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Lawyers at Leisure

I am compelled to write and express my kudos for this article (*The Lawyers of Endless Summer*, August 2016). As a surfer of forty-three years and an attorney of twenty-nine years, and particularly having travelled to Central America with Bob Morecock, Don Clark, and Jeff Breit, I greatly appreciated the mature and thoughtful treatment of the friendship between these dedicated surfers who all happen to be accomplished lawyers. All too often, articles about surfers intended for a general reading audience, particularly those written by non-surfers, resort to worn out clichés and tired stereotypes. It was indeed gratifying to finish this piece without encountering a single “dude,” “hang ten,” or “cowabunga.”

The surfer in me also appreciated you taking the space to run the (very respectable) surf shots of each of the boys. These guys not only know their way around a courtroom, they know what they’re doing in the ocean as well.

Steven P. Letourneau
Virginia Beach



Letters

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President's Message

by Michael W. Robinson



The Most Meaningful Service We Provide

THIS EDITION OF *Virginia Lawyer* spotlights our commitment to pro bono work and to improving access to justice in the commonwealth. While the national election year has elevated discussion about the nation's income gap, the justice gap significantly exacerbates the difficulties faced by those living near, at, or below the federal poverty level, but has received far less attention.

The Virginia State Bar and voluntary bars throughout the commonwealth continually focus on programs to help lead the effort to narrow the gap. The Virginia Access to Justice Commission — created by the Supreme Court of Virginia in 2013 — is studying, promoting, and emphasizing coordinated programs to help address the access to justice gap. The important work of this commission can be reviewed at <http://www.courts.state.va.us/programs/vajc/home.html>. The Supreme Court's biennial pro bono summit continues to bring added focus and emphasis to the deep-rooted needs of the underserved population. New technology and web-based programs are coming on-line to assist the efforts and allow greater coordination and pro bono management. For example, the VSB has recently launched a website devoted to allowing low-income Virginians to have questions answered by lawyers; the program allows lawyers to pitch in without having to take on a representation. The program can be reviewed, and lawyers can volunteer to assist at <https://virginia.freelegalanswers.org/>.

Virginia lawyers can be rightfully proud of their efforts to provide pro bono, and increase access to justice for the less fortunate, and the lost and unchosen among us. But the need is so great that we cannot pretend we are — as a profession — doing enough. So as we spotlight programs and ongoing efforts, it is important to focus again on our individual and collective obligations as lawyers.

Simply put, our privilege to practice law carries with it the responsibility to ensure legal services are available to those who, because of financial circumstances, cannot otherwise afford representation. This principle upholds the highest ideals of our profession, and is likewise firmly enshrined in our Rules of Professional Conduct. Rule 6.1 sets forth an aspirational goal for Virginia lawyers to devote 2 percent of their professional time to pro bono publico service. That equals just 40-50 hours per year. The goal is aspirational — a distinction that goes hand-in-hand with the voluntary nature of pro bono work, and recognizes that we are perhaps at our best when undertaking voluntary efforts.

So what does the rule contemplate we do with that 40-50 hours? What constitutes pro bono publico services under Rule 6.1? The rule identifies four broad areas: (1) poverty law, (2) civil rights law, (3) public interest law, and (4) efforts designed to increase the availability of pro bono legal services.

The phrase "poverty law" is intentionally and inherently broad; it captures those services provided for

free or for nominal fees to economically disadvantaged persons. The work is not limited to those whose income falls below a particular metric, such as the federal poverty guidelines. Nor is it limited to work referred by or coordinated with established legal service programs. It includes all work for those who have insufficient resources to hire counsel, as long as the pro bono or nominal fees are established in advance. Similarly, "civil rights law" is broadly intended to encourage legal services "to assert or protect rights of individuals in which society has an interest." These two categories address providing legal services directly to clients on specific matters.

In contrast, the latter two categories address broader efforts. The term "public interest law" encourages the provision of legal services to groups who themselves are undertaking efforts for civic improvement. Providing legal advice to groups that provide eleemosynary services — not strictly legal services — constitutes pro bono publico services. Finally, Rule 6.1 recognizes the value of training and assisting other lawyers, and working on systemic programs to increase the availability of pro bono legal services. Thus, lawyers can also meet their aspiration goals by, for example, conducting a CLE for legal aid and pro bono lawyers, serving on the board of a legal aid organization, recruiting lawyers to engage in pro bono service projects, and advocating for increasing resources for legal aid.

In all of our careers, there will be times when practice, family, and other commitments may limit our ability to take on significant pro bono matters. Rule 6.1 recognizes the need for, and value of, providing financial assistance to pro bono and legal services programs in lieu of, or in addition to, direct pro bono work. With budgets being consistently squeezed — legal service groups have lost approximately 20 percent of their funding in the last two-years — we should not overlook our ability to voluntarily help overcome the financial restrictions faced by programs upholding the profession's commitment.

With such a broad recognition of pro bono publico services, a commitment of 40-50 hours seems imminently achievable. Yet we instinctively know we don't always measure up to our aspiration. One self-imposed barrier to providing pro bono work is the concern that an individual's practice area or particularized skill does not translate to meeting pro bono needs. There is a fear of stepping outside our comfort zone. I would argue that pro bono is the perfect opportunity to do so, and that the concern is unnecessary; our skills as lawyers allow us to quickly transfer our abilities to broader areas to serve the needs of the underserved. And as with so many things in life, stepping outside our comfort zone offers opportunities for new experiences and personal and professional growth.

Pro bono work allows us to use our special skills as lawyers to improve and change people's lives in ways small and large. From personal experience, and from many discussions with lawyers around the commonwealth, I can join the chorus that also says it is often the most meaningful — and personally satisfying — service we provide.

Ten Facts about Virginia's Justice Gap

1. More than 80 percent of the civil legal needs of the poor in Virginia and nationwide go unmet.
2. Individuals who are represented by counsel are twice as likely to have a favorable outcome compared to those who are unrepresented.
3. There are presently more than one million people in Virginia who are living in poverty. In other words, one in eight Virginians is eligible for free legal services from Virginia's legal aid programs.
4. 48 percent of low- and moderate-income households in Virginia experience a legal problem each year (approximately 400,000 legal problems annually).
5. Because of funding cuts and decrease in IOLTA revenue, Virginia's legal aid programs have lost 20 percent of their funding, resulting in a loss of 20 percent of total legal aid attorney and support staff statewide (sixty-one positions total, including thirty-four attorneys). That leaves just 130 legal aid lawyers to cover the land area of Virginia or 42,775 square miles. At the same time Virginia's poverty population has increased by over 30 percent.
6. There is one legal aid lawyer per 7,237 poor people in Virginia. Compare this to the ratio of one lawyer per 349 Virginians.
7. Nationwide, 50 percent of the potential clients who request legal assistance from legal aid are turned away because of a lack of resources. People seeking assistance with family law cases were turned away 80 percent of the time.
8. Rule 6.1 of the Virginia Rules of Professional Conduct every lawyer, regardless of professional prominence, should devote 2 percent of his or her professional time to pro bono legal services activity (or approximately forty hours per year).
9. If Virginia lawyers were in compliance with this aspirational goal, we should be providing more than 900,000 hours of pro bono.
10. According to the best available data, Virginia lawyers are providing just 80,000 hours of pro bono.

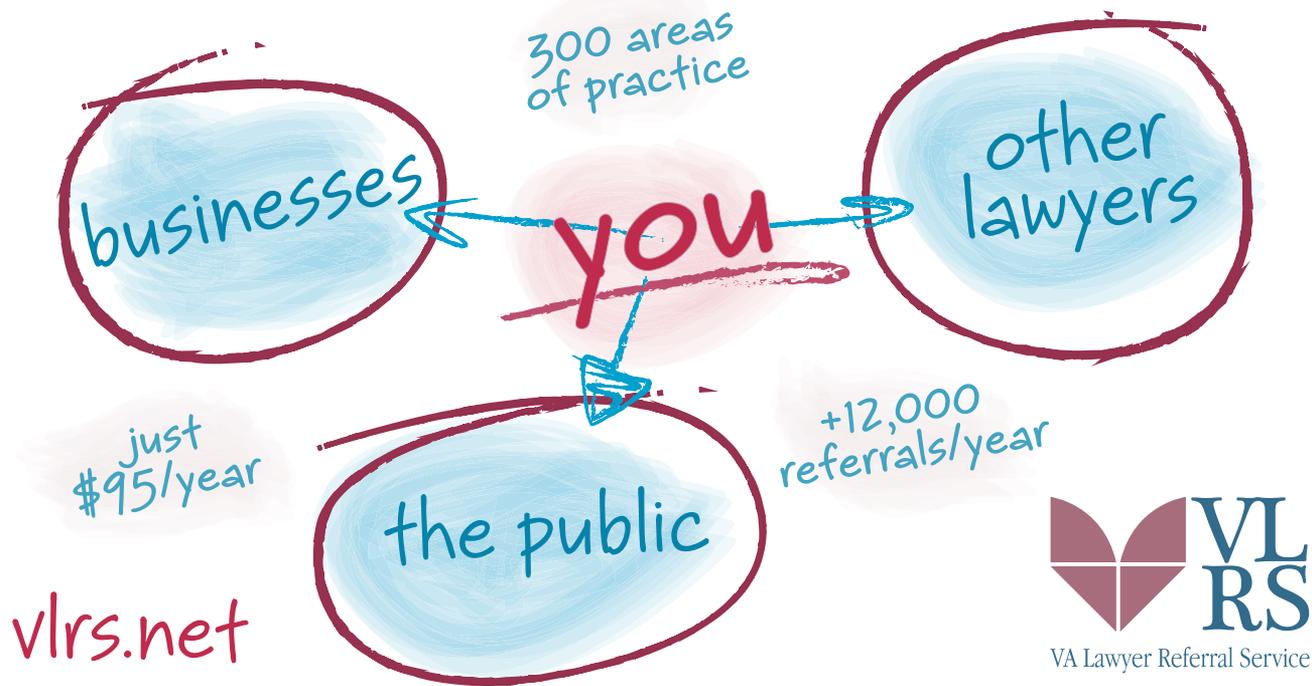
Justice Gap continued on page 10

Justice Gap *continued from page 9*

Sources:

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| <p>1 2007 Virginia Legal Needs Study, commissioned by the Legal Services Corporation of Virginia and funded in part by the Virginia Law Foundation; 1994 ABA National Legal Needs Study</p> <p>2 Russell Engler, "Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed," <i>Fordham Urban Law Journal</i>, Volume 37, Issue 1, 2009. pp. 51- 66.</p> <p>3 Legal Services Corporation of Virginia, Report to the Commonwealth and the General Assembly, FY 014-15, p. 8</p> | <p>4 id</p> <p>5 id</p> <p>6 VSB Membership Report, August 3, 2015 (number of active Virginia lawyers); LSC Grant Application, May 2014(number of legal aid lawyers); US Census website (Virginia population and poverty population)</p> <p>7 Legal Services Corporation, FY 2016 Budget Request; Alan W. Houseman, <i>The Future of Civil Legal Aid in the United States</i>, Center for Law and Social Policy (CLASP), November 2005</p> <p>8 Rule 6.1, Virginia Rules of Professional Conduct</p> <p>9 Joanna L. Suyes and John E.</p> | <p>Whitfield, "Is There a Justice Gap in Virginia?" <i>Virginia Lawyer</i>, February 2014</p> <p>10 Legal Services Corporation of Virginia, Report to the Commonwealth and the General Assembly, FY 014-15; 2013 VSB Access to Legal Services Statewide Survey of Independent Pro Bono Programs; and an extrapolation of ad hoc pro bono hours from ABA Supporting Justice III report, March 2013</p> |
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Executive Director's Message

by Karen A. Gould



Council: the Governing Body of the Virginia State Bar

THE GOVERNING BODY OF THE Virginia State Bar is Council, which consists of eighty-one lawyers, sixty-five of whom are elected representatives of their judicial circuits. The number of representatives from each circuit varies, depending upon the number of lawyers in their respective circuits, representing over 23,000 active Virginia lawyers.¹ The Fairfax contingent, the 19th circuit, has the most representatives with fourteen, representing more than 6,000 lawyers. Each of the thirty-one judicial circuits has at least one representative,² no matter how few lawyers it has,³ as set forth by the Council bylaws. Nine members are appointed as “at large” members by the Supreme Court of Virginia. Four members represent the conferences: the Diversity Conference, the Conference of Local Bar Associations, the Senior Lawyers Conference, and the Young Lawyers Conference. The president, president-elect, and immediate past president are also members of Council. The three officers and four conference representatives serve yearly terms; the remainder are elected or appointed to serve three-year terms and may be re-elected or reappointed for a second three-year term.

Council is almost as diverse as the composition of the legal profession in Virginia in terms of ethnic background, practice type, firm size, gender, religion, and sexual orientation. There are or have been whites, blacks, Asians, Middle Easterners, Hispanics, etc. There are four Council members employed by legal aid societies spread

throughout Virginia. Commonwealth’s attorneys and criminal defense attorneys populate the ranks. Beverly Leatherbury, of the Eastern Shore, is both an assistant commonwealth’s attorney and county attorney for her jurisdiction. Rhysa South is with the Henrico County Attorney’s Office. There are many family law lawyers on Council. Solo and general practitioner Bill Bradshaw hails from Big Stone Gap in far Southwest Virginia. Bankruptcy lawyer Paula Beran practices in a two-person setting in Richmond. President Michael Robinson is with mega-firm Venable, one of the few big firms represented on Council. The plaintiffs’ bar and defense bar are also well represented.

Why are these facts important? Council serves an important function in the regulation of the legal profession in Virginia. Its members analyze, comment, debate, and vote upon proposed rule changes and statutory amendments affecting the legal profession before the proposed rule changes and statutory amendments are presented to the Supreme Court of Virginia for consideration. Diversity is important. No matter what the source of the diversity it brings different viewpoints to the table and enriches the discussion.

In these troubling times of economic downturn, the Virginia State Bar is always looking for ways to save money. Should the size of Council be reduced to cut costs?

Council meets three times a year. The Executive Committee meets five times a year and can act on matters

for Council between its meetings. The Executive Committee consists of thirteen members of Council: the three officers; the four conference chairs, and six at-large members from Council. The VSB currently budgets \$97,000 for the three meetings of Council, which includes the travel expenses of the Council members. EC meetings are budgeted at \$22,000 for five meetings. The Council and EC meetings are planned to occur throughout the commonwealth, not just in Richmond, thereby incurring more expense (staff has to travel to support the out-of-town meetings). Meetings of Council generally last between two and three hours, depending upon the complexity of the agenda items. They are preceded by a reception and dinner the night before the meeting. Because of the eighty-one-person size of Council, the VSB has to rent hotel space for its meetings.

Our neighboring state bar to the South, the North Carolina State Bar, has a governing body of sixty-eight members: sixty-one lawyers elected from forty-five judicial districts, three public members appointed by the governor and four elected officers. This year’s budget for the North Carolina State Bar council is \$320,000 to cover the cost of quarterly meetings for **at least three days** at a time.⁴ The \$320,000 also covers travel expense reimbursement for the council members, who are drawn from all over the state.

A recent law review article, “Right-Sizing Association Governance,” 63 *Hastings Law Journal: Voir Dire* 1

(2012), discusses the optimal size for the board of directors of a bar organization. It concludes that best governance practices favor smaller boards for both nonprofit and corporate organizations and that more companies have moved to small boards. *Id.* at 5. Some reasons postulated for the move are that smaller boards can engage in a “conversation-al style [that] allows for consensus to emerge more organically, after a full and vigorous discussion, whereas decisions on big boards are almost always made by a formal vote after a stilted and often shortened discussion.” *Id.* Smaller boards foster cohesion and collegiality, thereby becoming a “team.” Large boards are likely to be disengaged and unwieldy, “transferr[ing] power to the CEO and other staff...” *Id.* at 6.

The *Hastings* article also dispenses with the diversity argument:

When it comes to the size and composition of the board, the easy path is always to go bigger, to ensure that every type of firm and area of practice, every geographic region and stage of career, every

section and division and county, is represented. But representation of diverse constituencies is out of step with current best practices. A focus on diversity stems from a belief that the main purpose of the board is to provide a forum for diverse perspectives and to pass resolutions through a representative assembly. But a more accurate understanding of the board's role recognizes that its primary responsibility is to govern—often to govern a large organization with tens or hundreds of thousands of members, millions of dollars, and scores of staff. The counsel of the governance literature, which lawyers have helped produce, is clear: resist the temptation to go bigger, and instead move towards a smaller, “working” board. *Id.* at 7.

The *Hastings* article should provoke discussion as to whether the VSB should turn to a smaller board to foster team-building through cohesion and collegiality, because that will result in more organic, full and vigorous discus-

sions and, hopefully, a better decision-making process.

What do you think? Should the VSB dispense with the diversity provided by its large and diverse governing body and go to the model of a much smaller governing body? Please let us know. My e-mail address is gould@vsb.org. President Michael W. Robinson can be reached at mwrobinson@venable.com.

Endnotes:

- 1 As of September 6, 2016, the total number of active in-good-standing lawyers with Virginia licenses was 31,807. The number of active in-good-standing lawyers in the thirty-one judicial circuits in Virginia was 23,842; the remainder had addresses outside the commonwealth.
- 2 There are 21 circuits with one representative on Council.
- 3 The 21st Circuit has the fewest number of active lawyers as of September 6, 2016, with sixty-nine lawyers appearing on the role of active in-good-standing members of the Virginia State Bar.
- 4 “State Bar Outlook: The Micawber Principle,” by L. Thomas Lunsford, II, Executive Director, North Carolina State Bar, *The North Carolina State Bar Journal*, Fall 2016, at 7.

