

# 67<sup>TH</sup> ANNUAL REPORT

*for the period July 1, 2004 – June 30, 2005*



VIRGINIA STATE BAR

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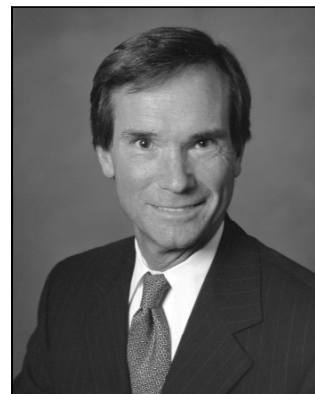
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Eric Severeid, the CBS Evening News anchor for many years, once analogized a certain organization to a coral reef, in that the coral reef was a vibrant organism that was very busy and ever-changing on the inside, but one that appeared quite immutable from the outside. At the risk of stretching the analogy too far, the Virginia State Bar has many of the characteristics of a coral reef. It is difficult from the outside to see and appreciate all of the tremendous and evolving work that goes on within the many conferences, committees, and sections and within the professional staff. The 2004–2005 bar year was no exception; outstanding work was accomplished for the benefit of the members, the judiciary, and the citizens of Virginia. Rather than attempt to catalogue all that went on within the organization, I would like briefly to recount the major themes of the recently ended bar year and my involvement in them.



This was the first bar year in which the VSB fully experienced its revitalized relationship with its parent Supreme Court of Virginia. My role in that revitalized relationship began with a meeting convened at the Supreme Court by the Chief Justice on November 30, 2004, to discuss ways of improving the involuntary commitment process. Those efforts will result in a conference of sheriffs, judges, special justices, lawyers, and mental health practitioners to be held on December 9, 2005, in Richmond, and that is just the beginning. A good portion of the bar year was devoted to planning two other major Supreme Court initiatives, the highly successful Solo and Small-Firm Practitioner Forum, which took place in Abingdon on March 18, 2005, and the excellent Indigent Defense Training Initiative, which was seen live in Richmond and on video in Abingdon on May 20, 2005. Like the efforts to improve the involuntary commitment process, focusing on the needs of solo practitioners and those who practice in a small-firm setting and the training needs of those who undertake indigent criminal defense will continue to be a priority of both the Supreme Court and the VSB.

One of the indicia of the revitalized relationship with the Supreme Court is the state bar's inclusion in court functions in its capacity as an administrative agency of the Supreme Court. On December 9, 2004, I was privileged to be included with Governor Mark R. Warner, Lieutenant Governor Timothy M. Kaine, Attorney General Jerry W. Kilgore, State Senator Kenneth W. Stolle, and Delegate H. Morgan Griffith in making congratulatory remarks to the Supreme Court during commemoration of its 225th anniversary. Later, on March 30, 2005, I was similarly honored by being given the opportunity to address the Virginia Court of Appeals on the observance of its twentieth anniversary. Then on April 30, I took part in the observance of the 250th birthday of John Marshall. Perhaps the most gratifying part of serving as president during the 2004–2005 bar year was my ability to travel throughout the state and to meet with the marvelous lawyers and law professors who serve the people of Virginia so unstintingly. From the Buchanan County Bar Association and the Appalachian School of Law in Grundy, to the Accomack County Bar Association on the Eastern Shore and the fledgling Liberty University School of Law in Lynchburg, I met some wonderful people, and I could not have been received more graciously. Those visits and the people I met will stay with me forever.

Much of the 2004–2005 bar year was spent preparing for the provision of an online computerized legal research tool to the members of the state bar, as a membership benefit. Those efforts culminated in the Supreme Court's issuance of a Rule of Court on June 13, 2005, that authorizes and directs the VSB to provide such a service. It is hoped that in the near future that service will become a reality. In other computer news, the Integrated Bar Information System at VSB headquarters came closer to completion. The membership and accounting modules are now complete, the mandatory continuing legal education module is scheduled for completion this winter, and the final professional regulation module should be finished by September 2006.

One of the best aspects of the Virginia State Bar is that it holds its annual meeting at the very start of summer at sunny (most of the time) Virginia Beach. This year was no exception and, for once, cool temperatures accompanied the sun. It was a great meeting, with the major credit for it going to the hard work of the professional staff and the fine-tuning of the program that occurred the year before during the monthly meetings of the Better Annual Meeting Committee, ably chaired by Past President Jeannie P. Dahnk. During Robert J. Grey Jr.'s recently concluded presidency of the American Bar Association, he stressed the importance of the American jury system and the service and sacrifices made by jurors. He created a Commission on the American Jury to establish modern jury principles. Governor Mark R. Warner had declared May 2–6, 2005, Juror Appreciation Week in Virginia, and the annual meeting was not to be outdone. This year's Showcase Continuing Legal Education program was entitled "The ABA Modern Jury Principles and the Virginia Jury," and a panel consisting of Gregory A. Giordano, Robert E. Scully, James O. Broccoletti, Circuit Judge Thomas S. Shadrack, and Virginia Court of Appeals Chief Judge Johanna L. Fitzpatrick engaged in a lively dis-

## REPORT OF THE PRESIDENT

cussion, followed by an exploration led by Robert Grey of the history of the jury system and issues confronting juries today. Participants included high school students from the Legal Studies Academy of First Colonial High School in Virginia Beach.

In closing, let me give special thanks to Jeannie Dahnk, Phillip V. Anderson, Karen A. Gould, and the members of the VSB Executive Committee and Council for their unwavering support and wise counsel throughout the year. I also want to thank Manuel A. Capsalis, Savalle C. Sims, and William Brice Smith for the incredible work they did during their year at the helm of their respective conferences. Lastly, let me thank Thomas A. Edmonds, Mary Yancey Spencer, Barbara A. Williams, Elizabeth L. Keller, Susan C. Busch and all of the other tireless staff members who keep it all together.

As I said on the evening of June 17 in Virginia Beach as I passed the gavel to Phil Anderson, this has been the best year in my thirty-four years of practicing law, and I will cherish the memories and you forever. Thank you for giving me the opportunity to serve.

Respectfully submitted,

David P. Bobzien

**REPORT OF THE EXECUTIVE DIRECTOR/  
CHIEF OPERATING OFFICER**

The membership of the Virginia State Bar continued its steady growth in the fiscal year ended June 30, 2005. Total "in good standing" membership was 38,548, an increase of 1,894 members, or 5.17 percent over the previous year. A new Supreme Court of Virginia rule was implemented relating to special limited admission of corporate counsel who are bar members in good standing in another U.S. jurisdiction, but not admitted in Virginia; and by June 30, 2005, 994 individuals had been issued certificates or registered under the rule.

	<b>2004-2005</b>	<b>2003-2004</b>
Active	25,212	24,472
Corporate Counsel Admittees	603	170
Corporate Counsel Registrants	391	93
Associate	9,886	9,561
Judicial	1,003	976
Retired/Disabled	<u>1,453</u>	<u>1,382</u>
	<b>38,548</b>	<b>36,654</b>

**Officers, Bar Activities During 2004–2005, and New Executive Committee and Council Members**

Phillip V. Anderson of Roanoke became president of the Virginia State Bar at its annual meeting on June 17, 2005. He was sworn in by Virginia Court of Appeals Chief Judge Johanna L. Fitzpatrick. Karen A. Gould, president-elect, was unopposed in the 2005 election for that office to serve during 2005–2006.

David P. Bobzien of Fairfax completed his year as president. Emphasis was placed throughout the year on several new initiatives of Supreme Court of Virginia Chief Justice Leroy R. Hassell Sr. Significant time and energy were devoted to designing and seeking vendor proposals for an online legal research benefit program under which all members of the Virginia State Bar would have free access to a database of Virginia and other state legal materials, as well as federal cases and materials. Legal issues impeded progress on this initiative during much of the bar year, but in June 2005 the Supreme Court of Virginia issued a rule authorizing and directing the bar to implement such a member benefit as soon as possible. The new rule should obviate the legal issues which were raised and enable the bar to proceed with the program during the 2005–2006 bar year.

The bar, in cooperation with a Supreme Court-appointed committee, also conducted a very successful educational program made available at no cost to persons who represent indigent criminal defendants, either as appointed counsel or public defenders. The seminar featured nationally prominent experts on a wide range of topics at a central location in Richmond, and it was broadcast by television to a group of lawyers from Southwest Virginia who gathered in Abingdon for the seminar. A total of 349 lawyers attended the May 20 program in Richmond, while another 99 lawyers participated in Abingdon.

The bar also worked with a Supreme Court-appointed planning committee, headed by Justice Cynthia D. Kinser, to plan and conduct a law practice management seminar for small-firm and solo practitioners. The first session of the seminar was held on March 7 in Abingdon, and it was attended by 167 lawyers from that area of the state. Additional sessions for small-firm and solo lawyers are planned during the 2005–2006 bar year in Harrisonburg and one or two other locations.

The bar continued its practice of having officers and members of the staff visit with a number of members of the Virginia House of Delegates and Senate to let them know about the bar and its work. In April 2005, the bar conducted its second Law School for Legislators under the direction of Immediate Past President Jeannie P. Dahnk. The half-day program was attended by some forty members of the General Assembly and featured presentations about the Virginia court system and the work of the Virginia State Bar.

The bar's Task Force on Receiverships completed its assignment of rewriting and modernizing the *Virginia Code* provisions under which receivers can be appointed to take over the practice of a lawyer who has died suddenly, disappeared or committed egregious acts of misconduct. The statutory changes recommended by the task force were adopted without controversy by the 2005 session of the Virginia General Assembly and signed into law by the Governor. The group continues its work on a handbook for receivers to assist them in performing their responsibilities. The task force also recommended that liability insurance for persons appointed to serve as receivers be obtained by the bar, and a group policy covering all receivers appointed at the bar's request was obtained from the bar's endorsed malpractice insurance carrier, Attorneys Liability Protection Society Inc.

**REPORT OF THE EXECUTIVE DIRECTOR/  
CHIEF OPERATING OFFICER**

The Task Force on Multijurisdictional Practice continued its work during the year, completing and recommending a proposed new Foreign Legal Consultants Rule which was approved by the VSB Council. The rule is awaiting approval by the Supreme Court of Virginia. The group continues to work on amendments to Rules of Professional Conduct 5.5 and 8.5, as well as a rewrite of the Supreme Court's *pro hac vice* rule.

Karen A. Gould will serve *ex officio* on the Executive Committee next year as president-elect. Manuel A. Capsalis and Edward L. Chambers Jr. were elected by the council as new members of the 2005–2006 executive committee, replacing Gould and Stephen Telfeyan. William E. Bradshaw, Leisa A. Ciaffone, Howard M. Martin Jr. and Alda L. White were reelected to one-year terms.

The following new member was elected to the VSB Council to fill an unexpired term ending June 30, 2006:

John D. Sharer	13th Judicial Circuit
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The following new members were elected to the VSB Council for three-year terms beginning July 1, 2005:

David W. Bouchard	1st Judicial Circuit
Ann K. Crenshaw	2nd Judicial Circuit
Kenneth B. Murov	7th Judicial Circuit
Elizabeth M. Allen	11th Judicial Circuit
Edward V. O'Connor	19th Judicial Circuit
Janine M. Saxe	19th Judicial Circuit
Paul B. Terpak	19th Judicial Circuit
Robert C. Hagan Jr.	25th Judicial Circuit

The following new member was elected to the council, filling a new position occasioned by growth in his circuit, for a three-year term beginning July 1, 2005:

Gary M. Pearson	20th Judicial Circuit
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The following incumbents were reelected to the council for three-year terms beginning July 1, 2005:

James O. Broccoletti	4th Judicial Circuit
Edward L. Chambers	9th Judicial Circuit
J. William Watson Jr.	10th Judicial Circuit
John S. Barr	13th Judicial Circuit
William L. Lewis	15th Judicial Circuit
Alan S. Anderson	18th Judicial Circuit
Joseph A. Condo	19th Judicial Circuit
Sandra L. Havrilak	19th Judicial Circuit
Sean P. Kelly	19th Judicial Circuit
Benjamin R. Gardner	21st Judicial Circuit
Henry C. Clark	26th Judicial Circuit

Gregory D. Edwards of Jonesville and Alexander N. Levay of Leesburg were reappointed to three-year terms as council members at large. Walter A. Wilson III was reappointed to a second three-year term as a council member at large. M. Janet Palmer of Richmond became president of the Conference of Local Bar Associations, Jimmy F. Robinson Jr. of Richmond became president of the Young Lawyers Conference and William T. Wilson became president of the Senior Lawyers Conference. They will all serve as *ex officio* members of the council and the executive committee during 2005–2006.

**Bar Operations and Staff**

Again this year, there were no changes among the bar's senior staff or department heads.

Further progress was made during the year on the bar's long-term goal of rewriting and integrating all of its computer software programs. Final improvements to the membership module of the system were completed, and major progress was made on the Mandatory Continuing Legal Education module. The project continues to be directed by

REPORT OF THE EXECUTIVE DIRECTOR/  
CHIEF OPERATING OFFICER

William H. Dickinson, the bar's information technology department head, with outside consultants retained for design work and programming. During the next bar year, the MCLE module will be completed and the professional regulation module will be initiated.

The bar's Professional Regulation Department continued its emphasis on resolving older complaints in the system, as well as reducing the number of new investigative files opened through more effective use of the proactive intervention tools available to the bar at the intake level. The results have been dramatic, with the bar carrying over the lowest number of open complaints into the fiscal year beginning July 1, 2005, in at least the last ten years. Use of the bar's proactive tools at the intake level also reduced the number of investigative files opened by some 15 percent from what it otherwise would have been.

Additional pressure was put on the bar's disciplinary system during the past year by revelations of a large number of procedural defaults in criminal appeals, which were reported to the bar by the state's appellate courts following focus on the matter by the news media. There were some four hundred matters which required the bar's attention. Many of the cases were resolved at the intake level, but a number of additional investigative files were opened in matters where there were serious or repeated defaults that resulted in failure to protect the appellate rights of criminal defendants.



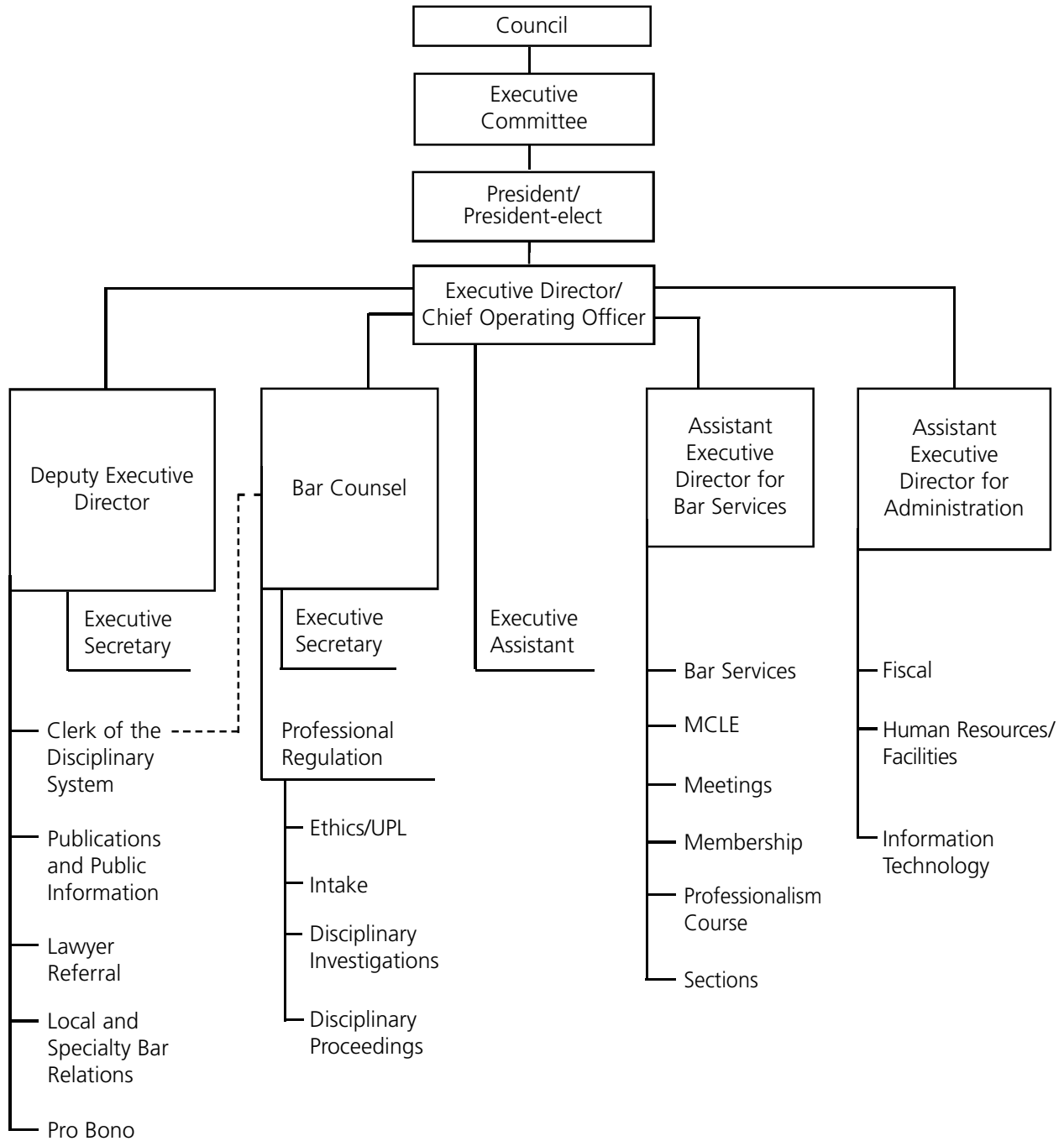


# REPORT OF THE TREASURER

## VIRGINIA STATE BAR CASH WITH THE TREASURER OF VIRGINIA AS OF JUNE 30, 2005

<b>Cash with the Treasurer of Virginia as of July 1, 2004</b>		<b>\$3,369,370</b>
<b>Revenue:</b>		
Membership Dues	\$7,876,880	
Professional Corporations	91,100	
Section Dues	335,700	
Virginia Lawyer and Virginia Lawyer Register	55,171	
Virginia Lawyer Referral Service	228,737	
Mandatory Continuing Legal Education	381,875	
Professionalism Course	233,860	
Cost Taxing & Bonds	111,964	
Seminars and Miscellaneous	315,359	
CRESPA Registration and Fines	92,600	
Administration and Finance	138,311	
Grants	2,952	
<b>Total Revenue</b>		<b>9,864,508</b>
<b>Operating Expenditures:</b>		
Salaries, Wages and Benefits	6,123,559	
Receivers	194,593	
Office Rent	366,482	
Furniture and Equipment	69,700	
Repairs and Maintenance	19,229	
Supplies, Stationery and Forms	83,872	
Printing and Copying	261,462	
Postage	236,275	
Telephone	91,480	
Staff Travel	91,647	
Computer	83,989	
Council, Committees and Board	377,034	
Professionalism Course	132,110	
Sections & Conferences	364,176	
Attorney General's Office Fees	69,876	
Other Operating Expenditures	206,975	
<b>Total Operating Expenditures</b>		<b>8,772,462</b>
<b>Other Disbursements and Transfers:</b>		
Integrated Bar Information System	404,284	
Lawyers Helping Lawyers	100,000	
Administration and Finance Account Transfers	149,935	
Clients' Protection Fund Transfers	250,000	
Transfers per Legislature	54,884	
<b>Total Other Disbursements and Transfers</b>		<b>959,103</b>
<b>Cash with the Treasurer of Virginia as of June 30, 2005:</b>		<b><u>\$3,502,313</u></b>

# ORGANIZATIONAL CHART



# REPORT OF THE OFFICE OF BAR COUNSEL

The Virginia State Bar's fiscal year runs from July 1 to June 30. Each month, and at the end of every fiscal year, the clerk of the disciplinary system compiles statistics relating to attorney discipline. These statistics help the Office of Bar Counsel and the Standing Committee on Lawyer Discipline (COLD) assess the efficiency of the attorney disciplinary process, discern trends and identify future needs. Reviewing the numbers on a monthly and annual basis is an integral part of the bar's ongoing effort to maintain and enhance the fairness of the attorney disciplinary process by improving efficiency. What follows is an overview of the year-end statistics for fiscal year 2005, with comparative information from prior years.

