

Virginia Lawyer

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VIRGINIA LAWYER REGISTER

The Official Publication of the Virginia State Bar



Meet 2020–21 VSB President Brian L. Buniva

The General Practice Issue

COVID: Family Law and Real Property Law Issues

Employment Law's Legislation Evolution

A High Flying Judge Discusses Judicial Demeanor

Lawyer Well-being in a Pandemic

THE TOP 5 CYBER SECURITY TIPS



1

Keep hardware and software as current as possible.

You don't need to be first in line for the latest and greatest, but don't be the last in line either. Once software becomes unsupported, it is unethical to use it because it is no longer receiving security updates and is vulnerable to hackers. Apply patches as soon as they are available to reduce vulnerability to an attack or compromise.

2

Backup all data.

Don't forget to periodically conduct a test restore of the backup and make sure your backups are impervious to ransomware – either backed up in the cloud or agent-based. Talk to your IT provider to learn more. Backups should be encrypted with a user-defined encryption key, whether on-site, off-site or stored in the cloud. If using a cloud vendor, the vendor should not have access to the decryption key.

3

Develop a password policy.

The policy should mandate the use of strong passwords (14 characters or more with upper and lower case, numbers, and special characters) and require that passwords be changed on a regular basis. The use of a password manager can make this task quite easy. Consider enabling two-factor-authentication (2FA) when available.

4

Mandate that all work-related internet sessions be encrypted.

Prohibit the use of public computers and unsecured open public Wi-Fi networks. Access to the office network must always occur through the use of a VPN, MiFi, smartphone hotspot or some other type of encrypted connection.

5

Provide mandatory social engineering awareness training to everyone at the firm at least once a year.

Technology alone cannot protect your data. The greatest vulnerability comes from the folks who use your network. Cyber attacks are successful because someone did something stupid like clicking on a link, opening an e-mail attachment, or verifying an ID and password when they shouldn't have.



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Virginia Lawyer

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June 2020
Volume 69/Number 1

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In response to “How to Succeed as In-House Counsel” by Kelly C. Scanlon:

Ms. Scanlon’s advice for in-house counsel is spot-on. Although unspoken in her article, each of those tips for success is part of a larger theme: Strategy.

This theme is most clearly reflected in her statement that “[i]n-house lawyers are . . . one part of a much bigger whole.” Just as in-house counsel must understand their role in assisting organizational strategy, they must view their own legal duties through a strategic lens. For the in-house practitioner, mere tactics won’t suffice, because each piece of advice, each training delivered (or not), each memorandum, and yes, each settlement, creates organizational precedent that will shape the behaviors of each unit. Those behaviors either contribute to or mitigate the aggregate risk to the organization.

It takes time and effort to lay the groundwork for this long-term approach but doing so can lend extra credibility to in-house counsel’s advice, even when unpopular. As organizations

make difficult choices to weather, and recover from, the economic impact of COVID-19, strategic guidance of in-house counsel will be vital.

James Thomas Koebel
Associate General Counsel, University of North Carolina Wilmington

Letters

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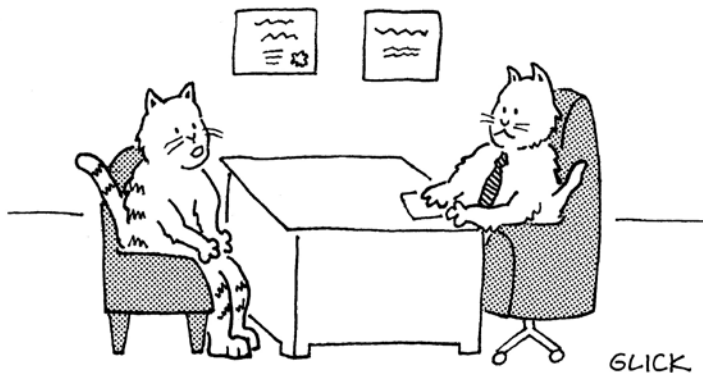
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Jest Is For All

by **Arnie Glick**



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First You Have to Make the Team, Then You Get to Change the Game

by Deirdre Norman

“I expect to be great. I expect to do what hasn’t been done. I expect to provoke change.”

— Deion Sanders

IN FOOTBALL, THE CORNERBACK is often described as the most athletic player on the field: they must be fast, tough, able to read and react to what’s happening in a split second. Yet, they are rarely famous. With the exception of Deion Sanders, these versatile defensive players don’t get the attention that quarterbacks and wide receivers receive. Ironically, the new Virginia State Bar President, Brian L. Buniva, of Richmond, not only played cornerback for three of his four years at Georgetown University, but he was inducted into his new role as president of the 50,000 member VSB with zero fanfare: a small gathering in the Supreme Court of Virginia courtroom instead of the traditional banquet for 300 people at the Annual Meeting in Virginia Beach. His induction celebration was a casualty, like so many things, of the COVID-19 pandemic that has gripped the country since mid-March.

Of his missed celebration Buniva said graciously, “I feel more disappointment for my predecessor, Marni Byrum, than myself. Marni deserves the fanfare and appreciation of her colleagues for her many years of service to our profession, including this last year as the 81st President of the VSB.”

But back to football: Buniva, who is sturdy, yet hardly football player size, was so small as a child that he stuffed his pockets with bar bell weights to make the 80 lb. cut off for his first football team, placing him on the field with



players up to 130 lbs. He started off determined, and from that inglorious beginning, Buniva went on to play for his undefeated high school football team in Tenafly, New Jersey, which won the state football championship of 1967. As a result of his efforts, Buniva was inducted into the Tenafly High School Athletic Hall of Fame in 2019, following in the footsteps of his father, Edo “Bull” Buniva, who was inducted posthumously nearly 30 years earlier.

Both sets of Buniva’s grandparents arrived in America through Ellis Island, his mother’s family from Ireland and his father’s from Italy. His story has some of the hallmarks of many immigrant families: his grandparents came here in the 1900s seeking a better life, and Buniva is the first member of his nuclear family to graduate from college and then become a lawyer. Today, his son Nathan, Nathan’s wife Sylvia O’Brien Buniva, and Buniva’s stepdaughter-in-law, Amanda Weaver, all have law degrees. He is equally proud of his daughter, Emily Buniva Edelson,

a doctor of psychology at Children’s Hospital of Philadelphia (CHOP), and his son-in-law, Jonathan Edelson, a pediatric cardiologist on the pediatric heart transplant team at CHOP.

Buniva considered attending the United States Military Academy at West Point, where his family often took Sunday drives, and quickly adopted as his own the West Point motto: “Duty, Honor, Country.” His poor eyesight prevented that, and he landed at Georgetown where he not only played football, but became interested in the politics that infuse Washington, D.C.

After a few years working in the political arena, Buniva made his way to Richmond and eventually attended the University of Richmond Law School. He said he chose the law because, **“I knew I wanted to be of service and at the end of my life, to know that it mattered that I had spent time on this earth. Ultimately, I decided upon a life in the law which has allowed me to advance the West Point ideals of Duty (Commitment to Principle); Honor (Integrity); and Country (with Justice for All).”**

Buniva chose environmental law, largely because of the environmental movement that came of age in the 1970s and 1980s with the passage of numerous federal and state laws designed to protect and preserve the environment. His first position as a lawyer was in the Virginia government, serving as Assistant Attorney General assigned to the Health and Environmental Sections in the Attorney General’s Office. He later transitioned to private practice, but has remained focused on environmental and



land use issues for the span of his 40+ year legal career.

Buniva's bar service is not surprising, in light of his commitment to duty, and over the years he has volunteered extensively for the Virginia State Bar, the American Bar Association, the Virginia Bar Association, and the Richmond Bar Association, eventually chairing the VSB, VBA, and RBA sections of Administrative and Environmental Law. He was one of the earliest volunteers for Lawyers Helping Lawyers (now the Judges and Lawyers Assistance Program) and chaired the Central Virginia committee. He has also been elected to VSB Council, serving from 2007 to 2013 and again from 2015 to the present.

In his free time, Buniva unwinds by boating on the James River, making homemade ravioli, and by spoiling the nine grandchildren who call him "Papi." In 2015, Buniva married his wife, Barbara Cochran Buniva, after proposing to her on the Jumbotron at Fenway Park in Boston. Today, they enjoy a



1: Brian as a child on his first football team in New Jersey.

2: Brian asking his wife, Barbara Cochran, to marry him on the jumbotron at Fenway Park.

3: Aboard his boat, *Never Look Back*, with one of his grandchildren.

4: The Bunivas at their 2015 wedding.

5: With nine grandchildren, Brian Buniva knows how to hold a baby.



Buniva continued on page 11

President's Message

by Brian L. Buniva



Compassionate Service in a Time of Human Suffering

I BEGAN WRITING THIS ARTICLE, my first as the 82nd President of the Virginia State Bar, on Good Friday, two days after Passover, and two weeks before the beginning of Ramadan. These three major observances of the Christian, Jewish, and Muslim faiths all have in common the belief that we are here on this earth to be of service to our individual communities and to the world. Our noble profession shares these values. Indeed, the preamble to our Virginia Rules of Professional Conduct states in relevant part:

As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. . . . A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance, and should therefore devote professional time and civic influence in their behalf. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

How do we lawyers meet the aspirational goals of our profession?

By the time this column is published we will either still be under the Governor's Executive Orders to combat the spread of the Covid-19 virus, or we will have begun to emerge from such restrictions in our pre-pandemic routines. We will emerge painfully aware of what we have lost. Many of us have suffered economic loss, loss of

social interactions, loss of family activities, loss of professional opportunities, loss of the VSB Annual Meeting, and most sadly some of us have lost one or more loved ones to this pandemic scourge.

But as Virginia Supreme Court Justice Mims recently wrote in the May 26th edition of the *Richmond Times Dispatch*, we might not just ponder what the Covid-19 pandemic has taken from us, but perhaps more importantly we might reflect on what the pandemic has given to us?

My answer is that the pandemic has given me the gift of time. Time to enable me to focus on what is truly important in my life as an individual and as a lawyer. It has given me the time to reflect upon the life and loss of my mother, a probable victim of this pandemic. It has given me the opportunity to reflect upon and cherish my wife, and the ability to simply hug family and friends. But the pandemic has also given me the unique opportunity to reflect upon priorities and reorder what is important and what is less important as I embark on this year as VSB President.

We all know that the mission of the VSB is to protect the public, regulate the legal profession, assist in improving the legal profession and the judicial system, and to advance access to legal services. The Bar is blessed with an impressive cadre of staff and selfless volunteers focusing on all four of these missions, but if we can rally the members of the Bar around the goal of advancing access to legal services for the poor and Virginians of modest means, we will indeed have used the gift of time and reflection wisely. The

predominant theme and focus of my year as president will be to do just that.

Shortly you will receive your VSB dues statement for Bar year 2020 to 2021. Included with your statement will be a form asking you to voluntarily report the number of pro bono hours and/or financial contributions you have made consistent with Rule 6.1 of the Rules of Professional Conduct. Rule 6.1 establishes the aspirational goal that every lawyer should render at least two percent per year of the lawyer's professional time to pro bono legal services. By voluntarily reporting your service you will provide the bar with the information necessary to measure our collective performance in achieving this aspirational goal and provide information to the Supreme Court's Access to Justice Commission in support of its work promoting equal access to justice for all Virginians.

Last year, the first year the voluntary reporting rule was in effect, 13.5% of the active members of the VSB reported nearly 369,000 hours of pro bono service and nearly \$1 million in financial contributions to legal aid societies throughout our Commonwealth. I believe that these numbers at a minimum can be doubled by the end of my term in June 2021. Please support this effort and complete the voluntary report. Please aspire to achieve the goals of Rule 6.1. And finally, please use your position as lawyers and community leaders to assist those less fortunate among us in closing the justice gap and receiving their rightful opportunity for equal access to justice.

God bless all of you for your service.

large, blended family, spending their free time at their beach house in Corolla, North Carolina, and travelling together.

Raised as a Catholic, Buniva has been an active member of the Midlothian Friends Meeting of the Religious Society of Friends (Quakers) for nearly 30 years. Though a relatively small religious group, the Quakers are known for their activism, their opposition to war, and their dedicated fight to end slavery, starting as early as the late 1600s. Susan B. Anthony, who devoted her life to fighting for women's rights was a Quaker, as was President Herbert Hoover, who earned global acclaim for the "Hoover Lunch" program that sent food and supplies to war ravaged Europe after World War I, prior to his presidency.

Though he often has a twinkle in his eye when at VSB meetings, after a childhood spent in the rigors of Catholic school, Buniva comes prepared to buckle down and be serious as the 2020–21 VSB president. His objectives are broad and begin with narrowing the justice gap. He said he will focus his year as president on:

- encouraging a substantial increase in the number of pro bono and low bono hours volunteered by our colleagues;
- partnering with the Supreme Court's Access to Justice Commission to improve access to the courts;
- being a voice for the independence of the judiciary; and
- being of service to local bar associations, lawyers, and the public throughout the Commonwealth.

Though the goals are challenging, and the obstacles obvious, there is little doubt Buniva has the mind for the game. From the 75 lb. weakling who forced his way onto the local peewee football team, to the cornerback at Georgetown, to the first member of his family to graduate from college and then law school, to environmental advocate, to president of the Virginia State Bar: Buniva has proven over and over again that if you want to change the game, the first step is getting on the team. ♪



Left: Brian making homemade ravioli, a skill learned from his Italian aunt. Right: Brian Buniva in his earlier days as an environmental lawyer.



Brian L. Buniva

B. L. Buniva Strategic Advisor, PLLC

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United States Supreme Court

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Midlothian Friends Meeting

Boys to Men Mentoring Network

Ten Thousand Villages Fair Trade Store

Former President of Maggie Walker Governors School Athletic Boosters Club.

Education:

Georgetown University, A.B. Government

The American University, Graduate Studies in Public Administration

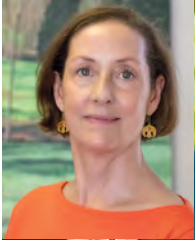
University of Richmond, T.C. Williams School of Law, (Highest Grade in Criminal Law, Constitutional Law and Advanced Constitutional Law)

Family:

Brian is married to Barbara Cochrane and has two adult children, three adult stepchildren, and nine (with one on the way) grandchildren.

Executive Director's Message

by Karen A. Gould



Coronavirus Brings Change to VSB

“Every adversity, every failure and every heartache carries with it the seed of an equivalent or a greater benefit.”

— Napoleon Hill

LONG-STANDING TRADITIONS have been uprooted by the disruptions caused by the coronavirus pandemic, and innovation has occurred. One of our immediate focuses in mid-March was cancellation of meetings and events through May. In early April, the decision was made to cancel the Annual Meeting set for June 17–20, 2020, in Virginia Beach. This was the first time the Annual Meeting has been canceled since World War II in 1945. Many other VSB events have been canceled, including most meetings and events through August and some in the fall. Please check the VSB website for an up-to-date status of an event or meeting.

At the request of the VSB, the Supreme Court of Virginia entered orders extending the dues compliance period from July 31, 2020, to September 30, 2020. As a public health precaution, the VSB office is closed to the public. Please be advised if you intend to mail or deliver renewals/payments to the Virginia State Bar, **deliveries** are only accepted from the following services: USPS, UPS, Fed Ex, DHL, and Richmond Express. Please use a trackable express delivery method if you are sending your renewals/payments close to the September 30 deadline. **All renewals must be received by 4:45 p.m. September 30, 2020.**

The Supreme Court of Virginia has also extended the MCLE compliance period until December 31, 2020.

On May 1, 2020, the Supreme Court of Virginia approved amendments to Part 6, Section IV, Paragraph 3 of the Rules of Court regarding the organization and government of the Virginia State Bar. **Most notably, these Rule changes: (1) impose an**

email address of record requirement for all members; (2) create separate membership classes for retired and disabled members (with corollary changes to Paragraph 13-23.K.); (3) remove the requirement for active members to be “engaged in the practice of law;” (4) revise some procedures for electing different membership classes; and (5) update the Rule’s language to eliminate ambiguous terminology. These rule changes were effective June 30, 2020 and were implemented as part of the 2020–2021 dues renewal.

On the gubernatorial front, Governor Ralph Northam proposed and the General Assembly passed at its Special Session on April 22, 2020, an amendment to the Freedom of Information Act to allow public bodies to meet electronically during the time of a declared emergency “when it is impracticable or unsafe to assemble a quorum in a single location.” This FOIA amendment will not help lawyers and law firms in private settings, but it will certainly assist the lawyers who serve on VSB committees and boards, so long as the declaration of an emergency continues.

The Leroy R. Hassell Sr. Indigent Criminal Defense Live Webinar, previously done as a live presentation in Richmond and simulcast to two other locations, was successfully telecast to over 1,000 Virginia lawyers on May 1, 2020. The program was a huge success for several reasons: (1) the vendor, Yorktel Information Technology & Service, was facile in switching from a televised simulcast program to a telecast program in a matter of weeks; (2) well-regarded speakers from across the country, who had canceled because

of the coronavirus, were able to give their presentations safely via this new modality); and (3) the changes saved \$77,596.

Because of the cancellation of the usual Admission and Orientation Ceremony at the Richmond Convention Ceremony, the Supreme Court of Virginia conducted its June swearing-in ceremony of new lawyers through videoconferencing. Approximately 200 lawyers were sworn in by Chief Justice Donald Lemons.

The VSB was unable to give President Marni E. Byrum a celebratory send-off at the end of her year as president at the Annual Meeting, unlike other presidents. The Virginia State Bar and its 50,000 members owe her a huge debt of gratitude for the leadership she has shown this year as president. As stated in the resolution honoring her service, Byrum’s leadership as president of the Virginia State Bar was exemplified by her unwavering commitment to improving the profession, to protecting and informing the public, to service to the VSB’s members and its committees, and by supporting the Virginia State Bar staff.

Be sure and read the article about incoming VSB President Brian Buniva in this magazine, as well as his first column. He would normally have been sworn in at the President’s Banquet at the Annual Meeting, but it was canceled due to the pandemic. Instead, Buniva was sworn in by Justice William C. Mims on June 30, 2020, at the Supreme Court of Virginia.

I hope you, your families, and your colleagues are healthy and doing well. As always, I can be reached at gould@vsb.org.



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Rule 1.18: You Didn't Hire Me But Your Adversary Just Did!

IN THE HBO SERIES *The Sopranos*, mobster Tony Soprano got ugly with his estranged wife, Carmela, holding a consultation with every high-end divorce lawyer in northern New Jersey so that the lawyers would be conflicted in representing her. While the Soprano story is fiction, in LEO 1794, the Ethics Committee was asked to address an insidious practice called “blocking” in which one spouse, preparing to divorce the other spouse, consults successively with several lawyers in a geographical area not to hire them, but to rather disqualify the lawyer from representing the other spouse.

When a prospective client and a lawyer communicate about possible representation, there is a “reasonable expectation of confidentiality” even if no attorney-client relationship ensues. The lawyer faces disqualification if hired by a person adverse to the prospective client in the same matter, i.e., a divorce case. LEO 1546 (1993); LEO 1642 (1995); *Gay v. Luhn Food Systems, Inc.*, 5 Cir. CL00121, 54 Va. Cir. 468, 2001 Va. Cir. LEXIS 24, at *7 (Va. Cir. Ct. Feb. 7, 2001); *Joslyn v. Joslyn*, 23 Cir. CH03596 (December 5, 2003).

In *Joslyn*, the wife sought to disqualify the husband’s lawyer because she had an initial interview with that lawyer but chose to hire a different lawyer before the divorce proceedings commenced. The husband’s lawyer argued no attorney-client relationship had ensued after the initial consultation and the wife acknowledged that in a signed writing before the consult. The court disqualified the husband’s counsel finding that the written acknowledgment was insufficient as it did not

waive the prospective client’s expectation of confidentiality nor did the wife consent to the lawyer representing the adverse spouse.

Lawyers have avoided disqualification caused by initial consults by, among other things, charging a hefty consultation fee, and other measures such as:

- 1) Running a conflicts check before the initial consultation;
- 2) Warning the potential client not to provide confidential information at that point;
- 3) Asking whether the potential client has met with other attorneys;
- 4) Sending a “non-engagement” letter if declining the representation; and
- 5) Anticipating a motion to disqualify should the opposing party become a client.

In 2002, the ABA adopted Model Rule 1.18 to address duties owed to and conflicts created by prospective clients. Virginia adopted a nearly identical rule, but not until June 21, 2011. Before the adoption of Rule 1.18, the Rules of Professional Conduct did not address the duties owed to prospective clients. However, legal ethics opinions addressed these issues, either treating the prospective client as analogous to a former client or holding that the duty of confidentiality applied even if there was never an attorney-client relationship. In family law cases, the prospective client typically would not waive the conflict and the consulted lawyer would be disqualified, even when only limited information was imparted during the initial consult.

MR 1.18 and Va. Rule 1.18 are nearly identical. New guidance from

ABA Formal Opinion 492 (June 9, 2020), is particularly helpful and important:

1. A “prospective client” is one who consults or discusses with a lawyer the possibility of forming an attorney-client relationship.
2. Not every communication a person interested in obtaining legal services has with a lawyer makes that person a prospective client. Formal Op. 492 at 2. See also Comment [2] to Va. Rule 1.18 (A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a “prospective client.”) and LEO 1842 (2008) (lawyer has no duty of confidentiality to person who unilaterally transmits unsolicited information in voice mail or email).
3. A person who communicates with a lawyer to disqualify that lawyer is not a “prospective client.” *Bernacki v. Bernacki*, 1 N.Y.S.3d 761, 764 (Sup. Ct. 2015) (husband in a divorce sent an email to his wife titled “Attorneys Which [sic] Whom I Have Sought Legal Advice” and then listed “twelve of the most experienced matrimonial attorneys in the county,” each of whom the husband asserted “would conflict themselves out” or be subject to disqualification); *Restatement (3d) of the Law Governing Lawyers* §15 cmt. c (“a tribunal may consider whether the prospective client disclosed confidential information to the lawyer for the purpose of preventing the lawyer or the lawyer’s

Ethics continued on page 53

General Practice: COVID-19 Impacts our Clients, Committees, and Us

by Christopher C. Johnson

From this time last year, the General Practice Section of the Virginia State Bar was on track to have one of its best years in recent times leading up to the COVID-19 pandemic. The section successfully put on a fantastic CLE called “A Day in General Practice,” which was held October 16, 2019, at the University of Richmond. The section was set to co-sponsor a CLE at the Annual Meeting in Virginia Beach prior to its cancellation. The current state of the section is that there are a total of 839 section members, which is broken down as follows: 726 Active/Associate, 97 Judicial, and 16 Other (includes corporate counsel, judicial retired).

As with many other areas of practice, general practitioners have felt varying effects from the COVID-19 pandemic, and it is our hope that we as a board, a section, and a state-wide bar can be of assistance to those struggling through these hard times. One of the greatest joys I have felt in the general practice of law is the ability to provide assistance to those of all walks of life during difficult times.

This is certainly a difficult time, and we have seen lawyers stepping up, often for no monetary compensation, to help people with issues ranging from potential evictions to navigating the potential benefits of the CARES Act and other similar stimulus related programs.

On behalf of the General Practice Section Board of Governors, I wish everyone the very best of health and continued security and prosperity as we move into the second half of 2020. Despite all of the jokes about lawyers, when times get tough, it is our profession that is relied on by so many to get them through. Given the caliber of lawyers we have in Virginia, as practitioners and as people in general, I am confident we will overcome this most recent challenge.



Christopher C. Johnson is a partner in the law firm of Johnson & Johnson Attorneys at Law, P.C., in Hanover County. A graduate of Virginia Tech and the Charleston School of Law, Johnson has been a lifelong resident of Hanover County. He is chair of the VSB General Practice Section, an active member of his local community, and president of the Hanover County Bar Association.