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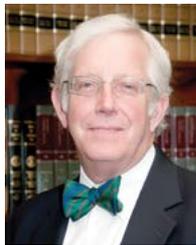
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I've Got a Secret: The Duty of Confidentiality is Much Broader Than the Attorney-Client Privilege

IN CONVERSATIONS WITH lawyers and while teaching CLEs, I have learned that lawyers often confuse the common law attorney-client privilege (ACP) and the lawyer's ethical duty of confidentiality under Rule 1.6. The ACP and the ethical duty of confidentiality are quite different in many respects. The ACP is an evidentiary privilege that is applied in court proceedings. The ethical duty of confidentiality applies in many other situations outside of litigation. While both the ACP and the ethical duty of confidentiality arise out of the attorney-client relationship, the ACP only applies to and protects communications by and between lawyer and client in which the purpose of that communication is to give or obtain legal advice or legal services, and where such communication has been made in confidence or with a reasonable expectation of confidentiality. The ACP is waived by the client's disclosure of otherwise privileged communications to a third party, and may sometimes be waived by the lawyer's disclosure of a privileged communication to a third party, whether intentional or inadvertent.

In contrast, the ethical duty of confidentiality covers a much wider spectrum of information in addition to information protected under the ACP. Under ABA Model Rule 1.6, "any information relating to the representation" is protected as confidential. Virginia's Rule 1.6 protects information protected under the ACP and attorney work product, but also any information that the client has requested be kept secret

and "**other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.**"

While ACP protection can be waived by the client's disclosure of information to others, an attorney may disclose information protected by Rule 1.6 only if the client consents after consultation, disclosure is "impliedly authorized," or disclosure is permitted or required under paragraphs (b) and (c) of the rule. Thus, the fact that the client may have shared confidential information or discussed the legal matter with others does not permit the lawyer to disclose the same information to others.

Even the client's identity, though not generally regarded as "privileged" under the ACP, may still remain protected under the ethical duty of confidentiality, if the client has expressed a desire that his or her retention of the lawyer remain secret. LEOs 1147 and 1284 state: "The Committee is of the view that even a client's identity may be construed to be a confidence or secret, even when such information is a matter of public record, where the client has specifically requested that such information be kept secret or held inviolate (see *In re Kozlov*, 79 NJ 232, 398 A.2d 882 (1979))." See also EC 4-4 under DR 4-101 of the former Code of Professional Responsibility: "[T]he ethical obligation of a lawyer to guard the confidences and secrets of his client extends beyond the evidentiary priv-

ilege without regard to the nature or source of information or the fact that others share the knowledge." This last sentence is critical to understanding the ethical duty of confidentiality. If a lawyer learns from the client's financial advisor relevant information that the client is in financial distress, that information may not be protected by the ACP since the information was not part of a communication between the lawyer and client. That information could be protected as qualified work product and protected from discovery under that doctrine. But the information is clearly protected under the ethical duty of confidentiality even though the source of the information is other than the client, if the disclosure of the information is contrary to the client's wishes or "would be embarrassing or likely to be detrimental to the client."

A lawyer's ethical duty to protect confidential client information continues even after the professional relationship or engagement has ended and even after the client's death. Cmt. [18], Rule 1.6, Rule 1.9(c)(2) and LEO 1207. Thus, former clients are entitled to the same protection as current clients.

Lawyers often assume that once information relating to the representation of a client has become a "matter of public record" it is no longer protected as confidential. I think the confusion is caused in part by the label "confidential." How can information be "confidential" if it is in a public record? This is a common misconception that overlooks the lawyer's personal and fiduciary duty not to disclose

information that is embarrassing or detrimental about a client or a client's matter. We were taught in law school to look beyond the title or label given a statute or rule and instead examine what it specifically states. Again, disclosure of information protected by Rule 1.6 is strictly governed by paragraphs (b) and (c) of the rule. A good illustration of this concept may be found in LEO 1643. A man hired a family lawyer to handle his divorce. The lawyer prepared a Property Settlement Agreement (PSA) that the parties signed and which was incorporated into a final divorce decree that was entered by the court and thus a "matter of public record." After the representation had ended, the former client listed his divorce lawyer as a creditor in his bankruptcy in an endeavor to discharge legal fees he still owed his former divorce lawyer. However, in his bankruptcy filings, the former client omitted assets he had acquired under the terms of the PSA his former lawyer had drafted and then became a public filing.

The question presented was whether it would be improper for the attorney to reveal to the bankruptcy court the information in the property settlement agreement regarding those assets not listed by the former client in his bankruptcy petition. The committee said "yes," holding that disclosure would violate the lawyer's duty of confidentiality even though the information sought to be disclosed was a matter of public record. The committee also examined two exceptions to the duty of confidentiality—(1) whether disclosure was permitted in the context of a fee dispute or controversy and (2) whether disclosure was permitted or reasonably necessary to prevent fraud on a tribunal. The committee found under the facts presented that there was no dispute over the fee the former client owed the lawyer, so that exception did not apply. The committee also concluded that the "fraud on the tribunal" exception did not apply

because the fraud did not relate to nor arise in the course of the divorce lawyer's representation of the former client.

Most authority holds that the duty of confidentiality applies and protects a client or former client's information, even if a matter of public record, if the disclosure would be embarrassing or likely detrimental to the client. Rule 1.6 contains no exception permitting disclosure of information previously disclosed or publicly available.¹ A recent California State Bar legal ethics opinion holds that a lawyer may never reveal embarrassing or detrimental secrets about a client learned during the representation—even if the information doesn't come from the client and is publicly available. A lawyer's duty of confidentiality extends beyond attorney-client privileged communications and continues after the representation ends, even if the information could be discovered on the Internet or in court records.²

Lawyers need to reflect, think, and essentially have a gag reflex anytime they consider disclosing information about a client or former client. This is true even when a lawyer seeks a court's permission to withdraw from a matter because the client is being difficult. The lawyer must refrain from voluntarily disclosing disparaging or embarrassing information as a basis to withdraw. *In re Gonzalez*, 773 A.2d 1026 (D.C. Ct. App. 2001) (public admonition for lawyer who disclosed as a basis for motion to withdraw that client has missed appointments and made misrepresentations to lawyer).

Confidence in our legal system and our profession rests upon our painstaking care to keep our clients' information safe and confidential. Our allegiance to the ethical duty of confidentiality "is designed to preserve the trust of the client in his lawyer, without which the practice of law, whatever else it might become, would cease to be a profession." *Id.* at 1030.

Endnotes:

- 1 See, e.g., *Lawyer Disciplinary Bd. v. McGraw*, 461 S.E.2d 850, 860 (W.Va. 1995) (Privilege not nullified where circumstances to be disclosed are part of a public record or there are other available sources for such information.); *Akron Bar Assn. v. Holder*, 102 Ohio St.3d 307, 315-16 (2004) (Attorney not free to disclose embarrassing or harmful features of a client's life just because they are documented in public records or the attorney did not learn details from client); *In re Anonymous*, 654 N.E.2d 1128 (Ind. 1995) (Rule 1.6 violation found even though information disclosed "was readily available from public sources and not confidential in nature."); *In re Bryan*, 61 P.3d 641 (Kan. 2003) (lawyer violated Rule 1.6 by disclosing, in court documents, existence of defamation suit against former client); *State ex rel. Okla. Bar Ass'n v. Chappell*, 93 P.3d 25 (Okla. 2004) (lawyer in fee dispute with former client violated Rule 1.6 by filing motion referring to criminal charges filed and dismissed against former client); *In re Harman*, 628 N.W.2d 351 (Wis. 2001) (Rule 1.6(a) violation for disclosure to prosecutor of former client's medical records obtained during prior representation; irrelevant whether those records "lost their confidentiality" by being made part of the former client's medical malpractice action). See also *Restatement of the Law (3d) Governing Lawyers* §59, cmt. (d)(2000) ("A lawyer may not justify adverse use or disclosure of client information simply because the information has become known to third parties, if it is not otherwise generally known.").
- 2 Cal. State Bar Formal Op. 2016-195 found at [http://ethics.calbar.ca.gov/Portals/9/documents/Opinions/CAL%202016-195%20\(13-0005\).pdf](http://ethics.calbar.ca.gov/Portals/9/documents/Opinions/CAL%202016-195%20(13-0005).pdf)

CALL FOR NOMINATIONS
William R. Rakes Leadership in Education Award

The Section on the Education of Lawyers in Virginia
Virginia State Bar

The Section on the Education of Lawyers in Virginia has established an award to honor William R. Rakes, of Gentry Locke, for his longstanding and dedicated efforts in the field of legal education, both in Virginia and nationally. The inaugural award was presented to Mr. Rakes in conjunction with the 20th Anniversary Conclave on the Education of Lawyers in Virginia sponsored by the Virginia State Bar's Section on the Education of Lawyers in April 2012.

2016 Recipient — Hon. Donald W. Lemons

2015 Recipient — Hon. B. Waugh Crigler

2014 Recipient — Hon. Elizabeth B. Lacy

2013 Recipient — W. Taylor Reveley III

2012 Inaugural Recipient — William R. Rakes

Criteria

This award recognizes an individual from the bench, the practicing bar, or the academy who has:

(1) demonstrated exceptional leadership and vision in developing and implementing innovative concepts to improve and enhance the state of legal education, and in enhancing relationships and professionalism among members of the academy, the bench, and the bar within the legal profession in Virginia.

(2) made a significant contribution (a) to improving the state of legal education in Virginia, both in law school and throughout a lawyer's career; and (b) to enhancing communication, cooperation, and meaningful collaboration among the three constituencies of the legal profession.

Nomination Process

Nominations will be invited annually by the board of governors of the Section on the Education of Lawyers, although the award may only be made from time to time at the discretion of the selection committee appointed by the section's board of governors. The selection committee will include five members: at least three members of the Section on the Education of Lawyers, with one each from the bench, the practicing bar, and the academy, including the chair of the section; and at least one former award winner.

When a nominee is selected, the award will be presented at a special event to include a reception for the honoree and his/her family, friends and colleagues; past award recipients; and special guests. The law firm of Gentry Locke has agreed to underwrite the award and the special event to honor award recipients on an ongoing basis. Please submit the nomination form below, together with a letter describing specifically the manner in which your nominee meets the criteria established for the award. Nominations should be addressed to **John M. Bredehoff**, chair, Section on the Education of Lawyers, and submitted with your nomination letter to the Virginia State Bar: 1111 East Main Street, Suite 700, Richmond, VA 23219-0026. **Nominations must be received no later than December 9, 2016.**

For questions about the nomination process, please contact Elizabeth L. Keller, assistant executive director for bar services: keller@vsb.org (804) 775-0516.

WILLIAM R. RAKES LEADERSHIP IN EDUCATION AWARD
NOMINATION FORM

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Name of Nominee: _____

Profession: _____

Employer/Affiliation (Law Firm, Law School, Court): _____

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Our Duty to Care

by Barbara A. Williams



“The duty of care” requires us to act toward others with the same degree of watchfulness, attention, caution, and prudence a reasonable person in like circumstances would exercise. In addition to our duty of care, lawyers have a professional responsibility I call *the duty to care*. ABA Model Rules of Professional Conduct 5.1 and 5.3 require lawyers who have managerial responsibility to make reasonable efforts to ensure that lawyers and staff they supervise conduct themselves in accordance with the rules. The duty to care includes helping colleagues deal with substance abuse and mental health issues in order to anticipate and prevent rules violations. Model Rule 1.16 specifically prohibits a lawyer from undertaking or continuing to represent a client if an impairment materially limits the lawyer’s ability to represent the client.

Anyone who follows current events knows that substance abuse and mental health

issues abound in the general population. What you might not realize is that lawyers are far more susceptible to substance abuse and mental health issues than other people. In 2014-15, the ABA and the Hazelden Betty Ford Foundation surveyed 12,825 licensed lawyers employed as clerks, paralegals, associates, partners, and judges. The results of the Hazelden survey were published in the January/February 2016 issue of *Journal of Addiction Medicine*. The survey found that 20.6 percent of respondents reported problematic use of alcohol, 28 percent indicated they suffer from depression, and 19 percent said they struggle with anxiety. The Hazelden survey suggests that lawyers who are 30 years old or younger and work for private law firms have higher levels of distress than more experienced lawyers.

According to the Substance Abuse and Mental Health Services Administration, 6.4 percent of adult Americans abuse alcohol and 6.6 percent experienced major depression in 2014. Comparing those statistics to the Hazelden survey findings, US lawyers are three times more likely to have an alcohol or mental health problem than most people.

One reason we have a duty to care about the members of the legal profession is that impairment can adversely affect the delivery of legal services. Studies preceding the Hazelden survey established a strong link between substance abuse and legal malpractice claims

and lawyer disciplinary proceedings. One study found that 65 percent of legal malpractice claims and 85 percent of trust account violations involve lawyers who are impaired. While the Hazelden survey calls attention to the number of younger lawyers dealing with substance abuse and mental health issues, other studies emphasize the tsunami of baby boom lawyers suffering from dementia and other illnesses causing cognitive deficits.

It is well established that impaired lawyers rarely seek help voluntarily due to fear they will be “outed” and their reputations and livelihoods irreparably damaged. But, ignoring impairment issues is not a viable option. In January 2014, the Centers for Disease Control and Prevention released data indicating that lawyers rank fourth after dentists, pharmacists, and physicians in the incidence of suicide. The same year, CNN reported that suicide is the third leading cause of death among lawyers. By comparison, suicide is the tenth leading cause of death in the general population.

Because the legal profession is self-policing, impairment is an issue lawyers and law firms ignore at our own peril. Nonetheless, regulators have been slow to address lawyers’ duty to care under the Rules of Professional Conduct. On June 11, 2003, the ABA issued Formal Op. 03-429, the first ethics opinion addressing lawyers’ obligations with respect to firm lawyers impaired by substance abuse and mental health issues. More than ten years passed before any state followed the ABA’s lead. On July 1, 2014, Kansas issued LEO No. 14-01 indicating that lawyers can satisfy their professional duties by reporting attorney memory lapses to Lawyers Helping Lawyers rather than to bar disciplinary authorities. On July 25, 2014, North Carolina issued Formal Ethics Opinion 8: Responding to the Mental Impairment of Firm Lawyers. On July 16, 2016, the Virginia State Bar Standing Committee on Legal Ethics issued for review and comment draft LEO 1886: Duty of Partners and Supervisory Lawyers in a Law Firm When a Lawyer in the Firm Suffers from Significant Impairment.

The legal ethics opinions emphasize lawyers’ duty to prevent impaired lawyers within a law firm from violating the Rules of Professional Conduct. The opinions advise law firms to make “reasonable efforts” to establish internal policies and procedures designed to provide “reasonable assurance” that

lawyers and other firm personnel comply with the rules.

Some firms have adopted policies requiring employees who have reliable information of a substance abuse problem to refer the affected individual to the employee assistance program or Lawyers Helping Lawyers (LHL). LHL is an invaluable resource for those who are concerned that another lawyer may have a possible impairment or problem. Among the potential concerns LHL can address are substance abuse, depression, and aging-related issues. If in doubt, contact LHL. Upon receipt of a referral, LHL assesses the need, and if appropriate, provides information, peer support (individual or group), intervention, and referral to Alcoholics Anonymous, Narcotics Anonymous, Gamblers Anonymous, a therapist, or a rehabilitation center.

Confronting a lawyer or staff member who is impaired, but in denial about having a problem, is not easy. Many of us would prefer to adopt the “not my problem” approach. Fortunately, Lawyers Assistance Programs (LAPs), including Lawyers Helping Lawyers in Virginia, share a common mission: helping individuals of every age, gender, race, and economic status deal with impairment issues. Impairment is an equal opportunity affliction, but the workplace is usually the last place where substance abuse and mental health issues manifest themselves. Lawyers and other legal professionals try to hide impairment issues at work, especially if their professional standing is an important part of their self-identity. An impaired person likely has been suffering for a long time before problems emerge at work.

US lawyers are three times more likely to have an alcohol or mental health problem than most people.

Aside from our professional duty to care and personal desire to help those in need, LAP referrals are a good risk-management strategy. If an assessment reveals a problem and the impaired person agrees, in most jurisdictions, a monitoring contract can be established before

Duty to Care *continued on page 25*

Health Savings Accounts — a Popular Approach to Health Insurance

by Robert Spicknall



Madonna Dersch

It has been an honor and a pleasure to work with law firms for over twenty years. Serving as a broker or agent, my colleagues and I continue to guide law firms with the selection of group health insurance products.

In 2004 Virginia State Bar President Jeannie Dahnk invited me to make a presentation to Bar Council on a new approach to health

insurance called Health Savings Accounts. Today, some twelve years later, approximately twenty million people in this country have opted for the Health Savings Account approach to health insurance. The popularity of Health Savings Accounts is expected to increase given the dynamics of our current health insurance system.

Small and medium sized law firms, with 2–50 employees, will want to consider the Health Savings Account approach to health insurance. Often law firms take a dual prod-

uct approach by giving employees a choice between two health insurance products. The first option is a traditional health insurance plan, with copayments for physician visits and prescriptions, but often more expensive. The second option is the Health Savings Account approach.

