



Terry Kilgore joins Hunter, Smith & Davis, LLP

Terry G. Kilgore, attorney in Gate City, Virginia, has joined Hunter, Smith & Davis, LLP in an Of Counsel position. Mr. Kilgore received his law degree in 1986 from the Marshall-Wythe School of Law at the College of William & Mary. He has been a member of the Virginia House of Delegates since 1994, serving the 1st District of Virginia which includes Lee County, Scott County, and parts of Wise County and Washington County. He is currently the Chairman of the Commerce and Labor Committee in the Virginia House of Delegates and also serves as a member of the Rules Committee and the Courts of Justice Committee.

Mr. Kilgore has practiced law in Gate City, Virginia since 1986. Mr. Kilgore has a general civil and criminal law practice with emphasis in the areas of civil litigation, personal injury, and white collar criminal defense. He will continue to practice in his Gate City office. Hunter, Smith & Davis, LLP has 28 attorneys.

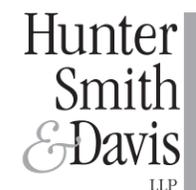
Mr. Kilgore and his wife reside in Gate City and have two children.



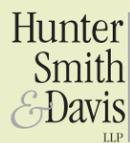
Jason A. Creech joins Hunter, Smith & Davis, LLP

Jason A. Creech has joined Hunter, Smith & Davis LLP. Mr. Creech has practiced law in Tennessee from Memphis to Mountain City. From 2000 to 2007 his practice was focused exclusively on family law in the Memphis area and the Tennessee Court of Appeals' Western District.

From 2007 until joining Hunter, Smith & Davis in 2010 Mr. Creech has had a general practice in Mountain City, Tennessee with an emphasis on family law, criminal law and general civil litigation. He continues to practice in these areas and was listed as a Tennessee Supreme Court Rule 31 mediator in 2009.



Printed on Recycled Paper



P.O. Box 3740  
1212 N. Eastman Rd.  
Kingsport, TN 37664  
www.hsdllaw.com

PRSRST STD  
US POSTAGE  
PAID  
MWI

This is an advertisement

Certifications from the Tennessee Commission on Continuing Legal Education and Specialization are available to Tennessee lawyers in all areas of practice relating to or included in the areas of Civil Trial, Business Bankruptcy, Consumer Bankruptcy, Creditor's Rights, Medical Malpractice, Elder Law and Estate Planning. The material included in the attorney profile is not intended as legal advice. Readers should not act upon information contained in this material without professional legal counseling. This is an advertisement. Certification as a specialist in the following areas is not currently available in the state of Tennessee: bond, commercial finance, corporate, securities, employee benefits, environmental, family, business, government relations, health care, information law, intellectual property, international labor and employment, music and entertainment, real estate, taxation and telecommunications.



Joseph B. Harvey joins Hunter, Smith & Davis, LLP

The law firm of Hunter, Smith & Davis, LLP is pleased to announce that Joseph B. Harvey has joined the Firm. Mr. Harvey returns to the Tri-Cities area after practicing in the Atlanta office of Littler Mendelson, a San Francisco-based law firm that focuses exclusively on employment and labor law.

Mr. Harvey received his undergraduate degree from The University of Tennessee, magna cum laude, and earned his Juris Doctor degree from the University of Tennessee College of Law, summa cum laude, in 2004 where he was elected to Order of the Coif and served as an Articles Editor for the Tennessee Law Review.

Mr. Harvey joins Hunter, Smith & Davis as a member of its Labor and Employment team, which is devoted to the needs of employers in all facets of labor and employment law. This includes compliance with state and federal labor and employment laws and representing management in state and federal litigation and in administrative proceedings before the EEOC, NLRB, and similar state agencies, employment contracts, trade secrets, and covenants not to compete.