Family Law: From Mayhem to Mindfulness In (Almost) Post-Pandemic Virginia

by Bretta Z. Lewis



TO CALL COVID-19 AN “ISSUE” with respect to family law is akin to calling what happened on the Titanic “a vacation mishap.” Although not all Virginia lawyers practice family law, it seems that all of us are, directly or indirectly, impacted by divorce. Whether it is your loved one, a neighbor, friend, or yourself, every person who has been privy to the turmoil caused by divorce turns to someone for advice.

Lawyers and mental health professionals are the obvious sources for guidance, and sometimes the line between legal advice and counseling is blurry (hence the traditional title “Attorney and Counsellor at Law”). Unfortunately, all Virginia attorneys, including those who practice family law, are currently facing a massive breakdown of the typical way we assist clients due to court closures and other pandemic response measures. Although we always aspire to advance our clients’ interests swiftly and efficiently, this goal seems all but impossible since the pandemic closures and restrictions have been enacted. There is no way to provide solid advice to clients without adding the caveat, “Nobody really knows what is going to happen ... I mean, literally, nobody.” This is new turf for even the most seasoned professionals and is unprecedented in the Commonwealth’s court system.

Ethical rules forbid us from guaranteeing outcomes to clients, however, in pre-COVID Virginia, we could at least tell clients when and where to appear for hearings and advise them of the possible outcomes. Now, we have no idea what matters will proceed, what the timetable will be, or what format to expect. We have no way to ease our clients’ fears about their financial futures or make any reliable assessment about the long-term ramifications of the litigation. With each order, each edict, and each publication from the Executive and Judicial branches, interpretations of which seem to differ in each jurisdiction and judicial district, the waters become increasingly murky.

In the family law realm, not only is uncertainty frustrating and disconcerting, but it can also be emotionally devastating and, in some cases, dangerous. Mental health professionals are concerned about the “layering” effect of the lack of closure on families. Dr. Robert Archer, a leading national expert in forensic psychology and adolescent development, emphasizes that “Stress is viewed by psychologists as a cumulative experience,” and that “The pandemic is making additional demands on the coping resources of family members.”

The pandemic has multiplied already existing issues including domestic violence

and substance abuse, during a time when in-person services are often suspended. The pressure cooker created by social isolation, financial strain, and unprecedented unemployment is taking an insurmountable toll on families. Some husbands and wives feel that there is no choice but to separate. This requires them to divide the remaining resources, including dividing time with often stressed-out children.

As responsible, compassionate practitioners, Virginia family law attorneys can help. After serving as a *Guardian Ad Litem* since 2005, I believe that we must first protect the most vulnerable participants, the children. We have to find a way to reach into the whirlpool and pull them out before they drown in their parents' stress. We also need to give our adult clients as much guidance as possible in solving their problems without waiting for the overwhelmed courts to provide answers.

With creative, empathetic representation, parties can avoid the stress of waiting and preparing for trial. Forward-thinking family lawyers can use new methods to change the norms in resolving conflicts and focus our energy into providing solutions in a revolutionary way. In short, we can become helpers.

This article seeks to shed some light for Virginia lawyers, both from a place of ideology and practicality. Family lawyers are facing some tricky questions that are as of yet, unanswerable.

- (1) How can parents who are separating, divorcing, or already divorced effectively co-parent and deal with delays, litigation and indefinite continuances?
- (2) How can parents effectively implement "distance learning" and support educational development when they are separated, divorced and at odds with the other parent?
- (3) How do we best manage child support cases when the courts are overwhelmed, and parties are facing unemployment, furloughs, or other loss of income stability?

Generally, for all of these unknowns, it seems that keeping parties out of court and finding an amicable, flexible solution that can be implemented immediately may be the best practice. Below are some insights gained in discussions with experts who deal regularly with families in crisis:

(1) Custody, Visitation and Co-parenting: Parents in the process of separation and divorce may be feeling hopeless because pending matters have been continued, finances are uncertain, they are reeling from the long, stressful litigation process, and/or because health concerns are exacerbating the situation. Families may be experiencing new rifts in previously quasi-functional family dynamics due to suffocating mandatory togetherness, while families already in crisis may find that the pandemic has created an unbearable tension.

Statistics from crisis hotlines indicate that substance abuse and domestic violence are escalating as anxiety and frustrations are fueled by isolation and despair. In some cases, one parent may be refusing to communicate or cooperate with the other and the courts are not able to respond quickly. There are, however, methods available to assist families to move toward a solution, even without court intervention.

Instead of waiting for a trial in a divorce or custody case, attorneys should hold settlement conferences on a flexible schedule, accommodating childcare and other contributing stressors. Using platforms such as Zoom, WebEx, Microsoft Teams, and Google Meetings, responsible and compassionate attorneys and the *Guardian Ad Litem*, working together, can assist parents to move past emotion and encourage them to find practical ways to preserve precious resources and protect their children. Agreements incorporated into court orders can provide closure without the stress of making litigants recount all of their interpersonal differences in open court and having rulings imposed after a long day of angry testimony. I have already participated in several remote settlement conferences with opposing counsel, parties, and, in some cases, the *Guardian Ad Litem* appearing by telephone or video. **Even in seemingly impossible cases involving adultery, protective orders, and domestic violence allegations, the matters have settled.** Literal sighs of relief echoed among all involved knowing that the matters would simply be removed from the docket by submission of agreed orders rather than playing the waiting game and enduring several more months of litigation.

If the matter is too complex or controversial for a simple settlement conference, or if the attorneys reach an impasse, mediation is an excellent option for accessing neutral assistance without the stress of a trial. The Hon. Winship Tower (ret.), an experienced mediator specializing in complex divorces, practiced family law before joining the Virginia Beach Juvenile and Domestic Bench in 2000. Judge Tower reports a high level of success with remote mediation noting that she has concluded multiple remote mediations and enthusiastically recommends the process.

"It has proven to be a flexible, viable alternative to resolving family law matters creatively and constructively," Judge Tower added. "Clients have expressed relief and gratitude for the opportunity to bring certainty and closure."

Once families put litigation behind them, they can begin the work of healing and restoring their children's security and confidence, which also requires a new approach. Archer reminds us that even though parents have differences, it is critical to find common ground, particularly now, stating, "It is already apparent that combining the effects of COVID-19 and domestic litigation...can have debilitating effects on the mental health" of family members. Archer urges parents to "maintain positive and close relationships with their children," adding, "the quality of the parent - child relationship is the single best predictor of the child's emotional development."

When parents struggle to communicate about parenting issues, it may be wise for them to consider remote mental health services. Due to the pandemic, many insurance providers are waiving copayments and authorizing insurance payments for "telehealth" or video therapy. Remote family or co-parenting sessions may be easier than traditional sessions for post-divorce couples who find it difficult to be in the same room. Having professional guidance during sensitive conversations

Family Law continued on page 23

Practice Points: Three Tips for Responding to a Subpoena Duces Tecum

by Lindsay Reimschuessel



YOU REPRESENT A CLIENT who is not a party to a lawsuit, but suddenly receives a subpoena demanding the production of thousands of documents on a tight timeframe. Your client wants to either delay production or substantially limit the documents it must hunt down and produce.

Below are some practice pointers to keep in mind when advising your client and responding to a subpoena.

Check for subpoena validity

Third parties are only legally required to produce documents when production requests are accompanied by a valid subpoena.¹

Issuing a valid subpoena can be surprisingly complicated, and many attorneys and the vendors they hire fail to follow the necessary steps. Even if you know you'll eventually produce documents, it can be helpful to use subpoena validity as a negotiating tool. Here are some common mistakes in attorney-issued subpoenas:

The subpoena is from a state court and was not properly domesticated

A state court's jurisdiction does not extend into another state, and subpoenas are not

enforceable across state lines. Many attorneys fail to take the necessary, simple steps to domesticate their state court subpoenas before serving them across state lines. If the subpoena was issued by a court in State A and served in State B, it's generally not valid.

Moreover, a non-party's "minimum contacts" are not automatically sufficient to grant subpoena power to state courts even when service was effected within the same state. For example, parties to a Virginia state court lawsuit served a subpoena on Yelp's registered agent in Virginia. Yelp had no physical presence in Virginia and the documents were in California. The Supreme Court of Virginia refused to enforce the subpoena, finding that merely registering to do business in the state and designating a registered agent was not enough to give Virginia courts subpoena power when Yelp was not a party to the lawsuit.²

The subpoena seeks pre-hearing discovery in an arbitration

Most arbitration is subject to the Federal Arbitration Act ("FAA"). The FAA permits arbitrators to issue a summons for third parties to "appear before" the arbitrator and bring

documents “which may be deemed material as evidence in the case.”³ The majority view is that an arbitrator can only summon documents to be brought to a hearing, and cannot compel pre-hearing discovery from third parties.⁴ Only one circuit has definitively stated that arbitrators can compel third parties to produce documents prior to the hearing.⁵

The subpoena fails to check all the boxes.

Most states have a statute setting out the required elements of an attorney-issued subpoena. Many attorneys and the vendors they engage often fail to include all of them. For example, many states also require the requesting party to notify the other parties before issuing a subpoena.⁶ We’ve also seen cases where an attorney signs paperwork authorizing a vendor to issue a subpoena, but the vendor fails to sign or date the actual subpoena. For arbitration-related summons, the FAA states that the summons must come from the arbitrator,⁷ but many attorneys try to issue arbitration-related summons themselves.

Check for deadlines and procedures to preserve objections

You also need to ensure you haven’t waived your ability to seek court relief by failing to file or serve timely objections.

If the subpoena is federal, the non-party has the earlier of the date of compliance or 14 days to serve objections on the requesting party.⁸ If the subpoena was validly domesticated under the Uniform Interstate Depositions and Discovery Act (“UIDDA”),⁹ the discovery rules of the state where the subpoena is domesticated normally apply.¹⁰ But state court procedures vary widely. For example, Maryland requires objections to be filed with the court.¹¹ Virginia, on the other hand, requires objections to be served on the requesting party.¹² Similarly, check the corresponding state statutes for deadlines to ensure you haven’t waived your objections.

Negotiate, negotiate, negotiate

You can start negotiating while also preserving your objections. Even while exchanging formal objections and responses, it is often helpful to engage in informal discussions with the requesting counsel.

Parties to lawsuits generally would prefer to avoid bothering the court with motions to compel and other discovery disputes, and courts are hesitant to impose undue burdens, especially on non-parties. Another potential negotiating tool is that some states require the requesting party to pay the non-party’s reasonably incurred costs of production, which can include time spent locating documents as well as photocopying costs.¹³ When faced with the costs of retrieving and producing thousands of documents, a requesting party may be willing to reduce the scope of the request.

In my experience, you can almost always negotiate the scope of a subpoena to something that is more manageable before proceeding to costly motions practice.



Lindsay Reimschuessel is an attorney at Zobrist Law Group, PLLC, where her practice focuses on business and commercial dispute resolution. Reimschuessel regularly assists a Fortune 500 company with responses to third-party subpoenas.

Endnotes

1 See, e.g., F.R.C.P. 34(c); Virginia Supreme Court Rule 4:9A; Texas Rule of Civil Procedure 205.1.

2 *Yelp, Inc. v. Hadeed Carpet Cleaning, Inc.*, 770 S.E.2d 440, 446 (2015) (“Because the underlying concepts of personal jurisdiction and subpoena power are not the same, the question of whether Yelp would be subject to personal jurisdiction by Virginia courts as a party defendant is irrelevant.”). The Virginia Supreme Court explicitly distinguished Yelp’s situation from one where a foreign corporation has a physical presence in Virginia. *Id.* at n. 17 (“[O]ur holding does not mean that a Virginia court could not compel in-state discovery from a non-party foreign corporation that maintains an office in Virginia.”).

3 9 U.S.C. § 7.

4 *CVS Health Corp. v. Vividus, LLC*, 878 F.3d 703, 706 (9th Cir. 2017) (noting that its decision was in agreement with the Second, Third, and Fourth Circuits). See also *Managed Care Advisory Grp., LLC v. CIGNA Healthcare, Inc.*, 939 F.3d 1145, 1159-60 (11th Cir. 2019) (adopting the majority approach).

5 *Sec. Life Ins. Co. of Am. v. Duncanson & Holt (in Re Sec. Life Ins. Co. of Am.)*, 228 F.3d 865, 870-71 (8th Cir. 2000) (“[I]mplicit in an arbitration panel’s power to subpoena relevant documents for production at a hearing is the power to order the production of relevant documents for review by a party prior to the hearing.”). In the Fourth Circuit, the arbitrator lacks power to compel pre-hearing discovery from non-parties, but the district court can compel pre-hearing discovery “upon a showing of special need or hardship.” *Deiulemar Compagnia di Navigazione S.P.A. v.*

M/V Allegra, 198 F.3d 473, 479 (4th Cir. 1999). The Sixth Circuit has not definitively stated a position on the issue. See, e.g., *Westlake Vinyls, Inc. v. Lamorak Ins. Co.*, No. 3:18-MC-00012-JHM-LLK, 2018 U.S. Dist. LEXIS 220196, at *14 (W.D. Ky. 2018) (discussing Sixth Circuit precedent).

6 See, e.g., Delaware Chancery Court Rule 45(b) (“Prior notice of any commanded production of documents, electronically stored information, and tangible things or inspection of premises before trial shall be served on each party . . .”).

7 9 U.S.C. § 7.

8 FRCP 45.

9 The UIDDA permits parties from out of state to easily domesticate non-party subpoenas. After receiving the correct paperwork under the UIDDA, the state court where the non-party is located will issue a subpoena that is binding on the resident non-party. A current list of all states who have ratified the UIDDA is available on the website for the Uniform Law Commission at <https://www.uniformlaws.org/committees/community-home?CommunityKey=181202a2-172d-46a1-8dcc-cdb495621d35>.

10 See, Model UIDDA § 5, Comment (“[T]he discovery procedure must be the same as it would be if the case had originally been filed in the discovery state.”).

11 Maryland Rule of Civil Procedure 510.1(g).

12 Virginia Code § 16.1-265; Virginia Supreme Court Rule 4:9A(c).

13 See, e.g., Fl. Statute 92.153(2)(a) (“In any proceeding, a disinterested witness shall be paid for any costs the witness reasonably incurs either directly or indirectly in producing, searching for, reproducing, or transporting documents pursuant to a summons . . .”).

2020 Legislative Session Heralds a Sea Change in Virginia Employment Law

by Jason Zuckerman and Dallas Hammer



THE 2020 LEGISLATIVE SESSION significantly transformed workers' rights, producing more than 50 employment-related bills that became effective July 1. Some bills make minor adjustments, while others are significant, including strong protections to remedy wage theft and inequality, combat discrimination, and prohibit whistleblower retaliation. This article summarizes the new worker protections and the implications for employees, employers, and the Commonwealth.¹

Private Right of Action for Wage Theft and Extensive Changes to Other Wage Laws

Prior to 2020, Virginia wage law lacked any private right of action for wage theft, and in contrast to Maryland and Washington, D.C., employers were subject only to the federal minimum wage. Nearly a dozen bills amend Virginia's wage law by establishing a minimum wage, creating a private right of action for wage theft, expanding the authority of the Department of Labor and Industry (DOLI) to remedy wage theft, and prohibiting retaliation against employees who disclose wage theft and other violations of the wage laws.

Virginia's minimum wage will increase from the federal minimum to \$9.50 per hour,

effective May 1, 2021.² It will increase gradually to \$15 an hour by January 2026, though the legislature will have to reenact the provision by July 1, 2024 for the full increase to take effect.³ And effective July 1, 2020, piece-rate and domestic workers must be paid the minimum wage, ending existing exceptions.⁴

As of July 1, 2020, employees will have a statutory cause of action to recover unpaid wages.⁵ And employees will be able to bring wage theft claims jointly or as a collective action.⁶ Employees need not exhaust administrative remedies before filing suit.⁷ A prevailing wage theft plaintiff can recover any owed wages, liquidated damages in an amount equal to the wages owed, prejudgment interest at an annual rate of 8% from when the wages were due, and reasonable attorneys' fees and costs.⁸ Where an employer has knowingly withheld wages, a prevailing employee can recover treble damages.⁹ The statute defines "knowingly" as having "actual knowledge of the information ... act[ing] in deliberate ignorance of the truth or falsity of the information, or ... act[ing] in reckless disregard of the truth or falsity of the information" – there is no requirement to prove specific intent to defraud.¹⁰

Previously, Virginia's DOLI could investigate wage theft only when an employee filed a complaint.¹¹ But now DOLI can conduct a broader investigation of an employer's wage practices where it develops information in the course of an investigation indicating that the employer has failed to pay wages to other employees.¹²

As lower-income workers disproportionately experience wage theft, protection against retaliation is especially vital. As of July 1, 2020, Virginia employers are prohibited from retaliating against any employee for filing a complaint or commencing or testifying in a wage theft proceeding.¹³ Retaliation complaints will be filed with DOLI, and the commissioner may institute proceedings on behalf of the employee for reinstatement, recovery of lost wages, and liquidated damages in the amount of the lost wages.¹⁴

The amendments to Virginia's wage laws also prohibit retaliation against employees for asking about or discussing compensation or for reporting a violation of the provision.¹⁵ A violation will subject an employer to a civil penalty of \$100, and DOLI is authorized to obtain injunctive relief.¹⁶

Virginia Values Act and Other Legislation Combatting Discrimination

The Virginia Values Act¹⁷ amends the Virginia Human Rights Act (HRA)¹⁸ by adding sexual orientation and gender identity as protected classes.¹⁹ Virginia now joins 20 states and Washington, D.C., in going a step further than Title VII and explicitly prohibiting employment discrimination based on sexual orientation and gender identity.²⁰ The Values Act also expands employer coverage, the range of actionable personnel actions, and the remedies available under the law.

Previously, the HRA covered employers with more than five and fewer than 15 employees. Now, for most unlawful discrimination claims the HRA covers employers with 15 or more employees, and for most unlawful termination claims it covers employers with more than five employees.²¹ Employers are also prohibited from retaliating against employees for opposing an unlawful employment practice or for filing a charge or otherwise participating in an investigation of discrimination.²² Further, employees now have a private right of action under the HRA to challenge any unlawful, discriminatory employment practice.²³ Prior to these amendments, the HRA provided a private cause of action only for unlawful termination.

The Values Act expands the remedies available under the HRA. **Formerly, a prevailing plaintiff under the HRA could receive only up to 12 months of backpay and attorneys' fees not to exceed 25% of the backpay award. Now, a prevailing employee may receive uncapped economic and compensatory damages, punitive damages of up to \$350,000,²⁴ and reasonable attorneys' fees and costs.²⁵**

Additional legislation amends the HRA to strengthen and expand rights and remedies for employees who are pregnant or postpartum.²⁶ Whereas employees alleging discrimination on other bases must still exhaust administrative remedies through the Division of Human Rights before suing in court,²⁷ an

employee alleging discrimination or refusal to accommodate on the basis of pregnancy, childbirth, or related conditions may file directly in court.²⁸ Further, the HRA now requires employers to provide reasonable accommodations for pregnant or postpartum employees.²⁹ These provisions apply to employers with five or more employees for all claims, making employer coverage for pregnancy and related discrimination broader than that for other causes of action under the HRA.³⁰

Under the pregnancy accommodation provision, reasonable accommodation includes a modified work schedule, assistance with heavy lifting, provision of a private location other than a bathroom for expression of breastmilk, and leave to recover from childbirth.³¹ A covered employer is required to provide reasonable accommodation unless they can prove that the accommodation would cause an undue hardship.³² The employer providing or being required to provide similar accommodation to other employees creates a rebuttable presumption against hardship.³³ After an employee requests accommodation, the parties should engage in an interactive process to determine if the request is reasonable, and if not, to pursue other options.³⁴

Other legislation strengthens the prohibition against race discrimination by covering traits historically associated with race, including hair texture, type, and protective styles such as braids, locks, and twists.³⁵

New Legislation Prohibiting Whistleblower Retaliation

Prior to 2020, Virginia recognized a very narrow public policy exception to employment-at-will. Effective July 1, 2020, however, whistleblowers in Virginia will have robust protection against retaliation. Protected conduct includes reporting in good faith a violation of law to a supervisor, governmental body, or law enforcement official; refusing to engage in a criminal act that would subject the employee to criminal liability; refusing an employer's order to perform an unlawful act; or providing information to or testifying before any enforcement body or official conducting an investigation, hearing, or inquiry into any alleged violation of law by the employer.³⁶ The statute does not protect employees disclosing data protected by law or legal privilege, making statements or disclosures that are false or made in reckless disregard of the truth, or making disclosures that would violate the law or deprive another or others of confidential communications as guaranteed by law.³⁷

A retaliation claim can be brought within one year of the retaliatory action,³⁸ and a prevailing whistleblower can secure an injunction to stop a continuing violation, reinstatement, compensation including lost wages and benefits plus interest, and attorneys' fees and costs.³⁹

Implications of The New Virginia Employment Laws

These new employment laws represent a sea change for workers' rights in Virginia, and employers will act at their peril when they discriminate or retaliate against employees. Additional implications include:

- The Values Act will likely foster more diverse and tolerant workplaces, which could make Virginia business more profitable and competitive as it seeks to attract businesses and workers that will thrive in the digital age. The benefits of diversity in the workplace include increased innovation and employee engagement, lower turnover, and superior decision-making.
- A robust whistleblower protection law will encourage employees to report unlawful conduct internally, thereby benefiting employers by giving them an opportunity to investigate and rectify misconduct.
- As Virginia civil procedure respects the important right to a jury trial by making it difficult to obtain summary judgment,⁴⁰ there will likely be a mass migration of employment litigation from federal court to Virginia circuit court. More employment cases will go to trial, and jury verdicts could encourage employers to comply with these laws. In addition, employment litigation will likely become a much larger portion of circuit court dockets.
- Employers will need to take steps to comply with these new laws and mitigate against the risk of employees bringing claims. For example, employers should consider training managers and supervisors about discrimination and retaliation. In addition, employers should update their policies prohibiting discrimination and retaliation.

Some employment law practitioners have criticized Virginia’s new employment laws as rendering the Commonwealth the “new California,” a state known for its strong employment and consumer protection laws.

California also has the world’s fifth largest economy, surpassing the United Kingdom, and is a worldwide hub of innovation, attracting top engineers from around the world to create products and services that have fundamentally changed how

we communicate and transact business. Strong employment legislation should not be viewed as a burden, and instead could hasten Virginia becoming the “Silicon Valley of the East.”

The authors thank Katherine Krems, an associate at Zuckerman Law, for her contributions to the article. ☞



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Endnotes

1 At the time of writing, these bills have not yet been entered into the state code. Code sections as cited are subject to change. All sections cited for new provisions are where the bills as written list them, but there is some overlap and disagreement that the code commission will reconcile.

2 See Va. Code § 40.1-28.10(B); H.B. 395/S.B. 7, Gen. Assemb., 2020 Reconvened Sess. (Va. 2020) (amended bills reenrolled Apr. 22, 2020). Though originally set for January 1, 2021, the legislature delayed the first increase at Gov. Ralph Northam’s suggestion to support businesses in response to the Covid-19 pandemic. See Press Release, Office of the Governor, Governor Northam Hails General Assembly Session That Propels Virginia Forward (Apr. 22, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/april/headline-856287-en.html> (“I am grateful that lawmakers supported my proposals to help ease the impacts of the COVID-19 pandemic on Virginians, on our economy, and on our state budget.”).

3 Va. Code §§ 40.1-28.10(F), (3); H.B. 395/S.B. 7.

4 Va. Code § 40.1-28.9(A); S.B. 78, Gen. Assemb., 2020 Reg. Sess. (Va. 2020); S.B. 804, Gen. Assemb., 2020 Reg. Sess. (Va. 2020).

