

Highlights of the Virginia State Bar Council Meeting

March 1, 2008

At its regular meeting on March 1, 2008, in Richmond, the Virginia State Bar Council heard the following significant reports and took the following actions:

Mandatory Malpractice Insurance Proposal

The council voted 44 to 7 to not publish for comment the VSB Special Committee on Lawyer Malpractice Insurance's proposal for mandatory legal malpractice insurance. Instead the VSB will notify Virginia's lawyers about the concepts involved in the proposal. The proposal will be an information item on the agenda for the June 2008 council meeting.

Random Trust Audits and Settlement Notifications

President Howard W. Martin Jr. will ask the Standing Committee on Lawyer Discipline to study the idea of random audits of lawyer trust accounts. His request followed news reports about a Virginia Beach lawyer revoked for misusing clients' money. The VSB Executive Committee approved referral of the matter to COLD. In addition, the issue of notification by insurance companies to clients when cases are settled, rejected by the council in October 2007, will be sent back to the Public Protection Task Force in light of the recent discovery of millions of dollars in defalcations by a Woodbridge lawyer who settled clients' cases without their knowledge and kept their money. Representatives of other statewide bar groups will be added to the task force for the study.

Size of Council — Proposed Rule Change

The number of lawyers in a circuit that triggers an increase in representation on the council would increase from four hundred to five hundred, with the number determined on February 1 of each year, under a proposed rule change approved by the council. The proposal

will be presented to the Supreme Court for consideration.

ALPS Reported to Be in Best Financial Shape Since 2001

Robert W. Minto Jr., president and chief executive officer of ALPS—the bar's endorsed malpractice carrier—reported that the company is in its best financial shape since its association with the VSB began in 2001. Responding to inquiries by bar members about reports that ALPS had been downgraded by insurance evaluator A.M. Best, Minto explained that ALPS received an A-minus (Excellent) rating by A.M. Best in 2003, and it was given a “negative outlook” in 2005 due to perceived deficiencies in its reserves. Its rating has not changed in any respect since 2005, and Minto told the council that ALPS is committed to long-term financial strength. ALPS will be reevaluated by A.M. Best in March, and Minto is hopeful that the “negative outlook” will be replaced by a “stable” finding as a result of that review.

Undisclosed Recordings — Amendment to Rule 8.4

The Supreme Court of Virginia asked that the VSB republish for comment proposed amendments to Rule 8.4, which would clarify that it is not necessarily unethical to permit or engage in undisclosed recordings. Roger T. Creager, chair of the Standing Committee on Legal Ethics, reported that the committee considered the comments and elected to notify the Court in a letter dated February 8, 2008, that the amendments should stand as recommended in the original petition to the Court. The council voted to authorize the bar president to notify the Court of its approval of the ethics committee's position.

Multijurisdictional Practice

Proposed changes to rules 5.5 and 8.5 and new rule 1A:7 are to be presented to the Supreme Court for approval, after having been approved without opposition by the

council on March 1, 2008. The proposed amendment to Rule 5.5 permits practice by non-Virginia-licensed lawyers on a “temporary and occasional basis” under limited circumstances. Legal services provided by a non-Virginia attorney, other than as authorized by the rule, would become a disciplinary matter, as opposed to an unauthorized practice of law matter. Part 6, § I (C) of the Rules of the Supreme Court would be eliminated, and the UPL Committee would deal only with unauthorized practice of law by nonattorneys. The proposed amendment to Rule 8.5 extends the disciplinary authority of the Virginia State Bar to any lawyer who provides or holds out to provide legal services in Virginia, regardless of where the lawyer is licensed. The rule also addresses the choice of law to be applied in disciplinary cases concerning non-Virginia-licensed attorneys. Proposed rule 1A:7 regulates foreign legal consultants and the circumstances under which they can practice law in Virginia. The proposed rule carves out a limited role for foreign legal consultants. An FLC would be permitted to render legal services only in matters involving international law or the law of the foreign nation in which the person is admitted to practice. An FLC could not appear before any Virginia court or hold himself or herself out as a member of the Virginia State Bar.

Fastcase

Ed Walters, president of Fastcase, the bar's provider of free online legal research, reported that almost ten thousand active lawyers in Virginia have logged onto Fastcase. Daily use has nearly doubled since the program became a VSB member benefit in 2006. The service has expanded its capability by offering public records and legal forms on a transactional basis. Fastcase's Authority Check has been improved, although Walters indicated that the Authority Check feature is not a sub-

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University of Richmond Professor Named Professionalism Award Winner by Virginia State Bar



Professor Ronald J. Bacigal receives the 2008 Harry L. Carrico Professionalism Award from Petersburg General District Court Judge Lucretia A. Carrico, the daughter of the former Virginia chief justice for whom the award is named.

