Husband's] execution of the quitclaim deed to [*Wife B*], the property was vested solely in her. The principles pertaining to fraudulent conveyances are simply not implicated by the facts of this case. Husband voluntarily conveyed his interest in this property to his co-tenant in common. This being the case, she had the full right to dispose of the property as she saw fit, in her sole discretion...<sup>37</sup>

“Be careful what you ask for, you might just get it.”<sup>38</sup>



### **Wedding III: What's the Constitution Between Friends?**<sup>39</sup>

Art. XI, § 18 of the Tennessee Constitution states the following:

The historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman shall be the only legally recognized marital contract in this state. Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one (1) man and one (1) woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee. If another state or foreign jurisdiction issues a license for persons to marry and if such marriage is prohibited in this state by the provisions of this section, then the marriage shall be void and unenforceable in this state.

---

<sup>37</sup> *Id.* at 513-514.

<sup>38</sup> *Rodriguez v. Deutsche Bank Nat'l Trust Co.*, 742 Fed. Appx. 32, 33 (5<sup>th</sup> Cir. 2018).

<sup>39</sup> Williamson Chang, *Darkness over Hawaii: The Annexation Myth Is the Greatest Obstacle to Progress*, 16 *Asian-Pacific L. & Pol'y J.* 70, 87 (2014).



The United States Supreme Court, in Obergefell v. Hodges, 576 U.S. 644, 675-676 (2015), specifically overruled this section of the Tennessee Constitution pursuant to the XIVth Amendment of the United States Constitution.<sup>40</sup> As was learned by Tennessee and several other states during the Civil War; when state and federal constitutions clash, the United States Constitution controls.<sup>41</sup>

When judges determine whether to conduct weddings, the judge should either do weddings for everybody or nobody.<sup>42</sup> The other option is to just conduct weddings for close family or friends.<sup>43</sup> This isn't an issue of conscience confined to jurists within the United States.<sup>44</sup> As one considers the moral issues of presiding over same-sex marriages, the judge should remember that he/she swore to follow existing law.<sup>45</sup> As stated by Justice Neil Gorsuch, of the United States Supreme Court, "Judges are not free to overlook plain statutory commands..."<sup>46</sup> Remember, **YOU** are not the person getting married – you are just conducting the ceremony. A judge can follow a law without endorsing it.<sup>47</sup>

---

<sup>40</sup>Accord, Harrison v. Harrison, 643 S.W.3d 376, 381-382 (Tenn. App. M.S. 2021).

<sup>41</sup> State ex rel. Peel v. Shelby County, 564 S.W.2d 371, 373 (Tenn. App. W.S. 1976).

<sup>42</sup> Judiciary, *ABA Issues Guidance on Judges Performing Same-Sex Marriages*, 55 Tenn. B.J. 6, 6 (Apr. 2019).

<sup>43</sup> *Id.*

<sup>44</sup> See Robin Fretwell Wilson, *Same-Sex Marriage and Religious Liberty: Life After Prop 8*, 14 Nexus J. Op. 101, 103-104 (2008/2009).

<sup>45</sup> Warwick v. Warwick, 2012 Tenn. App. Lexis 824 (Tenn. App. E.S. 11/29/2012), at \*14-\*15.

<sup>46</sup> Bostock v. Clayton Cnty, 590 U.S. 644, 683 (2019).

<sup>47</sup> Alex Ricciardulli, *The Double-Edged Sword of Judicial Sentencing Discretion*, 27 Los Angeles Lawyer 44, 44 (Sep. 2004) and Liaquat Ali Khan, *Taking Ownership of Legal Outcomes*, 55 St. Louis L.J. 887, 911 (2011).



## **Wedding IV: Come Fly With Me**

Some wedding requests are a bit odd, such as insisting that attending guests appear in medieval costumes.<sup>48</sup> Other couples “tie the knot” underwater with brave judges donning scuba gear.<sup>49</sup> *{As noted earlier, a formal scripted acknowledgment of entering into a marriage is not required – only a clear declaration by both parties, in the presence of the officiant, that both parties accept each other as husband/wife.}*<sup>50</sup> Skydiving weddings are possible.<sup>51</sup> Simply because a wedding is “not the norm,” doesn’t mean the wedding is invalid.<sup>52</sup> The skydiving judge can be reimbursed for his/her jump fee, pursuant to Tenn. R. Sup. Ct. 10, Canon 3.14(A).