5 Va. Code § 40.1-29(J); H.B. 123/S.B. 838, Gen. Assemb., 2020 Reg. Sess. (Va. 2020).

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 Va. Code § 40.1-29 (K); H.B. 123/S.B. 838.

11 Va. Code § 40.1-29 (F).

12 *Id.* at § 40.1-29.1; H.B. 336/S.B. 49, Gen. Assemb., 2020 Reg. Sess. (Va. 2020).

13 Va. Code § 40.1-33.1(A); H.B. 337/S.B. 48, Gen. Assemb., 2020 Reg. Sess. (Va. 2020).

14 Va. Code § 40.1-33.1(B); H.B. 337/S.B. 48.

15 Va. Code § 40.1-28.7:7(A); H.B. 622, Gen. Assemb., 2020 Reg. Sess. (Va. 2020). This code section may change, as H.B. 330/S.B. 480 as written add a separate, unrelated stipulation to the same section.

16 Va. Code §§ 40.1-28.7:7(B), (C); H.B. 622.

17 S.B. 868, Gen. Assemb., 2020 Reg. Sess. (Va. 2020).

18 Va. Code §§ 2.2-3900 et. seq.

19 *Id.* at §§ 2.2-3901(B), (C); 2.2-3905(B)(1)(a); S.B. 868.

20 See 42 U.S.C. § 2000e-2.

21 Va. Code § 2.2-3905(A); S.B. 868. Coverage for unlawful termination based on age remains unchanged, with the HRA covering employers with more than five and fewer than 20 employees. *Id.*

22 Va. Code § 2.2-3905(7); S.B. 868.

23 Va. Code § 2.2-3908(A); S.B. 868.

- 24 See Va. Code § 8.01-420, placing a \$350,000 cap on punitive damages generally.
- 25 Va. Code § 2.2-3908(B); S.B. 868.
- 26 H.B. 827/S.B. 712, Gen. Assemb., 2020 Reg. Sess. (Va. 2020).
- 27 Va. Code § 2.2-3907; S.B. 868.
- 28 Va. Code § 2.2-3904(E); H.B. 827/S.B. 712. The HRA's administrative process is still available to such employees, but it is optional. *Id.*
- 29 Va. Code § 2.2-3904(B)(2); H.R. 878/ S.B. 712.
- 30 Va. Code § 2.2-3904(A); H.R. 878/ S.B. 712.
- 31 *Id.*
- 32 Va. Code § 2.2-3904(B)(2); H.B. 878/S.B. 712.
- 33 Va. Code § 2.2-3904(B)(2)(b); H.B. 878/S.B. 712.
- 34 Va. Code § 2.2-3904(C); H.B. 878/S.B. 712.
- 35 Va. Code § 2.2-3901(C); H.B. 1514/S.B. 50, Gen. Assemb., 2020 Reg. Sess. (Va. 2020).
- 36 Va. Code § 40.1-27.3(A); H.B. 798, Gen. Assemb., 2020 Reg. Sess. (Va. 2020).
- 37 Va. Code § 40.1-27.3(B); H.B. 798.
- 38 Va. Code § 40.1-27.3(C); H.B. 798.
- 39 *Id.*
- 40 See Va. Code § 8.01-420, widely disallowing basing motions for summary judgment on discovery depositions.

Family Law *continued from page 17*

may lead to greater success in resolving disputes over parenting issues such as when it is safe to resume socializing or travel, whether to alter summer visitation, or how to deal with cancellations or lack of childcare. It seems apparent that the Courts will not be addressing these micro-disputes for quite some time, so parents must find a way to come to an agreement and spare their children months of upheaval.

(2) The Challenge of Remote Learning in Family Law Cases:

In addition to the financial and interpersonal challenges of divorce, parents are now dealing with supporting their children academically without a traditional school structure. Teachers, friends, and counselors who usually create a support system for children experiencing the breakdown of the traditional family unit are suddenly missing from their lives. **Exhausted parents, desperate to assist their children to cope, now have to figure out how to help educate them while working across differing households.**

School guidance Counselors at Norfolk Academy, an independent school in Norfolk, Virginia offering education for grades 1–12, have uniformly voiced an educational perspective similar to Archer's, regardless of the age of the student. "First and foremost, children need to know that their parents are supporting them and their relationships with both parents in a divorce situation." Counselors hope that parents can remember that the stressors of this situation are not borne by adults alone. "They need to know that their parents are good, responsible and loving people, even if they are not together, and that both of them are there to support them."

With respect to the challenges of the "distance learning" programs that have been implemented with varying degrees of success across the Commonwealth, the counselors at Norfolk Academy and schools across Virginia are urging parents to keep routines in both homes that support healthy habits, which, in turn, support learning. "Children need daily consistency, including sleep schedules." Archer adds that even if children are not enrolled in schools that are well-equipped for distance learning, parents should encourage educational activities. Even when the parents are not together, these goals can be achieved consistently in both homes with communication and cooperation. Parents should consider that even simple activities can create an educationally valuable experience as well as comfort

for children who are moving between homes. Counselors uniformly suggest that these activities might involve "simply reading, journaling their thoughts, and sharing those thoughts with their parents and siblings," or perhaps sharing articles from the same periodical with each parent to create a common experience. The Norfolk Academy guidance office specifically recommends National Geographic, for example, due to its breadth of subject matter, availability, and low cost.

Across the board, school counselors and mental health professionals encourage parents to engage in recreational and athletic activities with their children, particularly when domestic issues and isolation have taken a toll. Educators also echo Archer's opinions about the importance of children's positive relationships with both parents after a separation or divorce. Norfolk Academy's professionals uniformly remind us that "students whose parents have separated and/or divorced" need to understand that that in the long run, things will be much better if they can have a good relationship with both parents. If separated or divorced parents could keep that in mind when talking with their children about each other, it could save them from a world of pain and disillusionment."

In the aftermath of COVID, this advice seems more important than ever. We as family lawyers owe it to those we serve to encourage novel, amicable approaches to preserve their resources and ability to survive the crisis and thrive in the future. ☺



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Virginia Real Estate in the Time Of COVID

by Benjamin D. Leigh



Sean Pollock, Unsplash

HISTORY MAY NOT REPEAT ITSELF, but it does often rhyme, so said Mark Twain. This is written in May 2020, weeks into the COVID-19 intrusion. While disruption abounds, we find ways forward. Daniel Defoe in his “*Journal of a Plague Year*,”¹ detailing virus-threatened London life in 1665, wrote that “[t]his was the beginning of May, yet the weather was temperate, variable, and cool enough, and people had still some hopes.”

Disrupting the Work and Revealing the Digital Divide

All lawyers faced atypical problems these past few months. Before solving client problems, many lawyers re-located to home offices, separating from legal assistants, paralegals and colleagues. Hypothetical technology debates became action-items. CLE programs on remote access technology, remote conferences, and e-everything were the hot ticket. It felt like drinking from a firehose.

After managing forced change on “how to work,” next up were the client problems. Do we meet in person? Mask and gloves? Sanitize the room afterwards? For acknowledgments, is my notary comfortable sitting six feet away?

Did the client just touch that pen? They just returned from *what* country?

The challenges were just beginning. Perhaps three weeks into this contagion, I joined a conference call for the Real Estate Council of the Virginia Bar Association. This is a group of smart lawyers across the Commonwealth, sharing their views on issues, case-law, legislation and regulation. Kay Creasman, the immediate past-Chair of the Real Property Section of the Virginia State Bar, reported a shocking reality — some smaller Clerk’s Offices were open for recording, but land records research was unavailable. If online land records only went back a few years, no full title examination could be had. This stymied sales and financing. A digital divide was made apparent. Some jurisdictions had full remote access and comprehensive digitized land records.

Having to Learn New E-tricks

The digital divide also exists amongst lawyers. Some Virginia lawyers have avoided dealing with e-signatures, e-notaries and e-recording, citing some rule about old dogs. The dog is

now barking at us. We can all admit to resisting change, if not hating it.

Change came fast. When a corporate client needs a land-use document executed and acknowledged to build a new phase of one of the more important commercial projects in a Virginia locality, and has a corporate policy of e-signatures during COVID-19, the time is now. Easy enough in theory, but real life shows us where lawyers must swim with the tide. Read Virginia's version of the "Uniform Electronic Transactions Act" and specifically Virginia Code section 59.1-485, entitled "legal recognition of electronic records, electronic signatures and electronic contracts." Then read the rest of the Act — it helps with insomnia during these times. This appears promising, a way to get things done electronically.

That optimism is crushed by lenders who report "we do not accept e-signatures as a matter of policy." So too with governmental planning and engineering departments, even those mandating e-filing. They may demand a "wet" signature.

Even with an executed and acknowledged document in hand, what now? The digital divide resurfaces. Some Clerk's offices allow for e-recording — yet not all records qualify to be handled electronically. If e-recording is not an option, we decide again who goes to the Clerk's Office to record. If you have a staff member with special health considerations or a resistance to going to a public courthouse, employment law questions arise (at which you shudder, "I just want to be a real estate lawyer"). Arriving at the record room, the recording clerk finds a box. No access to the prior day's recording. Just leave the documents in the box and the Clerk will record. Examination and negotiation of the "gap indemnity" more than we used to, and title insurers are trying to work through an acceptable risk.

The estate planning and probate processes, facing their own unique challenges, hit home where these documents form part of the chain of title and empower sales by estate representatives. Some Circuit Court Clerk's offices are reportedly mailing back probate records proffered for filing. An executrix may not want to appear to qualify in one of the Commonwealth's busiest probate offices, given health concerns. There are no quick fixes to these problems but it does make one re-examine the benefits of probate avoidance.

Ripples and Ruptures in Real Estate

All of this disrupted productivity from "stay-at-home" orders, workforce furloughs, or other ripples in the economy beget work that piles up on the real estate lawyer's desk. An event facility faces a season of cancelled weddings — are refunds due? National commercial tenants sent out letters (not formal notices) stating they will not be paying rent for a specified period of time. Mortgages, residential or commercial, somewhere behind all this may not be timely paid.

Real estate lawyers are going to be busy. Who else will read that business interruption insurance policy and requirement

for "physical loss or damage" or the boilerplate exclusions for viral or airborne illness? Who else even thought about ways to draft force majeure clauses (and admit it, not many of you thought about these circumstances). **What class in law school prepared you for the medical practice tenant that wants to set up a COVID-testing facility in a parking lot of the landlord's mixed-use center?**

These problems surface at a time when many remedies are temporarily barred by federal responses under the CARES Act² (providing for stays of certain federally-financed residential foreclosures and evictions, forbearance for residential and multi-family loans). Or Virginia's response in House Bill 340 adopted in April. HB 340 became effective immediately as part of Title 44 of the Code of Virginia. Title 44? That covers "Military and Emergency Laws" — not a volume of the Code often touched. Piling on further, most remedies are stayed by the Supreme Court of Virginia's "judicial emergency" orders.³

Blessed are the Problem-Solvers

While we may not be in court, the real estate lawyers are on the front lines of this. Many had to become the "PPP Loan guy." My firm calculates processing loans with some 4,000 jobs associated with them — and I hope many of you greatly surpass those numbers.

In between the PPP loans, you might have had a client buy an office building — or try. At the end of March, we had the gut-wrenching phone call with a particular bank, telling the client-- "we won't be closing loans for the next 90 days." The seller under something called a "contract" with a "closing deadline" of mid-April (and an internal intra-seller fight brewing for years) was not pleased. Then the Phase 1 environmental report came back with "hits" mandating further investigation. Was DEQ even open? Can I still hoard Excedrin along with the toilet paper? That sale closed before the end of April, thanks to a lot of blood, sweat and good counsel representing seller, lender and buyer.

The work will continue. There will be bona fide rent forbearance to consider for affected Virginia families and businesses. When the landlord wants to work with the pizza tenant, who set records for takeout during the pandemic but still may want three months of rent deferred into next year, you have the job of reminding the landlord we have to get the lender to sign off, in order to avoid triggering the "bad acts" guaranty provisions. Then there will be the "asks." Such as when the commercial tenant asks for a 6-month rent abatement. The landlord's lawyer points out the lease requires financials — only to see that the tenant principal is paying himself \$100,000 a month (and then you wonder about your vocational choice).

There will also be the brazen — national tenants who have millions or even a billion in cash — making blanket pronouncements they will not pay rent. If the lease permits such remedies, what will the finance accountant at headquarters do if

Real Estate *continued on page 29*

Behaving Judiciously: The Importance of Judicial Demeanor

by the Honorable Steven C. Frucci



Outside the courtroom, the Hon. Steven C. Frucci has been known to look before he leaps, and then leap anyway.

I VIVIDLY RECALL IN 2009 standing before the Courts of Justice Committee in Richmond and nervously awaiting the lawmakers' questions about my desire and fitness for a position in the judiciary. Sure, they had my resume and judicial questionnaire, the high marks from my evaluation by two local committees, and the kind words from my local delegation, but there's never, EVER, a lock on this job and you could be made or broken in that committee if you said the wrong thing. I had prepared for a variety of questions, but two in particular seemed to be at the top of any list, to-wit: 1) Why do you want to be a judge? and, 2) What qualities do you possess that would warrant your selection by the General Assembly? With some careful introspection, both are not terribly difficult questions. The latter, however, has always been near and dear to my heart because repetition of that question, and my answer, have always driven me to improve as a judge.

So, what is the answer to the second question? The real question found within that query is: "What makes anyone a good judge?" The answer to that question, in my opinion, has not changed since the first time I stepped foot in a courtroom at the beginning of my litigation career. Right off the bat, two qualities are absolute pre-requisites for a sitting judge. First, intelligent knowledge of the law (rather than rote knowledge) and, second, litigation experience. But, there is a third. I spent 18 years in various courtrooms around Virginia and North Carolina in both criminal and

civil cases before I took the bench. As a litigator, especially in the area of criminal defense, I developed thick skin for a variety of reasons, including the fact that losing is commonplace for a criminal defense attorney.

Despite the thick skin, losing never feels good. However, the opportunity to be treated with respect and have a fair “day in court” for my client often buttressed the sting of a loss and, for the most part (in 99% of the cases), my client and I received that fair day in court. That being said, on occasion I ran into judicial intemperance in both civil and criminal cases. On a very rare occasion, an ill-tempered judge could prevent my client and me from attaining that fair day in court, even when the outcome was judicially reasonable. I learned early on that “winning” sometimes simply meant being heard and treated fairly, regardless of the outcome. So, in my humble opinion, a third prerequisite for sitting in judgment of our fellow man is a professional and attentive demeanor, and, all things being equal, it is the most important of the three. Let me explain why.

Virginia Beach Circuit Court has a docent program and so I am often confronted with 20 to 30 inquisitive high school students just waiting for a chance to ask me a question. When we get past the first couple of questions about the “worst” or “funniest” cases I have seen in my courtroom, I often get the “qualification” question. I give them my answer of the three qualities with an emphasis on demeanor and I try, as best I can, to relay that when I was in private practice my experience was that in our Commonwealth the overwhelming majority of judges were fair and possessed impeccable judicial demeanor. I tell them that I believe this is still the case, even more so today. But, as in any other profession, there exists outliers, and that when I practiced law, I would sometimes encounter a judge who was impatient and rude and that those very rare experiences affected me greatly. Was the outcome within reasonable boundaries of the law and facts in that particular case? Sure, most of the time. Then who cares? In my opinion, we all should.

I started as a judge in General District Court. GDC is the equivalent to a welcome center for the Virginia Judicial System; it is the gateway to our court system for most citizens. Most people who have contact with our court system will do so in GDC, whether it is a parking ticket, small claims, landlord/tenant dispute, a speeding infraction, or the like. The same can be said for Circuit Court and Juvenile and Domestic Relations District Court to a lesser extent, but often with higher stakes. **One judge, in one courtroom, who happens to have a bad day and exhibits poor demeanor can affect the perception of a great number of citizens who happen to be in court that day, and many others they touch outside the courtroom.** These citizens are sometimes witnesses and litigants who might not ever step foot in a courtroom again, but they leave the courthouse thinking that this particular judicial behavior is “just the way it is” in Virginia courts. Reinforcing stereotypes found in mainstream media, social media and cinema, they probably pass along their experience to countless other friends and relatives like that old shampoo commercial where you tell two friends, who tell two friends and so on. So, it matters quite a bit how a judge treats people in court, regardless of the outcome.

Perhaps it is human nature that the moments I remember most vividly of my litigation career were the very rare times my client and I were treated badly by a judge. Not the wins or successes that reinforced why I became an attorney; it was the judicial bad behavior that I remembered the most. Similarly, I would often explain to my client that this was a very rare exception to our judiciary and not the norm, but it usually fell on deaf ears. And can you blame them? They often came to court, especially in civil cases, knowing the odds were at best 50/50 for a win. Yet when a loss was coupled by judicial intemperance, an inevitable perception of injustice occurred. I resolved to never put anyone in that position if I took the bench and it has guided my behavior ever since. **So, I reinforce to those students that the way you treat people, especially those whom you have some power over, has long lasting effects that are potentially good and bad. Demeanor and temperance matter.**

Temperance is not a new concept. The ancient Greeks included temperance in their meaning for *sophrosyne*, which was their concept of excellence of character and was defined as “moderation in action, thought or feeling; restraint.”¹ Temperance was one of Plato’s four core virtues, and was heralded by Aristotle. For many centuries, most religions have spoken of and advocated for proper temperance in one form or another. Most recently, noted psychologists have studied temperance and its role in the betterment of the human mind and society as a whole, especially, in the “positive psychology” movement. The American Psychological Association defines temperance as “any form of auspicious self-restraint, manifested as self-regulation in monitoring and managing one’s emotions, motivation, and behavior and as self-control in the attainment of adaptive goals.”²

There have been many courtroom observational studies, worldwide, that often include judicial demeanor and the perception of fairness by the public.³ In Australia, an extensive national observational study (National Court Observational Study) of their lower criminal courts was undertaken between August 2004 and July 2005.⁴ The study examined various types of demeanor displayed towards “major participants,” namely, the prosecution, defense counsel, and the defendant.⁵ The study took snapshots of many types of procedural matters, both trial and pretrial, and followed one docket at a time for an entire day. In the end, 2,323 interactions were observed. Five types of demeanors were observed in the study and their origins and impacts discussed. In the end, one clear conclusion from the study was that judicial demeanor and temperament can “embody or undermine the core value of impartiality” within a judicial system and ultimately “enhance or detract from the legitimacy of courts as institutions and the exercise of judicial authority.”⁶

A 2005 case study in New York City collected observations about the judiciary, including perceived fairness, from 400 criminal defendants within the Red Hook Community Justice Center (“Red Hook”) as well as in traditional courts. Red Hook was established as a non-traditional court in an effort to combat perceived unfairness within the local traditional court system. The goal of the study was to compare different perceptions

by similarly situated defendants within the traditional courts and Red Hook and then to try to identify the predictors of the different perceptions.⁷ The Red Hook study concluded, like its Australian counterpart, that demeanor matters. Of note in the Red Hook study is that the defendant in both the community-based court system (which seems to emphasize the importance of impartiality in all aspects by all courthouse participants) and in the traditional court saw the perception of fairness effected in large degrees by the way they were treated by the judge. In the traditional court, the study found that “judges who make an effort to connect with defendants (e.g. making eye contact, providing clear explanations of court proceedings and their decisions and appearing respectful and impartial) can help to enhance their sense that the court is fair” and “defendants who were more satisfied with the judge were more satisfied with the court’s overall fairness.”⁸ More importantly, perceived treatment of defendants by the judge, in both courts, was the “most important predictor” of perceived fairness because “defendants who perceived that that judge treated them with respect, helpfulness, and objectivity were more likely to say the experience was fair overall.”⁹ No surprise there.

In Virginia, I believe judicial demeanor has always been a priority. There has been a recent trend, appropriately, to emphasize demeanor even more, and one need look no further than the Judicial Performance Evaluations (JPE) for proof of this. **Established by statute in 2014, the JPEs serve to provide direct feedback to judges for self-improvement and to lawmakers for consideration for reappointment.**¹⁰ Opinions will vary, but there is no denial that a substantial number of questions on the evaluations relate directly to demeanor and an objective look at the responses can be an effective tool of improvement for a new or even seasoned judge. Clearly, the JPEs demonstrate that demeanor is a key part of the equation for re-appointment. Anecdotally, I can point to very encouraging conversations with lawmakers about demeanor dating back to the 90s when I was still an attorney; so the current desire to have some sort of feedback by litigants regarding demeanor is no surprise.

Our own Judicial Canons contain sections relating directly to demeanor. Canon 3(B)(4) is a prime example. It states:

A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge’s direction and control.¹¹

Canon 3(B)(7) certainly touches on this subject as well in its directive to a judge to afford all litigants the “right to be heard according to the law.” It seems Virginia made demeanor a priority long before I came along, thankfully.

Now, just because I referenced rare encounters of bad judicial demeanor back when I was a trial attorney doesn’t mean I have all the answers nor that I sanctimoniously tout myself the “alpha demeanor” judge. I certainly try, but at the end of the day we are all human; good demeanor is often a work

in progress. The truth is most judges, myself included, try to restrain reflexive or reactive behavior from time to time when confronted with the occasional bad actor. “Restraint,” a common term found in any definition of temperance and demeanor as well as the observational studies cited above, is a great word to use when discussing the day-to-day struggle to maintain a reasonable demeanor. Impatience, irritation, and even anger are all things judges suffer from occasionally while on the bench. Restraint of temptation to act as a result of these things is not easy, but essential, in maintaining proper demeanor, especially when bad actors potentially disrupt court proceedings. Here, good demeanor can take you only so far. There is a limit.

So, what about contempt as it relates to judicial demeanor? Having a bad day or generally bad demeanor is one thing (and again rare in my opinion) but confronting disrespectful behavior in the courtroom can also test the demeanor of otherwise good-tempered jurists. As a young trial attorney, I would often hear my colleagues talk about certain judges who never “suffered fools gladly” and thought, at least at the time, that it made sense. In many circumstances it does. However, as I sit now in judgement, I often find myself suffering fools a bit. Reasonable people often act foolish in the course of litigation are often captured by emotion and do so out of character. In those circumstances, patience, understanding, and empathy are often the proper way to “suffer” such behavior. Certainly, ensuring the proper administration of justice requires summary action, such as contempt, from time to time when the circumstances merit such action. But the action should be a result of an affront to the judiciary’s integrity, not the subjective integrity of the judge personally.

I believe this relates directly to demeanor and temperance. Contempt in Virginia is reserved for behavior that “is calculated to embarrass, hinder, or obstruct the court in the administration of justice.”¹² A judge must divorce whatever emotions may be triggered by bad courtroom behavior and only seek redress for such behavior through the eyes of a blind-folded lady justice, not the judge’s personal ego. This is easier said than done and takes practice. Again, restraint is key. If the behavior only bruises the ego and fails to hinder or obstruct the administration of justice, contempt may not be an option. When you take the bench as a new judge, it is only a matter of time before someone acts up in open court and I often give new judges the advice to “not take it personally” when it happens and to evaluate the situation objectively. If the behavior could possibly erode the integrity of the judiciary as set forth in the caselaw, take the appropriate action, but never let pride or a bruised ego override or influence this evaluation. Again, easier said than done; we are only human.