# All Things Legal™

Editor, Matthew H. Wimberley



Volume VIII, Issue 1

A Newsletter of Hunter, Smith & Davis, LLP

Summer 2010

## Inside This Issue

- Why Mediate? I want to Win!!! ..... 1-2
- Employment Law Fall-Out from the Election Cycle? Only the tip of the iceberg. .... 3
- Hunter, Smith & Davis, LLP Attorneys in the News ..... 4

## Why Mediate? I want to Win!!!

by Suzanne S. Cook

Lawsuits are complicated. By the time a party seeks counsel to resolve a problem, they often already feel they have reached the "we can't agree" or "won't agree" stage in the relationship, whether it is business to business, spouse to spouse, or neighbor to neighbor. The emotionally desired outcome by parties, while misplaced, is a total "I win, you lose" scenario.

In many cases parties do not understand what is involved in litigation. Unlike the TV dramas where everything is resolved and there is a dramatic "winner" at the end of one or two episodes (and the attorneys and clients jump up and down, hug and pump arms in victory), complicated litigation can go on for many months, even years, taking an emotional and financial toil on all parties, sometimes exceeding the value of the dispute well before there is a resolution.

During the litigation process certain questions must be asked: How long will this take? How much will it cost? What are my opportunities for success? Can I or my business afford the time and emotion necessary to see this through to a trial? Is there something else I can

do? Over 90% of lawsuits today never make it to trial. There are several alternatives to lengthy litigation, one of which is mediation.

But, you ask, "If I agree to mediation, how can I get the 'I win, you lose' satisfaction?"

Entering mediation means you are committed to focusing on resolving the issue that caused the problem in the first place and having closure. The "win" is coming to an agreement with the other side and settling the problem...FINALLY!!

Mediation is a voluntary process. In many instances, parties agree to mediate without a court order because mediation offers the best opportunity for the parties to reach an agreement and offers the parties more control and satisfaction as to the eventual outcome. Even if the parties are ordered to participate in mediation, the process is still voluntary because parties cannot be forced to reach an agreement.

Mediation is an informal process in which a neutral person, called the mediator, conducts discussions among the parties designed to enable them to reach a mutually acceptable agreement among themselves on all or part of the issues in dispute without the necessity

Continued on Page 2...

## Why Mediate? I want to Win!!!

Continued from Page 1...

of a trial. Mediation is confidential (except as required by law to disclose) and evidence of conduct or statements made in the course of mediation is inadmissible in court to the same extent as conduct or statements are inadmissible under Tennessee Rule of Evidence 408.

The benefits of mediation include a quicker resolution to a problem, the parties can be represented by counsel or represent themselves, the parties have more control over the process and outcome, and a successful mediation is less expensive than the costs of protracted litigation and trial. If an agreement is not reached, the parties then still have the right to a trial by judge or jury. But, if an agreement is reached at the conclusion of mediation and the parties sign a written agreement memorializing the terms of the agreement,

“How can I get the ‘I win, you lose’ satisfaction?”

the settlement is binding. In contrast, once a suit enters the courtroom, the outcome is dependent upon many factors which the parties cannot control including the rulings from the judge and the jury’s deliberations, and the outcome may or may not be final depending on the appellate process.

Hunter, Smith, and Davis has four attorneys who are Tennessee Rule 31 listed mediators: S. Morris Hadden, Stephen M. Darden, Jason A. Creech along with Suzanne S. Cook, who is also a family mediator.

In Tennessee, Rule 31 mediators must meet qualifications in education, work experience, character, and training and be approved by the Alternative Dispute Resolution Commission. Rule 31 mediators are trained in conflict resolution concepts, negotiation dynamics, court process, mediation process and techniques, communication skills, standards of conduct and ethics for Rule 31 mediators, community resources and referrals, cultural and personal background factors, working with counsel and unrepresented persons, and confidentiality and any exceptions to that as required by law.



## Hunter, Smith & Davis, LLP Attorneys Receive National Recognitions

Jimmie C. Miller has become a Fellow of the American College of Trial Lawyers. Membership in the College cannot exceed one percent of the total lawyer population of any state. In addition, for the second consecutive year, Ms. Miller has been selected by her peers for inclusion in the 2010 edition of *The Best Lawyers in America* and for a third consecutive year in the 2010 selection of

*Mid-South Super Lawyers*. Ms. Miller is a partner with Hunter, Smith & Davis and chairs the firm’s Litigation section.

