

Executive Director's Message

by Karen A. Gould



Retirements and Other News

THE VIRGINIA STATE BAR has been fortunate to employ two very talented individuals who are retiring this year after long and successful careers in state government.

Mary Yancey Spencer's retirement as deputy executive director of the Virginia State Bar was effective July 1, 2016. At the VSB, her responsibilities included the Freedom of Information Act, monitoring legislation, and oversight of the clerk of the Disciplinary System. She also oversaw the operation of the Communications Department and the Information Technology Department. Before taking the deputy position at the bar, Mary Yancey served for twenty years at the Office of the Attorney General, in every department. Mary Yancey brought a wealth of knowledge of state government, the FOIA, and VSB history. She also brought wit and wisdom to her job. She is greatly missed.

Susan Busch, a certified public accountant and head of the Fiscal Department, will retire from the VSB effective October 1, 2016. She has been employed by the VSB for thirty-seven years. Just recently she helped transition the VSB from the decades-old commonwealth accounting system — "CARS" — to the new accounting system — "Cardinal." Susan's decades of experience with the bar, the Treasury of the Commonwealth of Virginia, and the Department of Planning and Budget are not easily replaced. She has also served as the VSB's representative on the Lawyers Helping Lawyers Board. Her dedication to LHL is so great that she will be continuing

there in a volunteer role after she leaves the VSB.

Highlights of FY2015–16

Rule Changes

During FY2015-16, the Supreme Court of Virginia approved changes to:

- Rule of Professional Conduct 1.10(a) (conflict of interest) and Comment [2a], effective 7/31/2015: www.vsb.org/pro-guidelines/index.php/rule_changes/item/rule-1-10-2014-01
- Rules of Professional Conduct 5.5 (UPL; Multijurisdictional Practice) and 8.3 (Reporting Misconduct), effective 2/1/2016: www.vsb.org/pro-guidelines/index.php/rule_changes/item/prop_5-5_and_8-3e
- Rules of Professional Conduct 1.1 (Competence) and 1.6 (Confidentiality), effective 3/1/2016: www.vsb.org/pro-guidelines/index.php/rule_changes/item/amendments-rules-1-1-1-6-112514
- Paragraph 10 (UPL), Part Six, Section IV, effective 10/30/2015: www.vsb.org/pro-guidelines/index.php/rule_changes/item/amendments_to_paragraph_10_2015-10
- Paragraph 10 (UPL), Part Six, Section IV, effective 5/1/2016: www.vsb.org/pro-guidelines/index.php/rule_changes/item/unauthorized_practice_law_030116
- Paragraph 13-4.E (service on district committees by certain ex-officio members of the Council), effective 8/21/2015: www.vsb.org/pro-guidelines/index.php/rule_changes/item/prop_13_4e_service_ex-officio

- Paragraph 13-11 (Limited Right to Discovery), effective 5/1/2016: www.vsb.org/pro-guidelines/index.php/rule_changes/item/paragraph_13-11
- Paragraph 13-25 (Board Proceedings for Reinstatement), effective 5/1/2016: www.vsb.org/docs/2015_12_17_part%206_Sect.%20IV_Para%2013_11_13_25_13_30.pdf
- Paragraph 13-30 (Confidentiality of Disciplinary Records and Proceedings), effective 5/1/2016: www.vsb.org/docs/2015_12_17_part%206_Sect.%20IV_Para%2013_11_13_25_13_30.pdf
- New Paragraph 13.4, Part 6, Section 4, effective 8/21/2015: www.vsb.org/pro-guidelines/index.php/rule_changes/item/prop-paragraph-13.4
- New Rule 10 to Part 10 (Provision of Legal Services Following Determination of Major Disaster), effective 1/1/2016: www.vsb.org/pro-guidelines/index.php/rule_changes/item/provision-of-legal-services-following-determination-of-major-disaster

FY2014 Audit Report

The audit report for FY2014, completed in May of 2016, found (1) proper recording and reporting of all transactions in the Commonwealth Accounting and Reporting System and our internal financial system; (2) no matters involving internal control and its operations necessary to bring to management's attention; and (3) no instances of noncompliance with applicable laws and regulations or other matters that are required to be reported.