On June 30, 2005, there were 25,193 attorneys active and in good standing to practice law in the commonwealth. On June 30, 1996, there were only 20,713 attorneys active and in good standing to practice law in Virginia. In fiscal year 1996, the bar received 1,585 inquiries and 1,092 complaints, for a total of 2,677 contacts. By comparison, the bar received 2,640 inquiries and 2,074 complaints, for a total of 4,714 contacts, in fiscal year 2005.

The surge in the number of complaints the bar received in fiscal year 2005 is largely due to increased scrutiny of procedural defaults in criminal appeals to the Virginia Court of Appeals and the Supreme Court of Virginia. In the summer of 2004, the *Washington Post* ran a series of editorials focusing on the high rate of dismissal of criminal appeals due to procedural defaults in Virginia. A review of procedural defaults in Court of Appeals cases between January 1, 2002, and August 31, 2004, plus regular reporting of such matters on a go-forward basis, produced a significant influx of complaints arising from procedural defaults.

The COLD and the Office of Bar Counsel continue to focus on more efficiently resolving inquiries concerning attorneys' conduct and disciplinary cases. Although significant progress has been made in this area, the bar has not reached its aspirational goal of investigating and either dismissing or referring for hearing all complaints on which disciplinary files are opened within six months of the bar's first receipt of each complaint. During fiscal year 2006, software will be developed that can calculate the average time it takes the bar to resolve a complaint after it is received. This tool will help the bar explain why it takes longer than six months to decide whether some complaints should be dismissed or set for hearing.

In the meantime, the available statistics show that the bar's ongoing effort to resolve complaints more expeditiously is bearing fruit. At the close of fiscal year 2003, the bar carried over 1,018 matters to the new fiscal year. That number decreased to 777 in fiscal year 2004 and remained stable at 781 in fiscal year 2005, even though the number of contacts the bar received in fiscal year 2005 increased by 932 from fiscal year 2004.

As the size of the bar and the annual tally of bar complaints have grown, the number of attorney disciplinary sanctions imposed has also increased. Three hundred six sanctions were imposed in fiscal year 2005, compared with 248 sanctions in fiscal year 1996.

Along with increased number of sanctions imposed, there has been a steady increase in the number of matters brought to the bar's attention on which no action was taken. The bar has adopted the term "inquiries" to describe these matters, which present issues over which the bar has no jurisdiction. Inquiries closed with no action taken range from grievances about judges or other court-appointed officials acting in their official capacity, allegations that a guilty plea in a criminal matter was not voluntary (unless a court set the plea aside) and fee disputes. In most instances, inquiries alleging that lawyers employed the wrong strategy in handling a legal matter and/or committed legal malpractice are also closed with no action taken. Two thousand six hundred forty such inquiries were closed in fiscal year 2005 because they involved issues outside the scope of the bar's jurisdiction.

The bar writes every correspondent whose inquiry is closed with no action taken and explains why no action was taken on the matter. Some inquiries are reviewed a second time and some a third or fourth time, to ensure that the bar followed the proper procedures and that closing the inquiry with no action taken was the appropriate disposition under the Rules of Court. In instances in which new evidence is presented or it is determined that important facts were overlooked, the bar opens a disciplinary file.

As the number of inquiries has grown, the bar has implemented procedures to resolve some inquiries outside the formal disciplinary process. Resolution of inquiries by proactive intervention has been the most successful of the procedures. In a proactive situation, intake counsel asks the lawyer about whom an inquiry has been made to address, usually directly with the client, the situation that led to the inquiry. The lawyer is requested to provide the bar written

# REPORT OF THE OFFICE OF BAR COUNSEL

confirmation of client contact within ten days. If the lawyer's response demonstrates that he or she has made an acceptable effort to address the client's concerns, intake closes the file and notifies both the complainant and the respondent of the disposition of the inquiry.

In fiscal year 2005, as has been the case for more than ten years, the practice of criminal law generated the most bar complaints. Complaints generated by the practice of family law ranked second, and complaints related to personal injury matters ranked third. The most common type of complaint remains failure to communicate, followed by failure to file and failure to pay amounts due from trust account funds.

The trend toward increased election of three-judge panels continued in fiscal year 2005. Pursuant to *Virginia Code* § 54.1-3915, respondents can elect three-judge panels to hear disciplinary matters in lieu of a district committee or the disciplinary board. Over the last three years, the number of respondents electing three-judge panels has dramatically increased from four respondents involved in ten cases in fiscal year 2002 to seven respondents involved in seven cases in fiscal year 2003, to eighteen respondents involved in twenty-eight cases in fiscal year 2005.

The election of three-judge panels may be due in part to a perception that recent three-judge panel determinations favor respondents. Unlike district committee or disciplinary board proceedings, three-judge panels do not include nonlawyers as decision makers.

In past years, it has also taken longer to schedule a three-judge panel proceeding than a district committee or disciplinary board hearing because three-judge panels do not have regular hearing dates, and the Supreme Court of Virginia cannot appoint panel members until the respondent, respondent's counsel and bar counsel agree upon a hearing date. Sometimes circuit courts are unable to provide a courtroom on the date the respondent, counsel and judges are available. Continuances cause additional delays. Delay benefits respondents whose licenses may be suspended or revoked, not the public or the bar.

To address this issue, effective November 1, 2004, the Court amended Part Six, Section IV, Paragraph 13.H. and I. of the Rules of Court to require a respondent to provide available dates for a hearing within four months of the respondent's election of a three-judge panel.

Effective January 1, 2005, the Court also amended Paragraph 13 to require a respondent who elects a three-judge panel to answer charges of misconduct presented in a notice of hearing or certification when making the election.

Other proposed amendments to Paragraph 13, still pending before the Court, would provide the bar a limited right of appeal in instances in which a determination is plainly contrary to law. The amended rule would permit the bar to challenge the propriety of a procedural or substantive ruling that allegedly leads to an erroneous determination, but not whether a hearing panel imposed an appropriate disciplinary sanction based upon the evidence presented.

The proposed rule changes would also require all three-judge court filings to be made with the clerk of the disciplinary system, who would be responsible for forwarding the record to the clerk of the court in which the three judges have been appointed to sit. This change will ensure that three-judge court members receive motions, briefs and voluminous trial records before the judges convene to hear the matter in question.

Finally, the proposed rule changes would permit the disciplinary board to dismiss appeals to three-judge courts when a respondent or bar counsel fails to perfect an appeal in a timely manner. In the past, resolution of attorney disciplinary matters has been significantly delayed when a three-judge court had to be appointed and convened solely to dismiss an appeal that was not perfected in a timely manner.

Fairness and efficiency are the twin goals of the attorney disciplinary process. The Office of Bar Counsel realizes that efficiency without fairness would be meaningless, but also recognizes that efficiency is a fundamental component of fairness. For the benefit of the public and members of the bar, the Office of Bar Counsel will continue to strive for both fairness and efficiency, reallocating available resources where possible and seeking rule changes in order to enhance the fairness and efficiency of the attorney disciplinary process.

# MINUTES OF THE SIXTY-SEVENTH ANNUAL MEETING

President David P. Bobzien called the General Session of the sixty-seventh Annual Meeting of the Virginia State Bar to order at 9 a.m. on June 18, 2005, at the Cavalier Hotel, Virginia Beach. He introduced Phillip V. Anderson, the incoming president, who had been sworn in by Virginia Court of Appeals Chief Judge Johanna L. Fitzpatrick the previous evening. Mr. Anderson reported on the actions of the Virginia State Bar Council at its meeting on June 16.

## **INTRODUCTION OF PRESIDENT-ELECT GOULD**

Mr. Bobzien introduced Karen A. Gould of Richmond, incoming president-elect. Ms. Gould made brief remarks. On motion made, seconded and unanimously approved, Karen A. Gould was formally elected as president-elect for the 2005–2006 bar year.

## **TRADITION OF EXCELLENCE AWARD**

Lawrence H. Hoover Jr. of Harrisonburg received the General Practice Section Tradition of Excellence Award. Mona Shapiro Flax, chair of the General Practice Section, made introductory remarks. The award is given each year by the General Practice Section to a lawyer who exemplifies outstanding professional and public service.

## **FIFTY-YEAR AWARDS**

Mr. Bobzien and Mr. Anderson presented fifty-year certificates to all honorees present for the occasion. Photographs were taken as they received this special recognition.

The meeting was adjourned at 9:45 a.m.



## I N M E M O R I A M

- Michael James Aheron**, *Roanoke*  
**The Honorable Albert D. Alberi**, *Virginia Beach*  
**Robert R. Aldinger**, *Chesapeake*  
**J. Lewis Ames**, *White Stone*  
**Hunter Booker Andrews**, *Hampton*  
**Donald Francis Beach**, *Falls Church*  
**Orville S. Beard**, *Covington, TN*  
**Leroy E. Berg**, *Satellite Beach, FL*  
**James A. Betts Jr.**, *Richmond*  
**Geoffrey F. Birkhead**, *Norfolk*  
**Junie L. Bradshaw**, *Richmond*  
**The Honorable Jerry G. Bray Jr.**, *Virginia Beach*  
**Richard Sweeney Brooks**, *Arlington*  
**Philip N. Brophy**, *Falls Church*  
**Michael Edward Bryant**, *Vienna*  
**Richard G. Brydges**, *Virginia Beach*  
**Michael B. Burgee**, *Addison, TX*  
**William Cabell**, *Irvington*  
**Archibald A. Campbell**, *Wytheville*  
**Stephen Geryld Christianson**, *Fairfax*  
**The Honorable J. Calvitt Clarke Jr.**, *Virginia Beach*  
**John Michael Cleary**, *Arlington*  
**T. Taylor Cralle**, *Colonial Heights*  
**William Johnson Creech Jr.**, *Hilton Head Island, SC*  
**David A. Dashiell Jr.**, *Norfolk*  
**L. Franklin Davis**, *Accomac*  
**William G. Davis**, *Rocky Mount*  
**Robert William DeVos**, *Owings, MD*  
**Garland Francis Dowling**, *Silver Spring, MD*  
**Rulon A. Earl**, *Las Vegas, NV*  
**Sam D. Eggleston Jr.**, *Lovington*  
**Claude Crisp Farmer Jr.**, *Richmond*  
**The Honorable Andrew B. Ferrari**, *Arlington*  
**Alexander R. Field**, *Whispering Pines, NC*  
**Daniel Edward Fischer**, *Virginia Beach*  
**Stanley Harold Gaines**, *Falls Church*  
**Allan Garrett**, *Danville*  
**The Honorable John Anthony Garrett**, *Richmond*  
**Michael Lawrence Geffen**, *Mililani, HI*  
**J. Mason Grove**, *Fredericksburg*  
**Harold G. Hernly Jr.**, *Alexandria*  
**Arthur H. Horwitz**, *Richmond*  
**Judith Gerrein Ising**, *Pittsboro, NC*  
**Russell W. Jordan III**, *Richmond*  
**Henry James Karison**, *Virginia Beach*  
**Patrick Kennedy**, *Vienna*  
**Barbara E. King**, *Glen Allen*  
**David B. Kinney**, *Great Falls*  
**Benjamin T. Kinsey Jr.**, *Petersburg*  
**Lydia Rachel Kupersmith**, *Washington, D.C.*  
**Robert E. Langley**, *Washington, D.C.*
- Wilbur Marsh Lewis**, *Halifax*  
**Jerome F. Lieblich**, *Winchester*  
**Harold E. Lieding**, *Vienna*  
**Susan Daphne Luebehusen**, *Winchester*  
**David Machanic**, *Charlotte, VT*  
**The Honorable Thomas R. McNamara**, *Blue Grass*  
**William Michael McQuade**, *Heathsville*  
**The Honorable Robert R. Merhige Jr.**, *Richmond*  
**Ruth Ellen Mellen**, *Alexandria*  
**Michael W. Moncure III**, *Richmond*  
**The Honorable Thomas R. Monroe**, *Arlington*  
**Waldo H. Moore**, *Alexandria*  
**Charles Anthony Moreau**, *Danville*  
**Andrew Ceselius Muse**, *Williamsburg*  
**Samuel E. Neel**, *McLean*  
**Walter F. Norris**, *Carlsbad, CA*  
**Gary Alfred O'Dea**, *Albuquerque, NM*  
**Edward Sean O'Neill**, *Winter Park, FL*  
**Michael Lawrence Payne**, *Alexandria*  
**Donald P. Peery**, *Roanoke*  
**Harlin Perrine**, *Salem*  
**Kenneth Stewart Potter**, *Spotsylvania*  
**James C. Quarles**, *Gainesville, FL*  
**Raymond H. Quist**, *Armonk, NY*  
**Richard Edward Railey**, *Courtland*  
**Bruce David Rasmussen**, *Charlottesville*  
**Robert Redmond**, *Annandale*  
**John H. Reed Jr.**, *Hurricane, WV*  
**D.E. Rellins**, *Melbourne, FL*  
**William T. Robey III**, *Buena Vista*  
**Elizabeth Van Deren Rothenberger**, *Nashville, TN*  
**William A. Royall**, *Alexandria*  
**Nicholas Sabalos**, *Springfield*  
**John Clark Salyer**, *Olympia, WA*  
**The Honorable Henry J. Schrieberg**, *Richmond*  
**V.R. Shackelford Jr.**, *Orange*  
**Edwin A. Shalloway**, *Alexandria*  
**George W. Stokes**, *Sissonville, WV*  
**Charles B. Sullivan Jr.**, *Arlington*  
**Fred A. Talbot**, *Chesapeake*  
**Walter Wayne Tiffany**, *Virginia Beach*  
**John B. Trent Jr.**, *Roanoke*  
**Donald D. Wear Jr.**, *Arlington*  
**McDonald Wellford Jr.**, *Richmond*  
**Richard W. West**, *Newport News*  
**Frank M. Whiting**, *Venice, FL*  
**Fred Glover Wood Jr.**, *Charlottesville*  
**James T. Wood**, *Williamsburg*  
**Marion A. Youngers**, *Brookfield, WI*  
**Henry B. Zachary**, *Hobe Sound, FL*

## ADMINISTRATIVE LAW SECTION

JoAnne L. Nolte, chair

The Board of Governors of the Administrative Law Section continues its efforts to offer meaningful educational programs to its members and other interested parties. Vice-chair Cliona M.B. Robb and I presented a proposal to amend the section's bylaws, previously approved by the section, to the Virginia State Bar Council in the fall of 2004. The proposal permitted the annual section membership meeting to be held either in conjunction with the May National Regulatory Conference (NRC) or at the Virginia State Bar Annual Meeting. The amendment was approved and the 2005 section meeting was held in the spring, following the NRC in Williamsburg.

### ADMINISTRATIVE LAW NEWS

T. Borden Ellis, an attorney with NiSource, edited his final edition of the *Administrative Law News*, published in late summer of 2004 before retiring as newsletter editor and assuming a position on the section's board of governors. Ellis also contributed an article on the newest member of the State Corporation Commission, Commissioner Mark C. Christie. Kenneth A. Barry from Hunton & Williams wrote of American Electric Power's attempt to join a regional transmission organization. Alexander F. Skirpan Jr., a hearing examiner at the SCC, wrote an article clarifying the commission's Rules of Practice and Procedure. Cassie R. Craze analyzed the Supreme Court of Virginia's decision in *State Water Control Board v. Crutchfield*. At the time she wrote the article, Craze was a third-year law student attending the University of Richmond's T.C. Williams School of Law. She will be assuming a judicial clerkship in the near future. Ashley C. Beuttel, an attorney with the Office of the Attorney General, submitted an article on a recent SCC decision involving the Utility Transfers Act. Brendan O'Toole, a law student at the University of Richmond, contributed an article on regulatory powers of the Virginia Racing Commission. Kiva Bland Pierce, an attorney with The Conrad Firm, summarized the events of the 2004 NRC.