William C. Argabrite was recently selected by his peers for the second consecutive year for inclusion in the 2010 edition of *The Best Lawyers in America*. Since its inception in 1983,

## Employment Law Fall-Out from the Election Cycle? Only the Tip of the Iceberg...

by Laura S. Steel

Many promises, laws, amendments, reform packages, bailout bundles and the like have crossed our inboxes and populated our news crawls since this time last year. In case you have not been inundated to your satisfaction, here are some highlights:

- **Genetic Information Non-Discrimination Act:** Taking effect on November 21, 2009, this may not have registered on many radar screens. The prohibition on discriminatorily using genetic information is now part of an employer’s obligations to employees and applicants. The EEOC has issued an updated equal employment opportunity poster that employers must display in the workplace, and employers should have updated policies, applications and practices in accordance with the Act.
- **Reverse Discrimination:** The United States Supreme Court held that the non-discrimination laws do not provide employers carte blanche to disregard the rights of a non-minority class. In the case *Ricci v. DeStefano*, testing results for departmental promotions were reinstated after the employer discarded them because a disproportionate number of minorities did not fare well on the exams. The Court gave employers plenty to consider when making assessments for promotions, affirmative action compliance, and reductions in force.
- **Ledbetter Fair Pay Act:** The Lily Ledbetter Fair Pay Act was passed in 2009 but took retroactive effect to May 28, 2007. The Act made each instance of an alleged unfair pay practice an “unlawful employment practice” for purposes of determining the start of the statute of limitations period. The immediate impact for most human resources departments was to alter the method of recordkeeping. Previously, most payroll histories were discarded once they were 3- to 7-years old (depending on your state recordkeeping requirements). Additionally, records which

impacted pay increases, such as performance evaluations, are now a necessary part of the document archive and should be kept for longer periods.

- **The Family and Medical Leave Act is amended (again) by the National Defense Authorization Act (again):** FMLA leave was amended for the second consecutive year. “Military caregiver leave” became available for those employees who are caring for a veteran who received treatment, therapy or is recuperating within 5 years from when rendered. Military caregiver leave is now also available where an injury incurred in the line of duty is aggravated. “Qualifying exigency leave” expands to cover foreign-deployed members of the regular Armed Forces, not just the Guard or Reserves.
- **American Recovery and Reinvestment Act:** ARRA created the COBRA subsidy now available to assistance eligible employees (and has since been amended to extend the length of the subsidy availability).
- **New Form I-9 (x2):** Although the USCIS’ ever-growing budget, corps of agents, and subpoena lists are worth watching, the most direct impact for employers is use of the new Form I-9. Two forms were issued in 2009, and employers should be using one dated 08/07/09 or 02/02/09 (check the lower right corner of the form).

As with most of our new ventures, the true bearing of these happenings will not be felt until some time has passed.

Stay plugged in with us at:  
<http://laboremploymenthsd.blogspot.com> and  
<http://twitter.com/HSDLaborEmp>  
as we embark down these new roads.

*Best Lawyers* has been recognized as a definitive publication on legal excellence. Mr. Argabrite is the Managing Partner for Hunter, Smith & Davis.

S. Morris Hadden, Senior Partner with Hunter, Smith & Davis, has been selected for inclusion in the 2010 *Mid-South Super Lawyers*. Only 5% of the lawyers in the state were selected. Mr. Hadden is also a Fellow in the American College of Trial Lawyers.

Mark. S. Dessauer has been selected for inclusion in the 2010 *Mid-South Super Lawyers* for the fifth consecutive year. Mr. Dessauer is a Partner with Hunter, Smith & Davis and chairs the Corporate Practice Section for the firm.

Meredith Bates Humbert has been recognized by *Mid-South Super Lawyers* “Rising Stars” for 2010. The peer nominated list features outstanding young lawyers in Tennessee. Ms. Humbert is an Associate with Hunter, Smith & Davis.