On a side note, sometimes bad demeanor on the part of a judge or even an attorney is the result of forces outside their control such as personal tragedy, depression, addiction or the tremendous amount of stress associated with the job (and isolation for judges). In those cases, there are always avenues for help such as the Virginia Judges and Lawyers Assistance Program. ☺



The Hon. Steven C. Frucci has been a Circuit Court Judge for the City of Virginia Beach since August 2013. He was elevated to the Circuit Court after serving four and a half years as a judge in the Virginia Beach General District Court. Prior to assuming the bench, Judge Frucci practiced law in Virginia for 18 years in both civil and criminal litigation. In the years Judge Frucci practiced as an attorney he served as a CLASS (Concerned Lawyers Advocating Spousal Safety); certified Guardian Ad Litem for children; served as Chair for the Virginia Beach Bar General District Court Liaison Committee; a member of the Virginia Beach Bar Circuit Court Liaison Committee; a member of the Virginia State Bar Fee Dispute Resolution Committee; and was a certified Fee Dispute Arbitrator. In 2012, he was elected to the Board of Governors to the VSB Section on Criminal Law and appointed by the Virginia Supreme Court to the Advisory Committee for the Judicial Mentoring Program as well as a Judicial Mentor. Judge Frucci served as a Facilitator Judge for Mentoring Training from 2012 to 2016. In 2015, Judge Frucci headed the committee for implementation of the current Drug Court Program in Virginia Beach. He currently serves as a member of the Virginia Criminal Sentencing Commission as well as a member of the Virginia Criminal Justice Conference. He received his BA degree from University of North Carolina, Chapel Hill in 1988, and his Juris Doctorate from the University of North Carolina, Chapel Hill in 1991. He is an active member of both the VSB and the State Bar of Hawaii.

Endnotes

- 1 [https://en.wikipedia.org/wiki/Temperance_\(virtue\)#Greek_civilization](https://en.wikipedia.org/wiki/Temperance_(virtue)#Greek_civilization)
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Lawyers Helping Lawyers is now Virginia Judges and Lawyers Assistance Program

Real Estate *continued from page 25*

the national store is chained up and possession retaken without lease termination?

Real Estate Opportunities to meet Challenges

COVID-19 will create work for the real estate lawyers. The ability to use e-meeting technology, make e-payments and remotely connect to an office pushes the need for even more data storage in high-value buildings near "internet pipe." Localized and last-mile logistics are the rage among supply chains — many are looking to repurpose failed retail real estate. On the fiscal side, we will be working through the back side of those PPP loans — they were forgivable — right?

We will muddle on through all this and be better tomorrow than today. After all, Mr. Twain helps us close out: "The secret of getting ahead is getting started." 🍀

Endnotes

- 1 A free version is available from the Project Gutenberg at <https://www.gutenberg.org/files/376/376-h/376-h.htm>
- 2 The Coronavirus Aid, Relief, and Economic Security (CARES) Act became effective March 27, 2020.



Benjamin D. Leigh is a partner in the Leesburg firm Atwill, Troxell & Leigh, P.C. and was a former Law Clerk to Chief Justice Harry L. Carrico. Leigh is the 2020 recipient of the Real Property Section's Traver Scholar Award that honors lawyers who embody the highest ideals and expertise in the practice of real estate law.

- 3 Defoe's London lawyers must have been subject to similar orders: "[t]he Inns of Court were all shut up; nor were very many of the lawyers in the Temple, or Lincoln's Inn, or Gray's Inn, to be seen there."

Taking the Law into Your Own Hands: Private Criminal Complaints in Virginia

by Henry H. Perritt, Jr.



Bill Oxford, Unsplash

VIRGINIA IS ONE OF about a dozen states that permit an ordinary citizen to put the criminal justice system in motion by filing a private criminal complaint. Section 19.2-71 of the Virginia Code authorizes the issuance of an arrest warrant by any judicial officer, including a judge or clerk of a court or a magistrate, on a complaint. (To facilitate discussion, this article uses the term “magistrate” to include all of these types of judicial officer.) The text of the statute makes it clear that the complaint may be filed, not only by a law enforcement officer or prosecutor, but by anyone. If the magistrate finds probable cause to believe that a crime has been committed by the accused, after examining the complainant and possibly other witnesses, he must issue an arrest warrant.¹

A private citizen needs no prior authorization before going to a magistrate for misdemeanor warrants. For felony complaints, no warrant may issue without prior approval by either the Commonwealth’s attorney or by a law-enforcement agency. Commonwealth’s attorney approval is necessary for arrests for capital murder. Some Commonwealth’s attorneys apparently pre-authorize warrants for classes of felony cases. Law enforcement agen-

cies also may grant pre-approvals.² The practice is unevenly used across Virginia. In fact, some experienced Commonwealth’s attorneys may have never heard of it.

A private criminal complaint must be presented to the magistrate in writing;³ a complaint by law-enforcement officer must be sworn, but it may be oral.⁴ Section 19.2-53 gives the magistrate the option of issuing a summons instead of a warrant for certain misdemeanors.

Once the magistrate finds probable cause, the form of the warrant or summons is no different than if it had issued based on the complaint of a law enforcement officer. Nor does execution differ based on how the case was commenced. A warrant is directed to a law enforcement officer with jurisdiction; the summons is directed to the respondent. The warrant is executed by taking the accused into custody; a summons is executed by delivering it to the respondent.⁵

The police are obligated to execute warrants (or to give notice and allow the accused voluntarily to appear)⁶ but they are not obligated to allocate resources to investigate a particular case. Commonwealth’s attorneys have a statutory duty to prosecute felonies, and discretion whether to prosecute misdemean-

ors.⁷ The Commonwealth's attorney may decline to prosecute even felonies, however, by entering a *nolle prosequi* appearance. In practice, a Commonwealth's attorney's office sometimes asks for additional investigation into a case where a misdemeanor warrant was obtained from a magistrate on a private citizen complaint. The prosecutor may need more follow-up from a witness(s), evidence sent to the lab, or a follow-up with the complaining party to get more details about the incident. This is infrequent, except for classes of misdemeanors that Commonwealth's attorneys prosecute, especially DUI and domestic violence cases.⁸

Virginia had just under 400 magistrates, as of March 2019,⁹ with at least one magistrate office in each of 32 judicial districts. In 2018, Virginia magistrates issued 110,393 felony arrest warrants, and 184,476 misdemeanor arrest warrants.¹⁰ In each judicial district, a magistrate is on call 24 hours per day, 7 days per week.

The office of Magistrate replaced the office of Justice of the Peace, on January 1, 1974. The Virginia General Assembly extensively restructured the magistrate system in 2008, to centralize appointment, training, and supervision under the Executive Secretary of the Supreme Court. Formerly, magistrates had reported to the chief judges of the circuit courts for the judicial circuits where they sat.¹¹ Until 2009, no consultation with Commonwealth's attorneys or law enforcement was required, even for felony warrants. Until 2011, the statute merely required consultation, with Commonwealth's attorney or law enforcement, not approval.

Private criminal complaints presented to magistrates make Virginia's criminal justice system more accessible to victims of crimes. The possibility offers protection when the police and public prosecutorial apparatus is indifferent or lacking in sufficient resources. Despite the claims of some critics to the contrary, private criminal complaints are at the core of due process. When the 14th Amendment's Due Process Clause was adopted, and for centuries before, in the evolution of the Anglo-American legal system, private criminal complaints were the norm, organized law enforcement and public prosecutors were hardly known. When someone was thought to have committed a crime, any person who knew or heard about it would go to a magistrate – usually a justice of the peace--and swear out (in other words, give sworn testimony supporting the issuance of) a warrant.¹² The magistrate would give the warrant to the sheriff, and if the sheriff did not think he was big enough and tough enough to effect the arrest of the accused, he would command an adequate number of citizens to form a posse comitatus to help him make the arrest.¹³ The involvement of public officers was quite limited; privatization was the norm.

In an increasingly bureaucratized world, in which all organs of government seem more and more remote from ordinary citizens, allowing private criminal complaints gives the ordinary person direct access to the criminal justice system. This may be an important justice safety net for those who are unable to get redress otherwise. When law enforcement refuses

to investigate or Commonwealth's attorneys refuse to prosecute a legitimate criminal case because of bias, prejudice, or other abuse of discretion, the existence of a privately obtained warrant might bring a matter to the public's attention. But it's not 1868, and times have changed. Critics argue that police and prosecutorial discretion are important protectors of accused's rights, and the private criminal complaint system is easily abused for malicious purposes. It makes it too easy, critics say, for an angry spouse or a cranky neighbor to get an opponent put in jail when, at most, their dispute should be adjusted in the civil courts. Using the private criminal complaint system against police officers thrusts the criminal justice system into an arena better suited for civil actions for false arrest and has a chilling effect on police performance. Use of the procedure in the context of personal vendettas often results in cross complaints, where each party swears out a warrant against the other, creating a tangle for prosecutors and judges to unravel.

Roanoke defense attorney Seth Weston thinks private complaints without police or prosecutor involvement burden the judicial system with lots of poor-quality cases. He thinks it would be better if the statute required police involvement before arrest warrants issue. Virginia Beach Commonwealth's attorney Colin Stolle agrees, although he is not certain of the magnitude of the problem. Although the statute authorizes magistrates to call witnesses, reality limits magistrate investigation. Police agencies, on the other hand are more likely to be on the scene, where they easily can investigate.

Not much momentum exists for changing the system, however. Should a problem with the police exist, an ethical Commonwealth's attorney can refer a legitimate case to an outside agency for investigation. The Internet and social media make it much easier for disgruntled victims of crime to bring prosecutorial inaction to public attention.

Although the statute does not require complainants to consult the Commonwealth's attorney before presenting misdemeanor complaints to magistrates, it does not preclude the magistrate from consulting informally with the Commonwealth's attorney before acting on the complaint. Magistrates sometimes do so, and this enables them to handle private complaints so that they do not interfere with ongoing criminal investigations, as they would if warrants were issued prematurely alerting the defendant of an ongoing investigation.

Senator Bill DeSteph introduced legislation in the 2020 Regular Session to amend sections 19.2-71 and 19.2-72 to require Commonwealth Attorney approval when the accused in a private criminal complaint is a law enforcement officer who allegedly committed an offense in the performance of his official duties.¹⁴ The bill died in committee on a straight party-line vote, with all the Republicans voting for it and all the Democrats voting against it. In a telephone interview with the author, Sen. DeSteph recounted instances in which suspects resisting arrest went to several magistrates, seven, in one case,

Criminal Complaints *continued on page 54*

Thank you,

to the lawyers across the Commonwealth who joined the Virginia Lawyer Referral Service and supported its mission of assisting the public in finding an attorney.



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A Thank You Note to All Virginia Lawyers

by Margaret Hannapel Ogden

Dear Members of the Virginia State Bar,

My deepest thanks for the bar dues assessment you gave to the Attorney Wellness Fund for the first time last year. My dear mother would be mortified to learn that I hadn't written to you earlier. A staunch believer in never using a gift before penning a proper "thank you" card, she would admonish my impatience and remind me of the importance of gratitude often when I was a child. I viewed this as motherly nagging at the time, but have come to see how crucial patience and thankfulness can be for well-being, particularly for those of us in the legal profession.¹ It is in that spirit that I write to you today (better late than never) because, as the Coordinator for the Virginia Lawyers' Wellness Initiative (VLWI), I have been using your gift for almost a year now.²

So, how have I been spending your contribution? If you have kept up with the hot news in occupational wellness, you already know that Chief Justice Lemons and the 25 brilliant legal minds he appointed to serve on the Committee on Lawyer Well-Being created a ground-breaking roadmap for our Commonwealth in 2018. The report they produced started the VLWI with 38 recommendations designed to improve mental health and address substance abuse in our profession.³ **Of those recommendations, 15 were intended to be on-going, such as "communicate that well-being is a priority,"⁴ "reduce the stigma of mental health and substance use disorders,"⁵ and "discourage alcohol-centered social events."⁶** Within the first year of the VLWI, all of these on-going recommendations are underway.

The remaining 23 recommendations in the report are immediate, one-and-done changes, like "provide adequate funding to Lawyers Helping Lawyers

[now the Virginia Judges and Lawyers Assistance Program] for implementation of its statewide strategic plan,"⁷ "re-evaluate bar application inquiries about mental health history,"⁸ and (my favorite) "create a position and program within the Office of the Executive Secretary of the Supreme Court to coordinate comprehensive well-being initiatives."⁹ Sixteen of these recommendations have been completed already, and the VLWI is excited to tackle the final seven recommendations in the upcoming year. Virginia is leading the nation by publishing our state-specific report on lawyer well-being and by taking it further to implement its recommendations through a staffed and funded Supreme Court initiative.¹⁰

Of course, any good "thank you" note should include more than a recitation of the numeric value of the gift. "Make it personal!" my mother's voice gently urges — a layperson's way of saying that gratitude can strengthen our connections and, in turn, our social wellness.¹¹ Selfishly, I am grateful for my job, but for more than the obvious reason of being employed. When I read the national studies that show the staggering prevalence of depression, anxiety, addictions of all kinds, burnout, and suicide in our profession (two to four times that of the general population depending on the metric),¹² I recognized myself in nearly all of these dire statistics.

Similar to 23% of law students in a 2016 survey,¹³ I started law school at Washington & Lee in 2008 with "mild to moderate" anxiety. While in law school, I coped with the increasing stress the same way 43% of surveyed students did: binge drinking.¹⁴ This culturally acceptable but ultimately unhealthy strategy did little to assuage my worrying brain, and, like 14% of survey respondents, my anxiety increased to "severe."¹⁵ As clinical experts will tell you, anxiety and

depression go hand in hand, and by the end of my 1L year, I had joined 6% of students who reported serious suicidal thoughts.¹⁶ I was fortunate enough to have a strong family support system that encouraged me to seek the professional help I needed — and that W&L provides therapy to its students on campus at no-cost — the combination of which set me on a path of increasing awareness of the complexity of mental health issues and improving my coping mechanisms as I prepared to enter our demanding profession.

Since becoming a member of the VSB in 2011, I've seen how our unique occupational risks play out in different areas of the law: first as an Assistant Commonwealth's Attorney for the City of Roanoke, then as a private defense attorney for a small firm in the New River Valley. I learned these issues were not unique to Virginia when I moved to Pittsburgh, PA to serve as the Staff Attorney for the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness.¹⁷ All the while, my understanding of my own mental health continued to develop; I began to experience what experts refer to post-traumatic growth, defined as "positive psychological change experienced as a result of adversity and other challenges in order to rise to a higher level of functioning."¹⁸

To see my darkest moments reflected in these statistics was at first reassuring ("I'm not alone! I'm not the only crazy one!" screamed my monkey-brain, always wanting to fit in) and then devastating ("What is wrong with our profession on a structural level and how on earth could we ever start to fix it?" prodded my policy wonk training). To finally see how Virginia attorneys, judges, law schools, and legal profes-

Thank you *continued on page 36*

A Lawyer's Story of Recovery: First Step to Full Circle

by Asha Pandya

Feeling supported and connected enabled me to rebuild my social, emotional, and occupational wellness; establish a strong foundation for living a healthy life; and resume employment in a position from which I previously resigned due to struggles with substance use and mental health. The Virginia Judges and Lawyers Assistance Program (VJLAP, formerly Lawyers Helping Lawyers) was integral to my regeneration and recovery.

The first few days of February 2012 were among the worst of my life. After being arrested for a second alcohol-related offense while employed as a Senior Assistant Commonwealth's Attorney (ACA), I resigned from the position which had become the most important thing in my life during the previous 12 years. Within days, I received a call from Norfolk Circuit Court Judge Charles Poston who expressed his concerns and support. His kind and quick response was lifesaving. While I was unsure where my life was headed, it was apparent I required professional assistance. Judge Poston's suggestion was to call VJLAP (formerly LHL) and talk with Jim Leffler.

Again, I found support there. I arrived in the VJLAP office, filling out paperwork and completing assessments that made no sense to me at the time. I had not had a drink in four days and had no intention of ever drinking again. A promise I had made so many times before to myself. While skeptical, I was assured that I could recover from my current situation. Jim explained that my assessment results, history of alcohol use, and mental health background indicated that inpatient treatment was recommended. A step which I was unwilling to take as I had not exhibited any signs of withdrawal. Like most, I was in denial but emotionally lost. Again, I found support and received encourage-

ment from VJLAP as Jim navigated me towards treatment. The one truth I did embrace was that I was determined to remain sober and willing to do (almost) anything to accomplish that. Thus, with Jim's guidance, I agreed to attend 90 12-step AA/NA meetings in the next 90 days, was referred for intensive outpatient treatment (IOP), and began voluntary monitoring by VJLAP.

Participating in a treatment program created for other professionals such as doctors, nurses, dentists, and other lawyers was integral to my recovery. Treatment included groups twice a week; individual therapy once a week; psychoeducational programs about addiction and recovery; medication management and attendance at 12-step recovery groups. Recovery was my full-time job. Learning skills for living a life without alcohol and focusing on positive mental health enabled me to build a strong foundation for my recovery. Consistent aftercare over the next three years, included attendance of VJLAP support groups where I continued to meet with other legal professionals struggling with sobriety and mental health disorders. I was to learn later that Judge Poston periodically checked in with VJLAP on my progress, as I had voluntarily authorized by a signed release.

In April 2012, I opened a solo practice as a defense attorney and continued working my recovery program. Again, I received support, this time professionally from colleagues, judges, and courts. As I developed a practice consisting of court appointed criminal defense cases, I was repeatedly shown that others believed I was legally competent. This professional validation along with positive comments concerning my continued legal effectiveness meant much to my recovery path. I can never fully thank those who took a chance on me professionally, but know that your actions and words have

assisted in my success in a meaningful way over the years as I celebrate eight years of sobriety. I joined the VJLAP Board of Directors after a year of sobriety and have remained a board member ever since. VJLAP had enabled me to assist numerous other attorneys in their attempts to get sober, to mentor other attorneys in recovery, and to share my story at various CLEs. The response from other legal professionals has been surprisingly supportive and I continue to receive much needed acceptance.

While I believe it was necessary for my recovery path to include all the trials and tribulations that led me to that weary state in February 2012, there was much pain before I was willing to look honestly at myself and become motivated to make the changes necessary.

Surprisingly last fall, I returned to the Norfolk Commonwealth's Attorney's Office as a Senior Assistant Commonwealth's Attorney — the very position I resigned from some eight years ago on that fateful night when I was a different person mentally, emotionally, physically, and professionally. It is not lost on me today that I am assigned to the same position and same prosecution team and that I work with the same staff (secretaries and paralegals), some of whom requested to work with me again. I know I am called to do this work; however, after my resignation I never thought a chance to do so would present itself. I am so thankful that the Norfolk Commonwealth's Attorney's Office embraced a universal truth — that when a person recovers from addiction and embraces the help needed to address mental health issues and substance abuse that the person is a skillful, well-rounded employee who is a worthwhile team member and public servant.

Recovery *continued on page 36*

Recovery *continued from page 35*

With the assistance and support of many, both inside and outside the legal community, I have maintained recovery. I know continued work is necessary to grow and thrive, just as I must share my story so that others see that it is possible for addicts to turn their lives around. And that help and support is a phone call away 24/7, 365 days a year.

I will always be an alcoholic in recovery. I am healthy mentally, with medication management that will last

a lifetime. I will always be available to assist others seeking assistance with mental health and substance abuse. During my journey, I have learned that being connected with and helping others allows me to live a life of which I am proud. Talking to people I trust, going to meetings, and utilizing recovery tools allow me to have the life I have today. Talking about it is step two, and seeking treatment is the 3rd step, followed by so many other steps along the way. All that

is necessary to take that first step is to reach out.

My name is Asha Pandya.

Asha Pandya is a Senior Assistant Commonwealth's Attorney for the City of Norfolk. Before returning to the office she maintained a solo practice, was a partner in RPPG, and was employed as an Assistant Public Defender for the City of Virginia Beach. She has provided training on various legal topics on recovery.

Thank you *continued from page 34*

sionals came together to address these findings gives me faith that we can grow together. Connection, gratitude, and support saved my life over a decade ago. Just think of all the lives we will change for the better as we take the first steps to embed these positive coping mechanisms into the profession at large. I am grateful, humbled, honored, and optimistic to be walking this path with you all.

Thank you for your gift to both our profession as a whole and each of us individually who comprise it. I can't wait to see you all in person to fully convey my appreciation, and until then, stay well! 🙏



Margaret Hannapel Ogden is the wellness coordinator in the Office of the Executive Secretary of the Supreme Court of Virginia. She is dedicated to improving mental health and addressing substance abuse in the legal profession through education, regulation, and outreach. Ogden began her legal career in the Roanoke City Commonwealth Attorney's Office before entering private practice. A native of Washington, D.C., she graduated Phi Beta Kappa from the University of Maryland and earned her J.D. from Washington & Lee School of Law.

Endnotes

- 1 Practicing gratitude has been scientifically shown to improve our physical and emotional wellness, and to play a major role in how we overcome trauma. See Morin, Amy, "Seven Scientifically Proven Benefits of Gratitude," *Psychology Today*, April 3, 2015, available online at <https://www.psychologytoday.com/us/blog/what-mentally-strong-people-dont-do/201504/7-scientifically-proven-benefits-gratitude>
- 2 The precision-minded among you may take issue with my usage of the term "gift," when this assessment was a mandatory fee approved by the General Assembly at the behest of the Supreme Court of Virginia. See Virginia State Budget Bill of 2019, H.B. 1700, Chapter 854, Item 38, P.1 - 3. See also Virginia State Bar Professional Guidelines 23. Attorney Wellness Fund, available online at https://www.vsb.org/pro-guidelines/index.php/bar-govt/attorney_wellness_fund/
- 3 See *A Profession at Risk*, Report of the Committee on Lawyer Well-Being of the Supreme Court of Virginia, September 2018, available online at http://www.courts.state.va.us/programs/concluded/clw/2018_0921_final_report.pdf
- 4 *Id.* at 9.
- 5 *Id.* at 10.
- 6 *Id.* at 21.
- 7 *Id.* at 5. This recommendation has been completed thanks to your bar dues assessment.
- 8 *Id.* at 12. The VBBE has completed this recommendation.
- 9 *Id.* at 4. This recommendation was completed when I was hired in October 2019, so my bias in favor of these recommendations should be apparent.
- 10 At least 32 other states have created committees in response to the National Taskforce on Lawyer Well-Being. See The National Task Force on Lawyer Well-Being, available online at <https://lawyerwellbeing.net/> Virginia was one of the first three states to publish its Report, and the first to create and fund a full-time position in its court system dedicated to wellness in the profession. Utah, another early publisher of a wellness report, created a Standing Well-Being Committee for the Legal Profession within their State Bar, staffed by a part-time Executive Director Martha Knudson. See The Utah Task Force on Lawyer and Judge Well-Being, *Creating a Well-Being Movement in the Utah Legal Community*, February 2019, available online at <https://www.utahbar.org/wp-content/uploads/2019/07/Task-Force-Report-2.pdf>. The Massachusetts Supreme Judicial Court established a Standing Committee on Lawyer Well-Being, and hired Heidi Alexander as its full-time Director in February 2020. See Supreme Judicial Court Steering Committee on Lawyer Well-Being, *Report to the Justices*, July 2019, available online at <https://www.lawyerwellbeingma.com/history-and-report>. Martha, Heidi, and I have a standing monthly conference call to discuss national trends and state-specific hurdles.
- 11 See Bartlett, Monica Y, and David DeSteno. "Gratitude and prosocial behavior: helping when it costs you." *Psychological Science* vol. 17,4 (2006): 319-25.
- 12 *A Profession at Risk*, *supra* note 3, referencing P. R. Krill, R. Johnson, & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016).; and J. M. Organ, D. Jaffe, & K. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns* 66 J. LEGAL EDUC. 116 (2016).
- 13 Organ, Jaffe, & Bender, *supra* note 12.
- 14 *Id.*
- 15 *Id.*
- 16 *Id.*
- 17 Established in 2005 in response to a Pennsylvania Supreme Court report on gender and racial bias, the Pennsylvania Interbranch Commission applies the resources of all three branches of state government to implement the report's numerous recommendations to improve court policy and procedure. See <http://www.pa-interbranchcommission.com/about.php>
- 18 Tedeschi, R., et al. *Post Traumatic Growth: Theory, Research and Applications*. New York, NY: Routledge (2018).