Briefly, the Health Savings Account (HSA) alternative is a tax advantageous approach where one combines a high deductible health insurance plan with the HSA. The HSA is an IRA-like account used for most medical expenses. The HSA enables an individual to deposit and draw from pre-tax dollars to pay for or to be reimbursed for most out-of-pocket medical expenses. The high deductible insurance product is often \$3,000 or \$6,000 annually. A high deductible as low as \$2,000 is sometimes paired with the HSA.

Health insurance premiums continue to increase each year and employers occasionally look to increase the health plan's deductible to help offset the rising premiums. Thus, a comprehensive deductible in excess of \$1,000 has become common, so if a higher deductible product is chosen, one compatible with the tax-favored HSA may be selected.

The Affordable Care Act or Health Care Reform brought great change to health insurance. Perhaps the most significant change was the move to modified community rating for groups with 2–50 employees. No longer is there medical underwriting starting with the group's annual renewal in 2014. Health insurance rates became based solely on age, geographic location, and smoker status. No longer were groups composed of healthy individuals rewarded with lower rates. Likewise, medical conditions and large medical claims did not result in a group being singled out to receive higher than average rates. The analogy I used in describing how health insurance rates were determined for groups of 2–50 was, "View me as your law professor. No longer will anyone receive an A or C as their grade. Everyone will get a B." This change in health insurance underwriting was enjoyed by some, yet many healthy law firms voiced displeasure as their rates increased dramatically. Health insurance rates no longer reflect the health

risks associated with small and medium sized groups. In theory, healthier groups subsidize other groups in Virginia.

A decade ago it was primarily higher income individuals, or those in the higher tax brackets, who found the Health Savings Account approach appealing. Since then escalating health insurance premiums have necessitated that groups consider higher deductibles and the Health Savings Account approach. Today, it is also the healthy people who find the Health Savings Account approach appealing as healthy people enjoy both the lower premiums and the tax advantages associated with HSAs. As one attorney told me, "As a healthy person I feel good because I am not sending all my money to the insurance company, rather, I now have a tax-favored bucket that I can use to pay for my out-of-pocket medical expenses during my working years and in retirement."

Conversely, the traditional copayment alternative is preferred to the Health Savings Account approach by those with significant and predictable medical expenses. Those anticipating numerous physician visits and costly prescriptions often find the traditional copayment alternative more appealing. Risk-averse people are also reluctant to try the HSA alternative. Thus, the Health Savings Account approach will appeal to many, but not to everyone.

The popularity of Health Savings Accounts is expected to increase given the dynamics of our current health insurance system.



Robert Spicknall is president of the Virginia State Bar Members' Insurance Center. VSBMIC is an affiliate of Digital Benefit Advisors and is endorsed by the Virginia State Bar.



Qualified Immunity in Section 1983 Cases

by Tillman J. Breckenridge

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Through the William and Mary Appellate and Supreme Court Clinic, I have handled numerous Section 1983 appeals all over the country. Our clinic identifies cases with issues of public import, then offers to handle the appeal for the side the students think has the law right, whether the plaintiff or the defendant. Through this work, I have run across many preservation issues and other issues that affect an appeal. In light of the qualified immunity doctrine's strength in federal courts, trial counsel must be vigilant in protecting the client's rights and careful not to waive a factual claim or a legal issue on either side.

Factual Issues

Many, if not most, Section 1983 cases are resolved on a motion to dismiss, either because relief cannot be granted on the merits or because the defendants enjoy qualified immunity against the right asserted in the context

of the case. Preservation of factual issues becomes particularly important in this context because of the hybrid evidentiary standard applied that does not normally apply in cases involving a motion to dismiss.

In most litigation, a motion to dismiss based on the pleadings simply takes the complaint and construes it in the light most favorable to the non-moving party. Voila! The facts are resolved for the purposes of the motion. To succeed on a motion to dismiss—particularly based on qualified immunity—the facts supporting the resolution must be apparent on the face of the complaint. But different circuits have competing approaches. For instance, some circuits allow a bending of the rules of motions to dismiss, by allowing municipalities and officers to attach affidavits to motions to dismiss actions based on qualified immunity. *See, e.g., Coyne v. Cronin*, 386 F.3d 280, 285 (1st Cir. 2004). The Fourth Circuit, meanwhile, has adhered to the traditional rule that qualified immunity must be apparent on the face of the complaint for the complaint to be dismissed. *Columbia v. Haley*, 738 F.3d 107, 116 (4th Cir. 2013).

The Fourth Circuit standard is advantageous to plaintiffs in Virginia and it is a helpful way of preventing litigation from being cut off at the knees before discovery can reveal the specific facts necessary to prove the claim. Plaintiffs can craft their complaints to ensure that they do not state facts establishing a right to qualified immunity. That puts defendant officers and municipalities in the unenviable position of having to decide whether to move for summary judgment right out of the gate. Plaintiffs can bolster their complaints by utilizing the Freedom of Information Act and relevant state corollary laws. To the extent participants are unknown, there should be a thorough pre-suit investigation because it is not enough to simply allege bad acts by “defendants.” The plaintiff must personally identify which defendant engaged in which unconstitutional act.

Legal Issues

Plaintiffs should carefully consider the legal allegations they make. Constitutional precedent can create a tricky thicket through which a plaintiff must navigate. For example, the Supreme Court of the United States will take up an issue that has vexed plaintiffs this term—under what amendment malicious prosecution fits—in *Case no. 14-9496, Manuel v. City of Joliet*. On that issue, plaintiffs have gone all the way to the Supreme Court before, only to find that they alleged violation of the wrong clause of the wrong amendment. The long arc of this issue underscores the necessity of counsel to thoroughly research and think about the structures of the legal rights to be asserted.

When briefing a motion to dismiss a Section 1983 case on the qualified immunity ground, the basic questions are (1) whether a constitutional right was violated, and (2) whether that right was clearly established. Both of these questions require thorough research and briefing to avoid waiving aspects of them. The first question is often left unanswered, as the Supreme Court has expressly given district courts permission to skip the first step to determine whether the plaintiff correctly stated a constitutional right. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). The Fourth Circuit had expressed some concern over skipping the first inquiry, noting that the first “inquiry is made at the outset in order to promote clarity in the law and to ensure that legal standards may evolve from case to case.”

Mellen v. Bunting, 327 F.3d 355, 365 (4th Cir. 2003). The current regime thus “results in a self-perpetuating cycle in [qualified immunity cases]: district courts will skip the constitutional inquiry in favor of disposing of cases on the ‘clearly established’ prong, so there will never be an actual finding that an officer’s conduct shocks the conscience, so courts will continue to be able to dispose of cases on the ‘clearly established’ prong, and so on.” *Jones v. Byrnes*, 585 F.3d 971, 980-81 (6th Cir. 2009).

District courts have not been shy about taking the Supreme Court up on the option to skip the first step of the analysis. Thus, it is critical for plaintiffs that they make a clear argument in response to a motion to dismiss on the second step, and state and local governments should place special emphasis on whether a right is clearly established in their motions to dismiss actions based on qualified immunity. On this second step, the most common problem I see is a failure to define the constitutional right at an appropriate level of generality. I also see a failure to cite and apply precedent in the most meaningful possible way.

Describing the right at the correct level of generality

Defining the right at the most appropriate level of generality is challenging. Indeed, the courts cannot find consistency in this realm, and they employ different analytical frameworks to determine the level of factual similarity needed between cases to render a right clearly established. Sometimes it seems the right is defined at a level of generality that the question is simply whether there is a Fourth Amendment right against being stopped with-

... the Supreme Court of the United States will take up an issue that has vexed plaintiffs this term—under what amendment malicious prosecution fits ...

out reasonable suspicion. Other times it seems the right is defined so narrowly as to require similarity between the day of the week and what brand of gum the plaintiff was chewing.

Some circuits have determined that broad principles of law can establish that a right under specific circumstances is clearly established even though there is no particular case

following the same fact pattern. Others have a narrower notice-based analysis that allows for a right to be clearly established if prior cases put officers on notice that their conduct is unconstitutional. A third group only allows use of broad principles in “extraordinary cases.”

The Fourth Circuit fits into the first category. It has held that the law can be clearly established in novel factual circumstances, even without a body of specific case law. Case law need not address the right in a “specific context before such right may be held ‘clearly established.’” *Meyers v. Balt. Cnty.*, 713 F.3d 723, 734 (4th Cir. 2013).

I think the Fourth Circuit gets it right. There are times that broad principles of constitutional law lay out a clear framework for law enforcement officers to understand what they can and cannot do. Take, for instance, one of the Clinic’s first cases: *Ortega v. United States Immigration and Customs Enforcement*, 737 F.3d 435 (6th Cir. 2013). That case involved a third-generation American citizen, Ricky Ortega, who was on home-confinement for a DUI offense. Immigration and Customs Enforcement issued a detainer for him, which tells local officials to retain control over someone and notify ICE at least twenty-four hours before release.

On receiving the detainer, local officials went to Ortega’s home and took him to jail. The district court had resolved that Ortega had no right at all against being taken from home confinement to jail and thus local officers were entitled to judgment in their favor. The Sixth Circuit affirmed though it ruled the district court erred by finding Ortega lacked a right against the change in conditions of confinement. The Sixth Circuit went on to state that the right was not clearly established.

I think the Fourth Circuit gets it right. There are times that broad principles of constitutional law lay out a clear framework for law enforcement officers to understand what they can and cannot do.

In dissent, Judge Keith expressed the approach embraced by the Fourth Circuit—broad principles of constitutional law can render a right clearly established if they make it obvious to a reasonable officer that the conduct alleged is not allowable. He deter-

mined that the case’s “core constitutional principle—that an officer must provide some process before seizing an individual from his home and taking him to jail—is unquestionably enshrined in our case law.” *Id.* at 442. The majority had rejected cases applying this principle in the parole and probation contexts.

The case thus squarely raised the question of at what level of generality a constitutional right should be evaluated to determine whether it is clearly established. Litigants on both sides of qualified immunity cases should take care to describe a right at a point of generality at which a factual distinction no longer makes a difference. In *Ortega*, that would have meant that the parole and probation contexts of other potentially guiding cases is irrelevant—if the constitutional comparison is being at home versus being in jail, the reason for being at home does not make a difference.

Sources of law on what is clearly established

Another issue on which the circuits disagree is which sources of law are appropriate for use to determine what is clearly established. Again, three camps appear to emerge in general. A few circuits have a very broad standard for appropriate sources of law to determine what constitutional rights are clearly established. These circuits, at their broadest, consider law from other circuits, district courts, and state courts. There is a group of circuits with a narrower approach; they only consider out-of-circuit or unpublished dispositions if, together, they form a consensus. The Fourth Circuit falls into the third group, which has the narrowest standard—it does not consider unpublished dispositions, and it confines its analysis of precedent to the relevant jurisdiction.

Again, the Fourth Circuit appears to have the right recipe. It seems unfair to hold law enforcement officers responsible for knowing another circuit’s law. Perhaps a consensus from other circuits can be useful to help recognize that law from the Supreme Court should have provided sufficient guidance to officers but beyond that it would be an incredible burden on law enforcement officers to hold them responsible for knowing that eight of thirteen circuits, but not their own, have ruled certain conduct unconstitutional.

In any event, Virginia practitioners should be aware—on both sides—that published Fourth Circuit precedent, precedent from the Supreme Court of the United States,

and precedent from the Supreme Court of Virginia take on a nearly exclusive role as the necessary precedent to establish the contours of a clearly established right.

For Virginia practitioners, the strongest route toward convincing the court to your side on issues of qualified immunity, whether you represent the plaintiff or the defendant, is to focus on cases arising out of the relevant jurisdiction and recognize that the courts are not instructed to take an unduly narrow approach to defining the right at issue. When combined with carefully considering the correct constitutional provision to apply, and smartly forming the facts, parties can put their best feet forward in asserting a claim under Section 1983. Developing your case in this way will help the district court and also help to preserve the legal issues in their best possible form, in case an appeal is unfortunately necessary.



Tillman J. Breckenridge is a partner at Bailey & Glasser where he concentrates his practice on appellate litigation at all levels. He has represented individuals, companies, organizations, and foreign, state, and local governments before the United States Supreme Court and the US Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, District of Columbia, and Federal Circuits as well as many state appellate courts. He is an adjunct professor of law at the William & Mary School of Law, where he directs the Appellate and Supreme Court Clinic.

Duty to Care *continued from page 19*

disciplinary, legal, or employment-ending problems arise. Contracts can mandate adherence to a professionally prescribed treatment plan, random testing for drugs and alcohol, counseling, regular meetings with an LAP staff member or volunteer who agrees to monitor the impaired lawyer, and other terms tailored to each situation.

Recovery is almost impossible without professional help and a strong support network. The good news is that studies show lawyers in recovery receive fewer malpractice claims and bar complaints than the general lawyer population. The even better news is that lawyers and others in recovery are outstanding members of the bench, bar, and legal community and make positive contributions to the legal profession, the judicial system, and society every day.

In the course of practicing law for more than twenty-five years, including eight years as the chief prosecutor and spokesperson for the Virginia State Bar's attorney disciplinary system, I became keenly aware of the growing need for the services that LAPs provide. That is why after I left the VSB and returned to private practice in 2006 I joined Virginia Lawyers Helping Lawyers' board of directors and served as its president from

July 2012 through June 2015. Lawyers are professionally obligated to care because by helping troubled colleagues we protect the public and our profession. Equally, if not more importantly, heeding our duty to care and helping those in need may spare impaired colleagues and their loved ones the potentially devastating consequences of failing to recognize and address substance abuse and mental health issues in a timely and effective manner.



Barbara Ann Williams provides ethics and risk management advice to McGuireWoods LLP in her role as a deputy general counsel. Between 1998 and 2006, as bar counsel, she managed the Virginia State Bar's professional regulation staff and prosecuted lawyer disciplinary matters. Her service as bar counsel followed sixteen years in private practice, litigating commercial, product liability, and professional liability matters. She served on Lawyers Helping Lawyers' board from July 2006 to June 2012, as its president from July 2012 through June 2015, and currently is an emeritus board member.



photo by Deirdre Norman

Changing Lives with Pro Bono, One Case at a Time

by Deirdre Norman

It was shaping up to be a very good year for Daniel Davis III. He was 23 years old, had a new car, a job that he liked, and a girlfriend that he loved. Yet on March 13, 2015, much of that changed when the grocery store where he had worked for two years accused him of stealing \$20 from the cash register behind the service desk. In a matter of months, Davis lost his job, his unemployment benefits claim was denied when the grocery store appealed it, and he was charged with the theft of \$20.

It might have been easier to walk away from the problem, look for a new job, give up on the benefits claim, and take a plea on the criminal charge. But for Davis this was never an option. When he was young he had watched his father be wrongfully accused of stealing by an employer. “[The store] said I did something that I know I didn’t do. I didn’t want anybody to think I was a thief,” Davis says.

On the other side of Richmond, Dominion Assistant General Counsel Cyril F. Coombs was busy as usual handling labor and employment cases in a fifty-person law department that serves one of the largest energy producers in the country with over 15,000 employees in fifteen states. Yet with the support of Dominion, which encourages all of its in-house counsel to give back to the community through pro bono, Coombs made the time to stop by the Legal Aid Justice Center (LAJC) on Broad Street where he was scheduled to meet with clients arranged by civil advocacy attorney Pat Levy-Lavelle of the LAJC.

In November of 2015, Coombs met with Davis at the LAJC office and discussed the details of his case. Davis, who was referred to the LAJC by the Virginia Employment Commission, says, “I was then, and I am still, a little shaky on the justice system. There are two sides to every story, but I was by myself — and there were a whole lot of people lined up on the other side.”

The grocery store chain had a surveillance video that it claimed showed Davis stealing the \$20. The videotape had been the basis not only of the criminal proceedings filed against Davis, but also the denial of his unemployment benefits in July of 2015. Coombs noted that when the assistant commonwealth’s attorney finally reviewed the tape on August 19, 2015, an order of *Nolle Prosequi* was entered, essentially freeing Davis from the criminal

charges, but leaving him unemployed, without benefits or unemployment compensation.

Says Coombs, “I am grateful that Dominion makes service to the community a priority. I knew as soon as I reviewed the case that my experience in the field of labor and employment law could be a tremendous help to Daniel and his family.” After reviewing Davis’s file, Coombs set out to help him with his appeal before the Virginia Employment Commission.

Davis had handwritten his original appeal to the commission *pro se*. Working from this appeal, Coombs began preparation for the hearing before the special examiner of the Virginia Employment Commission. The two issues up for consideration were: “Should the claimant’s request that the commission direct the taking of additional evidence and testimony be granted?” And, “Was the claimant discharged due to misconduct connected with work?”

In the appeal, Davis had asked for the opportunity to provide his bank statements to show he had no need to steal \$20 from his employer. The commission ruled that this evidence “was not relevant to the case,” but concluded that “the evidence of the videotape was both relevant and probative.” Although the employer had submitted the surveillance tape, the copy was not in the file at the appeals examiner’s hearing, meaning that the appeals

“I was then, and I am still, a little shaky on the justice system. There are two sides to every story, but I was by myself — and there were a whole lot of people lined up on the other side.”

examiner ruled against Davis without ever seeing the tape that supposedly proved the grocery store’s case. Based on Davis’s handwritten appeal, “The employer was instructed to provide a copy of the videotape to be played

at a hearing before the special examiner on January 28, 2016.”