February 27, 2016, Council Meeting

Council debated whether the Diversity Conference should be funded with dues dollars. By a vote of 52-7, council approved the Diversity Conference being funded by VSB dues.

June 16, 2016, Council Meeting

Proposed Amendments to RPC 1.6 and 3.3

By a vote of 52-7, the council approved the proposed amendments to Rules of Professional Conduct 1.6: *Confidentiality of Information*, and 3.3: *Candor Toward the Tribunal*. The proposed amendments clarify a lawyer's obligations when a client discloses an intent to commit perjury well in advance of trial, and when the lawyer can withdraw from the representation before the client's intended perjury occurs. The proposed amendments must be approved by the Supreme Court of Virginia before becoming effective.

Legal Ethics Opinion 1884

The council unanimously approved LEO 1884: *Conflicts arising from a*

lawyer-legislator's employment with a consulting firm owned by a law firm. The proposed opinion addresses a situation where a lawyer who is a member of the Virginia General Assembly joins a consulting firm owned by a law firm. The lawyer inquires whether the lawyers and non-lawyers in the consulting firm would be barred from lobbying the General Assembly. The Standing Committee on Legal Ethics concludes that both lawyers and non-lawyers in the consulting firm, as well as all lawyers in the law firm that own the consulting firm, would be barred from representing clients or otherwise lobbying before the General Assembly. The proposed LEO must be approved by the Supreme Court of Virginia before becoming effective.

Budget

Management reported that a savings of over \$1 million is being projected for FY2015-16 over what was budgeted this time last year.

Officer Succession

At the Annual Meeting in Virginia Beach on June 18, 2016, Michael W. Robinson

of Tysons Corner succeeded Edward L. Weiner as president of the Virginia State Bar and Doris H. Causey of Richmond became president-elect.

FY2016-17 Budget

Council and the Supreme Court of Virginia approved the VSB's proposed 2016-17 budget of \$14.9 million. This is an increase of \$277,000 over the 2015-16 operating budget. The budget includes a 3 percent raise for VSB employees as authorized by the General Assembly, contingent on the state achieving its revenue forecast for FY2016. As required by law, however, the state comptroller submitted a report to the governor on July 8, 2016, on the preliminary results of revenue collections for fiscal year 2016. The data indicated that total tax collections were 1.8 percent below the official budget estimates for the year. The shortfall means pay increases for state employees, slated for December 1, cannot move forward pending budgetary actions to address the shortfall, according to the Appropriations Act.

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that enhances lawyers' representation of their clients.

- Civility enhances advocacy. Judges routinely bemoan incivility in the courtroom, so it hardly should be seen as an advocate's tool of choice. The problem is just as serious in written submissions, where attacks on counsel may not draw a rebuke, but just as detrimentally are seen as unnecessary clutter or distractions that must be cleared to address the real issues. Why have your arguments lost in the clutter?
- Civility enhances a lawyer's professional reputation, which follows that

lawyer whenever she is advocating a position for her client.

- Judges and clients rate lawyers who act civilly as more effective.
- The practice of law is undeniably stressful; and incivility among lawyers is frequently cited as a cause of unnecessary stress.

A number of courts and bar associations have adopted principles of civility, some with very detailed guidelines. We should welcome the increasing focus on civility by the courts and bar associations. But I think professionalism and civility are difficult to codify, and the effort misses the essence of what we

strive to promote: the attitude of genuine respect for others and for a system that allows us to vigorously debate, further our client's positions, and resolve disputes in an adversarial system.

As Virginia lawyers, we owe it to our clients, our profession, and ourselves to both remember the underpinnings of the oath to demean ourselves professionally and courteously in our practice of law, and to reinforce civility as a core principle of professionalism. And here, I can betray perhaps a touch of Pollyanna optimism: perhaps in doing so we can help elevate as well the level of our public discourse.