

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

for the period July 1, 2006 – June 30, 2007



## VIRGINIA STATE BAR

707 East Main Street, Suite 1500 • Richmond, Virginia 23219-2800  
(804) 775-0500 • Fax: (804) 775-0501 • Voice/TDD: (804) 775-0502

[www.vsb.org](http://www.vsb.org)

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## THE VIRGINIA STATE BAR'S DISCIPLINARY SYSTEM AND ETHICAL RULES

### Proposed diversionary program for first-time offenders

The Standing Committee on Lawyer Discipline was asked to consider a system whereby first-time offenders with minor violations of the ethics rules could be diverted from the disciplinary system and required to attend an "ethics school." The program would address situations in which a lack of knowledge causes lawyers' disciplinary problems. It also would deflect criticism that the bar unfairly singles out solo and small-firm lawyers for prosecution. I hope that an ethics school, if established, will be as successful as it is in other jurisdictions in identifying lawyers who do not understand the Rules of Professional Conduct and educating them without establishing a disciplinary record.



### Reformatting of Paragraph 13 to make it more user-friendly

Consideration has been given to the possibility of recompilation of disciplinary rules in Part 6, Section IV, Paragraph 13 of the Rules of Court to a more user-friendly format. The Virginia State Bar set up an internal work group to address this issue and work with the Virginia Division of Legislative Services to improve the format. Any reorganization or compilation of the disciplinary rules would be brought to the council and the Court for approval.

### Status of proposed changes to the comments of Rule 8.4 clarifying when undisclosed lawful recording may be made

The Standing Committee on Legal Ethics proposed additional comments to Rule of Professional Conduct 8.4 (Misconduct) that outlines when undisclosed lawful recordings of communications on behalf of an attorney's clients could take place. The council added an additional comment 10 to clarify that, except in exceptional circumstances, lawyers could not record communications with other lawyers or their own current clients unless consent was obtained, and that lawyers could record communications in personal matters when they were not functioning as attorneys. Proposed comments 6 through 10 were passed unanimously by the council and submitted to the Court for its consideration.

### Rule 4.2 comment change clarifying when a lawyer may communicate with a represented person

The Standing Committee on Legal Ethics proposed an additional comment 3 to Rule 4.2 (Communication with Persons Represented by Counsel) to clarify that a lawyer would be permitted to communicate with a represented person without obtaining the consent of the lawyer currently representing that person if the person were seeking a second opinion or replacement counsel. The council declined to approve the American Bar Association version of comment 3. Instead, the council passed an amended version of comment 3, which was approved by the Court on April 13, 2007, and became effective immediately.

### Proposed LEO 1829

The Standing Committee on Legal Ethics of the Virginia State Bar withdrew Legal Ethics Opinion 1829, which would have eliminated the bright-line guidance that generally bars members of a law firm from appearing before a public body on which another member of the law firm sits. The bar heard many comments from attorneys, members of the General Assembly, and newspaper editorials that opposed adoption of the opinion.

### Status of the foreign legal consultant rule (proposed Rule 1A:7 and revisions to Rule 5:5)

The Supreme Court, in a discussion in March 2007 of the language of proposed Rule 1A:7 and revisions to Rule 5:5, asked questions that indicated further study of these rule changes were needed. Therefore, the VSB withdrew the proposals and asked the Multi-Jurisdictional Practice Task Force to work on resolving the questions.

## PUBLIC PROTECTION ISSUES

### Clients' Protection Fund assessment

The council approved a proposed amendment to Virginia Code § 54.1-3913.1 (Clients' Protection Fund) to permit the Supreme Court to adopt rules and regulations providing for a special assessment up to \$25 for the Clients' Protection Fund. The General Assembly passed the proposed change to the statute and the Court adopted the new rule with only a minor change. The change to Paragraph 16, Section IV of the Rules for integration of the Virginia State Bar reads as follows:

Effective, July 1, 2007, each active member of the Virginia State Bar shall be assessed a required fee of \$25 for the Clients' Protection Fund on the bar's annual dues statement. The fee shall be in addition to each member's annual dues as presented in Part 6, Section IV, Paragraph 11 of these rules, and it shall be paid on or before the 31st day of July each fiscal year.

All monies collected under this Paragraph 16 shall be accounted for and paid into the State Treasury of Virginia and transferred by the bar from the Treasury to the Clients' Protection Fund. The bar shall report annually on or about January 15 to the Supreme Court of Virginia on the financial condition of the Clients' Protection Fund, *and the assessment will be reduced or discontinued whenever directed by the Court.* [The italicized language was added by the Court.]

### **Public Protection Task Force**

The Public Protection Task Force agreed that VSB Counsel George W. Chabalewski and Executive Director Thomas A. Edmonds would draft a proposed statute that would require insurance companies to report directly to the intended beneficiary of the payment the fact that they have disbursed settlement proceeds to the person's lawyer. Ten states have similar statutes, and the task force seemed disposed to recommend one for Virginia if the VSB can agree on the language. The Virginia Trial Lawyers Association has noted its opposition, but the task force thought the VSB's public protection mission required that the proposal be considered by the council.

Bar staff is checking with market sources to see if there is a chance of getting an insurance policy to provide excess coverage for defalcations beyond the maximum payment available under the Clients' Protection Fund, with that amount functioning as the policy deductible. The fund had such a policy in the early 1990s, but heavy losses from the David Murray case resulted in its cancellation. Executive Director Edmonds expressed doubt as to whether any company will issue such a policy again.

The task force voted unanimously to recommend that the employee dishonesty bond and surety bond required under the Consumer Real Estate Settlement Protection Act be increased from \$100,000 to \$200,000. Bar staff is drafting the necessary bill to present to the VSB Executive Committee and the council in October 2007. The task force anticipates opposition from lawyers who conduct only an occasional closing and will not want to pay more for coverage, but task force members felt strongly that, with the increase in property values in the twelve years since CRESPA was enacted, the VSB's public protection responsibilities require that it move in this direction.

### **The Lawyer Malpractice Insurance Committee and the question of mandatory malpractice insurance**

The Lawyer Malpractice Insurance Committee debated during the past year whether it should recommend that all Virginia lawyers in private practice carry malpractice insurance. Ultimately, it decided not to make such a recommendation. The committee developed an alternative proposal to require production of a declarations page or certificate of insurance by those who are insured, but withdrew the proposal before it was submitted to the council for a vote at the June 2007 meeting. Instead, it was agreed that the committee would bring the issue of mandatory malpractice insurance to the council at its October 2007 meeting for a vote on whether to proceed with such a proposal.

## **THE BUDGET AND DUES-INCREASE ISSUES**

### **Increase in late and reinstatement fees**

The council unanimously voted to recommend to the Court that the VSB increase late fees and reinstatement fees, to place more of the cost of administering the Membership and Mandatory Continuing Legal Education departments on those who fail to meet their membership obligations under the Rules of Court, and to try to discourage such procrastination. This rule change was adopted by the Court and became effective on July 1, 2007.

Effective July 1, 2007, the MCLE late-completion and late-reporting fees, previously set at \$50 each, increased to \$100 each. Late fees for the membership obligations, dues, completion of insurance certification, and completion of professionalism course increased from \$25 to \$50. The reinstatement fee for administrative suspensions was increased from \$75 to \$150 for each member obligation for which they were suspended.

### **Dues increase**

In the budget submitted to the council to be considered at the June 2007 meeting, the projected revenue for 2008 is \$11,664,165. This projected revenue is a substantial increase from the projected revenue for fiscal 2007 of \$10,278,270. There are two primary reasons for this increase: (1) past and penalty dues are projected to increase from \$220,000 to \$420,000 and MCLE late fees from \$400,000 to \$610,000, and (2) the revenue figures also reflect \$700,000 attributable to the Clients' Protection Fund assessment pass-through. The CPF assessment is not included in the long-range projections, since it is a pass-through item.

The long-range projections indicate that by July 2010 the reserve will stand at \$520,187 — 4.2 percent of the bar's operating expenses. This figure includes the \$300,000 reserve from the Administration and Finance Account, which cannot be used to defray

bar expenses. As of spring 2007, the long-range projections of the bar's operating expenses clearly indicate that the bar will need to plan for the next dues increase to go into effect no later than July 2009. This is one year beyond the last projection. The bar last increased its dues in July 2000, and had planned then for a dues cycle of about eight years. The Supreme Court has been asked for its direction on when to seek approval from the General Assembly for a change in the dues-cap statute.

## ACCESS TO JUSTICE ISSUES

### **The General Assembly and the indigent defense fee waivers and increased funding**

Final legislation from the 2007 General Assembly accomplished a great deal by amending *Virginia Code* § 19.2-163 to establish indigent defense fee-cap waivers and by increasing funding. The code change brought statutory authority to the process of waiver of caps for all felonies and misdemeanors in district and circuit courts. A compromise agreement resulted in the removal (for now) of the fee-cap increase for juvenile felonies. An additional \$8.2 million was put into the budget to fund waiver of the fee caps, which was estimated to cover 20 percent to 25 percent of the cases.

### **Amendment to Part 6, Section 4 of the rules re pro bono services by emeritus members.**

The Access to Legal Services Committee proposed an amendment to Part 6, § 4 of the Rules of Court to broaden opportunities for emeritus members to provide pro bono legal services by expanding the definition of approved legal assistance organizations. The VSB Council passed the proposed amendment by unanimous vote and the proposal is under consideration by the Supreme Court.

### **Legal aid society increased reporting obligations.**

The VSB Special Committee on Access to Legal Services proposed an amendment to the legal aid society regulations to clarify the heightened reporting obligations of legal services providers that hold themselves out to the public as "legal aid societies." The proposed regulatory changes passed by unanimous vote at the March 2007 council meeting and became effective immediately.

## JUDICIAL CANDIDATE EVALUATIONS

### **Revision of the VSB judicial evaluation policy**

The VSB judicial-evaluation policy was revised in fall 2006 in response to criticism from state legislators that the bar was attempting to select judges rather than providing evaluations of the candidates. The revised policy was approved by the council at the October 2006 meeting. Instead of selecting two candidates to recommend to the appointing authority, the Judicial Nomination Committee (JNC) now interviews all candidates and ranks them as either "highly qualified" or "qualified" and writes a summary of the candidate's credentials, attributes, etc.

### **JNC policy re confidentiality**

The VSB's policy on the evaluation process of the Judicial Nominations Committee was amended at the March 2007 council meeting to address the confidentiality of information obtained during investigations and to require that the evaluation summary stand without further explication or explanation. The revised policy became effective immediately.

### **JNC evaluations for FY 2006-07**

The JNC evaluated many candidates for two federal judgeships in the Eastern District of Virginia and two Virginia vacancies on the Fourth Circuit Court of Appeals and rated them with written summaries.

### **Interviews with Senators Warner and Webb**

Joseph A. Condo, Mary Yancey Spencer, and VSB President Karen A. Gould met with Senators John W. Warner and James H. Webb Jr. and their staffs on April 18, 2007, to discuss the VSB's new judicial evaluation process. The senators and their staffs were very complimentary of the VSB's new system and said how thankful they were that the JNC was performing this service, which they found invaluable, particularly in preparing questions for the candidates during their limited thirty-minute interviews. It was also very helpful for Mr. Condo to describe the process so the senators could understand what went into the background check, the interview, and the resulting written summary of each candidate's credentials and the committee's evaluation.

## MEMBER SERVICES

### **Improved communication with members: the e-mail newsletter and online member directory**

The first e-mail newsletter was sent out on May 1, 2007, to the 26,542 VSB members for whom the VSB has e-mail addresses. Since then, 504 members have opted out of receiving the *Virginia State Bar E-News*.

The online member directory became available for registration on May 1, 2007, and as of May 29, 2007, 1,201 members had signed up for the online member directory.

**Status of Fastcase online legal research member benefit**

In April 2007, Fastcase had 8,319 logins with 64,481 total transactions. Total number of users to date amounts to 8,197. Unique logins for April 2007 came to 2,078. Edward J. Walters, chief executive officer of Fastcase, spoke to the Solo and Small-Firm Practitioner Forum in Roanoke on May 23, 2007. The many questions asked indicated that the product has been well-accepted by the Roanoke community.