The Lawyers' Lighthouse: The Growth of VJLAP

by Tim Carroll

Thirty-five years ago, a small group of Virginia lawyers concerned about colleagues who were struggling with addiction recognized the need for an organized assistance program from which the seeds for the Virginia Judges and Lawyers Assistance Program (VJLAP, formerly Lawyers Helping Lawyers) were planted. Over the years, the organization has relied largely on the service of a single counselor and a vast network of dedicated volunteers to assist Virginia's entire legal profession with addiction and, when the mission expanded, mental health concerns. With the recent swell of information that has emerged on the risk for and rate of substance use and mental health disorders within the legal profession, VJLAP's need for more support was specifically addressed one year ago.

Thanks to the incredible vision and support of the Supreme Court of Virginia (SCV), and the Virginia State Bar (VSB), the Virginia Bar Association, Virginia Trial Lawyers Association, and, in fact, each of you, VJLAP received additional funding and has now fully executed the Lighthouse Plan¹ we have been talking about for several years.

VJLAP's mission remains, as it was from the beginning, to provide confidential, non-disciplinary, no-cost assistance to judges, lawyers, law students, other legal professionals, and their families in addressing substance use and mental health concerns². We continue to rely on our amazing peer volunteers, and, instead of a single counselor, we now have a team of counselors located in key parts of the Commonwealth. Our Clinical Director, Jim Leffler, is now supported by a Deputy Clinical Director, Barbara Mardigian. Mardigian's principle focus is on northern Virginia. Janet Van Cuyk joined our team as our Tidewater Region Manager, and Angeline Saferight Lloyd

is our Southwest Region Manager. Each of our counselors are connected to each other and our volunteers, and are located closer to each of you. You can learn more about our program and staff by visiting our the VJLAP website.

VJLAP entered 2020 with improved staffing, expanded ideas, and enhanced outreach efforts so that every legal professional throughout the Commonwealth knows we are available. In addition to changing our name, VJLAP adopted a new website and social media presence. We reached out to law firms, government agencies, bar associations, and others to strengthen our partnerships in spreading the word on our purpose and availability. We enhanced our relationships within the law schools by assigning a specific VJLAP counselor to each school while making ourselves available in any way possible. We presented CLEs. We were available at resource tables at trainings and conferences. We updated our website blog (The Beacon) and Facebook page and started VJLAP Twitter, Instagram, and LinkedIn accounts. We strive to serve as a beacon of hope to anyone reaching out by whatever means available.

In the one month between our first fully-staffed month in January and the pandemic restrictions in March, we saw a doubling of our first-time client engagement, the largest single month of new clients in our history. Since the pandemic restrictions, our support groups (women's, 12-step, and wellness via Zoom) participation increased by 60 percent VJLAP has taken advantage of the expanded staff and virtual capabilities and has remained and remains open, with acute awareness of the possible exacerbation of areas of concerns as the world adapts to our tumultuous circumstances. A lot has changed over the last six months and, certainly, COVID-19 has limited our activity; but the care and

attention our team gives each individual seeking our assistance remains the same as it has been for the past 35 years.

We told you if we built it, they would come. Thank you for your trust, faith and support, but more importantly, your care and commitment to your fellow legal professionals. We are here for you!

Endnotes

- 1 In 2017, the VJLAP Board of Directors approved the Lighthouse Strategic Plan to expand the VJLAP organizational structure to include regional coordinators for providing services and organizing volunteers. Adoption of the Lighthouse Plan was a recommendation of the SCV's 2018 report, *A Profession at Risk*. The 2019 assessment added to the VSB dues, in part, funded this expansion.
- 2 LHL's mission was expanded to include mental health issues in 2003.



Tim Carroll is the Executive Director of Virginia Judges and Lawyers Assistance Program. He grew up in Henrico County and left after high school to join the United States Air Force. After 28 years of service and numerous assignments around the world, he retired in Anchorage, Alaska where he became the Chief Executive Officer of a fisheries related business. In 2014, he returned to Virginia and assumed his role at VJLAP in 2015. Carroll has an undergraduate degree in history from the University of Alaska and a Master's degree in business administration from Virginia Commonwealth University.

For resources for legal professionals during COVID-19, please visit: <http://www.vsb.org/docs/PATH-resources.pdf>.

Highlights of the June 9, 2020, Virginia State Bar Executive Committee Meeting

On March 12, 2020, the Governor of Virginia declared a state of emergency due to the COVID-19 pandemic, declaring it unsafe for public bodies to assemble in person. Therefore, the VSB Annual Meeting scheduled for June 17-20, 2020, in Virginia Beach was canceled. Additionally, the VSB Council meeting scheduled for June 18 was canceled.

The VSB Executive Committee convened telephonically on June 9, 2020, and heard the following significant report and took the following action.

Rule 1A:8, Military Spouse Provisional Admission

By a vote of 11–2, the Executive Committee voted to recommend revisions to Supreme Court of Virginia

Rule 1A:8. The proposed amendments request the removal of Section 4, requiring supervision and direction of local counsel for attorneys barred under this rule. An additional amendment updates the CLE requirement in Section 2. (k). The proposed changes will be presented to the Supreme Court of Virginia for approval.

Dues Statements Mailed: What's New This Year?

Virginia lawyers' annual renewal statements for the 2020–21 year were mailed on June 26. More information about the topics below may be found on our website, www.vsb.org.

In response to a request by VSB Executive Director Karen A. Gould, the Supreme Court of Virginia issued an order on April 14, 2020, extending a number of compliance deadlines that affect Virginia lawyers to ease their professional responsibilities during the COVID-19 public health emergency.

The Court's modifications affect deadlines for dues, the Clients' Protection Fund fee, certification of professional liability insurance, and the attorney wellness fund fee. **The extensions move all membership dues/renewal deadlines from July 31, 2020, until September 30, 2020.**

The MCLE deadline has been moved from October 31, 2020 to December 31, 2020. All CLE hours need to be reported no later than 4:45 p.m. EST **February 15, 2021.**

As of our printing deadline, the VSB office is closed to the public. Please consider using the VSB member portal or a trackable express delivery method if sending close to the September 30 deadline. Please be advised if you intend

to mail or deliver renewals/payments to the Virginia State Bar, deliveries are only accepted from the following services: USPS, UPS, Fed Ex, DHL, and Richmond Express. **All renewal requirements must be received by 4:45 p.m. on September 30, 2020.**

Voluntary Pro Bono reporting: All active and associate members are encouraged to report their pro bono contributions this year, which will be recorded anonymously unless an attorney chooses to provide a name and/or Bar ID. Amendments to Paragraph 22 Voluntary Pro Bono Publico Legal Services reporting became effective May 15, 2020.

Emeritus status: If you're considering retirement, the Court made changes to the requirements for Emeritus status in December 2017 which makes it easier to transition to pro-bono-only work.

Please contact the VSB Regulatory Compliance Department at (804) 775-0530 or email Membership@vsb.org if you have questions about your dues statement.

Virginia State Bar
1313 East Main Street, Suite 700
Richmond, Virginia 23219-0526
www.vsb.org
(804) 775-0530

ANNUAL DUES STATEMENT 2020-2021
Deadline for Payment: September 30, 2020
** Individual Attorneys-RENEW ONLINE **
www.vsb.org Click on Member Login

September 30: Deadline for Receipt
November 9: 90-Day Law Firm renewal for each rate of Credit
November 30: Deadline for Administrative Reporting

1. VOLUNTARY SECTION DUES
The membership members are requested to use sections to which they are personal or direct sales. These sections are optional and are not subject to funding by the organization.

Look For	Section	Section	Amount
1	AD	Administrative Law	0
2	AD	Admitted Fee	0
3	AD	Bar ID	0
4	AD	Healthcare Law	0
5	AD	Members Fee	0
6	AD	Construction Law	0
7	AD	Corporate Counsel	0
8	AD	Criminal Law	0
9	AD	Education of Lawyers	0
10	AD	Environmental Law	0
11	AD	Family Law	0
12	AD	General Practice	0
13	AD	Health Law	0
14	AD	Intellectual Property	0
15	AD	International Practice	0
16	AD	Litigation	0
17	AD	Local Government Law	0
18	AD	Medical Law	0
19	AD	Real Property	0
20	AD	Taxation	0
21	AD	Trade & Finance	0

2. CLIENT PROTECTION FUND (CPFF) - (Required of all Active Members)
CPFF (Active) - Voluntary Fund Fee (Required of all Active Members)
To be used to fund Current Litigation, Current, CLE courses, and other activities relating to wellness, behavioral health, and substance abuse.

3. TOTALS

2020-2021 Virginia State Bar Dues
2020-2021 CPFF (Active) - Voluntary Fund Fee (Required of all Active Members)
2020-2021 CPFF (Inactive) - Voluntary Fund Fee (Required of all Inactive Members)
2020-2021 CPFF (Newly Admitted) - Voluntary Fund Fee (Required of all Newly Admitted Members)
2020-2021 CPFF (Emergency) - Voluntary Fund Fee (Required of all Emergency Members)
2020-2021 CPFF (Emergency) - Voluntary Fund Fee (Required of all Emergency Members)
2020-2021 CPFF (Emergency) - Voluntary Fund Fee (Required of all Emergency Members)

4. MAINTAIN YOUR CREDIT RECORD REGARDING PROFESSIONAL LIABILITY INSURANCE - As required by Supreme Court Rule Part 6, Section 17, Paragraphs 19 and 20 - ALL ACTIVE MEMBERS (including attorneys changing to active membership) ANSWER the following questions.

1. Do you have any unreported legal malpractice judgments against you or any professional entity during this year? Yes No

2. Are you engaged in the prior practice of law representing clients from the public? (If you answered "no" to question 1, if you answered "no" to question 2.) Yes No

3. Do you intend to maintain professional liability insurance coverage during this time you remain inactive/probationary? Yes No

4. Are you currently covered by professional liability insurance, other than an extended reporting endorsement? Yes No

If you are currently covered by a professional liability insurance policy, you are required to notify the Virginia State Bar in writing within 30 days of your coverage being a replacement.

5. VOLUNTARY PRO BONO REPORTING: ALL ACTIVE AND ASSOCIATE MEMBERS - use section 22 on this statement to report your pro bono hours.

6. EMERITUS STATUS REPORTING: ALL MEMBERS - use section 23 on this statement to report your emeritus status.

IMPORTANT "NEW" MAILING/DELIVERY INFORMATION AS A RESULT OF COVID-19: As a public health precaution we are closed to the public. Please be advised if you intend to mail or deliver membership payments to the Virginia State Bar, deliveries are only accepted from the following services: USPS, UPS, Fed Ex, DHL, and Richmond Express. Please consider using a trackable express delivery method if sending close to the September 30 deadline. All renewal requirements must be received by 4:45 p.m. on September 30, 2020.

** Individual Attorneys-RENEW ONLINE **
www.vsb.org Click on Member Login

VIRGINIA STATE BAR
BANK OF AMERICA
1313 EAST MAIN STREET, SUITE 700
RICHMOND, VA 23219-0526

Make check payable to Treasurer of Virginia. Check must be drawn on a U.S. bank payable in U.S. dollars. (Do not cash checks.)

To pay by USPS register mail: Use included return envelope.

USPS Priority, UPS, Fed Ex, DHL, and Richmond Express: Send to: Virginia State Bar, 1313 E. MAIN ST. SUITE 700, RICHMOND, VA 23219-0526. * Please include a copy of this statement.

If you have any questions about your dues statement, please contact the VSB Regulatory Compliance Department at (804) 775-0530 or email Membership@vsb.org.

Jay B. Myerson will be VSB President for 2021–22

Jay B. Myerson of Reston is the Virginia State Bar president-elect for 2020–21 and will serve as president for 2021–2022. Myerson, who was unopposed in his bid for the presidency, will succeed current president Brian L. Buniva of Richmond, who was sworn in as VSB president on June 30th, succeeding Marni E. Byrum.

Myerson, who assumes his VSB president-elect position on July 1st, founded The Myerson Law Group, P.C. and supervises a six-attorney domestic, criminal, and civil litigation practice in Fairfax County.

Myerson was twice elected to Bar Council, representing the 19th Circuit from 2014 to 2019. He has been a member of the VSB's Executive Committee since 2018. Myerson has been a member of the VSB's Standing Committee on Budget and Finance for seven years, and recently completed his second three-year appointment on the VSB's Standing Committee on Legal Ethics. Myerson

has also served as a member of the Harry L. Carrico Professionalism Course faculty, the VSB's Study Group on Online Elections, and the 19th Judicial Circuit Committee on Resolution of Fee Disputes.

Myerson is a past president of the Fairfax Bar Association (FBA), and for many years led its efforts to obtain judicial funding. He is a five-time recipient of the FBA's President's Award and was the 2018 recipient of the Local Bar Leader of the Year Award from the VSB's Conference of Local and Specialty Bars.

Myerson has served in the American Bar Association's House of Delegates and is a past president of the George Mason American Inn of Court.

A graduate of Georgetown University and Georgetown University Law Center, Myerson is a Fellow of the Virginia Law Foundation and has been a member of the Fairfax Law Foundation's Board of Directors since 2012.



Myerson lives in Reston with his wife Barbara. They are the parents of three adult children — Josh, Jennifer Samuelson (Patrick) and Matthew (Annie Savage) — and have a young granddaughter.

“It will be a privilege to work with the many talented bar leaders across Virginia,” Myerson said. “I’m especially looking forward to working with the wonderful VSB staff, the Chief Justice and other justices on our Supreme Court.”

Check Your MCLE Hours Online Now

Please apply for any non-approved courses now to avoid the late application fee for applications received over 90 days after course attendance.

Reminder: Of the 12.0 CLE hours required each year, 2.0 must be in ethics and 4.0 must be from live interactive programs. The live interactive requirement can be met by attending live in person, completing a live webcast, or completing a live teleconference. Since the live interactive requirement can be met without leaving home and/or violating any Stay-at-Home orders there are no plans at this time to change the annual CLE requirement. A partial list of already approved CLE courses is available on the VSB MCLE web page under Current Virginia Approved Courses at <http://bit.ly/MCLEvsb>. All CLE hours need to be reported no later than 4:45 p.m. EST February 15, 2021.

Questions? Please contact the VSB Regulatory Compliance Department at (804) 775-0577 or MCLE@vsb.org.

Bar Welcomes New Council Members and Conference Leadership

The Virginia State Bar Council welcomes eleven representatives after voting was held in five circuits.

The Council is an 81-person body, consisting of 65 lawyers elected from the 31 circuits throughout the Commonwealth, as well as nine at-large members appointed by the Supreme Court of Virginia, four conference chairs, and three officers.

Newly elected, re-elected, and appointed members include:

Conference of Local and Specialty Bar Associations chair

Susan Godman Rager, Coles Point

Diversity Conference chair

Sheila M. Costin, Alexandria

Senior Lawyers Conference chair

Margaret A. Nelson, Lynchburg

Young Lawyers Conference president

Melissa Y. York, Richmond

2nd Circuit:

Ryan G. Ferguson, Virginia Beach, elected to a second term

Bretta Marie Zimmer Lewis, Virginia Beach

9th Circuit:

Susan B. Tarley, Williamsburg

13th Circuit:

Neil S. Talegaonkar, Richmond

15th Circuit:

Allen F. Bareford, Fredericksburg

19th Circuit:

Brian C. Drummond, Fairfax, elected to a second term

Susan M. Butler, Fairfax

Sandra L. Havrilak, Fairfax;

Christie A. Leary, Fairfax

Luis A. Perez, Falls Church

Susan M. Pesner, Tysons Corner

Council at-Large appointments:

Lisa A. Wilson, Arlington



Rager

Costin

Nelson

York



Ferguson

Lewis

Tarley

Talegaonkar



Bareford

Drummond

Butler

Havrilak



Leary

Perez

Pesner

Wilson

See the full list of Bar Council and Executive Committee members on page 4.

The Annual Meeting That Wasn't



For the first time since 1945, the Virginia State Bar Annual Meeting in Virginia Beach was cancelled, this time not for a war but for a pandemic. Though COVID-19 forced us to miss the collegiality and learning opportunities of the Annual Meeting, as well as the induction celebration of our new president, Brian L. Buniva, the Virginia State Bar wishes to thank the many lawyers who worked diligently for our profession and for their communities. Special thanks to Immediate Past President Marni E. Byrum, who worked tirelessly to traverse the Commonwealth spreading her message of diversity, inclusion, and engagement.

On the following pages, we include the resolution that would have been presented to Marni at the Annual Meeting, as well as the award winners whose awards would have been presented at the meeting.

Thank you to all the members of the Virginia State Bar for the work you do as lawyers of the Commonwealth. Hopefully, we will see many of you in June 2021 as we convene for the 82nd Annual Meeting.



RESOLUTION

WHEREAS, Marni E. Byrum, a founding partner of McQuade Byrum PLLC, has diligently and enthusiastically pursued her goals of inclusion, diversity, and engagement as she served as the president of the Virginia State Bar during the 2019-2020 Bar year; and

WHEREAS, since her admission to the Bar in 1979, Marni E. Byrum has contributed her time and leadership skills to the Virginia State Bar, serving as a member of the Council 1997-2003 and 2015-2020; as a member of the Executive Committee 2015-2021; as a member of the Standing Committee on Legal Ethics 1994-2014 and as its chair 2002-2004 and 2009-2014; as chair of the Standing Committee on Budget and Finance 2015-2020; as a member of the Judicial Candidate Evaluation Committee 1990-1992 and 2008-2010 and as its chair 1992-1996 and 2010-2011; as chair of the Rule 1A:3 Study Committee 2011-2012; as chair of the Rules Revision Committee 2019-2020; as chair of the Bar Counsel Search Committee 2018-2019; as chair of the Multi-Jurisdictional Practice Task Force 2004-2008; as chair of the Task Force on Membership Rules 2009-2013; as a member of the Study Committee on the Future of Law Practice 2014-2017; as a member of the Special Committee on Future of Law Practice 2017-2019; as a member of the Legal Education Conclave 1991-1993; as a member of the Long Range Planning Committee 1989-1994; as a member of the Study Committee on Prepaid Legal Services 1990 and as its chair 1991-1993; as a member of the VSB Section on Education of Lawyers Board of Governors 1993-1995; and

WHEREAS, Marni E. Byrum's leadership as president of the Virginia State Bar has been exemplified by her unwavering commitment to improving the profession, to protecting and informing the public, to service to the VSB's members and its committees, and by supporting the Virginia State Bar staff in a myriad of ways; and

WHEREAS, Marni E. Byrum traversed the Commonwealth of Virginia during her year as president speaking to bar organizations and to new lawyers at the Professionalism Courses about lawyers' obligations to their clients under the Rules of Professional Conduct, the ongoing need for pro bono assistance, the importance of judicial independence, the collegiality and cooperation between the Virginia State Bar and the Virginia Bar Association to represent and support the interests of all Virginia lawyers, the importance of inclusion, diversity, and engagement, and the strength and stability of the VSB.

WHEREAS, in the spring of 2020 during the coronavirus pandemic, Marni E. Byrum supported the mission of the Virginia State Bar and was a steadying force available via telephone or email to provide advice while managing her own law practice and representing clients during one of the most challenging times an employment lawyer has ever faced; and

WHEREAS, Marni E. Byrum, in her April, 2020, column in *Virginia Lawyer* magazine wrote eloquently of the importance that lawyers will play in the pandemic recovery and how we will be needed on the front line defending and protecting clients' rights and speaking for those who may have no voice.

NOW, THEREFORE, BE IT RESOLVED, this 30th day of June, 2020, that the Executive Committee of the Virginia State Bar, on behalf of Council and the 50,000 members of the Virginia State Bar, and in recognition of her outstanding service to the Bar and her powerful statements on behalf of the legal profession, offers their expressions of gratitude and affection to Marni E. Byrum for her service as the 81st president of the Virginia State Bar.

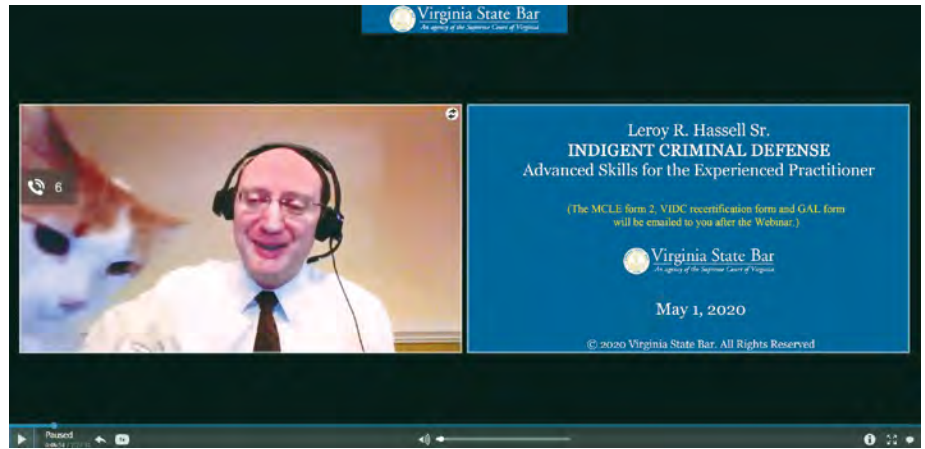
Brian L. Buniva
President-elect, Virginia State Bar

Karen A. Gould
Executive Director/Chief Operating Officer

Of Cats, Dogs, and Defense Attorneys: The Indigent Criminal Defense Seminar Goes Virtual

Over 1,000 Virginia lawyers tuned in for the first ever completely virtual presentation of the Leroy Rountree Hassell Sr. Indigent Criminal Defense Seminar. The seminar brought together a national panel of illustrious speakers for one of the Bar's most popular CLEs: Justice Hassell's vision of a yearly opportunity for those who represent indigent Virginians to learn, interact, and prepare to best represent their clients.

The seminar was introduced by Justice Stephen R. McCullough of the Supreme Court of Virginia, whose unimpressed rescue cat, Ginger, made a languid appearance. Professor Randee Waldman, of Emory Law School discussed ethical considerations when representing juveniles after a brief barking session by her out-of-the-frame dog. The audience, who were able to ask questions of the speakers, led off by asking, "May we see your dog?"



Yorktel Communications

Lawyers on the panel included Vernida Chaney, Chaney Law Firm, Fairfax; Daniel Goldman, Capital Defender Office of Northern Virginia, Tysons; Kenneth Hardin, Assistant Public Defender, Houston, TX; Bonnie H. Hoffman, National Association of Criminal Defense Lawyers, Washington,

D.C.; Doug Passon, Passon Law, Phoenix, AZ; and Lauren Whitley, Public Defender, Richmond.

Other speakers included Dr. Matthew Clair of Stanford University and Nora Gruber of Square Cap Media, Los Angeles, CA.

Fee Dispute Resolution

If COVID-19 has put you and a client at odds over fees, consider the VSB's Fee Dispute Resolution Program. For over 25 years, this program has helped lawyers and clients resolve fee conflicts without litigation and for only \$20.

Learn more at www.vsb.org/site/members/fee_dispute_resolution.

When you retire, your law degree doesn't have to.



Transition into emeritus status and practice only pro bono.

For questions about the program, contact the VSB Pro Bono/Access to Legal Services department at (804) 775-0522.

To start the application process toward emeritus status, call (804) 775-0530.

