Docket Call

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Martha E. Hulley, Ed.

The newsletter of the Young Lawyers Conference of the Virginia State Bar

In this issue:

YLC Wins Big at the Annual Meeting

Martha Hulley

On Thursday, June 14th, the YLC, along with other Virginia attorneys from around the Commonwealth, descended upon the Cavalier Inn in Virginia Beach for the 74th Annual Meeting of the Virginia State Bar. Despite the strong winds accompanying the weekend, attorneys from all over enjoyed the chance to mingle and network.

Things kicked off for the YLC on Friday morning with the YLC-sponsored "Run in the Sun" 5K Race up and down the Virginia Beach Boardwalk. Finishing in the top 3 for the men were Douglas Burch (20.27), Matthew O'Neil (20.28), and Steven Ramsdell (20.29). The top 3 women were Lauren Dillon (23.04), Michelle Ramsdell (23.37), and Amy Kelly (25.13)

After the race, the focus of the Annual Meeting turned to the back-by-popular demand Judiciary Squares, the Showcase CLE, presented by the YLC at the Cavalier Oceanfront Hotel. As many may recall from last year the CLE was a spin-off of the classic game show "Hollywood Squares." This year the topic was "Civil Procedure." Nine judges from around the Commonwealth, some returning to reprise their roles and some making their debut appearances (including justices from the Supreme Court, judges from the Virginia Court of Appeals, and a puppet named Little Bro) acted as the "squares." The judges were posed questions by the returning CLE moderator, the Honorable Stanley P. Klein (Ret.). The judges, who had been provided the answers in advance, then answered the question either correctly or incorrectly in an attempt to mislead the contestants.

Spicing up the already entertaining event were several contestant grudge matches. Kicking off the CLE was Big Bar vs. Little Bar as our fearless former president Christy Kiely took on the venerable outgoing VSB president George Shanks. In true YLC fashion, the young lawyers proved victorious. Then it was time for two Virginia judges to put everything on the line and navigate the trickery of their colleagues. Judges Hoover and Varoutsos may be the bravest judges in the Commonwealth. The CLE closed out with a grudge match carried over from last year: YLC's Nate Olson vs. our new president, Brian Charville. Unfortunately, the game was called before a winner could be announced. This intrepid reporter senses that a third and final must-see re-match may be in the making.

The CLE was another huge success. It was standing room only in the crowded Cavalier Ballroom, and laughter filled the air when Judge Rossie Alston suddenly started retrieving his answers from a special guest star, his puppet Little Bro. At the conclusion of the CLE, the YLC held its annual Reception and Membership Meeting to install the new YLC Board Members for the 2012–2013 bar year, and Brian Charville rolled out the new YLC Fellows Program. The Fellows Program is for past YLC leaders who are no longer YLC members but have demonstrated a commitment to the Conference and have been identified as persons with whom the YLC wants to maintain a connection. Be sure to contact any YLC Board member for more information!

In addition, YLC members who contributed significant service to the Bar over the previous year were honored. Patricia Amberly, Jennifer Haberlin, Lindsay Heitger, Martha Hulley, Jean Humbrecht, Andrea Davison,

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Family Law Corner

Andrew R. Tank

What's Love Got to Do with It? Premarital Agreements

Premarital agreements are weird. Two people who are presumably in love and planning to spend the rest of their lives together decide to enter into a contract that will determine what will happen if and when they divorce. I think even most attorneys find that terribly unromantic.

From a family law attorney perspective, every time I read a premarital agreement I find new reasons not to like them. Typically one or both parties are trying to avoid what they consider unfair outcomes that would result from the application of equitable distribution and spousal support statutes, but they always seem to create different and worse problems. The statutes are not perfect, but for the most part they allow spouses to make decisions in the best interest of the marriage without worrying about what will happen if the marriage fails. They make it difficult to plan for divorce. Premarital agreements almost always seem to do the opposite.