**Search for new executive director.**

The Executive Director Search Committee re-advertised the position with the hope that it will be able to bring a candidate to the October 2007 council meeting for approval.

**ABA HOUSE OF DELEGATES**

**Substitution Policy**

The council passed a policy permitting the VSB president to appoint an alternate for any VSB-appointed ABA delegate who is unable to attend an ABA meeting. Joseph Condo notified Karen A. Gould, VSB president, in April 2007 that he would be unable to attend the August 2007 ABA House of Delegates meeting. Pursuant to this new policy, a substitute was sought — preferably someone who was already planning on attending the ABA meeting, since the VSB does not reimburse expenses for non-officers who attend as its delegates. Savalle C. Sims agreed to serve as a substitute.

**Resolution regarding bar members serving in the armed forces**

The VSB Executive Committee agreed to cosponsor at the August ABA House of Delegates meeting a recommendation to all bar associations to permit waiver or suspension of the dues, CLE requirements and other membership obligations for members who are serving in the United States armed forces in a combat zone. The VSB is joined in this recommendation by the bars of Florida, Maryland, Mississippi, Nevada, North Carolina, South Carolina, and West Virginia, as well as the ABA Section of Public Contract Law and The Virginia Bar Association.

**Thank you**

Thank you for the opportunity to serve as bar president. It has been a unique and rewarding experience. I have thoroughly enjoyed the opportunity to be of service to the bar and the citizens of Virginia.

Respectfully submitted,

Karen A. Gould

## ::: 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, 2007. Total membership in good standing totaled to 40,744, an increase of 1,074 members, or 2.71 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 United States jurisdiction, but not admitted in Virginia, was implemented in 2005; and by June 30, 2007, 1,128 individuals had been issued certificates or registered under the rule.

	2006-2007	2005-2006
Active	26,238	25,659
Corporate Counsel Admittees	699	660
Corporate Counsel Registrants	429	396
Associate	10,699	10,342
Judicial	1,043	1,032
Retired/Disabled	1,636	1,581
	<b>40,744</b>	<b>39,670</b>

### **Officers, bar activities during fiscal 2007, and new executive committee and council members**

Howard W. Martin Jr. of Norfolk became president of the Virginia State Bar at its annual meeting on June 15, 2007. He was sworn in by Chief Justice Leroy R. Hassell Sr. of the Supreme Court of Virginia. Manuel A. Capsalis, president-elect, was unopposed in the 2007 election for that office to serve during 2007-2008. Karen A. Gould of Richmond completed her year as president.

On the basis of an actuarial study that determined the bar needed to significantly increase the corpus of its Clients' Protection Fund in order to continue to be able to respond to future claims, the bar secured legislative and Supreme Court of Virginia approval for a \$25-per-year special assessment to be paid by all active members of the bar, with the entire proceeds of the assessment to be placed in the Clients' Protection Fund. Effective July 1, 2007, the special assessment will be collected along with annual member dues, and it is anticipated that \$600,000 to \$700,000 will be generated from the assessment and added to the corpus of the fund annually for the next several years. By that point the corpus of the fund should go from its present \$3.3 million dollars to approximately \$9 million dollars, and it is anticipated that the income from the fund will then be sufficient to honor all valid claims.

The Multi-Jurisdictional Practice Task Force continues to work on proposed amendments to Rules of Professional Conduct 5.5 and 8.5, as well as a new Supreme Court rule governing the activities of foreign legal consultants. Almost half of the states in the country now have temporary practice and foreign legal consultant accommodations for lawyers from other countries who want to work in a limited way or for a short period of time in their states. Virginia needs to join the ranks of these states if its lawyers are to continue to be provided with reasonable opportunities to practice in foreign locales.

The subject of requiring malpractice insurance of all active members engaged in the private practice of law continued to be discussed during the year. At the June 2007 council meeting in Virginia Beach, a proposal to simply strengthen the existing malpractice insurance certification now contained on the dues statement was defeated. The proposed rule change would have required lawyers who report that they do have malpractice insurance to provide evidence of that fact. Instead, the council agreed to discuss and decide at its October 2007 meeting whether the bar ought to take the step of requiring insurance of all active members in private practice. If the decision is made to do that, then the Special Committee on Lawyer Malpractice Insurance would be tasked with the responsibility for developing a specific proposal for later consideration by the council.

In June 2007, the bar's Section on Education of Lawyers in Virginia partnered with the American Bar Association's Section of Legal Education and Admissions to the Bar to produce the fourth Virginia Conclave on Legal Education in Charlottesville. The occasion was the spring meeting of the ABA Section's Council. In addition to the thirty members of the council from all parts of the United States, about seventy Virginia lawyers, judges, and academics participated in the half-day conclave, at which globalization of the legal profession and opportunities for minorities in the profession were subjects of conversation. The conclave ended with a dinner and remarks by College of William and Mary Law School Dean W. Taylor Reveley III about the lawyer as public citizen and how law schools might begin the process of inculcating the values of public and professional service in students during the legal education experience.

Bar member use of the Fastcase online legal research system continued to increase during the year, and the bar also conducted two Solo and Small-Firm Practitioner Forums, designed to provide law practice management information to practitioners in the Roanoke and Fredericksburg areas. The bar worked with the Supreme Court on a third highly successful Indigent Defense Training Seminar, once again held in Richmond and broadcast by television to lawyers from Southwest Virginia who gathered in Abingdon.

## ::: REPORT OF THE EXECUTIVE DIRECTOR/CHIEF OPERATING OFFICER :::

Manuel A. Capsalis will serve ex-officio on the executive committee next year as president-elect. Jan L. Brodie, Michael C. Guanzon, and Theophani K. Stamos were elected by the council as new members of the 2007-2008 Executive Committee, replacing Mr. Capsalis, Jon D. Huddleston, and Alda L. White. Irving M. Blank, Edward L. Chambers Jr., and Judith N. Rosenblatt were re-elected to one-year terms.

The following new members were elected to the VSB Council for three-year terms beginning July 1, 2007:

Kevin E. Martingayle	2nd Judicial Circuit
George M. Willson	3rd Judicial Circuit
William H. Riddick	5th Judicial Circuit
Brian L. Buniva	13th Judicial Circuit
Ronald R. Tweel	16th Judicial Circuit
Mark D. Cummings	17th Judicial Circuit
Gregory T. Hunter	17th Judicial Circuit
Sharon D. Nelson	19th Judicial Circuit
Edward L. Weiner	19th Judicial Circuit
Peter C. Burnett	20th Judicial Circuit
Mark B. Holland	22nd Judicial Circuit
Christopher W. Stevens	23rd Judicial Circuit
Aubrey J. Rosser Jr.	24th Judicial Circuit
Michael J. Barbour	27th Judicial Circuit
C. Eugene Compton	29th Judicial Circuit

The following incumbents were re-elected to the council for three-year terms beginning July 1, 2007:

John Y. Richardson Jr.	4th Judicial Circuit
Steven B. Novey	6th Judicial Circuit
Theophani K. Stamos	17th Judicial Circuit
Leslie W. Hoffman	19th Judicial Circuit
John D. Whittington	31st Judicial Circuit

Margaret A. Nelson of Lynchburg was appointed to a three-year term as a council member at large, replacing Alda L. White. J. Nicholas Klein III of Keller and Judith N. Rosenblatt of Virginia Beach were both reappointed to three-year terms as council members at large. John Y. Richardson Jr. of Norfolk became president of the Conference of Local Bar Associations, Daniel L. Gray of Fairfax became president of the Young Lawyers Conference, and George W. Shanks of Luray became president of the Senior Lawyers Conference. They will all serve as ex-officio members of the council and the executive committee during 2007-2008.

### **Bar operations and staff**

All of the bar's senior staff and department heads continued to serve effectively during the past year, with new VSB Counsel George W. Chabalewski completing his first year of service at the end of the year.

The bar's long-term goal of rewriting and integrating all of its computer software programs was completed in June 2007, though work continues on refinements in the last major module — professional regulation and the office of the clerk of the disciplinary system. The project was directed by William H. Dickinson, the bar's Information Technology Department director, using outside consultants, and he and his staff will largely be able to maintain and update the system in the future, as well as implement more Web-based applications and a more paperless office at the bar.

The bar completed its acquisition and furnishing of new space on the sixteenth floor of the Eighth and Main Building, which is now occupied by all of the VSB's Richmond professional regulation staff. In addition, a significant amount of space on the fifteenth floor has been refurbished and modified to meet the needs of the rest of the Richmond staff. The new and reconfigured space should meet the bar's needs for the foreseeable future, and there are several spaces for expansion when additional staff need to be added. With the completion of the new space and the renovations, the bar was able to fill two support staff positions previously left open because of the lack of space. They will provide additional assistance in the professional regulation, membership, fiscal, and human resources areas.



# ::: REPORT OF THE TREASURER :::

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## VIRGINIA STATE BAR CASH WITH THE TREASURER OF VIRGINIA AS OF JUNE 30, 2007

**Cash with the Treasurer of Virginia as of July 1, 2006:** **\$3,225,805**

**Revenue:**

Membership Dues	\$8,345,010	
Professional Corporations	100,455	
Section Dues	341,270	
Virginia Lawyer and Virginia Lawyer Register	46,302	
Virginia Lawyer Referral Service	241,261	
Mandatory Continuing Legal Education	431,515	
Professionalism Course	212,630	
Cost Taxing and Bonds	100,979	
Seminars and Miscellaneous	356,088	
CRESPA Registration	101,480	
Administration and Finance	116,097	
Grants	16,000	
<b>Total Revenue</b>	<u>10,409,087</u>	<b>10,409,087</b>

**Operating Expenditures:**

Salaries, Wages and Benefits	6,964,954	
Receivers	172,302	
Office Rent	380,122	
Furniture and Equipment	216,888	
Repairs and Maintenance	19,332	
Supplies, Stationery and Forms	113,979	
Printing and Copying	240,312	
Postage	230,510	
Telephone	84,365	
Staff Travel	129,043	
Computer	216,397	
Council, Committees, and Boards	362,167	
Professionalism Course	171,265	
Sections and Conferences	386,038	
Attorney General's Office Fees	53,772	
Chief Justice's Programs and Projects	197,050	
Other Operating Expenditures	210,216	
<b>Total Operating Expenditures</b>	<u>10,148,712</u>	<b>10,148,712</b>

