

Executive Director's Message

by Karen A. Gould



The Year Ahead: What You Need to Know

I HOPE YOU HAVE HAD an opportunity to visit the VSB website and review President Jon Huddleston's *Virginia Is for Good Lawyers* campaign. The campaign is designed to spotlight Virginia lawyers' community involvement. Through the artistic and technical support of Madonna Dersch of the VSB publications staff, the interviews can be accessed through the VSB home page <http://www.vsb.org> under the title *The Big Picture*. In addition, Jon has solicited essays from and about Virginia lawyers and gathered them into a collection titled *Reflections*. This is a wonderful public relations campaign, and we should all thank Jon for his efforts to improve the image of lawyers in Virginia. If you have suggestions for interview opportunities or would like to write an essay, please send Jon an email at TheBigPicture@vsb.org.

MCLE Information

On the regulatory front, you should be aware that the Mandatory Continuing Legal Education Board is considering limiting the amount of MCLE credits you can earn through distance learning. This rule change, if adopted by the MCLE Board, would require that every active member of the VSB attend some amount of live programming every year. The MCLE Board is concerned that the increasing usage of the Internet will undermine one of the primary purposes of the MCLE requirement: to preserve the collegiality of the profession. Any proposed rule change will be published for comment before being adopted.

This may be the last year the VSB mails to all members the MCLE End of

Year Report, which logs the number of MCLE credits you have completed (and are lacking). The Supreme Court of Virginia has before it a proposed change to the Rules of Court Part 6, Section IV, Paragraph 17 — Mandatory Continuing Legal Education Rule. (<http://www.vsb.org/site/regulation/paragraph-17-form/>) The change would eliminate a requirement that the bar mail the annual MCLE form to all members.

With the new system, members can access their End of Year Report online or request that it be mailed. To access it online, enter your member number and password to reach the secure Member Login area at [VSB.org](http://www.vsb.org), then click on the MCLE Records button.

You can also report your MCLE hours from the same page, which will then immediately post the hours to your compliance report — a much more efficient and reliable method of reporting your hours than sending or faxing your MCLE record to the bar.

The VSB has already eliminated MCLE's midyear Interim Report.

In May 2009, the Supreme Court approved an additional MCLE delinquency fee of \$100 if a lawyer has not complied with the MCLE requirements by February 1 of a given year.

The season between the MCLE compliance deadline of October 31 and administrative suspensions of members who fail to comply — usually in March — is the busiest for the bar's MCLE staff.

To cite an example, by the close of business on October 31, 2008, more than 8,000 attorneys had not complied with MCLE requirements. Delinquent

filers who had not completed their required hours were fined \$100 and had until December 15 to complete their credits and file a report without further penalty.

Thousands of MCLE certifications flooded the bar's offices from late October through mid-December. After the December 15 deadline, approximately 1,600 attorneys continued to be noncompliant. Those members were charged an additional \$100 for failing to file an End of Year Report.

It takes the VSB approximately one month to process all the certification forms that come in during December and notice those members who still have not complied. Sixty-day notices of noncompliance required for administrative suspension under Paragraph 19 thus are usually not issued until mid-January. In our example, approximately 1,031 attorneys still had not complied by February 27, 2009.

The MCLE Board and the VSB staff hope that, by instituting an additional \$100 penalty to be imposed on February 1, prior to the suspension notice, the bar will encourage more attorneys to comply with MCLE requirements without being suspended and incurring reinstatement costs.

Proposed Rule Changes

The Virginia State Bar's Rule 4.2 Task Force is proposing an amendment to Rules of Professional Conduct, Rule 4.2, Comment [5] to address the situation in which a defendant who is in custody, formally charged, and represented by counsel waives his or her rights under *Miranda v. Arizona*

The Year Ahead continued on page 57

and wants to give a statement to a law enforcement officer without the defendant's counsel present. The proposed amendment to Rule 4.2, Comment [5] clarifies that the commonwealth's attorney can advise a law enforcement officer regarding the legality of an interrogation or the legality of other investigative conduct. The proposed amendment to Comment [5] does not authorize a commonwealth's attorney to "script" or "mastermind" the police's interrogation of the defendant. The Virginia State Bar Council will consider at its October 16, 2009, meeting whether to recommend the amendment to the Court.

Legal Ethics

The Standing Committee on Legal Ethics is proposing that the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 10, be amended to eliminate redundancy in the rule's procedures for notice and public comment. Paragraph 10 as revised would continue to provide sufficient notice and comment periods in the *Virginia Lawyer Register* and on VSB.org as related to draft advisory opinions and proposed rule amendments. Additionally, the rule has been reformatted into new subparagraphs to

conform to the recent reformatting of Paragraph 13 of the Supreme Court Rules. The proposed changes to Paragraph 10 will be voted on by VSB Council at its October 16 meeting. If approved, the proposed amendments will be presented to the Court for approval.

Member Directory

The VSB's online Lawyer Directory has been well-received by the bar and the public, with very few complaints. As of September 14, 2009, only 2,109 members out of 27,798 active "in good standing" (IGS) members have elected to not be listed in the directory. Members who seek admittance to local and regional jails and courts may wish to be listed in the directory, because sheriffs and administrators of the regional jails are aware that the directory lists of 92.4 percent of the active IGS members of the VSB. If you decide to change your status in the directory, just go to Member Login, enter your member number and password and select Virginia Lawyer Directory Options.

If you need assistance, do not hesitate to email me at gould@vsb.org. I hope you are successfully weathering the economy and enjoying the practice of law. ■