Another aspect of premarital agreements I find distasteful is the negotiating process, especially if the agreement being proposed is a raw deal for your client. Where is your leverage? Unlike divorce cases, you do not have the option of going to court. If the other side will not budge you either take a bad deal or threaten to call off the wedding. That is a high stakes game of chicken you do not want to be involved in during the weeks leading up to your client's wedding.

So if it were up to me I would get rid of them. But they can serve the important purpose of protecting your client in the unfortunate situation of ending a marriage, so if you find yourself representing a client who has been presented with a less-than-favorable agreement, here are some key points to remember:

- Make the other side state clearly why a premarital agreement is necessary. Make sure your client understands those reasons and is comfortable with them. If the agreement goes beyond what is necessary to accomplish the stated objectives, challenge the other side on it. For example, if the goal is to protect the family business, then you do not need a provision that changes the way a 401(k) would typically be divided.

- Make sure your client understands how the provisions of the agreement change what would happen if there were no agreement and the applicable statutes controlled. If your client is getting a bad deal with that trade, tell him/her that in writing.

- Try not to impute negative motives to the other spouse-to-be. Remember that your client is in love with this person. Make the other lawyer the enemy if necessary.

- Finally, regardless of how bad the agreement is, do not ever advise a client to call off the wedding. If it is a bad deal you have an obligation to tell your client. But you do not have to tell him/her what the agreement says about the person who is proposing it and whether or not he/she wants to marry that person. That is a decision that your client needs to reach on his/her own. While you may be tempted, limit yourself to legal advice, and leave the relationship advice to another professional.

Andrew R. Tank practices family law at Surovell Isaacs Petersen and Levy, PLC in Fairfax. He may be reached at atank@siplfirm.com.

Make a Difference. Volunteer.

We need your help! The Virginia State Bar Young Lawyers Conference (YLC) needs Circuit Representatives, Program and Commission Chairs, and committee members / volunteers for many of its programs in the 2012–13 bar year. Please visit the YLC website at http://www.vsb.org/site/conferences/ylc/view/volunteer-opportunities/ for more information on how to get involved, or contact Nathan Olson at nolson@cgglawyers.com.

President's Message

Brian Charville

Welcome to the 2012–2013 bar year! Wait—you missed it? Perfectly understandable. On July 1, the Conference began its 38th year of activity and I became its President. While the latter occurrence isn't consequential, the former is—our Conference has been representing young lawyers, serving the public, and enriching our members for nearly 40 years! My principal goal for 2012–2013 is for our Conference to undertake a bit of circumspect self-evaluation so that we ensure we're well-positioned for the next 38 years.

As the bar year begins it's important that we recognize our outgoing leaders and challenge the leaders coming on board. Christy Kiely of Richmond concluded her term as President in June and (in true outdoorswoman style) left her "campsite" much better than she found it. She encouraged many of you to become involved in the Conference's activities for the first time, represented us well to the State Bar's Council and Executive Committee, and shepherded our new YLC Fellows program through its inaugural year. We also lost leaders Carson Sullivan of Washington, D.C., who concluded her term as Immediate Past President, and Glen Sturtevant of Richmond, who has embarked on a campaign for the School Board there. We thank them and wish them the very best.

In the coming year our Board of Governors will be joined by Monique Miles of Reston and J. Craig Kemper Jr. of Wytheville. We look forward to them providing the Board with new energy and ideas for improving the Conference. Monique will be a Board liaison to the Women & Minorities in the Profession Commission (which she previously chaired) and the Legal Handbook for Cancer Survivors program, and Craig will be a liaison to the Emergency Legal Services and Admission & Orientation Ceremonies committees.

> Our Conference has been representing young lawyers, serving the public, and enriching our members for nearly 40 years!