**Other Disbursements and Transfers:**

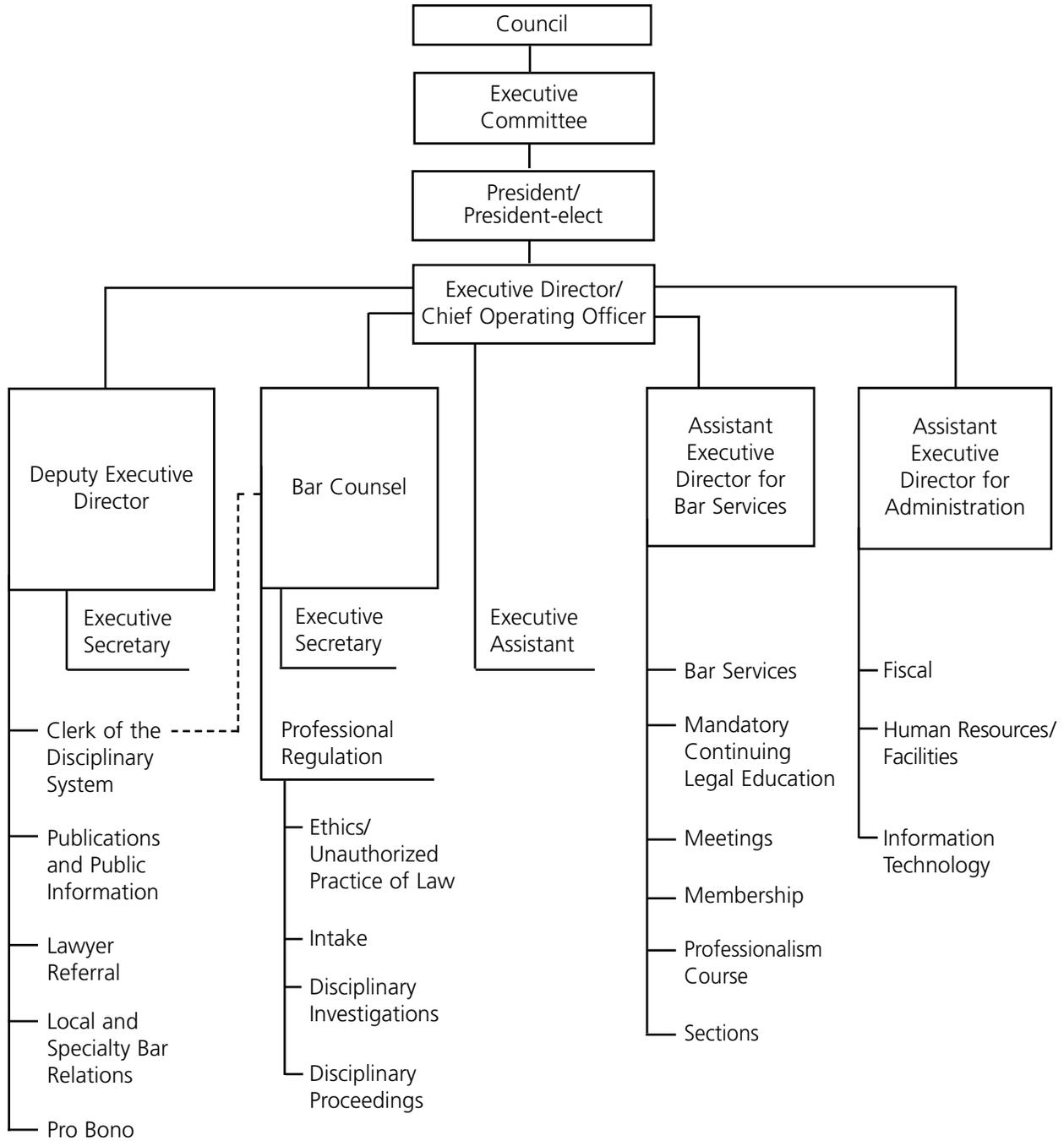
Integrated Bar Information System	456,866	
Lawyers Helping Lawyers	100,000	
Administration and Finance Account Transfers	116,097	
Clients' Protection Fund Transfers	0	
Grant Expenditures	17,647	
Transfers per Legislature	266	
<b>Total Other Disbursements and Transfers</b>	<u>690,876</u>	<b>690,876</b>

**Cash with the Treasurer of Virginia as of June 30, 2007:** **\$2,795,304**

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:: VIRGINIA STATE BAR ORGANIZATIONAL CHART ::

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## ::: REPORT OF THE OFFICE OF BAR COUNSEL :::

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This annual report pertains to the 2007 fiscal year, from July 1, 2006, to June 30, 2007.

### **Overview**

The Office of Bar Counsel is composed 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 that 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 the 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.

### **Personnel**

Fiscal 2007 produced its share of personnel issues. One investigator resigned in late October 2006 and was replaced in January 2007. Contemporaneously, with the hiring of the new investigator, another investigator went on short-term disability. In addition, the ethics department legal research assistant resigned in July 2006. Her position was filled in September 2006. Unfortunately, the replacement recently resigned, which required a search for a successor who will fill the position in mid-September. Finally, the senior assistant bar counsel in charge of the Northern Virginia office resigned in December 2007. That vacancy was filled by promoting an attorney from within the office. This required a search to find a replacement for the promoted assistant. That office was fully staffed as of March 2007.

### **The move**

In March 2007, the Office of Bar Counsel completed its long-awaited move to its new offices. This move permitted the department to expand from tight quarters to a more workable and comfortable physical environment. The move also permitted the hiring of the fourth secretary for discipline, whose position had been previously frozen pending availability of space.

### **IBIS**

In April 2007, the Office of Bar Counsel finally went online with the bar's Integrated Bar Information System (IBIS). That system has been in use by other departments for some time. The module that will permit this office to work more effectively was not fully functional at its start date, however. Extensive work by the bar's information system personnel in conjunction with the deputy bar counsel has improved it significantly. Some work remains to be completed before the full capabilities are available. When fully operational, the system will permit among other things, the tracking of disciplinary cases for the life of the case; the automation of certain routine writing and filing functions; and the ability to chronologically date and monitor the time it takes to dispose of an average disciplinary case.

### **Statistics**

The number of active members of the bar in good standing continued its annual increase. At the end of fiscal 2006, there were 26,348 active members of the bar in good standing. As of the end of fiscal year 2007, there were 26,937.

There were 987 cases in the disciplinary system at the end of fiscal 2007. This compares to 833 cases in the system at the end of the prior fiscal year. The number of cases in the system at the district committee level that were over 180 days old at the end of fiscal 2007 was 284, compared to 247 at the end of fiscal 2006. The number of cases to be tried at the end of fiscal 2007 was 106, compared to 155 at the end of fiscal 2006. Cases tried by the end of fiscal 2007 totaled 50, of which 40 were post-district committee cases. This compares to 98 cases tried by the end of fiscal 2006, of which 82 were post-district committee cases. Agreed dispositions for the latest fiscal year totaled 86, compared to 177 in fiscal 2006.

The year-end case numbers are higher than in the last several fiscal years. Whatever cause or combination of causes might be at the heart of this increase, the Office of Bar Counsel remains attentive to, and concerned about, the increase in the statistics and is constantly looking at and implementing solutions to reduce it. Significantly, and as noted above, implementation of IBIS will give the office the opportunity to manage these cases more effectively from inception.

In addition, the introduction this year of a vetting process for disciplinary cases being heard by the Disciplinary Board and circuit court panels should have a positive effect on the quality of the cases prosecuted by this office over time.

In addition to the above case resolution data during fiscal 2007, the ethics staff attorneys handled an average of 378 calls per month from Virginia lawyers seeking legal ethics advice. This compared to 349 calls per month for fiscal year 2006.

### 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.

Paragraphs 13(B)(6) and 13(F)(3) were amended effective January 1, 2007, to clarify the issue of disqualification of a district committee or Disciplinary Board member from disciplinary proceedings. The rules now state that a member of a district committee or the Disciplinary Board shall be disqualified from service in a disciplinary proceeding if that member previously represented the respondent.

Paragraphs 13.H(2), 13(I)(3)(a) and 13(N)(3) were amended, effective March 1, 2007, to substitute the phrase "Charge of Misconduct" for the term "Notice of Hearing." These amendments were designed to change remaining inappropriate references to "Notice of Hearing" in Paragraph 13.

Finally, Paragraph 13(I)(4) was also amended effective March 1, 2007, changing the term "Notice of Hearing" to "notice of hearing," with the lower-case version referring to the notice for a hearing before the Disciplinary Board upon a Certification for Sanction Determination, following a prior determination of misconduct by a district committee.

### Changes to the Virginia Rules of Professional Conduct

An amendment to the Rules of Professional Conduct Rule 4.2 was adopted by the Supreme Court of Virginia on April 13, 2007. The amendment included the language of comment [3] of the American Bar Association rule regarding the prohibition against communicating with a represented party even when the represented person or the lawyer initiates the contact. That comment reads:

The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule. A lawyer is permitted to communicate with a person represented by counsel without obtaining the consent of the lawyer currently representing that person, if that person is seeking a "second opinion" or replacement counsel.

The Supreme Court of Virginia adopted a proposed amendment to Rule 5.6 on July 20, 2006, effective September 1, 2006. The amendment to Rule 5.6 (b) deleted "broad" preceding "restriction" and in comment [2] struck the word "broadly" preceding "restricted" in the first sentence of the first paragraph, and added the second paragraph to that comment, stating:

Originally, Rule 5.6(b) prohibited only *broad* restrictions on an attorney's right to practice in settlement agreements. However, in line with the recommendations of the Boyd-Graves Conference Report of August 2004, the prohibition in Rule 5.6(b) is now expanded to reach *all* restrictions on the right to practice in settlement agreements, other than those within the exception afforded for settlement agreements approved by a tribunal or governmental entity. The current more expansive prohibition is in line with both the ABA's Model Rule 5.6 and with provisions in other jurisdictions.

### Pending amendments

The Standing Committee on Legal Ethics approved new comments to Rule 8.4 that represent an important change in the committee's position on the ethical propriety of a lawyer, or his or her agent, using an undisclosed recording device to capture a communication or event in which the lawyer or agent is a participant. Under the new comments, the undisclosed recording of a communication or event is not unethical per se if the recording is lawful; is consented to by one of the parties to the transaction; is in furtherance of an investigation on behalf of a client; is not effectuated by means of any misrepresentations; and if the means by which the communication or event was recorded and the use of the recording do not violate the legal rights of another.

The committee and council have adopted these amendments, and they are currently pending with the Supreme Court of Virginia.

### Conclusion

With the start-up of a new computer system for the Office of Bar Counsel, its staff will be better positioned to track and assess the progress of disciplinary cases through the system. Vetting of cases should improve the quality of the office's prosecutions. With these two improvements as a backdrop, the Office of Bar Counsel is well-positioned to face the challenges ahead and to meet its responsibilities to the lawyers and citizens of the Commonwealth of Virginia.



President Karen A. Gould called the General Session of the Sixty-Ninth Annual Meeting of the Virginia State Bar to order at 9:15 a.m. on June 16, 2007, at the Cavalier Hotel, Virginia Beach. She introduced Howard W. Martin Jr. the incoming president, who had been sworn in by Supreme Court of Virginia Chief Justice Leroy R. Hassell Sr. the previous evening. Mr. Martin reported on the actions of the council at its meeting on June 14.

**Introduction of President-elect Capsalis**

Mr. Martin introduced Manuel A. Capsalis of Arlington, incoming president-elect. Mr. Capsalis made brief remarks. On motion made, seconded, and unanimously approved, Manuel A. Capsalis was formally elected as president-elect for the 2007-2008 bar year.

**Tradition of Excellence Award**

James C. Roberts of Richmond received the General Practice Section Tradition of Excellence Award. Charles E. Adams, 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.

The meeting was adjourned at 9:47 a.m.



:: IN MEMORIAM ::

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James T. Adams, *Lexington*  
Nathan Webster Albright, *Las Vegas, NV*  
Barbara Andrick, *Manassas*  
Gary L. Bengston, *Danville*  
Alfred Bernard III, *Norfolk*  
Charles Harley Booth, *Williamsburg*  
Justin Hart Brandon, *Alexandria*  
Sylvia Mary Brennan, *Alexandria*  
Mark Christopher Brocki, *Charlottesville*  
Miles J. Brown, *Annandale*  
George Wendal Campbell Jr., *Springfield*  
The Honorable Joseph H. Campbell, *Norfolk*  
John Francis Carman, *Vienna*  
Daniel A. Cerio, *Falls Church*  
James Edward Cervenak, *Alexandria*  
Robert Lewis Clark, *Dayton, OH*  
Richard A. Cohan, *Charlotte, NC*  
Edwin S. Cohen, *Charlottesville*  
Lawrence Martin Cohn, *Glen Allen*  
The Honorable A. Christian Compton, *Richmond*  
Walter J. Cory Jr., *Richmond*  
William P. Currier Jr., *Charlotte, NC*  
James Frank De Deo, *Vienna*  
The Honorable John E. Dehardit, *Gloucester*  
Robert R. Dively, *McLean*  
The Honorable T. Ryland Dodson, *Danville*  
John L. Doyle, *Richmond*  
The Honorable Robert W. Duling, *Richmond*  
Jon Lee Duncan, *Abingdon*  
Frank W. Dunham Jr., *Alexandria*  
G.D. Faulkner, *Mechanicsville*  
Joseph C.V. Ferrusi, *Clinton, MD*  
Andre Allen Foreman, *Norfolk*  
Neale Strong Foster, *Miami, FL*  
Byron E. Fox, *Manakin-Sabot*  
E. William Fox Jr., *McLean*  
Thomas J. Freaney Jr., *Alexandria*  
Jean Rouault Galloway, *Fairfax*  
David Brent Garland, *Charlottesville*  
Barry Vance Gibbens, *Yorktown*  
Robert L. Gilliam III, *Tappahannock*  
The Honorable William S. Goode, *Durham, NC*  
Carter Lee Gore, *Fort Defiance*  
Carter Tredway Gunn, *Norfolk*  
Jonathan Andrew Hack, *McLean*  
The Honorable Quinlan J. Hancock, *Fairfax Station*  
Roy G. Harrell Jr., *St. Petersburg, FL*  
Ernest S. Heisley, *Fairfax*  
L.W. Hiner, *Richmond*  
Joseph G. Hitselberger, *Alexandria*  
Roger Bryant Hunting, *Richmond*  
John W. Jackson, *San Rafael, CA*  
Earl L. Johnson Jr., *Arlington*  
The Honorable Randall G. Johnson, *Richmond*  
Richard Wigley Perrott Johnson, *Hampton*  
M. Ray Johnston, *Kilmarnock*  
John Wayne Jones, *Washington, D.C.*