At issue was whether Davis had taken \$20 from the cash register and put it in his pocket, as the employer asserted, or whether he had simply been reaching for the keys in his pocket to unlock the door of the service counter where he was working. Davis contended all along that he had been approached by a customer who had lost \$20 in the store’s lottery

... the appeals examiner ruled against Davis without ever seeing the tape that supposedly proved the grocery store’s case.

machine. He had removed \$20 from the cash drawer, written a note explaining the situation, and placed the note in the cash drawer before reaching for his keys, unlocking the door, and going to inspect the lottery machine with the customer.

Coombs says that although he never had a doubt about having Davis testify in front of the special examiner “...because he’s a credible individual,” Coombs was “...really nervous about what we were going to see on this video.” At the hearing, Coombs took the special examiner through the video “frame by frame,” with both sides contending that the video showed something different.

A few days later in its written decision, the commission determined that, “The greater weight of the evidence supports the claimant’s contention that he put his right hand in his back pocket to retrieve the key to the service area, and not to place the \$20.00 bill in his back pocket. Even more persuasive is the claimant’s actions in writing a note on the ‘no sale’ receipt and placing it in the cash drawer.” The decision concluded decisively that Davis not only did not take the money, “...he attempted to protect the employer’s property

by writing a note and placing it in the cash drawer, so that the employer could seek reimbursement from the lottery machine vendor.” Coombs had won a reversal of the appeals examiner’s decision and Davis was qualified for unemployment benefits.

Ultimately, “No one did their homework in this case,” says Coombs. “The employer failed Daniel; they fired him. The union representative failed him by not advising him he could file a grievance contesting his discharge. And then finally, at the commission, the appeals examiner believed the grocery store’s version that they observed Daniel stealing the \$20.00 on the video without ever viewing the video. No one would believe his version — which was the truth.”

Asked why he makes the time to take on pro bono cases, Coombs answers, “I’m an African American male and I saw myself in Daniel’s shoes. I was born and raised in Harlem. I’ve seen the injustices. I’ve seen the good stories and the not so good stories. What motivated me to go to law school was to some extent to make a good living, and in doing so to help others who cannot afford legal representation. It is rewarding and it’s effective.”

According to George Marget, managing general counsel at Dominion and its pro bono coordinator, the fifty lawyers at Dominion endeavor to donate 2 percent of their time to pro bono. “We have a general policy and value at Dominion of giving back to the communities in which we serve, so why not do that in the law department as well?”

For the last six years Dominion’s law department has been part of the “Pro Bono Promise” administered by the Greater Richmond Bar Foundation (GRBF), which also includes the corporate law department of CapitalOne, as well as a number of local law firms who belong to “Firms in Service,” including Hunton & Williams, McGuireWoods, Troutman Sanders, Thompson McMullan, Spotts Fain, Christian & Barton and WilliamsMullen, among others.

“Pro bono helps lawyers get out of their comfort zone,” Marget says. “Although Cyril

and I are comfortable in a courtroom setting, we have an army of regulatory and corporate/transactional attorneys who are less so. But they find ways to help in such areas as no-fault divorces, the pro bono hotline, the wills clinic, and the Richmond Bar Association's Pro Bono Clearinghouse that links volunteer lawyers with non-profits in need of legal advice."

Marget also gives credit to CapitalOne for working with the GRBF and the Legal Aid lawyers in creating JusticeServer®, an online case management system that allows legal aid lawyers and their staff to upload cases and files so that participating pro bono lawyers may select and work on cases while never having to leave their desks. According to Marget, "JusticeServer® has dramatically streamlined the efficiencies in the pro bono process and serves as a leading example of how the collegial forces of our legal community can come together for the betterment of all."

Marget is particularly enthusiastic about his team's work with the "Drive to Work" clinic that helps educate soon-to-be-released prisoners on the steps they need to take to get their licenses reinstated upon release. "The number one reason inmates go back to prison is driving on a suspended license. This program helps them stay out of jail and on the job," he says.

Coombs and the lawyers of Dominion will continue giving back via pro bono because, as Marget says, "The legal needs of the indigent have never been greater and we have the ability and the talent to help serve that need, which is fundamental to the core value of Dominion in serving our communities in which we work and live."

As for Daniel Davis, he and his partner, Jennifer, welcomed a baby boy, Tyler Elijah Davis, in December, 2015. And Davis has found new employment—he greatly enjoys working for retail giant Amazon. Winning his appeal "made me feel like I could live again. I felt like I didn't have to look over my shoulder anymore," Davis says.

Coombs estimates he spent approximately 30–40 hours working on Davis's case from



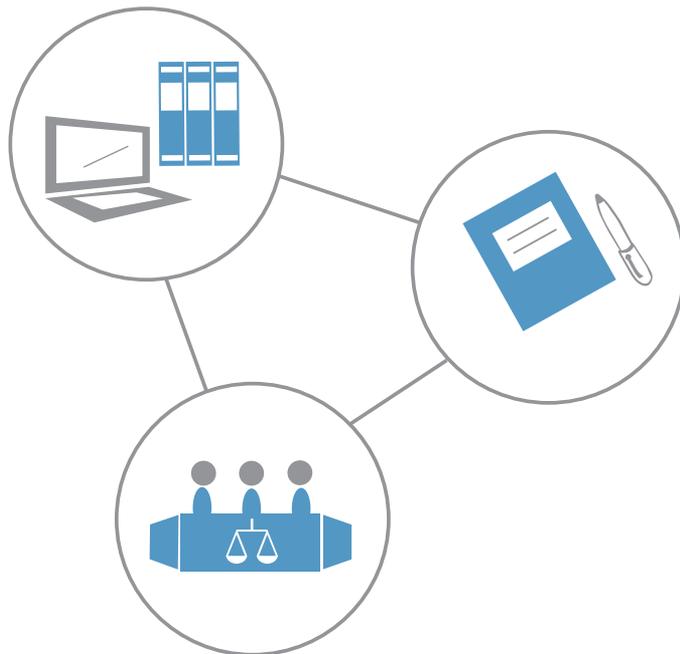
photo by Deirdre Norman

November 2015 to February 2016, when he factors in drafting the opening and closing statements, witness outlines, client preparation, and phone calls, and since that time he has continued to use his labor and employment law experience to help walk-in cases from the Legal Aid Justice Center.

Says Coombs, "You do what you can to help the Daniels of this world."

The Next Step in “Unbundling”: The Case for Limited Scope Representation

by John E. Whitfield



Caryn Persinger

The broad concept of “unbundling” the provision of legal services has been under discussion in Virginia and across the country for more than two decades. The concept is promoted as a means of allowing greater access to legal services to a public that increasingly cannot afford counsel. This is a pressing need in our courts, one that threatens to undermine the very legitimacy of our system of civil justice. A recent study by the National Center for State Courts revealed that in non-family law civil cases across America, both litigants are represented by counsel in only 24 percent of the cases. In 68 percent of the cases, only the plaintiff has representation, to the likely detriment of the unrepresented defendant. This represents a dramatic increase in the number of unrepresented litigants over the last twenty-five years.¹

The concept of “unbundling” can be broken down into three primary components:

- providing advice (including legal research) to a client on how she can represent herself in court;
- assisting a client in preparing pleadings, discovery responses, and other documents for litigation without becoming counsel of record, sometimes called “ghost writing”; and
- making limited appearances for purposes of addressing one particular issue or one stage of litigation without the need to seek the court’s leave to withdraw at the conclusion of that limited appearance.

The first component, providing unbundled advice to a client on how to proceed in court without a lawyer, is now commonplace in Virginia. The language of Rule 1.2 is broad enough to allow for this degree of unbundling when it provides that “the attorney and client can agree to limit representation as long as there is full and adequate disclosure.” In the legal aid world where I have practiced for thirty-five years, this approach has been an integral part of our delivery of services to clients. Our pro bono hotlines are built around this model.

The second component of unbundling, “ghost writing,” is now similarly permitted in state courts. With the promulgation of LEO 1874 in 2014, the ethical constraints on ghost writing have been removed, allowing attorneys to assist clients in preparing pleadings, discovery responses, and other court documents so that they can more effectively present their cases to the court. The Virginia Access to Justice Commission has gone on record opposing the adoption of any new procedural rule to regulate ghost writing because of the important access to justice implications in any such proposal.

That still leaves the third and final prong of unbundling to consider: “limited scope representation.” The current inability to make a limited appearance poses dilemmas for legal aid and pro bono attorneys. Particularly in the context of family law and divorces, we are in a predicament where our priorities might suggest we should take a case involving support, but suggest that we avoid equitable distribution cases because of the major commitment of resources these entail. If we could make a limited appearance to obtain *pendente lite* spousal support, for example, we might be able to stabilize our client financially, allowing her to then retain private counsel to litigate the equitable distribution issues. Under the current court rules, the choice is all or nothing, a difficult dilemma for legal aid societies and their clients. It is virtually impossible to refer a contested divorce with issues of custody, support, and equitable distribution of a modest home and retirement accounts, along with the family’s debts, to a pro bono attorney. It’s very difficult to refer a hotly contested custody case to a pro bono attorney, for fear the attorney will be involved in litigation until the child turns 18. But if we could refer a single hearing, or a single issue, to a pro bono attorney — that would be a very different story. While the court might prefer an attorney to be involved throughout the litigation, wouldn’t it be better to at least have an attorney there for one important hearing or issue, rather than not at all? Providing full representation of low-income parties who can’t afford to hire an attorney would be ideal. But when we are faced with overwhelming demand and limited resources, the choice of all or nothing — all in, or not in at all — is very difficult. Take this case and turn down the next ten clients? Or turn down this case with the near certain knowledge that the client will lose, not on the merits, but for lack of a lawyer.

The ability to make limited scope appearances, under rules that clarify all the roles and notice issues, as has been done in twenty-nine other states so far, would allow legal aid and pro bono programs a much needed flexibility to provide services on the discrete issues that most critically affect our clients. By doing so, it would encourage greater pro bono participation in such cases.

In 2002, The Supreme Court of Virginia’s Pro Se Litigation Planning Committee, chaired by Justice Elizabeth Lacy, studied the rise of unrepresented litigants in Virginia courts. In its report, “Self-Represented Litigants in the Virginia Court System, Enhancing Access to Justice,” the committee recommended, among other things, that the Virginia State Bar explore the feasibility of delivering legal services through limited scope representation. At the time of the Lacy report, only four states allowed such limited appearances. In the intervening fourteen years, another twenty-five states and the District of Columbia have done so. The Virginia Access to Justice Commission has recently endorsed the concept of allowing limited scope representation and is working with the Virginia State Bar’s Access to Legal Services Committee to develop a proposed rule change explicitly allowing such representation, with a goal of providing The Supreme Court of Virginia an opportunity to review and ultimately allow limited scope representation as a means of allowing greater access to Justice. It is an idea whose time has come.

Endnote:

- 1 Hannaford-Agor, *Civil Justice Initiative: The Landscape of Civil Litigation in State Courts*, National Center for State Courts, 2015, pp. 31-32, available at <http://ncsc.contentdm.oclc.org/cdm/ref/collection/civil/id/133>.



John E. Whitfield has served as the executive director and general counsel of Blue Ridge Legal Services since 1989. Prior to becoming the executive director, he served as law clerk, staff attorney, and supervising attorney since joining the organization in 1980. He is co-chair of the Virginia Access to Justice Commission. He was the 1998 recipient of the Virginia State Bar’s Legal Aid Award and he was inducted as a Fellow of the Virginia Law Foundation in 2009.

Regent School of Law

by Rosey Mellion

The legal profession is both a vocation to practice law and a call to serve. Calling and service are tenets integral to the mission and culture of Regent University School of Law. The School of Law recently approved a standard that all law students are expected to give fifty hours of community service during their time in the program. The fifty service hours can be a combination of a minimum of thirty hours pro bono legal service and up to twenty hours of other community service.

The pro bono program will partner with Regent Law's Civil Litigation Clinic and Law Career Services. Associate Professor Kathleen McKee, who has directed the Civil Litigation Clinic for seventeen years, has overseen our Legal Aid internships and opportunities for students to use their Virginia Third Year Practice Certificate. Working with Professor McKee, our Career and Alumni Services office will coordinate pro bono opportunities for our students, including cases they can handle in their third year.

This public service outreach is also a reflection of the commitment Dean Michael Hernandez has demonstrated to supporting pro bono services across the commonwealth. Hernandez is on the Virginia Bar Association's Pro Bono Council, and he has worked with Norfolk Firms in Service and on our bi-annual community service projects. He also appointed me to develop and coordinate our public service and pro bono initiatives. I was recently selected to serve on the inaugural Virginia Access to Justice Commission Pro Bono Coordinating Consortium.

Regent Law's Pro Bono Community Legal Service Program will provide students experiential learning and networking opportunities while providing invaluable legal assistance that will impact Hampton Roads and beyond. We are excited to be able to launch this important initiative.



Rosey Mellion is associate director for Career Services & Alumni Relations at the Regent University School of Law.

Pro Bono at University of Richmond School of Law

by Tara L. Casey

"Pro bono" is often the first legal Latin that a law student learns, before other courses come in with their *res ipsa loquitur* and *in flagrante delicto*. The reason for this primacy is the greater emphasis law schools have placed upon pro bono programming in the past ten to fifteen years. Indeed, the American Bar Association's Standards and Rules for Approval of Law Schools require schools to provide opportunities for students to participate in pro bono activities.

The challenge in taking advantage of these opportunities is that the very nature of pro bono requires that it be done without any intent of remuneration, either in financial or academic credit. Often, committed law students find themselves juggling classes, journals, and jobs in their pursuit of service. True, many of them will receive invaluable experience and skills development, as well as networking, through their service. However, many of them are simply open to the idea of service in and of itself — and making it work.

For some it will not just be about making it work, but making it thrive. Beginning in 2009, the Carrico Center for Pro Bono & Public Service at the University of Richmond School of Law has awarded a Pro Bono Certificate to graduating 3Ls who have performed at least 120 hours of pro bono service during their law school careers. This past May, nearly 20 percent of our graduating class received the Pro Bono Certificate, with approximately 5,400 hours of service total. In many ways, these law students are already our profession's best teachers when it comes to pro bono service.

Every fall, I get to speak to the new class of first-year law students about the tremendous pro bono and public service opportunities that await them. I describe a set of keys they will receive in the next three years that few in our society get to hold, keys that are meant to unlock barriers to justice. The question for them is whether they will only use those keys for their own benefit. In many ways, that question will stay with them through law school and into practice. However, through the incorporation of pro bono programming into our legal education, it is a question they will be better prepared to answer.



Tara Casey is the director of the Carrico Center for Pro Bono & Public Service at the University of Richmond School of Law.

JusticeServer 2.0

by Alexandra S. Fannon

JusticeServer® is a customized case management system with a volunteer portal currently serving central Virginia. Thanks to the generous support of the Virginia Law Foundation, Capital One, Dominion Resources, the Mary Morton Parsons Foundation and Firms In Service — Richmond, this pilot program has enabled Central Virginia Legal Aid Society (CVLAS), Legal Aid Justice Center (LAJC) and the Greater Richmond Bar Foundation (GRBF) to manage over 22,000 cases and help over 50,000 low income Virginians since 2012.

With a growing volunteer pool of more than 1,000 lawyers, law students and paralegals, 6,800 of these needy clients have had pro bono volunteer assistance (helping more than 17,000 individuals). From the beginning, the hope was to expand JusticeServer to a statewide system, available to any legal service nonprofit who utilizes pro bono volunteers. With proof of lessons learned and our pilot successes, JusticeServer caught the attention of two national funders, Legal Services Corporation and the Salesforce Foundation, both of whom awarded the project large grants to help fund an improved version available to all in Virginia and the United States.

With these grants in hand, and a second grant from Virginia Law Foundation, JusticeServer 2.0 is currently in development and targeted to open next year. JusticeServer 2.0 will have an improved Pro Bono Portal where volunteers can do one-stop shopping of pro bono service opportunities throughout the commonwealth, find necessary resources and training, and connect securely to all case information. Once JusticeServer 2.0 is launched, the private bar will have an amazing opportunity to provide pro bono service and to help legal aids move the needle on the civil justice gap.

Please stay tuned for more information and details in the months to come. For those in the central Virginia area, please visit www.justiceserver.org to register today.



Alexandra S. Fannon is executive director of the Greater Richmond Bar Foundation.

Access to Legal Justice 2.0

by Jennifer Grace Dean

The use of technology in the 21st century has challenged traditional ideas of relationships and community. Conversations that once occurred across dinner tables and in meeting spaces now reach into online networks, adding new layers of engagement. The ease at which headlines, ad campaigns, and Internet memes are shared among friends and strangers has given rise to a “viral” environment that is as stimulating as it is nuanced. To become absorbed in a secluded corner of the World Wide Web has never been easier.

The Virginia State Bar Access to Legal Services Committee aims to occupy such a niche corner, having launched the bar’s second-sanctioned Facebook page, titled the “Virginia State Bar Access to Legal Services.” Through Facebook, the committee is connecting with audiences in new ways — providing notice of pro bono training and service opportunities, recognizing those who devote themselves to closing the justice gap, and raising awareness of access to legal justice issues.

The response to the committee’s social media presence is encouraging. With a current tally of over 250 “likes” and engagement reaching into the thousands, the page is off to a strong start. But the cause of promoting equality under our legal system is one that all members of the bar can rally around. For those who have not yet connected with the committee’s Facebook page, I encourage your visit and your “like” the next time you log on.



Jennifer Grace Dean is the founding partner of the Virginia Immigration Law Center, a private law firm in Roanoke dedicated to the practice of immigration and nationality law. She represents individuals in removal proceedings before the immigration courts and assists clients in obtaining work authorization, permanent residence, and US citizenship. She serves on the Virginia State Bar Access to Legal Services Committee and the Special Committee on Technology and the Practice of Law.

