

# 68TH ANNUAL REPORT

*for the period July 1, 2005–June 30, 2006*



VIRGINIA STATE BAR

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## TABLE OF CONTENTS

### ADMINISTRATIVE/GOVERNING

Report of the Executive Director/Chief Operating Officer . . . . .	4
Report of the Treasurer . . . . .	7
Virginia State Bar Organizational Chart . . . . .	8
Report of the Office of Bar Counsel . . . . .	9
Minutes of the 68th Annual Meeting . . . . .	12
In Memoriam . . . . .	13

### REPORTS OF THE SECTIONS

Administrative Law . . . . .	14
Antitrust, Franchise and Trade Regulation . . . . .	14
Bankruptcy Law . . . . .	15
Business Law . . . . .	16
Construction Law and Public Contracts . . . . .	16
Corporate Counsel . . . . .	17
Criminal Law . . . . .	17
Education of Lawyers in Virginia . . . . .	18
Environmental Law . . . . .	19
Family Law . . . . .	19
General Practice . . . . .	20
Health Law . . . . .	21
Intellectual Property . . . . .	21
International Practice . . . . .	22
Litigation . . . . .	22
Local Government Law . . . . .	23
Military Law . . . . .	24
Real Property . . . . .	24
Taxation Law . . . . .	25
Trusts and Estates . . . . .	25

### REPORTS OF THE CONFERENCES

Conference of Local Bar Associations . . . . .	26
Senior Lawyers Conference . . . . .	26
Young Lawyers Conference . . . . .	27

# TABLE OF CONTENTS

## REPORTS OF STANDING COMMITTEES

Budget and Finance . . . . .	30
Lawyer Advertising and Solicitation . . . . .	30
Lawyer Discipline . . . . .	31
Legal Ethics . . . . .	32
Professionalism . . . . .	33
Unauthorized Practice of Law . . . . .	33

## REPORTS OF SPECIAL COMMITTEES

Access to Legal Services . . . . .	35
Bench-Bar Relations . . . . .	36
Judicial Nominations . . . . .	37
Lawyer Malpractice Insurance . . . . .	37
Personal Insurance for Members . . . . .	38
Publications and Public Information . . . . .	38
Resolution of Fee Disputes . . . . .	39
Seminars . . . . .	40
Technology and the Practice of Law . . . . .	40
Lawyer Referral . . . . .	41

## REPORTS OF SPECIAL BOARDS

Clients' Protection Fund . . . . .	42
Indigent Defense Task Force . . . . .	42
Mandatory Continuing Legal Education . . . . .	43
Multijurisdictional Practice Task Force . . . . .	44

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

The membership of the Virginia State Bar continued steady growth in the fiscal year ended June 30, 2006. Total in-good-standing membership increased to 39,670, an increase of 1,122 members, or 2.25 percent over the previous year. A new Supreme Court of Virginia rule 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, was implemented in 2005. By June 30, 2006, 1,056 individuals had been issued certificates or registered under the rule.

	<b>2005–2006</b>	<b>2004–2005</b>
Active	25,659	25,212
Corporate Counsel Admittees	660	603
Corporate Counsel Registrants	396	391
Associate	10,342	9,886
Judicial	1,032	1,003
Retired/Disabled	1,581	1,453
	<u>39,670</u>	<u>38,548</u>

**Officers, Bar Activities during 2005–2006 and New Executive Committee and Council Members**

Karen A. Gould of Richmond became president of the Virginia State Bar at its annual meeting on June 16, 2006. She was sworn in by Justice Elizabeth B. Lacy of the Supreme Court of Virginia. Howard W. Martin Jr., president-elect, was unopposed in the 2005 election for that office to serve during 2006–2007.

Phillip V. Anderson of Roanoke completed his year as president. The bar continued to develop and refine during the year several new initiatives of Chief Justice Leroy R. Hassell Sr. Following adoption late last year of a Supreme Court rule that specifically authorizes the bar to provide an online legal research member benefit, the bar reissued its request for proposals early in the 2005–2006 bar year. A contract was successfully negotiated with Fastcase Inc., and a secure log-on site was developed on the VSB Web site to enable all members of the bar to access the benefit. The service went online in late February 2006. To date, about a quarter of the bar’s membership has registered to use the service.

The bar worked with the Supreme Court on a second highly successful Indigent Defense Training Seminar—once again held in Richmond and by videoconference in Abingdon. The seminar featured nationally prominent experts on a wide range of criminal law topics. A total of 429 lawyers attended the April 7, 2006, program in Richmond, while another 100 lawyers participated in Abingdon.

The bar continued to work with a committee chaired by Supreme Court Justice Cynthia D. Kinser to plan and conduct law practice management seminars for small-firm and solo practitioners. During the 2005–2006 bar year, programs were conducted in Harrisonburg, Williamsburg and Danville, with a total of approximately 700 lawyers attending in these three locations.

The Task Force on Multijurisdictional Practice continued its work during the year, completing a proposed rewrite of the Supreme Court of Virginia’s *pro hac vice* rule, as well as proposed amendments to Rules of Professional Conduct 5.5 and 8.5. These matters were pending at the Court at the conclusion of the bar year.

At the request of the Supreme Court of Virginia, and under a study resolution passed during the 2006 Session by the House of Delegates of the Virginia General Assembly, a client protection subcommittee of the bar’s Special Committee on Lawyer Malpractice Insurance studied whether the public is sufficiently protected by the Court’s present rule that requires lawyers simply to disclose to the bar each year on their dues statement whether or not they have malpractice insurance. The bar was asked specifically to look at whether all lawyers engaged in private practice representing clients drawn from the general public should be required to either have malpractice coverage or make payments into an uninsured lawyer fund. The subcommittee gathered a great deal of information and has considered several different models under which increased public protection might be achieved, and a report from the subcommittee was provided, for information purposes only, to the VSB Council at its June 2006 meeting. The report has also been forwarded to the Supreme Court of Virginia to ascertain what further steps the Court would like to see the bar take in this important area.

In response to a letter from Chief Justice Hassell and President Anderson, more than four hundred Virginia lawyers volunteered to provide pro bono legal advice to Gulf Coast hurricane evacuees who relocated to Virginia.

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

The young lawyers groups of the VSB and The Virginia Bar Association trained the volunteers, and the Virginia Lawyer Referral Service fielded requests for help. Virginia lawyers also personally contributed \$72,000 towards restoration of the justice system in the affected areas, in response to a letter from Mr. Anderson and VBA President James V. Meath. Half of the money was sent to state bar-sponsored projects in Louisiana, and half to Mississippi.

The Supreme Court appointed a commission, "Virginia's Courts in the Twenty-First Century: To Benefit All, To Exclude None." Anne M. Whittemore chairs the commission, which will study and recommend improvements in the state's judicial system. Mr. Anderson, Immediate Past President David P. Bobzien and former Bar Counsel Barbara Ann Williams serve on commission task forces or subcommittees.

In the aftermath of a receivership during which it was discovered that a lawyer had misappropriated funds from a number of different clients, President Anderson and the bar initiated discussions with the Virginia Association of Commonwealth's Attorneys that led to a meeting of association officers with the Standing Committee on Lawyer Discipline. Out of these discussions a closer and better working relationship was developed between the bar and commonwealth's attorneys around Virginia.

Mr. Martin will serve *ex officio* on the Executive Committee next year as president-elect. Irving M. Blank, Jon D. Huddleston and Judith N. Rosenblatt were elected by the council as new members of the 2006–2007 Executive Committee, replacing Mr. Martin, William E. Bradshaw and Leisa K. Ciaffone. Manuel A. Capsalis, Edward L. Chambers Jr. and Alda L. White were reelected to one-year terms.

The following new members were elected to the VSB Council for three-year terms beginning July 1, 2006:

Mary G. Commander	4 <sup>th</sup> Judicial Circuit
Patrick B. McDermott	8 <sup>th</sup> Judicial Circuit
W. Richard Hairfield	12 <sup>th</sup> Judicial Circuit
Hugh T. Antrim	13 <sup>th</sup> Judicial Circuit
W. David Harless	13 <sup>th</sup> Judicial Circuit
Helen E. Phillips	16 <sup>th</sup> Judicial Circuit
Mark D. Seidelson	17 <sup>th</sup> Judicial Circuit
Jean K. Niebauer	18 <sup>th</sup> Judicial Circuit
Joseph E. Wolfe	30 <sup>th</sup> Judicial Circuit

The following new member was elected to the council, filling a new position occasioned by growth in her circuit, for a three-year term beginning July 1, 2006:

Andrea L. Bridgeman	19 <sup>th</sup> Judicial Circuit
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The following incumbents were reelected to the council for three-year terms beginning July 1, 2006:

Irving M. Blank	13 <sup>th</sup> Judicial Circuit
Bruce M. Marshall	13 <sup>th</sup> Judicial Circuit
John D. Sharer	13 <sup>th</sup> Judicial Circuit
Daniel L. Rosenthal	14 <sup>th</sup> Judicial Circuit
Rhysa G. South	14 <sup>th</sup> Judicial Circuit
Raymond B. Benzinger	17 <sup>th</sup> Judicial Circuit
John K. Zwerling	18 <sup>th</sup> Judicial Circuit
Jan L. Brodie	19 <sup>th</sup> Judicial Circuit
Richard J. Colten	19 <sup>th</sup> Judicial Circuit
Carol J. Schrier-Polak	19 <sup>th</sup> Judicial Circuit
Richard C. Sullivan Jr.	19 <sup>th</sup> Judicial Circuit
David B. Carson	23 <sup>rd</sup> Judicial Circuit
Robert V. Ward	28 <sup>th</sup> Judicial Circuit

Kimberley W. Slayton of Halifax was appointed to a three-year term as a council member at large, replacing Ms. Ciaffone. Michael C. Guanzon of Danville and M. Janet Palmer of Richmond were reappointed to three-year terms as council members at large. George W. Shanks of Luray became chair of the Conference of Local Bar Associations, Maya M. Eckstein of Richmond became president of the Young Lawyers Conference and Jack W. Burtch Jr. became

## REPORT OF THE EXECUTIVE DIRECTOR/ CHIEF OPERATING OFFICER

chair of the Senior Lawyers Conference. They will all serve as *ex officio* members of the council and the executive committee during 2006–2007.

### **Bar Operations and Staff**

For the first time in a number of years, the bar lost one of its senior staff. Barbara Ann Williams, after eight years of service as bar counsel, resigned in January 2006 to return to private practice. A search committee headed by President-Elect Karen A. Gould conducted an extensive search for her successor, and after interviewing several outstanding finalists, the committee recommended George W. Chabalewski. His selection was finalized by the council at its June 2006 meeting. Mr. Chabalewski comes to the bar after extensive experience as a senior assistant in the Office of the Virginia Attorney General, where he has been involved in litigation matters on behalf of the commonwealth for eighteen years.

Much additional progress was made on the bar's long-term goal of rewriting and integrating all of its computer software programs. The mandatory continuing legal education module, as well as several other databases, were completed and integrated into the system, and work was begun on the final major module, for professional regulation and the office of the clerk of the disciplinary system. The project continues to be directed by William H. Dickinson, the bar's information technology department head, with outside consultants retained for design work and programming. It is anticipated that this entire project will be wrapped up during the 2006–2007 bar year. Completion of the project will not, of course, mean that the bar can discontinue spending money on its information systems. Future work should be limited, however, to refining and maintaining the new system, as well as implementing more Web-based applications that will enable members to interact with the bar electronically.

With a continued increase in the number of complaints received by the bar, demands for services by the bar's increasing membership, and the new programs the bar has undertaken in cooperation with the Supreme Court of Virginia, we are experiencing some growth in the staff. A new position was created during the 2005–2006 bar year to support the membership services initiated at the suggestion of the Court, and we anticipate adding other staff support in the professional regulation, membership, publications and human resources areas during the coming bar year.

The bar also plans to take some additional office space to relieve present overcrowding and accommodate new staff during the upcoming bar year. Most of the planning for the expansion space has been completed, and we expect a lease to be finalized for the additional space, as well as an extension of the lease on our present space, during fall 2006. A task force under the direction of Joseph R. Richmond and Jon D. Huddleston is examining the longer-term space needs of the VSB, including the possibility of the bar acquiring or constructing a building, using the model developed when Virginia CLE acquired its present building in Charlottesville through the auspices of the Virginia Law Foundation.



# REPORT OF THE TREASURER

## CASH WITH THE TREASURER OF VIRGINIA AS OF JUNE 30, 2006

**Cash with the Treasurer of Virginia as of July 1, 2005:** **\$3,502,313**

**Revenue:**

Membership Dues	\$8,183,663	
Professional Corporations	92,850	
Section Dues	347,115	
Virginia Lawyer and Virginia Lawyer Register	47,198	
Virginia Lawyer Referral Service	225,404	
Mandatory Continuing Legal Education	422,374	
Professionalism Course	212,815	
Cost Taxing & Bonds	77,618	
Seminars and Miscellaneous	308,595	
CRESPA Registration	105,410	
Administration and Finance	112,421	
Grants	14,252	
Total Revenue	<u>10,149,715</u>	<b>10,149,715</b>

**Operating Expenditures:**

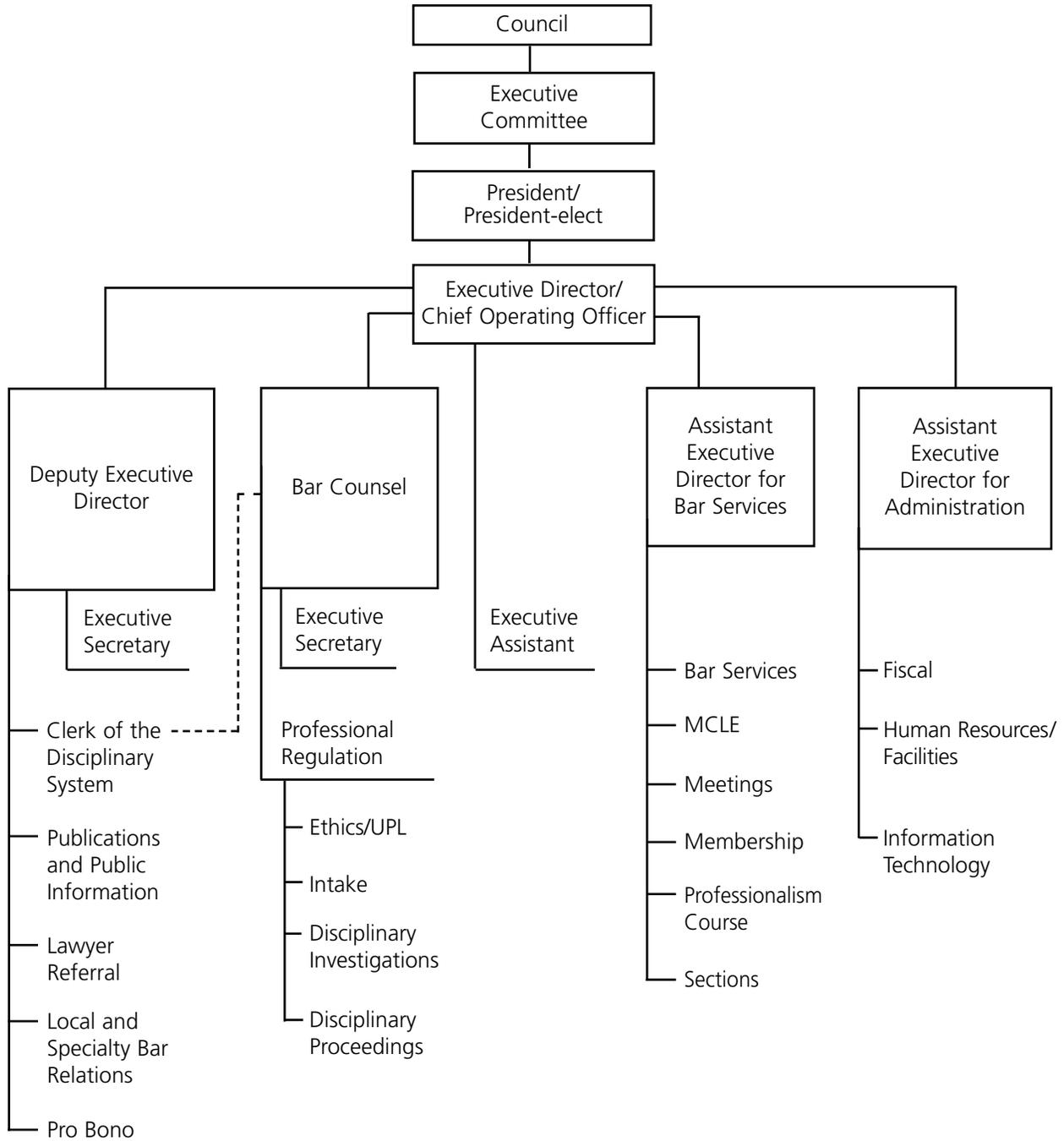
Salaries, Wages and Benefits	6,800,321	
Receivers	99,437	
Office Rent	375,185	
Furniture and Equipment	35,678	
Repairs and Maintenance	21,996	
Supplies, Stationery and Forms	88,279	
Printing and Copying	265,569	
Postage	229,895	
Telephone	72,754	
Staff Travel	78,674	
Computer	187,179	
Council, Committees and Board	333,747	
Professionalism Course	149,161	
Sections & Conferences	362,290	
Attorney General's Office Fees	82,068	
Chief Justice's Programs and Projects	268,656	
Other Operating Expenditures	197,976	
Total Operating Expenditures	<u>9,648,863</u>	<b>9,648,863</b>

**Other Disbursements and Transfers:**

Integrated Bar Information System	509,045	
Lawyers Helping Lawyers	100,000	
Administration and Finance Account Transfers	112,421	
Clients' Protection Fund Transfers	0	
Transfers per Legislature	55,895	
<b>Total Other Disbursements and Transfers</b>	<u>777,361</u>	<b>777,361</b>

**Cash with the Treasurer of Virginia as of June 30, 2006:** **\$3,225,805**

# ORGANIZATIONAL CHART



# REPORT OF THE OFFICE OF BAR COUNSEL

This annual report pertains to the 2006 fiscal year, from July 1, 2005, to June 30, 2006.