### BROWN BAG LUNCHEON

In March of 2005, the section hosted a successful Fifth Annual Brown Bag Luncheon program. Through the leadership of past president Brian L. Buniva of LeClair Ryan, the luncheon speaker was Virginia Justice Elizabeth B. Lacy who offered helpful tips to the participants on honing their appellate practice skills. Many of the presubmitted questions can be viewed on the section's Web site at [www.vsb.org/sections/ad/](http://www.vsb.org/sections/ad/).

### NATIONAL REGULATORY CONFERENCE

The twenty-third National Regulatory Conference was held May 12–13, 2005, in Williamsburg. The program, entitled "Regulatory Chrysalis: Emerging from the Cocoon," focused on how the regulatory world is changing. Stan Wise, commissioner of the Georgia Public Service Commission, delivered the keynote address.

Through the leadership of Vice-Chair Robb and her committee—made up of in-house counsel, private firm practitioners and attorneys from the public sector—the conference boasted a new format for the materials that were disseminated, which included a beautiful commemorative binder. Each NRC committee member received conference lapel pins to recognize their efforts to make the conference a success.

The panels offered attendees up-to-the-minute information and discussions concerning the following: energy markets, moderated by John A. Pirko of LeClair Ryan; telecommunications, moderated by Dr. Irene Leech, president of the Virginia Citizens Consumer Counsel; regulatory process, featuring a mock trial moderated by Philip R. "Duke" deHaas, counsel to the SCC; fuel industry issues, moderated by James C. Dimitri of McGuireWoods LLC; and legal ethics, moderated by Kiva Bland Pierce of The Conrad Firm.

### WEB SITE

The section boasts a facelift to its Web site ([www.vsb.org/sections/ad/index.htm](http://www.vsb.org/sections/ad/index.htm)), updated under the oversight of Michael J. Quinan of Christian & Barton. To have items posted on the Web site, contact Quinan with your suggestions at [mquinan@cblaw.com](mailto:mquinan@cblaw.com).

### WELCOME THE NEW OFFICERS AND BOARD MEMBERS

New board members and officers were elected at the conclusion of the NRC for the 2005–2006 term. The section's new officers are: Cliona M.B. Robb, chair; James S. Copenhaver, vice-chair; and Michael J. Quinan, secretary. Vishwa B. Link, an attorney with Dominion Resources Services Inc., was elected to the board of governors.



**ANTITRUST, FRANCHISE AND TRADE REGULATION**

*R. Scott Caulkins, chair*

I had the good fortune to chair the Antitrust, Franchise and Trade Regulation Section for 2004–2005. Thanks to our board, we had a successful winter program and continuing legal education during the annual meeting of the Virginia State Bar in Virginia Beach.

In January 2005, we sponsored a CLE luncheon at the Tower Club in McLean. The topic was “Recent Developments in Antitrust Law.” Speakers were J. Bruce McDonald, deputy assistant attorney general for regulatory matters, Antitrust Division, U.S. Department of Justice; and Andrew J. Heimert, executive director and general counsel, Antitrust Modernization Commission. McDonald provided an update on current developments in the Justice Department’s antitrust division. Heimert provided information on the Antitrust Modernization Commission and the status of its work. Both speakers did a terrific job.

Led by Anne Marie Cushmac and Thomas Folsom, the board worked with the business law, administrative law and corporate counsel sections to cosponsor a CLE program entitled “Ethical Issues in Dealing with Governmental Entities,” for the 2005 Virginia State Bar Annual Meeting. It was a well-attended, successful program due to a favorable time slot, a great speaker panel and an opportunity to earn ethics credit.

On a sad note, the board lost a very active member during the year. Ellen Moore was a new member to the board during the 2004–2005 year, but prior to that participated in section activities. Moore worked as assistant editor for the section newsletter, and in 2004 worked hard in the planning of a very successful CLE program for the 2004 VSB Annual Meeting. When she joined the board, she became editor of the section’s newsletter. She was full of enthusiasm and energy, and she will be missed.

During our 2005–2006 section year, we look forward to the leadership of Anne Marie Cushmac as chair, Doug M. Garrou as vice-chair, Kenneth W. Dolbeare as secretary, and Gustav P. Chiarello III, James M. Wilson, Patrick J. Maslyn and Byron E. Fox as board members. Gus Chiarello has graciously agreed to assume the editorial duties for the section newsletter.



**BANKRUPTCY LAW SECTION**

*A. Michele Dickerson, chair*

It has been my pleasure to serve as chair of the Bankruptcy Law Section for 2004–2005. The section was active during this year, especially after the much-anticipated bankruptcy legislation was signed into law.

Robert S. Westermann of Hunton & Williams edited and streamlined the format of *Bankruptcy Law News*.

The section presented the annual basic bankruptcy seminars in conjunction with Virginia CLE in January and February in Norfolk, Northern Virginia, Richmond and Roanoke. Richard C. Maxwell—section vice-chair of Woods Rogers PLC in Roanoke—chaired the seminar committee.

The section presented the annual Advanced Consumer Bankruptcy Continuing Legal Education program in April. The program was designed for more experienced bankruptcy lawyers. Rich Maxwell changed the program due to new bankruptcy laws.

The section presented proof-of-claim seminars to help members of the credit community who routinely file claims for businesses. Under the direction of Roy M. Terry Jr., of DurretteBradshaw PC in Richmond, the section presented a proof-of-claim seminar in Richmond in May.

Under the able leadership of Peter G. Zemanian of the Zemanian Law Group in Norfolk, the section organized seminars to educate members about the new bankruptcy laws. These programs were conducted on the following dates: July 19 (Roanoke), July 21 (Fairfax), July 26 (Norfolk) and July 28 (Richmond) and included at least one local judge, a representative from the U.S. Trustee’s Office and selected presenters.



## REPORTS OF THE SECTIONS

The section cosponsored a continuing legal education seminar, “What Judges and Trial Lawyers Need to Know About Bankruptcy,” at the sixty-seventh annual meeting of the Virginia State Bar. The section was pleased to sponsor this program with the Litigation Section and VSB Bench-Bar Committee. Speakers were the Honorable David H. Adams, United States Bankruptcy Court, Eastern District of Virginia; James E. Brydges of Taylor & Walker PC in Norfolk; and Douglas M. Foley of McGuireWoods LLP in Norfolk.

A nominating committee—comprising board member Lawrence E. Rifkin of McGuireWoods LLP in McLean and former section chairs Michael A. Condyles of Kutak Rock LLP in Richmond and Donna J. Hall of Troutman Sanders LLP in Norfolk and Donald F. King of Odin, Feldman & Pittleman PC in Fairfax—nominated H. Jason Gold of Wiley Rein & Fielding LLP in McLean to succeed Larry Rifkin, whose term expired. Also nominated were Peter G. Zemanian, Roy M. Terry Jr. and Robert T. Copeland to second three-year board terms. These members were elected to the board at the annual meeting.

Rich Maxwell was elected chair of the section; Pete Zemanian was elected vice-chair; and James R. Schroll was elected secretary for 2005–2006.



### **BUSINESS LAW SECTION**

*James J. Wheaton, chair*

The Virginia State Bar Business Law Section continued its emphasis on educating its members. In conjunction with Virginia CLE, the section sponsored the Advanced Business Law Seminar in October 2004 and the Annual Business Law Seminar in spring 2005. The advanced program at the Tides Inn centered on a variety of issues involving the purchase and sale of businesses, including the due diligence process, valuation issues, noncompetition and other side agreements, and legal opinion issues, in addition to the traditional commercial law developments update and ethics program. The annual program focused on business torts.

At the Virginia State Bar Annual Meeting in June, the section also hosted a continuing legal education program.

The section pursued two significant changes during the past year. First, after a long run at the Tides Inn, the section's board of governors decided to schedule the 2005–2006 Advanced Business Law Seminar at the Boar's Head Inn in Charlottesville on February 23–24, 2006. Although the Tides Inn provided a wonderful location, attendance at that location had dwindled to the point where the section's subsidy required us to seek out alternatives. Section members will soon receive details regarding this year's program in Charlottesville. Second, the section's first newsletter in many years is expected to be published this fall.

At the June annual meeting, Peter E. Broadbent Jr. of Christian Barton was elected the 2005–2006 chair.



### **CONSTRUCTION LAW AND PUBLIC CONTRACTS SECTION**

*Timothy R. Hughes, chair*

The Construction Law and Public Contracts Section enjoyed another extremely successful year for 2004–2005. We held our twenty-fifth annual fall program at the Boar's Head Inn in Charlottesville. Our continuing legal education program provided attendees with all the CLE credits required for the year.

Our fall program covered recent developments in the law, ethics, environmental issues, jury selection, land use and Occupational Safety and Health Administration-related matters. We added shorter practical guide vignettes on how to handle practice issues and smaller construction disputes. We continued our “sticks and bricks” presentations with a program on site work issues. We held a mock trial involving construction issues that was presided over by the Honorable John Richard Alderman. Richard F. Smith did a wonderful job preparing for this seminar.

## REPORTS OF THE SECTIONS

Our spring program at the Virginia State Bar Annual Meeting focused on site issues, environmental reviews and “Miss Utility.” Kristan B. Burch and Jack Rephan selected excellent speakers.

We have consciously attempted to have seminar topics that are not only informative and educational, but also have practical application. It is a challenge to offer a balanced series for lawyers experienced in this field and to feature basic matters for newer construction and public contracts lawyers. We believe our seminars strike a balance that is helpful and responsive to the needs of our section.

Matthew P.W. Pritts and Todd R. Metz produced an excellent and informative newsletter for our section, and they are to be commended.

The section updated its handbook of construction cases. K. Brett Marston and Gregory T. St. Ours analyzed cases, wrote summaries and coordinated others’ writing. Board members also wrote summaries.

It has been a distinct pleasure and honor to serve as chair of a section comprised of such distinguished lawyers. I would like to thank all of the board members for their tireless assistance and enthusiasm and to thank to the Virginia State Bar staff who are so crucial to accomplishing all of our tasks—especially our state bar liaison, Elizabeth L. Keller.



### **CORPORATE COUNSEL SECTION**

*Eileen Morgan Johnson, chair*

The Corporate Counsel Section had another successful year. Our newsletter grew in length and members received two issues this year with a third ready to mail. We began to post the newsletter on the Web site so that those who are not section members can have the benefit of the articles in it.

We discontinued our law student writing competition this year due to a dwindling number of entries each year and expanded our law school corporate counsel forum program at George Mason University Law School. We introduced the program at Regent University School of Law and we plan to expand it in the year ahead. During this informal event, a panel of corporate counsel join the students for pizza to discuss career options.

We cosponsored two continuing legal education programs this year. A program on electronic data discovery was held in December with Barnes & Thornburg LLP in Washington. An antitrust forum was held in Richmond in May with McGuireWoods LLP. We cohosted a program on ethical issues in dealing with governmental entities at the Virginia State Bar Annual Meeting in June along with the Administrative, Antitrust and Business Law sections.

Our annual May regional luncheons were held in Norfolk, Northern Virginia and Richmond. We saw increased participation and received requests from members outside of Richmond for more local events.

My thanks to our board—each member was involved in the success of our section this year. Special thanks to our liaison, Dolly Shaffner, who has moved to another position at the Virginia State Bar. She set the bar high for her successor and will be greatly missed.



### **CRIMINAL LAW SECTION**

*Michael N. Herring, chair*

The Criminal Law Section continues to enjoy the enthusiastic support of a broad cross section of the state bar’s membership. With approximately two thousand members, the section is one of the bar’s largest.

The section continued its support for the reform of indigent defense services and funding in the commonwealth. After careful consideration of the work and reports of the various committees on indigent defense, the section’s board of governors unanimously authorized a subcommittee to lobby members of the General Assembly for increased indigent defense funding.

## REPORTS OF THE SECTIONS

The section sponsored its annual Criminal Law Seminar in Charlottesville and Williamsburg. Professor Roger D. Groot of Washington and Lee University Law School encouraged the attendees at the Charlottesville program to take all reasonable measures to improve the quality of indigent defense in Virginia. Professor Groot has steadfastly supported the activities of the Criminal Law Section, and we remain indebted to him for his invaluable leadership in the area of capital murder litigation.

Deputy U.S. Attorney General James B. Comey addressed the section at its Criminal Law Seminar luncheon in Williamsburg. Comey is widely regarded as one of the more competent and ethical attorneys in the Department of Justice, and his comments on the Patriot Act were informative and provocative.

Also at the Williamsburg luncheon, the section posthumously recognized Justin W. Williams for his many years of service to the bar and to our nation during his tenure with the Department of Justice.

Senior Justice Harry L. Carrico presented the section's Carrico Professionalism Award to Overton P. "Opie" Pollard for his tireless efforts as director of the Virginia Public Defender Commission.

In June, the section cosponsored a continuing legal education program with the Family Law Section entitled "Dangerous Intersection Ahead: When Criminal and Family Law Collide." Michael HuYoung did a masterful job as moderator of the program, which focused on the delicate balance between family law and criminal law in domestic relations matters.

At our business meeting Harvey L. Bryant III of Virginia Beach was elected chair of the section for 2005–2006. John E. Lichtenstein of Roanoke was elected vice-chair and Robert B. Beasley of Powhatan was elected secretary. The following members were elected to the board for four-year terms: Carolyn V. Grady of Richmond, David P. Baugh of Richmond and John L. Brownlee of Roanoke.

The section appreciates the generous commitments of Professor Robert E. Shepherd Jr. and Reno S. Harp for their thoughtful guidance and assistance to the board as it manages the affairs of the section. We are also indebted to Elizabeth L. Keller, Dolly Shaffner and Theresa B. Patrick at the state bar.

I have truly enjoyed my tenure on the board and as chair of the section. I hope all of the members of our section have found programming to be engaging and enjoyable.



### **EDUCATION OF LAWYERS SECTION**

*Raymond J. Diaz, chair*

The Virginia State Bar Section on the Education of Lawyers continued to provide a forum for integrating the bench, bar and academia to improve Virginia's legal system.

The Professionalism Program for Law Students, developed by this section and the Standing Committee on Professionalism, was again offered to first-year students at six accredited law schools in Virginia. The program scheduled at George Mason University was cancelled at the last minute due to bad weather. The sessions were well-attended and student evaluations were strongly positive. The program will remain a staple for those beginning the study of law in the commonwealth.

Professor James M. Boland of the Regent University School of Law, the new editor of the section newsletter, produced two interesting and comprehensive issues. He assumed the post in fall 2004 and fulfilled his responsibilities without missing a beat.

Edward B. Lowry continued as chair of the Emerging Trends Committee. The committee worked on developing an agenda and identifying speakers for a conclave on the topic "The Lawyer as Public Citizen." The committee secured funding from law firms in Virginia to present the program in spring 2006.

## REPORTS OF THE SECTIONS

Virginia's seven accredited law schools contribute to the section's annual operating budget. The budget is augmented by matching contributions from Virginia law firms.

The section board of governors thanks the following firms for their generous support: Gentry Locke Rakes & Moore LLP of Roanoke; Michie, Hamlett, Lowry, Rasmussen & Tweel PLLC of Charlottesville; and Williams Mullen of Richmond.

At the section's annual business meeting, Virginia Court of Appeals Judge Rudolph Bumgardner III of Staunton presented the nominating committee's report. Officers elected for the 2005–2006 bar year were George A. Somerville of Troutman Sanders LLP in Richmond, chair; Circuit Judge Cleo E. Powell of Chesterfield County, vice-chair; and Professor Joan M. Shaughnessy of Washington and Lee University in Lexington, secretary.

Elected to second three-year terms were Dean Winston S. Moore of George Mason University School of Law and Professor Shaughnessy. Elected to new three-year terms were Court of Appeals Judge Walter S. Felton Jr. of Williamsburg; Circuit Judge J. Martin Bass of Stafford County; and Anita O. Poston of Vandeventer Black LLP in Norfolk. Professor Paul M. Thompson of the University of Richmond was elected to fill the unexpired term of Brian K. Jackson.

The board thanks Justice Cynthia D. Kinser of Pennington Gap, Judge Bumgardner and General District Judge R. Edwin Burnette Jr. of Lynchburg, who all contributed significantly to the work of the section for the last six years. It has been my pleasure to serve as the section's chair and to work with the judges, academicians and leading private practitioners who make up the board of governors. The section will be especially well-served by Chair Somerville.



### ENVIRONMENTAL LAW SECTION

*Karen L. Lebo, Chair*

The Environmental Law Section sponsored or cosponsored continuing legal education seminars this year and published the *Environmental Law News* in conjunction with student editors at Washington and Lee University School of Law.

In 2004–2005, we published four editions of the newsletter—an increase from two editions published in 2003–2004. Deputy Hanover County Attorney Barbara M. Rose edited the *Environmental Law News*, working with the W&L students to insure high quality. Each edition contained a feature article, summaries of recent regulatory changes in state and federal environmental codes or regulations and a digest of recently published environmental law decisions. Articles discussed the King William County reservoir project; recently adopted Virginia water quality standards regulations for the Chesapeake Bay and tidal tributaries; the Wilderness Act of 1964; the Environmental Protection Agency's Utility Mercury Reduction Rule; the U.S. Forest Service's Roadless Area Conservation Rule, the impact of the federal Endangered Species Act in Virginia; early action compacts and relaxation of federal Clean Air Act enforcement; and the standards of review applied in challenges to state and federal environmental agency actions.