Now back to circumspect self-evaluation: in order to begin that process I'm taking a few steps along with our Board to make sure we're ready for the future. I'm appointing a Board subcommittee to undertake formal long-range planning for the Conference's direction. They will consider what the Conference is doing and how it's doing it, and what we're not doing that we should add. I also plan to appoint a committee that will evaluate our bylaws to ensure compliance and to suggest revisions to them. I plan for the Board to better liaise with our circuit representatives, the diligent members of our Conference who serve as our principal representatives and conduits to and from you and the members of the Bar who aren't YLC members. To that end a Board member will be assigned to each circuit representative to provide individualized assistance throughout the year. I hope that these steps allow us to serve you and the public better.

We already know about exciting events that lie ahead—our peerless Professional Development Conference CLE will be at multiple sites on September 21; our renamed First Day in Practice and Beyond CLE will be on October 30 following the autumn Admission & Orientation Ceremony; the annual Bench/Bar Dinner recognizing recently elected female and minority judges will be on November 1; and our second consecutive Minority Pre-Law Conference at the Regent University School of Law is scheduled for November 3. Interested in volunteering? Now's a great time to do so—contact Nate Olson (nolson@cgglawyers.com), the Board's point person for member involvement, by submitting our volunteer form. Please contact me with your ideas for how we can improve the Conference. I look forward to hearing from you by email at vsbylcpresident@gmail.com. Thank you!

Brian Charville is an assistant county attorney with the Arlington County Attorney's Office. He can be reached as vsbylcpresident@gmail.com.

YLC Professional Development Seminar

September 21, 2012
9:45 AM–5:00 PM

Two locations this year!

Richmond
Hunton and Williams - Riverfront Plaza, 951 East Byrd Street
Washington, DC
Hunton and Williams - 2200 Pennsylvania Avenue, NW

See http://www.vsb.org/site/conferences/ylc-calendar/seminar9212012 for more information and to register.

Bankruptcy Bullets

John Farnum

A Primer on Preferences

The Bankruptcy Code includes several provisions that permit a trustee to avoid, or invalidate, certain prebankruptcy transfers. One of the more commonly used bases for avoidance can be found under section 547(b) of the Bankruptcy Code, which outlines the prima facie elements a trustee (or debtor-in-possession) must establish to avoid a transfer as "preferential." In turn, and to the extent a trustee is able to establish each of the elements of section 547(b), a transfer may be protected from avoidance as a preferential transfer if a defendant can establish that a transfer falls within one of the several exceptions set forth in section 547(c) of the Bankruptcy Code.

Preferences

In order to recover a prebankruptcy transfer under section 547(b), a trustee must establish that a payment was (i) a transfer; (ii) of an interest of the debtor in property; (iii) made to or for the benefit of a creditor; (iv) for or on account of an antecedent debt; (v) made while the debtor was insolvent; and (vi) made within ninety days or, in the case of an insider, within one year before the filing of the bankruptcy petition. A trustee must further establish that the transfer enabled such creditor to receive more than it would have received in a hypothetical chapter 7 distribution. By enabling a trustee to avoid preferential transfers that would otherwise permit a creditor to receive greater payment than other similarly situated creditors, Congress sought to promote the bankruptcy policy of equality of distribution among creditors, hence, the intent of the debtor and the creditor as it relates to a preferential transfer is not controlling.

While the trustee bears the burden of proof in establishing each of these elements under section 547(g), the debtor is presumed to have been insolvent on and during the ninety (90) day prebankruptcy period under section 547(f). A trustee typically has two years from the filing of the bankruptcy petition to bring a preference action.

Ordinary Course and New Value Defenses

To the extent a trustee is able to prove each element under section 547(b), a creditor may be able to prevent the avoidance of a preferential transfer by establishing that a transfer is subject to an exception set forth under section 547(c). While the burden was on the trustee to establish each element of the preferential transfer, the burden is on the defendant creditor to prove the nonavoidability of such transfer. Nine exceptions are set forth under section 547(c); the two most common are the subsequent new value and ordinary course of business defenses.