---

<sup>48</sup> *Darrow v. Phillips*, 2015 IL (2d) 140763-U (Ill. App. 4/10/2015), at \*P4.

<sup>49</sup> Stuart M. Wise, *The Judge Wore Rubber, Too. (Underwater Wedding In Seattle)*, 5 Nat. L. J. 51 (5/4/1983).

<sup>50</sup> See Tenn. Code Ann. § 36-3-302(a).

<sup>51</sup> See e.g., <https://www.skydivecarolina.com/blog/skydiving-weddings-proposals/>, visited on 2/23/2025. Cf., Sarah Terry-Cobo, *Diving in: From pilot to physician assistant, Plummer not afraid of career change*, Jnl. Record (Oklahoma City, OK 6/3.2015), discussing skydiving proposals.

<sup>52</sup> See e.g., *Aghili v. Saadatnejadi*, 958 S.W.2d 784, 787-788 (Tenn. App. M.S. 1997), discussing the fact that Islamic lay leader can perform marriages in Tennessee.

It is even possible for the “Internet Preacher” to perform weddings,<sup>53</sup> *a’la* the wedding of Howard and Bernadette in the final episode of season 5 of *The Big Bang Theory*; where the rest of the cast obtain online divinity licenses to be allowed to perform the wedding on a building rooftop before Howard, an astronaut, goes into space.<sup>54</sup> This is not the only example where life imitates television.

In the television series, *Happy Days*, Richie Cunningham, was drafted into the U.S. Army and stranded in Greenland, (because Ron Howard, the actor playing Richie, left the show to pursue a directing career which led to two Oscars, a Grammy, and five Emmy Awards).<sup>55</sup> The plot has Richie and his girlfriend, Lori Beth, use an international long distance phone call to conduct a wedding by proxy, with “The Fonz” standing in as groom and Richie conducting his vows over the telephone.<sup>56</sup> While far-fetched in 1981, Tenn. Code Ann. § 36-3-302(b) today allows for video weddings for deployed U.S. military personnel if: **A)** the military person is deployed in another country; **B)** a commissioned officer is present with the deployed military person and affirms the military person’s identity; **C)** the marriage officiant and non-

---

<sup>53</sup> See e.g., *Validity of Marriage That Was Performed by a Universal Life Church, Inc., Minister*, Tenn. Op. Atty. Gen. 97-138, 1997 Tenn. AG Lexis 171 (19/9/1997).

<sup>54</sup> The Big Bang Theory (television series), *The Countdown Reflection* (episode, season 5, #24), [https://en.wikipedia.org/wiki/The\\_Countdown\\_Reflection](https://en.wikipedia.org/wiki/The_Countdown_Reflection) (5/10/2012). Accord, *Ponorovskaya v. Stecklow*, 45 Misc. 3d 597, 599 & 617 (N.Y. Co. Sup. Ct. 2014).

<sup>55</sup> See, Ron Howard, *List of awards and nominations received by Ron Howard*, [https://en.wikipedia.org/wiki/List\\_of\\_awards\\_and\\_nominations\\_received\\_by\\_Ron\\_Howard#Academy\\_Awards](https://en.wikipedia.org/wiki/List_of_awards_and_nominations_received_by_Ron_Howard#Academy_Awards) visited on 2/23/2025.

<sup>56</sup> See, *Happy Days* (television series), *R.C. and L.B. Forever*, <https://www.imdb.com/title/tt0596289/> (5/5/1981), visited on 2/23/2025. See also, *Gillpatrick v. Frakes*, 2021 U.S. Dist. Lexis 156051, discussing internet weddings.

military person are together in Tennessee when the video wedding occurs. Today, weddings often include online-viewing wedding guests.<sup>57</sup>

There are limits on performing weddings, namely a judge cannot perform marriages between two incompetent people, under Tenn. Code Ann. § 36-3-305. If you need a polestar for how to determine if a party is not entering a marriage; if the “best man” and “maid of honor” at a wedding is named “Smith & Wesson,” the judge probably needs to investigate whether ***both*** parties to the wedding are there voluntarily or is this a “shotgun wedding”?<sup>58</sup> So, let’s look at an extreme example of how one wedding scenario plays out.