## OVERVIEW:

The Office of Bar Counsel [OBC] consists of the following component parts: intake, ethics and discipline. The intake department initially receives and screens all inquiries to the bar about attorney conduct and proactively handles inquiries, which involve minor misconduct. The ethics department provides ethics advice to Virginia lawyers via the bar's ethics hotline; it supports the Standing Committee on Lawyer Advertising with respect to the issuance of advertising opinions and the review of lawyer advertising; it supports the Standing Committee on Legal Ethics in the issuance of legal ethics opinions; and it supports the Standing Committee on the Unauthorized Practice of Law in issuance of UPL opinions as well as investigation of allegations of UPL. The discipline department receives complaints, which have been forwarded from the intake department, and conducts the investigation and prosecution of complaints before district committees, the Disciplinary Board and three-judge circuit courts.

Generally, FY 2006 was a year in which the OBC experienced an unusual number of personnel changes. It was also a period by the end of which the bar had received one of the highest number of inquiries about attorney conduct in at least the last nine years, and yet the number of cases in the disciplinary system had dropped to one of the lowest levels in at least the last six years.

## PERSONNEL:

In January 2006, Bar Counsel Barbara Ann Williams resigned after having served in that position for eight years, to take a position with McGuireWoods LLP. During Ms. Williams's tenure, the disciplinary system was improved in several ways. The disciplinary process became more open to the public. The OBC increased in staff, resulting in an increase in the number of cases completed and a reduction in the number of older cases, while emphasis was placed on the continuing goals of increased efficiency with fairness.

Deputy Bar Counsel Harry M. Hirsch was appointed as interim bar counsel during the search for a new bar counsel.

George W. Chabalewski became bar counsel effective June 15, 2006. Mr. Chabalewski's experience includes eighteen years as an assistant Virginia attorney general, preceded by seven years as a public defender in Illinois.

The OBC uncharacteristically experienced a number of other personnel changes. An attorney in the ethics department resigned; a new trial attorney was hired; three investigators resigned or retired; four new investigators were hired, one filling the position of an investigator who had resigned in the prior fiscal year; and the Northern Virginia office experienced turnover in its support staff.

As of June 5, 2006, the bar's investigative function was fully staffed at ten.

## STATISTICS:

The number of active members of the bar in good standing continued its annual increase. As of the end of FY '06 there were 24,710 active members of the bar in good standing.

There were 833 cases in the disciplinary system at the end of the fiscal year. This compares to 913 cases, which were in the system at the end of the prior fiscal year. At the district committee level, the number of cases in the system over 180 days old at the end of FY '06 was 247, compared to 217 at the end of FY '05, which reflects the effect of the reduced investigative staff during the year. The number of cases to be tried at the end of FY '06 was 155, compared to 154 at the end of FY '05. Cases tried by the end of FY '06 totaled 98, of which 82 were post-district committee cases. This compares to 85 cases tried by the end of FY '05, of which 63 were post-district committee cases. Agreed dispositions for FY '06 totaled 177, compared to 175 in FY '05.

The areas of law in which the most inquiries were received by the bar were, first, criminal law, and second, family law. Most of the types of complaints made to the bar fell into three categories: first, failure to communicate; second, failure to file; and third, failure to pay amounts due from a trust account. This is generally consistent with the observation that most bar complaints arise out of situations involving the necessity of the attorney and client to communicate directly, and breakdown of that communication.

During FY '06, the ethics staff attorneys handled an average of 349 calls per month from Virginia lawyers seeking legal ethics advice.

# REPORT OF THE OFFICE OF BAR COUNSEL

## **PROCEDURAL RULE CHANGES:**

The bar's disciplinary system operates pursuant to Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13 [Paragraph 13], as well as other statutes and case law.

Paragraph 13.I.8 was amended, effective September 1, 2005, to require an attorney who seeks reinstatement after revocation, or after a disciplinary suspension for more than one year, to demonstrate that he or she has reimbursed the bar for any sums of money incurred as a result of a receivership involving the attorney's law practice. Prior to this rule change, the only avenue for the bar to recoup its receivership costs from the attorney required court action.

Paragraph 13.F. was amended, effective January 1, 2006, to require a respondent attorney to sign his or her written response to any complaint, charge of misconduct, or certification, even if the respondent attorney is represented by counsel. There have been instances in prior disciplinary cases in which a respondent attorney has disavowed the written representations to the bar made by his or her attorney on behalf of the respondent. The rule change is intended to prevent such situations from occurring.

## **CHANGE TO THE VIRGINIA RULES OF PROFESSIONAL CONDUCT**

A new Comment [4] was added to Rule 1.3 [Diligence] to clarify that a lawyer's duty of diligence to the client should embrace planning for client protection in the event of the attorney's death or disability. The Supreme Court of Virginia approved this change on February 28, 2006.

## **CHANGES TO RULES OF COURT, PART 1A: 5 [CORPORATE COUNSEL PRO BONO AMENDMENT]**

The amendment permits lawyers certified as in-house counsel under Part I of the rule to provide pro bono legal services under the direct supervision of a Virginia-licensed attorney employed by a licensed legal aid society, or a fully licensed Virginia attorney serving as a volunteer in a licensed legal aid society pro bono program. The amendment also increases the application fee under both Part I and Part II of the rule from \$50 to \$150. The Supreme Court of Virginia approved these changes effective May 1, 2006.

## **REJECTED OR PENDING AMENDMENTS:**

A number of proposed amendments to Paragraph 13 were submitted together to the Supreme Court of Virginia in June 2005 and were subsequently rejected. These included changes to Paragraph 13 that would have given bar counsel a limited right of appeal; that would have required filings pertaining to three-judge circuit court trials to be made with the Clerk of the Disciplinary System; and that would have amended Paragraph 13.M. [notice required after suspension or revocation], Paragraph 13.E.6 [limitation on the filing of a motion to dismiss] and Paragraph 13.A. [definition of "certification"]. With the exception of the proposal regarding the limited right of appeal, the above proposals were resubmitted to the Court in January.

A proposed change to Rule 7.4 [Communication of Field of Practice and Certification] was rejected by the Court on February 28, 2006. This change would have permitted a lawyer to advertise certain certifications or accreditations related to organizations accredited by the American Bar Association.

Proposed amendments to Rule 1.2 [Scope of Representation], Rule 4.2 [Communication with Persons Represented by Counsel] and Rule of the Supreme Court of Virginia 1:5 [Counsel] would have permitted an attorney to provide discrete task representation to a client when both the client and the attorney had agreed the attorney would only perform the discrete tasks and the client would perform the remaining tasks. The Court rejected these amendments, which pertain to the concept of "unbundling."

Other proposed amendments related to multijurisdictional practice issues are pending at the Supreme Court of Virginia. These include:

Rule 5.5 [Temporary Practice by a Foreign Lawyer]—This proposal would allow non-Virginia licensed lawyers to provide legal services in Virginia on a temporary and occasional basis within the limits of the proposed rule. The proposal would also subject foreign lawyers to the Virginia disciplinary system.

## REPORT OF THE OFFICE OF BAR COUNSEL

Rule 8.5 [Disciplinary Authority and Choice of Law]—The amendments address disciplinary authority and choice of law issues in disciplinary cases and provide enforcement authority for proposed Rule 5.5.

Rule of Court 1A:4 [*Pro Hac Vice*]—the proposal would require, among other things, the applicant to be licensed and in good standing to practice in a United States jurisdiction; require the filing of a verified application, a written motion and an application fee of \$250; require consent to the disciplinary jurisdiction of the Virginia State Bar and limit the number of appearances in one year to twelve.

Rule of Court 1A:7 [Certification of Foreign Legal Consultants]—the amendment would allow a non-United States attorney to practice in Virginia within the limits of the rule and would subject the foreign legal consultant to the Virginia disciplinary system.

### **SUMMARY:**

With the anticipated startup of a new computer system for the OBC, its staff looks forward to new challenges and opportunities in its primary responsibilities: protecting the public from the misconduct of lawyers and providing support to lawyers to enable them to better practice their profession.



## MINUTES OF THE SIXTY-EIGHTH ANNUAL MEETING

President Phillip V. Anderson called the General Session of the Sixty-Eighth Annual Meeting of the Virginia State Bar to order at 9:10 AM on June 17, 2006, at the Cavalier Hotel, Virginia Beach. He introduced Karen A. Gould, the incoming president, who had been sworn in by Supreme Court of Virginia Justice Elizabeth B. Lacy the previous evening. Ms. Gould reported on the actions of the council at its meeting on June 15.

### **INTRODUCTION OF PRESIDENT-ELECT MARTIN**

Mr. Anderson introduced Howard W. Martin Jr. of Norfolk, incoming president-elect. Mr. Martin made brief remarks. On motion made, seconded and unanimously approved, Howard W. Martin Jr. was formally elected president-elect for the 2006–2007 bar year.

### **TRADITION OF EXCELLENCE AWARD**

Frank O. Brown Jr. of Richmond received the General Practice Section Tradition of Excellence Award. Robert L. Flax, former 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.

### **NORTHSTAR AWARD**

Barbara Ann Williams of Richmond received the first Lawyers Helping Lawyers Northstar Award. The award recognizes contributions to Lawyers Helping Lawyers's efforts to address mental health issues within the profession. John T. Molumphy III, president of Lawyers Helping Lawyers, presented the award.

The meeting was adjourned at 9:30 AM.



## IN MEMORIAM

- A. Lewis Allen**, *Hampton*  
**Dorothea Allen**, *Annapolis, MD*  
**Donald R. Antonelli**, *Arlington*  
**Ellen Spring Moore [Balazs]**, *Christiansburg*  
**William S. Banks**, *Richmond*  
**Newell Blair**, *Falls Church*  
**The Honorable John D. Butzner Jr.**, *Richmond*  
**John Muse Bareford Sr.**, *Saluda*  
**Jerry T. Batts Jr.**, *Sun City West, AZ*  
**Herbert Berl**, *Washington, DC*  
**David E. Bass**, *McLean*  
**The Honorable Robert P. Beaver**, *Mechanicsville*  
**Jeffrey Alan Brandwine**, *Fairfax*  
**Lucie Carolyn Clarke**, *Charlottesville*  
**Harry Edward Cohn**, *Virginia Beach*  
**The Honorable Marvin F. Cole**, *Richmond*  
**Honorable Frederick H. Combs**, *Tazewell*  
**French H. Conway**, *Danville*  
**Roger J. Costello**, *Manassas*  
**Berkeley Cox Jr.**, *Hartford, CT*  
**Richard C. Erickson**, *Staunton*  
**Julian Kroh Fite**, *Tabequah, OK*  
**Vernon M. Geddy Jr.**, *Williamsburg*  
**Ernest A.E. Gelhorn**, *Washington, DC*  
**Joseph B. Geyer**, *Baltimore, MD*  
**H. Brice Graves**, *Richmond*  
**Chris E. Hagberg**, *Vienna*  
**Pat B. Hale**, *Grundy*  
**Albert Henry Jacoby Jr.**, *Stafford*  
**Thomas B. Larkin Jr.**, *San Diego, CA*  
**Frank David Harris**, *South Hill*  
**McClanahan Ingles**, *Gloucester*  
**Ellsworth Martin Jennison Sr.**, *Arlington*  
**James Stuart Keith**, *Virginia Beach*  
**Ross James Kellas**, *Manassas*  
**Jo Hambrick Kittner**, *Glen Allen*  
**Robert Helmuth Kluge III**, *McLean*  
**Jeffrey D. Krause**, *Clifton*  
**Woodrow P. Lipscomb**, *Boydton*  
**Henry I. Lipsky**, *Arlington*  
**Graham Gilmore Ludwig Jr.**, *Richmond*  
**Bernard G. Makowka**, *Fairfax*  
**C. Hardaway Marks**, *Hopewell*  
**Mary Brooke Massie**, *Bristol*  
**The Honorable D. Carleton Mayes**, *Dinwiddie*  
**Peter Leo McCloud**, *Lexington*  
**Paul W. McElhinney**, *Sanford, ME*  
**John Robert Morgan**, *Tunkbannock, PA*  
**Robert M. Musselman**, *Charlottesville*  
**William H. Parker Jr.**, *Danville*  
**James Ned Pate**, *Signal Mountain, TN*  
**Stanley Walter Preston Jr.**, *Richmond*  
**Martha Zilmer Neely**, *Fairfax Station*  
**Neal Douglas Peterson**, *Fairfax*  
**Howard Curtis Pilson**, *Stuart*  
**Nanette Helen Pointon**, *Richmond*  
**William C. Preston**, *Charlottesville*  
**Walter W. Regirer**, *Richmond*  
**James L. Rider**, *Washington, DC*  
**Gilman P. Roberts Jr.**, *Norfolk*  
**Frank W. Rogers Jr.**, *Roanoke*  
**C. Fred Rosenbaum**, *Lake Worth, FL*  
**Joel S. Shapiro**, *Virginia Beach*  
**James Francis Sharkey**, *Sun City Center, FL*  
**G. Martin Shepherd Jr.**, *Springfield*  
**Rudolph Albin Shupik Jr.**, *Chatham*  
**Thomas Dean Simmons**, *Houston, TX*  
**Harold C. Skeen**, *Richmond*  
**John D.K Smoot Jr.**, *Alexandria*  
**Charles G. Snead**, *King George*  
**Harry Lee Thomas**, *Arlington*  
**Kenneth W. Thomas**, *Shobomish, WA*  
**Calvin Forrest Tiller**, *Richmond*  
**Earl Montgomery Tucker**, *Glen Allen*  
**Theophlise Lee Twitty**, *Portsmouth*  
**Bedford Brown Uhler Jr.**, *Manassas*  
**John Joseph Wall**, *Manassas*  
**Felix J. Ward**, *Roanoke*  
**John Thurston Wassom**, *Richmond*  
**Gary David Weinfeld**, *Miami, FL*  
**Kenneth Roger Weiner**, *Fairfax*  
**William F. Wetmore Jr.**, *Arlington*  
**Colins Denny White**, *Richmond*  
**James Woolls**, *Alexandria*  
**Andra Jade Zavoy**, *Richmond*

## REPORTS OF THE SECTIONS

### ADMINISTRATIVE LAW SECTION

*Cliona Mary Robb, chair*

#### Newsletter and Web Site

Brian R. Greene edited the 2005–2006 winter edition of the *Administrative Law News*, which featured articles on the Energy Policy Act of 2005, developments in performance-based rates, the Verizon alternative regulatory plans, legal standing of associations, restrictions on rate cases, and the Gramm/Leach/ Bliley Act. Thanks to Michael J. Quinan, our Web site now features the complete text of all current and past articles of the *Administrative Law News* and the programs for every National Regulatory Conference.