This year we began planning for the publication of the October 2005 edition of *Virginia Lawyer* that will feature environmental law. Chosen by the board to write articles were Andrea W. Wortzel of Hunton & Williams, Stewart T. Leeth of McGuireWoods LLP, Marina L. Phillips of Kaufman & Canoles PC and Caleb A. Jaffe of the Southern Environmental Law Center in Charlottesville.

The section and the University of Richmond T. C. Williams School of Law will cosponsor a symposium about the Chesapeake Bay in the fall of 2005.

The section offered members the option of subscribing to an e-mail discussion group that would allow the section to distribute announcements to environmental law practitioners. The section's Web site also archives section newsletters and links to state and federal government Web sites.

The Environmental Law Section cosponsored with the Real Property Section a spring CLE entitled "It's Not Easy

## REPORTS OF THE SECTIONS

Being Green: A Practitioner's Guide to Environmental Due Diligence" at the Virginia State Bar Annual Meeting. Presenters at the CLE included Ray K. Forrester of the Forrester Group in Springfield, Missouri; Lisa M. Murphy of LeClair Ryan in Norfolk; and Keith H. Canon of Marsh Environmental Practice in Richmond.

The section elected Heather Nixon Stevenson of McGuireWoods LLP, chair for the 2005–2006 bar year. Also elected were Brooks M. Smith of Hunton & Williams, vice-chair, and Rick R. Linker, of the Virginia Department of Environmental Quality, secretary. Caleb Jaffe, of the Southern Environmental Law Center was elected to the board and will edit the *Environmental Law News* for the 2005–2006 bar year. Chair emeritus Marina L. Phillips retired from the board. We wish her well.

We appreciate and enjoyed working with Dolly Shaffner, our VSB staff liaison who has been a mainstay for the Environmental Law Section board. While we will miss working with her, we wish her the best in her new position with the Virginia State Bar.



### **FAMILY LAW SECTION**

*Edward D. Barnes, Chair*

The Family Law Section of the Virginia State Bar continues to improve the quality and relevance of our continuing education for attorneys, the bench and the public.

We launched our Web site which was extensively used.

The section added more than one hundred members. It now ranks as the fourth largest section of the VSB.

Our section presented a continuing legal education program at the VSB Midyear Legal Seminar in Bermuda. Brian M. Hirsch and Annie Lee Jacobs represented our section with a fine presentation. We also coordinated and held the annual Family Law Seminar in October. These were conducted in Richmond, Fairfax, Norfolk and Roanoke. They featured an update on the law, including case law and legislation. We held a seminar in Richmond in January in conjunction with the American Academy of Matrimonial Lawyers.

In May, we conducted the Advanced Family Law Seminar at the Jefferson Hotel in Richmond. We had one of the largest numbers of lawyers and judges attending this seminar in the history of our CLE programs. The program was highlighted by presentations by the Honorable Dennis J. Smith of Fairfax County Circuit Court; David D. Masterman; Susan Massie Hicks; and Lawrence D. Diehl. Edward D. Barnes moderated the program.

Our fiscal year culminated at the VSB Annual meeting in Virginia Beach in June. We cosponsored a CLE program with the Criminal Law Section. Michael HuYoung moderated the program and was joined by the Honorable Lee A. Harris Jr. of Henrico County Circuit Court, and Shepherd D. Wainger. We also cosponsored a continuing legal education program with the Joint Committee on Alternative Dispute Resolution.

This year's recipient of the Lifetime Achievement Award was Donald K. Butler of Richmond. Don is a former chair of the Family Law Section and continues the long line of worthy and distinguished recipients of the award.

We reluctantly bid farewell to two of our distinguished members whose terms were completed—the Honorable Robert P. Frank, judge of the Court of Appeals of Virginia, and Paul F. Nichols from Woodbridge. Both will be missed, as they were vital and valuable contributors to the work of our board. We welcome James W. Korman of Arlington and Mitchell D. Broudy of Virginia Beach as new board members.

I thank all of the members of our board for their unselfish donation of time and expertise. Their devotion to the work of this section is inspiring, and I am sure that it will continue under the leadership of Cheshire FAnson Eveleigh—our new chair. Brian M. Hirsch will serve as vice-president and Craig E. White will serve as secretary for the coming year. I will serve as immediate past chair.

## REPORTS OF THE SECTIONS

I also appreciate the efforts and the hard work of Patricia A. Sliger of the VSB. Without Pat's guiding hand in our activities, our work would be beyond difficult. Pat is our cheerful, ever-diligent representative from the bar. I know that I speak for our entire board in extending our warm regards and thanks to Pat for her hard work.



### **GENERAL PRACTICE**

*Judy L. August, chair*

#### **First Day in Practice Seminar**

The General Practice Section's headline production is its annual First Day in Practice Seminar, cosponsored by the Virginia State Bar Young Lawyers Conference. This program is available to all new bar admittees at minimal cost. The faculty of the 2004 First Day in Practice Seminar included the following speakers: Virginia Court of Appeals Judge James W. Benton Jr.; retired U.S. District Judge Robert R. Merhige Jr.; Circuit Judge Leslie M. Alden, General District Judge Jacqueline Ward Talevi; Juvenile and Domestic Relations District Judge Denis F. Soden; attorneys Craig S. Cooley, Jeannie P. Dahnk, Frank O. Brown Jr., Gerald A. Schwartz, Terrence R. Batzil, Joseph W. Richmond, Keith L. Phillips, and Sharon D. Nelson; and computer expert John W. Simek.

#### **The Tradition of Excellence Award**

The General Practice Section annually recognizes an attorney with at least ten years of experience practicing law and five years as a general practitioner who "embodies the highest tradition of personal and professional excellence in Virginia and in doing so enhances the image and esteem of attorneys in the commonwealth." The 2005 Tradition of Excellence Award was presented to Lawrence H. Hoover Jr. of Harrisburg.

#### **Annual Meeting Workshop**

At the VSB Annual Meeting in Virginia Beach in June 2005, the General Practice Section cosponsored with the Trust & Estates Section and the Senior Lawyers Conference a seminar on current developments in estate and trust law. Frank O. Brown Jr. of the Senior Lawyers Conference moderated.

#### **Section Newsletter**

Kathleen A. McKee from the Regent University School of Law and Daniel J. Farnsworth Jr. of Keysville continue to edit our newsletter.

#### **2004–2005 Board**

The new officers for the section are Mona S. Flax, chair; Charles E. Adams, vice-chair; and Daniel J. Farnsworth Jr., secretary. Other board members include Deborah C. Embrey of Lynchburg, Linda Y. Lambert of Richmond, Kathleen A. McKee of Virginia Beach, George W. Shanks of Luray, Aubrey Jones Rosser Jr. of Altavista, Jill C. Dickerson of Farmville, Alexander F. Dillard Jr. of Tappahannock and David D. Masterman of McLean. Judicial members include the Honorable Barbara Joan Gaden of Richmond and the Honorable Harry T. Taliaferro III of Warsaw. Powell L. Duggan, immediate past chair, is an ex officio member.

#### **Acknowledgments**

Our section's accomplishments would not be possible without our bar liaison Patricia A. Sliger, who is indispensable. This section would have perished long ago without her support, enthusiasm and dedication. Also, thanks to all the Virginia State Bar personnel and the members of our section who contribute their time and their talents to promoting the continued success of the General Practice Section.



### **HEALTH LAW SECTION**

*John C. Bilzor, chair*

Our year began and ended with projects intended to educate non-health law attorneys in the basics of the diverse practice that health law comprises. The Health Law Section sponsored the June/July 2004 issue of the Virginia State Bar magazine, *Virginia Lawyer*. Section members contributed timely and informative articles. Topics included

## REPORTS OF THE SECTIONS

basic review of self-referral and anti-kickback laws, the Health Insurance Portability and Accountability Act, peer review, health care disciplinary proceedings and mergers and acquisitions of medical practices.

The section cosponsored a continuing legal education program in connection with the seventh annual Legislative Update and the Health Law Extravaganza presented by The Virginia Bar Association Health Law Section.

The section's annual business meeting followed the Health Law Extravaganza in April. Stephen C. McCoy will serve as chair of the section during the 2005–2006 bar year. Molly S. Evans will serve as vice-chair and William H. Hall will serve as secretary. Brian K. Brake was elected a new member of the section board of governors.

The section also elected Nathan A. Kottkamp to serve as chair of the newly established Virginia State Bar Advance Directives Committee. The committee initially will promote establishment of an Advance Directives Day in Virginia.

The section sponsored a CLE program entitled "Health Care Providers for Dummies: A Primer for the General Practice Attorney" at the VSB Annual Meeting in June. The program included presentations by Anthony W. Basch on "Primer on Physician Discipline" and William R. Van Buren III on "Physician Employment Agreement Basics."

The section thanks Robyn S. Ellis, Walter P. Sowers II and Shannon E. Sinclair for service and leadership during their terms as members of the board of governors.

I have enjoyed my year of service as the chair of the Health Law Section. I want to thank the Health Law Section and the VSB for providing me with this opportunity, as well as all section members who contributed their time and services during the 2004–2005 bar year.



### **INTELLECTUAL PROPERTY LAW SECTION**

*John B. Farmer, chair*

In 2004–2005, the Intellectual Property Law Section built upon strong past performance with more accomplishments. Every member of our board worked hard to make it a successful year.

We held our first writing competition for Virginia law students. The winner was Susanne C. Walts, now a third-year law student at George Mason University School of Law. Her winning paper was "*In re Klopfenstein: The Federal Circuit's Unprecedented Expansion of the Definition of 'Printed Publication.'*" Walts won the four-thousand-dollar grand prize. Thanks to the Honorable Richard Linn, a member of the United States Court of Appeals for the Federal Circuit, for serving as the final judge for this competition. Judge Linn was a founding member of the Intellectual Property Section Board of Governors and is a past chair of the section. Also, thanks to board members Susan M. Dadio, Janet P. Peyton and Cynthia C. Lynch for organizing and conducting this competition.

We made electronic progress. We upgraded our section e-mail list to include many of the member e-mail addresses. We estimate that we now reach well over half of our section by e-mail, and we hope to increase the percentage. If you are a section member and you have not joined our e-mail list, you can do so on our Web site: [www.vsb.org/sections/ip/index.htm](http://www.vsb.org/sections/ip/index.htm).

We totally rebuilt our Web site. It contains information about coming events and activities, board member contact information, an application to join our section and other (hopefully) useful material.

We presented our usual seminars with great speakers and had great attendance at each of them, thanks to the hard work of section board members.

The section's seminar year began at the 2004 Virginia State Bar Annual Meeting in Virginia Beach. On June 18, 2004, the section presented a continuing legal education program in conjunction with the VSB Business Law Section. Jamie A. Powers, founder and president of Data Rights & Privacy Advisors LLC, presented a general overview of intellectual property rights. Lawrence R. Robins, a partner with Finnegan, Henderson, Farabow, Garrett & Dunner LLP, made a presentation on "Creating Security Interests in Intellectual Property Rights." Section board members David M.

## REPORTS OF THE SECTIONS

Hill and Kristan B. Burch organized this program. Burch organized all of our section's activities at the 2004 and 2005 annual meetings.

We held our seventeenth annual Fall Weekend CLE on October 22 and 23, 2004. Board members Kristan Burch, Janet Peyton and Cynthia Lynch organized the seminar and weekend, and put on a great show. We had great attendance—about sixty individuals, not counting speakers. These were our topics and speakers:

- Use of surveys in trademark infringement cases, by Jacob Jacoby, Ph.D., Merchant Council Professor of Retail Management and Consumer Behavior, New York University, Stern School of Business.
- Discovery and pretrial considerations in patent infringement litigation in the Eastern District of Virginia, by the Honorable Liam O'Grady, U.S. Magistrate Judge, U.S. District Court for the Eastern District of Virginia, Alexandria Division.
- The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, by Curtis P. Lu, deputy general counsel, America Online Inc.
- Open Source Panel Discussion Slides, by Jeffrey A. Berkowitz, partner, Finnegan, Henderson, Farabow, Garrett & Dunner LLP; Jason B. Wacha, general counsel, MontaVista Software; and J.T. Westemeier, partner, Piper Rudnick LLP.
- Ethics and lawyer marketing, by Thomas E. Spahn, partner, McGuireWoods LLP.
- Trade secrets and the enforceability of noncompete provisions in Virginia, by the Honorable Elizabeth B. Lacy, Justice, Supreme Court of Virginia.
- The ethics, art and philosophy of rendering intellectual property opinions, by Samuel C. Miller III, partner, Burns Doane, Swecker & Mathis LLP, and Erin M. Dunston, associate, Burns Doane, Swecker & Mathis, LLP
- Effective advocacy before the Federal Circuit, by John M. Whealan, deputy general counsel for intellectual property law and solicitor for the U.S. Patent and Trademark Office.

Board member Susan M. Dadio organized the section's spring ethics CLE program, which was held at her law firm, Burns, Doane, Swecker & Mathis LLP, on March 26, 2004, in Alexandria. We had a great attendance—about fifty-five individuals. Our speaker was David Hricik, an assistant professor at Mercer University School of Law. His presentation covered conflicts of interest in patent practice, choice of law issues in patent practice and during federal court litigation, and the ethics of taking an interest in an application in lieu of fees.

The section's seventeenth annual fall CLE was scheduled for October 21–22 at the Wintergreen Resort. Board members Kristan Burch, Cynthia Lynch and Chris Ward organized it.

We closed our operating year at the 2005 VSB Annual Meeting by electing new section officers and board members. Our new officers are Chris Mugel, chair; Cynthia Lynch, chair-elect; Janet Peyton, vice chair; and Kristan Burch, secretary. Dominic P. Madigan and Stephan W. Palan are new board members. Also, the whole section board thanks departing board member Michael J. Huppe for his great contributions, hard work and friendship.



### LITIGATION SECTION

*Robert E. Scully Jr., chair*

The Virginia State Bar Litigation Section had another outstanding year in 2004–2005. As she does every year, Patricia A. Sliger, our tireless VSB section liaison, kept us on track and on budget. Vicki H. Devine served as treasurer and found the funds we needed to support our various projects.

The Litigation Section Web site became operational in 2005. It can be accessed through the VSB Web site by clicking on "Sections" or by going directly to [www.vsb.org/sections/lg/index.htm](http://www.vsb.org/sections/lg/index.htm). Many thanks to Ann K. Crenshaw who saw us



## REPORTS OF THE SECTIONS

through several years of the development process. Thanks are also due to Patricia Sliger and the current and former members of the board of governors, who provided the past issues of *Litigation News* that are posted on the site and that have already been well received.

The Litigation Section was the featured section in the December 2004 *Virginia Lawyer*. The articles were written or obtained by members of the board of governors on timely subjects and received high praise from readers of that magazine.

Kevin W. Motley became editor of the *Litigation News* in 2004. He survived a difficult change of publishers and has maintained the high standards for both format and content previously set by R. Lee Livingston.

The section cosponsored two major continuing legal education workshops at the Virginia State Bar Annual Meeting in Virginia Beach. "What Trial Lawyers and Judges Need to Know about Bankruptcy" was cosponsored with the Bankruptcy Section and Bench-Bar Relations Committee. The meeting's showcase program, "The ABA Modern Jury Principles and the Virginia Jury," also was cosponsored with the Bench-Bar Relations Committee.

The Litigation Section also sponsored a reception for appellate judges at the annual meeting. The reception was an opportunity for appellate lawyers to converse with several members of the Court of Appeals of Virginia, including Chief Judge Johanna L. Fitzpatrick. William H. Shewmake was honored as the retiring chair of the appellate subcommittee. L. Steven Emmert became the new chair of that subcommittee.

Paul M. Black and Thomas E. Albro represented the section as panelists at a CLE program on lawyer advertising at the VSB 2004 Midyear Legal Seminar in Bermuda.

As we have in the past, the section sponsored the Law in Society Award high school essay contest.

Unfortunately, as is the case every year, we lost several valuable board members due to the expiration of their terms. In 2005, Judge Lydia Calvert Taylor and Jacqueline G. Epps retired as board members. They will be greatly missed. They will be replaced by Simon H. Scott III of Sams & Scott PC, in Norfolk and the Honorable Rodham T. Delk Jr. of the Suffolk Circuit Court.

At the annual meeting of the section board of governors at Virginia Beach on July 18, 2005, new officers were elected. Samuel W. Meekins Jr. of Wolcott Rivers Gates in Virginia Beach was elected chair. Vicki Hansen Devine of Fumiss, Davis, Rashkind and Saunders PC in Norfolk was elected vice-chair, and R. Lee Livingston of Tremblay & Smith LLP, in Charlottesville was elected secretary.

The section remains the largest in the Virginia State Bar, with 2,235 members. It has sound and dedicated leadership. It is well positioned to continue to achieve its mission of providing educational opportunities that enhance the capabilities of the bench and the trial bar in the commonwealth.

It was an honor and privilege to serve as the chair of the section, and I thank each of the members of the board of governors for their outstanding efforts.



### LOCAL GOVERNMENT LAW SECTION

*Mark K. Flynn, chair*

The Local Government Law Section of the Virginia State Bar concentrated during the 2004–2005 fiscal year on producing journals that address issues facing local government attorneys.

New issues that were addressed in the *Journal* include the *Cochran v. Fairfax County Board of Zoning Appeals* decision of the Supreme Court of Virginia, in which the Court restated the existing law on the standards for granting a variance by a board of zoning appeals. The *Journal* addressed the opinion and the political fallout in the following session of the General Assembly. Changes in the Fair Labor Standards Act on exempt employees as applied to government employees was another topic.

The newsletter included an article on the major rewrite of the law on rental inspection programs. Those pro-

grams are operated by local governments to ensure that apartments and rental houses are safe. The article addressed the new law and its implementation by local governments. Another article cut through the layers of the state budget process to make it comprehensible.