Andrew David Kaufmann, *Reston*  
Gabor J. Kelemen, *Conches, Switzerland*  
Herbert V. Kelly, *Newport News*  
John H. Kennett Jr., *Roanoke*  
Trevilian A. Kerns Jr., *Irvington*  
James Gordon Kincheloe, *Fairfax*  
Carr Lanier Kinder III, *Richmond*  
William Peter Koczyk Jr., *Annandale*  
Peter J. Kostik, *Arlington*  
Henry Kowalchick, *Virginia Beach*  
Svein Jarl Lassen, *Newport News*  
Francis Xavier Lillis, *Vienna*  
Edward A. Linden, *Tucson, AZ*  
Salvatore Frank Lorello, *Midlothian*  
Nancy Lang Lowndes, *Richmond*  
The Honorable Jack M. Matthews, *Galax*  
Conard B. Mattox III, *Richmond*  
F. Sheild McCandlish, *Clifton*  
Joseph Alexander McCann, *Vienna*  
Sally Perritt McConnaughey, *Amelia*  
Louis Leonard Meier Jr., *Bethesda, MD*  
John W. Moore III, *Richmond*  
Marcus D. Minton, *Petersburg*  
Nathaniel S. Newman, *Richmond*  
Frank John Nivert, *Sarasota, FL*  
Jacob Nathan Perkins, *Poolesville, MD*  
William R. Perlik, *McLean*  
Mark Bennett Peterson, *Charlottesville*  
Robert Lee Polk, *Clifton*  
Clarence F. Rhea, *Gadsden, AL*  
Scott Arthur Richie, *Mineral*  
James Milton Rinaca, *Richmond*  
Kenneth Leon Roberts, *Williamsburg*  
The Honorable Ralph B. Robertson, *Richmond*  
The Honorable Philip L. Russo, *Virginia Beach*  
The Honorable Perry W. Sarver, *Strasburg*  
Frank Satta, *Alexandria*  
Murray W. Seagears, *Fairfax Station*  
Robert Gordon Shepherd Jr., *Reston*  
Stephen Kenneth Simpson, *Reston*  
Richard Earle Smith, *Mechanicsville*  
Richard W. Smith, *Staunton*  
Joseph Patrick Spellman, *Sarasota, FL*  
Lee Stephen Strickland, *Clifton*  
Ann Sungmie Suh, *Arlington*  
Henry A. Thomas, *Alexandria*  
Theodore N. Irving Tondrowski, *Richmond*  
Eldred C. Van Fossen, *Frederick, MD*  
Timothy Robert Walters, *Chatham Township, NJ*  
Paul Weeks II, *Arlington*  
Robert Emmett Wegmann, *Corpus Christi, TX*  
Joseph Frederick West, *Arlington*  
Stephen Graham White, *Petersburg*  
Jack I. Wilkerson, *Richmond*  
Frederick Charles Williams, *Washington, D.C.*  
Thomas Aquilla Williams, *Callao*  
T. Eugene Worrell, *Charlottesville*

## ADMINISTRATIVE LAW

*James S. Copenhaver, chair*

### Twenty-fifth National Regulatory Conference

The Twenty-fifth National Regulatory Conference (“NRC” or “conference”) was held May 22-23, 2007, in Williamsburg. The program, titled “Regulation ... Alternate Regulation ... De-regulation ... Re-regulation ... What’s the Name of the Game?,” examined diverging regulatory trends that face the energy and telecommunications industries. In celebration of the conference’s twenty-fifth anniversary, five former commissioners from the Virginia State Corporation Commission opened with a round-table discussion that focused on the history of the NRC, prior case decisions, changes in the industry, and current regulatory issues. The panel was moderated by Commissioner Theodore V. Morrison Jr., who highlighted the role of former commissioner Preston C. Shannon in initiating the NRC and made a presentation on behalf of former commissioner Thomas P. Harwood, who was unable to attend. The panel included Virginia Justice and former commissioner Elizabeth B. Lacy and former commissioners Preston C. Shannon, Hullahan Williams Moore, and I. Clinton Miller.

The NRC was a success, due in large part to the efforts of program Chair Brian R. Greene and volunteers from the Administrative Law Section. The NRC panels continued the recent trend toward an increasingly interactive debate format, which has been well-received by attendees. The success of the NRC is also apparent from attendance that appears to have outgrown its current venue at the Marshall-Wythe School of Law at the College of William and Mary.

### Newsletter

Ashley C. Beuttel edited the Winter 2006-2007 edition of the *Administrative Law News*, which featured articles on the Virginia SCC’s approval of a performance-based rate plan for Virginia Natural Gas, a ruling on Dominion Virginia Power’s petition seeking preliminary assurances in advance of construction of a new coal-fired generating facility, the Virginia Office of the Attorney General’s annual report on the status of stranded costs, a commission investigation into significant incidences of telephone directory errors and omissions, and revised “Rules Governing Disconnection of Local Exchange Telephone Service.”

### Annual brown-bag luncheon

On April 6, 2007, the section hosted its Seventh Annual Brown Bag Luncheon Program, moderated by Cliona M.B. Robb. Kenneth J. Schrad, director of the SCC’s Division of Information Resources, provided a General Assembly update and discussed the commission’s appointment of former Virginia Tax Commissioner Danny M. Payne to the new position of chief administrative officer of the SCC.

### VSB Annual Meeting CLE program

Kiva B. Pierce spearheaded the section’s support of a successful continuing legal education program at the VSB’s Sixty-Ninth Annual Meeting in Virginia Beach. The program, titled “A Variety of Issues that Keep General Counsel Up at Night,” was cosponsored by the sections on Corporate Counsel, Administrative Law, and Antitrust, Franchise and Trade Regulation.

### Annual meeting

The section’s annual meeting was held during the NRC for a second consecutive year, and attendance continued to climb significantly from previous years. The section’s business meeting included election of officers and new board members. New officers are Brian R. Greene, chair; Kiva B. Pierce, vice chair; and Vishwa B. Link, secretary. Ashley C. Beuttel, Arlen C. Bolstad, Mark A. Keffer, Renata M. Manzo, and Louis R. Monacell were elected to the section Board of Governors, and Beuttel continues as newsletter editor.



## ANTITRUST, FRANCHISE AND TRADE REGULATION

*Kenneth W. Dobeare, chair*

### Programs

At the 2007 Virginia State Bar Annual Meeting, the section cosponsored a seminar on a variety of current topics of interest to corporate counsel. The speakers included Allen C. Goolsby and Louanna O. Heuhsen, both partners at Hunton & Williams, and Leon E. Roday, senior vice president, general counsel and secretary of Genworth Financial Inc. The panel explored a number of topics, including corporate investigations, shareholder activism, and a number of pending and proposed legislative changes. The program was well-attended, and Douglas M. Garrou did an excellent job of coordinating the section’s participation in this event.

### **Publications**

This year's goal is to have a newsletter for distribution in spring 2008.

### **Annual Meeting**

At the annual business meeting on June 15, 2007, the following officers were elected: Kenneth W. Dolbear, chair; Patrick J. Maslyn, vice chair; and Wendell L. Taylor, secretary. Patrick R. Hanes was elected to a three-year term on the section's Board of Governors, and existing member James M. Wilson was re-elected to a second three-year term.

### **Future Projects**

The section plans to explore sponsoring a writing contest at George Mason University and perhaps tie it into their antitrust symposium. The section also is looking into offering a program in the fall of 2008 with the Federal Trade Commission's Franchise Disclosure Rule as a possible topic.

I would like to express my sincere gratitude to Mr. Garrou and all the members of the board for their efforts and work on behalf of the section this year. In addition, on behalf of the entire section, I want to express my thanks for the guidance and support provided throughout the year by Theresa B. Patrick, our VSB liaison. Her service to the section continues to be extraordinary.



## **BANKRUPTCY LAW**

*Peter Gilbert Zemanian, chair*

It has been an honor to serve as your 2006-2007 Bankruptcy Law Section chair, and a privilege to witness the dedication of so many bankruptcy practitioners in and around Virginia. We are proud of the generosity of our section members. Many have offered their time and talents to improve bankruptcy practice. This annual report highlights accomplishments of the section in fiscal 2007.

Continuing legal education is central to the mission of the section. Due to recent legislative and procedural changes to the bankruptcy practice, however, the section experimented with a different seminar format. The annual basics program (held live in four locations) has been replaced by a telephonic seminar, presented in four two-hour sessions. Complementing the new telephone seminars was the section's annual advanced consumer conference. The section's summer program at the Virginia State Bar Annual Meeting in Virginia Beach was a joint presentation with the Real Property Section. James R. Schroll of Bean, Kinney & Korman PC in Arlington handled administrative duties related to the section's fiscal 2007 CLEs.

The section is preparing a pilot program for conducting public seminars on consumer bankruptcy. The section's goal is to present the seminars regularly at schools, libraries, and community centers throughout Virginia, and possibly to broadcast it on public-access TV. H. David Cox of the Cox Law Group PLLC in Lynchburg is leading this initiative.

The section recently signed a contract with Virginia Interactive to upgrade the functionality of its Web site. The first enhanced service will be to make available online the Western District of Virginia judges' instructions for consumer debtors. Future enhanced services may include electronic distribution of section notices, publication of locally issued bankruptcy court opinions and possibly an interactive chat room capability. Robert T. Copeland of Copeland & Bieger PC in Abingdon and Lynn L. Tavenner of Tavenner & Beran PLC in Richmond are the section's Internet gurus.

Other accomplishments included an update of the bankruptcy brochure to conform to the Bankruptcy Abuse Prevention and Consumer Protection Act, thanks to H. Jason Gold of Wiley Rein LLP in McLean. The section might translate the brochure into Spanish. The section also helped defray costs of the November investiture ceremony in honor of Judge Kevin R. Huenekens.

The section's three newsletters included articles by Judges Douglas O. Tice and William F. Stone Jr., as well as section practitioners. The newsletter committee is chaired by Richard Daniel Scott of LeClair Ryan PC in Roanoke. He succeeded Robert S. Westermann of Hunton & Williams in Richmond.

The section nominating committee nominated Steven Bret Ramsdell of Tyler, Bartl, Gorman & Ramsdell PLC in Vienna and Cecelia Ann Weschler of the Office of the U.S. Trustee in Norfolk to join the board of governors. Eligible for reelection were Brian Francis Kenney of Miles & Stockbridge PC in McLean and Lynn Tavenner. The election was held at the annual meeting on June 15,

2007. Leaving the board after many years of service and a very productive role as 2005-2006 section chair is Richard C. Maxwell of Woods Rogers PLC in Roanoke.

The board of governors selected Roy Madison Terry Jr. of Durette Bradshaw PLC in Richmond to serve as secretary for fiscal 2008. Robert T. Copeland will be vice chair and James R. Schroll will serve as chair.



## CONSTRUCTION LAW AND PUBLIC CONTRACTS

The Construction Law and Public Contracts Section kicked off fiscal 2007 with a Fall Seminar held at the Boar's Head Inn in Charlottesville. As in years past, the section had an outstanding crowd and excellent speakers.

The section comprised approximately seven hundred members, with Elaine R. Jordan serving as chair. The section's budget of \$10,880 was put to good use by producing several issues of the *Construction Law and Public Contracts News* and a handbook, the *Construction Law and Public Contracts Reference Manual*, which is in great demand by section members.

At the Virginia State Bar's Annual Meeting in June 2007, the section cosponsored a continuing legal education program with the Environmental Law Section titled "Monday-Morning Quarterbacking the Public-Private Education Facilities and Infrastructure Act and Public-Private Transportation Act: Lessons Learned from State and Local Public/Private Construction Projects in the Commonwealth."