#### Farewell to Commissioner Miller

In January 2006, Allison L. Held organized a farewell breakfast for Commissioner I. Clinton Miller in honor of his retirement from the State Corporation Commission. The section also presented the commission with a commemorative plaque prepared by Mr. Quinan and Cliona Mary Robb. The plaque now hangs in the corridor outside the commission's courtrooms.

#### Welcome to Commissioner Jagdmann and Legislative Update

In February 2006, the section hosted a brown-bag luncheon organized by Jo Anne L. Nolte and Ms. Held, featuring Commissioner Judith W. Jagdmann, who was appointed to replace Commissioner Miller. Kenneth J. Schrad from the SCC provided an update on developments at the 2006 General Assembly.

#### Annual Brown-Bag Luncheon

In April 2006, the section hosted its Sixth Annual Brown Bag Luncheon Program, moderated by Ms. Nolte. The speaker was Commissioner Mark C. Christie, chair of the State Corporation Commission. He fielded questions on what the commission could be doing better.

#### National Regulatory Conference

The Twenty-Fourth National Regulatory Conference was held May 11 and 12, 2006, in Williamsburg. The program, "To Market, To Market—From Regulation to Free Markets: Where Have We Been, Where Are We Now, and Where Do We Go?" focused on how regulation and market forces impact regulated industries. Professor David E. Nye, author of *Electrifying America*, provided a historical perspective on regulated industries in his keynote address.

Through the leadership of James S. Copenhaver and his committee, the conference implemented new approaches that were well received, including organizing several of the panels in a debate format, adding an extra panel to cover the wealth of regulatory developments in the past year, and serving lunch during the ethics panel.

#### Annual Meeting

Attendance at this year's annual meeting was the highest it has been in years, thanks in large part to holding the annual meeting during the NRC. The section's new officers are Mr. Copenhaver, chair; Mr. Greene, vice chair; and Kiva B. Pierce, secretary. In addition, John A. Pirko and Donald Francis Lynch III were elected to the board of governors and Ashley C. Beuttel joins the board as newsletter editor. Our section Web site at [www.vsb.org/sections/ad/index.htm](http://www.vsb.org/sections/ad/index.htm) contains a complete list of the board of governors.

#### Ethics at the Beach

Mr. Quinan organized an ethics continuing legal education panel at the Virginia State Bar Annual Meeting in Virginia Beach in conjunction with the Business Law, Antitrust Law, and Corporate Counsel sections.



### ANTITRUST, FRANCHISE AND TRADE REGULATION SECTION

*Anne Marie Cushmac, chair*

The Board of Governors of the Antitrust, Franchise and Trade Regulation Section continued its mission to improve the quality and relevance of continuing legal education programs for our members and to provide a forum for the discussion of topics of interest to antitrust practitioners.

## REPORTS OF THE SECTIONS

### Programs

This year at the Virginia State Bar Annual Meeting, the section cosponsored a seminar, "Practicing in a House of Mirrors: Dilemmas Posed by Shifting Alliances and Latent Conflict When Representing Multiple Parties." The speakers included Judge Walter D. Kelley Jr., E. Ford Stephens and Thomas G. Slater Jr. The panel explored ethical conflicts that can arise when an attorney is asked to represent multiple parties. Douglas M. Garrou did an excellent job coordinating the section's participation in this event. The program was well attended and offered participants an opportunity to earn ethics credit.

### Publications

Under the leadership of Gustav P. Chiarello III, the section is working on a newsletter to distribute to our members.

### Annual Meeting

At the annual business meeting on June 16, 2006, the following officers were elected: Mr. Garrou, chair; Kenneth W. Dolbeare, vice chair; and Patrick J. Maslyn, secretary. New section Board of Governors members Bradley J. Hansen, Patricia M. McDermott and Wendell L. Taylor were elected to three-year terms.

### Future Projects

This fall the section plans to reprise its successful program entitled "Understanding and Negotiating a Franchise Agreement," which will be sponsored jointly with the Maryland and District of Columbia bars.

It has been a pleasure and honor to serve as chair of this section. I would like to express my sincere thanks to all the members of the board for their unselfish dedication to the work of the section. I also appreciate the patience, diligence, gentle guidance and tireless support provided throughout the year by Theresa B. Patrick, our VSB liaison. Her service to the section continues to be extraordinary.



## BANKRUPTCY LAW SECTION

*Richard C. Maxwell, Chair*

It has been my pleasure to serve as chair of the Bankruptcy Law Section for 2005–2006. The section was particularly active this year responding to the new bankruptcy legislation that became effective October 17, 2005.

Robert S. Westermann of Hunton & Williams continued his work editing the *Bankruptcy Law News*.

In July 2005, the section and Virginia CLE presented a program about the effects of the new bankruptcy legislation. This program was held in Norfolk, Northern Virginia, Richmond and Roanoke. Vice Chair Peter G. Zemanian of the Zemanian Law Group chaired the seminar committee.

The section and Virginia CLE also presented the annual basic bankruptcy continuing legal education program in January and February 2005 in Norfolk, Northern Virginia, Richmond, and Roanoke. Mr. Zemanian chaired this seminar committee.

The section presented the Annual Advanced Consumer Bankruptcy Conference in April. This conference is designed for more experienced bankruptcy lawyers. It featured presentations by Dale W. Pittman and Morgan King. Bankruptcy Judges Stephen S. Mitchell, Douglas O. Tice Jr. and Stephen C. St. John participated in panel discussions in the conference.

The section presented a proof-of-claim seminar in Roanoke to help members of the credit community who routinely file claims for businesses. The seminar, directed by Malissa Lambert Giles of Giles & Lambert PC, was held in the U.S. Bankruptcy courtroom in Roanoke to a standing-room-only crowd.

The section cosponsored a continuing legal education seminar, "The Bumpy Road to Substantial Completion," at the 2006 Annual Meeting of the Virginia State Bar. The speakers were Tyler P. Brown of Hunton & Williams and Paul K. Campsen of Kaufman & Canoles PC.

## REPORTS OF THE SECTIONS

The section also organized a reception honoring Judge David H. Adams at the conclusion of his term as president of the National Conference of Bankruptcy Judges. The section also made a contribution to support the ceremony honoring Judge William E. Anderson on his twenty-five years of service as a bankruptcy judge.

The section has done work on redesigning its Web site so that communication between section members will be increased and the site will serve as a greater tool for the section members.

A nominating committee was formed comprising board members Debera F. Conlon of the Office of the U.S. Trustee and Roy M. Terry Jr. of Durette Bradshaw PC, together with Frank J. Santoro of Marcus, Santoro and Kozak; Donna J. Hall of Troutman Sanders LLP; and James L. Pedigo Jr. of Alexander P. Smith & Associates PC.

The following officers and board members were elected to serve in 2006–2007: Mr. Zemanian, chair; James R. Schroll, vice chair; Robert T. Copeland, secretary; Douglas M. Foley, to succeed Ms. Conlon, whose term has expired; and H. David Cox, Ms. Giles and Mr. Brown, to serve second three-year terms.



### **BUSINESS LAW SECTION**

*Peter E. Broadbent Jr., 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 February 2006 and the Annual Business Law Seminar in May 2006. The thirty-sixth Annual Advanced Business Law Seminar included topics on legal enforcement of letter agreements and other preliminary agreements, commercializing intellectual property, special-risk insurance in transactions, fiduciary duty and exit strategies, and computer security and ethics. The Annual Business Law Seminar focused on choice of business entity.

At the Virginia State Bar Annual Meeting in June, the section also hosted a continuing legal education program on ethical issues in representing multiple parties, cosponsored with the Administrative Law, Antitrust and Corporate Counsel sections.

After decades of holding the Annual Advanced Business Law Seminar at the Tides Inn in the fall, the section Board of Governors decided to try the Boars Head Inn in February, and the excellent attendance there proved that this was a popular and correct decision. Planning is now underway for the 2007 Annual Advanced Business Law Seminar at the Boars Head Inn.

With approximately 1,750 members, the section attempts to cover a broad range of topics relevant to its members.

At the June annual meeting, Peter E. Broadbent Jr. of Christian & Barton LLC was reelected 2006–2007 chair; South T. Patterson of Patton Wornom Hatten & Diamonstein, reelected vice chair; and James C. Hale of Gentry Locke Rakes & Moore LLP, elected secretary.



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

*William R. Mauck, Jr., chair*

The Construction Law and Public Contracts Section enjoyed another extremely successful year in 2005–2006. In early November 2005, we held our twenty-sixth annual continuing legal education program at the Boars Head Inn in Charlottesville. Our program provided attendees with all the CLE credits required for the year and covered recent developments in the law, ethics, mechanic's liens, immigration law, alternative dispute resolution, American Institute of Architects form contracts, and emerging trends in architecture and engineering. We continued our “sticks and bricks” presentations with a program on the management of constructing the Woodrow Wilson Bridge project. We also held two lively panel discussions on the use of technical expert witnesses and factors to consider for presenting expert witness testimony. Kristan B. Burch, Todd R. Metz and K. Brett Marston planned and organized this seminar. Attendees gave the program and speakers high marks for content and presentation.

## REPORTS OF THE SECTIONS

Our spring program at the Virginia State Bar Annual Meeting in June 2006 focused on bankruptcy issues on construction projects. Ms. Burch selected excellent speakers and our program was well-attended and well-received. We have consciously selected seminar topics that not only are informative and educational, but also have practical application. It is a challenge to offer a balanced series for lawyers who are experienced in this field as well as 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 Mr. Metz produced an excellent and informative section newsletter, in the fall and spring.

The section also updated its handbook of construction cases on CD-ROM for distribution to all members. Mr. Marston and Gregory T. St. Ours, with other section Board of Governors members, analyzed and indexed cases and wrote case digests.

Officers for 2006–2007 are Elaine R. Jordan, chair; William R. Mauck Jr., immediate past chair; Jack Rephan, vice chair; Richard F. Smith, secretary. It has been a pleasure and honor to serve as chair of a section comprised of such distinguished lawyers. I thank all board members for their assistance and enthusiasm, and also the Virginia State Bar staff who are so crucial to accomplishing all of our tasks—especially our liaison, Elizabeth L. Keller.



### CORPORATE COUNSEL SECTION

**Budget (Fiscal Year 2006):** \$16,876

**Activities:** The Corporate Counsel Section of the Virginia State Bar was established in 1989 and has more than nine hundred members. The section's primary goals are to facilitate communication and exchange of information and ideas among Virginia attorneys who work in an in-house setting, and to represent in-house attorneys' interests with the Virginia State Bar.

At the VSB's Annual Meeting in June 2006, the section cosponsored a continuing legal education program, "Practicing Law in a House of Mirrors: Dilemmas Posed by Shifting Alliances and Latent Conflicts when Representing Multiple Parties." Other sponsors were the Administrative Law, Antitrust and Business Law sections.

**2005–2006 Officers:** Edward Henry Beck, chair; Douglas Darrell Callaway, vice chair; and Mary Christina Floyd, secretary.



### CRIMINAL LAW SECTION

*Harvey L. Bryant III, chair*

The Criminal Law Section continues to enjoy the enthusiastic support of criminal law defense practitioners, prosecutors and judges. With approximately two thousand members, it is one of the Virginia State Bar's largest sections.

The section continued to provide a forum for the improvement of the criminal justice system through our newsletters, seminars and Web site.

Our Thirty-Sixth Annual Criminal Law Seminar, held in Charlottesville and Williamsburg, was well attended and received. Professor Roger D. Groot of Washington and Lee University Law School was posthumously recognized with a resolution honoring his support of the section and its goals. Frank W. Dunham Jr. was also honored with a resolution for his service to the bar, the federal public defender's offices and the Department of Justice.

The section's Harry L. Carrico Professionalism Award was presented to Paul B. Ebert of Prince William County for exemplary service to the bar and the commonwealth.

Continuing efforts to improve the funding and quality of indigent defense and prosecution included sending a letter to Governor Mark R. Warner that urged budget increases for indigent defense and meeting in a strategy session with Virginia State Bar President Phillip V. Anderson and representatives of the Governor, the Attorney General and concerned organizations.

## REPORTS OF THE SECTIONS

At the VSB Annual Meeting, the section presented a timely program about the noncitizen defendant in the criminal justice system

In June 2006, John E. Lichtenstein of Roanoke was elected chair of the section for 2006–2007; Robert B. Beasley Jr. of Powhatan County, vice chair; and David P. Baugh of Richmond, secretary. Joining the section Board of Governors for four-year terms are John R. Doyle of Norfolk, Richard E. Trodden of Arlington, Nina J. Ginsberg of Alexandria, and Judge Beverly W. Snukals of Richmond.

Professor Robert E. Shepherd Jr. and Reno S. Harp III continued their thoughtful guidance and assistance to the board. The organizational assistance of Elizabeth L. Keller and Theresa B. Patrick was invaluable.

My term on the board has been a tremendous experience. I learned far more than I contributed. Our section continues to be vibrant because of its commitment to the justice system.



### EDUCATION OF LAWYERS SECTION

*George A. Somerville, chair*

The Section on the Education of Lawyers provides opportunities for the exchange of ideas and information and promotes constructive action on legal education issues; provides a vehicle for continuing dialogue and communication on legal education issues among the academic community, the judiciary and the practicing bar in Virginia; sponsors projects regarding the education and training of lawyers from their entry into law school and throughout their careers; and conducts programs, publishes and distributes educational and professional materials, and undertakes other activities that enhance cooperation and interaction among the law schools, the bench and the practicing bar. The section pursued those purposes during the past year, primarily through our newsletter, professionalism programs at Virginia's law schools, and our presentation at the Virginia State Bar Annual Meeting in June.

Professor James M. Boland of Regent University School of Law continues to serve as editor of the section newsletter. We published two excellent issues this year, including Professor Boland's very informative interview with Chief Justice Leroy R. Hassell Sr. in the spring issue. Professor Boland has agreed to continue to serve as editor for the coming year.

The Law School Professionalism Program, developed by this section and the Standing Committee on Professionalism, was again offered to first-year students at each of Virginia's seven accredited law schools. All 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. Judge J. Martin Bass of Stafford was the committee chair. From a chair's perspective, this is a practically perfect program: it brings credit to the section and it is exceedingly well run by the committee, with no need for assistance or involvement by the chair or the section Board of Governors as a whole.

Our annual meeting presentation was a prequel to a longer, stand-alone "Conclave" program that we hope to present in fall 2006 on "The Lawyer as Public Citizen." Edward B. Lowry, chair of our Emerging Trends Committee and a former VSB president, organized and chaired the presentation. The panelists were Professor Margaret I. Bacigal of the University of Richmond, a former section chair; John A.C. Keith of Fairfax, a former VSB president; and George H. Hettrick, chair of Hunton & Williams's Community Service Committee and managing partner for its pro bono offices in Richmond and Charlottesville.

The board of governors thanks the seven Virginia law schools and the following law firms for generous support of the section's operating budget: Gentry Locke Rakes & Moore LLP in Roanoke; Hunton & Williams in Richmond; Michie, Hamlett, Lowry, Rasmussen & Tweel PC in Charlottesville; Oblon, Spivek, McClelland, Maier & Neustadt PC in Alexandria; Reese, Broome & Diaz PC in Vienna; and Troutman Sanders LLP in Richmond.