The elements of the subsequent new value defense are set forth under section 547(c)(4). Here a creditor is protected from avoidance of a transfer by establishing that it provided new value for the benefit of the debtor. Specifically, a creditor must establish that it provided new value subsequent to the transfer at issue and that such new value either remains unpaid or was paid with a transfer that is itself avoidable as a preferential transfer. The subsequent new value defense serves to protect creditors from attack for preference liability where they have provided a benefit to the debtor.

The elements of the ordinary course of business defense are set forth under section 547(c)(2). To qualify for the ordinary course of business defense, a defendant creditor must establish that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was either (i) made in the ordinary course of business or financial affairs of the debtor and the transferee; or (ii) made according to ordinary business terms. The ordinary course of business defense serves to protect customary credit and financial transactions. Notably, prior to changes made to the Bankruptcy Code in 2005, a defendant creditor was required to prove that the transfer was made in the ordinary course of business of the debtor and the defendant creditor and according to ordinary business terms and not just one or the other as currently required.

Conclusion

In support of the fundamental bankruptcy concept of equal distribution to similarly situated creditors, a trustee (or debtor in possession) has been provided a statutory basis to avoid transfers as preferential so that the bankruptcy estate may recover and ultimately distribute on a pro rata basis such recovered transfers to creditors. In turn, however, creditors have been granted nine statutory exceptions, including the subsequent new value and ordinary course of business defenses – both of which help to shield creditors that have continued to conduct business with distressed entities prior to a potential bankruptcy filing.

John Farnum is an associate attorney with Wiley Rein LLP in McLean. He can be reached at jfarnum@wileyrein.com.

Don't miss a thing.

http://www.vsb.org/site/conferences/ylc-calendar

Applications of Life Care Planning in Your Law Practice

Andrea Detar OTR/L CLCP

Attorneys in certain practice areas can enhance their cases by collaborating with a Certified Life Care Planner. A Life Care Plan is a case management tool, written and developed to outline the medical needs and costs that will likely be incurred by an individual with catastrophic injury or disability.

In personal injury cases, this document provides a valuable educational tool to all parties involved. Every aspect of the client's medical care will be considered. These items, procedures, and services are categorized within the life care plan and comprise a total dollar amount for probable future medical expenses. A life care planner, who has been certified through the International Commission on Healthcare Certification (ICHCC), has received extensive training on how to present and defend the life care plan in deposition and testimony. Certified life care planners have experience as nurses, therapists, or vocational counselors, bringing a valuable knowledge base to the process. All recommendations included in a life care plan are not, however, based solely on the planner's personal clinical experience. Recommendations are based on medical records review, interview with the individual and his/her family, consultations with medical treatment providers, and literature and research on clinical practice standards.

Life care plans are also valuable when establishing special needs trusts. The life care plan not only provides a dollar amount needed for future care, but also outlines when each item, procedure, or service is likely to be needed within the individual's life span. Trustees can therefore use the life care plan as a roadmap and credible rationale to guide decision-making. Financial planners specializing in special needs trusts may suggest that they offer this service. Confusion sometimes results, as the term "life care plan" in the financial planning industry may refer more to another valuable, albeit different, document - a written statement of the family's desires and wishes for the disabled individual.

Andrea Detar is a licensed, practicing occupational therapist and certified life care planner in Fredericksburg. For more information, contact detarlifecareplanning@gmail.com.

Ethics Corner

Emily F. Hedrick

Confidentiality

A lawyer's duty of confidentiality to a current client is relatively straightforward—it is much broader than the attorney-client privilege and forbids the lawyer from revealing any information, no matter what its source, that is detrimental or embarrassing to the client, or that the client has requested be held inviolate. There are a number of exceptions to that general rule that may be difficult to apply in particular cases, but lawyers generally have a good grasp of the contours of the duty—specifically, a lawyer shouldn't disclose any information about a client, no matter what its source and even if it's not privileged.