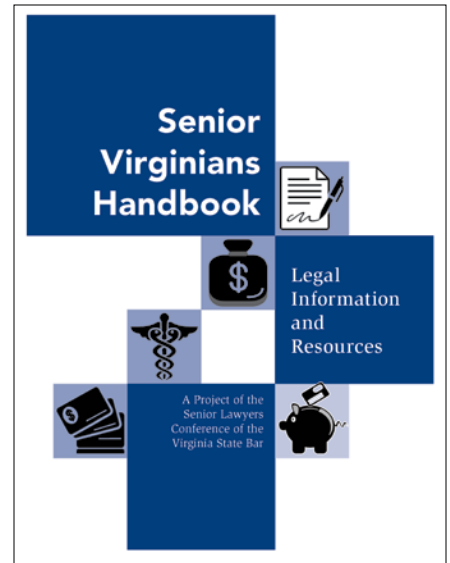
2020 Edition of *Senior Virginians Handbook* Available

For the first time since 2013, the Virginia State Bar Senior Lawyers Conference has comprehensively updated the *Senior Virginians Handbook* (formerly known as the *Senior Citizens Handbook*).

This book contains over 100 pages of information designed to assist older Virginians with a vast range of legal issues, life decisions, and other topics of interest. It has been a popular resource for lawyers whose practices assist older Virginians, and a valuable aid to seniors across the Commonwealth. Copies are distributed free of charge to participants of the Senior Law Day programs and are available in some public libraries.

Edited by the SLC Board of Governors member Barbara Anderson, other contributors include Sheri Abrams, Amy Allman, Alan Anderson, Tom Bell, Peter Burnett, Grimes Creasy, Julia Crisfield, John Eure, Doris Gelbman, Wayne Glass, Richard Gray, Amy McCullough, Martha McQuade, Jesci Norrington, Kathryn Poe, Tom Tokarz, Robert Vaughan, Edward Weiner, Christopher Wright, Loretta Williams, and Carter Younger.

The *Senior Virginians Handbook* is available for download online. Attorneys or individuals may purchase the books singly or by the box by completing the



order form. <https://www.vsb.org/site/publications/senior-virginians-handbook>



Mark your calendars:

ADVANCE DIRECTIVE

HEALTHCARE DIRECTIVE

POWER OF ATTORNEY

END-OF-LIFE CARE

Learn more:

www.vsb.org/site/public/healthcare-decisions-day/

JULY 16

Healthcare Decisions Day is designed to raise public awareness of the need to plan ahead for healthcare decisions related to end of life care and medical decision-making whenever patients are unable to speak for themselves and to encourage the specific use of Advance Directives to communicate these important healthcare decisions.

In Memoriam

Roger L. Amole Jr.

Alexandria
September 1939 – January 2020

William H. Bass III

Midlothian
June 1947 – March 2020

Norborn P. Beville Jr.

Manassas
February 1941 – February 2019

Susan Elizabeth Bishop

Barboursville
February 1956 – July 2019

Donald Hart Bowman

Mathews
October 1924 – March 2020

Douglas Andrew Britton

Montross
December 1950 – February 2020

Robert F. Brooks

Richmond
July 1939 – March 2020

David D. Brown

Abingdon
July 1929 – May 2007

Robert Elmer Cappell

Bowie, Maryland
April 1954 – April 2020

Randolph W. Church Jr.

McLean
November 1934 – March 2020

Barry S. Comess

Richmond
May 1944 – May 2020

William D. Cremins

Southport, North Carolina
February 1939 – March 2020

Walter Clayton Farley

Harpwell, Maine
July 1932 – January 2020

Morton Foelak

Arlington
May 1931 – May 2020

Bernard S. Gild

Ashburn
May 1929 – April 2020

Edwin C. Gillenwater

Falls Church
February 1938 – January 2019

Richard Barthen Gorman

Annandale
May 1944 – January 2016

Colleen Tate Hagy

Roanoke
March 1961 – May 2020

Jack Franklin Hankins

Martinsville
November 1920 – April 2015

R. Braxton Hill III

Norfolk
August 1946 – March 2020

Henry M. Jarvis

Irvington
March 1923 – April 2020

Larry Quinn Kaylor

Harrisonburg
July 1950 – September 2019

Daoud L. Khairallah

Falls Church
February 1937 – March 2020

Catherine Crismon Lorraine

Bethesda, Maryland
July 1949 – March 2020

Janet C. McCaa

Portland, Maine
January 1943 – June 2016

Richard Edward McCallum

Birmingham, Alabama
July 1929 – November 2005

Hugh S. Meredith

Virginia Beach
November 1916 – June 2019

Gerald Joseph Mossinghoff

Arlington
September 1935 – March 2020

Darryl Arthur Parker

Richmond
August 1963 – April 2020

Thomas Dawson Pearson Jr.

Norman, Oklahoma
April 1939 – June 2019

Frank T. Peartree

Falls Church
July 1923 – June 2014

Earle W. Putnam

Lynchburg
June 1928 – May 2013

Sebastian Richard Rio Jr.

Annandale
October 1945 – August 2018

Randolph Clay Robertson

Richmond
February 1960 – April 2020

Barbara Wurtzel Rabin

Gwynedd, Pennsylvania
April 1933 – September 2019

Robert Edward Stroud

Charlottesville
July 1934 – June 2020

Tracy Lee Taliaferro

Prince George
October 1962 – April 2020

Lawrence James Tracy

Reston
April 1944 – February 2020

Charles F. Tucker

Norfolk
April 1929 – April 2020

Ralph E. Turpin Jr

Lovingston
May 1942 – May 2020

William C. Walker

Virginia Beach
August 1937 – May 2020

Jamilah D. LeCruise Receives Young Lawyer of the Year Award

Defense attorney Jamilah D. LeCruise of Norfolk has been awarded the 2020 R. Edwin Burnette Jr. Young Lawyer of the Year Award by the Virginia State Bar Young Lawyers Conference.

The award recognizes young lawyers who demonstrate dedicated service to the conference, the legal profession, and the community. LeCruise has served in numerous roles both at the VSB and other bar associations and is a prolific lecturer who donates much of her time to community and civic organizations.

Before opening the Law Office of J. D. LeCruise, she served as an Assistant Public Defender for the City of Norfolk, handling hundreds of criminal cases including felonies, misdemeanors, traffic offenses, and probation violations.

Her pro bono involvement includes volunteering abroad with a human rights organization in Ghana, traveling to villages for educational programs and participating in juvenile defense during law school. LeCruise also interned at the Legal Aid Society of Eastern Virginia where she currently serves on the board of directors, and at the Office of the Capital Defender in Richmond, assisting in the defense of individuals charged with death penalty offenses.

LeCruise is the chair of the Norfolk Portsmouth Bar Association Young Lawyers Section and President of the South Hampton Roads Bar Association. She is also a member of the Old Dominion Bar Association and the Virginia Association of Criminal Defense Lawyers.



Doris Henderson Causey Receives the Clarence M. Dunnville Jr. Award

Doris Henderson Causey, 80th VSB president and managing attorney of the Richmond office of the Central Virginia Legal Aid Society, has been awarded the Clarence M. Dunnville Jr. Achievement Award, sponsored by the Diversity Conference of the VSB. The award honors a lawyer who exemplifies "...the conference's goal of fostering, encouraging, and facilitating diversity and inclusion in the bar, the judiciary, and the legal profession."

In 2017, Causey made legal history in the Commonwealth when she was inducted as the Virginia State Bar's first African American president, and first president from the legal aid community.

Throughout her legal career, Causey has made service a priority, both in her profession and for the legal community. Causey has provided many years of ser-

vice on the VSB's Executive Committee and Bar Council, as well as on the Old Dominion Bar Association's Executive Committee, and as secretary of both the Old Dominion Bar and of the Hill Tucker Bar, Richmond Chapter.

At the Central Virginia Legal Aid Society, Causey works to meet the needs of the underserved, delivering quality legal services to low income individuals and communities, while advocating for the protection of civil and human rights in the Commonwealth.

The award, named after Clarence Dunnville, the noted Virginia attorney, civil rights pioneer, legal reformer, author, and justice activist, will be presented by the Diversity Conference at a future date.



Michael McHale Collins Receives Tradition of Excellence Award

Covington lawyer Michael McHale Collins has been awarded the General Practice Section’s Tradition of Excellence Award. The award recognizes a Virginia lawyer who “...embodies the highest tradition of personal and professional excellence in Virginia, enhances the image and esteem of attorneys in the Commonwealth, and has devoted significant amounts of time, efforts, and/or funds to activities that benefit their community.”

In his nomination, Benjamin P. Thurman wrote, “Michael genuinely enjoys helping people and finds it difficult to turn away those in need, regardless of the complexity of the problem or the client’s ability to pay.”

In addition to being a founding member and senior partner of Collins & Hepler, PLC for 12 years, Collins has donated his time to the Covington-Hot Springs Rotary Club, the Advisory Board for the Alleghany Highlands Community

Housing Improvement Program, and the Board of Trustees for the Dabney S. Lancaster Community College. He has served as the pro bono legal advisor to the Covington Fire Department and the Covington Rescue Squad since 1973.

Jeanne M. Hepler, his co-partner said, “Michael is the classic example of the beloved country lawyer — he’s handled nearly every kind of case imaginable, is an outstanding litigator with a keen understanding of the law, always conducts himself with fairness, respect, and humility, and has a delightful sense of humor with many amusing stories to share.”

Collins was a member of the Virginia State Bar Disciplinary District Committee for the 6th Congressional District, serving as chair of the northern division in 1987. He was a long-standing member of the Local Government Attorneys of Virginia.



Collins served Alleghany and Bath counties for almost 50 years. He earned his bachelor’s degree from the University of Virginia in Charlottesville and his law degree from The College of William & Mary, where he was the managing editor of the *William & Mary Law Review* and a member of the Omicron Delta Kappa Honorary Fraternity.

Leesburg Lawyer Ben Leigh Receives 2020 Traver Scholar Award

Benjamin D. Leigh of Atwill, Troxell & Leigh, P.C. in Leesburg is the 2020 recipient of the Traver Scholar Award, awarded by the Real Property Section of the VSB and VaCLE to honor a lawyer who embodies the highest ideals and expertise in the practice of real estate law.

After clerking for the Chief Justice of the Supreme Court of Virginia, Leigh practiced with the Fairfax firm of Blankingship & Keith, P.C. In 2002, he joined Bill Atwill and William C. Mims to form Mims, Atwill & Leigh, P.C., which now exists as Atwill, Troxell & Leigh, P.C.

Leigh’s practice includes a variety of business and real estate matters, transactions, planning, and litigation, as well as administrative lobbying and even legislative amendments. He has also personally

developed residential and commercial real estate projects.

Leigh is a frequent lecturer and writer on topics from ethics in real estate, easements, title insurance coverage and disputes with published articles on unique topics such as slander of title limitations. He has served the past few years as a co-moderator of the Advanced Annual Real Estate Seminar.

A graduate of the University of Richmond for both undergraduate and law school, Leigh is a past chair of the Real Estate Section of the Virginia Bar Association, a current member of the Board of Governors of the Virginia Bar Association, and currently an Area Representative for the Real Property Section of the VSB. He has served as a Commissioner in Chancery and Special



Commissioner for the 20th Judicial Circuit. Leigh has also served on the Loudoun County Rural Economic Development Council and the Economic Development Commission.

Marcellinus Slag Named 2020 Legal Aid Lawyer of the Year

Marcellinus Slag, who has fought for the rights of underserved Virginians for over 30 years, has received the 2020 Virginia State Bar Legal Aid Award honoring excellence in legal aid society work.

The award recognizes those who exhibit: 1) Innovation and creativity in advocacy; 2) Experience and excellence in service; and 3) Impact beyond his or her own program's service area.

A native of the Netherlands, Slag received his undergraduate and master's degrees in the Netherlands before graduating from George Washington University Law School in 1988. He then lived in Richmond where he has devoted his entire legal career to legal aid work primarily in housing, consumer, and employment law issues. He retired from

the Legal Aid Justice Center in April 2020.

In his nomination, Jonathon T. Blank of McGuire Woods recalled the many cases he tried against Slag as a young attorney working for the Richmond Redevelopment and Housing Authority while Slag represented low income tenants. Said Blank, "Marcel taught and forced me to learn how to be a trial attorney. More importantly, he taught me the importance of the role of the attorney in the system of justice. He did so with civility, dignity, passion and pride. To this day, I cherish those lessons and try to pass on what Marcel did for me to others."

The Legal Aid Award, usually given at the VSB Annual Meeting in June, will



instead be presented to Slag at the Pro Bono Conference in October, 2020.

Emily Lopynski Receives Law Student Pro Bono Service Award

Emily Lopynski of the University of Richmond Law School class of 2020 has been awarded the Oliver White Hill Law Student Pro Bono Award honoring "extraordinary law student achievement in the areas of pro bono publico and under-compensated public service work in Virginia."

Lopynski was heavily involved in the Carrico Center for Pro Bono & Public Service at the University of Richmond. She participated in the Wills for Seniors Pro Bono Clinic and Pro Bono Housing Law Program, volunteered at the Farmville immigration detention center, and drafted an asylum brief for a pro bono immigration case. She was also a part of the student cohort selected to support the Governor's Commission to Examine Racial Inequity in Virginia Law.

Lopynski interned at Legal Aid Justice Center, Virginia Poverty Law Center, and the Division of Human

Rights of the Office of the Attorney General of Virginia. Lopynski represented pro bono clients in special immigrant juvenile, delinquency and truancy cases, through the Children's Defense Clinic of the University of Richmond.

Additionally, after graduating magna cum laude At William & Mary she participated in a year-long fellowship in El Paso, Texas, delving into the dynamics of the border and starting an immigration legal assistance program at a community-based non-profit.

Fluent in Spanish, Lopynski facilitated communication with Spanish-speaking clients, and worked cases at the Children's Defense Clinic, run by Julie McConnell at the University of Richmond School of Law.

Beginning in August 2020, Lopynski will clerk for The Hon. Louise M. DiMatteo of the Arlington County Circuit Court.



The Oliver White Hill Award will be presented at the October 2020 Pro Bono Conference.

Shemeka C. Hankins Receives Local Bar Leader of the Year Award

Shemeka C. Hankins of Hampton Roads, the associate attorney at Invictus Law, has received the Conference of Local and Specialty Bar Associations' (CLSBA) Local Bar Leader of the Year Award that honors a bar leader who "offers important service to the bench, bar, and public."

Hankins' support of the community includes hosting the SHRBA Annual Judges Panel in May 2019 and moderating a *So You're 18* program at Heritage High School, where she was a teacher prior to starting her legal career. According to LeCruise, many of the student attendees had never met lawyers or had the opportunity to ask legal questions in a safe space.

Hankins was a prosecutor for over six years with the Norfolk Commonwealth's Attorney's Office, where she advocated for help for defendants suffering from mental health issues. She has received specialized training in the areas of domestic violence, driving under the influence, and narcotics. She has moderated and organized numerous panels, roundtables and presentations to the benefit of her bar, alma mater, and community.

The Conference of Local and Specialty Bar Associations will present the Local Bar Leader of the Year Award at the South Hampton Roads Bar Association's next in-person meeting.



Lynchburg Bar Association Named 2020 Bar Association of the Year

The Virginia State Bar Conference of Local and Specialty Bar Associations has named the Lynchburg Bar Association Bar Association of the Year.

The Lynchburg Bar Association (LBA), founded in 1915, carries out community outreach efforts and strives to promote the relationships between citizens and the law.

Pro bono work is central to the mission of the LBA, and the close partnership the bar association has with the Virginia Legal Aid Society. The LBA has created the Conflicts Panel, a group of attorneys willing to speak to someone who has approached VLAS but, due to a conflict, VLAS cannot help the prospective client.

CLSBA Honors Bar Associations

Awards of Merit

The CLSBA has recognized three bars across the commonwealth for outstanding special projects that have assisted Virginians with access to justice or enhanced the profession and quality of legal services in Virginia.

The 2020 Awards of Merit were judged by George W. Shanks, past president, Virginia State Bar; Peter D. Vieth, *Virginia Lawyers Weekly*; and Dean Wendy S. Perdue, University of Richmond.

The winners are:

Alleghany-Bath-Highland Bar — Senior Citizens Law Day

Roanoke Bar Association — You and the Law: Legal and Social Tools for Assisting Survivors of Violence

The Prince William County Bar Association — Attorney Wellness Initiative

Certificate of Achievement

Virginia Beach Bar Association — VBBA Feeds the Homeless: Legal Minds; Helping Hands

Because this year's meeting was cancelled, the Conference of Local and Specialty Bar Associations will present the Awards of Merit at each respective bars' next in-person meeting.

The conference makes information on winning projects available to other groups that want to consider similar programs. For information, contact Paulette J. Davidson at davidson@vsb.org or (804) 775-0521.

50 YEARS OF SERVICE

The Senior Lawyer's Conference presents the 50 Year Award for lawyers who have been members of the Bar for 50 years. The award is traditionally presented during the VSB Annual Meeting. There are 236 lawyer's entering their 50th year of service in Virginia. They were admitted to the bar between July 1, 1969, and June 30, 1970.

John B. Adams Jr.	Bruce E. Denslow	Ray W. Grubbs	Robert D. Linder	Mark Stuart Rudy
Eileen M. Albertson	Joseph H. Dettmar	Donald G. Gurney	Richard Linn	Rodney Laird Russell
Lars Eric Anderson	James S. W. Drewry	Raymond J. Gustini	Elizabeth G. Loggia	Clement Paul Ryan
William E. Artz	Seymour Dubow	David R. Hackett	Daryll N. Love	John J. Sabourin Jr.
Karen Lee Atkinson	John J. Easton Jr.	Barry A. Hackney	David G. Ludwig	Henry L. Sadler III
William James Baker	Allen T. Eaton	Virginia H. Hackney	Gerald Joel MacFarlane	Stanley M. Salus
John Sykes Barr	Stephen L. Echols	Richard D. Hall Jr.	Eugene Mar	Stanley John Samorajczyk
Gilbert Anson Bartlett	John W. Edmiston	Paul W. Hallman Jr.	Eric B. Marcy	Laurens Sartoris
B. W. Basheer	Homer Lee Elliott	Ronald S. Hallman	Carl Markowitz	James R. Saul
James W. Benton Jr.	Thomas S. Ellis III	Bruce H. Hamill	Vernon E. Martens Jr.	Charles Kane Schanker
Douglas K. Bergere	Ralph A. Elmore III	Thomas Francis Hancock III	James Thayer Martin Jr.	Edward F. Schiff
Howard Leonard Bernstein	William C. Field	John Waller Harrison	Alexander T. Mayo Jr.	William McClure Schildt
Michael J. Blachman	Henry Joseph Flynn	Pierre M. Hartman	James L. McLemore III	Jerold I. Schneider
Richard Jeffrey Bonnie	David P. Forbes	Randall Stone Hawthorne	Nancy Mattox McMurrer	Norval Dennis Settle
Robert D. Bouck	John Thomas Fowlkes	C. Alexander Hewes Jr.	Gaynor Vanlandingham McNeal	William M. Sexton
Rosemarie G. Bowie	B. Roland Freasier Jr.	Allen E. Hirschmann	Val S. McWhorter	George Warren Shanks
Burt A. Braverman	Joel Mark Freed	Edward L. Hogshire	Jay C. Miner	William Tracey Shaw
Janet Blake Brydges	Jerome B. Friedman	Barry M. Hollander	H. Ronnie Montgomery	Raymond John Shelesky
Nancy L. Buc	Frank William Frisk Jr.	William H. Hoofnagle III	John Norton Moore	Brian Charles Shevlin
Francis L. Burk Jr.	Thomas McInnis Gachet	Leighton Summerson Houck	Lester V. Moore Jr.	Howard B. Silberberg
Stephen G. Butler	Richard J. Gallagher	Edwin Cutter Hughes Jr.	Frank West Morrison	Eric Lee Sisler
Thomas B. Carr	Ronald M. Gates	John E. Hughes III	Roger Linwood Morton	Daniel D. Smith
Earl W. Chapman	Gordon Bertram Gay	James S. Insley	James Moushegian	J. Randolph Smith Jr.
Francis Chester	Andrew R. Gelman	Matthew M. Jacob	Thomas J. Mullaney	John D. Sours
William G. Christopher	W. Peyton George	Paul E. Jensen	Thomas Orville Murphy	Stuart D. Spirn
James K. Cluverius	Robert A. Giannasi	Thomas G. Johnson Jr.	George H. Myshrall Jr.	James Roderick St Martin
Thomas F. Coates III	Stanley J. Glod	George Herman Jones	Carroll T. Neale III	Frederick T. Stant III
Irwin Charles Cohen	Jack J. Goehring	Hugh J. M. Jones III	George S. Newman	Myron T. Steele
John Marshall Coleman	Walter B. Golden III	Albert A. Kashinski	William A. Noell Jr.	Edward L. Stolarun
Tucker St Martin Coleman	Webster Lee Golden	James D. Kemper Jr.	David B. Olson	Phillip C. Stone
Michael McH. Collins	Michael T. Goode	William R. Keown	M. Richard Page	William F. Stone Jr.
Thomas A. Connor	Robert C. Goodman Jr.	Edward J. Kessler	Jon Larry Palmer	William Jesse Strickland
Robert B. Cousins Jr.	Katherine L. Goolsby	Richard W. Kienle	Thomas G. Parachini	Aron Leslie Suna
Thomas L. Crisman	Michael J. Graetz	Angus S. King Jr.	Lloyd J. Parker Jr.	Scott Hugh Swan
James A. L. Daniel	Edward F. Greco	William L. Kirby III	Michael Lee Paup	Philip J. Sweeney III
Joel A. Deboe	Jess Frank Greenwalt Jr.	Carol Cole Kleinman	Saul Ralph Pearlman	John K. Taggart III
		Byron Peter Kloepfel	Mosby Garland Perrow III	Henry W. Tarring II
		Harry Lane Kneedler III	Fred Anderson Phelps	William L. Taylor
		J. Richard Knop	Edward A. Plunkett Jr.	Carl John Turnquist
		Jason David Kogan	Joseph Pogar Jr.	Paul M. Vincent
		William T. Kresge Jr.	G. Michael Price	Gerard E. W. Voyer
		Richard M. Kurshan	Gary G. Quintiere	Herbert Clare Wamsley
		Jonathan S. Kurtin	James Edward Rainey	Jeffrey L. Ward
		Robert P. Kyle	David William Ralston	George D. Webb II
		Dennis H. Lambert	John H. Raubitschek	Harold C. Wegner
		Edward E. Lane Jr.	Pasquale A. Razzano	Kemble White
		Girard C. Larkin Jr.	David D. Redmond	Paul Whitehead Jr.
		Robert deTreville Lawrence IV	William Ryder Register	David K. Wiecking
		Burton M. Leibert	Michael L. Rigsby	Mervin C. Withers
		John Waugh Leonard	Robert Foster Ripley Jr.	Franklin David Wolffe
		Robert A. Lester	Rollin Anthony Rogers	John Ashton Wray Jr.
		Theodore Alan Levine	Alton D. Rollins	Hubert H. Young Jr.
		Michael Haim Levinson	Filmore E. Rose	Wilhelm Alfons Zeitler
		Stephen Lewis	David Lee Ross	Jeffrey M. Zwerdling
		Stuart Miley Lewis		John Kenneth Zwerling

A Guide to COVID-19 Legal Research Resources

by Gregory H. Stoner

During the past few months, COVID-19 has affected the lives of all Americans. For legal practitioners, the outbreak and subsequent shutdown have quickly and profoundly disrupted the practice of law. Many attorneys have been working remotely for an extended period — some for the first time — and have come to rely on various online resources for research purposes. Others have been forced to deal with myriad new legal issues and scenarios.