***Facts:*** Judge Ida Law’s favorite nephew, Joe Sixpack, has decided to get married in Guam (a U.S. territory) and Joe wants Ida to perform the ceremony. Judge Law is a retired municipal judge in Rocky Top, Tennessee, in East Tennessee. The ticket from Nashville to Guam costs \$5000.00. Joe Sixpack and his bride, Bertha Badbreth, live in Memphis, Tennessee. Just for giggles, Joe and Bertha want to marry while hang gliding over the cliffs of Guam. Can Judge Law make Joe Sixpack’s wedding dream come true? If yes, how?

***Answer:*** At first blush, there is a major jurisdiction problem that must be overcome. Judge Law doesn’t have jurisdiction to perform a valid wedding outside

---

<sup>57</sup> See e.g., *Auxier v. Auxier*, 995 N.W.2d 446, 453 (Neb. App. 2023).

<sup>58</sup> Rebekah Marcarelli, *State Criminal Laws Could be a Light in the Dark for the Hidden Victims of Forced Marriage*, 36 J. Civ. Rts. & Econ. Dev. 445, 447 n.21 (2023).

of the boundaries of Tennessee.<sup>59</sup> While the hang-gliding wedding, *within Tennessee*, is possible because of concepts such as “state jurisdiction over the high skies.”<sup>60</sup> One option is to conduct two (2) ceremonies – 1 in Tennessee before heading to Guam, and the second in the South Pacific that is a “renewing the new vows,” as a gesture of love that has lots of emotional value, but no legal validity. The other issue is who pays for Judge Law’s plane tickets and hang-glider? The “safe bet,” is that if the judge is close enough to her nephew to follow him to a beach in Guam; that she can pay her own bill for both the plane and glider. She also has a legitimate argument that the expense was necessary, so reimbursement is possible under Tenn. R. Sup. Ct. 10, Canon 3.14(A), but good luck not seeing an A.O.C. audit on that one when Judge Law submits her report...



## **Funeral Jury Trials? For Us?**

<sup>59</sup> Tenn. Code Ann. § 36-3-301(k).

<sup>60</sup> For a discussion of this unique legal theory, see *generally*, Philip J. Duggan, *Venue Above the Clouds: Prosecuting In-Flight Crimes by Creating a "High Skies" Law*, 106 Cornell L. Rev. 247, 271 (2020).

General Sessions Court judges are allowed to conduct jury trials in coroner inquests under Tenn. Code Ann. § 38-5-103. Coroner's inquests are rare and the last appellate decision referencing a coroner's inquest occurred almost twenty years ago.<sup>61</sup> Tenn. Code Ann. § 38-5-104 sets the jury at seven (7) members and asks the following questions: *A*} Identity of the deceased; *B*} When/where the death occurred; and *C*} By what means did the person die? While this procedure is seldom used, the statutes predate the Civil War.<sup>62</sup> For the cross-over General Sessions judges who dream of presiding over a jury trial...coroner's inquests is your chance.

### **Conclusion**

I hope you found this presentation as endearing as its namesake.

Greg Smith

---

<sup>61</sup> Lunsford v. Montgomery County, 2007 Tenn. App. Lexis 194 (Tenn. App. M.S. 4/4/2007), at \*3. This case discusses a 1998 Coroner's Inquest that the author won that changed a 1993 finding of an accidental death into a finding that the death was a homicide. The author was not part of the 2007 employment case cited above, that involved a wrongful termination.

<sup>62</sup> See Tenn. Code Ann. §§ 38-5-103 and 38-5-104 at statutory history.



25<sup>TH</sup> ANNIVERSARY EDITION

HUGH GRANT ANDIE MACDOWELL

A MIKE NEWELL FILM

# Four Weddings and a Funeral



SHOUT SELECT