Distance Lawyering: Richmond to Southwest Virginia

by Alexandra S. Fannon

In rural areas, the civil justice gap is often compounded by the high density of individuals living in poverty, geographic distances to legal aid offices, and hard economic times for many of the practicing local attorneys. The resulting gap is sometimes referred to as a “legal services desert” (e.g., see OneJustice’s Rural Initiative). One such desert exists in the southwest corner of our commonwealth.

With seventeen counties and four small cities, the three offices of the local legal aid, Southwestern Virginia Legal Aid Society (SVLAS) (www.swvalegalaid.org), has its hands full with critical needs in all civil areas. However, the most requested service is for no fault divorce assistance, and for SVLAS, even with restricting access to lower income levels (100 percent of federal poverty, which for one person is gross income of \$12,000/year or below) and mandating a one-year separation, it could easily have 600 eligible divorce clients each year.

Since 2015, the Greater Richmond Bar Foundation (GRBF) has partnered with SVLAS to connect urban lawyers in the greater Richmond area with low-income divorce clients. Thanks to lawyers in the Firms In Service- Richmond group, 103 clients have the pro bono legal help they need. Thanks to the amazing leadership team at SVLAS (Mary Parsons, deputy director; Anita Robinson, managing attorney; and Cassandra Turner, pro bono coordinator), the volunteers get all the intake information and assistance they need to handle these cases pro bono.

These divorce cases are perfect for distance lawyering and pro bono service, and allow volunteers an opportunity to put their knowledge and skills to use for those who cannot afford an attorney. For more information on how you can get involved and help these individuals, please e-mail Ali Fannon at afannon@grbf.org for details. Training and resources are available.



Alexandra S. Fannon is executive director of the Greater Richmond Bar Foundation.

Virginia Judicial System Self-Help Website

by Gail Warren

In June 2016, the Supreme Court of Virginia announced the availability of a new website for self-represented litigants in the commonwealth. The Virginia Judicial System Court Self-Help Website, <http://selfhelp.vacourts.gov/>, as a public service, provides neutral legal information in topical areas commonly sought by self-represented litigants, such as traffic tickets, divorce, and landlord and tenant issues. The site features glossaries of legal terms used in the district and circuit courts, instructions for routine processes, and informational videos, with the goal of making Virginia’s courts more accessible for all citizens. In August, the site was updated to include a link to Virginia.freelegalanswers.org.

The website was created by the Committee on Access for Self-Represented Litigants of the Virginia Access to Justice Commission. It utilizes a platform based on Drupal for Legal Aid Websites (DLAW), an open source website management system developed and maintained by Urban Insight Inc. Selfhelp.vacourts.gov features web responsive design that works on computers, smartphones, and other mobile devices. Content was drafted to meet guidelines for lower literacy and reading levels; additional content and resources are planned for future updates. The Access for Self-Represented Litigants Committee is chaired by the Honorable Deborah V. Bryan, Virginia Beach Juvenile and Domestic Relations District Court, and its members include judges, representatives from the legal services community and the National Center for State Courts, clerks of court, and law librarians.



Gail Warren is the Virginia State Law Librarian.

Virginia.freelegalanswers.org

On August 22, 2016, Virginia was one of twenty states to open a freelegalanswers site to the public on that date. Twenty more states will launch in October. More than ninety Virginia attorneys have registered to provide answers to civil legal questions posted by low income and modest means Virginians, and members of the public have begun to post questions to the website.

In the weeks leading up to the launch, the VSB heavily recruited lawyers to volunteer for the website and more than 200 submitted “Attorney Interest Forms” to volunteer for the site. VSB Executive Director Karen A. Gould and President Michael W. Robinson made written appeals to Virginia lawyers to sign up for the website, and Access to Legal Services Director Karl Doss and members of the Access to Legal Services Committee recruited lawyers at several CLE events and local bar programs across Virginia. VSB Access to Legal Services staff has been contacting these lawyers to request them to complete the registration process by:

1. visiting the website, <https://virginia.freelegalanswers.org/>, and
2. clicking on the words “Volunteer Attorney Registration” at the top of the page, and providing the requested information. Once the lawyer clicks “I agree,” she will be approved to provide pro bono assistance and may begin answering civil legal questions posted by low income Virginians.

Lawyers who did not submit the form may register directly on the website following the steps noted above.

Additionally, the VSB has begun its effort to market the service to the public. Information about virginia.freelegalanswers.org has been posted on social media pages by legal aid offices



and legal services organizations and the state court’s Self-Help Website. The VSB Communications Department has developed promotional materials that will be sent to court clerks, public libraries, legal aid offices, social services organizations, magistrate offices, and other outlets. Potential users of the website are told that they simply need to go to the “Get Started” page on the homepage, complete the user registration, and, if they meet the financial eligibility requirements, they may post up to three civil legal questions in a year.

Virginia.freelegalanswers.org includes Frequently Asked Question pages for users and attorneys, a Training and Resources page for attorneys that provides links to websites with training materials, publications and forms that may assist them to answer questions, and “Other Places to Find Legal Help” page which provides information about legal and non-legal resources that could assist clients and individuals determined to be ineligible to post a question with potential legal representation and services.

VSB Pro Bono Webinars

by Karl Doss

Since October 2013, the Virginia State Bar Special Committee on Access to Legal Services has been offering webinars, almost monthly, to recruit, train, and mobilize lawyers interested in providing pro bono legal services to low income Virginians. These webinars cover a variety of topics on substantive law and legal ethics on matters that especially impact pro bono and legal aid clients. Presentations include uncontested divorces, representing survivors of domestic violence, Special Immigrant Juvenile Status, elder law, advance medical directives, Social Security Disability, landlord-tenant law, relief from creditors, the Justice Gap, and Rule 6.1 of the Virginia Rules of Professional Conduct. The VSB has collaborated with several legal aid offices, non-profit pro bono providers, law firms, and bar associations to offer the webinars including Legal Aid Justice Center, Central Virginia Legal Aid Society, Virginia

Poverty Law Center, Legal Information Network for Cancer, Community Tax Law Project, Drive to Work, CAIR Coalition, the VSB Young Lawyers Conference, the Sands Anderson law firm, and the Old Dominion Bar Association.

Programs are typically approved for 1.0 to 2.0 hours of MCLE credit. There is no cost to attend the webinars; however, registrants are asked to certify that, in exchange for the CLE credit, they will either accept a referral of a pro bono case from the co-sponsoring legal services organization or their local legal aid office or make a financial contribution to the designated organization. The webinar presentations are recorded and posted on the Pro Bono/Access to Legal Services page (Resources for Attorneys subpage) on the VSB website. These

Webinars continued on page 36

A Survey by the VBA Pro Bono Council

by David Neumeyer

In January 2016, the VBA Pro Bono Council's Committee on Unmet Needs asked executive directors and program leaders of thirty-seven nonprofit legal providers in Virginia to take part in a survey. The survey sought to identify Virginia's top needs, by type of case, for pro bono assistance from the private bar.

Eight local direct-service legal aid programs and ten other nonprofit legal providers responded. They indicated that they had placed 5,202 cases in 2015, but could have placed 9,300 with more pro bono volunteers. This gap of 4,100 cases does not describe the total additional pro bono need in Virginia, just the number of additional cases that could have been placed by the current providers using current staff.

Some providers serve hundreds of clients with pro bono volunteers each year and would like to serve hundreds more, while some small providers serve dozens and would like to serve dozens more.

Top 10 Statewide Pro Bono Needs

These case types received the most provider votes for "strong need."

1. Private landlord/tenant
2. Divorce/separation/annulment
3. Custody/visitation
4. Wills/estates
5. Advance directives/powers of attorney
6. Bankruptcy/debtor relief
7. Adult guardianship/conservator
8. Domestic abuse
9. Collections (including repossession/garnishment)
10. Support

Survey respondents rated the relative time needed to handle a matter and the complexity for each case type. Of the top ten needs, the time needed is low in all but these three categories: divorce and support were rated medium and custody was

rated high. The complexity level was rated as low in all but one category. Bankruptcy was rated medium in complexity. Private landlord tenant cases, for example, were the number one pro bono need, and they ranked medium in client demand but were desired by many providers; they were ranked low in time needed and in complexity. Divorce/separation/annulment cases were the number two pro bono need, and they ranked high in client demand, "varies" in complexity, and low in complexity. To view the complete list of statewide needs, for to http://c.ymcdn.com/sites/www.vba.org/resource/resmgr/Pro_Bono_Council/Statewide_needs_survey_2016.pdf

Program Needs

The committee also reported the strongest pro bono needs by providers that participated in the survey, including contact information and additional comments. Pro bono needs expressed by the eighteen individual programs responding varied. Some legal aid programs and independent providers like Rappahannock Legal Services and the Veterans Initiative listed many different types of cases in which they need pro bono help, while a few agencies like Southwest Virginia Legal Aid Society and the Community Tax Law Project listed just a few subject areas for help.

The full report on the survey results is compiled at http://c.ymcdn.com/sites/www.vba.org/resource/resmgr/Pro_Bono_Council/Top_Pro_Bono_Needs_in_Virgin.pdf.



David Neumeyer is the executive director of the Virginia Legal Aid Society.

Webinars *continued from page 35*

recordings may be viewed for informational purposes only and are not eligible for MCLE credit. Following the webinar, the registration information of the attendee is sent to the appropriate legal aid or pro bono provider organization to facilitate the case referral or collection of the attorney's financial contribution.

The webinars are, in a small way, making a difference. For example, "Uncontested Divorces: A Webinar for Pro Bono Lawyers in Northern Virginia" in 2015 was attended by forty-one attorneys who agreed to accept two uncontested divorce referrals from their choice of the jurisdictions served by Legal Services of Northern Virginia (LSNV). Attendees heard presentations by Jennifer Fulmer, LSNV's Pro bono managing

attorney, and Laura O'Brien an attorney with Kelly Byrnes & Danker. Attendees were provided with a training manual and sample pleadings. Following the webinar, attorneys received their case assignments and, as a result of their pro bono efforts, were able to almost eliminate LSNV's sizeable backlog of uncontested divorce cases.

To date, the VSB has conducted twenty-seven pro bono programs that have been attended by 1,435 lawyers. Additionally, Access to Legal Services staff assisted the Virginia Lawyer Referral Service, Lawyers Helping Lawyers, the Virginia Indigent Defense Commission, the VSB Young Lawyers Conference, the Intellectual Property Section, and the VSB-VBA Joint ADR Committee to conduct CLE webinars.



“Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob, and degrade them, neither persons nor property will be safe.”

– FREDERICK DOUGLASS (APRIL, 1886)

The Virginia State Bar and the Access to Legal Services Committee appreciate the tireless efforts of Virginia’s Legal Aid Societies in helping to build a bridge to justice for underserved Virginians.

Blue Ridge Legal Services
Central Virginia Legal Aid Society
Legal Aid Justice Center
Legal Aid Society of Eastern Virginia
Legal Aid Society of Roanoke Valley
Legal Services of Northern Virginia
Rappahannock Legal Services
Southwest Virginia Legal Aid
Virginia Legal Aid Society
Virginia Poverty Law Center
VirginiaLegalAid.org



Greater Richmond

Bar Foundation



The Greater Richmond Bar Foundation thanks its loyal volunteers, donors, community and corporate partners, members of Firms In Service Richmond and the Virginia Law Foundation for supporting our efforts to close the justice gap.

www.grbf.org

Nominate Your **Good** Friend

We are looking for a few **Good** lawyers to profile for future issues of *Virginia Lawyer*.

If you know a lawyer who manages a law career yet still finds time to do *law for the good*, send an e-mail to hickey@vsb.org.

National Civil Rights Lawyer to Be Honored at Pro Bono Celebration

Frankie Muse Freeman, who will be 100 years old in November, will be honored at the Virginia State Bar Access to Legal Services Committee's Annual Pro Bono Conference in Hampton on October 26.

According to Karl A. Doss, director of Access to Legal Services, the Frankie Muse Freeman Organizational Pro Bono Award will be an annual award given to organizations that have made outstanding contributions in the area of legal services to the poor. "This award will be geared toward the law firms, corporate law departments, nonprofit organizations, law school programs, and bar associations that undertake pro bono initiatives, whereas exemplary pro bono service provided by an individual lawyer or group of lawyers will continue to be the focus of the Lewis F. Powell, Jr. Award. It's fitting that a Virginian whose humility is as large as her accomplishments in civil rights and equal justice

should have a pro bono award named in her honor."

Freeman was born in 1916 in Danville, Virginia, and graduated from Hampton University before receiving her law degree from Howard University in 1944. After opening her own law practice, Freeman served as co-counsel on a successful NAACP law suit against the St. Louis Board of Education. In 1952, Freeman worked as the lead counsel on an NAACP case, *Davis v. St. Louis Housing Authority* that ended legal racial discrimination in public housing in the city. Freeman went on to win the Supreme Court appeal of that case in 1954.

Freeman was the first woman to serve on the US Commission on Civil Rights after her appointment by President Lyndon Johnson in 1964. She was reappointed by Presidents Richard Nixon, Gerald Ford, and Jimmy



Carter, and successfully represented the NAACP in a number of landmark cases involving segregation in education and housing.

Freeman recently said of her work as an attorney, "I did whatever I felt I had to do to make a difference." Her numerous accolades for a lifetime of civil service include her 2007 induction

Freeman continued on page 41

VSb Adds New Assistant Bar Counsel

Laura Ann Booberg has joined the Virginia State Bar as Assistant Bar Counsel. A graduate of New York University and New York Law School, she has practiced law for over twenty years primarily in the areas of workers' compensation and social security disability. Booberg worked for The Boleman Law Firm and Geoffrey R. McDonald & Associates in Richmond before founding and running her own law firms from 2000 until joining the VSb in August.

A member of the Virginia Trial Lawyers Association for over twenty years and a certified guardian ad litem, in her free time Booberg is an avid runner and tennis player. She is married to Christopher C. Booberg and has three children.



Lawyers at Leisure

Lawyers at Leisure is a new feature of *Virginia Lawyer* that profiles the interesting hobbies, passions, and projects of the members of the Virginia State Bar. In April, we profiled a gentlewoman farmer who raises sheep, cows, and horses in addition to her busy civil practice. In August we profiled six surfing lawyers who have been surfing together for over four decades in Virginia and around the world when they are not practicing law.

If you have a passion other than the law, or know a lawyer who does, please let us know by contacting Gordon Hickey at hickey@vsb.org.

Oblon Elected to Represent the 17th Circuit

David A. Oblon has been elected as the new 17th Judicial Circuit representative on the Virginia State Bar Council. His term begins immediately. The online election, between Oblon and Nathan J. Olson, was held August 29 through September 9. The seat became vacant when Rachelle Hill relocated to Colorado.



The VSB E-News

Have you been receiving the Virginia State Bar E-News? The E-News is a brief monthly summary of deadlines, programs, rule changes, and news about your regulatory bar. The E-News is e-mailed to all VSB members. If your Virginia State Bar E-News is being blocked by your spam filter, contact your e-mail administrator and ask to have the VSB.org domain added to your permissions list.

NOTICE: Check Your MCLE Hours Online Now

The Mandatory Continuing Legal Education compliance deadline is October 31, 2016. Go to <https://member.vsb.org/vsbportal/> to review your MCLE record.

An Interim Report was mailed to all active members in July. Please apply for any non-approved courses now to avoid a new late application fee for applications received over 90 days after course attendance.

Reminder: Of the 12.0 CLE hours required each year, 2.0 must be in ethics and 4.0 must be from live, interactive programs. If you have any questions, please contact the MCLE Department at (804) 775-0577 or mcle@vsb.org.

Have You Moved?

To check or change your address of record with the Virginia State Bar, go to the VSB Member Login at <https://member.vsb.org/vsbportal/>.

Go to “Membership Information,” where your current address of record is listed. To change, go to “Edit Official Address of Record,” click the appropriate box, then click “next.” You can type your new address, phone numbers, and email address on the form.

Contact the VSB Membership Department (membership@vsb.org or (804) 775-0530) with questions.

2017 Law in Society High School Scholarship Contest Explores Transgender Legal Issues in Schools

The Litigation Section and the Communications Committee of the VSB have announced the topic of the 2017 Law in Society essay contest, which awards almost \$7,000 in scholarship money to the eight Virginia high school students with the best essays on a matter pertaining to trending legal issues.

This year the hypothetical deals with the topic of transgender students and their rights in schools, particularly as they relate to Title IX laws and state and federal jurisdictional issues. Recently, public awareness of the transgender community has grown, largely in part to the publicity generated by Caitlyn Jenner's Diane Sawyer interview, *Vanity Fair* cover, and television show, *I Am Cait*.

At the same time, the judicial system has seen a flurry of legal initiatives designed to protect gender identities, including guidance from the Obama administration that Title IX protects gender identity and gender expression, as well as lawsuits by parents and students who believe Title IX pertains only to biological sex, not gender identity.

In 2016, the U.S. Court of Appeals for the Fourth Circuit became the first appellate court to affirm the Obama Administration's position in the case *G.G. v. Gloucester County School Board*. In that case, a Virginia high school student named Gavin Grimm sued school officials over its policy requiring all students to use the bathrooms and locker rooms of their biological gender

or "an alternative appropriate private facility."

This contest asks Virginia high school or home school students age 19 or younger to write an essay between 750–1000 words discussing these issues. First prize is \$2,300, second prize is \$1,850, third prize receives \$1,350 and there are five honorable mentions of \$250 each. The contest is intended to inspire an interest in the legal system and the US Constitution.