The board also thanks four outgoing members for diligent and excellent service over the last six years: Judge Cleo E. Powell, retiring vice chair; Judge Pamela Meade Sargent; Judge Clifford R. Weckstein; and Mr. Lowry.

## REPORTS OF THE SECTIONS

Judge Sargent served as chair of the Section's Nominating Committee, which nominated the following officers and governors, who were elected by acclamation at the annual meeting of the section on June 16, 2006: George A. Somerville of Richmond, chair; Professor Henry L. Chambers Jr. of Richmond, vice chair; Judge Rossie D. Alston Jr. of Manassas, secretary; and Lisa Hicks-Thomas of Richmond, Lawrence H. Hoover Jr. of Harrisonburg, Judge Teresa M. Chafin of Tazewell, Judge Winship C. Tower of Virginia Beach, Judge B. Waugh Crigler of Charlottesville, and Justice G. Steven Agee, new members of the board of governors.



### **ENVIRONMENTAL LAW SECTION**

*Heather N. Stevenson, chair*

In 2005–2006, the Environmental Law Section published two editions of its newsletter, the *Environmental Law News*. Caleb A. Jaffe of Southern Environmental Law Center edited the *Environmental Law News*, working with Washington and Lee University law students. Each edition contained one or more feature articles, summaries of recent state and federal regulatory changes, and a digest of recently published environmental law decisions.

This year we also contributed to the October 2005 edition of *Virginia Lawyer*, which was dedicated to environmental law issues. The board chose articles for the journal authored by Andrea W. Wortzel of Hunton & Williams; David E. Evans and Stewart T. Leeth, both of McGuireWoods LLP; Christopher D. Pomeroy of Aqualaw PLC; Marina L. Phillips and David B. Graham, both of Kaufman & Canoles PC; James R. Allison, formerly of Hunton & Williams; and Mr. Jaffe.

In the fall of 2006, the section will help the University of Richmond's T.C. Williams School of Law sponsor a symposium about the Chesapeake Bay.

The section's Web site was updated to include the recent and archived section newsletters and links to state and federal government Web sites.

With the Real Property and Local Government Law sections, the Environmental Law Section cosponsored a continuing legal education program, "A Practitioner's Guide to Debunking the Myths of Traditional Neighborhood Development," at the Virginia State Bar Annual Meeting. Presenters included Joe Barnes of Celebration Associates LLC, Daniel K. Slone of McGuireWoods LLP, Oliver Amos Pollard III of the Southern Environmental Law Center, and Howard E. Gordon of Williams Mullen. Hanover County Attorney Sterling E. Rives III moderated the program.

Officers for the 2006–2007 bar year are Brooks M. Smith of Hunton & Williams, chair; Mr. Jaffe, vice-chair; and Kelley Kline of Smithfield Foods Inc., secretary.



### **FAMILY LAW SECTION**

*Cheshire I'Anson Eveleigh, chair*

The Family Law Section continued its service to its members through continuing legal education, a newsletter and a Web site.

The Web site continues to be useful to section members, and the section Board of Governors hopes to expand its usage in the future. We are also working on having the brochure "Children and Divorce" translated into Spanish, with the cost paid through a grant from the Virginia Law Foundation.

The section grew by about one hundred members this year. It is the fourth largest section of the Virginia State Bar. The section continued its longstanding partnership with Virginia CLE by providing topics and speakers for seminars in the fall of 2005 and spring of 2006. The fall seminars took place in Northern Virginia, Richmond, Hampton Roads and Roanoke. The responses from the participants to the subject matter and speakers were excellent. Although attendance at the Roanoke session was low, the board felt strongly that we needed to continue to have a seminar in that location each fall, and we will work with Virginia CLE to see how we can increase attendance in 2006.

## REPORTS OF THE SECTIONS

The Advanced Family Law Seminar took place in Richmond and, according to Virginia CLE, it was one of the most well-attended family law seminars in recent memory. The speakers and topics were diverse; they included a review of the *Miller-Jenkins* case that was on appeal to the Virginia Court of Appeals at the time of the seminar.

We ended our fiscal year on a high note by cosponsoring a CLE program with the Litigation Section and Bench-Bar Relations Committee about preparing a client for trial. The seminar included vignettes from members of all the sections, including judges, as well as an ethics session headed by Thomas E. Spahn that was very well-received.

At the conclusion of the CLE program, we presented Frank West Morrison with the Lifetime Achievement Award. Frank gave a wonderful acceptance speech that emphasized how mediation can help family law practitioners assist their clients through difficult times.

We also bid farewell to outgoing board members Laura Lynn Dascher and Edward D. Barnes—our immediate past chair—and welcomed new members Frank W. Rogers III, Christopher W. Schinstock, and J. Rene Hicks. Officers for 2006–2007 are Brian M. Hirsch, chair; Craig E. White, vice chair; Andrea R. Stiles, secretary-treasurer; and Cheshire I'Anson Eveleigh, immediate past chair.

As always, our board worked tirelessly over the year, and we could not have been as successful without the help of Patricia A. Sliger, our VSB liaison.



### GENERAL PRACTICE SECTION

*Mona Schapiro Flax, chair*

The General Practice Section's 2005–2006 fiscal year brought improvement to our traditional programs and the addition of new programs.

Our year began at the Virginia State Annual Meeting, with the presentation of the Tradition of Excellence Award to Lawrence H. Hoover Jr. of Harrisonburg, a father of mediation in Virginia.

On November 1, 2005, with the help of the Young Lawyer's Section, we presented our annual First Year in Practice Seminar. The seminar was held at the Richmond Convention Center. We were fortunate to have speakers who have returned on an annual basis. We were saddened by the loss of Judge Robert R. Merhige Jr., who ably moderated the panel discussion on civility and courtroom etiquette. However, we were fortunate to have Judge Jerome B. Friedman step in as moderator.

Due to the help of our members, we now have a Web site that is user friendly and often used. Further, we have persevered with many changes in our newsletter process, with admirable results.

Virginia CLE asked the section to cosponsor the first Virginia CLE Solo and Small-Firm Institute. This was a challenge we gladly accepted. The Institute was held May 16–17 at the Kingsmill Resort in Williamsburg. Thanks to the tireless efforts of Link Christin of Virginia CLE, this institute far exceeded our expectations. Many of the lectures were standing room only. We hope to be associated and involved with solo and small-firm institutes in future years.

Our year concluded at the Virginia State Bar Annual Meeting, with a workshop on the new Bankruptcy Act and how the changes affect general practitioners. Judge David H. Adams and attorney Keith L. Phillips were speakers. Charles E. Adams acted as the moderator.

All members of the section Board of Governors gave their time and expertise unselfishly. The members have enabled this board to flourish. I am confident in the leadership of Mr. Adams as the 2006–2007 chair, Daniel J. Farnsworth Jr. as vice-chair, and Linda Y. Lambert as secretary.

Thanks to Patricia A. Sliger, the VSB liaison, for being a friend throughout my tenure on this board. She has been a guiding force. Our board would not achieve its successes without her guiding hand and infinite patience.



## REPORTS OF THE SECTIONS

### HEALTH LAW SECTION

**Number of Members (6/1/2006):** 517

**Budget (FY 2006):** \$7,648

**Activities:** The membership of the Health Law Section consists of those in legal practice devoted to dealing with the administration of health care.

The section has been active in the continuing legal education field, including the sponsorship of the Annual Law Institute on Hospitals and Medicine, cosponsored with the Department of Health Administration of Virginia Commonwealth University Medical Center, the Virginia Health Care Association, and the Virginia Hospital Association.

The section also publishes a newsletter of substantial interest to its membership.

The section's board invites all members to attend its meetings. Many meetings include an informal program or roundtable discussion of current topics. The section also produces programs of interest to the general health-care professional.

The Health Law Section sponsored Advance Directives Day on April 18, 2006. Health-care organizations across the state distributed advance directives forms, and 162 persons were known to have executed them on the spot. The event was kicked off with a proclamation signed by Governor Timothy M. Kaine. The committee plans to repeat the effort in the coming year. Nathan A. Kottkamp of Richmond chaired the committee that organized the event.

**2006–2007 Officers:** Molly Shuttleworth Evans, chair; William Hiram Hall Jr., vice chair; and Erica Christine Reed, secretary.



### INTELLECTUAL PROPERTY LAW SECTION

*Cynthia C. Lynch, 2006–2007 chair*

In 2005–2006, the Intellectual Property Law Section continued its commitment to promoting excellent lawyering and scholarship in the field of intellectual property.

We began the reporting period with our section's events at the 2005 Annual Meeting of the Virginia State Bar. We had a great turnout for our dinner meeting, and we also offered a continuing legal education presentation. Our speaker, Anthony K. Greene of the Jamison Insurance Group, gave an informative "Primer on Intellectual Property Insurance." We were joined at both events by Judge Richard Linn of the United States Court of Appeals for the Federal Circuit. Judge Linn, a founding member of the section Board of Governors and past chair of our section, presented the award in our section's first annual law student writing competition, which he also judged. Thanks to board members Kristan B. Burch and Jonathan R. Pond, who organized the annual meeting event.

Our eighteenth annual fall continuing legal education program took place October 21–22, 2005, in Wintergreen. Topics and speakers included:

- "Reforming U.S. Patent Law"—Suzanne T. Michel
- "Franchising and Related Trademark Issues"—Stephen E. Story
- "*MGM Studios v. Grokster* Panel"—David E. Kendall, Richard G. Taranto, Kim Gibson and Michael J. Huppe
- "Conflicts Between Lawyers and Their Clients"—Thomas E. Spahn
- "The Evolving Doctrine of Trademark Dilution"—David Hill
- "Two Lessons in Discovery as Illustrated by *Rambus Inc. v. Infineon Technologies AG*"—Judge Robert E. Payne
- "Online Trademark Infringement Issues"—Jonathan Hudis

## REPORTS OF THE SECTIONS

Board member Susan M. Dadio organized the section's annual spring ethics CLE program, which took place May 31, 2006, in Alexandria. Deborah Jeffrey discussed "Ethics and Loss Prevention for I.P. Lawyers."

The section held its second annual writing competition for Virginia law students, with Judge Linn again serving as the final judge. However, because Judge Linn determined that no entry of acceptable quality was received to merit the \$4,000 prize, the section instead donated the funds to the American Intellectual Property Law Education Foundation to use for a one-time merit-based scholarship to a Virginia law student. The section plans to continue the law student writing competition and hopes to award a winner in 2007. Thanks to board members Janet P. Peyton, Ms. Dadio and 2005–2006 Chair Christopher J. Mugel for their efforts on this project.

We progressed in efforts to improve communications with section members. Our Web site—[www.vsb.org/sections/ip](http://www.vsb.org/sections/ip)—is kept up-to-date. We continued to increase our e-mail list, which allows us to convey information to members in a faster, more convenient format.

At the 2006 annual meeting, our section elected new officers and board members: Ms. Lynch, chair; Ms. Peyton, chair-elect; Ms. Burch, vice chair; and Ms. Dadio, secretary. New board members are Thomas L. Stoll and Christopher P. Foley.



### INTERNATIONAL PRACTICE SECTION

*Brian S. Alperstein, chair*

The Virginia State Bar International Practice Section (IPS) had a difficult operating year in 2005–2006. Our primary focus was to build a more active membership. We held monthly meetings, which were attended by a dedicated core of members. Our first event was a membership holiday party in Richmond in the beginning of December 2005. The VSB provided a budget increase to help pay for this important membership effort. It was extremely well attended. In 2006, the IPS Board of Governors spent significant time planning our panel presentation for the annual meeting. We competed for the keynote event but unfortunately we were provided a less than ideal time slot of Friday afternoon. Nevertheless, the panel was a tremendous success. We had excellent attendance (more than twenty people) and the panel was well received. We also elected a new slate of officers, with Lauren M. Camilli as 2006–2007 chair.



### LITIGATION SECTION

*Samuel W. Meekins Jr., chair*

The Litigation Section of the Virginia State Bar had a fruitful and rewarding year fulfilling its goal of promoting efforts to improve the efficient, ethical and just resolution of societal disputes. Vice Chair Vickie H. Devine and Secretary/Treasurer R. Lee Livingston, kept the section Board of Governors on track and under budget. A special thanks is due to Patricia A. Sliger, our VSB section liaison, whose devotion to the section and effervescent manner made the year's work pleasurable.

The *Litigation News*, edited by Kevin W. Mottley, provided interesting and educational articles on legal topics to section members. These issues are currently made available as hard copy but on the Litigation Section Web site at [www.vsb.org/sections/lg/index.htm](http://www.vsb.org/sections/lg/index.htm).

Litigation Section seminars included an insightful dissertation on depositions offered at the VSB 2005 Midyear Legal Seminar in Barcelona, Spain, presented by the Honorable William H. Ledbetter Jr. and Past Chair Robert E. Scully. At the VSB Annual Meeting, the section also presented a program, "Extreme Makeover: Preparing Your Client for Trial," on the dos and don'ts of witness preparation. R. Lee Livingston worked with the Family Law Section and Bench-Bar Relations Committee to coordinate the panel, which included Judge Michael F. Urbanski, Judge Jane M. Roush, Thomas E. Spahn, Thomas E. Albro and Glenn C. Lewis.

Sandra Chinn-Gilstrap, liaison to the Litigation Section's Young Lawyers Committee, and Philip G. Gardner created a workshop in which fundamentals of deposition-taking were taught and demonstrated by skilled practitioners and jurists. The seminar was videotaped for possible circulation to local bar associations.

## REPORTS OF THE SECTIONS

Thanks to L. Steven Emmert, chair of the section's Appellate Subcommittee, the section developed an enhanced program for those practicing before appellate courts. Two symposia were offered where appellate practice issues were discussed and debated. The appellate subcommittee is developing a list of attorneys who will assist *pro se* litigants in civil appeal preparation. The appellate subcommittee also added representatives of the Supreme Court of Virginia, Court of Appeals of Virginia and Fourth U.S. Circuit Court of Appeals to its membership.

The Litigation Section wrote feature articles for the February 2005 *Virginia Lawyer*. The articles, written or solicited by members of the section Board of Governors, received high praise from readers. An article by Mr. Emmert, "Getting a Writ in Virginia's Appellate Courts," has received wide circulation from lawyers seeking guidance on the appellate process.

As has been the practice for the past several years, the section was once again a primary sponsor of the Law in Society Award competition, in which high school students earn educational assistance for submitting essays on timely legal topics of public interest.

The section was pleased to add as new members this year Gary C. Hancock of Pulaski, Sharon S. Goodwin of Norfolk, and Gary A. Bryant of Norfolk. Ms. Goodwin and Mr. Bryant will fill unexpired terms. Next year's section can look forward to the outstanding leadership of Ms. Devine of Furniss, Davis, Rashkind & Saunders PC, chair; R. Lee Livingston of Trembley & Smith LLP, vice chair; and Jennifer Lee Parrish of Parrish, Houck & Snead PLC, secretary/treasurer.

It was my honor and pleasure to serve the section and its 2,765 members for the 2005–2006 year. I thank each member for his or her kindness and assistance.



### LOCAL GOVERNMENT LAW SECTION

*Barbara M. Rose, chair*

At the Virginia State Bar Annual Meeting in June 2006, the Local Government Law Section jointly sponsored, with the Environmental Law and Real Property sections, a continuing legal education program on critical planning. The program, "A Practitioner's Guide to Debunking the Myths of Traditional Neighborhood Developments," drew a crowd of approximately ninety.

In addition, the section published four issues of the *Local Government Law Journal* during the 2005–2006 fiscal year. These journals addressed legal issues that face local government attorneys, including the alphabet soup of immigration law; Virginia's Public Records Act; Virginia municipal broadband opportunities and initiatives to protect and, conversely, to bar municipal broadband; and the United States Supreme Court's eminent domain decision in *Kelo v. New London*.