The section produced a dedicated issue of the *Virginia Lawyer* magazine in October 2006. The section also is updating its Web site, [www.vsb.org/site/sections/construction](http://www.vsb.org/site/sections/construction).



## CORPORATE COUNSEL

*Douglas D. Callaway, chair*

**Number of Members:** 1,143

**Budget (Fiscal 2007):** \$18,588

**Activities:** The Corporate Counsel Section was established in 1989. 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 2007, the section cosponsored a continuing legal education program, "A Variety of Topics of Current Interest to Corporate Counsel." Other sponsors were the Administrative Law and Antitrust, Franchise and Trade Regulation sections.

**2006-2007 Officers:** Edward Henry Beck, chair; Douglas Darrell Callaway, vice chair; and Mary Christina Floyd, secretary.



## CRIMINAL LAW SECTION

*John E. Lichtenstein, chair*

The Criminal Law Section enjoyed a vibrant and successful fiscal 2007. The section continued to receive the enthusiastic support of criminal law defense practitioners, prosecutors, and judges and continued to be the forum where those often-separate groups work together effectively for the good of Virginia's criminal justice system. With more than two thousand members, the Criminal Law Section is one of the Virginia State Bar's largest sections.

Without question, the most concentrated effort of the year was toward the improvement of Virginia's system of indigent defense. For the last forty years, members of our section, including several who continue to sit on our board of governors, have

worked tirelessly for improvement in what had become well-recognized as a broken system. In fiscal 2007, the section focused a great deal of time and energy on unique and exciting legislative opportunities. For the first time in the long history of the section's work in this area, the Governor and the Attorney General spearheaded a joint effort to address structural issues concerning the non-waivable cap on court-appointed fees and the funding required to support increased pay. The section worked intensely to support the Governor's initiative, with two members sitting on the Governor's Indigent Defense Stakeholder's Group, which also included public defenders, private criminal defense attorneys, and representatives of the Virginia Indigent Defense Commission, the Supreme Court of Virginia, the Commonwealth's Attorneys Association, and others.

Over a period of months that included the 2007 General Assembly session, this group worked to focus legislation. The legislation took many turns throughout the process but resulted in a historic statutory pathway to waiver of court-appointed fee caps and a significant increase in funding. A new procedure for submission, review, and approval of attorney fee-cap waiver claims is now in place, and the section will remain involved in easing the logistics of the new process. Many challenges remain, but pathways for additional improvement and funding are now open because of the great work, past and present, of so many members of our section and its board.

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

Our Thirty-Seventh Annual Criminal Law Seminar, held in Charlottesville and Williamsburg, continued to be one of the largest continuing legal education programs in Virginia. It drew approximately 650 attendees for the two live locations and more than 300 for videotape replays around the state.

The section's Harry L. Carrico Professionalism Award was presented to Rodney G. Leffler of Fairfax for his exemplary service to the bar and the commonwealth.

At the VSB Annual Meeting, the section cosponsored a program with the Litigation Section and the Bench-Bar Relations Committee. The program, "Answering the Call: Striving for Professionalism and Happiness in Our Lives as Lawyers," featured William Haltom, a Tennessee trial lawyer, with a panel that included Joseph A. Condo, Karen A. Gould, and Judge Ann Hunter Simpson. It was moderated by David P. Baugh.

In June 2007, Robert B. Beasley Jr. of Powhatan County was elected chair of the section for fiscal 2008; David P. Baugh of Richmond, vice chair; and John R. Doyle III of Norfolk, secretary. Joining the section Board of Governors for four-year terms are David J. Damico of Roanoke, Casey R. Stevens of Woodbridge; Jeffrey A. Swartz of Norfolk, and Judge James S. Yoffy of Henrico County.

Of special importance, Professor Robert E. Shepherd Jr. and Reno S. Harp III continued their substantial involvement, assistance, and thoughtful guidance to the board.

As well, Elizabeth L. Keller, assistant executive director of the Virginia State Bar, continued to support our section in many ways. The involvement of the bar leadership with our section, specifically the support of Thomas A. Edmonds, executive director of the VSB, was very important to the success reached in indigent defense.

Finally, my term on the board and as chair has been a tremendous experience, and I am very grateful. I appreciate the work of so many members of our section and the intense work of the board members. I am certain the Criminal Law Section will continue to be a critically important actor in the protection and improvement of criminal justice in Virginia.



## **EDUCATION OF LAWYERS IN VIRGINIA**

*George A. Somerville, chair*

The Section on the Education of Lawyers:

- exchanges information and promotes constructive action on legal education issues
- promotes communication and enhances cooperation among the academic community, the judiciary, and the practicing bar in Virginia
- sponsors projects on the education of lawyers in law school and throughout their careers
- publishes materials and offers programs that enhance cooperation between law schools, the bench, and the practicing bar

## :: REPORTS OF THE SECTIONS ::

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The section pursued those purposes during fiscal 2007 through a newsletter, professionalism programs at Virginia's law schools, and a Mini-Conclave on Legal Education in partnership with the American Bar Association's Section of Legal Education and Admissions to the Bar.

Professor James M. Boland of Regent University School of Law was editor of the section's newsletter. The section published two issues this year, including an interview with Chief Justice Leroy R. Hassell Sr. in the spring issue. Boland will continue to serve as newsletter editor in fiscal 2008.

The Professionalism Program for Law Students, developed by the education section and the Virginia State Bar's Standing Committee on Professionalism, was offered to first-year students at each of Virginia's eight 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. Circuit Judge J. Martin Bass was chair of this annual project, and U.S. Magistrate Judge B. Waugh Crigler served as cochair.

The Mini-Conclave on Legal Education was held at the University of Virginia School of Law on June 8, 2007. William R. Rakes, chair of the ABA Legal Education Section, and Thomas A. Edmonds, executive director of the Virginia State Bar, presented opening remarks. Dean John C. Jeffries Jr. of the U.Va. Law School welcomed attendees. Dean Rodney A. Smolla of the T.C. Williams School of Law at the University of Richmond led a discussion on preparing lawyers for their roles in a global society. Panelists for a discussion of ways to improve diversity in the legal profession and bar organizations included Carolyn B. Lamm (White & Case LLP), Dean Jeffries, Professor Blake D. Morant (associate dean for academic affairs and a professor of law at Washington and Lee University) and Mathew D. Staver (dean of Liberty University School of Law). Virginia Justice Elizabeth B. Lacy led the second panel, which included Jeffrey A. Brauch (dean of the Regent School of Law), Karen A. Gould (president of the VSB), Annamaria L. Niels (assistant dean at George Mason University School of Law), Judge Cleo E. Powell (Chesterfield County Circuit Court), Clinton W. "Wes" Shinn (dean of Appalachian School of Law), and W. Scott Street III (secretary of the Virginia Board of Bar Examiners). Dean W. Taylor Reveley III of Marshall-Wythe School of Law at the College of William and Mary closed the program with an address on "The Lawyer as Public Citizen."

The section gratefully acknowledges the financial support to the conclave from law firms Christian & Barton LLP; Gentry Locke Rakes & Moore LLP; Hunton & Williams LLP; Michie, Hamlett, Lowry, Rasmussen & Tweel PC; Oblon Spivak McClelland Maier & Neustadt PC; Patten, Wornom, Hatten, & Diamonstein LC; Troutman Sanders LLP; and Vandeventer Black LLP.

In addition, Virginia's accredited law schools and a number of leading law firms contributed to the section's annual operating budget. The section board of governors offers thanks to all the law schools and the following firms for their support: Edmunds & Williams PC; Gentry Locke Rakes & Moore LLP; Rees Broome PC; and Troutman Sanders LLP.

The board also wishes to express thanks to three outgoing members for diligent and excellent service. Those members are William G. Broadus, Eric R. Thiessen, and Bruce C. Stockburger.

This report would not be complete if it did not include one major disappointment — the failure at the VSB Council of a proposal for a statutory amendment to allow admission of full-time law professors as active members of the Virginia State Bar. At a series of meetings between October 2005 and March 2006, the section Board of Governors discussed, debated, and ultimately endorsed a proposal to request an amendment to Virginia Code § 54.1-3931. The proposed amendment would have authorized the Supreme Court to provide by rule that law professors in Virginia who have been admitted to practice in another state may be admitted without examination to active membership in the Virginia State Bar. The statute currently provides for only associate membership, except that any attorney who has been admitted to practice law in another state or territory or the District of Columbia for at least five years may be admitted to the Virginia State Bar. At its meeting on October 27, 2006, the VSB Council rejected the section's proposal by a vote of 38-13.

George A. Somerville served as chair of the section's nominating committee, with members who included Circuit Judge J. Martin Bass (a member of the section board); Warren County Attorney Blair D. Mitchell; Sharon K. Eimer, a public defender in Lynchburg; James E. Brydges Jr. of Taylor & Walker PC in Norfolk; Robert S. Ballou of Johnson Ayers & Matthews PLC in Roanoke; and Professor Margaret I. Bacigal of the University of Richmond.

New officers are Professor Henry L. Chambers Jr., chair; Lawrence H. Hoover Jr., vice chair; and Winston S. "Sid" Moore, secretary. Prince William Circuit Judge Rossie D. Alston Jr., UR Professor Paul M. Thompson, John D. Sharer of Dominion Resources Services Inc., Frank K. Friedman of Woods Rogers PLC, and John H. Foote of Walsh Colucci Lubeley Emrich & Walsh PC are new and returning members of the board of governors.



## ENVIRONMENTAL LAW

*Brooks M. Smith, chair*

In 2006-2007, the Environmental Law Section continued its tradition of high-quality, topical legal education and media for its members.

In October 2006, the section cosponsored at the University of Richmond School of Law a symposium titled "Preserving the Chesapeake: Law, Ecology, and the Bay." This unique symposium brought together experts from federal and state government, leading law firms, nonprofits, and academia to assess past regulatory efforts and identify the steps that still need to be taken to achieve restoration goals for the Chesapeake Bay.

In June 2007, the section collaborated with the sections on Local Government Law and Real Property on a continuing legal education program, "Monday-Morning Quarterbacking the Public-Private Education Facilities and Infrastructure Act and Public-Private Transportation Act: Lessons Learned from State and Local Public/Private Construction Projects in the Commonwealth." The program featured Pierce R. Homer, Virginia secretary of transportation; James V. McGettrick Jr., an assistant county attorney from Fairfax; and Oliver Amos "Trip" Pollard III, director of land and community projects for the Southern Environmental Law Center in Charlottesville. They engaged in a spirited debate over issues involved in transportation planning—one of Virginia's controversial political topics.

On the media side, the section produced two issues of its newsletter, *Environmental Law News* (note that the release of the second issue was delayed due to unexpected scheduling problems with our student editors at Washington and Lee University). Each edition contained one or more feature articles, summaries of recent federal and state regulatory changes, and a digest of environmental law case decisions.

We also expanded the section Web site to include archived newsletters and regulatory links of interest.

Finally, the section was instrumental in discussions that led to the Virginia State Bar's partnership with the state to promote land conservation. For information, see [www.vsb.org/site/news/item/vsb-partners-with-state-to-promote-conservation-easements/](http://www.vsb.org/site/news/item/vsb-partners-with-state-to-promote-conservation-easements/).

Officers for fiscal 2008 are Caleb A. Jaffe of the Southern Environmental Law Center, chair; A. Lisa Barker of the Hanover County Attorney's Office, vice chair; and Joseph J. Tannery of the Chesapeake Bay Foundation, secretary.



## FAMILY LAW

*Brian M. Hirsch, chair*

During fiscal 2007, the Family Law Section Board of Governors added a Family Law Service Award, which it presented this year for the first time. Philip Schwartz of Vienna received the Lifetime Achievement Award and Mary G. Commander of Norfolk received the Family Law Service Award. The awards were presented at the Annual Advanced Family Law Seminar luncheon in Richmond, which is attended by more section members than the Annual Meeting in Virginia Beach, where the award was previously handed out.

The section sponsored the February 2007 issue of *Virginia Lawyer* magazine. The section contributed five articles.

Membership in the section increased approximately 20 percent over last year's. This was due in part to the section's concerted efforts at seminars and similar events to encourage new members of the bar to join the section.

