

Highlights of VSB Council Meeting

October 15, 2004

At its fall meeting on October 15, 2004, in Charlottesville, the Virginia State Bar Council heard the following reports and took the following significant actions:

Indigent Defense Task Force

The council without dissent approved the task force's recommendations, which will be shared with other groups, including the newly created Virginia Indigent Defense Commission, that are studying how to improve the quality of indigent criminal defense in the commonwealth. The task force recommends that the General Assembly:

- Abolish the nonwaivable cap on fees paid to court-appointed private attorneys, while retaining the current compensation rate of ninety dollars per hour.
- Empower the Virginia Indigent Defense Commission to set standards for achieving excellence in indigent criminal defense, which should include specialized appellate defense capacity.
- Give the commission enough funds to eliminate excessive public defender workloads and perform its oversight responsibilities.
- Pay for comprehensive training of all public defenders, private court-appointed counsel and support staff.
- Fund more computers, Internet access and online legal research in public defender offices.
- Establish parity in the salaries and resources provided to public defenders and prosecutors.

The task force also recommends that the Supreme Court of Virginia:

- Amend its rules to allow *ex parte* application to the trial court by indigent defense counsel for appointment of experts and investigators.

- Broaden the rules of discovery to allow more access to information in a criminal case.
- Study, through the court's Office of the Executive Secretary, the cost of jury sentencing, and determine what percentage of jury trials are taken at the commonwealth's request.

The VSB Council authorized up to thirty thousand dollars for consulting services, as needed in the judgment of the VSB officers, to assess the fiscal impact of the recommendations.

Online Legal Research

President David P. Bobzien told the council that the VSB is looking into providing basic online legal research to all Virginia-licensed lawyers as a membership benefit. Chief Justice Leroy R. Hassell Sr. supports the idea as part of his initiative to improve services to solo and small-firm practitioners in rural areas. Statewide bars in twenty-two states now provide such legal research services to their members. The VSB will issue a request for proposals from vendors in November, and proposals will be evaluated by a selection committee. A proposed agreement with a vendor likely will be submitted for the council's consideration at its February 2005 meeting. H. Duncan Garnett Jr., president of the Virginia Trial Lawyers Association, expressed concern that the VSB would be sponsoring an outside commercial enterprise that competes with services already provided by voluntary bar groups in Virginia, and would be funding the service with mandatory bar dues.

Corporate Counsel Certification and Registration

The Supreme Court's new rule that requires in-house counsel to be certified by or registered with the state bar has brought 935 new names onto the VSB rolls.

Campaign for Legal Aid

The Presidents Council Campaign for Legal Aid, a fund-raising effort launched in February on behalf of Legal Services Corporation of Virginia and its field programs, has to date received \$27,625.50 from 166 lawyers—a lower response than was hoped for. As a result, the VSB Council voted to underwrite the \$7,885.97 in expenses for the campaign that were originally to be paid from the funds raised.

Investigation of Procedural Defaults

Bar Counsel Barbara Williams reported that over the summer *The Washington Post* ran a series of editorials addressing Virginia's indigent criminal defense system. The editorials stated that procedural defaults result in the dismissal of almost 10 percent of criminal appeals on the Court of Appeals docket. The bar determined that many of the defaults had not been reported to the bar. After *The Washington Post* declined to identify the cases in which defaults allegedly occurred, the bar hired a law school graduate to review dismissal orders the court entered between January 2002 and August 2004 and identify attorneys who might have engaged in a pattern of neglect with respect to their handling of criminal appeals. It appears that a significant number of disciplinary files dealing with procedural defaults in criminal appeals will be opened, which will in turn increase disciplinary caseloads. The Court of Appeals has agreed to report procedural defaults to the bar in the future.

Three-Judge Disciplinary Panels

Williams reported that many attorneys facing ethics charges continue to elect three-judge panel hearings in lieu of proceeding before the Disciplinary Board. As of September 10, 2004, twenty-three matters were pending before the Disciplinary Board, and three-judge panels had been elected in twenty-two matters.

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New Bar Counsel Staff

The VSB is in the process of filling a vacant assistant bar counsel position in Alexandria and a vacant investigator's position to cover cases in central Virginia.

NABE Presidency

President Bobzien announced that VSB Executive Director Thomas A. Edmonds will be sworn in next August as president of the National Association of Bar Executives. Edmonds is currently serving on the board of the organization as president-elect. He will be the first Virginian to lead NABE.

Task Force to Study Mediation of Fee Disputes

The council accepted the task force's report, which concluded that the current

process for resolving attorney-client fee disputes should be strengthened and modified. The current process consists almost entirely of arbitration. It is not well understood and is not available in all circuits in the commonwealth. Clients often perceive the process is biased toward attorneys, yet lawyers frequently decline to participate. Adding a mediation option along with a public education campaign and several rule changes would remedy the deficiencies, the task force concluded. The recommendations have been referred to the Special Committee on Resolution of Fee Disputes, the Standing Committee on Lawyer Discipline and the Standing Committee on Legal Ethics.

Computer Project

The project to rewrite and integrate the VSB's computer software is moving along. The fiscal component is finished, and the

membership module is nearing completion. The computer team will next take up the Mandatory Continuing Legal Education module. The project has exhausted the one million dollars that was allocated. The council authorized spending another \$226,800 to proceed with the MCLE module.

VSF Budget

As of September 30, 2004, the VSB projected a budget of \$9,680,000 in operating revenue and \$9,750,000 in operating expenses, with a total reserve balance at the end of the fiscal year of \$3.5 million, or 35.25 percent of the preceding year's operating expenditures. The reserve is projected to decrease to 18.14 percent by the 2008-2009 fiscal year. No increase in bar dues is projected in the next several years.

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