The Court, in upholding the condemning authority's action in *Kelo*, merely restated the long-established federal standard for public use under the takings clause of the Fifth Amendment. Nevertheless, in Virginia and elsewhere the case has caused and will continue to cause widespread political action. The challenge for this section and local government attorneys will be *not* to give abstract reasoning about eminent domain to legislators, but to gather examples of projects that would not have been or could not in the future be built if changes are made in Virginia's already more-restrictive judicial interpretation of the state constitution's takings clause under the "predominant use test": Public interest based on all the peculiar facts of each case dominates over private gain.

The section Board of Governors at its last meeting in this fiscal year voted to explore setting up a Web site with the VSB to archive the *Journal*. The section at its annual meeting elected Joseph L. Howard Jr., Stafford County Attorney, chair for the 2006–2007 bar year. Also elected were Michael Long, Fairfax County Attorney's office, vice chair; Phyllis A. Errico, Virginia Association of Counties, secretary; and Andrea W. Wortzel, Hunton & Williams, and William M. Hackworth, City of Roanoke Attorney, new board members. Rhysa G. South, Mark K. Flynn and Sandra J. McNinch retired from the board after wonderful years of service.



## REPORTS OF THE SECTIONS

### MILITARY LAW SECTION

**Number of Members (6/1/2006):** 216

**Budget (Fiscal Year 2006):** \$3,280

**Activities:** The Military Law Section was created to serve attorneys who have an interest in how Virginia law affects military personnel, functions, and operations. It is suitable for attorneys whose clients may include members of the military.

The section is open to members in good standing of the Virginia State Bar, members of the judiciary, military attorneys and law students. The section sponsors continuing legal education programs and publishes educational materials, including a newsletter, for its members.

**2006–2007 Officers:** Marcus Anton Brinks, chair; Matthew Westcott Smith, vice chair; Richard James Prevost, secretary.



### REAL PROPERTY SECTION

*Douglass W. Dewing, chair*

This year of *Kelo v. New London* marked a return to public awareness of the uniqueness of real property. With a membership hovering over the two thousand mark, the Real Property Section's goal was to better serve the public through improving our knowledge and skills.

The board and area representatives of the section met quarterly, discussed issues in our practices in an informal collegial setting, and took those discussions to the membership through continuing legal education seminars and our newsletter. The active participation of the membership in this year's programs resulted in a CLE offering second to none.

In cooperation with Virginia CLE, the section cosponsored two top-of-the-line programs. The Tenth Annual Advanced Real Estate Seminar offered "Is *Kelo* Possible in Virginia?" and multiple-track programs for the commercial and residential practitioner. Our twenty-fourth annual Real Estate Seminar presented two longtime favorites—Current Case Law and Current Legislation (no simple task with this year's General Assembly). Topics that included "Who Is Your Client in a Real Estate Transaction?" and "The Mechanics of Mechanic's Lien Coverage."

With the Environmental Law and Local Government Attorneys sections, our summer meeting program on "Debunking the Myths of Traditional Neighborhood Development" examined the development process from several perspectives: Local governments', developers', purchasers' and future generations', and provided a thoughtful framework for the practitioner involved in the process.

Section members continue to raise the standards of our newsletter, *The Fee Simple*. For the first time in many years, the section actively sought articles from law students on real property topics—a practice that will continue in the future through the inauguration of a student writing competition. The article selected for publication in this year's competition offered a contrarian view of the significance of *Kelo*. Other articles of interest included a summary of changes in the Bankruptcy Code affecting real estate practitioners and a summary of title issues to be considered in transactions as churches begin to explore holding title in a corporate form after two hundred years of constitutional prohibition.

The section has been fortunate to have enthusiastic, dedicated and outstanding members step forward as the need arose during this year. I have confidence that the section will continue to grow and adapt, as it has done for more than fifty years.

Our Web site—[www.vsb.org/sections/rp/index.htm](http://www.vsb.org/sections/rp/index.htm)—shows where we've been. More importantly, it shows why real estate practitioners remain essential members of their local communities.



## REPORTS OF THE SECTIONS

### TAXATION SECTION

*Geoffrey C. Dodson, chair*

**Expansion of Board/Activities:** In an effort to increase diversity and better meet the needs of the tax lawyer, the Taxation Section Board of Governors 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 improve the quality of tax administration in the commonwealth and provide input on important policy issues.

**Budget Matters:** Through the efforts of board member Robert G. McElroy, the section provided funding for the University of Virginia Annual Conference on Federal Taxation, held in June 2006, and the Fifty-Second College of William & Mary Tax Conference, to be held in November 2006.

The following officers will continue to serve until the 2007 Virginia State Bar 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 W. Botkin, William G. Fendley IV and Mr. McElroy.



### TRUSTS AND ESTATES SECTION

*Laura O. Pomeroy, chair*

The Trusts and Estates Section successfully organized and presented two seminars this past year.

In November, 2005, the twenty-fourth annual Trusts and Estates Seminar was held in Richmond, Roanoke, Norfolk and Fairfax. The seminar, cosponsored with Virginia CLE, featured a potpourri of practical topics for estate planners and administrators. The topics included how to handle the administration of tangible personal property in an estate; potential cultural, religious and ethnic considerations in drafting estate planning documents; drafting and administrative changes under the Uniform Trust Code (UTC); divorce and family law concerns for estate planners; and a discussion of the top mistakes trusts and estates lawyers make that lead to malpractice. The seminar continued its annual tradition of reviewing of the latest tax developments and Virginia developments. Unique to this seminar was a question-and-answer booth where experienced lawyers were available to answer trusts and estates questions one-on-one.

For the Virginia State Bar Annual Meeting in Virginia Beach in June 2006, the Trusts and Estates Section presented a seminar entitled "Practical Drafting Tips Under the UTC and Health Insurance Portability & Accountability Act." John T. Midgett and Andrew H. Hook provided excellent written materials, including sample language and forms. The presentations were straightforward and informative.

At the annual meeting, Donna Esposito Fincher was elected chair of the section; Victoria J. Roberson, vice-chair; Mr. Midgett, secretary; and Julie A. King, newsletter editor.



## REPORTS OF THE CONFERENCES

### CONFERENCE OF LOCAL BAR ASSOCIATIONS

*M. Janet Palmer, chair*

Virginia State Bar fiscal year 2005–2006 marked the successful continuation of existing programs and an enthusiastic implementation of a new initiative. Added to the Conference of Local Bar Associations's Executive Committee were Andrew M. Condlin of the Henrico Bar Association and Dillina W. Stickley of the Harrisonburg-Rockingham County Bar Association. Departing members Manual A. Capsalis and Nancy C. Dickenson are to be thanked for service and dedication to the CLBA.

The Bar Leaders Institute (BLI) again provided a vehicle for leadership training, networking and information regarding projects of other local bars. There were two locations: Williamsburg and Abingdon. New topics of discussion included the Indigent Defense Task Force report, Lawyers Helping Lawyers and ethical issues of contingency planning. We were honored to have College of William & Mary President Gene R. Nichol as our luncheon speaker in Williamsburg and Robert J. Grey Jr., immediate past president of the American Bar Association, in Abingdon. W&M and the Southwest Virginia Higher Education Center provided inspiring venues for these events.

The CLBA became the permanent home for the Solo & Small-Firm Practitioner Forums, initiated by the Supreme Court of Virginia and led by Chief Justice Leroy R. Hassell Sr. and Justice Cynthia D. Kinser. Three forums were presented, building on the first in March 2005. James Madison University in Harrisonburg, The College of William & Mary (in conjunction with the BLI) and the Institute for Advanced Learning and Research in Danville were selected to host these events. Solo and small-firm attorneys attended programs geared to their specific needs. Topics included ethical issues crucial to solo and small firms, law-office management, technology, trust accounting, and protecting clients in the event of a lawyer's death or disability. In addition to President Nichol in Williamsburg, keynote speakers were Chief Justice Hassell in Harrisonburg and Chief Deputy Attorney General William C. Mims in Danville.

Each forum concluded with a Town Hall meeting led by the Chief Justice, with Justice Kinser, VSB President Phillip V. Anderson and VSB Executive Director Thomas A. Edmonds as panelists. A candid question-and-answer period that ended each meeting was well-received and endorsed for future forums.

Thanks to a grant from the Virginia Law Foundation, awarded in May 2006, the signature publication of the CLBA, *So You're 18*, will again be updated and published in English and Spanish with a fall beginning-of-school, distribution date. A new emphasis includes distribution and presentations of the booklet at local drivers licensing ceremonies. Interest expressed by juvenile and domestic court judges has been positive.

Information regarding local bar activities and pro bono opportunities will continue to be available through the *Legally Informed* booklet, CLBA monthly columns in the *Virginia Lawyer* and the *Local Bar Connection* newsletter.

Two exceptional individuals were honored at the CLBA annual meeting in June at Virginia Beach. Carolyn M. Grimes of the Alexandria Bar Association and George W. Dodge of the Arlington County Bar Association each received a Bar Leader of the Year award. They represent achievement and volunteerism of the highest order. Thirty-two Awards of Merit and Certificates of Achievement were given for excellence to local and specialty bars of all sizes. Multibar projects were also recognized.

Many thanks to my fellow committee members and the VSB staff. We have much to be proud of.



### SENIOR LAWYERS CONFERENCE

*William T. Wilson, chair*

The Senior Lawyers Conference (SLC) consists of more than eleven thousand members. From July 1, 2005, to June 30, 2006, the SLC has been involved in the following programs:

**Senior Law Day:** The SLC encouraged local bar associations to conduct Senior Law Day programs in their jurisdictions. This is a program first successfully executed in Covington by the Alleghany/Bath/Highland Bar Association. A panel of seven lawyers and a general district court judge discussed topics in the *Senior Citizens Handbook* with about one hundred senior citizens who met at the courthouse. The SLC has agreed to furnish *Senior Citizens Handbooks* to bar associations willing to put on similar programs, with the help of a \$9,000 grant from the

## REPORTS OF THE CONFERENCES

Virginia Law Foundation. Virginia Chief Justice Leroy R. Hassell Sr. and Virginia State Bar President Phillip V. Anderson endorsed the program in letters to local bars. Patricia A. Sliger of the VSB staff is the contact for distribution of the books. The Conference of Local Bar Associations recognized the program with an Award of Merit to the Alleghany/Bath/Highland Bar.

**Senior Citizens Handbook:** The SLC and Young Lawyers Conference continued to jointly produce and distribute the handbook.

**Frank O. Brown Jr.,** a former SLC Chair and now editor of the SLC newsletter and Web site, traveled the commonwealth urging lawyers to prepare for orderly resolution of their practices should they die or become disabled. He gave unselfishly of his time without seeking fees or costs reimbursement. The General Practice Section presented Mr. Brown with its Tradition of Excellence Award.

**Emeritus Rule:** The SLC continued to encourage retiring lawyers to help the poor under the Emeritus Rule, which waives some formalities of active membership for retired lawyers doing pro bono work.

**“So You’re Going to a Nursing Home/Assisted Living Facility.”** This program, held at the VSB Annual Meeting, was designed to educate lawyers about the technicalities, complications and pitfalls involved when one is considering becoming a resident of a nursing home or assisted living facility. The panel included state Senator R. Creigh Deeds; Virginia Social Services Commissioner Anthony Conyers Jr.; Linda Wilhelm from the Department of Health; attorney T. Daniel Frith III of Roanoke; and attorney Andrew H. Hook of Portsmouth. William T. Wilson of Covington moderated the panel. The program was videotaped for future distribution.

**SLC Web Site:** Largely through the efforts of Mr. Brown, the SLC Web site, [www.vsb.org/slc](http://www.vsb.org/slc), was used heavily. It provides information helpful to the profession and the public.

**Supreme Court Initiatives.** Members of the SLC participated in a number of committees and commissions that execute the initiatives of Chief Justice Hassell. Topics include involuntary commitment, court-appointed defense counsel pay, and future planning for the courts.

**Fifty-Year Awards.** During the annual meeting, the SLC hosted a luncheon for members of the bar who have practiced fifty years or more. Awards were presented to the fifty-year lawyers by President Anderson.

The SLC is active and dedicated to improving the legal profession. Without the assistance of the SLC Board of Governors, I would have been like the proverbial gooney bird on the beach trying to get off of the ground. My thanks go to Jack W. “JB” Burtch Jr., incoming chair; George W. Shanks, chair-elect; Homer C. Eliades, first vice chair; Harriette H. Shivers, second vice chair; John G. Mizell Jr., secretary; Robert E. Eicher, treasurer; William Brice Smith; Mr. Brown; J. Dale Bimson; retired Judge William C. Boice; Robert L. Calhoun; Judge Bonnie C. Davis; Earle Garrett III; F. Warren Haynie Jr.; William H. Oast III; retired Judge J. Davis Reed III; Janine M. Saxe; Edward R. Slaughter Jr.; and retired Judge Frank M. Slayton.

Thanks also to Patricia A. Sliger, conference liaison; Thomas A. Edmonds, VSB executive director; and all of the VSB staff with whom we worked, for their very able assistance. It has been a rewarding year and I am thankful for the opportunity to serve.



### YOUNG LAWYERS CONFERENCE

*Jimmy F. Robinson Jr., president*

Throughout the 2005–2006 bar year, the Young Lawyers Conference continued to make positive strides toward accomplishing the goals of the YLC. We worked diligently this year to make our theme—“*Bettering Our Community; Strengthening Our Profession*”—a reality.

**Voter Education Initiative:** Under the leadership of Jennifer L. McClellan and Jacqueline S. McClenney, the Young Lawyers Conference worked with the State Board of Elections for a second year to distribute a “Know Your Rights and Responsibilities” brochure to citizens across the commonwealth. The Young Lawyers Conference distributed more than thirty-two thousand brochures to civic organizations, churches, and chambers of commerce. Additional

## REPORTS OF THE CONFERENCES

pamphlets were distributed to fraternities, sororities, voting rights organizations and the Virginia Commonwealth University Black Caucus.

**Peer Mediation:** Under the leadership of Sona Rewari, peer mediation chair, the Young Lawyers Conference secured retired Judge Rosemarie P. Annunziata to be keynote speaker at the November 22, 2005, Northern Virginia Regional High School Peer Mediation Conference, which the YLC Peer Mediation Committee cosponsored. In addition, the YLC secured all panelists for a Mediation Beyond High School workshop that was conducted at the Peer Mediation Conference.

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

- **Hurricane Katrina:** The Virginia Lawyer Referral Service began providing referrals related to Hurricane Katrina in September 2005. Virginia State Bar Emergency Legal Services cochairs Jeffrey H. Geiger and J. Barrett Lucy monitored this storm and Virginia's efforts to assist displaced citizens from Louisiana.
- **Training of Additional Volunteers:** As a result of the tremendous Virginia effort to assist in the worldwide support to the Gulf Coast and specifically to New Orleans, Louisiana, in conjunction with the Virginia State Bar and VBA, the YLC ELS Committee conducted multiple continuing legal education volunteer training sessions to add new volunteers to the rolls. More than seventy-five individuals were trained.

**Oliver Hill/Samuel Tucker Prelaw Institute:** The 2005 Oliver Hill/Samuel Tucker Prelaw Institute hosted twenty-five high school students at the University of Richmond July 18-22, 2005. We had a variety of students from various backgrounds. A fair number of students attended George Wythe and Huguenot high schools in Richmond. The week of activities included panels of government, private-practice and in-house counsel attorneys; mock law classes with UR law professors; and academic sessions to preparing students for college and the "real world." The students were treated to an interactive session with Judge Roger L. Gregory, followed by a tour of the Black History Museum and Cultural Center (featuring the *Brown v. Board of Education* exhibition). The week culminated in the Mock Trial Program where the students tried a case similar to those completed by first-year law students. For recreation, the students bowled, played Laser Quest, and attended a Richmond Braves baseball game.

**Professional Development Conference:** The fifth annual Professional Development Conference was held March 17-18, 2006, at the University of Virginia's Darden School in Charlottesville. This program provided Virginia's young lawyers with a forum to specifically address their professional and educational concerns, including substantive CLE programs and professional development seminars. This year's conference, "Do It Yourself: Your Career Building Tool Kit," was at arming young lawyers with the tools necessary to build a successful practice. Approximately forty-five individuals attended the PDC.