The board of governors adopted a new masthead, thanks to the good work of our editor, Susan W. Custer. The members of the board for the year were Mark K. Flynn, chair; Kevin J. Cosgrove, vice-chair; Barbara M. Rose, secretary; and Harwell M. "Sam" Darby Jr., Phyllis A. Errico, Joseph L. Howard Jr., Michael H. Long, Sandra J. McNinch, Rhysa G. South and Gregory J. Haley.



## **MILITARY LAW SECTION**

*Charles R. Allen Jr., chair*

The Military Law Section provides assistance to the military legal community in Virginia and serves as a liaison to the Virginia State Bar on legal matters affecting the military. On May 13, 2005, the section conducted a seminar with continuing legal education credit on Virginia law for military lawyers at the Naval Amphibious Base, Little Creek. There were presentations on Virginia domestic relations law, will drafting for the military client and professional responsibility for the military practitioner. There was no charge for the seminar, which was well attended by active-duty and reserve military practitioners and lawyers from the civilian community. A thank you is extended to Bob Thomas, Craig D. Bell and Edward L. "Ned" Davis for their fine presentations.

The Board of Governors continued its practice of holding meetings on Virginia military bases, providing an opportunity to meet with the judge advocate general (JAG) lawyers stationed at those bases. In October the meeting was held at the Quantico Marine Corps Base. Colonel Rose Favre, the JAG and senior Marine legal officer at Quantico, was the featured speaker.

The section kept up its efforts to implement an expanded legal assistance program. This program, implemented pursuant to Supreme Court of Virginia Rule 1A:6 and *Code of Virginia* Section 54.1-3900, permits military lawyers in Virginia who are licensed in another state to provide limited services to lower-ranking military personnel in Virginia courts. A drawback to this program is the fee imposed by the Virginia Board of Bar Examiners for approval of non-Virginia military lawyers. That fee has to be paid by the military lawyer and cannot be reimbursed by the government. Through the efforts of board member Alfred F. "Fred" Arquilla, the fee was reduced from \$750 to \$250.

A section newsletter was published by Matthew W. Smith, the newsletter editor. The newsletter contained an interesting and informative article on the observations of a Virginia lawyer serving as a reserve JAG officer in Iraq.

At the annual business meeting on June 17, 2005, at Virginia Beach, the following officers were elected: Diana L. Branscome, chair; Matthew W. Smith, vice chair; Marcus A. Brinks, secretary; and Nicholas S. Murphy, newsletter editor. I wish them success in the coming year. I also want to thank all of the officers and board members for their assistance to the section and me during the past year.



## **REAL PROPERTY SECTION**

*Larry J. McElwain, chair*

The Real Property Section—the third largest in the Virginia State Bar—sought to respond to the needs and desires of its membership, which were expressed during the quarterly board and area representative meetings in Charlottesville, Virginia Beach and Williamsburg. Responses were framed by standing committees and by ad hoc committees appointed to address specific issues.

The traditional continuing legal education seminars were well attended. The Advanced Real Estate Seminar in February 2005 at Kingsmill in Williamsburg was sold out. A new feature of this year's advanced seminar was breakout sessions focused on residential or commercial matters. More topics were presented and attendees had a direct say in the curriculum. The reviews of that program—along with the twenty-third annual Real Estate Practice Seminar, held at four locations throughout the state—and the seminar held during The Virginia Bar Association's summer meeting

## REPORTS OF THE SECTIONS

(cosponsored with the Environmental Section) were uniformly laudatory. Planning for the 2005–2006 seminars is under way.

The section publishes its newsletter, *The Fee Simple*, twice a year. *The Fee Simple* is invaluable, with past issues a part of many members' personal libraries. We established a writing competition this year. The winner will be published in *The Fee Simple* and its author will receive a monetary award.

One of our goals was to rekindle the relationship of the section with the Real Property Section of The Virginia Bar Association, to highlight topics that should be addressed by the state legislature.

The section is a vibrant, responsive mechanism to enhance the quality of law practiced by its members.



### SENIOR LAWYERS CONFERENCE

*William B. Smith, chair*

The Senior Lawyers Conference got a dramatic jump start in June when Chief Justice Leroy R. Hassell Sr. of the Supreme Court of Virginia asked to meet with the leadership of the conference at the Virginia State Bar Annual Meeting at Virginia Beach to discuss his ideas of how the Supreme Court might work with the conference.

At the request of the Chief Justice, I named Earle Garrett III of Danville, Harriette H. Shivers of Roanoke, Robert L. Calhoun of Alexandria, Thomas F. McPhaul of Norfolk, and John G. Mizell Jr. of Richmond as the SLC Involuntary Commitment Procedures Committee—with Garrett chair. In November, the committee, William T. Wilson of Covington, other SLC board members and the SLC chair attended a luncheon at the Supreme Court arranged by Chief Justice Hassell to discuss involuntary commitment issues and concerns and to outline the plan for a statewide conference and workshop in the fall of 2005.

As chair of the conference, I have attended meetings of the Virginia State Bar Executive Committee and Council. I also was invited to and attended the Judicial Conference of Circuit Court Judges.

Former SLC Chair Colin J.S. "Cal" Thomas Jr. of Staunton, Edward R. Slaughter Jr. of Charlottesville and Homer C. Eliades of Hopewell are developing seminar programs on civility and professionalism. F. Mather Archer of Portsmouth served as liaison to the Lawyers Helping Lawyers Committee, and Wilson was liaison to the VSB Litigation Section. Clarence M. Dunnville Jr. of Richmond and Henry L. Woodward of Roanoke are working to involve senior lawyers in pro bono legal work with legal aid societies. Patricia A. Barton of Springfield was instrumental in increasing the distribution of the *Senior Citizens Handbook*, and retired Judge J. Davis Reed of Virginia Beach contributed considerable time and effort to editing portions of the newly revised handbook, which was printed in time for distribution at the 2005 annual meeting of the VSB. Jack W. Burtch Jr. of Richmond kept accurate minutes of our meetings, and Treasurer Robert A. Cox Jr. of Richmond made sure we stayed within our budget. George W. Shanks of Luray and Wilson served on the panels of two bar leadership programs presented by the Conference of Local Bar Associations and gave an overview of the activities of our conference.

Wilson planned and presented a program on the *Senior Citizens Handbook* to the public at the courthouse in Covington. His work on this project is a model for future presentations to the elderly by local bar associations.

Frank O. Brown Jr. of Richmond, former chair and our newsletter editor and Webmaster, keeps the board fully informed about all deadlines and procedures. He also chairs our nominating committee and presents seminars to local bar associations on protecting lawyers' and clients' interests in event of the lawyer's disability, death or other disaster.

Other members of our board not mentioned above—R. Hunter Manson III of Reedville, Carolyn O. Marsh of Richmond, John H. Tate Jr. of Marion, Ebb H. Williams III of Martinsville and retired Judge James E. Kulp of Richmond, and Joseph E. Spruill of Tappahannock and Frank M. Slayton of South Boston all made valuable contributions to the work of the conference.

Patricia A. Sliger is the VSB staff liaison in Richmond and the right hand of the Senior Lawyers Conference leadership. She is always available, supportive and informative. She is especially adept at reasoning out how to get SLC projects and activities done.

The Senior Lawyers Conference is alive and well and looking forward to the future in planning and making contributions to its mission.



## TAXATION SECTION

*M. Powell Peters, chair*

**Publications**—The Taxation Section is preparing a newsletter for mail and electronic distribution to its members later this year.

**Expansion of Board/Activities**—In an effort to increase its diversity and better meet the needs of the tax bar, the board is seeking to add representatives from the academic community and in-house counsel.

**Liaison with the Department of Taxation**—The board will seek to provide assistance from the tax bar to the leadership of the Virginia Department of Taxation, to enhance the department's efforts to improve the quality of tax administration in the commonwealth and provide input on important policy issues.

The following officers will serve until the 2006 Annual Meeting: Geoffrey C. Dodson, chair; Elizabeth J. Atkinson, secretary; and David S. Lionberger, newsletter editor.

Other members of the board of governors are Mark Wayne Botkin, William Guy Fendley IV, Robert Gawain McElroy and McGlemre Powell Peters.



## TRUSTS AND ESTATES SECTION

*Amy G. Pesesky, chair*

Newsletter editor Victoria J. Roberson did a great job pulling together two newsletters for the Trusts and Estates Section during the fiscal year 2004–2005. I thank the following individuals who shared their excellent work in the two newsletters published this term: Avram H. Zysman, Kimberly Ann Murphy, Peter A. Dingman, Elizabeth G. Engle, Dana G. Fitzsimmons Jr., Christopher D. Scott and John E. Donaldson.

In November 2004, the twenty-third annual Trusts and Estates Seminar was held in Richmond, Roanoke and Fairfax. The seminar, cosponsored by Virginia CLE, was informative and well-received. As always, Howard M. Zaritsky's materials on recent developments and J. William Gray's materials on Virginia developments kept attendees informed on current issues. In addition, presentations on practical ethical considerations for trusts and estates lawyers, legal and practical issues involving cemeteries and funeral homes, basic trust concepts and total return trusts were well-done and timely.

The Trusts and Estates Section partnered with the Senior Lawyers Conference to present a workshop entitled "Current Developments in Estate and Trust Law" at the Virginia State Bar Annual Meeting. Frank O. Brown and I presented J. William Gray's materials, entitled "2004–2005 Virginia Developments in Estate Planning and Administration."

At the annual meeting, Laura O. Pomeroy was elected chair of the section, Donna Esposito Fincher was elected vice-chair, Victoria Roberson was elected secretary and John T. Midgett was elected newsletter editor.

**YOUNG LAWYERS CONFERENCE**

*Savalle C. Sims, president*

**Voter Education Initiative:** Under the leadership of Jennifer L. McClellan, the Young Lawyers Conference worked with the Virginia Board of Elections to distribute a “Know Your Rights and Responsibilities” brochure to citizens across the commonwealth. The Young Lawyers Conference distributed approximately one hundred thousand brochures to the American Association of Retired Persons, the Richmond Crusade for Voters, the Richmond Junior League, several churches in Richmond and Alexandria, and civic organizations.

**Diversity Tolerance Initiative:** In late November and early December, the Young Lawyers Conference implemented the “Welcome to School: Helping Kids Belong” project to approximately one hundred third graders at Varina Elementary in Henrico County.

**Students’ Day at the Capitol:** This fall, the Young Lawyers Conference implemented the Students’ Day at the Capitol program in Richmond under the leadership of Christy E. Kiely. More than six hundred students and teachers participated over a two-day period in programs at the State Capitol of Virginia, the Supreme Court of Virginia and the Governor’s residence.

**Emergency Legal Services:** In collaboration with The Virginia Bar Association Young Lawyers Division, the Young Lawyers Conference Emergency Legal Services Committee activated and undertook the following efforts:

- Tropical Depression Gaston—The Virginia Lawyer Referral Service provided referrals related to Tropical Depression Gaston in September 2004. The Young Lawyers Conference assisted thirty-five to forty persons.
- Hurricanes Frances and Ivan Remnants—Virginia State Bar Emergency Legal Services cochairs Jeffrey H. Geiger and J. Barrett Lucy monitored the rain/flood activity from these storms.
- Training of Volunteers—In conjunction with The Virginia Bar Association, the VSB Young Lawyers Conference ELS Committee conducted a telephone continuing legal education volunteer training session for twenty persons on October 7, 2004.

**Oliver Hill/Samuel Tucker Prelaw Institute:** The Oliver Hill Pre-Law Institute was held July 18–23, 2004, at Virginia Union University. Twenty-five students from Richmond, Newport News and Stafford County attended. Also present were former Virginia Justice John Charles Thomas, U.S. Court of Appeals Judge Roger L. Gregory, Virginia State Bar President David P. Bobzien and VSB Executive Director Thomas A. Edmonds.

**2005 Professional Development Conference:** The fourth annual Professional Development Conference was held March 18-19, 2005, at the University of Virginia Darden School of Business. This year’s PDC offered training in transactions, in-house counsel, and litigation. Fifty persons attended.

One of the highlights of the session was the first of the Young Lawyers Conference’s jury-based initiatives: “A View from the Box: A Panel Discussion of Judges, Trial Lawyers and Former Jurors.” Craig S. Cooley and Julia B. Judkins served on the panel with several jurors. U.S. District Judge James P. Jones of the Western District of Virginia served as moderator.

**Celebration Bench-Bar Dinner:** This year’s Celebration Bench-Bar Dinner was held in Richmond on February 28, 2005, at the Virginia Museum of Fine Arts. American Bar Association President Robert J. Grey Jr. was the keynote speaker. Women and minority judges were honored at the event.

**Community Law Week:** In May and June, the Young Lawyers Conference implemented two programs:

- No Bills Night—No Bills Night was held in Richmond and Danville. In Roanoke, the event was offered on May 4, 2005, over NBC affiliate Channel 12’s “Call 12.” Five Young Lawyers Conference volunteers handled eighty-five calls concerning medical malpractice, collections, personal injury, contract and tenant-landlord disputes. In Danville, the event was held on May 12, 2005. Danville volunteers fielded fifty calls.

## REPORTS OF THE SECTIONS

- “We the Jury”—The “We the Jury” program was implemented in four schools in the commonwealth. On May 16 and 17, 2005, under the leadership of Theodore W. Atkinson, the program was presented to two hundred students at Stonewall Jackson High School in Manassas. On May 25 and 26, Young Lawyers Conference volunteers conducted the program at Patrick Henry High School in Roanoke before twenty students. Conference volunteers presented the program to approximately 350 students at West Potomac High School in Alexandria on June 1 and 2. And on June 6 and 7, two hundred students participated in the program at First Colonial High School in Virginia Beach.

**Minority Pre Law Conference:** The Minority PreLaw Conference was held on April 23, 2005, at the University of Richmond’s T.C. Williams School of Law. The goal of the program was to show students how to start a legal career, from the law school admissions process to the selection of career opportunities. David P. Bobzien made opening remarks at the conference, which hosted fifty-one participants. Eight law schools participated.

**“Wills For Heroes”:** “Wills for Heroes” was successfully implemented in Williamsburg. A continuing legal education program to train volunteers was held on April 20, 2005. A client education session was held on May 14, 2005. At the will signing session, Young Lawyers Conference volunteers prepared wills, powers of attorney and advance medical directives for two dozen first responders.

**Annual Meeting:** The Young Lawyers Conference sponsored a debate between the Democratic and Republican candidates for attorney general of Virginia. Rebecca J. Cooper, a reporter for ABC’s Washington, D.C., affiliate WJLA-TV, moderated the debate.

**Admission and Orientation Ceremony:** The Young Lawyers Conference welcomed 353 Virginia attorneys at the June 2005 Admission and Orientation Ceremony and 939 admittees at our fall Admission and Orientation Ceremony held in October 2004. After each program, the Supreme Court of Virginia convened in the Richmond Convention Center and bestowed the duties and responsibilities of our profession upon Virginia’s newest lawyers.

**Docket Call:** The Young Lawyers Conference published three editions of our *Docket Call* newsletter over the course of the past bar year, keeping our membership informed about our activities and providing helpful practice tips and other information. The *Docket Call* again garnered national recognition from the American Bar Association Young Lawyers Division, receiving first place for newsletters distributed to conferences of similar size.



**STANDING COMMITTEE ON BUDGET AND FINANCE**

*William E. Bradshaw, chair*

The Standing Committee on Budget and Finance met on March 24, 2005, and reviewed the staff's detail for the 2005–2006 proposed Virginia State Bar operating budget. Immediately following the meeting, the proposed budget was sent to Chief Justice Leroy R. Hassell Sr. and all members of the Supreme Court of Virginia for their review and approval. The proposed budget was reviewed by the Executive Committee on April 15, 2005. The Chief Justice requested several minor changes, which were incorporated for review by the VSB Council in June. The council approved an operating budget for fiscal year 2005–2006 for the bar totaling \$11,574,625. This budget includes a one-time expense of \$1,058,000 for set-up costs for new employees and for the ongoing computer project.



**STANDING COMMITTEE ON LAWYER ADVERTISING  
AND SOLICITATION**

*Daniel L. Rosenthal, chair*

The Standing Committee on Lawyer Advertising and Solicitation (SCOLAS) monitors lawyer advertising and solicitation in Virginia, responds to inquiries regarding the propriety of certain lawyer advertising and issues advisory opinions when, in the judgment of the committee, it is helpful to do so. The SCOLAS meets every other month at the offices of the Virginia State Bar in Richmond.

The committee and assistant bar counsel review in detail selected broadcast media and Yellow Pages ads and other printed advertising material to determine compliance with the applicable *Rules of Professional Conduct*. If the committee finds that an ad is in violation of a rule, a letter is written to the responsible lawyer pointing out the problem and requesting that the advertisement be modified accordingly. In the fiscal year ending 2005, sixty-seven such letters were sent to lawyers who in all cases voluntarily complied with the committee's request. None of the matters were referred to discipline.

The SCOLAS is proposing an amendment to Rule 7.4(d) that concerns a lawyer's ability to advertise certain certifications or accreditations. This amendment was approved by the Virginia State Bar Council at its meeting on June 16, 2005, and was submitted to the Supreme Court of Virginia for consideration. The amendment incorporates the American Bar Association's position in the current Model Rules—that if an attorney has been certified by an ABA-accredited organization, the attorney can advertise that he or she is so certified without any disclaimer. The amendment adds further distinction to the current rule that requires a disclaimer for all certifications that are not recognized by the Supreme Court of Virginia. The amendment comes as a committee response to requests from many of the practicing members who carry these ABA specialty certifications. In making this recommendation, the committee has confirmed that the ABA has a stringent accreditation process to ensure that certified lawyers have been evaluated, have demonstrated substantial involvement in the subject area, received adequate peer review, passed a written examination and are currently in good standing with their state bar.