Ronald J. Bacigal, a University of Richmond law professor who is a much-consulted authority on criminal law in Virginia and a leading Fourth Amendment scholar, has received the 2008 Harry L. Carrico Professionalism Award from the Virginia State Bar's Criminal Law Section.

The award was presented February 15, 2008, at the section's Criminal Law Seminar in Williamsburg.

"There is no one in the Commonwealth who is called upon more frequently by lawyers, judges, and the media for questions relating to criminal law and procedure, and he has always been willing to dedicate his time to furthering the cause of an efficient and fair system of criminal justice," wrote Professor Robert E. Shepherd Jr., an emeritus professor of law at UR and a longtime member of the section Board of Governors.

Bacigal received a bachelor's degree from Concord University and a law degree from Washington and Lee University. He was a Fulbright Scholar in international law at The Hague, Netherlands. He was a U.S. district court law clerk in Roanoke and an instructor in the U.S. Navy at the Judge Advocate General's School in Rhode Island.

He joined the UR faculty in 1971. He teaches criminal law, criminal procedure, and evidence. He has produced many books and articles, including four principal texts used by attorneys and judges. He twice was recognized as a Distinguished Educator at the university. The State Council of Education gave him its Outstanding Faculty Award in 1990.

"Professor Bacigal has exhibited an unyielding commitment to quality and integrity, along with a dedication to the highest ideals of professionalism at the bench and bar in Virginia and elsewhere," Shepherd wrote.

The professionalism award is named for former Virginia Chief Justice Harry L. Carrico. It recognizes the highest ideals and aspirations of professionalism in the administration of justice in Virginia.

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stitute for using *Shepard's*, which is available for a fee through Fastcase. Fastcase has agreed to include retired VSB members as users without additional cost to the bar. The bar is considering adding circuit court opinions and Virginia model jury instructions to the searchable database.

CRESPA Bond Increase

VSBS Executive Director Karen A. Gould reported to the council that Senate Bill 149, which would increase the Consumer Real Estate Settlement Protection Act surety bond from \$100,000 to \$200,000, passed both houses of the General

Assembly without opposition. Sen. Walter A. Stosch introduced the bill after the VSBS Council and the Supreme Court authorized the VSBS to seek the increase.

Memorial to Honor Hill, Robinson, and Other Civil Rights Pioneers



When it is completed in July of this year, the Capitol Square Civil Rights Memorial will pay tribute to those Virginians, including attorneys Oliver W. Hill Sr. and Spottswood W. Robinson III, who fought to end segregation.

In February, donors, students, politicians, and family members and friends of those depicted on the memorial gathered to break ground on the spot where the granite and bronze tribute will stand on the grounds of Virginia's capitol in Richmond. The memorial is scheduled to be installed in July.

Designed by Connecticut artist Stanley Bleifeld, the four-sided memorial will feature eighteen figures. The first panel will depict the students of Robert Russa Moton High School in Prince Edward County, who staged a walkout—led by sixteen-year-old Barbara Rose Johns—to protest the shoddy conditions of their aging, segregated school in April 1951.

The students' court case, *Davis v. County School Board of Prince Edward County*,

The Rev. Curtis W. Harris Sr. greets Virginia Gov. Timothy M. Kaine, Del. William J. Howell, speaker of the Virginia House of Delegates, Virginia Lt. Gov. Bill Bolling, and Secretary of Administration Viola O. Baskerville at the February groundbreaking for the Capitol Square Civil Rights Memorial. Harris, a Baptist minister and member of the Hopewell City Council for twenty-two years, is a civil rights activist who marched in Alabama with the Rev. Dr. Martin Luther King Jr. in 1965 in support of the Voting Rights Act.

was filed by Hill and Robinson. The case eventually was joined with four others to become *Brown v. Board of Education of Topeka, Kansas*, which led to a landmark 1954 U.S. Supreme Court decision that separate educational facilities for black and white students were unequal. That decision paved the way for integration. The Prince Edward case was the only one of the five cases in *Brown* that was initiated by students.

Law partners Hill and Robinson, who became the first black chief judge of the U.S. Court of Appeals for the District of Columbia Circuit in 1981, will be depicted on the fourth panel of the memorial.

The second panel will feature the likeness of the Rev. L. Francis Griffin, who was nationally known as the "fighting preacher." When Prince Edward County

schools shut down in 1959 rather than desegregate, Griffin helped create training centers for black children and place hundreds of students in schools around Virginia and across the country.

A quote from Thurgood Marshall, the first black U.S. Supreme Court justice and one of the litigators in *Brown*, will be featured on the third panel, along with the depiction of individuals of different races walking into the future together.