**Celebration Bench-Bar Dinner:** This year's Celebration Bench-Bar Dinner was held in Richmond on May 23, 2006, at the Virginia Museum of Fine Arts. First Lady Anne B. Holton was the keynote speaker. As always, the goal of the dinner was to create an informal, relaxed event for young lawyers to mingle with prominent members of the legal community. The dinner is also an opportunity to recognize and honor recently appointed or elevated female and minority members of the Virginia judiciary.

**Community Law Week:** The Young Lawyers Conference implemented its Community Law Week programs during May and early June. No Bills Night was implemented in Roanoke, Danville, and Northern Virginia.

**Minority Prelaw Conference:** Each year the YLC hosts the Minority Prelaw Conference to encourage minority undergraduate students to consider the legal profession as a career. This year's program was held February 25, 2006. The committee chairs, Tomika N. Stevens and Samantha Ahuja, and committee members Ronke H. Hughes and Reginald M. Skinner successfully expanded the program by having several new events, including a Friday night reception with a keynote speaker. The program was held at a new venue, the George Mason School of Law in Arlington. Many sponsors, law firms, law schools and conference participants attended the Friday reception and the U.S. District Judge Gerald Bruce Lee of the Eastern District of Virginia was the keynote speaker. Panelists on Saturday included VSB President Phillip V. Anderson. This was the biggest and best-attended Prelaw Conference, with approximately one hundred students in attendance.

## REPORTS OF THE CONFERENCES

**Wills For Heroes:** Wills for Heroes was successfully implemented in Cumberland County and Norfolk. CLE programs to train volunteers and client education sessions were held prior to the will signings. At the will signings, session, YLC volunteers prepared wills, powers of attorney and advance medical directives for more than forty first responders.

**VSB Annual Meeting:** The Young Lawyers Conference sponsored this year's Annual Meeting showcase program—"A Roberts and Alito High Court: The Effect of Long-Standing Precedent and Developing Areas of Law." The panel presentation addressed significant developments that have taken place in the composition of the United States Supreme Court with the appointments of Chief Justice John G. Roberts Jr. and Justice Samuel Alito. The panelists included Tony Mauro of the *Legal Times* publication.

**Admission and Orientation Ceremony:** The Young Lawyers Conference welcomed more than 300 new Virginia attorneys at our June 2006 Admission and Orientation Ceremony and more than 850 new admittees at our Fall Admission and Orientation ceremony in October 2005. After each program, the Supreme Court convened in the Richmond Convention Center and bestowed the duties and responsibilities of our profession upon Virginia's newest lawyers.

**First Day in Practice Seminar:** This year's program took place on November 1, 2005, following the fall Admission and Orientation Ceremony. More than 162 attended. The YLC continues to work with the VSB General Practice Section to put on this program.

**Juvenile Justice/Youth Rights Handbook:** This handbook is being championed by Lesley A. Pate. It will be published in the fall 2006 by the YLC in conjunction with the Just Children Program of the Legal Aid Justice Center in Charlottesville. The handbook, spearheaded by Andrew K. Block, will describe the rights of juveniles in schools, police custody and courts. The handbook is a guide for students, parents and school personnel who wish to protect their own rights and respect the rights of others.

**We the Jury: A View from the Box:** The We the Jury program took place April 28, 2006, at the University of Richmond Law School's Moot Courtroom. The program was divided into two forty-five-minute segments on the history of the jury system and timely topics such as large punitive damage awards in products liability cases; the "CSI effect" (the imagined need for DNA evidence to convict an accused); jury nullification; and jury note taking. Panelists include: The Judge Margaret P. Spencer, Judge Richard D. Taylor, Michael N. Herring, Carolyn V. Grady, Thomas M. Wolf, Claire G. Cardwell and citizen jurors. The second portion of the program was a town-hall format moderated by Shawri King Casey. This program was an opportunity to inform the public about the importance of jury service, as well as a chance for previous jurors to inform attorneys and judges about positives and negatives from the jury box. Juniors and seniors from area high schools and the general public were invitees.

**Immigrant Outreach:** This year the Immigrant Outreach program provided information to attorneys and judges regarding deportation and implications of arrests, charges and criminal convictions to immigrants. The program has been a success for the past three years and has received positive feedback from attorneys and courts in Northern Virginia. This year we expanded the program to include a Model Hearing Program, developed to improve the quality of advocacy for immigrants before the court, as well as increase levels of pro bono representation. The program allowed participants to acquire hands-on immigration training and a broad understanding of immigration law, in exchange for a limited commitment.

**Docket Call:** The YLC publishes a quarterly newsletter for young lawyers under the editorial leadership of Christopher E. Gatewood. The *Docket Call* reports on legal issues, career issues and bar activities and is an important tool for the YLC to publish its many activities and recruit volunteers.



## REPORTS OF STANDING COMMITTEES

### STANDING COMMITTEE ON BUDGET AND FINANCE

*Howard W. Martin Jr., chair*

The Standing Committee on Budget and Finance met on August 1, 2005, to review the Virginia State Bar's submission to the commonwealth for the 2006–2008 biennium budget. The requested appropriations of \$10,554,397 for fiscal year 2007 and \$10,676,669 for FY 2008 were approved by the state Department of Planning and Budget and included in the Governor's budget for consideration by the General Assembly. The General Assembly also approved the appropriation amounts requested by the bar.

The committee met again on March 23, 2006, to review the staff's proposal for the 2006–2007 operating budget. Immediately following the meeting, the proposed budget was sent to the Supreme Court for review and approval. The proposed budget was reviewed by the VSB Executive Committee on April 27, 2006, and recommended to the VSB Council for approval. In June, the Supreme Court informed the bar that the proposed budget was approved, except that a grant item of \$50,000 to Legal Services Corporation of Virginia should not be made until further study. On June 15, 2006, the council approved an operating budget for fiscal year 2006–2007 totaling \$12,276,360. This budget includes \$705,000 of one-time expenses for set-up costs for proposed new employees, including set-up costs related to the rental of additional office space, and the ongoing computer project. The \$50,000 previously included for LSCV was set aside as a contingency item.



### 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 about the propriety of certain lawyer advertising, and issues advisory opinions. 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-page and other printed advertising material to determine compliance with the Rules of Professional Conduct. If the committee finds 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. This fiscal year, fifty such letters were sent to lawyers who, in all cases, voluntarily complied with the committee's request. None of the matters were referred for disciplinary action.

On July 14, 2005, the SCLOAS submitted to the Supreme Court of Virginia a proposed amendment to Rule 7.4(d) concerning a lawyer's ability to advertise practice certifications and accreditations. The Court rejected the proposed amendment on February 28, 2006. The amendment would have incorporated the American Bar Association's position in its current Model Rules that if an attorney has been certified by an ABA-accredited organization, the attorney may advertise the certification without any disclaimer. Because the Court rejected this amendment, attorneys need to continue to use a disclaimer for *all* certifications not recognized by the Supreme Court of Virginia.

Legal Advertising Opinion A-0114 was carried over from FY 2003. The Supreme Court approved LAO A-0114 on August 26, 2005. In the LAO, the committee opines that an attorney may advertise the fact he or she is listed in a publication such as *The Best Lawyers in America*, or a similar publication, and include additional limited statements, claims or characterizations based upon the lawyer's inclusion in the publication, provided such statements, claims or characterizations do not violate Rule 7.1. Also, attorneys recognized and listed in *The Best Lawyers in America* may properly note that they are among those lawyers "whom other lawyers have called the best." The opinion cautions, however, that lawyers should be mindful to exercise discretion when communicating this information, and that the communication should be objective and not misleading. For example, although an attorney may properly characterize inclusion in the book *The Best Lawyers in America*, the attorney cannot characterize that inclusion into statements such as, "Since I am included in the book, that means I am the best lawyer in America." Nor can the attorney impute any such endorsement to others in the law firm not so recognized or to the firm itself.

The work of the SCOLAS could not be done without our volunteer members. I thank them for the inspiration, time and energy they bring to our work. They are Cochair Alison P. Landry, Alan S. Anderson, Gina M. Burgin, Jeffrey H. Krasnow, Susan R. Salen, William Miller, William L. Schmidt, Roscoe B. Stephenson III, David R. Selig,

## REPORTS OF STANDING COMMITTEES

George L. Townsend and C. James Williams III. James M. McCauley, Leslie A.T. Haley and Michelle L. Townsend of the VSB staff work hard to guide us in our work, and their talents are appreciated as well.



### **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.

The COLD held the twenty-sixth annual Disciplinary Conference on July 10 and 11, 2005, in Charlottesville. All attorney and lay volunteers serving on district committees, the Disciplinary Board and the COLD were invited to attend the conference in addition to circuit court judges who serve on three-judge panels in attorney discipline cases.

The program included presentation and discussion of case vignettes and separate breakout sessions about the disciplinary system for new district committee members, returning district committee members, members of the Disciplinary Board and judges.

Afshin Farashahi chaired the Oversight Subcommittee in fiscal year 2006. Subcommittee members randomly reviewed more than one hundred 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.

William L. Babcock Jr. chaired the Rules Subcommittee during fiscal year 2006. The subcommittee proposed, and the COLD approved, three amendments to Paragraph 13, which were presented to the VSB Council for consideration at its meetings on October 21, 2005; March 3, 2006; and June 15, 2006. These included one amendment that was proposed and approved by the COLD in fiscal year 2005. Council approved the amendments, and the bar subsequently petitioned the Supreme Court to adopt them. One of the amendments has been adopted by the Court and the other two amendments are pending before the Court. During fiscal year 2006, the Court also rejected four rule amendments which had been approved by the COLD and Council in fiscal year 2005, including a limited right of appeal by bar counsel. Three of the amendments were resubmitted to the Court and are pending. The proposal for a limited right of appeal for bar counsel was not resubmitted. The subcommittee continues to work on a proposal that would give bar counsel a limited right of appeal.

In fiscal year 2006, the number of complaint files opened decreased compared to fiscal year 2005; however, in fiscal year 2005, the bar received a large number of matters involving procedural defaults in criminal appeals, which caused a substantial increase in the number of complaint files opened during fiscal year 2005.

The areas of law in which the most inquiries about attorney misconduct were received by the bar were first, criminal law, and second, family law. Most of the complaints made to the bar fell into three categories: first, failure to communicate; second, failure to file; and third, failure to pay amounts due from a trust account.

The COLD e-mailed a newsletter to attorney and lay volunteers who serve on district committees and the Disciplinary Board to keep them informed about rule changes and other attorney disciplinary developments.

In fiscal year 2006, the COLD Chair Ray W. King and VSB Bar Counsel Barbara A. Williams met on several occasions with the Chief Justice to identify and discuss attorney disciplinary issues. In addition, the Supreme Court of Virginia has appointed Justice Elizabeth B. Lacy as an informal liaison to the COLD on behalf of the Court.

In January of 2006, Barbara A. Williams resigned as bar counsel, having served in that position for eight years, to take a position with McGuireWoods LLP. During Ms. Williams's tenure, the disciplinary system was improved in several ways, including the following: the disciplinary process became more open to the public, and the staff of the Office of Bar Counsel was increased, resulting in an increase in the number of cases completed and a reduction in

## REPORTS OF STANDING COMMITTEES

the number of older cases, while emphasis was placed on the continuing goals of increased efficiency with fairness. The COLD extends its thanks to Ms. Williams for her dedication to the bar and efforts in improving the bar's disciplinary process.

Deputy Bar Counsel Harry M. Hirsch was appointed as interim bar counsel until a new bar counsel was appointed.

George W. Chabalewski became bar counsel effective June 15, 2006. Mr. Chabalewski's experience includes eighteen years as an Assistant Attorney General in Virginia, preceded by seven years as a public defender in Illinois.



### STANDING COMMITTEE ON LEGAL ETHICS

*James O. Broccoletti, chair*

#### Ethics Opinions

In addition to opinion requests carried over from the prior year, the Standing Committee on Legal Ethics received five new opinion requests this year. The committee issued twelve opinions during the 2005–2006 fiscal year. Those requests addressed a wide range of topics. Specifically, opinions responded to inquiries regarding:

- Possibility of converting all paper files to electronic files.
- Contingent fee agreement with a provision directing the attorney's fee should representation end prior to the end of the case.
- Potential conflict of interest where a local government attorney must represent a Board of Zoning Appeals in one matter and sue them in a second matter.
- Attorney providing training to social workers to assist nonattorneys with warrants in debt.
- Attorney representing party suing a corporation on whose board the attorney's partner serves.
- Attorney departing firm and writing clients regarding his departure without providing the firm a copy of the letter or the list of clients to whom it was sent.
- Criminal defense attorney electing a bench trial without discussing the waiver of a jury trial with the client beforehand.
- Potential conflict of interest for attorney serving as commissioner in chancery where his partner had previously represented one of the parties.
- Attorney's duty when suicidal client requests attorney put on no defense in capital case.
- Duty of attorney who missed his client's appeal deadline in a criminal case.
- Whether attorney working as a lobbyist ever creates attorney/client relationships with his lobbying customers.
- Potential conflicts of interest for attorneys working in both a law firm and a mediation company.
- Whether an attorney serving as a claims agent for a railroad may contact injured workers who have obtained counsel regarding their injuries.

#### Ethics Telephone Calls

From July 1, 2005, through June 30, 2006, the average number of ethics calls per month to Virginia State Bar staff attorneys was 349. This represents an increase from fiscal year 2005's average of 339 calls per month. This number also represents a steady increase of calls in the past five years. FY 2004's average was 344; FY 2003's average was 305 calls per month; FY 2002's average was 280 calls per month; and FY 2001's average was 266 calls per month.

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



## REPORTS OF STANDING COMMITTEES

### STANDING COMMITTEE ON PROFESSIONALISM

*The Honorable Jeri K. Somers, chair*

The Standing Committee on Professionalism is charged with responsibility for administration and ongoing oversight of the Mandatory Course on Professionalism, which is required of all newly admitted active members of the Virginia State Bar. The purpose of the course is to encourage attorneys to uphold and elevate the standards of honor, integrity and courtesy in the legal profession. Since institution of the program in 1988, over 22,000 new admittees have taken the course—more than 80 percent of the current practicing bar in Virginia.

The course faculty is distinguished lawyers and judges who represent a broad cross section of the legal profession in Virginia. Faculty members are nominated by their peers and invited by Chief Justice Leroy R. Hassell Sr. to accept appointment for a three-year term.

The course was offered eight times in Northern Virginia, Richmond, Roanoke, Chesapeake and Charlottesville during the 2005–2006 bar year. Due to the Virginia corporate counsel admissions, the course attendance jumped to 1,595 attendees this year. An additional course was provided to focus on corporate counsel practice in Virginia, to meet the needs of the new category of admittees. The committee hopes that the number of corporate counsel registrants will decrease after the initial influx and that additional courses will be unnecessary.

Both the Chief Justice and Senior Justice Harry L. Carrico—who was instrumental in founding the course—continue to demonstrate enthusiastic support. One of the two served as luncheon speaker at each course.

The committee continues to oversee the administrative functions of the course, including faculty selection, course material updates and faculty training activities.

Finally, the committee continues to work with the Professionalism for Law Students program cosponsored by the VSB Section on the Education of Lawyers. This program has become a fixture at all the Virginia law schools, thanks to diligent work by Judge J. Martin Bass.



### STANDING COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW

*Jon C. Poulson, chair*

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

During the 2005–2006 fiscal year, seventy-nine new investigations were opened in addition to the twenty-three investigations remaining on the UPL Committee's docket from previous years. Of those open investigations, fifty were closed during the year. During fiscal year 2006, five 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 eight investigations were referred to that office.