The Court approved the committee's proposed amendments to Rule 7.2(e) and Comment [1] of Rule 7.5, which became effective June 30, 2005. The amendment to Rule 7.2(e) allows attorneys who advertise to file a written statement with the Virginia State Bar identifying the lawyer responsible for all firm advertising, rather than having to include that identifying information in every advertisement. This revision came from suggestions of the practicing bar whose firms engage frequently in advertising. The Court also approved the amendment to Comment [1] of Rule 7.5, which comes as a result of the ethics counsel realizing that language in the disciplinary rules, specifically EC 2-13, was not included in the new rules when they were adopted in 2000. The language clarifies that a law firm could continue to use the name of a retired or deceased member in the firm's name, if the lawyer was a member of that firm, if doing so is authorized by law or by contract and if the public is not misled.

One opinion, Legal Advertising Opinion A-0114, was carried over from the fiscal year 2003 and is currently pending approval, modification or rejection with the Supreme Court. The opinion states 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*." The opinion additionally cautions that "any advertisement which makes statements or claims beyond the fact that the lawyer is listed in such a publication must comply with Rule 7.1." In addition, the Allen, Allen, Allen & Allen law firm of Richmond filed an alternative opinion, with response from the Virginia State Bar to be considered by the Court.

## REPORTS OF STANDING COMMITTEES

I wish to thank the members of the committee—Alison P. Landry, vice-chair; Alan S. Anderson; Kevin O. Barnard; Gina M. Burgin; Jeffrey H. Krasnow; William Miller, lay member; William L. Schmidt; David R. Selig, lay member; George L. Townsend; and C. James Williams III—for their dedication and contributions to the work of the committee during the past year.



### STANDING COMMITTEE ON LAWYER DISCIPLINE

*Ray W. King, chair*

The Standing Committee on Lawyer Discipline (COLD) oversees the attorney disciplinary process, including the bar's investigation and prosecution of complaints. The COLD also formulates and presents proposed amendments to Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia, which govern the attorney disciplinary process, to the Virginia State Bar Council, which in turn decides whether to petition the Court to adopt the proposed rule amendments.

COLD held the twenty-fifth annual Disciplinary Conference on July 10 and 12, 2004, in Williamsburg. All attorney and lay volunteers serving on district committees, the Disciplinary Board and the COLD were invited to attend the conference. The program included an overview of the disciplinary system, presentation and discussion of case vignettes, and separate break-out sessions for new members, lay members and officers of district committees.

Eric F. Shell, the COLD's immediate past chair, headed the Oversight Subcommittee in fiscal year 2005. Subcommittee members randomly reviewed approximately 245 case files to ensure that bar counsel handled them in a procedurally correct fashion. The random reviews did not reveal any instances where bar counsel had handled cases inappropriately. In addition to the random case file reviews, the Oversight Subcommittee responded to complaints about the way in which particular attorney disciplinary matters were handled and resolved.

Howard W. Martin continued to chair the COLD Rules Subcommittee during fiscal year 2005. The subcommittee proposed, and the COLD approved, nine amendments to Paragraph 13, which were presented to the VSB Council for consideration at its February 18, 2005, and June 16, 2005, meetings. One of the proposed rule changes would give the bar a limited right of appeal in attorney disciplinary matters.

The council approved the amendments, and the bar subsequently petitioned the Supreme Court to adopt them. The Court adopted four of the amendments; the other five are still pending before the Court. During fiscal year 2005, the Court also adopted ten rule amendments that the COLD presented and the council approved in fiscal year 2004.

Deputy Bar Counsel Harry M. Hirsch, working with the Rules Subcommittee, developed a bench book for three-judge panel proceedings. The bench book has been submitted to the Supreme Court's Bench Book Committee for possible inclusion in the bench book that the Court disseminates to all circuit court judges. The Clerk of the Disciplinary System is currently distributing the VSB bench book to judges appointed to serve on three-judge panels.

The COLD appointed a special subcommittee, chaired by Andrew H. Goodman, to review how the bar receives and processes complaints against attorneys. The subcommittee's assignment was to make the system more user-friendly and accessible to the public. The subcommittee recommended some modest improvements to the system, including securing a toll-free telephone number to provide information about how to make a bar complaint and accepting complaints via e-mail. The bar implemented both recommendations. The subcommittee also recommended that bar complaints not falling within the jurisdiction of the attorney disciplinary process be classified as "inquiries" and not counted as "complaints" for statistical purposes. This change was implemented in January 2005.

In fiscal year 2005, the number of bar complaints increased, largely due to a rash of complaints stemming from procedural defaults in criminal appeals. The increased number of procedural default complaints resulted in part from a series of editorials in the *Washington Post* and discussions with the Virginia Court of Appeals and Supreme Court about how to address the problems identified in the editorials. As in previous years, neglect and failure to communicate remained the most common complaints in fiscal year 2005, and criminal law is still the practice area most likely to give rise to bar complaints.



In an effort to keep attorney and lay volunteers who serve on district committees and the Disciplinary Board better informed about rule changes and other attorney disciplinary developments, the COLD e-mailed newsletters in November 2004 and June 2005. The newsletters were well received, and the committee plans to disseminate newsletters three or four times each year.

In fiscal year 2005, Ray W. King, COLD Chair, and VSB Counsel Barbara A. Williams began meeting regularly with the Chief Justice to identify and discuss attorney disciplinary issues. These meetings have facilitated a helpful exchange of information between the COLD and the Court.



## STANDING COMMITTEE ON LEGAL ETHICS

*James O. Broccoletti, chair*

### ETHICS OPINIONS

The 2004-2005 year started out with five opinion requests carried over from the prior fiscal year. The committees received thirty-nine requests in 2004-2005. Twenty of these requests were handled as legal ethics inquiries, where the request dealt with issues that have been addressed by previous opinions and do not require a new opinion. Nine opinions were issued; ten opinion requests remain open. Two of the ten opinions that remain open are pending final approval by the committee because a press release must be issued requesting public comment, pursuant to the new procedures for issuing opinions under Part 6, Section IV, Paragraph 10 of the Rules of the Supreme Court of Virginia, effective January 1, 2005. Two opinion requests were withdrawn. Summaries of each of the issued opinions are as follows:

LEO 1786—This opinion deals with the disclosure and use of confidential documents obtained by a client without authorization. The opinion discusses ten scenarios, each involving one attorney receiving documents regarding the opposing party. In each scenario, the question addressed whether the attorney must return the documents and whether he can read and use the information contained in the documents. The answer depends on the facts outlined in each scenario.

LEO 1800—This opinion asks whether nonattorney support staff is subject to the conflicts of interest prohibitions and whether an attorney's hiring of opposing counsel's secretary creates an impermissible conflict for the hiring attorney. The opinion looks to Rule 5.3 which governs an attorney's ethical responsibilities regarding nonlawyer assistants and presents suggested screening techniques that the supervising attorney can choose to follow. The opinion concludes that an attorney is not required to withdraw from the representation despite having hired his opponent's secretary so long as appropriate measures are taken.

LEO 1803—This opinion questions whether ethical obligations apply to an attorney who is serving as an institutional attorney in a state prison. The opinion concludes that whenever an attorney has assisted an inmate in drafting a pleading, the attorney must ensure that the inmate does not inform the court that he is just *pro se*; rather, the inmate must disclose that he was assisted by an institutional attorney who no longer represents him. The opinion expressly supersedes prior LEOs that carve out an exception to the ethics rules for attorneys working as scribes.

LEO 1804—This opinion deals with the impartiality of a judge whom an attorney supported in an inquiry proceeding against the judge. The request specifically asks whether Rule 3.5(d) triggers a conflict of interest, requiring disclosure by the attorney to opposing counsel in this situation. The committee found that Rule 3.5(d) does not reach the sort of action taken by this attorney. Paragraph (d) expressly applies only to gifts and loans; therefore, the attorney is not required to make a disclosure to opposing counsel.

LEO 1806—This opinion deals with a potential conflict of interest in litigation involving real estate that is owned by trustees. The opinion finds that the opposing parties in the litigation are the three individuals who currently operate in the role of trustee, but are nonetheless the same individuals who originally purchased the real estate. The committee finds that the conversion to a trust does not change the application of the conflict rules to these former clients.

## REPORTS OF STANDING COMMITTEES

LEO 1807—This opinion deals with an attorney who issues a subpoena to garnish the retainer fee that was paid by the former client and is held in the new attorney's trust account. The opinion finds that it is not a per se violation for an attorney to garnish the funds of a former client that are in a new lawyer's trust account. As the new attorney has not yet earned the legal fees, he has no legal claim to them and holds them only on behalf of the client.

LEO 1810—This opinion addresses a potential conflict of interest where the attorney is serving as guardian *ad litem* when opposing counsel in the divorce matter was a former partner. The opinion finds that a conflict does not exist because the connection is not strong enough to "materially limit" the ability to represent the child.

LEO 1811—This opinion deals with whether an attorney is required, or even allowed, to disclose documents to a third party from his file about a former client who has retained new counsel. The opinion finds that it is permissible for the attorney to decline to provide the requested documents to the third party and instead to refer the requester to the former client's new attorney.

LEO 1813—This opinion is a joint opinion issued by the Standing Committee on Lawyer Advertising and Solicitation and this committee. This opinion generally addresses whether two law firms can use the term "affiliated" or "associated" to describe the relationship between the firms on their letterhead. This opinion finds that the communication that one firm is "affiliated" or "associated" with another is not prohibited so long as the relationship between the firms is such that the communication is not false or misleading. This opinion also assumes that if "associated" or "affiliated," the law firms adhere to applicable rules regulating disclosure of confidential information and conflicts of interest as if they were a single firm.

### RULE AMENDMENTS

RULE 1.7—The Supreme Court of Virginia approved the committee's proposed amendment to Rule 1.7 of the Virginia *Rules of Professional Conduct*, which became effective June 30, 2005. This amendment was originally part of the committee's comprehensive review of the *Rules of Professional Conduct*, the majority of the amendments of which were approved by the Supreme Court of Virginia and went into effect on January 1, 2004. The amendment to Rule 1.7 replaces the rule in its entirety, and the new language is from the Ethics 2000 Initiative. The committee found persuasive the American Bar Association's contention that the current language of Rule 1.7 is ambiguous. The purpose of the new language is to provide a clearer test for lawyers to apply to potential conflicts of interest; nonetheless, the committee did not believe the new language represents a substantively different test, just a clearer articulation of the current one. The committee, however, chose not to include the ABA's requirement that consent be in writing, as that requirement would have been a substantive departure from the current rule. The proposed amendment does require that an attorney memorialize in writing that the attorney and client discussed a conflict and that the client consented to the lawyer continuing the representation. Further, the committee amendments to the comments of the rule clarify that, while any memorialization would be better than none at all, it would be best to obtain the client's consent in writing.

The committee took the language from Rule 2.2 (this rule was deleted by the amendments effective January 1, 2004) and put it into the comments of Rule 1.7. The elimination of Rule 2.2 was due to concern that there could be confusion between Rule 1.7's application to joint representations and former Rule 2.2's application to the lawyer's role as intermediary. As the two contexts are indistinguishable, all such situations would now be handled in one rule, i.e., Rule 1.7.

Recent Revision to Rule Regarding Promulgation of Advisory Opinions—The Supreme Court approved the committee's proposed amendments to Part 6, Section IV, Paragraph 10 of the Rules of the Supreme Court of Virginia, which became effective on January 1, 2005. The amendments require the standing committees to issue "draft" or "proposed" opinions to be published for comment while the opinions are still pending before the committee.

Two other areas of needed improvement in paragraph 10 were also approved. The first clarifies the application of paragraph 10. The rule-making process outlined in paragraph 10 applies only to changes to *Rules of Professional Conduct* and the Unauthorized Practice Rules, and not to changes to paragraph 13, which contains the rules of procedure for the discipline system. To reinforce that paragraph 13 changes are not subject to the paragraph 10 process, a definitional change limits this paragraph's application to rule changes proposed by the Legal Ethics Committee, the Unauthorized Practice of Law Committee, or the committee on Lawyer Advertising and Solicitation.

The final amendment approved regards the informal ethics advice that the bar's ethics counsel provides via the telephone. While it has always been the ethics counsel's policy that these calls are confidential, that policy is not

currently incorporated in paragraph 10. Language has been added to confirm that the calls are confidential and that the ethics counsel may only testify regarding the content of such a call if the caller consents.

#### **ETHICS TELEPHONE CALLS**

From July 1, 2004, through June 30, 2005, the average number of ethics calls to VSB staff attorneys per month has been 339. This represents a slight decline from fiscal year 2004's average of 344 calls per month. This number, however, represents a steady increase of calls; FY 03's average was 305 calls per month; FY 02's average was 280 calls per month; and FY 01's average was 266 calls per month.

I wish to thank the members of the committee: Roger T. Creager, vice-chair; Jennifer A. Brust, Kathleen A. Dooley, John P. Fishwick, Leonard C. Heath Jr., David Ross Rosenfeld, Thomas E. Spahn and Steven T. Telfeyan for their dedication and contributions to the work of the committee during the past year.



#### **STANDING COMMITTEE ON PROFESSIONALISM**

*David E. Roop, Jr., chair*

The Virginia State Bar's mandatory professionalism course has become the cornerstone for professionalism training of all newly admitted Virginia lawyers. Since 1988, approximately sixteen thousand new admittees to the Virginia bar—more than half of the lawyers in active practice—have taken the course.

The Standing Committee on Professionalism has three areas of responsibility:

- Selection of faculty members for nomination to the Chief Justice of the Supreme Court of Virginia.
- Oversight of the curriculum for the course.
- In cooperation with VSB staff, the administration of the course.

Faculty for the professionalism course comprises seventy-five judges and lawyers, each serving a three-year term. The faculty is chosen to achieve diversity of geography, practice area and legal experience—with an emphasis on excellence and professionalism. Approximately twenty-five faculty members are chosen for nomination each year. After the faculty members are nominated by the standing committee, they are invited by the Chief Justice, upon his approval, to serve a three-year term.

New faculty members are invited to a faculty training seminar given in early October in Richmond. New and current faculty members are oriented to the theory of the curriculum, the mechanics of the course and its aspirational goals.

The course is offered seven times during each academic year: twice in Northern Virginia, twice in Richmond and once each in Roanoke, Portsmouth and Charlottesville. The number of students varies from approximately one hundred to more than three hundred at each meeting of the course. The course is held from 8:30 A.M. until 5 P.M.

In addition to the regularly scheduled meetings of the course, two sessions were held during the 2004–2005 bar year, and one will be held during the 2004–2005 bar year year to accommodate the large number of admittees joining the bar pursuant to the new Corporate Counsel Rule. These courses will handle the one-time increase in the annual number of admittees. The committee anticipates that in future years the seven-course schedule will be adequate to serve all new members.

A welcome in the morning from the VSB president begins the day, followed by a presentation of the new *Professionalism in Virginia* video. This video—which incorporates footage of former Virginia Chief Justice Harry L. Carrico and the late U.S. Supreme Court Justice Lewis F. Powell Jr.—also includes comments and thoughts on professionalism from contemporary justices, judges and lawyers from around the commonwealth.

The curriculum of the course is reviewed annually to assure the currency of the ethical rules articulated. The standing committee is in the process of revising the real-life situations that are discussed in both the general workshop sessions and the specialty workshop sessions before and after lunch.

Judge Jeri K. Somers is chair of the committee and moderator of the course for 2005–2006. Judge Jacqueline Ward Talevi is vice-chair, and Judge J. Martin Bass continues as vice-chair in charge of the law school program.



## STANDING COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW

*Jon C. Poulson, chair*

The Standing Committee on Unauthorized Practice of Law (UPL Committee) is charged with two duties. It investigates complaints alleging that individuals or business entities are engaged in the unauthorized practice of law, and it renders opinions to Virginia-licensed attorneys on whether specific conduct constitutes the unauthorized practice of law.

During the past year, eighty-two new investigations were opened in addition to the thirty-seven investigations remaining on the UPL Committee's docket from previous years. Of those open investigations, ninety-three were closed during the year. During the fiscal year ending 2005, twenty-nine investigations were referred to a commonwealth's attorney for prosecution. The UPL Committee also has the option of referring matters to the attorney general, and five files were referred to that office.

UPL Opinion 209 was requested this fiscal year. It addresses the issue of whether it is the unauthorized practice of law for an attorney licensed in a jurisdiction other than Virginia to represent a client in the state before the Virginia Gas and Oil Board (the Board). Relying upon the definition of a nonlawyer found in Part 6, § I(C) of the Rules of the Virginia Supreme Court of Virginia, UPR 1-101(A) (which prohibits a nonlawyer from representing another before a tribunal) and UPC 1-1 (which defines "tribunal") as well as UPL Opinions 158, 195 and 201 (which address the scope of practice by a foreign attorney in Virginia), the UPL Committee determined that it would be the unauthorized practice of law for an attorney licensed in a jurisdiction other than Virginia to represent a client before the Virginia Gas and Oil Board. This conclusion is based primarily upon the determination that the Virginia Gas and Oil Board is a "tribunal." The Board was created by the Virginia Gas and Oil Act, § 45.1-361.1 *et seq.* of the *Code of Virginia* (1950, as amended). A review of the provisions of the act indicates that the Board does more than simply "promulgate rules and regulations of general applicability." It does determine the rights and responsibilities of the parties before it. It must conduct its hearings pursuant to the "formal litigated issues hearing provisions" of the Administrative Process Act (§ 2.2-4000 *et seq.*), which makes no allowance for appearance by a nonlawyer to represent a party in such a hearing. Without such authority, and the Board being a "tribunal," any representation must be by a licensed Virginia attorney. Based on this authority the UPL Committee finds that representation by a nonlawyer (which includes a lawyer licensed outside Virginia) before the Virginia Gas and Oil Board is not appropriate and would be the unauthorized practice of law. This opinion just completed the initial comment stage and will be distributed by press release for comment before its consideration by the Virginia State Bar Council at the October 2005 meeting.