For more information about the Capitol Square Civil Rights Memorial, including architects renderings of the statue and information about how to make a tax-deductible donation, visit <http://www.vacivilrightsmemorial.org>.

—Sandy Adkins



Robert Minto Jr., president and chief executive officer of ALPS Corp., presents a check for thirty thousand dollars to James E. Leffler, executive director of Lawyers Helping Lawyers. The funding, which will help Lawyers Helping Lawyers aid legal professionals who cope with addiction and mental illness, came from the risk management budget of the Virginia State Bar Special Committee on Lawyer Malpractice Insurance. ALPS, the bar's endorsed legal malpractice carrier, provides the VSB's risk management funding.

Electronic Filing Now an Option in the Fourth Circuit System Will Become Mandatory June 1

Lawyers now can file documents electronically in the Fourth U.S. Circuit Court of Appeals.

The system became available April 1, 2008. Electronic filing will be voluntary until June 1, when it becomes mandatory with the following exceptions:

- Case-initializing documents, including petitions for review, mandamus, or permission to approach (filed in paper form)
- Appendices (paper)
- Formal briefs (filed in both electronic and paper forms)
- Documents exceeding size limitations set by the court (paper)
- Criminal Justice Act and other vouchers (paper)

Details and Administrative Order 08-01, which governs the case management and electronic filing system, are posted at <http://www.ca4.uscourts.gov/pdf/cmecf/noticeofproposedadministrativeorder0801.pdf>.

In Memoriam

Penrose Lucas Albright
Arlington
February 1925–November 2007

Philip Joseph Bagley III
Richmond
November 1941–November 2007

Michele Scott Bellizaire
Woodbridge
May 1954–February 2008

Joseph C. Carter Jr.
Richmond
June 1921–January 2008

Robert Benoit Ellert
St. Augustine, Fla.
May 1921–August 2007

William E. Fulford
Norfolk
July 1910–December 2007

Geraldine Ribar Keyes
Scottsdale, Ariz.
December 1921–July 2007

Charles Richard Martin
Springfield
October 1941–February 2008

Robert E. Norman
Blue Bell, Pa.
September 1928–September 2005

Hon. Nelson T. Overton
Hampton
February 1928–January 2008

Charles Paul Padgett Jr.
Mesa, Ariz.
March 1940–November 2007

Bruce H. Roberson
Tampa, Fla.
March 1941–December 2007

William J. Rhodes Jr.
Franklin
December 1930–February 2008

Edwin G. Shaffer
Wytheville
September 1923–August 2007

K. McFarlane Smith
Arlington
February 1927–January 2008

Frank James Zanin
Virginia Beach
February 1941–December 2007

Local and Specialty Bar Association Elections

Bristol Bar Association

Robert Lucas Hobbs, President
Eric Wagaman Reeher, President-elect
Colette Marie Wilcox, Secretary-Treasurer

Chesapeake Bar Association

Christopher Howard Falk, President
Brian Kenneth Miller, Vice President
Lori Beth Klinghoffer Galbraith, Secretary
David Jason Whitted, Treasurer
Kimberly Hughes Phillips, Executive Officer

Danville Bar Association

David Wayne Pugh, President
Wells Huntington Byrnes Sr., Vice President
Michael James Newman, Secretary
Stacy Danielle Allocca, Treasurer

Franklin County Bar Association

George I. Vogel III, President
Melissa P. Keen, Vice President
Arthur J. Donaldson, Secretary
John T. Boitnott, Treasurer

Fredericksburg Area Bar Association

Robert Brandt Goodall, President
Dale Edward Adams, President-elect
Sunny Marie Clemons, Secretary
Marcel Dabriel Jones, Treasurer
John James Good Jr., Assistant Secretary
Michael Edward Levy, Assistant Treasurer

Hampton Bar Association, Inc.

James Robert Harris III, President
Patrick B. McDermott, President-elect
Crystina Marie Kowalczyk O'Brien, Secretary
Terry Noland Grinnalds, Treasurer

Rockbridge-Buena Vista Bar Association

Lawrence Lloyd Muir Jr., President
Donald Jackson Ellis, Vice President
Shawna Jean Cheney, Secretary-Treasurer

Russell County Bar Association

Wade Trent Compton, President
Martha Ellen Puckett, Vice President
Brian Keith Patton, Secretary-Treasurer

The Prince William County Bar Association Inc.

