

# President's Message

by W. David Harless



## A Matter of Fairness

SINCE 2007, all facets of our profession have suffered from the nation's economic downturn. The Virginia State Bar has not been insulated from these events and has been sensitive to this circumstance. In fiscal year 2009 and FY 2010, the bar employed austerity measures and constraints that have permitted the bar to operate well within its means. Indeed, in FY 2012, the VSB *lowered* its annual dues for active members from \$250 to \$225 annually. At this level, the VSB shares the distinction with one other state of having the lowest mandatory professional fees among the thirty-three mandatory bars in the nation.

This responsible fiscal management is attributable largely to the devoted efforts of the bar's employees. However, there is an irony attendant to their stewardship. As they have labored to decrease expenditures and maximize the efficiency of the bar, our employees have suffered from a budgetary oversight in 2007 that has adversely affected their income over six years and will compromise their prospective benefits.

Historically, the VSB has proposed for approval the same salary increases and benefits proposed for judicial branch employees. Through this process, the VSB has endeavored to achieve parity in compensation for bar employees holding positions comparable to positions of other judicial branch employees. Unlike the judicial branch, the VSB receives no general fund or taxpayer dollars to underwrite the expense of the regulatory activities of the VSB or the salaries and benefits of its staff. Further, unlike other judicial branch agencies, the VSB's appropriation needs are not included in the

Supreme Court's annual budget request. Instead, the VSB makes its appropriation request for inclusion in the governor's budget prior to review and approval by the General Assembly.

During its 2007 session, the General Assembly approved for FY 2008 a 4 percent supplemental salary increase for all judges, court clerks, magistrates, and employees of the Virginia courts' system. This request was made apart from the appropriations request by the VSB. The VSB was unaware of this proposed supplemental increase, and, unlike the other employees within the judicial branch, the employees of the bar did not receive this supplemental salary increase in FY 2008.

The loss of the 4 percent supplemental increase in FY 2008 has resulted in a substantial disparity between the salaries and bonuses received by VSB employees and the salaries and bonuses received by their counterparts within the judicial branch. Additionally, this disparity has resulted in substantive differences in the retirement and death benefits that might otherwise have been available to VSB employees.

For a legal secretary at the VSB and the Supreme Court in FY 2008 each making a midrange salary of \$40,000 annually, the gross differential in salaries and bonuses at the end of FY 2013 would be \$9,192. Additionally, the base salary of each employee would be \$43,680 for the VSB employee and \$45,360 for the Supreme Court employee, a \$1,680 differential.

For midrange attorneys at the VSB and the Supreme Court earning \$85,000 in 2007, the disparity is more dramatic. The gross salary differential

and bonus differential for the six-year period would be \$19,532, and the base salary differential would be \$3,570.

Apart from the compounding effect of diminishing future salary increases and bonuses, these salary differentials lower prospective VRS retirement and death benefits. In 2011, a senior VSB employee retired after 30+ years of service and began receiving a monthly retirement benefit of \$5,093.05. Had this individual received the FY 2008 supplemental salary increase of 4 percent, the retiree would have received a monthly retirement benefit of \$5,288.96, a difference of \$195.91 per month, or \$2,350.92 annually. This differential will widen over time as the retiree receives annual cost of living adjustments.

In another instance, a VSB employee passed away in 2011. Since death was due to natural causes, the employee's survivors received \$136,000. If the employee had received the supplemental 4 percent increase in FY 2008, the survivors would have received \$142,000, a difference of \$6,000.

These disparities cannot be recovered retroactively. Specifically, the bar will not make lump-sum payments to its employees for the salary and bonus differentials they have lost since FY 2008. However, the bar should endeavor to make an equitable adjustment of salaries that will restore salary parity *prospectively* between VSB employees and their counterparts in the judicial branch. This will eliminate the ongoing negative impact to VSB

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employees from their loss of the FY 2008 4 percent salary increase.

The bar leadership discussed this issue with the Supreme Court in May of this year and received its approval of this endeavor. At its meeting on October 19, 2012, the Bar Council unanimously approved a proposal to seek General Assembly authorization of and appropriations for a 4 percent supplemental salary increase for all VSB employees effective in FY 2014. The bar has submitted this request to the governor for inclusion in his pro-

posed budget amendments for the 2013 session of the General Assembly. We will not know whether the governor has put our request in his budget until he announces his budget on December 17, 2012.

We believe that this supplemental salary increase comports with the responsible stewardship of the bar's financial *and* human resources. Our employees have endured for five years the wage disparity attendant to their loss of the 4 percent salary increase. We, the members, have benefitted

from these cost savings. We should now reciprocate the dedication demonstrated by our employees these past years. If we fail to act, the current disparity will be compounded further. It is simply a matter of fairness.