The duty of confidentiality to former clients, however, is both less widely understood and more likely to conflict with the lawyer's self-interest, especially for lawyers who wish to discuss their significant cases after they are concluded. Rule 1.9(c) provides that the lawyer cannot use information acquired in the course of representing the client to the disadvantage of the former client except as Rules 1.6 or 3.3 would permit or require (this is typically not relevant to situations where lawyers want to discuss or advertise their cases), or when the information has become generally known, and the lawyer cannot reveal information relating to the representation except as Rules 1.6 and 3.3 permit or require.

Unfortunately, there is little guidance on what it means for information to be "generally known." Not all information revealed in open court is generally known; the information must be more widely disseminated than that. Likewise, the fact that there was news coverage about a particular case does not necessarily mean that the information is generally known – although it sometimes does, as in the cases of OJ Simpson or Casey Anthony. (For a further discussion of this subject, see Justice Lemons's concurrence in *Turner v. Commonwealth*, 726 S.E.2d 325, 331 (Va. 2012)).

As always, when in doubt about whether information is confidential or not, the best course for both the lawyer and the client is for the lawyer to obtain the client's informed consent to any disclosure.

Emily F. Hedrick is Assistant Ethics Counsel for the Virginia State Bar in Richmond. She may be reached at hedrick@vsb.org.

Women and Minorities in the Profession Commission

A dialogue with Josephine Nelson Harriott, Associate with Miller & Chevalier Chartered, President of the GWAC Bar Association

Krystle I. Cobran

Krystle I. Cobran:
Thank you for taking the time to speak with the Women and Minorities in the Profession Commission today. Would you introduce yourself to the Docket Call readers?

Josephine Nelson Harriott:
My name is Josephine Nelson Harriott. I am an associate at Miller and Chevalier in Washington, DC, where I practice Health Care and Regulatory Compliance work, with particular focus on the Health Reform Bill.

KIC: Where are you licensed to practice law, and when did you become licensed to practice?

JNH: I was admitted in Virginia in 2007, and admitted in the District of Columbia in 2008. I am also admitted to the Eastern District of Virginia, the District of Columbia District Court, and the United States Circuit Court for the District of Columbia.

KIC: As an associate at Miller and Chevalier Chartered, what comes to mind when you hear the term "retention of women and minorities"?

JNH: What comes to mind are the challenges that law firms have in ensuring that the work that they are offering and their environment is sensitive to the needs of women and minorities, and their need to demonstrate to the marketplace that they are inclusive.

KIC: What is the significance of inclusivity versus exclusivity?

JNH: The world has become a much smaller place. In order for businesses to thrive and not just survive in the marketplace, diversity of thought is essential. It also demonstrates sensitivity to the needs of all segments of the population. As businesses become more diverse in their approach towards the marketplace, they expect that their law firms and other vendors will be sensitive to the needs of a diverse society.

KIC: How do you think this impacts women and minorities particularly?

JNH: The practice of law has traditionally been a male dominated field and in this country, a white male dominated field. There is a perception that in big law firms, the successful person will be male and be white. With many women and racial minorities, there is to some extent a concern that if you are not a white male you are an "other," and your opportunity for advancement is limited. So not only do law firms face challenges in letting women and minorities know that they are welcomed and their presence is desired, but also in letting them know that they have the same opportunity to be successful in a law firm than if they were in another environment.

KIC: What factors do you think contribute to law firm struggles in retaining women and minorities?

JNH: Well, it's not an easy way to live. The practice of law in a big law firm is a challenge because a client engages a large law firm when they need specialized service in a defined way; they expect a high level of service. The clients are demanding, the environment is demanding. This environment can be demanding for anyone. This work environment may not be suitable for a lot of people. Women face an additional challenge because if they want a family, women have to contribute the baby, which contributes to absences and challenges that may not be faced by men. It can be isolating because it can be so demanding, and you have to push through the difficult times. With women and minorities, where there are so many customs and workplace culture issues, they may feel as though they are not included as part of the group, and they may not be as comfortable in the environment.