William Elmer Jarvis, President
Barry Alan Zweig, President-elect
Jeanice Bowden Wiethop, Secretary
Jonathan Stuart Rochkind, Treasurer
Richard Hamilton Boatwright, Director
Mark Thomas Crossland, Director
Megan Eileen Kelly, Director
Petula Cherise Alston Metzler, Director

Virginia Association of Criminal Defense Lawyers

Kristie Lee Kane, President
William Todd Watson, President-elect

Carolyn Virginia Grady, Vice President
Cynthia Ellen Dodge, Secretary
David Leonard Heilberg, Treasurer
David Preston Baugh, At-Large Board Member
Margaret Angela Nelson, At-Large Board Member

Virginia Beach Bar Association

Glen Alton Huff, President
Timothy Sean Brunick, President-elect
William Carl Bischoff, Secretary
Timothy John Quick, Treasurer
Glenn Randall Croshaw, Director
Sandra Lynn Sampson, Director

Washington County Bar Association

Victor Blake McKinney, President
George Allen Whitley, Vice President
Deborah Coffey Icenhour, Secretary-Treasurer

Raising the Bar: *Virginia Lawyer* and vsb.org Make Changes

Beginning with the June/July 2008 issue, *Virginia Lawyer* will have a new design and improved content.

The changes have already begun. We're using different paper stock, and we are reorganizing content to save printing and postage costs. On the Web, the Virginia State Bar home page (<http://www.vsb.org>) sports a new color scheme and displays bar news and events more prominently.

More improvements are coming to provide you with information that lawyers need. We'll report more about what the bar staff and volunteers do. We'll have timely notice of changes that affect legal practice and office management. Theme issues will have more general interest. Our design will be more readable and inviting.

Additionally, the August/September *Virginia Lawyer Register* will be

reduced in size. It will serve as a directory to more detailed documents published on the website.

Your input has helped make these changes possible. Please keep the feedback coming. Send your critiques and ideas to Rodney Coggin, Editor, Virginia State Bar, 707 E. Main St., Ste. 1500, Richmond 23219; coggin@vsb.org; (804) 775-0585.

Family Law Attorney Edward D. Barnes Recognized for Lifetime Achievement

Edward D. Barnes, a family lawyer in Chesterfield and the founding chair of the National Center for Family Law at the University of Richmond, has been named the 2008 recipient of the Lifetime Achievement Award, presented by the Virginia State Bar's Family Law Section.

The award recognizes persons who have demonstrated excellence and integrity and have made a substantial contribution to the practice of family law in Virginia. The 2008 award will be presented during the section's annual Family Law Seminar on April 25, 2008, in Richmond.

Attorneys who nominated Barnes for the award emphasized his contributions to continuing legal education and to his alma mater, the University of Richmond School of Law. That service was recognized by the school in 2006, when it gave him its Alumni Award.

Nominations also praised his professional leadership through the VSB Family Law Section, the American Academy of Matrimonial Lawyers, and the Metro Richmond Family Law Bar Association.

He also is a fellow of the London-based International Academy of Matrimonial Lawyers. He has been a lawyer for almost thirty-seven years.

Barnes's partner, Lawrence D. Diehl, singled out the formation of the National Family Law Center as a crowning achievement. Barnes developed the concept with Rodney A. Smolla, then of UR and now dean of the law school at Washington and Lee University. Barnes made a significant financial commitment to the center's funding. He now serves as chair of its board of directors, made up of Virginia and national leaders in family law.

"This is a mammoth undertaking with national significance reaching beyond the administration of family law in the Commonwealth of Virginia," wrote attorney Donald K. Butler of Richmond.

The national center hosted its debut conference in September 2007. The center will conduct research, participate in development of public policy and law that affect families, and provide clinical experience to UR students and legal services on family



law issues to low-income people in the Richmond area. Starting in September 2008, UR law students can opt for a certification in family law through the center.

Barnes is founder and chief executive officer of law firm Barnes & Diehl PC. He received a bachelor's degree from East Carolina University in 1966 and a law degree from UR in 1972. He was a first lieutenant in the U.S. Army Corps of Engineers from 1966 to 1969.

Free and Low-Cost Pro Bono Training

Visit the Pro Bono page on the VSB website for free and low-cost pro bono trainings and volunteer opportunities:

http://www.vsb.org/site/pro_bono/resources-for-attorneys

Virginia State Bar Publications

The Virginia State Bar publishes pamphlets and handbooks on law-related issues for Virginia's lawyers and citizens. Please note that some are available in bulk quantities, and others only in single copies. All publications can be found on the VSB website at <http://www.vsb.org/site/publications>.

Benchmarks

No judicial changes were reported by the Supreme Court of Virginia since the list in the February 2008 edition of *Virginia Lawyer* magazine. The General Assembly is scheduled to take up judicial appointments and reappointments when it reconvenes on April 23, 2008.