The section conducted a survey of its members to ensure that we are meeting their needs. It appears that the *Family Law News*, edited by Richard Crouch, and seminars are the cornerstones of the section. The survey also provided valuable feedback on how to improve these programs, and brought to light other needs of the section members.

While the section has a Web site, it had not been as interactive or user friendly as it could have been. This year, the Web site was updated and the members have been encouraged to use it regularly. The site ([www.vsb.org/sections/fa/index.html](http://www.vsb.org/sections/fa/index.html)) featured an article in which Juvenile and Domestic Relations Judge Angela G. Roberts, a Family Law Section board member, promoted National

Adoption Day with Virginia First Lady Anne B. Holton. Also, the section has now begun e-mailing members to inform them of important news, such as upcoming seminars.

The section sent James W. Korman and Joseph A. Condo to Portugal to present on family law at the Virginia State Bar's Midyear Legal Seminar.

The Advanced Family Law Seminar in April, "Using Experts Effectively in Your Family Law Case," paired experts and lawyers by topic. It received excellent ratings and reviews, according to Virginia CLE. Likewise, the section's seminar on attorneys fees, presented at the VSB Annual Meeting, was a success.

Section officers for 2007-2008 are Craig Elliott White, chair; Andrea Rowse Stiles, vice chair; and Peter Williams Buchbauer, secretary.



## GENERAL PRACTICE

*Charles E. Adams, chair*

Throughout fiscal 2007, the General Practice Section persevered through the vagaries associated with a membership with broad and varied practices. It successfully served its members through its *General Practice* newsletter, sponsorship with Virginia CLE of the annual Solo and Small-Firm Institute, and the section's continuing legal education program at the Virginia State Bar Annual Meeting. Although the section has not yet received practical benefits from its other inchoate endeavors, such as exploring the need for a mentoring program for young attorneys or sponsoring a free or low-cost CLE program for general practitioners in Southwest Virginia, the section Board of Governors has nevertheless pursued these programs with dogged alacrity.

The General Practice Section enjoyed a budget in fiscal 2007 of \$25,840.00 and spent \$21,054.37. On June 1, 2007, membership comprised 879 attorneys, including 792 active members and 81 judges. The board of governors hopes to extend the benefits of the section to other general practitioners throughout the commonwealth, with special emphasis on Western and Southwest Virginia.

The section continues to sponsor the annual Virginia CLE Solo and Small-Firm Institute in Williamsburg, where attendees found the content extremely useful in conducting their practices. At the Annual Meeting of the Virginia State Bar in Virginia Beach, the section presented a CLE program titled "Basic Eviction Law and Defenses." Speakers included General District Judge Lucretia A. Carrico of Petersburg; Stephen E. Dickinson of the Petersburg Legal Aid Society; and section Chair Charles E. Adams. The section will continue to cosponsor with the Young Lawyers Conference the First Day of Practice Seminar for newly admitted members of the bar. The section thanks speakers who annually agree to share their expertise with new attorneys attending this program.

Charles E. Adams will serve a second consecutive term as chair, Linda Y. Lambert is vice chair, and Elizabeth K. Dillon is recording secretary. The Board of Governors continued to enjoy the unflinching support of its Virginia State Bar liaison, Patricia A. Sliger, without whom its efforts would come to a grinding halt. Vivian R. Byrd of the Virginia State Bar also made strong contributions to the board's work during fiscal 2007 and will serve as chief VSB liaison for fiscal 2008.



## HEALTH LAW

*Molly Shuttleworth Evans, chair*

**Number of Members:** (6/01/07): 497

**Budget (FY 2007):** \$8,000

**Activities:** The Health Law Section serves lawyers who deal with the administration of health care. The section has been active in providing continuing legal education, including the sponsorship of the Ninth Annual Legal Update and Extravaganza, cosponsored with The Virginia Bar Association. The section also publishes a newsletter, *The Virginia Health Lawyer*, and produces programs of interest to the general health-care professional. The section's board invites all members to attend its meetings.

The Health Law Section, with a coalition of other health-care organizations, cosponsored the Second Annual Advance Directives Day on April 17, 2007. One hundred percent of hospitals participated. At least 12,300 people either picked up advance directives information while they were already in a facility, specifically came by for information, attended a presentation, or received information from their employer. The participation was well over three times the number in 2006. Nathan A. Kottkamp chaired the committee that organized the event, which will be a model for a national event planned for next year.

**2007-2008 Officers:** William Hiram Hall Jr., chair; Erica Christine Reed, vice chair; and Alan S. Goldberg, secretary.



## INTELLECTUAL PROPERTY LAW

*Cynthia C. Lynch, chair*

In fiscal 2007, the Intellectual Property Law Section continued its commitment to promoting excellent lawyering and scholarship.

In early October, the Intellectual Property Section cosponsored, with the Federal Circuit Bar Association, special events and continuing legal education programs in connection with special sittings of the United States Court of Appeals for the Federal Circuit (CAFC) at Virginia law schools. The CAFC has exclusive appellate jurisdiction over patent cases and is influential in the intellectual property field. On October 3, 2006, in conjunction with the CAFC's sitting at the University of Virginia School of Law, the section cosponsored two CLE programs — one titled "The Leading Edge: A Window on National Intellectual Property, Trade, and Government Matters," and other titled "Appellate Advocacy in Patent, Trade, and Contract Litigation: Judges and Professors." On October 4, 2006, the section cosponsored a bench-and-bar lunch in Richmond with several judges of the CAFC. The special sittings and associated programs afforded Virginia law students and attorneys an opportunity to attend oral arguments before the CAFC and to learn more about its intellectual property matters.

The Intellectual Property Section's nineteenth annual fall CLE program took place October 5-6, 2006, in Wintergreen. Topics included panel discussions on injunctions in patent cases, the status of patent reform, trends in Supreme Court jurisprudence on intellectual property law, copyright fair use in the digital age, legal issues associated with public wireless networks, and protecting intellectual property when working with the federal government.

The section held its third annual writing competition for Virginia law students, with Judge Richard Linn of the CAFC, a founding member and past chair of the Intellectual Property Section, again serving as the final judge. The four-thousand-dollar prize was awarded to Ajeet Pai, a May 2007 law school graduate from the University of Virginia, for his paper titled "Written Description of Software Inventions: An Argument for the Status Quo."

The Intellectual Property Section also provided the feature articles for the June/July 2007 issue of *Virginia Lawyer* magazine, and was pleased to include the winning paper from our competition among the articles.

The section progressed in efforts to improve communications. The Web site was kept up-to-date, and, with the approval of the Virginia State Bar, it secured the domain name vsbip.org in order to make the site more easily accessible to members. The section also continued to increase its e-mail list, which allows us to convey information in a faster, more convenient format.

At the 2007 annual meeting, the section elected new officers and members to the board of governors. Officers for fiscal 2008 are Janet P. Peyton, chair; Kristan B. Burch, chair-elect; Susan M. Dadio, vice chair; and David W. Hill, secretary. Thomas L. Stoll resigned from the board with two years remaining on his term. New board members are Robert A. Angle, who will serve the remainder of Stoll's term, and Thomas W. Brooke and Melanie C. Holloway, who will serve three-year terms.



## LITIGATION

*Vicki Divine, chair*

The Litigation Section had a membership of 2,924 for fiscal 2007, and the total allocated budget was \$33,155.

### Law in Society Essay Contest

Participation significantly increased this year. In an effort to keep up this trend, in 2007 the Virginia State Bar will advertise and distribute literature in the fall so that schoolteachers will have more time to incorporate the subject matter of the essay into their curricula.

### Appellate Practice Subcommittee

L. Stephen Emmert began holding mini-appellate seminars (he calls them “symposia”) for small groups around the state. With ten to fifteen attendees at each symposium, the give-and-take of information and ideas has been successful.

Additionally, the Appellate Practice Subcommittee is working with the Supreme Court of Virginia to put together two panels of appellate lawyers (one panel of experienced appellate lawyers and the other panel less experienced) to assist pro se parties. A team of two lawyers (one from each panel) will assist with the appeal. The pro se litigant benefits, the Court benefits, and the less-experienced attorney benefits.

### VSB Annual Meeting Showcase Workshop

Jennifer Lee Parrish worked with representatives of the VSB Criminal Law Section and Special Committee on Bench-Bar Relations to present the Showcase Workshop at the 2007 Annual Meeting. The workshop featured William Haltom, a Tennessee trial lawyer and legal humorist, with panel members David P. Baugh of Richmond, moderator; retired Circuit Judge Ann Hunter Simpson of Hartwood; Joseph A. Condo of McLean, a past president of the VSB; and Karen A. Gould, 2006-2007 president of the VSB.

### Fiscal 2008 Officers

R. Lee Livingston, chair; Jennifer Lee Parrish, vice chair; Gregory J. Haley, secretary; Vicki H. Devine, immediate past chair; and Kevin W. Holt, newsletter editor.



## LOCAL GOVERNMENT LAW

*Joseph L. Howard, Jr., chair*

The Local Government Law Section had a productive year in its activities. The membership of the section grew well above projections.

The section’s primary focus for fiscal 2007 was the quarterly publication of its *Journal of Local Government Law*. This publication provides in-depth analysis of important legal issues faced by local government attorneys in the commonwealth. The Attorney General’s Office submitted an article on the process for obtaining an official opinion of the Attorney General on a local government issue. The Division of Legislative Services contributed an article on the Public Records Act. Other topics addressed transfer of development rights legislation; an update of noteworthy bills adopted by the 2007 Virginia General Assembly; changing roles of state and local governments in land-use decisions and transportation funding issues; the sovereign immunity study by the Boyd-Graves Conference; and election law issues faced by local government attorneys.

The Local Government Law Section collaborated with the Construction Law and Environmental Law sections to present a continuing legal education program during the Virginia State Bar Annual Meeting. Pierce R. Homer, Virginia secretary of transportation, was a keynote speaker for this program, which also featured James V. McGettrick Jr., an assistant county attorney from Fairfax, and Oliver Amos Pollard III, director of land and community projects for the Southern Environmental Law Center in Charlottesville. The topic was “Monday Morning Quarterbacking the Public-Private Education Facilities and Infrastructure Act and Public-Private Transportation Act: Lessons Learned from State and Local Public-Private Construction Projects in the Commonwealth.”

The Local Government Law Section Board of Governors is composed of full-time city and county attorneys and individuals in private practice who represent localities. Virginia State Bar President Karen A. Gould attended one of the board of governors

meetings and spoke about new state bar initiatives. Barbara M. Rose, immediate past chair of the section, worked with bar staff to upgrade the section Web site.

At its annual meeting in June, the section elected Michael H. Long, senior assistant county attorney in Fairfax, chair for fiscal 2008; Phyllis A. Errico, general counsel for the Virginia Association of Counties, vice chair; and Elizabeth K. Dillon, a partner with Guynn, Memmer & Dillon in Roanoke, secretary. Newly elected to the board was Karen M. Adams, senior assistant county attorney in Henrico. Barbara Rose retired from the board at the expiration of her second term.



## MILITARY LAW

*Marcus A. Brinks, chair*

**Membership:** (6/01/07): 197

**Budget:** The section's budget was set at \$3,105. Expenditures of \$3,706.74 left a deficit of \$601.74. The Virginia State Bar apparently has a contingency account that made up the shortfall. The printed newsletter accounted for \$2,504.48 of the expenditures. In view of the high newsletter costs, the section is pursuing production and dissemination of an electronic newsletter. The proposed budget for fiscal 2008 is \$2,720, based on a membership of 170.

**Special activities:** Steve Chucala and Edward L. Davis investigated and reported on the obligation of nondomiciliary service members to pay Virginia personal property taxes on vehicles co-owned with nonmilitary, nondomiciliary spouses. The section further studied implementation of the Expanded Legal Assistance Program. ELAP is designed to allow active duty judge advocates to represent lower-ranking service member clients in minor cases before Virginia courts. The program is currently stymied, in large part because the Virginia Board of Bar Examiners levies a \$250 investigation fee for the military attorney's application to practice under the ELAP provision.