KIC: What benefits do you think law firms incur by maintaining women and minorities among their ranks?

JNH: Well, on a very basic level, in-house counsel are becoming more and more diverse. There are more women who are holding general counsel positions. The traditional ways of cultivating traditional client relationships may not be as effective with a woman as with a man. For instance, women are generally

more collaborative than men. There is enough existing sociological support for these broad generalizations. To the extent that our business partners—the ones who pay us to do high level work—are the ones who pay law firm bills and supervise our work, on a very basic level, to the extent that the lawyers are more diverse, the law firm benefits. Many of these firms consider diversity when engaging outside counsel. As other professions become more diverse and law firms become more diverse, law firms who are not as diverse may find themselves at a disadvantage. Their ability to attract diverse talent may be seen as a lack of willingness, or failure to be receptive to women and minorities in general.

KIC: Are there any suggestions you have for law firms interested in recruiting and retaining female and minority associates?

JNH: I think many law firms are still looking for the silver bullet, even those who are doing quite well and have women and minorities in prominent positions. There is no silver bullet. However, making diversity a priority, so that it is an unspoken priority that is part of the culture, in that the law firms seek not only to diversify their attorneys but also their pro bono efforts and vendors and the activities the firm engages in outside of its normal work, all of these things create an environment of diversity where diversity is not forced but adds something very real and tangible to the law firm.

KIC: What advice would you give to a woman or minority attorney seeking to build a strong résumé and thrive in a law firm environment?

JNH: Well, the first is to get to know your peers and your associates, counsel, and all of the attorneys in your law firm. Because just as diverse attorneys want to be known as individuals, we should afford the same respect and collaboration to others. It is the interpersonal that establishes the collegiality that makes law firm practice more satisfying, and also may provide opportunities that may not otherwise be available. The other thing is not to be isolated. Join bar groups, activities in the community and have colleagues outside of the law firm. This is probably valuable for all attorneys, but for women and diverse attorneys in particular so that we can have peers and mentors to help us find our way when we are trying to understand things that are occurring within our law firms.

KIC: The current theme of the Women and Minorities Commission is "Thrive!" In this current economic context, what steps do you think attorneys can take to ensure that they do more than just survive, or get by?

JNH: Primarily, you have to do good work. That is an absolute requirement for any lawyer practicing in any environment because our clients rely on us for that. Getting to know more people who are practicing law and people who are business leaders, including lawyers or people working in areas that are of interest to you either personally or professionally, is beneficial. In business development, knowing lawyers is important but knowing actual business people is even more important because these are the people spending the actual dollars. Doing good work and developing a strong professional network are probably the two most valuable things a lawyer can do for himself or herself.

KIC: What are some steps you have taken to ensure that you thrive in the practice of law?

JNH: I rely on my law school classmates as the basis for my network and fellow alumni from law school. I am a graduate of Howard University School of Law. I also try to be very active in bar associations in the District of Columbia, which is my primary area of practice. And as I attend seminars or professional development events I network, I am an active networker; I follow-up and try to stay in touch with the people that I meet at professional development activities.

KIC: Thanks again for taking the time to speak with the Women and Minorities Commission. We appreciate the information you have provided.

This piece has been edited for grammar, content and format.

Krystle I. Cobran is a law clerk for the Superior Court of the District of Columbia. She can be reached at KrystleC24@gmail.com.

Mark Your Calendars

Celebration of Women and Minorities in the Legal Profession Bench Bar Dinner

November 1, 2012, Bull and Bear Club, Richmond, Virginia

Brand Protection: Trademark Basics Part 1

Andrew Stockment

Almost every business has a brand—a name, a logo, or some other mark used to identify its products or services. Trademarks allow businesses to develop brand reputation and public goodwill in connection with the associated goods or services, and consumers rely upon trademarks and the reputation of the products sold under those marks to inform their buying decisions. As a result, trademarks are often among the most valuable and important assets owned by a business.