One new opinion, UPL Opinion 210, was requested this fiscal year. This proposed opinion addresses whether it is the unauthorized practice of law for a non-Virginia licensed attorney who is a registered U.S. patent attorney and a member of a Virginia law firm to render legal advice and legal opinions in Virginia to clients who may be located anywhere in the world on matters relating only to patent law. The proposed opinion finds that this conduct would not be the unauthorized practice of law, and the controlling authority is found in *Sperry v. Florida* ex rel. Florida Bar, 373 U.S. 379 (1963); Virginia Unauthorized Practice of Law Rule 9 (UPR 9); Unauthorized Practice Consideration 1-1 (UPC 1-1); and Unauthorized Practice of Law Opinions (UPL Opinions) 158 and 201. Based on this authority, an attorney who is licensed other than in Virginia, who is registered and authorized to practice before the U.S. Patent Office and who is a member of a Virginia law firm can provide all legal services and representation related to a patent law practice to all clients needing such services and representation regardless of where the clients are located.

Two opinions were carried over from prior fiscal years. UPL Opinion 209, carried over from fiscal year 2005, was approved February 28, 2006, by the Supreme Court of Virginia. This opinion addresses the issue of whether it is unauthorized practice of law for an attorney licensed to practice law in a jurisdiction other than Virginia to represent

## REPORTS OF STANDING COMMITTEES

a client in Virginia before the Virginia Gas and Oil Board. Relying upon the definition of a nonlawyer found in Part 6, § I(C) of the Rules of the Virginia Supreme Court, 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, or non-Virginia licensed, 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 board is a “tribunal.” The board was created by the Virginia Gas and Oil Act, § 45.1-361.1 *et seq.* of the Virginia Code (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. Further, 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 committee finds that representation by a nonlawyer (which includes a lawyer licensed elsewhere than in Virginia) before the Virginia Gas and Oil Board is not appropriate and would be the unauthorized practice of law.

UPL Opinion 207, carried over from fiscal year 2004, was approved August 26, 2005, by the Supreme Court. 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 Small Claims Court in Virginia. The Standing Committee on Legal Ethics referred this inquiry to the UPL Committee. 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 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 Small Claims Court by a nonattorney worker would be unauthorized practice of law.

I would like to thank the committee members—Vice Chair Megan E. Kelly, David P. Bogardus, William H. Chandler Jr., Gary M. Coates, Joseph C. Fleig, Steven B. Novey, Robert V. Ward and Sean C. Workowski—for their hard work and dedication to the mission of the UPL Committee during the past year.



## REPORTS OF SPECIAL COMMITTEES

### SPECIAL COMMITTEE ON ACCESS TO LEGAL SERVICES

*Robert J. Stoney, chair*

This is my last annual report as chair of this committee. I will miss the dedication, energy and iron will of the Access to Justice Committee. The members and staff of this committee are the most dedicated, committed and effective group with whom it has been my pleasure to serve.

On behalf of the committee, I am pleased to share the following developments:

#### **Special Subcommittee on Discrete Task Representation (Unbundled Legal Services for *Pro Se* Litigants)**

The committee thanks the VSB Standing Committee on Legal Ethics and its staff—notably James M. McCauley—for edits to and final approval of the Access Committee's proposed amendments to three rules covering unbundled legal services: Supreme Court Rule 1:5, and Rules 1.2 and 4.2 of the Rules of Professional Conduct. The amendments were unanimously endorsed by the Virginia State Bar Council and referred to the Supreme Court of Virginia. The Court deferred action on the request for adoption, pending analysis by its own Commission on Virginia Courts in the Twenty-First Century: To Benefit All, To Exclude None (the "Futures Commission"). After reviewing all material, the commission concurred that "[t]he unbundling of legal services should be permitted" (Recommendation 2.30, pp. 48-49, re Vision 1), pursuant to its published *Preliminary Recommendations*.

The committee is optimistic that the Court will approve a concept of discrete task representation similar to the recommendations approved by the VSB Council.

#### **Awards**

Last year, inspired by retired Judge Dale H. Harris and with the assent and support of the VSB Council and Virginia Chief Justice Leroy R. Hassell Sr., the VSB instituted a pilot project at the judicial circuit level to honor appointed counsel for their service to the Virginia justice system. The committee reviewed nominations and worked with local bars and members of the judiciary to see that the inaugural awards were presented in local formal ceremonies in three circuits—the fourth, twenty-fourth and thirtieth. Attorneys commended for their in-court pro bono and public service work were Michelle J.L. Atkins of Norfolk, John Randolph "Randy" Nelson of Lynchburg, and Melanie L. Jorgensen of Jonesville. The committee anticipates that five or six awards will be presented during the next year of the pilot phase.

The committee was again awed and humbled by the number of well-deserving nominees for its annual Lewis F. Powell Jr. Pro Bono Award, many of whom have devoted decades of service to the community and bar to improve access to the courts and justice with no expectation of recognition. The committee was pleased to recognize one such bar member, David P. Baugh of Richmond, for his courageous and tireless work in civil rights and Bill of Rights advocacy.

Equally humbling was the committee's attempt to single out one legal aid lawyer to honor with the Virginia Legal Aid Award. Over the course of the last several years, the committee has been privileged to review an embarrassment of candidates, all of whom eschewed lucrative private practices to dedicate themselves to public service to the poor and disadvantaged. One extraordinary lawyer, Jill A. Hanken of Richmond, was chosen to receive this prestigious award in 2006.

Of the many incredible law students who have dedicated their law school experience to helping the disadvantaged, the committee was proud to award the Oliver W. Hill Law Student Pro Bono Award to University of Virginia law student Ryan T. Almstead.

#### **Conference Planning**

The 2006 Annual VSB Pro Bono & Access to Justice Conference was held April 26th in Charlottesville at the University of Virginia's Miller Center of Public Affairs. A continuing legal education program, "All-Hazards Preparedness Through the Prism of Public Interest Law," featured an ethics session on client record preservation and business continuity planning, as well as post-Katrina remarks on volunteer opportunities in the Gulf Coast region and a presentation by young lawyers engaged in VSB/Virginia Bar Association Disaster Legal Services in Virginia. The committee particularly appreciated the attendance at the conference of Thomas M. Diggs, assistant to the chair of the futures commission.

## REPORTS OF SPECIAL COMMITTEES

### **Funding Alternatives**

The committee is very appreciative of support from the VSB Council and Committee on Budget & Finance for our recommendation that the VSB set aside \$50,000 as a line item in the bar's 2007 budget to help legal aid attorneys and Legal Services Corporation of Virginia (LSCV) grantees comply with bar dues, mandatory continuing legal education and other VSB reporting requirements. The proposal, developed as an alternative to a bar dues donation check-off, is pending final action by the Supreme Court of Virginia.

### **Proposed Revisions: Legal Aid Licensing Regulation and Court Emeritus Rule**

The access committee's Subcommittee on Independent Service Providers, under the able leadership of Elizabeth J. Atkinson, met extensively over the past year to reach consensus on proposed amendments to the legal aid licensing regulation and to companion provisions in the Court's Emeritus Rule that deal with approved legal assistance organizations. The full committee was to review these recommendations for possible preliminary approval at its July 28, 2006, organizational meeting.

### **Legal Needs Oversight**

The Virginia Law Foundation (VLF) and LSCV jointly funded a study, under a grant application submitted to VLF by the VSB and The Virginia Bar Association Foundation, on civil legal needs of low-income Virginians. The Subcommittee on Legal Needs Oversight named one of its members, Barbara A. Ziony, as a liaison to work with grantees of LSCV on adjustments to the legal needs assessment's landline telephone survey instrument. Data has been collected by the commercial vendor on the project, and an analysis of the results is expected before the end of the calendar year.

### **VSB Indigent Defense Task Force**

The VSB Indigent Defense Task Force was established in 2004 to operate under the auspices of the bar's Access Committee. An update on its goals and activities may be found elsewhere in the *68th Annual Report*.

### **Legal Aid Board Appointments: Appreciation for Judicial and Local Bar Input**

We thank members of the judiciary and local bar leaders who generously continue to consult on appointments to the boards of directors of licensed local legal aid societies.



## **SPECIAL COMMITTEE ON BENCH-BAR RELATIONS**

*Sterling E. Rives III, chair*

The purpose of the Bench-Bar Relations Committee is to support and improve the administration of justice, enhance service to the community, and increase professionalism within the legal system by promoting the exchange of information and ideas between the judiciary and lawyers of the commonwealth. The committee has continued or initiated the following undertakings during the 2005–2006 fiscal year:

**Orientation Video for Jurors:** The orientation video for jurors was updated and has been distributed to circuit courts across Virginia. The committee is exploring sources of funding and means of distribution to make this video available for use by classroom teachers and others.

**Judicial Independence and Merit Selection and Retention of Judges:** The committee believes this continues to be an issue that requires the attention and advocacy of members of the bench and bar. Several members of the committee will prepare educational articles for publication in major newspapers in the commonwealth for the purpose of increasing public awareness of this issue. The committee has offered to provide speakers in the upcoming year for regional judicial conferences and meetings of statewide bar associations.

**Bench-Bar Communications:** The committee has offered to provide speakers to regional judicial conferences, statewide bar associations and the Bar Leaders Institute to discuss the many effective formal and informal methods of communicating concerns and information between the bench and the bar on the local level.

**Presentation at the VSB Annual Meeting:** The Litigation Section and Family Law Section of the Virginia State Bar, joined by the Bench-Bar Relations Committee, sponsored a continuing legal education seminar, "Extreme Makeover: Preparing Your Client to Testify," at the VSB Annual Meeting. The program featured skits and a panel

## REPORTS OF SPECIAL COMMITTEES

discussion by judges and veteran litigators and included a one-hour ethics component addressing the boundary between good witness preparation and improper witness coaching.

The committee, which meets at the Richmond offices of the VSB, has established the second Tuesday of August, November, February and May as its regular meeting dates.



### **JUDICIAL NOMINATIONS COMMITTEE**

*Joseph A. Condo, chair*

The Judicial Nominations Committee conducted its organizational meeting by telephone conference call on October 6, 2005. Joseph A. Condo was selected chair during that meeting. Judicial vacancies occurred on two courts, which required the committee to conduct interviews of candidates.

Judge Claude Hilton of the U.S. District Court, Eastern District of Virginia, announced his intention to take senior status, and the committee was asked by U.S. Senators John W. Warner and George F. Allen to interview candidates for that position. The committee convened December 15, 2005, at the VSB's Richmond office, interviewed five candidates, and after deliberation reported the names of the two best qualified: U.S. Magistrate Judge Liam O'Grady and Anthony J. Trenga, Esquire.

Two vacancies on the Court of Appeals of Virginia resulted from the retirements of Chief Judge Johanna L. Fitzpatrick and Judge Rudolph Bumgardner III. The committee convened December 19, 2005, at the VSB's Richmond office, interviewed three candidates, and after deliberation reported the names of the two best qualified: Fairfax Circuit Court Judge R. Terrence Ney and Winchester Circuit Court Judge John E. Wetsel Jr.

Committee members made themselves available for the two separate, daylong meetings, on relatively short notice during a busy time of the year. Several members spent substantial time conducting a background investigation of one the candidates. During the meetings, all members asked pertinent and incisive questions that indicated that they had thoroughly reviewed the candidates' submissions, and they offered valuable and perceptive insights about the candidates during the committee's deliberations.



### **SPECIAL COMMITTEE ON LAWYER MALPRACTICE INSURANCE**

*Darrel Tillar Mason, chair*

The Lawyer Malpractice Insurance Committee (LMIC) has been active and productive in the 2005–2006 Virginia State Bar year.

During fall 2005, LMIC members participated in the presentation of ten interactive Risk Management Seminars by the bar's endorsed malpractice insurance carrier, Attorneys Liability Protection Society (ALPS). These programs were held throughout the state, were open to all members of the bar at no cost, and carried three hours of continuing legal education ethics credit. More than fifteen hundred lawyers took advantage of this opportunity to engage in a discussion with professional risk managers, bar counsel staff and each other about ethical issues that face lawyers who practice in the commonwealth.

As a major focus this year, in response to a request by the Supreme Court of Virginia, an LMIC subcommittee was engaged in assessing where Virginia's malpractice insurance procedures fit in the spectrum of malpractice insurance procedures utilized across the country. The subcommittee considered ways to strengthen the VSB's malpractice insurance disclosure requirement. Additionally, the subcommittee explored models of mandatory malpractice insurance programs. A comprehensive report was presented to the VSB Council at its June 2006 meeting and forwarded to the Supreme Court.

The LMIC continued in its role of directing the VSB's endorsed malpractice insurance carrier, Attorneys Liability Protection Society, as to the allocation of the Risk Management Fund made available through this endorsement. In addition to underwriting the statewide seminars, the fund supported a confidential risk management hotline, voluntary

## REPORTS OF SPECIAL COMMITTEES

solo and small-firm audits, and the publication of articles in the VSB's *Virginia Lawyer* magazine related to risk management topics. Finally, the LMIC began to develop a new risk management presentation that would be available to local bar associations.



### **SPECIAL COMMITTEE ON PERSONAL INSURANCE FOR MEMBERS**

*Gail D. Jaspen, chair*

The Personal Insurance for Members Committee met periodically during the Virginia State Bar's 2005–2006 fiscal year. The objective of the committee is to oversee the VSB-endorsed health, term life and disability insurance plans. The work of recommending appropriate plans and assisting bar members in obtaining coverage is performed by a broker/administrator selected by the bar.

The endorsed health insurance plan with Anthem Blue Cross Blue and Shield has grown to cover more than five thousand persons—lawyers, their staffs, and dependents. The purchasing power of the VSB qualifies the plan for Anthem's Value Added Benefits, or extra coverage at no extra cost. The plan's broker/administrator helps VSB members and firms outside of Anthem's service area obtain other health insurance. The endorsed broker/administrator also assisted VSB members in understanding the new federal Medicare Part D prescription drug program for seniors during the November to May open enrollment period.

Approximately 650 persons are covered in the VSB Group Term Life Insurance plan and 250 in the Group Disability Income plan. Both plans are operated on a refund-accommodation basis. Because our life insurance claims experience has been very favorable in recent years, insureds were given a six-month premium holiday for a second consecutive year. The premium holidays for the group life plan resulted in total savings to insureds of about \$130,000 for each of the past two years.

In 2006, the VSB issued a request for proposals for a broker/administrator of all the personal insurance programs. The committee recommended and the VSB selected Dominion Benefits to serve in that role. Dominion Benefits is a Richmond-based organization that specializes in employee benefits. It will do business as Virginia State Bar Members' Insurance Center. Dominion Benefits replaced the Insurance Center for Virginia State Bar Members, a division of the Medical Society of Virginia Services Corporation. The change in broker/administrator did not change any insurance coverage or the associated premiums. Bob Spicknall, who has been involved with the VSB Insurance Program for much of the past fifteen years, will lead the broker/administrator activity for Dominion Benefits.

I would like to express my appreciation to the committee members: Gary William Lonergan, vice chair; Cary B. Bowen; Raymond Paul Childress Jr.; Jane Siobhan Glenn; Sean Patrick Kelly; Jennifer Lynne Redmond; Susan Katharine Stoneman; and Larry Stanton Wiese. The Committee, in turn, thanks VSB Executive Director Thomas A. Edmonds and Deputy Executive Director Mary Yancey Spencer for their assistance and support.



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

*William R. Allcott Jr., chair*

The Special Committee on Publications and Public Information (publications committee) undertook the following projects in the 2005–2006 fiscal year:

**Online lawyer look-up:** The Virginia State Bar Council approved a proposal by the publications committee that a lawyer look-up feature be added to the VSB Web site. The feature will allow the public to obtain addresses and phone numbers of record for lawyers who sign up to be in the database. At the end of the fiscal year, the VSB's Information Technology department was working with its Web site contractor to develop the program. The proposal was initiated by committee Vice Chair Bruce M. Marshall as a convenience for lawyers who are trying to reach other lawyers.

Lawyers will be listed in the look-up database only if they opt into the program through a password-protected page on the VSB Web site. E-mail addresses will not be posted.