**Continuing legal education:** Neal A. Puckett spearheaded a highly successful effort for a free continuing legal education program. He secured the assistance of Col. Eric Rissling, the staff judge advocate at Langley Air Force Base, to provide a meeting site. Michael Geffroy and Charles Gittins presented a program about mobilization legal issues, combat-zone military justice, the Military Extraterritorial Jurisdiction Act, Article 32 litigation, and ethics. Program attendance increased from twenty-seven at the 2006 program to more than fifty at the May 4, 2007, program. Active duty and National Guard lawyers from various services joined Virginia Defense Force and civilian colleagues.

**Other activities:** The section published a newsletter, the *Military Law News*. Articles included promotion of democracy and rule of law in Iraq, obedience to orders and the law of war, the military's return to college campuses, and adoption-cost reimbursement.

**Officers and board members:** Officers and board members for fiscal 2008 are year are Richard J. Prevost; chair ; John B. Gately, vice chair; Andrea E. Brotherton, secretary; Gary M. Bowman, new board member; and Charles R. Allen Jr., Marcus A. Brinks, and Prescott L. Prince, board members elected to a second term.



## REAL PROPERTY

*C. Grice McMullan Jr., chair*

The board of governors and area representatives of the Real Property Section met each quarter of fiscal 2007 to discuss real property law and legislation, to provide notice to section members of legal issues and changes in statutes. Board meetings were held in Charlottesville on September 8, 2006, in Williamsburg on January 19, 2007, and February 23, 2007, and in Virginia Beach on June 15, 2007. Important issues were then brought to the attention of the section's membership through the section's semi-annual publication, the *Fee Simple*, and at section-supported seminars conducted by Virginia CLE.

In support of Virginia CLE, the section participated in the Eleventh Annual Advanced Real Estate Seminar in Williamsburg on January 19, 2007, and the Twenty-fifth Annual Real Estate Seminar at four locations around the commonwealth. Both seminars were well-attended.

In conjunction with the Virginia State Bar Bankruptcy Section, the Real Property Section presented a panel discussion on June 15, 2007, during the VSB Annual Meeting, on the topic "Fighting the Trustee: Strategy and Tactics to Defeat a Bankruptcy Trustee's Attempt to Take Your Client's Property," with Bruce Davis, Philip Hart, and Robert S. Bozarth as the panelists. Forty-five to fifty people attended the seminar.

For the first time, the section established an e-mail list that includes all officers, directors, ex officio section members, and area representatives. The list allowed discussions of the practice of real estate law and legislation. There has been heavy participation among those on the list. Participants uncovered legislation that is not clear and needs correction, and they assisted each other with questions about impending legal issues. Attempts were made during fiscal 2007 to obtain better geographic coverage area representatives, and to have each of the section's subcommittees communicate with each of their members between the quarterly meetings of the section.

Overall, the activities of the section seemed to be enthusiastically received by our membership. It is hoped that the goals of the section will continue to provide value to its members.



## TAXATION

*Geoffrey C. Dodson, chair*

**Expansion of board and 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 to provide input on important policy issues.

**Budget matters:** The section provided funding for the University of Virginia Annual Conference on Federal Taxation, held in June 2007, and the Fifty-Third College of William and Mary Tax Conference, held in November 2007.

The following officers were elected to serve until the 2008 Virginia State Bar Annual Meeting: William G. Fendley IV, chair, and David S. Lionberger, vice chair, secretary, and newsletter editor. Other members of the board of governors are Beaufort O. "Shawn" Martin, and Geoffrey C. Dodson, immediate past chair.



## TRUSTS AND ESTATES

*Donna Esposito Fincher, chair*

The Trusts and Estates Section successfully organized and presented two educational programs in fiscal 2007.

In October 2006, the Twenty-fifth Annual Trusts and Estates Section seminar took place in Fairfax, Richmond, Norfolk, and Roanoke. The seminar was cosponsored by Virginia CLE and covered a variety of timely topics in the area of estate planning and administration. Recent developments in federal tax law and Virginia law were presented, along with selected ethics issues for trusts and estates practitioners. The program also focused on drafting and administration issues related to minor beneficiaries, charitable gifts, and retirement accounts.

In June 2007 at the Virginia State Bar Annual meeting, the Trusts and Estates Section presented a program titled "New Charitable Legislation under the Pension Protection Act of 2006 and Selected Topics: Fiduciary Litigation under the Uniform Trust Code and New Rules of Court." The speakers, Michele A.W. McKinnon and Dana G. Fitzsimons Jr., provided thorough outlines on these topics.

In fall 2006, the section published a *Trusts and Estates Newsletter*. Topics included the charitable giving provisions under the Pension Protection Act of 2006, the law of insurable interests in trusts in light of the decision in *Chawla v. Transamerica Occidental Life Insurance Company*, and the new early termination provisions of trusts under the Virginia Uniform Trust Code.

## :: REPORTS OF THE SECTIONS ::

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The Trusts and Estates Section is establishing a Web site for its members. At the annual board meeting of the section in June, the board of governors approved the creation of a Web maintenance committee to maintain the site by ensuring the accuracy of the information and adding information of interest to section members, such as the newsletters. During fiscal 2007, the Trusts and Estates Section conducted a survey to determine whether its members would be interested in participating in an electronic mailings list to share ideas and knowledge. The survey indicated that the members have a great interest in such a list, and the section will consider this idea further once the Web site is functioning.

At the VSB Annual Meeting, Victoria J. Roberson was elected chair; John T. Midgett, vice chair; Julie A. King, secretary; Neal P. Brodsky, newsletter editor; and Martha L. Sotelo, assistant newsletter editor.



## LOCAL BAR ASSOCIATIONS

*George W. Shanks, president*

In fiscal 2007 the Conference of Local Bar Associations continued its association with the Solo and Small-Firm Practitioners Forum initiative of Virginia Chief Justice Leroy R. Hassell Sr. Presentations that combined the CLBA's Bar Leaders Institute and the forum were held in Fredericksburg and Roanoke.

In Fredericksburg, the program included a luncheon address by Jay G. Foonberg, an author and speaker on the joys and challenges of solo practice. In Roanoke, Virginia Justice Donald W. Lemons shared scholarship and humor in his address on "The Jamestown Legacy." Edward J. Walters, chief executive officer of Fastcase, described the free legal research product available to all Virginia State Bar members. Frank W. Rogers III described the bar's Fee Dispute Resolution Program, which offers mediation and arbitration services. James E. Leffler, George H. Hettrick, and John A. Gibney Jr. described the scope, procedure, and benefits of Lawyers Helping Lawyers, a program entering in its twenty-second year of service to Virginia lawyers and judges, their staffs, and their families.

Each forum concluded with a Town Hall Meeting hosted by Chief Justice Hassell. Through that program, he now has heard lawyers' ideas and responded to their complaints and suggestions in Abingdon, Harrisonburg, Williamsburg, Danville, Fredericksburg, and Roanoke.

The conference continued to distribute its flagship publication, *So You're 18*, using a method developed under the leadership of former Chair Manuel A. Capsalis, through driver's licensing ceremonies in the state's juvenile and domestic relations courts. The publication is circulated in English and Spanish. The CLBA continues to distribute the pamphlet *Legally Informed* that was conceived by former VSB President Bernard J. DiMuro. It summarizes projects developed by members of local and specialty bars to improve their communities and the legal profession.

Stephen L. Higgs of Roanoke received the 2007 Local Bar Leader of the Year Award. He was honored at the CLBA meeting at Virginia Beach on June 15, 2007.

The conference continues to be a resource for leadership in the Virginia State Bar. Howard W. Martin Jr., VSB president for 2007-2008, formerly served on the CLBA executive committee; Manuel A. Capsalis, who will become VSB president in 2008, is a former chair of the conference; and Jon D. Huddleston, another former chair, is running for VSB president-elect for fiscal 2008.

CLBA officers for fiscal 2008 are John Y. Richardson Jr. of Norfolk, chair; William T. Wilson of Covington, chair-elect; Gifford R. Hampshire of Manassas, secretary; and Nancy Marie Reed of Luray, treasurer. New members of the executive committee are Vanessa L. Jones of Chesterfield and G.W. Nolle of Rustburg.



## SENIOR LAWYERS

*Jack W. Burch, Jr. president*

The Virginia State Bar Senior Lawyers Conference is the largest VSB Conference, with more than twelve thousand members. From July 1, 2006, through June 30, 2007, the SLC was involved in many activities, including:

- The conference sponsored a luncheon in honor of lawyers who received certificates to commemorate their fiftieth anniversaries as VSB members. Approximately seventy were in attendance, including families and friends of the honorees.
- Former chair Frank O Brown Jr. frequently presented before lawyer groups on the topic "Protecting Your and Your Clients' Interests in the Event of Your Disability, Death, or Other Disaster."
- Officers for fiscal 2008 were elected. They are George W. Shanks, chair; Homer C. Eliades, chair-elect; John G. Mizell Jr., first vice chair; John H. Tate Jr., second vice chair; William H. Oast III, secretary; Judge Janine M. Saxe, treasurer; and Jack W. Burch Jr., immediate past chair.

### Virginia Law Foundation grant

The conference received a ten-thousand-dollar grant to fund printing of additional *Senior Citizens Handbooks*. The Handbook will be primarily distributed at Senior Citizens Law Day Programs sponsored by local bar associations throughout the commonwealth.

The *Handbook* also underwent a full revision in anticipation of printing more copies. Due to the popularity of the Law Day programs, the SLC had exhausted its supply of the *Handbook*.

### Senior Citizens Law Day programs

Many local bar associations throughout the state continued to hold Senior Law Citizens Day Programs, which were well-attended and enthusiastically received. The programs are a prime example of this conference's desire to achieve what I consider a core mission of the SLC: "To... promote the welfare of seniors generally."

I would like to thank the Board of Governors and Patricia A. Sliger for making this year a success for the SLC. I am truly grateful to have had the opportunity to serve as chair.



## YOUNG LAWYERS

*Maya M. Eckstein, president*

**Membership:** approximately 9,000

**Budget (fiscal 2007):** approximately \$93,000

**Officers for fiscal 2008:** Daniel L. Gray, president; Jennifer I. McClellan, president-elect; Lesley A. Pate, secretary; and Maya M. Eckstein, immediate past president.

### Activities in fiscal 2007:

Throughout the 2006-2007 bar year, the Young Lawyers Conference continued to make positive contributions to the bar and the public. The YLC completed the following sample projects:

**Minority Prelaw Conference:** The YLC hosts the Minority Prelaw Conference to encourage minority undergraduate students to consider the legal profession as a career. For the first time in fiscal 2007, the YLC held two Prelaw Conferences in different parts of the commonwealth to ensure that the program was accessible to more people. The first was in February 2007 at the George Mason University School of Law, and the second was in April 2007 at Washington and Lee University School of Law. Both were extremely successful, with more than one hundred students attending the George Mason event and more than sixty at Washington & Lee.

**Juvenile Rights Handbook:** In conjunction with the JustChildren organization, the YLC drafted the *Juvenile Rights Handbook*, which provides young people and their parents with information about juvenile rights and responsibilities in the schools, with the police, and in the courts. The YLC also secured low-cost printing of the handbook, printed several thousand copies, and began distribution efforts.

**Professional Development Conference:** The sixth annual Professional Development Conference was held in March 2007 at the University of Virginia's Darden School of Business. The program addressed young lawyers' professional and educational concerns. It included substantive continuing legal education programs and professional development seminars. This year's conference focused on "What Clients Want," about client expectations and needs. Approximately fifty people attended.

**Voter education initiative:** The YLC worked with the State Board of Elections for a third year to distribute a *Know Your Rights and Responsibilities* brochure. The YLC distributed thousands of brochures to civic organizations, churches, and chambers of commerce.

**Oliver Hill/Samuel Tucker Prelaw Institute:** The 2006 Oliver Hill/Samuel Tucker Prelaw Institute hosted twenty-eight high school students at the University of Richmond for a week in July. The students came from a variety of backgrounds and locales, although most came from Richmond-area high schools. The week's activities included panels of government, private-practice and in-house counsel attorneys; mock law classes with UR professors; academic sessions to prepare students for college and the "real world"; and an interactive discussion with Judge Roger L. Gregory of the U.S. Court of Appeals for the Fourth Circuit. The week culminated in the Mock Trial Program where the students tried a case similar to those completed by first-year law students.

