

# Highlights of Virginia State Bar Council Meeting

October 27, 2006

At its regular meeting on October 27, 2006, in Williamsburg, the Virginia State Bar Council heard the following significant reports and took the following actions:

## VSF Budget

The VSB ended the 2005–2006 fiscal year with revenues of \$10.1 million; expenditures and transfers of \$10.4 million; and a draw on the reserve of \$270,000. The reserve at year's end stood at 33.5 percent, or \$3.5 million. Due to the declining reserve, the VSB did not transfer the \$250,000 it had budgeted in 2005–2006 for the Clients' Protection Fund, and no further transfers to the fund from the operating budget are anticipated in the immediate future.

The VSB will need a dues increase by July 1, 2008. Any increase will require the General Assembly to raise the statutory cap on bar dues, currently set at \$250.

In the interim, the VSB will ask the 2007 General Assembly to authorize the Supreme Court of Virginia to assess each member up to \$25 per year, to be paid into the Clients' Protection Fund. (See page 7.) An actuarial analysis has recommended the fund be built to \$9 million to meet anticipated needs. The fund currently totals \$3.3 million.

VSF Executive Director Thomas A. Edmonds encouraged members of the council to talk to their legislators, as well as other lawyers, to explain why the dues increase will be necessary. The VSB will soon develop an outline of where the dues money is currently spent and how the increase will be allocated, to help in this educational process.

The Supreme Court has indicated that fees paid by non-Virginia lawyers under a proposed *pro hac vice* rule will be used by the Court for special projects. The proposed rule, which is pending before the Court, would track the Virginia court appearances of lawyers licensed in jurisdictions other than Virginia, and charge a fee for those appearances.

## Access to Legal Services

Retired Judge Dale H. Harris of Lynchburg, chair of the Special Committee on Access to Legal Services, presented procedures developed by the committee for handling appeals by legal aid societies that are denied a license by the Virginia State Bar.

Under the new procedures, which were adopted unanimously by the council, appeals are limited to whether the bar acted properly under the statute and regulations that govern the licensing process.

## Lawyers Needed for Conservation Cases

Virginia Secretary of Natural Resources L. Preston Bryant Jr. told the council the state is in need of lawyers to counsel landowners about the legal and tax ramifications of donating or selling conservation easements. No more than thirty lawyers have significant experience in this field, and more are needed—particularly in rural areas.

The VSB is partnering with the Department of Natural Resources to offer continuing legal education to prepare attorneys for this work. Governor Timothy M. Kaine has set a goal to conserve four hundred thousand acres during his four-year term.

Bryant encouraged lawyers to discuss conservation easements in estate planning sessions with clients.

More information on conservation easements can be found at [www.virginiaoutdoorsfoundation.org](http://www.virginiaoutdoorsfoundation.org).

## Principles of Cooperation between Physicians and Attorneys

The VSB Executive Committee has approved an updated version of the "Principles of Cooperation between Physicians and Attorneys in the Commonwealth of Virginia." The document is on the VSB Web site—at [www.vsb.org/site/news/item/principles-of-cooperation-for-physicians-and-attorneys-in-the-commonwealth](http://www.vsb.org/site/news/item/principles-of-cooperation-for-physicians-and-attorneys-in-the-commonwealth)—and paper copies will be

printed. The document was updated by the Medical Society of Virginia and members of the health law sections of the VSB and The Virginia Bar Association.

## Judicial Nominations

The Judicial Nominations Committee is preparing to change its process for evaluating prospective judges. Rather than recommending the three best-qualified persons for a vacancy on a statewide court, as it does now, the nomination committee would investigate, interview, evaluate and rate all candidates. The committee would prepare a written summary of the qualifications of each candidate, and the VSB president would present the recommendations in person to the appointing authority and field any questions.

The committee will present a formal proposal to the VSB Executive Committee for consideration on November 30, 2006.

## President-Elect Designee

Manual A. Capsalis of Arlington is the VSB president-elect designee, to serve the 2008–2009 presidential term. He was uncontested.

## License Waive-In for Law Professors

The council, by a vote of 38 to 13, rejected a proposal by the Education of Lawyers Section to ask the General Assembly to allow Virginia law professors who are admitted in jurisdictions elsewhere to be admitted here as active members without examination.

## Business Casual for Test-Takers

The council unanimously defeated a proposal by the Environmental Law Section that the VSB request the Board of Bar Examiners to allow people to wear business casual dress while taking the bar examination.

## Communication with Represented Persons

The council, by a vote of 46 to 9, passed a proposed additional comment to the Rules of Professional Conduct, Rule 4.2

(Communications with Persons Represented by Counsel) to clarify that a lawyer cannot communicate with a represented person, even if the person initiates the communication, except with the consent of the person's lawyer or in instances where the person is seeking a second opinion or a replacement lawyer. The proposal will be sent to the Court for consideration.

### Undisclosed Tape Recording

The council unanimously passed proposed additional comments to Rule 8.4 (Misconduct) that would generally allow a lawyer to make undisclosed, lawful tape recordings on behalf of a client or in personal matters when the lawyer is not acting as an attorney. The proposed rule continues to discourage routine undisclosed recording by a lawyer of his or her client or another lawyer. The proposal will be sent to the Court for consideration.



### Lee L. Nelms Joins VSB as Assistant Ethics Counsel

Lee L. Nelms has joined the Virginia State Bar staff as an assistant ethics counsel. She previously practiced with her husband, David O. Nelms, at Nelms & Nelms in Blackstone. Most recently she was a contract attorney at McGuireWoods in Richmond.

She holds a bachelor's degree in sociology from Gettysburg College and a law degree from Widener University School of Law.

### Local and Specialty Bar Elections

#### Virginia Association of Black Women Attorneys

Kimberly Friend Smith, President  
 Robyn Nicole Seabrook, Secretary  
 Elaina Loréal Blanks, Treasurer

### In Memoriam

**Charles Harley Booth**  
 Williamsburg  
 September 1931–July 2006

**Sylvia Mary Brennan**  
 Alexandria  
 May 1965–January 2006

**Robert Lewis Clark**  
 Dayton, Ohio  
 January 1948–October 2006

**Jonathan Andrew Hack**  
 McLean  
 March 1965–April 2006

**William Peter Koczyk Jr.**  
 Annandale  
 February 1953–May 2006

**Mark Bennett Peterson**  
 Charlottesville  
 December 1949–May 2006

**T. Eugene Worrell**  
 Charlottesville  
 July 1919–April 2006

## Richmond Celebrates National Adoption Day



First Lady Anne B. Holton and Judge Angela E. Roberts

Richmond Juvenile and Domestic Relations District Court observed National, Virginia and Richmond adoption days on November 18 at the court, where thirty-one cases of children adopted from foster care were honored. Virginia First Lady Anne B. Holton (left), a former Richmond J&DR judge, was keynote speaker at the event, which was chaired by Richmond J&DR Judge Angela E. Roberts, who is a member of the Virginia State Bar Family Law Section's Board of Governors. The Greater Richmond Juvenile Bar Association was a cosponsor.