Complete rules for the essay contest and a full hypothetical may be found on the VSB website at <http://www.vsb.org/site/public/law-in-society>. The entry deadline is February 10, 2017.

Freeman *continued from page 39*

into the International Civil Rights Walk of Fame at the Martin Luther King, Jr. National Historic Site in Atlanta; the NAACP's highest honor, the Spingarn Medal in 2011; the 2014 Spirit of Excellence Award from the American Bar Association; and in 2015 President Barack Obama appointed Freeman to serve as a member of the Commission on Presidential Scholars.

Freeman will be presented with a certificate from the Virginia State Bar at the awards dinner that includes a stanza from her favorite hymn which says:

*"If I can help somebody, as I travel along
If I can help somebody, with a word
or song*

*If I can help somebody, from doing wrong
No, my living shall not be in vain."*

Freeman will be recognized at the Lewis F. Powell Jr. Pro Bono Award Dinner and Ceremony at the Hilton Hampton Hotel and Convention Center. For more information, please contact Karl Doss at (804) 775-0522 or doss@vsb.org.

Hoover Penrod to Receive Powell Award

The Lewis F. Powell Jr. Pro Bono Award will be awarded to the Harrisonburg law firm of Hoover Penrod PLC. Founded in 1935, the firm was nominated by John Whitfield, executive director of Blue Ridge Legal Services Inc., and Molly Bell, the Blue Ridge's referral coordinator. Said Whitfield and Bell, "The good works done by this firm and its members are unparalleled in the region."

Every lawyer at the firm assists with pro bono cases for Blue Ridge Legal Services, while ten lawyers have contributed more than 3,200 hours and assisted on more than 560 cases to date. Hoover Penrod has provided more than \$820,000 in pro bono value over twenty-five years. Firm lawyers also volunteer on the Harrisonburg-Rockingham Bar Association's (HRBA) pro bono Family Law hotline.

Lawrence Hoover Jr. helped form what is now the Blue Ridge Legal Services in 1977 while David Penrod serves as one of the HRBA team leaders for pro bono referrals and was largely responsible for organizing an attorney fund-raising campaign that has benefited Blue Ridge Legal Services for fifteen years.

The Powell award was established by the Special Committee on Access to Legal Services of the Virginia State Bar to honor attorneys and attorney groups that have made outstanding pro bono contributions. This year's award will be presented October 26 during the Virginia State Bar Pro Bono Conference and Celebration in Hampton.

In Memoriam

Sharon Adrienne Coles-Stewart

Newport News
July 1949 – July 2016

Alexander Dillard Jr.

Tappahannock
May 1938 – July 2016

Tara Desiree D’Lutz

North Chesterfield
December 1970 – June 2016

Homer C. Eliades

Hopewell
February 1929 – July 2016

Carroll O. Ferrell

Portsmouth
October 1934 – March 2016

Emeric Fischer

Williamsburg
February 1926 – February 2016

Alan George Fleischer

Richmond
May 1917 – August 2016

Maxwell Bruce Hirshorn

Vienna
October 1931 – July 2016

Jerome David Jackson

Alexandria
December 1956 – January 2016

Clothilde C. Jacxsens

Baltimore, Maryland
February 1942 – May 2016

Melvin Wayne Ringer

Norfolk
April 1953 – April 2016

Marilyn Annette Sallee

Portsmouth
May 1950 – June 2016

Allan W. Smith

Richmond
January 1946 – July 2016

Samuel W. Weaver III

Knoxville, Tennessee
May 1930 – June 2016

Robert Edward Wick Jr.

Charlotte, North Carolina
September 1944 – August 2016

George A. Zaphiriou

Rockville, Maryland
July 1919 – March 2016

SAVE THE DATE

The only thing changing faster than the law is technology ...
and staying technologically competent not only benefits your practice,
it is a key part of the Rules of the Supreme Court of Virginia.



April 24, 2017

Greater Richmond Convention Center, Richmond

CALL FOR NOMINATIONS

HARRY L. CARRICO PROFESSIONALISM AWARD

VSB Section on Criminal Law

The Harry L. Carrico Professionalism Award was established in 1991 by the Section on Criminal Law of the Virginia State Bar to recognize an individual (judge, defense attorney, prosecutor, clerk, or other citizen) who has made a singular and unique contribution to the improvement of the criminal justice system in the Commonwealth of Virginia.

The award is made in memory of the Honorable Harry L. Carrico, former Chief Justice of the Supreme Court of Virginia, who exemplified the highest ideals and aspirations of professionalism in the administration of justice in Virginia. Chief Justice Carrico was the first recipient of the award, which was instituted at the 22nd Annual Criminal Law Seminar in February 1992.

Although the award will only be made from time to time at the discretion of the Board of Governors of the Criminal Law Section, the Board will invite nominations annually. Nominations will be reviewed by a selection committee consisting of former chairs of the section and Chief Justice Carrico.

Prior Recipients

The Honorable Harry L. Carrico	1992	Richard Brydges, Esquire	2004
James C. Roberts, Esquire	1993	Overton P. Pollard, Esquire	2005
Oliver W. Hill, Esquire	1995	Hon. Paul B. Ebert	2006
Hon. Robert F. Horan	1996	Rodney G. Leffler	2007
Reno S. Harp III, Esquire	1997	Prof. Ronald J. Bacigal	2008
Hon. Richard H. Poff	1998	Hon. Jere M.H. Willis Jr.	2010
Hon. Dennis W. Dohnal	1999	Melinda Douglas	2012
Hon. Paul F. Sheridan	2000	Claire G. Cardwell	2013
Hon. Donald H. Kent	2001	Gerald T. Zerkin	2014
Craig S. Cooley, Esquire	2002	Hon. Jerrauld C. Jones	2015
Prof. Robert E. Shepherd	2003	Michael N. Herring	2016

Criteria

The award will recognize an individual who meets the following criteria:

- ◆ Demonstrates a deep commitment and dedication to the highest ideals of professionalism in the practice of law and the administration of justice in the Commonwealth of Virginia;
- ◆ Has made a singular and unique contribution to the improvement of the criminal justice system in Virginia, emphasizing professionalism as the basic tenet in the administration of justice;
- ◆ Represents dedication to excellence in the profession and “performs with competence and ability and conducts himself/herself with unquestionable integrity, with consummate fairness and courtesy, and with an abiding sense of responsibility.” (Remarks of Chief Justice Carrico, December 1990, Course on Professionalism.)

Submission of Nomination

Please submit your nomination on the form below, describing specifically the manner in which your nominee meets the criteria established for the award. If you prefer, nominations may be made by letter.

Nominations should be addressed to Colette Wallace McEachin, Esq., Chair, Criminal Law Section, and mailed to the Virginia State Bar Office: 1111 East Main Street, Suite 700, Richmond, VA 23219-0026. **Nominations must be received no later than December 5, 2016.** Please be sure to include your name and the full name, address, and phone number of the nominee.

If you have questions about the nomination process, please call Elizabeth L. Keller, Assistant Executive Director for Bar Services, Virginia State Bar, at (804) 775-0516.

HARRY L. CARRICO PROFESSIONALISM AWARD

NOMINATION FORM

Please complete this form and return it to the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026. **Nominations must be received no later than December 5, 2016.**

Name of Nominee: _____

Profession: _____

Employer/Firm/Affiliation: _____

Address of Nominee: _____

City _____ State _____ Zip _____

Name of person making nomination _____ Telephone _____
(Please print)

E-mail _____ Signature _____

(Please attach an additional sheet explaining how the nominee meets the criteria for the Harry L. Carrico Professionalism Award.)

Local and Specialty Bar Elections

Colonial Heights Bar Association

Michael Wayne Lee, President
Cecilie Bronwyn Hamilton,
Vice President

Alfred Gray Collins III, Secretary
Nathaniel Atwell Scaggs, Treasurer

Local Government Attorneys of Virginia

Wesley Clarke Whitfield Jr., President
George Arthur McAndrews,
Vice President

Roderick Benedict Williams, Secretary
Tara Ann McGee, Treasurer

Lynchburg Bar Association

Hope Regina Townes, President
Andrew Wagner Childress, Vice
President & President-elect
Sarah Wayland Bell, Secretary
Grady William Donaldson Jr., Treasurer

Metropolitan Richmond Women's Bar Association

Melissa Suzanne VanZile, President
Jennifer Ellis Lattimore, President-elect
Elizabeth Wilson Hanes, Vice President
Joley LaBelle Steffens, Secretary
Joanna Lee Suyes, Treasurer

Newport News Bar Association

Joseph Franklin Verser, President
Darlene Paige Bradberry, President-elect
Lisa Marie Moore, Secretary

Salem-Roanoke County Bar Association

Peter Sean Lubeck, President
Nanda Elizabeth Davis,
1st Vice President
Bradley Ryan Thompson,
2nd Vice President
Adam Heath Moseley, Secretary-
Treasurer
Paul Anthony Dull, Judge Advocate

Virginia Association of Commonwealth's Attorneys

Eric Lawrence Olsen, President
Patricia T. Watson, President-elect
Roy Franklin Evans Jr., Vice President
Jeffrey Wayne Haislip,
Secretary-Treasurer

Solo & Small-Firm Practitioner Forum

The Solo & Small-Firm Practitioner Forum focuses on issues that confront attorneys who practice alone or in small firms. Law office management and ethics are among several topics covered at these CLEs.

These CLEs are free, include lunch, and are available on a first-come, first-served basis. Registration and the agendas will be posted on the CLBA website at www.vsb.org/site/conferences/clba-calendar as soon as they are available.

SAVE THE DATE:

October 24, 2016

Solo & Small-Firm Practitioner Forum/Regional Bench-Bar Conference
Golden Leaf Commons, Emporia

April 7, 2017

Solo & Small-Firm Practitioner Forum
Holiday Inn Downtown, Lynchburg

SAVE THE DATE

Bar Leaders Institute

Lewis Ginter Botanical Garden, Richmond

March 10, 2017

For more information, please visit:
www.vsb.org/site/conferences/clba
or contact Paulette Davidson at davidson@vsb.org.



Federal and Virginia Legislative Information Websites

by Andrew M. Winston

Where can I find debates in Congress on pending legislation? How do I track the status of a bill in the Virginia General Assembly? These questions can seem daunting to practitioners and students who perform this type of research infrequently. Online legislative information systems have, however, evolved into robust platforms that provide free access anywhere to a wealth of information on lawmaking.

Congress.gov

Congress.gov is the official online legislative system for the US Congress and is presented by the Library of Congress.¹ The successor to THOMAS, which was retired in July 2016, Congress.gov enables users to quickly locate proposed and enacted federal legislation and related legislative history materials, as well as information about members of Congress and other resources on the federal legislative process.

You can search for bills using the search box on the Congress.gov homepage. The full text of bills is available from 1989 through the present, and bill status information is available from 1973 through the present.² Bills can be searched by keywords, as well as by bill number and public law number, and search results can be refined based on date, whether or not the bill passed, subject, and other filters.

Selecting a bill from your search results takes you to the bill's page, with an overview box at the top that includes the bill's sponsor, the committees reviewing it, the latest action on it, and a "tracker" showing its progress through Congress. Tabs below the overview allow you to select:

- A summary of the bill,
- The full text of all versions of the bill,
- All actions taken on the bill,
- The short title and official title,
- Any amendments,
- Information on any cosponsors,

- The committees associated with the bill and links to their reports, and
- Links to any related bills.

Other resources on Congress.gov, links to all of which can be found on the home page, include:

- Information on roll call votes in the Senate and the House,
- A glossary of lawmaking terms (in case you need a reminder of, for example, the difference between an "enrolled" bill and an "engrossed" one),
- A series of videos (with transcripts) explaining the legislative process,
- The daily edition of the *Congressional Record*,
- Biographical information on members of Congress, and bills they sponsored or cosponsored, and
- Tables of appropriations measures.

You can monitor federal legislative developments by creating a free account on Congress.gov. Once you have registered, you can get e-mail alerts when there is activity on a particular bill, when a specified member of Congress sponsors or cosponsors a new bill, or when the Congressional Record has been updated.

Virginia's Legislative Information System

Virginia's Legislative Information System, or LIS (at lis.virginia.gov), is a state-level counterpart to Congress.gov. On LIS, you can search for bills in the current session of the General Assembly by bill number, as well as by subject, member, day, status, committee, and other categories. The page for a bill includes summaries and the full text of versions of the bill, information on the bill's sponsor, and a chronology of activity on the bill with links to information on events like votes and committee referrals and reports.

LIS also offers keyword-searchable databases of bills and bill summaries from 1994 to the present; there is also

a subject index with links to the bills under each subject term from 1995 to the present. Reports to the General Assembly dating back to 1897 are available on LIS. Additionally, you can access the Virginia State Budget Portal through LIS and find information on the budget bill and amendments, reports by the House Appropriations Committee and Senate Finance Committee staff, and budget updates.

To help you monitor legislative developments, LIS now offers a service named Lobbyist-in-a-Box. You can register for the free version of Lobbyist-in-a-Box for a single profile that allows you to track and receive e-mail alerts of legislative activity on up to five bills. A fee-based subscription to the service enables you to create additional profiles tracking different bills with different e-mail notification options based on legislative events, keywords, or Virginia Code references.

Endnotes:

- 1 I am employed by the Law Library of Congress, a service unit of the Library of Congress, although I am not involved with the creation or maintenance of Congress.gov or its content. The views expressed in this article are my own and not those of the Law Library of Congress or the Library of Congress.
- 2 For more information coverage dates for legislative information on Congress.gov, go to <https://www.congress.gov/about/coverage-dates>.



Andrew Winston is a senior legal reference librarian at the Law Library of Congress.

The Importance of Understanding that “Computer Stuff”

by Erin W. Hapgood

The air is crisp, the sky is blue, football is in full swing and children are dreaming of bags of Halloween candy and a variety of treats, tricks, and scares. What scares some attorneys the most, however, is the ever-changing landscape of technology. Social media, e-mail and an individual’s online presence can be a treasure trove for litigants, but can also tempt lawyers to bad behavior. The threat of a compromised e-mail system or online scam can make the best attorneys want to hide under the bed and cover their ears. Nonetheless, since the revision of the comment to Rule 1.6 of the Rules of Professional Responsibility, lawyers have an affirmative obligation to educate themselves about technology or, as difficult as it is for some attorneys, to seek the assistance of someone with such knowledge.

In honor of the month that sees witches, vampires, and zombies parading the streets, examples of the frightening ignorance and bad behavior of some attorneys can provide guidance to lawyers, at least of what *not* to do.

A dramatic example of which Virginia attorneys are probably familiar, *Lester v. Allied Concrete Co.*, 285 Va. 295 (2013), exemplifies such bad behavior. In the suit for the wrongful death of his client’s wife, plaintiff’s attorney advised his client (via a paralegal) to destroy potentially damaging posts from Facebook after defense counsel showed him a photograph from his client’s account showing plaintiff “holding a beer can while wearing a T-shirt emblazoned with ‘I <<heart>> hot moms.’” Compounding the misconduct, plaintiff then responded to discovery stating he had no Facebook account, testified in

a deposition that he never deactivated his account, and made other false representations. The jury verdict stood, but plaintiff and his attorney suffered sanctions in the amount of \$180,000 and \$542,000 respectively.

In a federal case from Missouri,¹ the plaintiff initially denied the existence of her Facebook and other social media profiles, leading the court to grant defendant’s request that plaintiff provide a “Download Your Info” report from Facebook, noting that this report will also include records of deleted material. In New York,² defendants moved for sanctions and an injunction because they believed the plaintiff had deleted some of her Facebook content. It turns out that the plaintiff had merely changed her privacy settings which, as most Facebook users know, limits who can see the posts but does not delete the content.

Technology can challenge attorneys outside the realm of social media and discovery. A recent settlement in an employment dispute in the Eastern District of Virginia shows just how vulnerable lawyers are to increasingly sophisticated hackers.³ Plaintiff’s counsel received an e-mail from an “aoi.com” address that was “visually similar” to his client’s aol.com address, providing wiring instructions for the \$65,000 settlement. Properly suspicious, plaintiff’s counsel called his client who confirmed he did not send the e-mail; his counsel did not inform the defense that a third party was attempting to subvert the settlement proceeds. Plaintiff insisted on a strict payment deadline, in furtherance of which his counsel informed the defense that he would send wiring instructions.

Shortly thereafter, defense counsel received an e-mail, from plaintiff’s counsel’s actual e-mail address, providing wiring instructions which turned out to be fraudulent.

In his opinion, Judge Payne determined the defendant substantially performed the settlement agreement and that plaintiff failed to take ordinary care. The court concluded that “[a]s technology evolves and fraudulent schemes evolve with it, the Court has no compunction in firmly stating a rule that: where an attorney has actual knowledge that a malicious third party is targeting one of his cases with fraudulent intent, the attorney must either alert opposing counsel or must bear the losses to which his failure substantially contributed.”

The most frightening aspect of this situation is the level of detail known by the fraudsters: the plaintiff’s name, the exact settlement figure, and the style of plaintiff’s counsel’s e-mails, including the use of a familiar salutation to defense counsel.

