

Highlights of Council Meeting

February 22, 2003

At its regular winter meeting on February 22, 2003, in Richmond, Council of the Virginia State Bar heard the following reports and took the following significant actions:

American National Lawyers Insurance Reciprocal

Several Council members had requested that additional information be provided during the meeting regarding the receivership proceedings initiated in late January against both ANLIR and its primary reinsurer, The Reciprocal of America. Numerous questions have been raised about what ANLIR policy holders in Virginia really have at this point in the way of coverage, whether unearned premiums on ANLIR policies will be refunded in the event people change carriers, and what kind of prior acts and tail coverage may be available in the event bar members do make a change to another carrier. Representatives of the bar's present endorsed carrier, Attorneys Liability Protection Society, were present to outline what they are doing to assist ANLIR insureds who may want to replace their coverage. It was announced that ALPS will provide both the prior acts and tail coverage to bar members insuring with them. Council member Boyd Collier, chair of the ANLIR board, acknowledged that it may well be advisable for bar members still insured with ANLIR to seek replacement coverage, and he told Council that refunds of unearned premiums can be achieved only through filing a claim in the receivership. He introduced to Council the president of Minnesota Mutual Insurance Company, with whom discussions are in progress about that company writing lawyer malpractice in Virginia and perhaps taking on some of the ANLIR staff to facilitate that effort. Thus, it is possible that Virginia will once again have two non-commercial companies competing in its malpractice insurance market for lawyers.

American Bar Association Report

Council heard a report from Richmond lawyer Robert J. Grey, Jr., who will become president-elect of the American Bar Association at its annual meeting in August 2003. Mr. Grey recounted the importance of his work as a volunteer in the Virginia State Bar in preparing him for his assumption of a leadership role in the American Bar Association, and he indicated that he hoped to involve many Virginia lawyers more extensively in the work of that national association.

Lawyer Discipline

The Standing Committee on Lawyer Discipline presented a number of proposals to further streamline the procedures for handling attorney discipline matters, as well as alleged violations of the Consumer Real Estate Settlement Protection Act. All of these proposed changes had been published for comment in the Virginia Lawyer Register, and they were approved without controversy.

Lawyer Advertising and Solicitation

The Standing Committee on Lawyer Advertising and Solicitation presented for Council's consideration Opinion A-0114 dealing with self laudatory statements in lawyer advertising that are not subject to factual verification. There has been little disagreement with most aspects of the opinion, but the committee had reserved judgment pending further study on the question of whether a lawyer could include in an advertisement a truthful, factually accurate statement that he or she is listed in a publication titled "Greatest Lawyers in the Country," or similar publication. In an earlier version of this same opinion, the committee had opined that such truthful, factual accurate statements are ethically

permissible in a lawyer ad. At the meeting, Council, upon recommendation of the Executive Committee, modified the proposed opinion before adopting it and recommending it to the Virginia Supreme Court by replacing the concluding paragraph of the committee's recommended opinion and with one making it clear "that it is not unethical for a lawyer to advertise the fact that he or she is listed in a publication entitled "Greatest Lawyers in the Country," or similar publication. The new concluding paragraph goes on to make it clear, however, that such factual statements may not be embellished or bootstrapped to assert self laudatory claims that go beyond the factual statement.

Clients' Protection Fund

Upon recommendation of the Clients' Protection Fund Board, Council approved a change in the Clients' Protections Fund Rules to allow assets of the fund to be invested in federal agency securities.

Judicial Independence

President DiMuro reported on a meeting between the leadership of the Senate and House Courts of Justice Committees and the presidents of the statewide bar associations in the Commonwealth on February 21, 2003, to discuss the judicial selection and retention process for state court judges and ways in which it might be improved. A Commentary on Judicial Independence in Virginia had been prepared by the presidents and shared with the leadership of the two committees in advance of the meeting. The commentary will be sent to all members of the two Courts of Justice Committees in the near future, and subsequent meetings with legislators are planned to continue the dialogue about the importance of assuring that Virginia judges remain independent in carrying out their judicial duties. A copy of the commentary will also be sent to each member of Council.