UPL Opinion 207 was carried over from the prior fiscal year and is currently pending approval at the Supreme Court of Virginia. This opinion addresses whether an attorney may train a nonattorney social worker to assist members of the general public in filling out warrants in debt and other forms necessary for *pro se* representation in a small claims court in Virginia. The Standing Committee on Legal Ethics referred this inquiry to the UPL Committee for a determination of whether it is the unauthorized practice of law for a nonlawyer to assist in the activities described. The applicable authority is found in Virginia's definition of the practice of law, in UPL Opinion 73, and also in five of the nine existing Unauthorized Practice Rules (UPRs) regarding the preparation of legal documents. Based upon this authority, the opinion finds that the preparation of warrants in debt and other forms necessary for *pro se* representation in a small claims court by a nonattorney worker would be the unauthorized practice of law. In addition, the UPL Committee notes that persons proceeding in a small claims court are required to represent themselves, which raises a question of whether such limited assistance by a social worker under the direction of an attorney is permissible. However, the opinion finds that this issue is beyond the purview of the committee.

## REPORTS OF STANDING COMMITTEES

I would like to thank the committee members—Megan E. Kelly, vice chair; Timothy P. Chinaris; Gary M. Coates; Joseph C. Fleig; Olin V. Hyde; Steven B. Novey; and Robert V. Ward for their hard work and dedication to the mission of the UPL Committee. I also wish to thank a particularly dedicated and hardworking staff at the VSB, who have made the work on the committee as streamlined as possible.



**SPECIAL COMMITTEE ON ACCESS TO LEGAL SERVICES**

*Robert J. Stoney, chair*

**Civil Justice System Developments**

*Unbundling of Legal Services:*

The Virginia State Bar Special Committee on Access to Legal Services was gratified to see one of its major long-term projects placed on the Virginia State Bar Council’s action agenda, set for public comment and forwarded to the Supreme Court of Virginia for review and possible approval. Opened by the Court for an extended comment period over the summer, the proposed rules, if adopted, would explicitly sanction the “unbundling” of legal services for *pro se* and other litigants who were unable to afford or otherwise obtain full representation by counsel.

The committee appreciates the guidance offered by the VSB Standing Committee on Legal Ethics related to Supreme Court Rule 1:5 (to explicitly permit ghostwriting without the consulting attorney becoming counsel of record), VSB Rule of Professional Conduct 1.2 (attorney/client relationship) and RPC 4.2 (communications with opposing parties). The access committee declined to address the question of allowing limited court appearances in some situations. It deferred consideration until after it has experience with the proposed incremental reforms and is in a better position to seek additional direction from the bench.

*Licensing of Legal Aid Societies:*

The committee continued, on an intermittent basis, deliberations to update the regulation covering licensing of legal aid societies. That regulation, 15 *Virginia Administrative Code* 5-10-10, was last revised in June of 1990, before the Court, the Virginia Law Foundation and other entities began programs to expand the delivery of legal services.

*Funding for Legal Aid—Statewide Bar Campaign:*

The committee is grateful for the council’s support of the statewide bar presidents’ letter-based fund-raising campaign to benefit legal aid. We thank the council for offsetting related fund-raising costs, thereby making some thirty thousand dollars in proceeds available to the Legal Services Corporation of Virginia (LSCV) for distribution to grantees. The Subcommittee on Funding Alternatives is exploring other ways to support and possibly help underwrite LSCV goals to sustain and expand delivery of civil legal services in Virginia.

*Legal Needs Study:*

The VSB applied for but was not awarded funds in 2004 to undertake a new legal needs assessment. However, in 2005, the Virginia Law Foundation noted a joint award of twenty eight thousand dollars to the VSB (through the access committee) and to The Virginia Bar Association Foundation for the project. Deliberations about the form and function of the study are ongoing.

*June Recipient of the 2005 Virginia Legal Aid Award:*

William L. Botts III of Fredericksburg was selected the “Legal Aid Lawyer of the Year.” His imaginative outreach to community leaders and other opinion makers during a decades-long career and the extraordinary service he continues to render on behalf of the poor and other vulnerable individuals made him an exemplary honoree.

**Developments Related to Indigent Defense Reform**

*VSB Indigent Defense Task Force:*

The Virginia State Bar’s Indigent Defense Task Force was formed in 2004 under the auspices of the access committee. It became operational last summer. In October 2004, it issued an interim report on near-term recommendations for systemic reforms to the indigent criminal defense system. The council adopted the task force recommendations, which were shared with Chief Justice Leroy R. Hassell Sr. and with the then-newly operational Virginia Indigent Defense Commission (VaIDC), the successor agency to the Virginia Public Defender Commission. Recommendations included abolition of the present system of nonwaivable caps per criminal charge and retention of the current ninety-dollar-per-hour compensation rate set by the Supreme Court of Virginia.

A member of the task force who also sits on the access committee and the board of the VSB Criminal Law Section (CLS) acted as a special liaison for a new CLS subcommittee that was formed to coordinate the bar’s response to related modest reform legislation entertained by the 2005 session of the Virginia General Assembly. The bar’s legislative agenda was consistent with the recommendations of the task force.

Task force member and Congresswoman Thelma Drake (who was then a member of the Virginia House of Delegates) expressed great interest in pursuing reforms to better ensure “quality” representation. She suggested exploring the feasibility of expanding the public defender system statewide. The task force deferred to the VaIDC, recommending that it be the entity to determine the appropriate mechanism for configuring the defense delivery system.

Other task force members contributed by surveying experienced retained counsel who routinely accept criminal cases at market rates. They informally charted tables of background data to project costs of best-practice scenarios. They focused on estimating the number of hours that ought to be expended in typical well-trying cases and the costs, over time, of waiving the caps on fees paid to appointed defense counsel in several case categories.

That activity was undertaken to help develop fiscal impact statements on the costs of implementing the task force’s recommendations for appointed counsel compensation. Also consistent with task force parity recommendations were conclusions reached by VSB Ethics Counsel James M. McCauley in a 2004 article in *Virginia Lawyer*. He counseled public defenders, as well as prosecutors, to be wary of accepting workloads in excess of what they can realistically and ethically handle.

### **Intersecting Matters**

#### *Other Funding Issues:*

At its January meeting, the access committee agreed that it was important that the indigent criminal defense and civil legal services communities not compete for General Assembly appropriations. One potentially divisive bill would have diverted money from legal aid to the criminal fund for indigent defense. We are adamant that parties unite in support of our common cause (i.e., ensuring that the poor have access to both quality civil legal—as well as criminal defense—services.)

#### *Circuit-Based Pilot Awards:*

The access committee hosted an inaugural circuit-based awards program to honor pro bono and appointed counsel in three preselected jurisdictions under a pilot program approved by the bar council. Michelle J. L. Atkins, John Randolph “Randy” Nelson and Melanie Leigh Jorgensen were selected the recipients of framed award certificates cosigned by Chief Justice Leroy R. Hassell Sr. and VSB President Phillip V. Anderson.

The awards were implemented on a pilot basis to recognize extraordinary contributions to the Virginia justice system made by pro bono or nominally compensated appointed counsel who take civil and indigent criminal defense cases. The framed certificates commend recipients for outstanding service to the Supreme Court of Virginia. The initiative is consistent with the council’s 1999 Resolution to Enhance Pro Bono *Publico* and with Rules of Professional Conduct 6.1 and 6.2, which became effective in 2000. These goals included publicizing attorney commitment to making the justice system work in Virginia, pressing for reform of the criminal justice system through increases in the compensation paid to counsel for indigent criminal defendants and acknowledging the pro bono nature of much of the nominally-compensated court-appointed work undertaken by members of the Virginia bar.

Local bar associations and chief judges and other court personnel in each of the pilot circuits helped plan and execute formal presentation ceremonies. The access committee expects to make recommendations to the council concerning possible expansion of the pilot project beyond the original three circuits, which were in the fourth (Norfolk), twenty-fourth (Lynchburg and environs), and the thirtieth (Scott, Lee and Wise counties). We are grateful to retired Judge Dale Harris for her imagination, inspiration and hard work in getting this project off the ground.

#### *May Pro Bono Conference:*

The 2005 Pro Bono & Access to Justice Conference focused on “Immigration Law and the Collateral Civil Consequences of Criminal Convictions and Other Status Problems.” The conference also featured an award ceremony and reception at the University of Richmond School of Law, where Joseph W. Gorrell and Amandeep Singh Sidhu were presented with, respectively, the Lewis F. Powell Jr. and Oliver White Hill Law Student pro bono awards. The ceremony guest speaker, Magistrate Judge Dennis W. Dohnal (U.S. District Court, Eastern District of Virginia), offered compelling remarks on the role of the “citizen lawyer.” His talk appeared afterward in bar publications.

*Gratitude to the Judiciary*

The committee commends Chief Justice Leroy R. Hassell Sr. for his uncommon vision in instituting numerous projects to make legal services more genuinely accessible to the public. We also note Chief Justice Hassell's many efforts to educate members of the bar with respect to best practices through his free indigent defense, child custody and other training initiatives. We also thank local bar leaders and chief circuit judges for their continuing generosity in consulting with the VSB on appointments to several legal aid society boards of directors.



**SPECIAL COMMITTEE ON BENCH-BAR RELATIONS**

*Gregory A. Giordano, chair*

The mission of the Bench-Bar Relations Committee is to improve the administration of justice, enhance service to the community and increase professionalism within the legal community by promoting the exchange of information and ideas between the judiciary and practicing attorneys of the commonwealth. The committee's activities range from monitoring changes in the judicial system to involvement in legal education programs for both judges and lawyers. The following matters or projects were addressed during the 2004–2005 Virginia State Bar year:

- **Judicial Merit Selection and Retention**—The committee will continue to monitor legislation that affects the process of evaluating, nominating, electing or retaining statewide judges and the legislation's effect on judicial independence.
- **Access to Legal Services and Unbundled Legal Services**—The committee continues to work with other state bar committees studying unbundled legal services
- **Regional Judicial Conferences**—The committee's goal is to foster and provide resources and promote local bar association efforts to establish and broaden communications among the bench and the bar on a local and regional basis. Committee member Brian L. Buniva gave a talk to the Region Three Judicial Conference on March 18, 2005, at the University of Richmond. The program concerned judicial merit selection and retention.
- **Annual Seminar at the VSB Annual Meeting**—In conjunction with the Litigation Section of the Virginia State Bar, the Bench-Bar Relations Committee presented the showcase continuing legal education program, "Dialogue on the American Jury." The program featured a panel discussion by the Honorable Johanna L. Fitzpatrick, Chief Judge of the Court of Appeals of Virginia; Virginia Beach Chief Circuit Judge Thomas S. Shadrick; and attorneys Robert E. Scully Jr. and James O. Broccoletti regarding the current Virginia jury system and the potential impact of the American Bar Association "Principles for Juries and Jury Trials."

Following the panel discussion, ABA President Robert J. Grey Jr. lead the highly acclaimed and engaging dialogue, in which students from the First Colonial High School Legal Studies Academy explored the history of the jury system, issues confronting juries today, and landmark rulings on the jury and the questions they raise.

The program received high praise and accolades.

- **Other projects**—The committee maintains a notebook that contains project and seminar materials that it completed over several years. As always, it is the goal of the committee that this notebook will be used by judges and members of the state bar and local bar associations.



**SPECIAL COMMITTEE ON PERSONAL INSURANCE FOR MEMBERS**

*Gail D. Jaspén, chair*

The chief function of the Personal Insurance for Members Committee is to provide oversight of the Virginia State Bar-endorsed health, term life and disability income insurance plans. With the help of the broker-administrator, the Insurance Center for Virginia State Bar Members (ICVSBM), the committee monitors the plans and the details of coverages. When necessary, the committee recommends changes, which must be approved by the VSB Executive



## REPORTS OF SPECIAL COMMITTEES

Committee. The work of the committee and the administrator relieves attorneys of the time and expense of finding insurance products.

The health insurance plan with Anthem Blue Cross and Blue Shield has grown to cover more than five thousand bar members, staff and dependents. Each insured receives Anthem's "Value Added Benefits," at no additional cost—thanks to the purchasing power of the Virginia State Bar. The ICVSBM can also assist VSB members who reside and work outside Anthem's service area in securing health insurance. With the committee's approval, ICVSBM sent all VSB members under age sixty-five information about the new tax advantages of health savings accounts, which combine a high-deductible health insurance policy with a tax-deductible investment account.

The VSB Group Term Life Plan covers more than 650 persons, and more than 260 are covered under its Group Disability Income Plan. Both plans are operated on a refund accumulation basis, and a period of favorable claims experience allowed for two significant savings for Group Term Life enrollees in 2005. Effective on May 1, 2005, rates were reduced for nonsmokers by 10 percent and for smokers by 5 percent. For those who applied or were enrolled for coverage as of February 17, 2005, the VSB Group Term Life Insurance Plan awarded a six-month "premium holiday."

As anticipated, in fall 2004 the VSB resolved its final differences with the prior administrator, The Reciprocal Insurance Agency Ltd., and Riggs, Counselman, Michaels & Downes Inc. All brokerage records and files were turned over to the VSB and ICVSBM. ICVSBM is now the listed agent on all predispute accounts.

Information about VSB-endorsed insurance plans can now be found online at [www.icvsb.org](http://www.icvsb.org).

As a final note, I would like to express my appreciation to the committee members: Cary B. Bowen, Paul R. Childress Jr., Sean P. Kelly, Gary W. Lonergan, Jennifer L. Redmond, Susan K. Stoneman and Larry S. Wiese; and I thank ICVSBM Vice-President Robert H. Spicknall and VSB Deputy Executive Director Mary Yancey Spencer for all their help on behalf of the committee.



### **SPECIAL COMMITTEE ON PUBLICATIONS AND PUBLIC INFORMATION**

*William R. Allcott Jr., chair*

In 2004–2005, the Special Committee on Publications and Public Information began implementation of changes to the format of the *Virginia Lawyer Register*. The new format and content were suggested by responses to a survey of member attitude toward bar publications conducted in the 2003–2004 fiscal year.

The committee also reviewed the advertising standards applicable to the *Virginia Lawyer* magazine and the *Virginia Lawyer Register* and made recommendations to the Virginia State Bar Council and Executive Committee for minor changes.

The annual Law in Society essay competition, funded by a grant from the VSB Litigation Section, asked Virginia high school students to write an essay on a subject related to the Constitution and the rule of law in society. Volunteer lawyers, who also assisted with presentation of awards, graded the essays. Awards included cash gifts as well as a set of reference books and were presented to the winners either on or near Law Day or at the school's annual scholastic awards ceremonies.

This year, students considered the legal aspects of preferential treatment in college admissions. Students reflected on the role of the Constitution in promoting or restricting preferences for geographic, ethnic and gender diversity, economic status and family connection with the educational institution, among other factors.

The committee will be exploring ways to include more students in the competition in future years, as it believes that the bar provides a valuable service by exposing young people to the role of law and legal issues in society.



**SPECIAL COMMITTEE ON SEMINARS**

*Phillip V. Anderson, chair*

This committee plans the Midyear Legal Seminar. Members of the committee included John A. Dezio, Ralph E. Kipp, James W. Korman, Carol J. Schrier-Polak, William L. Schmidt, Stephen A. Strickler and Kenneth R. Weiner.

The 2004 midyear seminar was held at the Fairmont Southampton Princess Hotel in Bermuda in November. There were 107 in attendance. The continuing legal education program included presentations by the Family Law and Litigation sections, as well as a special program on electronic evidence presented by Sensei Enterprises Inc.

The committee also finalized plans for the 2005 seminar, which will be held November 10-17, 2005, at the Majestic Hotel in Barcelona, Spain. The CLE program will include presentations by the Criminal Law and Family Law sections. Each section will underwrite the cost of its program's speakers, with a small subsidy provided by the Midyear Legal Seminar budget. A program on "Ethics for the Criminal Law Practitioner" will include three ethics credits. The Litigation Section will present a program on "Effective Depositions." The seminar will qualify for a total of seven hours of Mandatory CLE credit.



**SPECIAL COMMITTEE ON TECHNOLOGY AND THE PRACTICE OF LAW**

*Clyde R. Christofferson, chair*

The Committee on Technology and the Practice of Law is continuing to assess prospects for resolving conflicts between rights of privacy and rights of public access with respect to electronic court records and pleadings. These issues substantially affect the practical availability of electronic filing to Virginia lawyers.

The committee presented its report to the Virginia State Bar Council at the council's October 2004 meeting, sent a copy to the executive secretary of the Supreme Court of Virginia and notified the chair of the appropriate legislative committee that the report was available. The report proposed placing the burden on litigating parties to redact private or personal information in filings. Appropriate court rules or statutes identifying specific information that would support a protective order would reduce the need for a hearing on redaction issues. Finally, the report recommended a balanced procedural mechanism for minimizing the potential burden upon the courts of protective order hearings on information not covered by rule or statute.

The report also recommended that the rules be amended to permit electronic filing to be used by any party to the litigation rather than requiring consent of the parties, so that law firms would be able to develop regular procedures for filing electronically. This aspect of the report generated controversy at a Virginia State Bar Council meeting. The concern was that the prospect of electronic filing of, and public Internet access to, a paper containing embarrassing allegations in a divorce litigation could be used by a party as leverage in negotiations. Current practice avoids this issue because documents filed electronically are not available to the general public, under the terms of Supreme Court Rule 1:17(c)(3).

The committee will continue to monitor developments affecting use of electronic court records and pleadings. For example, new § 20-121.03 of the *Code of Virginia* requires that certain information in a divorce case that makes a party vulnerable to identity theft be excluded from any filing available to the public, and instead be included in a separate addendum. This raises practical issues for the use of technology in the practice of law—practical issues whose resolution merits continued attention. The committee will continue to pursue these issues and to cooperate with other committees also interested in preparing the bar to address impending changes in the practice of law



**VIRGINIA LAWYER REFERRAL SERVICE**

*Catherine Ann Lee, chair*

Since 1977, the Virginia Lawyer Referral Service (VLRS) has been the most effective means of providing quality legal assistance to those seeking low-cost help from the private bar.