Other cautionary tales come from the experiences of a retired federal magistrate. In one case, the lawyer for a nursing home where one patient beat another to death learned *at the hearing on a motion to compel* that his client’s cloud provider deleted data every thirty days; he had never asked his client about how and where they stored their data. In another case, an attorney representing a defendant in a child pornography case was cross examining the officer who had engaged with his client in a chat room. With each question he was, in the judge’s words, “digging the hole his cli-

Technology continued on page 48

How to Stop Having to Write Declination Letters

by Mark Bassingthwaite

How many malpractice claims have resulted from a failure to write a declination letter? You know the one that says: “Thanks, but no.” Truth be told, not many, although we have seen a few. Some are conflict problems because the creation of this letter is what normally would trigger the entering of the names of declined clients into the conflict database. When the letter isn’t written, the names can’t be entered, and a conflict problem sometimes arises down the road. Others are a bit more concerning and represent the real reason these letters should be used. Sometimes a non-client who did speak with you eventually sues you for failing to do something. They allege that you were indeed their attorney, at least as they understood it. If you have no documentation that you weren’t, you may have a problem because these kinds of word-against-word disputes don’t always end well for the attorney.

Excuses vary. Declination letters are viewed as a waste of time, unnecessary in most matters, irrelevant, or too costly. Sometimes they are just simply overlooked. The good news is that declinations can be documented in another more efficient way. The letter approach isn’t the only option.

Many attorneys use some version of a client intake form during an initial prospective client interview. If you use this form, consider making a few modifications to it that will help document the engagement or declination. Once you finish the initial interview you will give the prospective client a copy of this modified client intake form and then you and your prospective client should

sign both the copy and the original. If you and your prospective client decide to create an attorney/client relationship, you will then ask the client to also sign a fee agreement. This leaves the client with a copy of the client intake form and the written fee agreement. If you decide not to form an attorney/client relationship at the conclusion of the initial consultation, the prospective client will sign only the original and copy of the client intake form and receive just a copy of that document.

In order to use your client intake to document the engagement or declination, you might add language that reads something like this:

“The purpose of our initial consultation meeting is for me to determine what legal services (if any) our firm might be able to provide to address your legal concerns, as well as to provide an indication as to what your cost might be if you decide to hire this firm.

“Our initial consultation meeting does not give me enough time or information to provide you with a definite legal opinion. The short time allotted for this meeting makes it impossible for me to properly and fully assess any legal matter that you might have.

“Regardless of whether you and I create an attorney/client relationship today, the attorney/client privilege protects all information that I gather during this meeting and record on this client intake form. Rest assured that I will hold that information in strict confidence.”

At the end of the client intake form, you might add something similar to this:

“Please Read Carefully and Sign Below

Now that we have concluded our initial consultation, if you agree to hire me as your attorney and I agree to represent you, we will both sign a Contract for Legal Services. That contract will state the terms and conditions under which this firm will provide you with legal representation.

“If I am willing to represent you and you decide not to sign a Contract for Legal Services today, I strongly urge you to do one of two things: (1) schedule a follow-up appointment with me at the earliest possible time; or (2) immediately consult with another attorney in order to ensure that you fully protect your legal rights. **Unless and until both of us sign a Contract for Legal Services, neither I nor this firm represent you on the matters described in this client intake form or discussed during this initial consultation. No action of any kind will be taken on your behalf until you authorize us to do so by both of us signing a Contract for Legal Services.**

“If I do not agree to represent you, then we have not formed an attorney/client relationship, even though we had this initial consultation. Neither this firm nor I will represent you on the matters set forth in this client intake form or discussed during this initial consultation. If your legal matter involves a potential lawsuit, it is important that you realize that you must file your lawsuit within a certain period of time, known as a Statute of Limitations. Therefore, I strongly urge you to immediately consult with another attorney

Risk Management *continued on page 48*

Risk Management *continued from page 47*

in order to protect your rights. My decision not to represent you is *not* a legal opinion regarding the merits of your case.

“By signing below, you acknowledge that you have received a copy of this completed client intake form. Your signature also confirms that you understand that I have not been hired as your attorney and that this firm will take no further actions on your behalf.

Signature _____
Date _____.”

The expanded use of a client intake form with text substantively

similar to what I have suggested above effectively eliminates the need for a separate declination letter. The issue is addressed and documented while the client is in your office. Finally, if your practice covers several areas of the law, simply alter the sample language to meet the needs of each practice area. For example, a big reason that these letters aren’t used with prospective divorce clients is out of a fear of notifying an innocent spouse. This approach is a win/win on that front. The innocent spouse will never see a letter from an attorney in the mail and documentation of the declination is hand delivered to the prospective client before they ever leave your office.



Mark Bassingthwaight, ALPS risk manager, has conducted more than 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. His webinar on Best Practices for Client Selection in the ALPS CLE library is at <http://alps.inreachce.com>. He can be contacted at: mbass@alpsnet.com.

Technology *continued from page 46*

ent was in deeper and deeper.” Finally the judge called him to the bench and asked what he was doing; the lawyer actually replied, “Your honor, I just don’t understand this computer stuff.”

Learning about technology can be daunting, but the frightening consequences of failing to make even the simplest inquiries about electronic data make such knowledge imperative. Lawyers can no longer pretend that these issues will not impact their personal practice. Some may find it difficult to admit their ignorance and ask for help, but this is precisely the obligation imposed by the revised comment to Rule 1.6. Do not wait

until your case becomes an example; make the necessary inquiries before you are exposed as a lawyer who just does not understand “this computer stuff.”

Endnotes:

- 1 *Rhone v. Schneider Nat’l Carriers, Inc.*, Case No. 4:15-cv-01096-NCC (E.D. Mo. April 21, 2016)
- 2 *Thurmond v. Bowman*, 6:14-CV-06465 EAW (W.D. N.Y. August 10, 2016) (the court also determined that three postings were inadvertently deleted; sanctions and injunction denied)
- 3 *Bile v. RREMC, LLC and Denny’s Corporation*, Civil Action No. 3:15cv051 (E.D. Va. August 24, 2016)



Erin W. Hapgood is a member of the Technology and the Practice of Law Committee of the Virginia State Bar. Her practice on the Northern Neck of Virginia includes real estate and other civil litigation, criminal defense, and work as a guardian *ad litem*. She also has experience in electronic discovery in financial services litigation and has written and presented on ethics and technology.

Got an Ethics Question?

The VSB Ethics Hotline is a confidential consultation service for members of the Virginia State Bar. Non-lawyers may submit only unauthorized practice of law questions. Questions can be submitted to the hotline by calling (804) 775-0564 or by clicking on the blue “E-mail Your Ethics Question” box on the Ethics Questions and Opinions web page at www.vsb.org/site/regulation/ethics/.

Sentencing Guidelines Knowledge & Skills Evaluation (Including Ethics Issues)

Five-hour seminars, pending CLE approval for 5 CLE credits (1 ethics), October 20, Henrico/Richmond, Henrico Police and Fire Training Center; October 26, Danville Community College for Advanced Technology. The evaluation course is designed for the experienced user of Virginia's Sentencing Guidelines. Attendees will complete a knowledge and skills exercise that will determine the topics covered in this seminar. Attendees will participate in a discussion-oriented workshop addressing common errors and complex scoring issues. Ethics council with the Virginia State Bar will lead the discussion and answer questions related to ethical responsibilities relating to the Sentencing Guidelines. Register by com-

pleting the form and submitting it to the commission. Cost \$100. Purchase manual separately. (Fee waived for judges, commonwealth's attorneys, P&P, public defenders and staff. Limited scholarships are available for attorneys.)

Introduction to Sentencing Guidelines

Six-hour seminars approved for six CLE credits, December 1, Fairfax Government Center; December 7, Henrico/Richmond, Henrico Police and Fire Training Center; December 13, Roanoke Higher Education Center; December 15, Portsmouth, Department of Social Services. Details at <http://www.vcsc.virginia.gov/training.html>. The introduction seminar is designed for the attorney or criminal justice professional who is new to Virginia's sentencing guidelines. The seminar will begin with general background information and

progress to detailed information on scoring each of the guidelines factors to include changes beginning July 1, 2016. Register by completing the form and submit to the commission. Space may be limited. Purchase manual separately. Cost \$125. Purchase manual separately.

Virginia Lawyer publishes at no charge notices of continuing legal education programs sponsored by nonprofit bar associations and government agencies. The next issue will cover December 15 through February 21. Send information by October 30 to hickey@vsb.org. For other CLE opportunities, see Virginia CLE calendar and "Current Virginia Approved Courses" at www.vsb.org/site/members/mcle-courses/ or the websites of commercial providers.

Virginia CLE Calendar

Virginia CLE will sponsor the following continuing legal education courses. For details, see <http://www.vacle.org/seminars.htm>.

October 14

Great Adverse Depositions — Principles and Principal Techniques

Video — Tysons
8:30 AM–4:15 PM

October 14

Tom Spahn on Confidentiality: Non-Clients' Misunderstandings and Mistakes

Live — Charlottesville/Webcast/
Telephone
NOON–2 PM

October 17

Gun Trusts and Gun Law 2016

Live — Fairfax
8:30 AM–4:10 PM

October 17

Computer Forensics for Lawyers

Webcast/Telephone
NOON–2 PM

October 17

Representing Clients in Title IX Investigations of Sexual Misconduct on College Campuses

Live — Charlottesville/Webcast/
Telephone
3–5 PM

October 18

GAIN THE EDGE!® Negotiation Strategies for Lawyers

Live — Richmond
8:30 AM–3:45 PM

October 18

35th Annual Trusts and Estates Seminar

Live — Lexington
9 AM–4:10 PM

October 18

42nd Annual Recent Developments in the Law 2016: News from the Courts and General Assembly

Video — Alexandria, Charlottesville,
Norfolk, Richmond, Roanoke
9 AM–4:25 PM

October 19

GAIN THE EDGE!® Negotiation Strategies for Lawyers

Live — Fairfax
8:30 AM–3:45 PM

October 19

7th Annual Advanced Business Litigation Institute

Video — Norfolk, Richmond, Roanoke
8:30 AM–4:45 PM (RICHMOND VIDEO
BEGINS AT 9 AM)

October 19

34th Annual Real Estate Practice Seminar

Video — Tysons
9 AM–4:10 PM

October 19

Hot Topics in Employment Law

Live — Charlottesville/Webcast/
Telephone
1–4:15 PM

- October 20
7th Annual Advanced Business Litigation Institute
Video — Alexandria
8:30 AM–4:45 PM
- October 20
Great Adverse Depositions — Principles and Principal Techniques
Video — Charlottesville
8:30 AM–4:15 PM
- October 20
35th Annual Trusts and Estates Seminar
Live — Williamsburg
9 AM–4:10 PM
- October 20
42nd Annual Recent Developments in the Law 2016: News from the Courts and General Assembly
Video — Tysons
9 AM–4:25 PM
- October 20
Ethics Update for Virginia Lawyers 2016
Webcast/Telephone
NOON–2 PM
- October 20
A Winning Game Plan for Contracting with the Federal Government
Live — Blacksburg/Telephone
3:30–5:30 PM
- October 20
What's New at the Virginia Supreme Court? An Overview of Recent Civil Decisions 2016
Webcast/Telephone
5–6:30 PM
- October 20
Tom Spahn on Confidentiality: Non-Clients' Misunderstandings and Mistakes
Webcast/Telephone
7–9 PM
- October 21
Asset Purchase Transactions: Negotiating the Acquisition or Sale of a Business Using an Asset Purchase Agreement
Live — Charlottesville/Webcast/Telephone
NOON–3:15 PM
- October 21–22
28th Annual Intellectual Property Seminar: The Evolving Landscape of IP
Live — Williamsburg
FRIDAY: 1–5:30 PM; SATURDAY: 8:30 AM–12:45 PM
- October 24
Watergate—Dean's Break with the White House: The Ethics of a Lawyer Representing an Organization in Reporting Crime or Fraud That Is Continuing
Video — Alexandria
9 AM–12:15 PM
- October 25
17th Annual Virginia Information Technology Legal Institute 2016
Video — Charlottesville, Norfolk, Richmond, Roanoke, Tysons
8 AM–4:20 PM (RICHMOND VIDEO BEGINS AT 9 AM)
- October 25
DUI Defense in Virginia
Video — Abingdon, Alexandria, Warrenton
8:30 AM–3:45 PM
- October 26
7th Annual Advanced Business Litigation Institute
Video — Tysons
8:30 AM–4:45 PM
- October 26
35th Annual Family Law Seminar
Video — Abingdon, Alexandria, Charlottesville, Norfolk, Richmond, Roanoke
9 AM–4:30 PM
- October 26
Ethics Update for Virginia Lawyers 2016
Webcast/Telephone
NOON–2 PM
- October 27
35th Annual Trusts and Estates Seminar
Live — Fairfax
9 AM–4:10 PM
- October 27
35th Annual Family Law Seminar
Video — Fredericksburg, Harrisonburg, Tysons
9 AM–4:30 PM
- October 27
Tom Spahn on Confidentiality: Non-Clients' Misunderstandings and Mistakes
Webcast/Telephone
10 AM–NOON
- October 27
Covenants Not to Compete and the Duty of Loyalty in Virginia 2016
Webcast/Telephone
1–4:15 PM
- October 28
Trials of the Century II
Live — Richmond
8:25 AM–3:45 PM
- October 28
DUI Defense in Virginia
Video — Fredericksburg, Norfolk, Tysons, Winchester
8:30 AM–3:45 PM
- October 28
7th Annual Advanced Business Litigation Institute
Video — Charlottesville
8:30 AM–4:45 PM
- October 28
No Reason to Be Anti-Social (Media): Your Ethical Obligations Regarding Social Media
Webcast/Telephone
10 AM–NOON

October 28
**Asset Purchase Transactions:
 Negotiating the Acquisition or Sale of
 a Business Using an Asset Purchase
 Agreement**
 Webcast/Telephone
 1-4:15 PM

October 31
**17th Annual Virginia Information
 Technology Legal Institute 2016**
 Video — Alexandria
 8 AM-4:20 PM

October 31
Trials of the Century II
 Live — Fairfax
 8:25 AM-3:45 PM

October 31
DUI Defense in Virginia
 Video — Charlottesville, Danville,
 Richmond, Roanoke
 8:30 AM-3:45 PM (RICHMOND VIDEO
 BEGINS AT 9 AM)

October 31
Hot Topics in Employment Law
 Telephone
 9 AM-12:15 PM

November 2
**Representing Clients in Title IX
 Investigations of Sexual Misconduct
 on College Campuses**
 Webcast/Telephone
 NOON-2 PM

November 4-5
**37th Annual Construction and Public
 Contracts Law Seminar**
 Live — Charlottesville
 FRIDAY: 8:25-5:25 PM; SATURDAY: 8
 AM-12:20 PM

November 7-14
**International Destination CLE:
 London 2016**
 Live/Video — London, England

November 9
**Representation of Incapacitated
 Persons as a Guardian Ad Litem —
 2016 Qualifying Course**
 Live — Charlottesville
 9 AM-4:05 PM

November 15
**Data Privacy and Security: Compliance
 and Breach Response**
 Live — Charlottesville/Webcast/
 Telephone
 NOON-2 PM

November 16
**35th Annual Trusts and Estates
 Seminar**
 Video — Alexandria, Fredericksburg,
 Leesburg, Norfolk, Richmond, Roanoke
 9 AM-4:10 PM

November 16
Religious Institutions and the Law
 Live — Charlottesville/Webcast/
 Telephone
 9:30 AM-1 PM

November 16
**What Every Lawyer Needs to Know
 About the Trans-Pacific Partnership
 (TPP)**
 Live — Charlottesville/Webcast/
 Telephone
 2-5:15 PM

November 17
**35th Annual Trusts and Estates
 Seminar**
 Video — Charlottesville, Warrenton,
 Winchester
 9 AM-4:10 PM

November 18
**35th Annual Trusts and Estates
 Seminar**
 Video — Tysons
 9 AM-4:10 PM

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 Harry L. Carrico
 Professionalism Course**

December 8, 2016, Richmond

January 10, 2017, Alexandria

March 2, 2017, Alexandria

See the most current dates and
 registration information at
www.vsb.org/site/members/new.

November 29

Religious Institutions and the Law

Webcast/Telephone

9:30 AM–1 PM

November 30

Information Exchanges with Virginia Government Agencies: Two-Way Street?

Live — Charlottesville/Webcast/

Telephone

NOON–2 PM

December 1

Trials of the Century II

Video — Danville, Dulles, Norfolk, Richmond

8:25 AM–3:45 PM (RICHMOND VIDEO BEGINS AT 9 AM)

December 1–3

Experience Nashville with Virginia CLE: Ethics CLE, Two Nights at Opryland, and a Private Bluebird Café Concert

Live — Nashville, TN

FRIDAY SEMINAR: 10 AM–NOON

December 5

Advanced Topics on Veterans' Issues and Benefits

Live — Charlottesville/Webcast/Telephone

9:30 AM–12:45 PM

December 6

Trials of the Century II

Video — Tysons

8:25 AM–3:45 PM

December 6

28th Annual Intellectual Property Seminar: The Evolving Landscape of IP

Video — Alexandria, Charlottesville, Danville, Norfolk, Richmond, Roanoke

9 AM–4:10 PM

December 6

What Every Lawyer Needs to Know About the Trans-Pacific Partnership (TPP)

Webcast/Telephone

10 AM–1:15 PM

December 7

Gun Trusts and Gun Law 2016

Video — Abingdon, Charlottesville, Norfolk, Richmond, Roanoke, Tysons

8:30 AM–4:10 PM (RICHMOND VIDEO BEGINS AT 9 AM)

December 7

The Rocket Docket: Trying Cases in the Eastern District of Virginia

Live — Alexandria/Telephone

8:55 AM–1:25 PM

December 7

Ethics Update for Virginia Lawyers 2016

Webcast/Telephone

NOON–2 PM

December 8

Trials of the Century II

Video — Alexandria, Charlottesville

8:25 AM–3:45 PM

December 8

The Rocket Docket: Trying Cases in the Eastern District of Virginia

Live — Richmond/Telephone

8:55 AM–1:25 PM

December 8

28th Annual Intellectual Property Seminar: The Evolving Landscape of IP

Video — Tysons

9 AM–4:10 PM

December 8

Tom Spahn on Confidentiality: Non-Clients' Misunderstandings and Mistakes

Webcast/Telephone

NOON–2 PM

December 9

Advanced Topics on Veterans' Issues and Benefits

Webcast/Telephone

9:30 AM–12:45 PM

December 12

The Basics of Arbitration

Live — Charlottesville/Webcast/Telephone

11 AM–2:15 PM

December 13

Data Privacy and Security: Compliance and Breach Response

Webcast/Telephone

NOON–2 PM

December 14

42nd Annual Recent Developments in the Law 2016: News from the Courts and General Assembly

Video — Charlottesville, Tysons

9 AM–4:25 PM

December 15

Gun Trusts and Gun Law 2016

Video — Alexandria

8:30 AM–4:10 PM

December 15

Information Exchanges with Virginia Government Agencies: Two-Way Street?

