

Highlights of Virginia State Bar Council Meeting

October 21, 2005

At its regular meeting on October 21, 2005, in Charlottesville, the Virginia State Bar Council heard the following significant reports and took the following actions:

Malpractice Insurance Options Studied

At the request of the Supreme Court of Virginia, a subcommittee of the Special Committee on Lawyer Malpractice Insurance is exploring options for providing better protection to the public when malpractice is committed by lawyers in private practice. Options include the possibility of requiring lawyers in private practice to have malpractice insurance. About 90 percent of the commonwealth's lawyers in private practice report that they have malpractice insurance.

More Support of Criminal Defense Endorsed

VSB President Phillip V. Anderson has written to Governor Mark R. Warner to ask that more money be allocated toward court-appointed counsel fees and salaries and resources for state public defenders. The VSB Council in October 2004 adopted VSB Indigent Defense Task Force recommendations that included more financial support of indigent criminal defense in Virginia, which ranks last in the United States in fees paid to court-appointed counsel.

Disaster Pleas Drew Big Response

More than four hundred Virginia lawyers, responding to a letter from Chief Justice Leroy R. Hassell Sr. and VSB President Phillip V. Anderson, volunteered to provide pro bono legal advice to Gulf Coast hurricane evacuees who relocated to Virginia. The young lawyers groups of the VSB and The Virginia Bar Association trained the volunteers, and the Virginia Lawyer Referral Service is fielding requests for help.

Meanwhile, Virginia lawyers contributed seventy-two thousands dollars toward

restoration of the justice system in the affected areas, in response to a letter from Anderson and VBA President James V. Meath. Half of the money was sent to state bar-sponsored projects in Louisiana, and half to Mississippi.

Budget

The VSB ended fiscal 2004–2005 with revenues of \$9.8 million and expenses of \$9.7 million. The reserve as of June 30, 2005, stood at \$3.78 million. VSB President-elect Karen A. Gould reported that efforts are under way to increase the Clients' Protection fund, which currently contains about \$3.3 million. An actuarial study last winter recommended that the fund be increased to meet projected obligations in the coming years.

Legal Advertising Opinion —Best Lawyers

The Supreme Court approved a compromise version of Legal Advertising Opinion 114, which addresses how a listing in the book *Best Lawyers in America* can be used in lawyer advertising. The approved opinion states that truthful information about a listing in a credible directory can be included in an ad, but unfair or misleading characterizations drawn from the information are not permitted. For example, a firm might advertise that some members are listed in the book, but may not further claim to be the best law firm in a practice area or geographical region.

Online Legal Research

VSB Executive Director Thomas A. Edmonds reported that the VSB hopes to have a contract in place by the end of 2005 to provide online legal research capability to all Virginia lawyers as a member benefit. The provider is FASTCASE Inc., the only vendor to submit a proposal in response to the bar's second request through the state procurement process. FASTCASE provides a similar service in Florida, Louisiana and Iowa.

Limit Considered for Online CLE

The Mandatory Continuing Legal Education (MCLE) Board is exploring the possibility of a cap on the number of credit hours that lawyers may obtain through distance learning, based on the theory that live seminars with more interaction offer better training. The board is divided about the matter, as is the bar's membership.

Disciplinary Matters— Procedural Defaults

Of the instances of procedural default reported to the VSB by Virginia's appellate courts, 160 have become disciplinary cases, VSB Counsel Barbara A. Williams reported.

Law Practice Receiverships

Receiverships continue to present an element of unpredictability in the disciplinary budget, as more lawyers become disabled, die, abandon their practices or commit serious disciplinary infractions. Currently, twenty-four receiverships are pending. Ten involve attorneys who are deceased or disabled. As of August 31, the program was well under budget for costs and fees. The VSB has budgeted two hundred thousand dollars for receiverships in fiscal 2005–2006.

Justice Lacy Appointed as Liaison to the VSB Disciplinary System

The Supreme Court has appointed Justice Elizabeth B. Lacy to serve as the Court's first-ever liaison to the VSB Standing Committee on Lawyer Discipline, which reviews disciplinary cases for conformity to policy and develops disciplinary rules for review by the council and Court.

VSB Computer Project

Dana D. McDaniel, a volunteer lawyer who has overseen the VSB's years-long effort to rewrite and integrate its computer software system, reported that the bar's technical staff and consultants are now working on the MCLE and professional regulation modules. MCLE is scheduled to

be implemented in January 2006, and professional regulation in September 2006. The modules for managing accounting, membership and Consumer Real Estate Settlement Protection Act requirements are completed.

Virginia.gov has been hired to develop password-protected Web access so that Virginia lawyers can conduct legal research and do business online with the VSB. The log-on security component is scheduled to be completed by the end of December.

Online Lawyer Look-up

The Publications and Public Information Committee, represented by Chair William R. Allcott Jr., proposed that Virginia lawyers' addresses and phone numbers of record be made available on the VSB Web site. After concerns were expressed over junk mail and security of lawyers who work in law enforcement and intelligence, the council indicated in a straw vote that it would prefer an opt-in process, in which information would be provided online only if lawyers affirmatively choose to be on the list. The committee was asked to bring to the March 2006 council meeting a proposal that would specify what information would be provided and how a lawyer would choose to be listed.

Pro Hac Vice

The council approved by a vote of 51 to 11 a new rule that, if it is accepted by the Supreme Court, will govern appearances in Virginia courts by lawyers licensed in the U.S. outside of Virginia. The rule, proposed by the Multijurisdictional Practice Task Force, would require those lawyers to:

- Associate local counsel, who must sign all pleadings.
- File with the Virginia tribunal an application, a certificate of good standing from each jurisdiction where the lawyer is admitted and a fee of \$250. The fee will be waived for pro bono representations of indigent clients.
- Consent to the jurisdiction of Virginia courts and agencies and the Virginia State Bar.

- Be limited to seven appearances in a twelve-month period.

Succession Planning

On the recommendation of the Receivership Task Force, the council approved by a vote of 46 to 11 an addition to the comment section of Rule 1.3 of the Rules of Professional Conduct. New Comment [4], which is advisory only, states: "A lawyer should plan for client protection in the event of the lawyer's death, impairment, incapacity or disappearance. The plan should be in writing and should designate a responsible attorney capable of making, and who has agreed to make, arrangements for the protection of client interests in the event of the lawyer's death, impairment, incapacity or disappearance." The addition will be sent to the Supreme Court for its consideration.

Changes to Corporate Counsel Rule

The VSB Council voted 58 to 4 to allow and encourage pro bono work by attorneys with Part I corporate counsel certificates. The work must be through a Virginia-licensed legal aid society. The council also approved increasing the corporate counsel registration fee from \$50 to \$150. The changes are subject to approval by the Supreme Court.

Representation Before the Virginia Gas and Oil Board

The council approved and sent to the Supreme Court for its consideration Unauthorized Practice of Law Opinion 209, which states that only a licensed Virginia lawyer can represent a client before the Virginia Gas and Oil Board, which the UPL Committee concluded was a tribunal. The vote was 35 to 3 in favor of the proposed opinion.

ABA's Grey Commended

The council recognized Robert J. Grey Jr. of Richmond for his service as the 2004–2005 president of the American Bar Association.