What is a Trademark?

The term "trademark" is often used to refer to various types of marks, including trademarks (for goods) and service marks (for services). A trademark is any word, phrase, symbol, design, color, sound, scent, or any combination thereof, adopted and used by a business to identify its goods or services and to distinguish them from those of other businesses. Trademark law also protects trade dress—the overall "look" of a product (such as the distinctive fluted bottle used by the Coca-Cola Company to package Coke). The owner of a trademark has a limited property right in the exclusive use of the mark (subject to certain limitations).

How Trademark Rights are Acquired

Trademark rights are created through use, not registration, and such use establishes a business's common law rights in the mark.[1] Those common law rights protect the owner's use of the mark in the geographic area where it is used, in the channels of trade in which the products or services are offered or sold, and for those goods and services with which the mark is associated. Such unregistered marks are also protected under the federal Lanham Act, 15 U.S.C. §§ 1501 *et seq*. The owners of unregistered trademarks and service marks are entitled to use the ™ and ℠ symbols respectively to indicate their claim of ownership.

Mark Must Be Distinctive

In order for a mark to be eligible for protection, it must be distinctive—that is, it must be capable of identifying the source of particular goods or services. Trademarks that are more distinctive receive a wider scope of protection and are, therefore, stronger marks. The distinctiveness of trademarks is measured along a spectrum of increasing distinctiveness: (1) Generic, (2) Merely Descriptive, (3) Suggestive, (4) Arbitrary, and (5) Fanciful.

A generic term is the common name of a type of good or service, such as *pizza* and *catering*. Generic terms are the opposite of trademarks and cannot be distinctive source identifiers. Moreover, a trademark can lose its distinctiveness through widespread misuse such that it becomes the generic term for a product (for example, *zipper, cola, escalator*, and *thermos*). A mark that has become generic is no longer entitled to protection.

A merely descriptive mark immediately identifies or brings to mind the characteristics, qualities, ingredients, composition, functions, purpose, attribute, use, or other features of a product or service. Examples include *Vision Center* (for an eye care facility), and *Flat Fix* (for a flat tire repair service). A merely descriptive mark is eligible for only limited protection.

Suggestive marks are words that evoke or suggest some characteristic or attribute of the underlying goods or services but do not describe the goods or services themselves. Unlike a merely descriptive mark, a suggestive mark requires the exercise of imagination to associate the word with the underlying product. Examples include *Microsoft* (for computer software) and *Coppertone* (for tanning products).

An arbitrary mark is a word that has no logical relationship to the underlying product or service, including a generic term applied to an unrelated product. Examples include *Apple* (for consumer electronics) and *Penguin* (for books). Fanciful marks are the strongest marks. A fanciful mark is an invented word created solely for the purpose of functioning as a trademark, such as *Exxon*, *Starbucks*, and *Google*.

In the next installment of this article, I will discuss the requirements to obtain a federal trademark registration and the substantial additional benefits such registration provides.

1. Before developing a brand or filing a trademark application, a clearance search should be conducted to minimize the risk that the mark is already in use by another business.

Andrew Stockment practices business law at Clement & Wheatley in Danville. He can be reached at stockmenta@clementwheatley.com.