Webcast/Telephone

NOON–2 PM

FORTY-SEVENTH ANNUAL

CRIMINAL LAW 2017 SEMINAR

FEBRUARY 3, 2017
DoubleTree by Hilton, Williamsburg

FEBRUARY 10, 2017
DoubleTree by Hilton, Charlottesville

Video Replays in 13 Locations on Three Different Dates
6.5 MCLE Credits (including 1.5 ethics credit) Pending

VIRGINIA STATE BAR AND VIRGINIA CLE

Register Now

2016 VSB Pro Bono Conference and Celebration

Wednesday, October 26, 2016

the Embassy Suites by Hilton Hampton Hotel Convention Center & Spa



Free Continuing Legal Education Sessions (3.5 hours MCLE credits pending)*

- **Representing Domestic Violence Survivors: Protective Orders and Pro Bono**
- **Handling Uncontested Divorces: Nuts and Bolts for Pro Bono Lawyers**
- **Introduction and Demo: Virginia.freelegalanswers.org**

(*Note – The Pro Bono Conference will be held in conjunction with Day 1 of the Virginia Legal Aid Conference. Attendees of the Legal Aid Conference are welcome to attend sessions of the Pro Bono Conference at no additional cost)

- **Joint Legal Aid Conference/Pro Bono Conference Reception (Free)**
- **Lewis F. Powell Jr. Pro Bono Award Dinner and Ceremony** (\$20.00 fee) with Keynote Speech by Jeffery Robinson, Deputy Legal Director and Director of the Center for Justice, American Civil Liberties Union.

See agenda and group rate information for lodging at http://www.vsb.org/site/pro_bono/PB-celebration.
Please contact Karl A. Doss at (804) 775-0522 or doss@vsb.org for more information.

DISCIPLINARY PROCEEDINGS

Respondent's Name	Address of Record	Action	Effective Date
DISCIPLINARY BOARD			
John George Crandley	Virginia Beach, VA	Suspension – 30 Days	August 30, 2016
Keith Hamner Waldrop	Goochland, VA	Suspension – 30 Days	August 31, 2016

DISTRICT COMMITTEES

Frederick Scott Kaufman	Glen Allen, VA	Public Reprimand w/Terms	September 9, 2016
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Suspension – Failure to Pay Disciplinary Costs

		Effective Date	Lifted
Ana Maria Cuitino	McLean, VA	July 18, 2016	August 3, 2016
Warren Wilson McLain	Fairfax, VA	August 19, 2016	
Jason Gentry Mullins	Sunnyvale, CA	August 24, 2016	
Rocco Joseph DeLeonardis, Jr.	Reston, VA	August 18, 2016	
Richard Joseph Kwasny	Yardley, PA	August 26, 2016	
Nnika Evangeline White	Richmond, VA	August 12, 2016	
William Henry Yongue IV	Blacksburg, VA	August 30, 2016	

Suspension – Failure to Comply with Subpoena

Antonio Pierre Jackson	Hampden-Sydney, VA	August 29, 2016
John Forrest Roberts	Williamsburg, VA	August 29, 2016

DISCIPLINARY SUMMARIES

The following are summaries of disciplinary actions for violations of the Virginia Rules of Professional Conduct (RPC) (Rules of the Virginia Supreme Court Part 6, § II, eff. Jan. 1, 2000) or another of the Supreme Court Rules.

Copies of disciplinary orders are available at the Web link provided with each summary or by contacting the Virginia State Bar Clerk's Office at (804) 775-0539 or clerk@vsb.org. VSB docket numbers are provided.

DISCIPLINARY BOARD

John George Crandley

Virginia Beach, Virginia

15-021-103051

Effective August 30, 2016, the Virginia State Bar Disciplinary Board suspended John George Crandley's license to practice law for thirty days for violating professional rules that govern fairness to opposing party and counsel and respect for rights of third persons. This was an agreed disposition of misconduct charges. RPC 3.4(j) and 4.4

www.vsb.org/docs/Crandley-092116.pdf

Keith Hamner Waldrop

Goochland, Virginia

15-070-101516, 15-070-101973, 16-070-103348

Effective August 31, 2016, the Virginia State Bar Disciplinary Board suspended Keith Hamner Waldrop for thirty days for violating professional rules that govern diligence and misconduct. RPC 1.3(a,b), 8.4(a-c)

www.vsb.org/docs/Crandley-092116.pdf

DISTRICT COMMITTEES

Fredrick Scott Kaufman

Glen Allen, Virginia

16-032-104668, 16-032-105102

On September 9, 2016, the Virginia State Bar Third District Subcommittee, Section II, issued a public reprimand with terms to Fredrick Scott Kaufman for violating professional rules that govern diligence, communication, and safekeeping property. This was an agreed disposition of misconduct charges. RPC 1.3(a), 1.4(a-c), 1.15(a)(1)(3)(i.ii)

www.vsb.org/docs/Kaufman-092116.pdf

NOTICES TO MEMBERS

LEGAL ETHICS OPINIONS WITHDRAWN

The Virginia State Bar's Standing Committee on Legal Ethics has withdrawn thirteen Legal Ethics Opinions.

- 821: Advertisements
- 835: Fees—Collections
- 856: Solicitation of employment—Free estate planning seminars
- 862: Solicitation letter
- 926: Lawyer referral services
- 1003: Attorney—Relationship with financial advisor
- 1290: Nonlawyer employee: Use of for soliciting prospective clients
- 1348: Advertising and solicitation—Lawyer referral service: Propriety of nonlawyer screening calls and referring potential claims for attorney members
- 1380: Fees—Law firms—Aiding unauthorized practice of law—Splitting fees with nonlawyer: Arrangement between multi-jurisdictional offices of law firm
- 1543: Advertising—Recommendation of professional employment: Attorney paying “referral” service for “exclusive rights” to all prospective clients in four counties
- 1600: Aiding unauthorized practice of law—Nonlawyer personnel—Misconduct: Level of direct supervision of nonlawyer personnel required
- 1689: Attorney participation in referral service (legal-friend) that offers legal referrals to members at discount
- 1743: Virginia law firm forming partnership with a foreign legal consultant (FLC) when the FLC is a nonlawyer under the unauthorized practice rules and is not licensed in the United States.

MCLE COMPLIANCE

Now is the time to check your online record and plan your MCLE compliance. Apply now for any non-approved course that you have attended. The MCLE compliance deadline is October 31, 2016.

MEMBERSHIP DUES

Membership dues must be received by October 11 to avoid suspension. Members may pay at the member's portal or by mail. Dues statement at: www.vsb.org/docs/dues-form.pdf

FREE LEGAL ANSWERS

Lawyers can sign up for the VSB's new pro bono website, Virginia.FreeLegalAnswers.org, sponsored by the ABA. Lawyers sign up to provide online answers to legal questions posted by low-income Virginians. Details: www.vsb.org/site/news/item/virginia.freelegalanswers.org

NOTICES TO MEMBERS

SUPREME COURT APPROVES AMENDMENTS

The Supreme Court of Virginia has approved amendments to Rules 1.6: Confidentiality of Information and 3.3: Candor Toward the Tribunal. Details:

www.vsb.org/docs/SCV-order-rule_1_6_rule_3_3-093016.pdf

The Supreme Court of Virginia has approved Legal Ethics Opinion 1884: Conflicts arising from a lawyer-legislator's employment with a consulting firm owned by a law firm. Details: www.vsb.org/docs/SCV-order-leo1884-093016.pdf

COMMENTS SOUGHT ON PROPOSED RULE CHANGES

The Virginia State Bar's Standing Committee on Legal Ethics is seeking comments from its membership on proposed amendments to Rules 7.1 - 7.5 of the Rules of Professional Conduct that govern lawyer advertising. Details:

www.vsb.org/pro-guidelines/index.php/rule_changes/item/amendments_rules_7_2016-09-30

RESOLUTION OF FEE DISPUTES

VSB Resolution of Fee Disputes mediation and arbitration training sessions:

Fairfax — October, 14

Norfolk — October 20

Registration and training information is online at www.vsb.org/docs/med-arb-train-2016.pdf. For questions, please contact Stephanie Blanton, coordinator of the Resolution of Fee Disputes program, at (804) 775-0576 blanton@vsb.org or Kathryn Byler, chair of the Resolution of Fee Disputes Committee, at (757) 490-6292 kbyler@pendercoward.com

SOLO & SMALL-FIRM PRACTITIONERS FORUM/BENCH BAR CONFERENCE

Registration is open for the October 24 Solo & Small-Firm Practitioner Forum/Regional Bench-Bar Conference at Golden Leaf Commons in Emporia. Details: <http://bit.ly/2cHmKSK>

VSb PRO BONO CONFERENCE

The Annual Virginia State Bar Pro Bono Conference and Celebration will be Wednesday, October 26 in Hampton, Virginia. The conference will be held in conjunction with the Virginia Legal Aid Conference and features CLE sessions, a networking reception, and the Pro Bono Awards Dinner and Ceremony at which the Lewis F. Powell Jr. Pro Bono award will be presented. Details: www.vsb.org/site/pro_bono/PB-celebration

INTELLECTUAL PROPERTY SEMINAR

The 28th Annual Intellectual Property Seminar will be October 21–22 at the Williamsburg Lodge. The seminar is entitled: The Evolving Landscape of IP. Details: www.vacle.org/product.aspx?zpid=5613&zskuid=21801

SAVE THE DATES

- April 24, 2017 – VSB TECHSHOW – Greater Richmond Convention Center, Richmond.
- The 47th Annual Criminal Law Seminar, sponsored by the VSB Criminal Law Section and Virginia CLE, is scheduled for February 3 in Williamsburg and February 10 in Charlottesville.

“Not in Good Standing” Search Available at VSB.org

The Virginia State Bar offers the ability to search active Virginia lawyers' names to see if they are not eligible to practice because their licenses are suspended or revoked using the online Attorney Records Search at www.vsb.org/attorney/attSearch.asp.

The “Attorneys Not in Good Standing” search function was designed in conjunction with the VSB's permanent bar cards.

Lawyers are put on not-in-good-standing (NGS) status for administrative reasons—such as not paying dues or fulfilling continuing legal education requirements—and when their licenses are suspended or revoked for violating professional rules.

The NGS search can be used by the public with other attorney records searches—“Disciplined Attorneys” and “Attorneys without Malpractice Insurance”—to check on the status and disciplinary history of a lawyer.

NOMINATIONS SOUGHT FOR DISTRICT COMMITTEE VACANCIES

The Standing Committee on Lawyer Discipline calls for nominations for district committee vacancies to be filled by Council in June. Note that there are vacancies which may not become available because some members are eligible for re-appointment.

To review qualifications for eligibility, see Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-4 — Establishment of District Committees, specifically 13-4.E (Qualifications of Members) and 13-4.F (Persons Ineligible for Appointment).

FIRST DISTRICT COMMITTEE:

2 attorney vacancies; 2 non-attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 1st, 3rd, 5th, 7th or 8th judicial circuits.

SECOND DISTRICT COMMITTEE, SECTION I:

1 attorney vacancy (current member is eligible for reappointment); 3 non-attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 2nd or 4th judicial circuits.

SECOND DISTRICT COMMITTEE, SECTION II:

4 attorney vacancies (2 members are eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). Vacancies are to be filled by members from the 2nd or 4th judicial circuits.

THIRD DISTRICT COMMITTEE, SECTION I:

1 attorney vacancy; 3 non-attorney vacancies (1 member is eligible for reappointment.) Vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

THIRD DISTRICT COMMITTEE, SECTION II:

2 attorney vacancies; 1 non-attorney vacancy. Vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

THIRD DISTRICT COMMITTEE, SECTION III:

3 attorney vacancies (1 member is eligible for reappointment); 2 non-attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 6th, 11th, 12th, 13th or 14th judicial circuits.

FOURTH DISTRICT COMMITTEE, SECTION I:

3 attorney vacancies (2 members are eligible for reappointment); 1 non-attorney vacancy. Vacancies are to be filled by members from the 17th or 18th judicial circuits.

FOURTH DISTRICT COMMITTEE, SECTION II:

3 attorney vacancies (2 members are eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). Vacancies are to be filled by members from the 17th or 18th judicial circuits.

FIFTH DISTRICT COMMITTEE, SECTION I:

2 attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 19th or 31st judicial circuits.

FIFTH DISTRICT COMMITTEE, SECTION II:

3 attorney vacancies; 2 non-attorney vacancies (both members are eligible for reappointment). Vacancies are to be filled by members from the 19th or 31st judicial circuits.

FIFTH DISTRICT COMMITTEE, SECTION III:

2 attorney vacancies (1 member is eligible for reappointment); 1 non-attorney vacancy (current member is eligible for reappointment). Vacancies are to be filled by members from the 19th or 31st judicial circuits.

SIXTH DISTRICT COMMITTEE:

3 attorney vacancies (1 member is eligible for reappointment); 1 non-attorney vacancy. Vacancies are to be filled by members from the 9th or 15th judicial circuits.

SEVENTH DISTRICT COMMITTEE:

2 attorney vacancies (1 member is eligible for reappointment); 2 non-attorney vacancies. Vacancies are to be filled by members from the 16th, 20th or 26th judicial circuits.

EIGHTH DISTRICT COMMITTEE:

3 attorney vacancies (all 3 members are eligible for reappointment); 2 non-attorney vacancies (1 member is eligible for reappointment). Vacancies are to be filled by members from the 23rd or 25th judicial circuits.

NINTH DISTRICT COMMITTEE:

3 attorney vacancies (2 members are eligible for reappointment) 2 non-attorney vacancies. Vacancies are to be filled by members from the 10th, 21st, 22nd or 24th judicial circuits.

TENTH DISTRICT COMMITTEE, SECTION I:

3 attorney vacancies (1 member is eligible for reappointment. Vacancies are to be filled by members from the 27th, 28th, 29th or 30th judicial circuits.

TENTH DISTRICT COMMITTEE, SECTION II:

3 attorney vacancies (1 member is eligible for reappointment); 2 non-attorney vacancies. Vacancies are to be filled by members from the 27th, 28th, 29th or 30th judicial circuits.

Nominations, along with a brief resume, should be sent by February 28, 2017, to Stephanie Blanton, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026 Blanton@vsb.org.



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Professional Notices

Nina Ginsberg, of Alexandria, was sworn in as second vice president of the National Association of Criminal Defense Lawyers at the association's 59th annual meeting in Palm Beach, FL., on August 13. Ginsberg is a founding partner at DiMuroGinsberg PC in Alexandria and has practiced criminal law for more than thirty-five years.



Ginsberg

Richard C. "Rich" Gross, brigadier general, US Army (ret.), has joined the law firm of FH+H PLLC as a partner. Gross recently retired from the Army after more than thirty years of service, culminating his military career as the legal counsel to the chairman of the Joint Chiefs of Staff. FH+H has offices in Tyson's Corner and Woodbridge.



Gross

Stuart Ingis will succeed Venable LLP's longtime chair, **James Shea**, on February 1. Ingis is co-head of the firm's Privacy and Data Security Practice. Shea, who has been the firm's chair since 2006, also served as Venable's managing partner from 1995-2006. Shea will become chair emeritus.



Ingis

Curtis G. Manchester, a past Richmond office managing partner of Reed Smith LLP, has joined Kutak Rock LLP in the firm's commercial litigation practice in Richmond.



Manchester

Brett J. West has joined the Halperin Law Center in Glen Allen as an associate attorney. West focuses his practice on representing those deprived of their constitutional rights and represents individuals who have been seriously injured by the negligence of others.



West

Professional Notices

E-mail your news and high-resolution professional portrait to hickey@vsb.org for publication in *Virginia Lawyer*. Professional notices are free to VSB members and may be edited for length and clarity.

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Send your letter to the editor to:

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available to all Virginia attorneys on questions related to: legal malpractice avoidance, claims repair, professional liability insurance issues, and law office management, call Fairfax County lawyer, **John J. Brandt**, who acts under the auspices of the Virginia State Bar at

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Virginia State Bar Staff Directory

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More information is available online at www.vsb.org/site/publications/valawyer. Please contact Dee Norman at (804) 775-0594 or dnorman@vsb.org if you are interested in advertising in *Virginia Lawyer* or at VSB.org.

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