Throughout this crisis, a number of companies have offered complimentary products and services related to COVID-19 legal issues to practitioners. While the list that follows is far from comprehensive, it hopefully serves as a helpful guide to tools of particular note for attorneys navigating these complex times.

Fastcase

(www.fastcase.com/covid19)

Fastcase, a legal news and research resource available as a free membership benefit to all members of the Virginia State Bar, has developed a collection of COVID-19 resources. In addition to tools featuring COVID-19 related cases, as well as news via *Law Street Media*, Fastcase is also offering a number of complimentary webinars.

LexisNexis

Lexis Practice Advisor Coronavirus Resource Kit
(www.lexisnexis.com/en-us/products/lexis-practice-advisor/coronavirus-resources.page)

The Lexis Practice Advisor Coronavirus Resource Kit provides lawyers across a number of practice areas with practical guidance and analysis related to COVID-19 and the law. Included in the resource kit are a number of forms, guides, and substantive analysis in prac-

tices including, but not limited to, commercial transactions, M&A, data security and privacy, and employee benefits.

Law360

(www.law360.com/coronavirus)

Law360's free COVID-19 page includes access to a number of legal news articles, in-depth features, commentary and expert analysis of various topics related to the law and COVID-19. Articles focus on the impact of the pandemic on the legal industry, the practice of law, how it is affecting the government, courts, and industries throughout the United States and around the world. Interested individuals may also subscribe to a complimentary electronic newsletter with daily headlines.

Practising Law Institute (PLI)

(www.pli.edu/coronavirus)

Practising Law Institute (PLI), a well-known nonprofit learning organization, offers complimentary access to a number of online programs dealing with the coronavirus crisis and related legal developments. Prior programs are available for viewing “on demand,” while interested individuals may register for upcoming live programs.

Thomson Reuters

Practical Law Global Coronavirus Toolkit
(www.thomsonreuters.com/en/resources/covid-19.html)

This Global Coronavirus Toolkit is an extensive collection of practical guidance resources concerning numerous issues encountered by practitioners in today's challenging climate. Practice Notes, Standard Documents and Checklists provide users with “how to” guidance and insightful analysis. Resources

encompass a number of practice areas including corporate and mergers & acquisitions, labor and employment, litigation, real estate, and many more.

Those who are subscribers to other Thomson Reuters products, including Westlaw and Checkpoint, now also have additional resources related to COVID-19 available within their subscriptions.

Wolters Kluwer

Cheetah COVID-19 State & Federal Compare Smart Chart (lrus.wolterskluwer.com/store/cheetah-covid-19-state-federal-compare-smart-chart/)

The State & Federal Compare Smart Chart allows users to quickly view and compare federal and state laws, regulations and executive orders. Content is arranged topically across subject matter and practice areas including banking and finance, labor and employment, human resources/benefits, health, tax, securities, and more. Research results can be easily exported (email, print, download) to be shared with colleagues and clients.



Gregory Stoner, library manager at McGuireWoods in Richmond, has bachelor's degrees in historic preservation and American Studies from the University of Mary Washington, a master's degree in history from Virginia Commonwealth University, and a master's in information science from the University of Tennessee. He is a member of the Virginia Association of Law Libraries and other professional groups that advance the work of law librarians.

Technology Use by the Legal Profession in a Post-COVID-19 World

by Jonathan V. Gallo

The COVID-19 pandemic has changed our way of life. Stay-at-home orders and social distancing policies have shuttered courthouses and law offices across the country. As states begin reopening, the legal profession, like so many others, will continue adjusting to the “new normal.” During this period, courts and law offices have adapted and identified new ways to deliver legal services. Technology has played a major role in this process and will undoubtedly continue to shape the practice of law for years to come.

Adapting by using technology

While necessity may be the mother of invention, COVID-19 will likely be a driver of innovation. Stay-at-home orders have forced law offices, courts, and government offices to work remotely; from virtual meetings with colleagues and clients, to remote hearings, depositions, arbitrations, and even oral arguments using virtual meeting platforms such as Zoom, Microsoft® Skype, and Microsoft® Teams. Even the delivery of legal education has changed: In a matter of weeks law schools, like colleges, have transitioned from lecture halls and classrooms to online learning platforms. The pandemic has, for better or for worse, altered the way legal education and legal services are provided throughout the world.

Remote workforce = evolving demand for technology solutions

Along with the demand for technologies capable of allowing attorneys to attend meetings, hearings, and depositions remotely, the current environment has driven a need for technologies that help law offices address the daily challenges of managing a remote workforce. Workforce productivity and law practice

management software are being utilized by law offices to track employee time, increase productivity, and reduce costs by leveraging technology to improve workflow efficiency, reduce travel, and manage legal tasks. While many of these technologies were in existence prior to the pandemic, the need for lawyers to work remotely has increased the adoption of these technologies and increased the development of new applications.

Downsizing and work-life balance

Through technology, attorneys and support personnel are discovering that many legal tasks can be performed without having to set foot inside a physical office. Law office managers are discovering that certain legal services can be provided effectively without the expense of leasing large office spaces. Additionally, some attorneys and support personnel may find that using technology to work remotely provides a more desirable work-life balance. In virtual meetings, we meet with colleagues remotely while in our homes, creating a less rigid working social dynamic.

Ethical responsibilities

With all its advantages, technology also brings heightened risks. Virginia Rule of Professional Conduct 1.1 requires lawyers to consider the benefits and risks associated with relevant technology.¹ For example, when using technologies such as online meeting platforms, lawyers must be sure that they are using technology responsibly and within appropriate ethical boundaries. **Recently, as use of the videoconferencing platform Zoom increased, reports appeared showing that configuration and credential sharing issues led to instances of hacking and the practice of “Zoombombing” in which an uninvited person joins a**

meeting in order to cause disruption.

This occurred partly because of users sharing meeting credentials through social media or not password protecting meetings. As a result, Zoom modified its default settings to require passwords to enter conference calls and the “waiting room” feature which allows the host of the meeting to control the entry of participants. These issues implicate a lawyer’s duty to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and to prevent inadvertent or unauthorized disclosure by the lawyer or other persons participating in the representation of the client. Lawyers must make sure that they are familiar with technology and able to use it competently and securely.

Change = Opportunity

As we begin easing into life “post COVID-19,” technology will play a crucial role in transforming the delivery of legal services. The COVID-19 pandemic

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Jonathan Gallo has practiced law for over twenty years and is Of Counsel at Vandeventer Black LLP. Gallo is a member of the firm’s Cybersecurity & Data Privacy group, Hemp and Medical Cannabis group, and the Government Contracts practice group. He advises clients on a range of matters related to data privacy and security, data breach planning and response, cyber risk liability and compliance, software development and licensing, government contracting, and other technology-related matters. He also assists businesses in navigating regulatory and contractual requirements in the industrial hemp and medical cannabis fields.

Five Ways Law Firms Can Get Ahead of COVID-19

by Stacey K. Smith

An ounce of prevention is worth a pound of cure. We talk a lot about risk management here at ALPS, but what we're really talking about is prevention — systems and practices that your firm can put into place to help catch human error before the mistake causes harm to a client's case. We all know that preventative medicine is the most effective medicine and that's the angle we're coming from as it relates to COVID-19.

We have all been inundated with information about the virus, from cautions to concessions to cancellations. Thankfully at ALPS, we have not received any reports from lawyers of claims arising from COVID-19 issues as of now. However, there are some basic systems that we would recommend law firms put in place to mitigate risk in this unknown time:

1. Ensure that lawyers and staff are set up to work remotely and can still e-file and perform other necessary functions from their home office to address deadlines.
2. As always, ensure communication and documentation systems are in place to keep clients up-to-date and informed as to how their case may be affected.
3. Lawyers should be diligent in confirming with staff and other attorneys that have been assigned tasks to ensure those tasks were completed in case of an unexpected absence.
4. Be aware of the most up-to-date notices from the courts regarding appearances and deadlines and stay in communication with opposing parties (and document that communication!).
5. Be smart, use common sense, and prioritize your health. Stress can lead to a weakened immune system. Take care of yourself so you'll be equipped to take care of your clients.



Stacey K. Smith is the Claims Manager at ALPS. She received her B.A. from Montana State University and her J.D. from Willamette University College of Law. Prior to joining ALPS in October 1999, Smith spent over five years litigating major damage cases in both state and federal court. She served on the Washington State Bar Professionalism Committee, the Washington State Bar Court Rules and Procedures Committee and the Washington State Bar Ad Hoc Committee on Civility. She is a member of the Washington State Bar Association.



You've Got Mail!

Or you might, if your email address is up to date with the Virginia State Bar.

Please make sure you are getting our monthly VSB News and annual compliance messages by adding vsbnews@vsb.org, membership@vsb.org, and MCLE@vsb.org to your email contacts.

And as always: Keep all of your information current by logging on at www.vsb.org.

NEW: You can opt out of receiving *Virginia Lawyer* by mail if you prefer to read it online.



Ethics *continued from page 14*

firm from representing an adverse party rather than in a good faith endeavor to determine whether to retain the lawyer”).

4. Communications and confidential information shared with a lawyer by a prospective client are protected under Rule 1.9. A lawyer must not share confidential information of a prospective client, except as Rule 1.9 would permit as to information of a former client.
5. A lawyer may condition conversations with a prospective client on the person’s informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. If the agreement expressly so provides, the prospective client may also consent to the lawyer’s subsequent use of information received from the prospective client. Comment [5], ABA and Va. Rule 1.18.

6. Unless the prospective client has imparted information that could be “significantly harmful” to that person if used to represent another client, the lawyer will not be disqualified even if the matter is the “same or substantially related to” the subject of the consultation.
7. Information that could be “significantly harmful” relates to its potential use and requires material prejudice or adverse impact within the confines of the matter in which disqualification is sought, “a determination that is exquisitely fact-sensitive and -specific.” Formal Op, 492 gives numerous examples of what is or is not “significantly harmful information.”
8. Lawyers should limit the information obtained at an intake or initial consult and do a conflict check as soon as practicable.
9. If a lawyer is disqualified for having received information that could be “significantly harmful,” another lawyer in the firm may undertake representation of a client adverse to the prospective client provided:
 - a. both the prospective and affected clients give informed consent confirmed in writing; or,
 - b. the disqualified lawyer took reasonable measures to avoid exposure to more significantly harmful information than was reasonably necessary to determine whether to represent the prospective client, and:
 - i. the disqualified lawyer is timely screened from participation, and the lawyer reasonably believes the screen is effective to protect information that could be significantly harmful to the prospective client; and
 - ii. written notice describing the matter about which the lawyer was consulted and screening procedures that have been employed are promptly given to the prospective client. ⚖

Tech *continued from page 53*

will create long-lasting changes, and in the practice of law and with those changes come opportunities. The legal profession can embrace these opportunities by safely leveraging technology to efficiently improve the delivery of legal services to clients. ⚖

Endnotes

- 1 VA Rules of Professional Conduct, Rule 1.1 Comment [6].

Join the General Practice Section

Organized in 1986, the General Practice Section sponsors programs and publications of general interest, but directs most programs to the sole practitioner and small firm lawyer. The section serves as a forum for the exchange of practical ideas and information on how to effectively manage and practice law. The section also publishes a newsletter several times a year, and sponsors an Annual Meeting CLE program. To recognize a general practitioner who has achieved distinction in public service, the section presents its Tradition of Excellence Award each year during the State Bar’s Annual Meeting.

www.vsb.org/site/sections/generalpractice

four, in another, trying to find one that would issue a warrant against a police officer. Sen. DeSteph believes there is a need for private criminal complaints, because one cannot always take an officer off the street to procure a warrant against a bad actor. “You shouldn’t be able to magistrate shop, however,” he said.

Senator John Edwards, chairman of the Senate Judiciary Commission that killed the bill, explained that the Democrats opposed the bill because it gave special treatment to law enforcement officers, unduly reducing police accountability. Senator Creigh Deeds said, in an email to the author, “The magistrate system may need a close examination, but I’m not willing to consider complaints against law enforcement officers at a different level of scrutiny than those made against other citizens.” In Senator Edwards’ view, the problems with private criminal complaints are not limited to complaints against police officers. Many merchants abuse the process by having shoppers arrested on flimsy evidence. “We might be better off getting rid of private criminal complaints,” he says, “by requiring prosecutors always to be consulted before a warrant issues. But we’d have to hire a whole lot more prosecutors, and we can’t afford it.”

Everyone agrees that Commonwealth’s attorneys’ offices lack the resources they would need if they were suddenly flooded with all

the private misdemeanor complaints that now go directly to magistrates.

Commonwealth’s attorneys receive state funding only for their felony caseloads. Commonwealth’s attorneys do not have their own investigative staffs, and their offices usually are in the courthouse, while magistrates are all over the place, usually in law enforcement facilities. Already, the offices are understrength and stressed by increases in workload occasioned by such initiatives as the new criminal discovery rules.¹⁵ Major Greg Jenkins, of the Albemarle County Police Department, says, “It appears to be a more efficient process to allow citizens to present their cases to a magistrate, in misdemeanor cases, for the probable cause hearing and issuance of the warrant.”

The statewide centralization of the magistrate system significantly improved selection and training of magistrates. Chief circuit judges often are consulted by the chief magistrates regarding administrative matters and enjoy a good working relationship. Others, while not criticizing the idea of central control, lament undue bureaucratization, resulting in more reluctance by magistrates to consult informally with Commonwealth’s attorneys when private complaints are presented. Requiring higher levels of formal education for magistrates is a mixed blessing. Some magistrates who went to law school want to do suppression hearings in conjunction with deciding whether to issue an arrest warrant, conflating two

completely separate steps in the criminal justice process. Others believe that they are obligated to issue a warrant if they find probable cause, even if the Commonwealth’s attorney advises that prosecution should be withheld.

Greater transparency with respect to the magistrate system, in particular to its role in screening private criminal complaints, is desirable. Data should be collected and made available to the public on the incidence of private complaints, compared to law-enforcement or Commonwealth’s attorney requests for warrants, and on the relative number of warrant requests granted or denied in each category. The Virginia Court Administration website has no comprehensive magistrate statistics for any year since 2012.¹⁶ Even pre-2013 statistics do not separately track the handling of private criminal complaints. ☺



Henry H. Perritt, Jr. is a Professor of Law and former Dean, Chicago-Kent College of Law. He is a member of the bars of Virginia, Pennsylvania, District of Columbia, Maryland, Illinois, and the Supreme Court of the United States. He has authored more than 100 articles and twenty-five books on judicial procedure, dispute resolution, technology and law, and labor law. He is a commercial helicopter and private instrument airplane pilot and extra class radio amateur (K9KDF). He is retiring this summer and moving to Albemarle County, where he will practice law part-time and write.

Endnotes

- 1 Va. Code § 19.2-72.
- 2 Department of Magistrate Services, Office of the Executive Secretary of the Supreme Court of Virginia, Magistrate Manual at 2-4, paras. II(c)(2) & (3) (rev’d Jul. 2019) [hereinafter “Magistrate Manual”] (giving felony bad check as example), <http://www.courts.state.va.us/courtadmin/aoc/mag/resources/magman/chapter02.pdf>
- 3 See Criminal Complaint Form, Form DC-311 (containing box to be checked if complainant is not a law enforcement officer or animal control officer; also containing boxes to be checked by the Commonwealth’s attorney or law enforcement agency approving issuance of a felony arrest warrant).
- 4 Va. R. Crim. P. 3A:3.
- 5 Va. Code § 19.2-76.
- 6 Va. Code § 19.2-73.2.
- 7 Va. Code. § 15.2-1627(b). But see *In re Horan*, 271 Va. 258, 264, 634 S.E.2d 675, 679 (2006) (“institution of criminal charges, as well as their order and timing, are matters of prosecutorial discretion”); 2001 Op. Va. Att’y Gen. 078 (Dec. 19, 2001), <https://www.oag.state.va.us/files/Opinions/2001/01-078.pdf> (“Commonwealth’s attorney should use restraint in discretionary exercise of governmental power, such as in selection of cases to prosecute”).
- 8 2 April 2020 email interview with Major Gregory Jenkins, Albemarle County Police Department.
- 9 Virginia State of the Judiciary Report 50-54 (2018) (listing magistrates by name).
- 10 Virginia State of the Judiciary Report Table 14 (2018).
- 11 Judicial Council of Virginia, Report to the General Assembly and Supreme Court of Virginia 49-52 (2008).
- 12 See William Blackstone, IV Commentaries on the Law of England 287 (1766) (describing appearance by citizen before justice of the peace).
- 13 *State v. Goodman*, 449 S.W.2d 656, 661 (Mo. 1970) (summarizing posse comitatus power).
- 14 2020 Va. Sen. Bill. No. 169 (offered Jan. 8, 2020), referred to Committee for Courts of Justice.
- 15 See Michael R. Doucette, *Virginia Prosecutors’ Response to Two Models of Pre-Plea Discovery in Criminal Cases: An Empirical Comparison*, 73 Wash. & Lee L. Rev. Online 415, 430 (2016), <https://scholarlycommons.law.wlu.edu/wlulr-online/vol73/iss1/17> (noting increasing burden of greater discoverable information, including video and audio recordings that are time consuming for prosecutors to review: “One individual traffic stop could generate several hours of video and audio evidence.”).
- 16 See http://www.courts.state.va.us/courtadmin/aoc/judpln/csi/stats/mag/mag_caseload_rpt_2012.pdf.

DISCIPLINARY SUMMARIES

The following are summaries of disciplinary actions for violations of the Virginia Rules of Professional Conduct (RPC) or another of the Supreme Court Rules.

Copies of disciplinary orders are available at the link provided with each summary or by contacting the Virginia State Bar Clerk's Office at (804) 775-0539 or clerk@vsb.org. VSB docket numbers are provided.

DISCIPLINARY BOARD

Babak Bagheri

20-000-117931

Chevy Chase, Maryland 20815

Effective April 24, 2020, the Virginia State Bar Disciplinary Board revoked Babak Bagheri's license to practice law in the Commonwealth of Virginia. This was a reciprocal revocation, based on his January 9, 2020, disbarment from the practice of law by the Court of Appeals of Maryland.

Rules of Court, Part 6, Section IV, Paragraph 13-24

<https://www.vsb.org/docs/Bagheri-042420.pdf>

William Franklin Burton

Chevy Chase, MD 20815

19-051-115210

By Order entered May 20, 2020, the Virginia State Bar Disciplinary Board suspended William Franklin Burton's license to practice law in the Commonwealth of Virginia for a period of one year and one day for violating professional rules that govern competence, diligence, communication, truthfulness in statements to others, and bar admission and disciplinary matters. This was an agreed disposition of misconduct charges.

RPC 1.1; 1.3(a); 1.4 (a-c); 4.1(a); 8.1(a)

<https://www.vsb.org/docs/Burton-052120.pdf>

Timothy Scott Carnes

20-000-118442

Norfolk, VA 23507

Effective April 28, 2020, the Virginia State Bar Disciplinary Board revoked Timothy Scott Carnes's license to practice law based on his affidavit consenting to the revocation. By tendering his consent to revocation at a time when allegations of misconduct are pending, Carnes acknowledges that the material facts upon which the allegations of misconduct are predicated are true.

Rules of Court, Part 6, Section IV, Paragraph 13-22 and 13-28.

<https://www.vsb.org/docs/Carnes-042920.pdf>

Michael Anthony Cole

19-090-114614 and 20-090-117131

South Boston, VA 24592

Effective February 21, 2020, the Virginia State Bar Disciplinary Board revoked Michael Anthony Cole's license to practice law in the Commonwealth of Virginia for violating professional rules that govern safekeeping property, truthfulness in statements to others, bar admission and disciplinary matters, and misconduct. RPC 1.15(a)(1); 1.15 (b)(5); 4.1(a); 8.1(a)(c); 8.4(b)(c)

<https://www.vsb.org/docs/Cole-032320.pdf>

Daniel Francis Izzo

19-053-116012

Alexandria, VA 22310

Effective April 8, 2020, the Virginia State Bar Disciplinary Board suspended, with terms, Daniel Francis Izzo's license to practice law in the Commonwealth of Virginia for one year and one day for violating professional rules that govern scope of representation, diligence, communication, and misconduct. This was an agreed disposition of misconduct charges.

RPC 1.2 (a); 1.3 (a); 1.4 (a) (b); 8.4 (c)

<https://www.vsb.org/docs/Izzo-040920.pdf>

Raymond Lewis Palmer

19-033-115044

Richmond, VA 23219

By Order entered May 15, 2020, the Virginia State Bar Disciplinary Board suspended, with terms, Raymond Lewis Palmer's license to practice law in the Commonwealth of Virginia for a period of one year for violating professional rules that govern diligence and safekeeping property. This was an agreed disposition of misconduct charges. The suspension is effective September 15, 2020.

RPC 1.3(a); 1.15(a)(1)(3), (b)(3-5), (c)(1,2,4), (d)(1-4)

<https://www.vsb.org/docs/Palmer-052220.pdf>

Kathryn Suzanne Pennington

18-021-110430, 18-021-110932, 18-021-112103, 19-021-113686, 19-021-114516, 19-021-114656

Virginia Beach, Virginia 23457

Effective May 11, 2020, the Virginia State Bar Disciplinary Board revoked Kathryn Suzanne Pennington's license to practice law based on her affidavit consenting to the revocation. By tendering her consent to revocation at a time when allegations of misconduct are pending, Pennington acknowledges that the material facts upon which the allegations of misconduct are predicated are true.

Rules of Court, Part 6, Section IV, Paragraph 13-28.

<https://www.vsb.org/docs/Pennington-051120.pdf>

DISTRICT COMMITTEES

Rose Ann Palmer

20-060-117391 and 20-060-117563

Mechanicsville, VA 23111

On March 10, 2020, the Virginia State Bar Sixth District Subcommittee issued an admonition with terms to Rose Ann Palmer for violating professional rules that govern diligence, communication, and safekeeping property.

RPC 1.3 (a); 1.4 (a); 1.15 (a); 1.15(b)(3)

<https://www.vsb.org/docs/Palmer-040620.pdf>

Janice Lynn Redinger

19-070-116058

Charlottesville, VA 22902

Effective April 7, 2020, the Virginia State Bar Seventh District Subcommittee issued a public reprimand without terms to **Janice Lynn Redinger** for violating professional rules that govern fairness to opposing party and counsel. This was an agreed disposition of misconduct charges.