Sign up for the YLC List Serve

http://mailman.listserve.com/listmanager/listinfo/ylc

continued from front cover

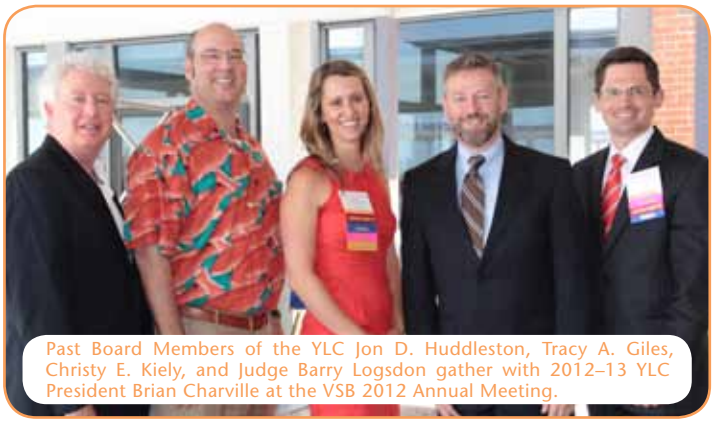
Paris Sorrell and Nicole Pszczolkowski all received Significant Service Awards for their work on the Annual Meeting CLE. Michael-Vincent Abejuela and Joel Morgan both received awards in recognition of their work with Wills for Heroes. Sarah Bell, Leonard Tengco and Brian Wesley each received awards for their efforts with their respective Minority Pre-Law Conferences. An award was given to Sarah Bruscia for her work on the Bench/Bar Celebration Dinner. Seth Land received an award for his work on No Bills Night. Monique Miles received a Significant Service Award in recognition of her work with the Women & Minorities in the Profession programming, while Ronald Page, Jr. was recognized for his work with the First Day in Practice and Emergency Legal Services programs.

The YLC closed out the Annual Meeting with the annual David T. Stitt Memorial Volleyball Tournament. After some fierce play, the Shenandoah Valley Spikers emerged victorious over Englisby Vaughn & Sloan and took home the trophy. Not to be overlooked however, was the winner of the grand prize raffle drawing which took place during the closing ceremonies on Saturday. This year the YLC's very own Nate Olson took home the gold – an all expenses paid trip to the 39th Annual Mid-Year Legal Seminar in Rome, Italy!

So there you have it, folks. Come to the meeting and win a trip to Rome! I expect to see all of you in Virginia Beach next year.

Martha Hulley is Assistant Counsel for the U.S. Navy's Military Sealift Command and Editor of the Docket Call. She can be reached at docketcall@gmail.com.

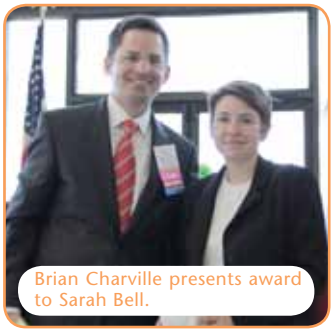

The YLC Board gathers at the YLC reception.

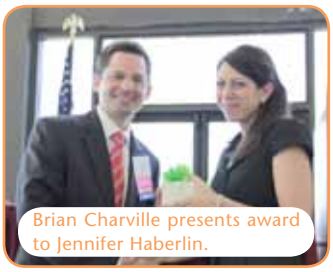

Past Board Members of the YLC Jon D. Huddleston, Tracy A. Giles, Christy E. Kiely, and Judge Barry Logsdon gather with 2012–13 YLC President Brian Charville at the VSB 2012 Annual Meeting.


Run in the Sun race winner Douglas Burch and family.


Nate Olson receives the Annual Meeting's raffle grand prize from 2012–13 VSB President David Harless.


Brian Charville presents award to Monique Miles.


Brian Charville presents award to Sarah Bell.

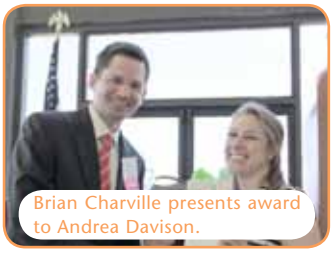

Brian Charville presents award to Jennifer Haberlin.


Brian Charville presents award to Nicole Pszczolkowski.


Brian Charville presents award to Patricia C. Amberly.


2012–13 & 2011–12 YLC Presidents Brian Charville and Christy E. Kiely.


Brian Charville presents award to Jean Humbrecht.


Brian Charville presents award to Andrea Davison.


Brian Charville presents award to Brian Wesley.


Brian Charville presents award to Martha Hulley.