The VLRS requires that panel members remain in good standing with the Virginia State Bar. VLRS membership fees and consultation charges have increased only once in the past decade.

The VLRS application now displays the rules and regulations of the service to ensure that all new panel members are fully informed when joining. This information is also available on the Virginia State Bar Web site at [www.vsb.org](http://www.vsb.org).

The marketing of the VLRS continues at the VSB Admission and Orientation ceremonies and the VSB Annual Meeting Expo. Lawyers also are recruited at local bar events such as the Bar Leadership Institute. The program is advertised through phone directory yellow pages and the *Virginia Lawyer* and *Virginia Lawyer Register*.

Credit card usage now exceeds 30 percent of VLRS revenues, which include membership and consultation fees.

The service committed its staff resources and toll-free hot line to provide free legal services to victims of Hurricanes Isabel and Gaston. The Disaster Relief program is cosponsored by the young lawyers sections of the Virginia State Bar and The Virginia Bar Association.

In closing, special thanks are extended to the 2004-2005 VLRS committee—Jay C. Paul, Cheryl Jordan Avery, Mary Margaret Benzinger, Michael D'Wayne Clower, Glenn Robert Lawrence, Francis Xavier Lillis, Kevin Edward Martingayle, Neil Edward McNally, Daniel Leigh Rosenthal, Carol Joy Schrier-Polak and Richard Julian Stahl—and the VSB support staff—VLRS Director Barbara O. Allen, Toni B. Dunson, Sheree L. Patterson, Lydia M. Maddox and Lily M. Norman.



**CLIENTS' PROTECTION FUND**

*H. Victor Millner Jr., chair*

The Clients' Protection Fund was established in 1976 to make monetary awards to persons who have suffered financial losses due to the dishonest conduct of Virginia lawyers. The fund is operated by a fourteen-member board appointed by the Virginia State Bar Council. The board has lay and lawyer members. Board members investigate all petitions from clients for payments from the fund, and the board discusses and acts on each petition.

The fund began the fiscal year on July 1, 2004, with a cash balance of \$3,235,339. The Virginia State Bar Council authorized a transfer of \$250,000 to the fund as part of the bar's 2004–2005 operating budget. Interest income for the 2004–2005 fiscal year totaled \$125,848. The fund received restitutions from attorney general's collections, debt setoff and individual restitutions in the amount of \$16,223. As of June 30, 2005, the cash balance in the fund was \$3,346,421. Pursuant to the rules governing the Clients' Protection Fund, all funds are invested in certificates of deposit, U.S. government securities and federal agency securities.

As of July 1, 2004, thirty-three claims were pending from the previous fiscal year. One hundred fifty-two new claims were received during the year, and one closed claim originally filed in FY 2003 was reopened. The total amount paid during 2004–2005 was \$299,520, representing eighty-six claims. Fifty-eight claims were denied and one claim was withdrawn by the petitioner. Forty-one claims were pending as of June 30, 2005.

The board began the 2004–2005 fiscal year with six new board members. They are Michael L. AtLee from Hampton, Barry J. Dorans of Virginia Beach, Stephen K. Gallagher of Alexandria, Robert P. Skoff of Prince William, Anthony J. Nicolo of Portsmouth and Robert L. Bailey (lay member) of Newport News. During the year, Fred A. Rowlett resigned from the board and was replaced by Tony M. Hutchinson of Bristol. Our board and the bar lost a dedicated member, John F. Lanham. His untimely death occurred a few weeks before he would have assumed the chairmanship of the board.

At the direction of the Supreme Court of Virginia, the bar hired an actuary to review the financial status of the fund. The recommendation from the actuaries is that the fund should be closer to nine million dollars in order to generate sufficient interest income with which to pay the potential future claims. The report was forwarded to the Court for review.

The fund continued to work with an increased workload during the year, and the board members are to be commended for the extra time required to investigate the large volume of claims on the docket during fiscal year 2004–2005. The board experienced a 50 percent turnover this year; however, the new and continuing board members shared in the work load and accomplished a tremendous amount of work in completing the investigations on 145 out of 186 petitions.



**CONFERENCE OF LOCAL BAR ASSOCIATIONS**

*Manuel A. Capsalis, chair*

The 2004–2005 year proved to be another hardworking, rewarding year for the Conference of Local Bar Associations (CLBA).

On March 7, 2005, in Richmond, and again on March 18 in Abingdon, the CLBA presented the twentieth annual Bar Leaders Institute (BLI), offering a full day of training and networking for bar leaders. Thanks to Barbara O. Allen and Paulette J. Davidson of the Virginia State Bar, the BLIs showcased activities of the local and specialty bars in Virginia. These included programs such as blood drives, food distribution to the needy, mentoring for students from elementary through law schools, fund-raisers for charitable causes, scholarships, youth courts, summer law camps, pro bono assistance with wills for first responders, voter registration drives, and educational pamphlets and videos about the legal system. We also learned about programs offered by local and specialty bars to further understanding, professionalism and collegiality within the profession—as well as with the judiciary and elected officials. Programs included bench-bar conferences, continuing legal education programs and public forums.

The BLI in Abingdon was presented in coordination with the Supreme Court of Virginia's Solo & Small-Firm Practitioner Forum. It offered a unique opportunity for bench and bar to gather for a day of training, education and camaraderie. It was an honor to be a part of such an important event. Of particular note were the efforts of Justice Cynthia D. Kinser and Chief Justice Leroy R. Hassell Sr.

The CLBA and the Supreme Court will present the BLI and the Solo & Small-Firm Practitioner Forum elsewhere in the commonwealth. There will be full-day forums in Harrisonburg and in Fredricksburg. The CLBA also looks forward to presenting the twenty-first annual BLIs in March 2006 in Richmond and Abingdon.

This bar year proved to be a banner year for *So You're 18*, the seminal publication of the CLBA. This is a handbook on legal rights and responsibilities of citizens reaching the age of majority, and it is printed in English, Spanish and Vietnamese. This year we distributed more than ten thousand copies throughout the state, and many others were downloaded from the Virginia State Bar Web site. Recipients included courts, counselors, social service departments, schools, bar associations, lawyers, law firms, police departments and parole offices. *So You're 18* will be updated and available for distribution at the start of each school year.

This year, the CLBA assumed responsibility for *Legally Informed*, a publication provided by the VSB that details public service and pro bono activities offered by local and statewide specialty bars in Virginia. This indispensable source of information was recently updated and revised.

At the VSB Annual Meeting in Virginia Beach, the CLBA held its annual meeting, which included the twentieth annual Awards of Merit competition to recognize outstanding projects and programs of local and specialty bar associations. We also presented the tenth annual Local Bar Leader of the Year Award, which recognizes extraordinary dedication and service to the bench, bar and public. An impressive array of projects and programs was recognized, and the meeting was a great opportunity to gather with the best in the legal profession.



## **MANDATORY CONTINUING LEGAL EDUCATION**

*Calvin S. Spencer Jr., chair*

The Mandatory Continuing Legal Education (MCLE) Board administers the program that was established by the Supreme Court of Virginia in 1985. The rules governing the MCLE program were amended in 1990 to require all active members of the Virginia State Bar to complete a minimum of twelve hours of approved continuing legal education courses each fiscal year, including two hours of ethics or professionalism. In 2001, the Supreme Court amended its rules to change the completion deadline for MCLE from June 30 to October 31. The date to certify the completion was changed by the Supreme Court from July 31 to December 15. These changes took effect in 2002.

The MCLE Board consists of twelve members appointed by the Supreme Court of Virginia. The MCLE Board for fiscal year 2004–2005 included Charles M. Allen Jr. of Glen Allen; Jan L. Brodie of Fairfax; George J. Dancigers of Norfolk; Michael L. Davis of Fairfax; R. Lee Livingston of Charlottesville; Sharon D. Nelson of Fairfax; Oliver L. Norrell III of Arlington; Eric M. Page of Glen Allen; Nancy G. Parr of Chesapeake; Calvin S. Spencer Jr. of Kenbridge; Bruce C. Stockburger of Roanoke; and Wilson F. Vellines Jr. of Staunton.

Two valuable members rotated off of the board at the conclusion of the 2004–2005 board year: Charles M. Allen Jr. (1998–2005) and Wilson F. Vellines Jr. (2002–2005). We appreciate their service.

The Virginia State Bar's MCLE department administers the MCLE requirements for the board. The board meets six times a year at the VSB's Richmond office and an average of ten times per year by consent agenda to consider applications. Over the last reporting cycle, the MCLE staff and board have worked on the following: 6,000 course applications; 14,800 accredited sponsor courses; 41 waiver requests; 25 extension requests; 15,000 telephone inquiries; 25,000 letters sent out; and more than 93,000 certificates of attendance.

The board continued to review the standards for approval of distance learning courses and the various delivery formats available. The board updated MCLE Opinion 16 and drafted Opinion 18 regarding in-house and law firm programs (to include in-house courses by corporations and government agencies). At this writing, Opinion 18 is currently open for public comment and likely will be finalized in August 2005.

The Virginia State Bar continued to provide access to members' CLE records on the VSB Web site. Members can check their MCLE record online and download MCLE regulations, opinions, forms or course listings from the Internet.

The MCLE staff, directed by Gale M. Cartwright, continues to work diligently to perform their many responsibilities. On behalf of the entire MCLE board, I wish to thank the staff for their hard work and dedication.



## **MULTIJURISDICTIONAL PRACTICE TASK FORCE**

*Marni E. Byrum, chair*

In August 2004, the Virginia State Bar formed a Multijurisdictional Practice Task Force to develop new rules and revise existing rules to better accommodate limited practice in Virginia by lawyers licensed only in other U.S. jurisdictions or in foreign countries. The impetus for this task force came from recommendations issued in 2002 in the final report of the American Bar Association Commission on Multijurisdictional Practice and recommendations from another ABA panel tracking the General Agreement on Trade in Services (GATS).

The VSB task force considered the recommendations of the ABA MJP Commission and the ABA GATS Task Force. Representatives from the VSB MJP Task Force and officers of the Virginia State Bar met in Atlanta in August 2004 to discuss these recommendations with leaders from other state bars, leaders of the European Union Bar Association (CCBE), representatives of International Bar Association, the ABA GATS Task Force and the ABA International Law Section. In November 2004, many of these same representatives met again in Washington, D.C., with representatives of the United States Trade Representative, including the chief U.S. negotiator on legal services, Christopher Melly. The VSB MJP Task Force revised rules, as well as developed rules to accommodate the recommendations. Since August 2004, the task force created a Foreign Legal Consultant Rule (FLC Rule)—approved by the Virginia State Bar Council in February 2005 and at this writing pending with the Supreme Court of Virginia—for review and approval. The task force has drafted revisions to Virginia Rules of Professional Conduct 5.5 and 8.5 and an entirely new *pro hac vice* rule. The proposed revisions to Rules 5.5 and 8.5 will likely be presented to the VSB Council for approval in February 2006. The *pro hac vice* rule is under revision and review.

The proposed FLC Rule regulates non-U.S. attorneys who seek to establish a systematic and continuous foreign consultancy practice in Virginia. Rule 5.5 regulates temporary practice by both non-U.S. and U.S. lawyers not admitted in Virginia. Rule 8.5 creates disciplinary authority over both non-U.S. and U.S. attorneys not admitted in Virginia. It also develops choice of law provisions when multiple jurisdictions' rules apply. Though not identical, the proposed rules are similar to and consistent with the ABA recommendations and recommendations from the U.S. Trade Representative.

### **The Proposed Foreign Legal Consultant Rule**

The Foreign Legal Consultant Rule allows Virginia clients access to foreign law expertise with accountability; foreign legal consultants (FLCs) will be subject to Virginia's ethics rules and the Virginia State Bar's disciplinary system. Under this rule, the FLC's practice will be limited to the law of his/her admitting country, other foreign countries where the FLC has expertise, and public and private international law. The FLC cannot appear as counsel or prepare pleadings for another before a Virginia court; cannot prepare legal instruments effecting transfer of real estate in the U.S.; cannot prepare will or trust instruments or any instrument relating to administration of a decedent's estate in the U.S.; cannot prepare any legal instrument relating to marital or parental relations in the U.S. or custody or care of children of a U.S. resident; cannot hold out as being a member of the Virginia State Bar; and cannot render advice on the law of Virginia, the District of Columbia, or any other state or territory of the U.S. without association of a licensed lawyer duly qualified to render such advice (other than by virtue of an FLC rule admission).

The FLC can be a member, partner or shareholder in a Virginia law firm. He/she must have a Virginia office and provide to the Virginia State Bar a Virginia address of record for service of disciplinary process.

### **Revisions to Rule 5.5**

Rule 5.5, as revised, is patterned after ABA Model Rule 5.5. It regulates unauthorized practice of law in Virginia by non-Virginia licensed attorneys—both those from other U.S. jurisdictions and those licensed in foreign countries. In contrast, ABA Model Rule 5.5 does not cover attorneys licensed in foreign countries. Instead, the ABA has a separate model rule addressing temporary practice in the U.S. by non-U.S. attorneys. The ABA Model Rules are similar, but not identical, to Virginia's proposed Rule 5.5. Under current law, unauthorized practice of law by attorneys or nonat-

torneys is regulated and monitored by the Virginia State Bar's Standing Committee on the Unauthorized Practice of Law (the UPL Committee) and governed by Virginia's Unauthorized Practice of Law Rules, the Definition of the Practice of Law in Virginia, and Part 6, § I (C), Rules of Supreme Court of Virginia. If adopted, proposed Rule 5.5 would make practice by non-Virginia licensed lawyers, other than as authorized by the rule, a disciplinary matter—Part 6, § I (C), Rules of Supreme Court of Virginia, would be eliminated and the UPL Committee would deal only with unauthorized practice of law by nonattorneys.

The scope of practice allowed under proposed Rule 5.5 would be on a “temporary and occasional basis” only (similar to Part 6, § I (C), Rules of Supreme Court of Virginia) and: (1) in association with a licensed Virginia lawyer who actively participates in the matter; (2) services related to a pending or potential proceeding in Virginia or another jurisdiction if the lawyer is authorized to appear or expects to be so authorized; (3) services related to mediation or arbitration in Virginia or another jurisdiction if such services are related to the lawyer's practice in his/her licensing jurisdiction and do not require *pro hac vice* admission; or (4) services related to representation of a client in the foreign lawyer's licensing jurisdiction or services governed by international law or law of a non-U.S. jurisdiction.

The proposed rule prohibits a lawyer from establishing an office or other systematic presence in Virginia except as authorized by other Rules of Professional Conduct or other law. The proposed rule retains the long-standing restrictions regarding the employment of a lawyer whose license has been suspended or revoked.

**Disciplinary Authority and Choice of Law Under Proposed Revisions to Rule 8.5**

Proposed Rule 8.5 addresses disciplinary authority and choice of law in disciplinary cases and provides enforcement authority for Rule 5.5. It expands the Virginia State Bar's disciplinary authority to include any lawyer who provides or holds out to provide legal services in Virginia, regardless of where the lawyer is licensed. Under this rule a lawyer not admitted in Virginia, who provides or holds out to provide legal services in Virginia, shall consent to appointment of the secretary of the commonwealth as his/her agent for disciplinary service of process. Under proposed Rule 8.5, the choice of law to be applied in a disciplinary matter will be: the rules of the court, agency or tribunal if the conduct in question occurred in connection with a matter before such court, agency or tribunal, for any other conduct, the rules of the jurisdiction where conduct occurred; or the Virginia Rules of Professional Conduct, if the lawyer provides or holds out to provide legal services in Virginia. The ABA Model Rule provides for a choice of law where the conduct had its “predominant effect”; however, the task force chose not to include this in the Virginia rule revision because it believed that where the conduct occurred provided a brighter line for enforcement than the predominant effect test.

Nine states have adopted ABA Model Rules 5.5 and 8.5 in whole or in part, and fifteen others have endorsed and submitted proposed revisions consistent with ABA recommendations to their highest courts.

**Proposed Revisions to Rule 1A:4 Regarding Pro Hac Vice Practice**

Revisions to Virginia's *Pro Hac Vice* Rule (Rule 1A:4, Rules of the Supreme Court of Virginia) are currently under consideration by the task force. Proposed revisions to the rule seek to clarify the procedure for admittance *pro hac vice* of non-Virginia lawyers. Included in these proposed revisions is a recommendation that a limit be placed on the number of times an attorney licensed in another U.S. jurisdiction can appear *pro hac vice* in Virginia courts (the current recommendation is five cases within the year preceding current application). It is envisioned that the Office of the Executive Secretary of the Supreme Court of Virginia, in cooperation with the clerks of the trial courts of the commonwealth, would maintain a central repository of information about *pro hac vice* admissions and make the information available electronically to trial judges who will be ruling on motions for *pro hac vice* admission. Also, there is a recommendation to impose a fee for each *pro hac vice* application. There is ongoing discussion about the use to which the funds generated by the fees would be put. The proposed revisions would require a written motion for admission *pro hac vice* and would set out specific admission standards. The proposed rule would not permit foreign country lawyers to appear *pro hac vice*.

The task force believes adoption of these new rules and proposed revisions to existing rules will address the recommendations of the ABA task force, as well as respond to the exigencies of the U.S. Trade Representative for proposals to GATS. In addition, the proposed rules and revisions are necessary, as a practical matter, to keep up with reality that the practice of law has become globalized and multijurisdictional.

I would like to thank the task force members—William J. Benos, Timothy P. Chinaris, Joseph C. Fleig, Megan E. Kelly, Donald E. King, Catherine D. Mayes, JoAnne L. Nolte, Eric F. Schell, W. Scott Street III, Charles L. Williams and Walter A. Wilson III—for their hard work and dedication to the mission of the MJP Task Force during the past year.