## REPORTS OF SPECIAL COMMITTEES

**VSB e-mail policy:** The VSB Council, based on a recommendation by the publications committee, established a policy for use of members' e-mail addresses by the VSB. The addresses can be used in three ways:

- In extraordinary circumstances, as determined by the VSB executive director or a majority of officers.
- In a periodic newsletter of official bar news and event dates, in accordance with guidelines to be determined by the publications committee.
- By members of VSB sections and committees as they conduct business for the bar.

**Law in Society Award:** The committee oversaw the Law in Society Award contest, in its thirteenth year. The contest solicits essays from high school students on a given law topic, and winners are presented with awards by members of their local bars. This year's topic was shield laws. The prizes are funded by the VSB Litigation Section.

The publications committee recognized Peggy Hays of Lexington who recently retired from teaching at Rockbridge County High School. Many of Mrs. Hays's students have won prizes in the contest over the years.

Mrs. Hays will attend the Virginia Social Studies Educators Conference conference in October 2006 on behalf of the VSB, so she can promote the contest and demonstrate how it can be incorporated into curricula and Standards of Learning requirements.

**2006–2007 Officers:** William R. Allcott Jr. will serve as chair for the upcoming bar year, and Mr. Marshall will serve as vice chair.



### SPECIAL COMMITTEE ON RESOLUTION OF FEE DISPUTES

*Frank W. Rogers III, chair*

In the 2005–2006 Virginia State Bar fiscal year, the Special Committee on Resolution of Fee Disputes has instituted significant changes in the Fee Dispute Resolution Program (FDRP). The FDRP rules and guidelines have been revised, and mediation will soon be included as an additional means to resolve fee disputes between lawyers and clients.

The committee plans four training sessions this fall, at locations across the state. The training opportunities will be for mediators, new arbitrators, and previously trained arbitrators. The committee expects the new and improved FDRP to be fully functional by the end of calendar year 2006.

The committee in April 2006 convened the first-ever meeting of the chairs of circuit fee dispute committees. This provided a collaborative, information-sharing forum for those responsible for the day-to-day functioning of the local committees. The committee now includes three circuit committee chairs among its members.

At the urging of the special committee, circuit committee chairs have been encouraged to revitalize and strengthen local committee membership. Most committees are in the process of recruiting new lawyer and nonlawyer arbitrators, and are molding certified mediators into local committee membership. All of this is in preparation for the fall training sessions. If, as expected, the FDRP is fully and effectively functioning on schedule, the committee plans to turn its attention to ways to increase awareness of the program among attorneys and the general public, and ways to encourage its use—especially by lawyers.

The following individuals have worked extensively and diligently last year on behalf of the committee: Geetha Ravindra, vice chair; Deborah Marie Costello, Edward Allen Newcomb, Stephen E. Scarce, Timothy T. Szabo, Thomas J. Gallagher, Anthony F. Troy, George B. Mason Jr., Mark D. Seidelson and Robert S. Ballou. I would like to also personally thank Barbara O. Allen and Paulette J. Davidson of the Virginia State Bar staff for their hard work.



## REPORTS OF SPECIAL COMMITTEES

### **SPECIAL COMMITTEE ON SEMINARS**

*Karen A. Gould, chair*

The principal function of this committee is to plan Midyear Legal Seminars. Members of committee members for this year were John A. Dezio, Terry N. Grimes, Ralph E. Kipp, James W. Korman, William F. Roeder Jr., William L. Schmidt, Carol J. Schrier-Polak and Stephen A. Strickler.

The 2005 Midyear Legal Seminar was held at Hotel Majestic in Barcelona, Spain. Approximately ninety-one participants were in attendance. The continuing legal education program included presentations by the Criminal Law and Litigation sections.

The committee also finalized plans for the 2006 seminar, which will be held November 9–6 at the Ritz-Carlton Penha Longa Hotel and Golf Resort, thirty minutes from Lisbon, in the Sintra region of Portugal. The CLE program will include the following topics: “Attorney Discipline Cases: We Report, You Decide”; “Hot Business Law Topics for the General Practitioner”; “Employment Law in the Twenty-First Century: A Primer for Practitioners”; and “What Every Lawyer Needs to Know About Family Law (And What Family Lawyers Need to Know from You).” The seminar will qualify for nine hours of mandatory CLE credit, including two hours of ethics.



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

*Clyde R. Christofferson, chair*

The Special Committee on Technology and the Practice of Law (technology committee) continued to monitor issues affecting implementation of electronic court filing in Virginia. Furthermore, the committee began reviewing application of the rules of evidence to electronic documents and electronic communication, and it continued looking into the use of Internet technology in support of pro bono activities.

The technology committee is monitoring ongoing practice related to the conflict between rights of privacy and rights of public access. New legislation effective in summer 2005 provided that personal and financial account data in divorce cases are to be maintained in a private addendum not available to the public. Committee members report that this new procedure is working well.

With regard to electronic filing, budget implementation issues are delaying active use of the Supreme Court of Virginia rule that authorizes electronic filing of pleadings in circuit court. The State Corporation Commission, under its own rules, has required electronic filing, but parties frequently agree informally to share pleadings electronically.

The committee followed the work of the Committee on Access to Court Records, established by Chief Justice Leroy R. Hassell Sr. to draft rules for public access to court records. Two members of the technology committee serve on the Chief’s committee, which expects to issue its final report in August.

The committee began consideration of adaptation of rules of evidence that better accommodate the practice realities of electronic documents, beginning with a review of exemplar rules newly published for use by federal courts. The committee planned to monitor application of the rules of discovery and evidence to electronic mail, with particular reference to privileged communications.

The committee also expects to further explore use of Internet technology to facilitate the operations of pro bono entities. Internet software for such purposes has been developed elsewhere under grant programs, and is being made available across the country, including in Virginia (at [www.probono.net/va](http://www.probono.net/va)). The committee will further consider prospects for leveraging pro bono efforts through technology.



## REPORTS OF SPECIAL COMMITTEES

### SPECIAL COMMITTEE ON LAWYER REFERRAL

*Mary Margaret Benzinger, chair*

The Virginia Lawyer Referral Service, almost thirty years old, continues to be utilized by the public in search of legal services. As an integral part of the bar's mission, the VLRS remains the public service arm of the bar. It strives to promote the image of the legal profession and at the same time offers its members the opportunity to engage in financially rewarding activities.

As of summer 2006, the VLRS is fully incorporated in the Virginia State Bar computer conversion. Led by Senior Staff Assistant Toni B. Dunson, the VLRS staff completed training in and implementation of the new software. The service now is fully able to communicate with other sections of the bar and share data. New efficiencies include e-mailing referrals to attorneys; more effective methods of tracking information; and timesaving management of correspondence.

Promoting and marketing of VLRS includes, in addition to Yellow Page advertising, the use of SuperPages as a further enhancement. Additionally, VLRS ads now reach out to potential attorneys who may desire to join the service. VLRS information continues on the Virginia State Bar Web site—<http://www.vsb.org/site/public/lawyer-referral-service/>. The State Bar Admission and Orientation Ceremony, Annual Meeting Expo booth, *Virginia Lawyer* and *Virginia Lawyer Register* continue to provide information to potential panel members. Courthouses and consumer affairs offices remain valuable resources for the public.

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

A special thanks to VLRS 2005–2006 committee members Daniel L. Rosenthal, Vice Chair; Cheryl J. Avery; Stephen A. Bryant; Michael D. Clower; Glenn R. Lawrence; Francis X. Lillis; Kevin E. Martingayle; Neil E. McNally; Carol J. Schrier-Polak; Richard J. Stahl; and James W. Watson Jr. Thanks also to VLRS staff: Director Barbara O. Allen, Ms. Dunson, and Staff Assistants Sheree L. Patterson and Lydia M. Maddox.



## REPORTS OF SPECIAL BOARDS

### CLIENTS' PROTECTION FUND

*Stephen K. Gallagher, chair*

The Clients' Protection Fund was established in 1976 to make monetary awards to persons who have suffered financial losses due to 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.

As of July 1, 2005, forty-one claims were pending from the previous fiscal year. A total of forty-two new claims were received during the year, and one closed claim originally filed in fiscal year 2005 was opened for reconsideration. The total amount paid during 2005–2006 was \$143,307, representing forty-one claims. The board denied thirty-four claims. As of June 30, 2006, there were nine pending claims.

The fund began the fiscal year on July 1, 2005, with a cash balance of \$3,346,421. Interest income for the 2005–2006 fiscal year totaled \$135,464. The fund received restitutions from Attorney General's collections, debt set-off and individual restitutions in the amount of \$17,430. As of June 30, 2006, and after payment of \$143,307 in claims, the cash balance in the fund was \$3,336,496. 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.

The board began the 2005–2006 fiscal year with two new board members: H. David Natkin of Lexington and Jeffrey R.B. Notz of Prince William.

Although the board's workload was considerably lighter than in the past several years, the Clients' Protection Fund board members should be commended for the many hours they spend investigating claims and tending to the business of the board.



### INDIGENT DEFENSE TASK FORCE

*Alex N. Levay Jr., chair*

The Virginia State Bar's Indigent Defense Task Force hosted for a second consecutive year a forum-style gathering, at the Virginia State Bar's 2006 Annual Meeting. The June 15, discussion allowed representatives of the VSB, voluntary bars, government agencies and public interest groups to update activities related to indigent defense reform. The exchange also offered an informal opportunity for the task force to carve out a flexible agenda that will dovetail with other groups' efforts.

Due to important activities on several fronts, this report also cites efforts by entities other than the task force. These entities share goals and concerns regarding indigent defense. Coordinating information about parallel initiatives gives perspective and context, and allows the task force to avoid duplication and redundancy.

The task force agreed at its June 2006 meeting to continue efforts to remove or substantially alter nonwaivable caps on court-appointed fees and to support substantive procedural reform, such as discovery reform, that will aid the fair administration of justice. The goal is to be well-positioned to share information with major players prior to the next session of the Virginia General Assembly and to answer questions about the fiscal impact of proposed reforms. This is consistent with VSB Executive Director Thomas A. Edmonds's request that the task force respond to certain preliminary recommendations he excerpted for its review from the preliminary report of the Supreme Court of Virginia futures commission, formally known as the Commission on Virginia Courts in the Twenty-First Century: To Benefit All, To Exclude None.

The task force is pleased to join the work of other bar committees asked to respond to different preliminary recommendations, and it appreciates the expressions of concern voiced by John E. Lichtenstein, 2006–2007 chair of the VSB Criminal Law Section. These views will be in September with VSB President Karen A. Gould and the VSB Executive Committee. The task force is grateful for the executive committee's decision to respond formally to the futures commission with respect to matters deemed central to its regulatory and other missions.

Among other reforms, the futures commission's preliminary recommendations call for an adequately staffed statewide public defender system (1.11) supplemented by adequately compensated appointed counsel and removal of the fee caps (1.8). Additionally, the commission's preliminary report recommends that public defender offices receive

## REPORTS OF SPECIAL BOARDS

funding at a level comparable with those of commonwealth's attorneys' (1.9). These were all issues previously considered and recommended by the task force in 2004.

2006–2007 President Gould has offered to write and secure signatures for a letter to legislators and the Governor on behalf of past presidents of the VSB in support of indigent defense reform. She takes as her model an April 2006 letter from past Virginia attorneys general to members of the General Assembly who sit as budget conferees for indigent defense matters. Ms. Gould's letter will not be submitted without precedent. The Criminal Law Section Board of Governors Annual Report noted the letter written by 2005–2006 VSB President Phillip V. Anderson that discussed the critical need for greater funding of indigent defense in Virginia. Ms. Gould's letter will be a timely addition to the momentum building among the bar's allies and partners in reform. We look forward to a similar campaign from members of the Virginia Association of Commonwealth's Attorneys.

Task Force members Betsy W. Edwards and James M. Hingeley Jr. met, on behalf of the Virginia Indigent Defense Coalition, with representatives of the Supreme Court and the Department of Planning and Budget. It is Jim's impression that the Court will try to work with representatives of the Virginia Indigent Defense Commission to arrive at estimates costing out certain indigent defense reforms. Jim anticipates this joint effort to be undertaken even though a proposed budget amendment that would have mandated the effort did not make it all the way through this year's legislative process. Research outcomes may provide more reliable figures than the back-of-the-envelope numbers that the task force was encouraged to explore on behalf of the bar last year.

Retired Judge Alan E. Rosenblatt has been named the interim executive director of the Virginia State Crime Commission. He has also been named by the General Assembly to fill one of the vacancies on the Virginia Indigent Defense Commission. Legislation in 2006 increased the number of members of the commission from twelve to fourteen.

It appears that the tide may be turning, once again, away from the filing of a lawsuit to compel increases in compensation paid to appointed counsel in Virginia. One reason may be the numerous favorable preliminary recommendations in the futures report. Another may be the expressed willingness of the current Governor and Attorney General to form a working group to try to tackle these problems. The Governor's 2006 Special Session Executive Amendment (to House Bill 5002) demonstrated his concern over inadequate court-appointed counsel fees. A working group with broad representation would be a positive bipartisan approach to what a subject that otherwise might be avoided.

The Virginia Criminal Justice Conference is scheduled for September 29 and 30, 2006, in Richmond. It will strive to build a working relationship between the prosecutor and defender sectors of the criminal bar. The conference will stress substantive law reforms as opposed to funding reforms. Modeled on the Boyd-Graves Conference, the Virginia Criminal Justice Conference is intended to be an annual event. In future years, indigent defense reforms may have a place on the conference agenda. The conference hosts ten study committees covering the following substantive issues: discovery; procedural defaults in the appellate courts; search warrants; subpoenas; standards for appointing investigators in court-appointed cases; not-guilty-by-reason-of-insanity competency; bond hearings; translators and interpreters; voir dire; and motions to suppress.

Finally, the Virginia State Crime Commission has been directed to conduct a two-year study of juvenile justice as a result of 2006 House Joint Resolution 136, sponsored by Delegate Brian J. Moran. Among other subjects, the crime commission will study improvement of "the quality of and access to legal counsel" in the juvenile and domestic relations court. The crime commission likely will focus on court-appointed compensation and the importance of specialized training for attorneys who handle cases involving juveniles.



### **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, including two hours of ethics or professionalism, each fiscal year. 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.

## REPORTS OF SPECIAL BOARDS

The MCLE Board consists of twelve members appointed by the Supreme Court of Virginia. The MCLE Board for fiscal year 2005–2006 included Timothy C. Carwile of Waynesboro; 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 Jacqueline M. Reiner of Richmond.

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: 6,500 course applications, 18,800 accredited sponsor courses; 24 waiver requests; 35 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. After much spirited debate and consultation with accredited sponsors, the board voted against a proposal to institute a cap on the number of distance-learning MCLE hours a member could earn each year. The board finalized Opinion 18 regarding in-house and law-firm programs (to include in-house courses by corporations and government agencies) this year.

The VSB 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 and 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 MCLE Board, I 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 for the purpose of developing new rules and revising existing rules to better accommodate limited practice in Virginia by lawyers licensed only in other U.S. jurisdictions or in foreign countries.

The task force has produced four proposed rules as part of this effort: the Foreign Legal Consultant Rule, a revised *Pro Hac Vice* Rule, and revised Rules of Professional Conduct 5.5 and 8.5. These proposed rules have been submitted to the Supreme Court of Virginia, where they are all currently pending the Court's consideration. There is no further action to be taken by the task force until such time as the Court requests additional information or approves the proposed rule amendments.

The status of the proposed rules is as follows:

The **Foreign Legal Consultant Rule** was approved by the VSB Council at its meeting in February 2005. The rule was submitted on March 10, 2005, to the Supreme Court where it is currently pending.

The **Pro Hac Vice Rule** was approved by the council at its meeting in October 2005. The council amended paragraph 3(a) to allow the fee for *pro hac vice* appearance to be waived in any case in which counsel is representing the client pro bono. The rule was submitted on November 10, 2006, to the Supreme Court where it is currently pending.

**Rules 5.5 and 8.5** were approved by the council at its meeting in March 2006. The rules were submitted on April 3, 2006, to the Supreme Court where they are currently pending.

Current members of the task force are William J. Benos, 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 Jr. and Walter A. Wilson III.