RPC 3.4 (d)

<https://www.vsb.org/docs/Redinger-040820.pdf>

DISCIPLINARY PROCEEDINGS

Respondent's Name	Address of Record	Action	Effective Date
Disciplinary Board			
Babak Bagheri	Chevy Chase, MD	Revocation	April 24, 2020
William Franklin Burton	Chevy Chase, MD	1-Year and 1 Day Suspension	May 20, 2020
Timothy Scott Carnes	Norfolk, VA	Revocation	April 28, 2020
Michael Anthony Cole	South Boston, VA	Revocation	February 21, 2020
Daniel Francis Izzo	Alexandria, VA	1-Year and 1 Day Suspension	April 8, 2020
Raymond Lewis Palmer	Richmond, VA	1-Year Suspension With Terms	September 15, 2020
Kathryn Suzanne Pennington	Virginia Beach, VA	Revocation	May 11, 2020
District Committees			
Rose Ann Palmer	Mechanicsville, VA	Public Admonition With Terms	April 3, 2020
Janice Lynn Redinger	Charlottesville, VA	Public Reprimand	April 7, 2020
Suspension – Failure to Pay Disciplinary Costs		Effective Date	Lifted
Ellis Charles Baggs	Richmond, VA	May 27, 2020	
Jason Michael Breneman	Ashland, VA	April 1, 2020	May 22, 2020
Kenneth Steven Kaufman	Potomac, MD	May 6, 2020	
Justin Alan Torres	Alexandria, VA	April 1, 2020	
Suspension – Failure to Comply with Subpoena			
Marc Ericson Darnell	Newport News, VA	May 14, 2020	
Impairment			
Ellen Mary Lynch	Arlington, VA	May 12, 2020	
Cheryl Schroeder Thomas	Virginia Beach, VA	April 29, 2020	

NOTICES TO LAWYERS

Supreme Court of Virginia Issues Statement on Justice

On June 16, 2020, the Justices of the Supreme Court of Virginia issued a statement to members of the judiciary and the Virginia State Bar.

https://www.vsb.org/site/news/item/SCV_statement_on_justice

Statement from VSB President Marni E. Byrum

After global and local protests spurred by civil rights issues, VSB President Marni E. Byrum released a letter to all Virginia lawyers.

https://www.vsb.org/site/news/item/statement_byrum_2020-06

Highlights of the June 9, 2020, Virginia State Bar Executive Committee Meeting

The VSB Council meeting scheduled for June 18 was canceled. The VSB Executive Committee convened telephonically on June 9, 2020. By a vote of 11–2, the Executive Committee voted to recommend revisions to Supreme Court of Virginia Rule 1A:8. The proposed changes will be presented to the Supreme Court of Virginia for approval.

https://www.vsb.org/site/news/item/highlights_EC_060920

Supreme Court of Virginia Amends Rules of Court

On May 1, 2020, the Supreme Court of Virginia approved amendments to Part 6, Section IV, Paragraph 3 of the Rules of Court regarding the organization and government of the Virginia State Bar. These Rules are effective June 30, 2020 and will be implemented as part of 2020-2021 dues renewal. Most notably, these Rule changes: (1) impose an email address of record requirement for all members; (2) create separate membership classes for retired and disabled members (with corollary changes to Paragraph 13-23.K.); (3) remove the requirement for active members to be “engaged in the practice of law;” (4) revise some procedures for electing different membership classes; and (5) update the Rule’s language to eliminate ambiguous terminology. https://www.vsb.org/site/news/item/scv_amends_rules_of_court

Supreme Court of Virginia Amends Two Rules

Effective June 4, 2020, the Supreme Court of Virginia amended two Rules of Court, one to take effect immediately and the other to take effect on July 1, 2020.

Effective immediately are changes to Part Three A (Criminal Practice and Procedure), Appendix of Forms, Form 10.

Effective on July 1, 2020, Rule 3B:2 of the Uniform Fine Schedule has been amended. https://www.vsb.org/site/news/item/scv_amends_two_rules

Supreme Court of Virginia Encourages E-Filing of All Documents

As a result of the COVID-19 emergency, on June 2, 2020, the Supreme Court of Virginia issued an order encouraging lawyers and pro se litigants to electronically file pleadings and documents that would normally be required to be filed in hard copy with the Court. https://www.vsb.org/site/news/item/SCV_efile

VSB Bar Council Election Results

The Virginia State Bar Council welcomes eleven representatives after voting was held in five circuits. The Council is an 81-person body, consisting of 65 lawyers elected from the 31 circuits throughout the Commonwealth, as well as nine at-large members appointed by the Supreme Court of Virginia, four conference chairs, and three officers. https://www.vsb.org/site/news/item/bar_council_election_results

Supreme Court of Virginia Offers Extensions to Deadlines Governing Lawyers Due to COVID-19 Pandemic

The Court’s modifications affect deadlines for dues, the Clients’ Protection Fund fee, MCLE, certification of professional liability insurance, and the attorney wellness fund fee. The extensions move all deadlines from July 31, 2020, until September 30, 2020, and October 31, 2020 to December 31, 2020.

https://www.vsb.org/site/news/item/extensions_to_deadlines_COVID

COVID-19 Updates and Safety Measures

For the latest news and information regarding Supreme Court of Virginia and Bar operations during the COVID-19 pandemic, please visit the website.

https://www.vsb.org/site/news/item/covid_19_safety_measures

Administrative Suspensions

Members of the Virginia State Bar were administratively suspended on October 15, 2019, for failure to comply with the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraphs 11 and/or 16, 18, 19; or the Code of Virginia, Sections 54.1-3912 or 54.1-3913.1. These attorneys were notified of their suspensions using their last address of record with the Virginia State Bar; however, in some instances, this has not been effective. **To assist the Virginia State Bar in re-establishing contact with these attorneys, anyone having knowledge of the present location and practice status of persons on this list should contact the VSB Regulatory Compliance Department.** This list was published on April 30, 2020, at www.vsb.org/site/members/administrative-suspensions

NOTICES TO LAWYERS

Clients Protection Fund Reimburses \$30,659 to Clients

The Virginia State Bar Clients' Protection Fund Board authorized payments totaling \$30,659.00 in reimbursement to former clients of eight Virginia attorneys at its September 20, 2019 meeting and at its most recent meeting on February 7, 2020.

In the largest award of the meetings, one petitioner, a long-standing client of Travis Joseph Tisinger of Berryville, was awarded \$12,000 as reimbursement for retainer fees that the attorney collected for a waterproofing claim and settlement, and trust fund work. The investigator found insufficient work on the attorney's part. Tisinger's license was revoked by consent in April of 2019 for misconduct related to the petitioner's case.

Two petitioners recovered \$6,409 and \$5,000, respectively, for fees paid to Michael F. Fasanaro Jr. of Virginia Beach. The first petitioner was granted returns for an unearned fee in family law wherein the petitioner hired Fasanaro to represent him in a divorce case, but mediated the divorce without attorney assistance, asking for a fee refund. Fasanaro did not have the funds to deliver the refund. The second recipient recovered funds for an unearned fee in criminal law. Fasanaro failed to represent the petitioner in an appeal for conviction of a murder sentencing. Fasanaro's license was revoked by consent in July 2019 for misconduct related to the two cases.

The board approved a \$3,500 payment to a petitioner's father to reimburse for an immigration case in which Sean Hanover of Fairfax did not do significant work. The petitioner's father paid the fee that was not honored or refunded. Hanover's license was revoked by consent in February 2019 after conviction in a felony case.

A petitioner received \$1,875 as reimbursement for funds that the attorney Shelley Renee Collette of Winchester received for prompt counsel in a drug distribution criminal case. The attorney was found to engage in dishonest conduct including failure to appear in court. Collette's license was revoked by consent in March 2018 for numerous infractions.

A former client of Jason Allen Spitler of Luray was awarded \$750 by the board for an insignificant amount of work in an adoption case. A Memorandum Order of Revocation for Spitler's license was entered June 2019.

The board approved the payment of \$500 to a petitioner against Bryan James Waldron of Oakton for not fully earning a retainer for filing a civil suit in September 2015. Waldron's license was revoked in September 2018 relating to this and three other complaints for wrongful action.

Two petitioners, mother and son, were awarded reimbursement for claims against John Frederick McGarvey of Glen Allen. The son was awarded \$125 and the mother was awarded \$250 for McGarvey's failure to appear in court and insufficient service in 2016. McGarvey was suspended indefinitely on grounds of impairment in February 2017. The board has previously approved petitions against McGarvey, most recently seven cases totaling \$14,550 in 2018.

Finally, the board awarded a petitioner \$250 for the failure to fulfill a verbal agreement by attorney George Ernest Marzloff of Ruther Glen in a matter of a work release in 2017. Marzloff's license was revoked by consent in August 2019.

A chart of the amounts paid as a result of the two meetings follows. The board delays the release of the final chart, as the awards given to new petitioners are subject to a 30-day appeal period.

The Clients' Protection Fund was created by the Supreme Court of Virginia in 1976 to reimburse persons who suffer a quantifiable financial loss because of dishonest conduct by a Virginia lawyer whose law license has been suspended or revoked for disciplinary reasons, or who has died and did not properly maintain client funds. The fund is not taxpayer funded but is supported by Virginia lawyers who pay an annual fee of up to \$25. The Supreme Court of Virginia has set the current annual fee at \$10 per Virginia lawyer with an active license status. Payments from the Clients' Protection Fund are discretionary and are not a matter of right.

If you have any questions, you may contact Vivian R. Byrd, administrator to Clients' Protection Fund at byrd@vsb.org or at (804) 775-0572.

Docket Number	Lawyer's Name	City of Record	Amount Paid	Type of Case
19-555-003199	George Ernest Marzloff	Ruther Glen, VA	\$250.00	Unearned Fee/Criminal Law
19-555-003203	Bryan James Waldron	Oakton, VA	\$500.00	Unearned Fee/Civil Law - State
19-555-003212	Sean Hanover	Fairfax, VA	\$3,500.00	Unearned Fee/Immigration
19-555-003218	Shelly Renee Collette	Winchester, VA	\$1,875.00	Unearned Fee/Criminal Law
19-555-003219	Travis Joseph Tisinger	Berryville, VA	\$12,000.00	Malpractice-Negligence/Civil Law - State
20-555-003228	John Fredrick McGarvey	Glen Allen, VA	\$125.00	Unearned Fee/Criminal Law
20-555-003229	John Fredrick McGarvey	Glen Allen, VA	\$250.00	Unearned Fee/Criminal Law
20-555-003233	Michael F. Fasanaro, Jr.	Virginia Beach, VA	\$6,409.00	Unearned Fee/Family Law
20-555-003232	Michael F. Fasanaro, Jr.	Virginia Beach, VA	\$5,000.00	Unearned Fee/Criminal Law
20-555-003237	Jason Allen Spitler	Luray, VA	\$750.00	Unearned Fee/Family Law

Effective July 1, A.

Benjamin Spencer moves from professor at the University of Virginia School of Law, the nation's second oldest law school to dean of William & Mary Law School, the nation's oldest law school. Spencer is the first African American to hold the position, and the first Black dean at William & Mary. Spencer graduated from Harvard Law School, has worked as a member of the Advisory Committee on Civil Rules of the U.S. Judicial Conference (appointed by Chief Justice John Roberts); and serves in the Judge Advocate General's Corps of the U.S. Army Reserves, where he holds the rank of captain and argues appeals on behalf of the Army; and he is a frequent VSB volunteer, having served on a variety of committees and on Bar Council for six years.



Spencer

The **Hon. Nolan**

B. Dawkins, presiding Circuit Court Judge for the City of Alexandria, retired on June 26, 2020. Judge Dawkins was appointed to the 18th Judicial Circuit Court in May 2008, after already serving as a Juvenile & Domestic Relations Court Judge in Alexandria for more than 12 years. He was appointed in 1989 to serve as a substitute judge; then, from 1994 until his elevation to the Circuit Court in 2008, Judge Dawkins presided over the Juvenile and Domestic Relations (JDR) Court. He was the Chief Judge of the JDR Court from 2004–2008 and he presided over the Alexandria Family Drug Treatment Court from 2001–2008. Prior to his 26-years on the bench, Judge Dawkins practiced law in Alexandria and served as an Assistant City Attorney.



Dawkins

Beth Gould has joined **Freeborn & Peter's** Richmond office as an associate in the Litigation Practice group and a member of the Insurance/



Gould

Reinsurance Industry team. Gould has extensive trial experience and focuses her practice on insurance defense for personal lines, trucking, commercial general liability, and restaurants and retail. She received her law degree from the University of Richmond School of Law, and her B.A. from Dartmouth College.

Eric W. Schweibenz and **John Kern**, partners at **Oblon LLP** in Alexandria,



Schweibenz Kern

recently secured appellate affirmation of a U.S. Patent Office decision for their client Aisin Seiki and its customers Toyota and Honda, freeing all parties from what had become a multibillion dollar threat to block some of the most fuel efficient, environmentally friendly, and best-selling vehicles in the United States.

The Virginia Indigent Defense Commission is pleased to announce that **Tracey A. Lenox** has been selected to serve as the Chief Public Defender for the newly created **Prince William County Public Defender Office**. Lenox has practiced as a criminal defense attorney in and around Prince William County for over 26 years and is the current president of the Prince William County Bar Association. Lenox will lead an office of 35 attorneys and support staff that was created with strong support from the community led by Virginians Organized for Interfaith Community Engagement.



Lenox



Hottell

Maddox

Gerock

Two northern Virginia family law firms, the Hottell Family Law Group and Maddox & Gerock have joined forces. The firm, known as **Maddox & Gerock**, is in Falls Church. **Dennis Hottell** joins **Katherine Maddox** and **Julie Gerock**.

Joseph Stepp has joined **Two Rivers Law Group, P.C.**, in its Christiansburg office as an associate in the firm's Workers' Compensation Practice. He received his law degree and undergraduate degree from Liberty University. Stepp is currently licensed in Virginia and Massachusetts.



Stepp

Uzo Onwuchekwa has also joined **Two Rivers Law Group, P.C.**, in its Richmond office as an associate in the firm's Workers' Compensation Practice.



Onwuchekwa

She began her legal education in Nigeria and received her Master of Laws from Fordham University as well as her Juris Doctorate from The University of Richmond. She is licensed in Virginia and New York.

Gentry Locke has added **Erin Harrigan** as a partner in the Criminal & Government Investigations practice. Harrigan served as Assistant United States Attorney in the Western District of Virginia, based in Charlottesville, where she was the Lead Prosecuting Attorney for the Organized Crime & Drug Enforcement Task Force. As a federal prosecutor, Harrigan also prosecuted and investigated public corruption, regulatory offenses, human trafficking and fraud cases of local origin and involving multi-national corporations. She previously worked for the Virginia Attorney General's office handling criminal matters in the trial and appellate courts and focused on human trafficking and gang/organized crime.



Harrigan

Andrew O. Gay has rejoined **Gentry Locke** in its Lynchburg office. Gay will work in the firm's commercial litigation practice group, where he will focus on assisting clients with complex construction contracts and construction liti-



Gay

Professional Notices

gation. Gay has significant experience in construction claim and defect litigation, as well as contract drafting and negotiations. He has represented a variety of clients in the road and bridge, residential, commercial, aerospace, and utility sectors, including national home builders, ENR-ranked contractors, national material suppliers, local and regional subcontractors, design professionals, and a variety of owners and developers. Gay is licensed to practice in Virginia and Florida.



McCaskey

Virginia lawyer **David I. McCaskey**, author of *The Ambidextrous Spore Print Book* and *Notes on the Provenance of my Pfretzschner Aluminum Bass*, has published his first novel, ***Golden Chains***, available through Amazon. *Golden Chains* chronicles the life of a wounded D-Day veteran, discharged before the war's end who relocates to Staunton after having been treated at Woodrow Wilson Hospital and touches on much of the local history that he observed in his job as a truck driver in Augusta and Highland Counties.

Kerns & Kastenbaum, a 60-plus year firm serving central Virginia has relocated its offices to 4900 Radford Avenue in Richmond.

Professional Notices

Email your news and professional portrait to dnorman@vsb.org for publication in *Virginia Lawyer*. Professional notices are free to Virginia lawyers and may be edited for length and clarity.

Virginia State Bar Staff Directory

Frequently requested bar contact information is available online at www.vsb.org/site/about/bar-staff.

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to, preparing for weekly trials, prosecuting misdemeanors and felonies, prepare plea agreements, prepare sentencing guidelines, and advise police officers on matters of criminal law. To apply: <https://www.governmentjobs.com/careers/winchesterva?>

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Odin, Feldman and Pittleman, PC is seeking an associate with 2-5 years of experience in Estate Planning and Trust and Estate Administration. Admission to the Virginia bar is required. Candidates must possess excellent academic credentials, strong organization, research, writing, analytical, and communication skills. Visit www.ofplaw.com for details

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Notices

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Giving Effective Feedback

by Joe Fore

It's summer — a time when many law firms, government offices, and judicial chambers will be welcoming new hires, summer associates, clerks, and interns (even if virtually, in these socially distanced times). And a key part of having aspiring attorneys in your office is giving them meaningful feedback on their writing. They need and deserve effective feedback to help build foundational skills that will serve them the rest of their careers.¹ And *you* benefit from giving good feedback, too, since it means you'll be getting better work product from your guests for the rest of their stay.²

Here's how you can help the next generation of lawyers become good, self-directed legal writers.

Be a teacher, not just an editor.

Too often, supervising attorneys simply cross out or rewrite sentences and hand back a marked-up document to their interns. But that's not really *feedback*, that's just editing. To grow as legal writers, novices must understand not only *what* they did wrong and *how* to correct it, but also *why* it's wrong.³ So, when you're giving feedback, be sure to explain your suggestions; the word "because" is your friend. Consider these two comments:

- *This paragraph is confusing.*
- *This paragraph is confusing because it lacks a clear topic sentence to let the reader know what the paragraph is about.*

With the second sentence, the recipient understands both the symptom of their writing flaw (confusion) and its cause (no topic sentence). Now, the writer can independently diagnose other paragraphs with the same issue.

Similarly, if you're giving feedback on digital documents, don't make spe-

cific edits in "track changes" format. It's too tempting for recipients to automatically "accept all changes" without reflecting on why those edits were made. Instead, use comment bubbles or in-line comments to suggest changes or raise questions, which will prompt deeper thinking and actual learning.

Prioritize quality over quantity

You might be tempted to mark every single problem or error in a piece of writing. And, of course, you'll eventually have to do that when preparing a final document for a client or a court. But in earlier stages, when helping newer legal writers to learn, it's usually better to give *fewer*, high-quality comments. Too many comments on a document can demoralize newer writers.⁴ (Just think back to how you felt in school when the teacher handed back a paper dripping in red ink.) Moreover, excessive commenting overwhelms their ability to learn — no one can try to master 25 new skills at once.

Instead, look for ways to group your comments into two to four broader lessons or themes for your new colleagues to work on this time around. Read back over the comments you made or the problems you identified and ask yourself, "*What do these individual suggestions have in common?*" Are there consistent issues with organization, reasoning, writing style, or even punctuation/grammar? If so, try to label them; it's much easier for the novice to focus on improving three main categories of problems than fixing 45 individual things scattered throughout a document.

Set the right tone

The tone of your feedback is every bit as important as the content. The goal isn't to sugar-coat or coddle; it's to increase the odds that the listener remains open



to hearing your feedback and is motivated to incorporate it and improve next time.⁵

Accentuate the positive. The newer legal writers you're working with won't be perfect. But they won't be wholly deficient, either. Inevitably, even those who struggle will have some things they did well. Point out those things. Positive feedback encourages the listener and makes them receptive to the rest of your critique; so mention the good stuff first.⁶ Positive feedback also lets new legal writers know what they're doing *right* so they can replicate it in the future.⁷

Avoid "you." Getting feedback isn't easy. It can feel like our worth as a person is being evaluated. So you want to depersonalize the feedback as much as possible — to avoid making it about "me" judging "you." One way is to keep your comments focused on the *writing* and not on the *writer*. Avoid using "you" — as in "*Your paragraph is confusing,*" or "*You wrote a confusing paragraph...*". Instead, try "*This paragraph is confusing,*" which puts the emphasis, appropriately, on the words that appear on the page.⁸

Adopt an alter ego. In addition to cutting the "you," another way to depersonalize feedback is to cut the "I" and have the critique come from another source. Try some "professional

role-playing” — framing feedback in terms of how another reader (a client, judge, other supervisor, or a hypothetical other “reader”) would respond to the writing.⁹ So rather than saying, “I found

this paragraph confusing because,” you might try saying, “A judge reading this would probably be confused by this paragraph because...”.



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Endnotes

- 1 Rebekah Hanley, *Generous Bonus in a Down Economy - Constructive Criticism*, 70 OR. ST. B. BULL. 13, 13 (2009).
- 2 *Id.*
- 3 Elizabeth Ruiz Frost, *Overcoming Illusory Superiority: Mentoring Legal Writers*, 73 OR. ST. B. BULL. 13, 14 (2013).
- 4 Hanley, *supra* note 1, at 14.
- 5 Joe Fore, *Want to Give Better Writing Feedback? Watch Your Tone*, THE #PRACTICETUESDAY BLOG (Nov. 28, 2017), <https://practicetuesday.com/2017/11/28/want-to-give-better-writing-feedback-watch-your-tone/>.
- 6 As Dale Carnegie says, the first step in getting others to change their behavior is to “begin with praise and honest appreciation.” DALE CARNEGIE, *HOW TO WIN FRIENDS AND INFLUENCE PEOPLE* 198 (Pocket Books 1981).
- 7 Anne Enquist, *Critiquing Law Students’ Writing: What the Students Say is Effective*, 2 J. LEGAL WRITING INST. 145, 188 (1996), https://www.lwionline.org/sites/default/files/2016-08/Students_Enquist.pdf.
- 8 Sammy Mansour, *Fostering Receptiveness to Feedback*, 98 MICH. B.J. 48, 49 (2019); Frost, *supra* note 3, at 15-16.
- 9 Jessie Grearson, *From Editor to Mentor: Considering the Effect of your Commenting Style*, 8 J. LEGAL WRITING INST. 147, 164 (2002), https://www.lwionline.org/sites/default/files/2016-08/Editor%20to%20Mentor_Grearson.pdf.

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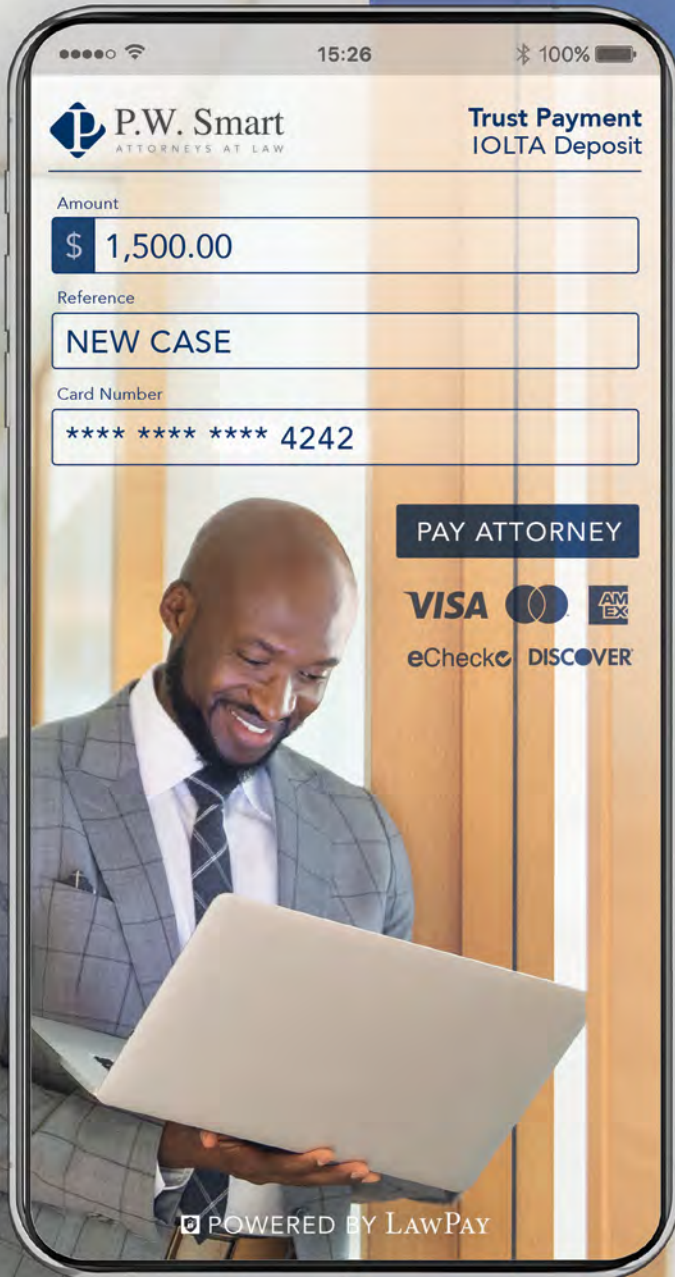
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