**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, as well as several other localities across the commonwealth.



## BUDGET AND FINANCE

*Alda L. White, chair*

The Standing Committee on Budget and Finance met on March 19, 2007, to review the staff's proposal for the 2007-2008 operating budget. Immediately following the meeting, the proposed budget was sent to Chief Justice Leroy R. Hassell Sr. and all members of the Supreme Court of Virginia for their review and approval. The proposed budget was reviewed by the Virginia State Bar Executive Committee on April 22, 2007, and recommended to the VSB Council for approval. On June 14, 2007, the council approved an operating budget for fiscal 2008 totaling \$12,738,325. This budget includes an anticipated \$700,000 collected through the new Clients' Protection Fund assessment. That sum will be transferred into the Clients' Protection Fund, which is maintained separately from the bar's operating account.



## LAWYER ADVERTISING AND SOLICITATION

*Alison P. Landry, chair*

The Standing Committee on Lawyer Advertising and Solicitation (SCOLAS) monitors lawyer advertising and solicitation in Virginia, responds to inquiries regarding the propriety of certain lawyer advertising, and issues advisory opinions when, in the judgment of the committee, it is helpful to do so. 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, Yellow Pages and other printed advertising material to determine compliance with the applicable 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 with the ad and requesting that the advertisement be modified accordingly. Several noncompliance letters were sent in fiscal 2007; each recipient voluntarily complied with the committee's request.

On November 28, 2006, the committee approved Legal Advertising Opinion A-0116 (Communications That Claim "Se Habla Español"). The opinion was published in February 2007. This opinion addresses whether a law firm may advertise the fact that they speak Spanish in the office—"se habla español"—if the lawyer is not fluent in Spanish but one of the staff members is. SCOLAS opined that while the committee does not believe there is any ethical prohibition against the lawyer advertising that someone other than the lawyer speaks and understands Spanish, the advertisement should describe, in Spanish, *how* Spanish is spoken in that particular office. The exact language to be used to convey such an arrangement may vary based upon an accurate rendition of the Spanish that is spoken in the office; however, it must be clear that it is not the lawyer who speaks Spanish, if that is the case.

The committee also adopted LAO A-0017 allowing for an attorney to advertise in an online attorney directory as long as the attorney complies with the advertising rules. The committee's proposed amendment to rule 7.4(d), which adopted the American Bar Association's position that an attorney may advertise that he or she has been certified by an ABA-accredited organization without the required disclaimer, was rejected by the Supreme Court of Virginia in 2006.

The committee has focused on perusing and evaluating different types and styles of Internet- and Web-based advertising, which includes lawyer directories and lawyer referral services. The exercise educates the committee on the direction of lawyer advertising in Virginia and the other states and helps the committee evaluate its application of Virginia's Rules of Professional Conduct to the new and ever-changing environment of Web-based lawyer communication and advertising.

The work of SCOLAS could not be done without the tireless efforts of our volunteer members. I thank them for the inspiration, time, and energy they bring to our work. They are Cochair Roscoe B. Stephenson III, Alan S. Anderson, Gina M. Burgin, Elizabeth M. Allen, Susan R. Salen, William Miller, Daniel L. Rosenthal, William L. Schmidt, David R. Selig, George L. Townsend and C. James Williams III. James M. McCauley, Lee L. Nelms, and Bonnie D. Waldeck of the VSB staff work hard to guide us.



## LAWYER DISCIPLINE

*William L. Babcock Jr., chair*

The Standing Committee on Lawyer Discipline oversees the attorney disciplinary process, including the bar's investigation and prosecution of complaints. 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 disciplinary process. Proposed amendments are published in the *Virginia Lawyer Register* and presented to the Virginia State Bar Council, which decides whether to petition the Court for adoption of the change.

The committee comprises eight lawyers, two laypersons and one member of the Virginia State Bar Disciplinary Board, who serves ex officio.

For the fiscal year ending June 30, 2008, the officers are William L. Babcock Jr., chair; Afshin Farashahi, vice chair; Julia S. Savage, chair of the rules subcommittee; and John D. Whittington, chair of the oversight subcommittee. There is an ongoing task force, chaired by Julia Savage, working on a reorganization of Paragraph 13, and a study group, chaired by Robert W. Carter, considering an ethics school or course as an addition to the disciplinary system.

The oversight subcommittee randomly reviews case files to ensure that the VSB counsel handled them in a procedurally correct fashion. In addition to the random case file reviews, the oversight subcommittee reviews files where complainants or respondents have questioned the handling of a case.

The Supreme Court approved a change to Paragraph 13 to update terminology used in the rules and to specify that neither district committee members nor board members may serve in a disciplinary proceeding if the member previously represented the respondent. COLD proposed and the bar council approved an amendment restating the notice requirements that must be met by an attorney who is suspended or disbarred and an amendment prohibiting a respondent from moving to dismiss a complaint or investigation. These were submitted to the Court and withdrawn; they will be resubmitted. COLD approved and sent to the council an amendment that sets out specific deadlines for a respondent to supply available dates for a hearing by a three-judge panel, and that clarifies the filing and service requirements for such cases. Two further amendments are pending submission to the council: one would prohibit an appeal from a board determination to which the respondent agreed, and the other would update terminology and the list of sanctions that may be issued by and appealed from a district committee, and would specify that district committee determinations are final ten days after service on the respondent.

COLD held its annual Disciplinary Conference in Williamsburg on July 13 and 14, 2006. The conference was attended by attorney and lay members of the district committees, the Disciplinary Board, and COLD, and judges who sit on three-judge panels hearing disciplinary matters. In attendance were seventy-two district committee members, sixteen Disciplinary Board members, two judges and eight members of COLD. The program included remarks by Justice Elizabeth B. Lacy, an overview of the disciplinary system, presentation and discussion of case vignettes, and break-out sessions for new members, officers, and lay members of district committees. Participants also played an "Ethics Jeopardy" game. Chief Justice Leroy R. Hassell Sr. was the luncheon speaker.



## LEGAL ETHICS

*James O. Broccoletti, chair*

### Ethics Opinions

The Standing Committee on Legal Ethics received six new opinion requests in fiscal 2007. Since July 1, 2006, the committee issued eight opinions in response to requests prior to and during fiscal 2007.

Those requests addressed a wide range of topics, including:

- *De minimus* gifts of money to a client's commissary account at the jail
- Guardian ad litem compensation from a third party for representation of a minor in settlement of the minor's personal injury claim
- Lawyers engaged in the practice of law serving on public bodies
- Conflicts analysis of a law firm where only a secretary received confidential information from a potential client
- Disbursement of uncollected funds from a trust account if all funds in the trust account are held for only one client
- Conflicts analysis when a local government attorney represents multiple constituents who are part of the same governmental organization

- In-house counsel providing services to a sister corporation and collecting reimbursement
- A lawyer representing a settlement company facilitating that company's practice of re-deeding property through a relocation intermediary without proper recordation.

### **Rule Revisions**

An amendment to the Rules of Professional Conduct Rule 4.2 was adopted by the Supreme Court of Virginia that included the language of Comment [3] of the American Bar Association rule regarding the prohibition against communicating with a represented party even when the represented person or the lawyer initiates the contact.

The committee approved new comments to Rule 8.4 that represent an important change in the committee's position on the ethical propriety of a lawyer or the lawyer's agent using an undisclosed recording device to capture a communication or event in which the lawyer or agent is a participant. Under the new comments, the undisclosed recording of a communication or event is not unethical per se if the recording a) is lawful; b) is consented to by one of the parties to the transaction; c) is in furtherance of an investigation on behalf of a client; and d) is not effectuated by means of any misrepresentations; and if e) the means by which the communication or event was recorded and the use of the recording do not violate the legal rights of another.

The committee and Virginia State Bar Council have adopted these amendments. They are pending with the Supreme Court of Virginia.

### **Ethics Telephone Calls**

In addition to the written requests for ethics opinions outlined above, the average number of ethics telephone calls to VSB staff attorneys from July to June was 378 per month.



## **PROFESSIONALISM**

*Dana D. McDaniel, chair*

The Standing Committee on Professionalism is charged with responsibility for administration and ongoing oversight of the renamed Virginia State Bar Harry L. Carrico Professionalism Course, which is required of all newly admitted active members of the VSB. 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 23,500 new admittees have taken the course—more than 80 percent of the current practicing bar in Virginia.

The course faculty is composed of distinguished lawyers and judges representing 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, Newport News, and Charlottesville during fiscal 2007. Approximately 1,500 persons attended these courses. The committee was hopeful that the number of attendees would decrease after the initial influx of registrants under the Virginia Corporate Counsel Rule, but the course has seen no such decrease. As such, the eighth course added in fiscal 2006 will be permanent to help accommodate the number of Northern Virginia attorneys required to take this course.

In September 2006, the committee recommended changing the name of the course to honor Senior Justice Harry L. Carrico, who was instrumental in the establishment of the program. Additionally, for almost fifteen years, Justice Carrico had attended virtually every course across the state to deliver the luncheon address. With the approval of the VSB Council and the Supreme Court of Virginia, the course was renamed the Virginia State Bar Harry L. Carrico Professionalism Course in February 2007.

The Supreme Court continues to demonstrate its support of the course. This past year, Chief Justice Hassell, Justice Donald W. Lemons, and others have given an inspiring luncheon address at each course. The involvement of the Chief Justice and the leadership of the bar demonstrate to new lawyers the VSB's commitment to professionalism. The committee was also delighted to have U.S. District Judge Gerald Bruce Lee and former VSB president Joseph A. Condo as luncheon speakers this year.

The committee continues to oversee faculty selection, course material updates, and faculty training activities. Also, the committee reviews the course evaluations and strives to update the course agenda and format to meet evolving demands.

Finally, the committee continues to work with the Professionalism for Law Students program cosponsored by the VSB Section on the Education of Lawyers. This former pilot program has become a fixture at all accredited law schools in Virginia, thanks to the diligent work of Stafford Circuit Judge J. Martin Bass, Fairfax Circuit Judge David T. Stitt, U.S. Magistrate Judge B. Waugh Crigler, and the committed faculty.



## UNAUTHORIZED PRACTICE OF LAW

*Megan E. Kelly, chair*

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

So far this year, 66 complaint investigations were closed; these included 24 resulting in signed letter agreements; 3 referred to the Office of the Attorney General for civil prosecution; 3 referred to commonwealth's attorneys for criminal prosecution; and 6 referred to the U.S. Attorneys Office. Fifty complaints were carried over from previous years, and 57 new complaints were opened. Since the beginning of fiscal year 2007, out of 107 cases (50 carried over and 57 newly opened), the committee concluded 53 percent of the docket.

The committee received two new opinion requests in fiscal 2007 and issued UPL Opinions 211 and 212 responding to these requests.

UPL Opinion 211 asked: Can a corporate counsel who is a licensed Virginia attorney provide pro bono legal services through a community-based nonprofit legal services entity? The attorney's corporate employer would allow him time off to do this and would provide access to administrative support, including secretarial, telephone, and photocopy services. The committee considered the findings in UPL Opinions 57 and 167, as well as Supreme Court of Virginia opinion *Richmond Ass'n of Credit Men v. Bar Assoc.*, 167 Va. 327, — S.E.2d — (1937), and concluded that the activity described in the opinion request would not be the unauthorized practice of law. The attorney would be working through a community-based legal services entity which has no connection with the attorney's corporate employer and over which the employer has no authority, control or influence. The lay corporation would not be the entity offering legal services and the legal services agency would be a "separate practice" through which the attorney would be working. This opinion was published for comment for the requisite period; no comments were received and the opinion was issued for publication.

UPL Opinion 212 asked: Is it the unauthorized practice of law for a nonlawyer settlement agent to negotiate with a creditor, on behalf of a debtor, a lower payoff of a judgment lien discovered in the course of a refinance. The requestor also asked whether such negotiation is appropriate if the debt has not been reduced to judgment or if the property is commercial, rather than residential. The committee determined that this activity would not be the unauthorized practice of law. The committee does not believe that "negotiation" alone is per se the unauthorized practice of law. The dispositive question, applying the definition of the practice of law, is whether there is an exercise of legal judgment within the context of the negotiation by a nonlawyer on behalf of another. So long as the settlement agent is only negotiating "numbers" and not offering the customer legal advice, not making a legal argument on the person's behalf to the creditor, and not holding out as qualified to practice law or attempting to represent the debtor within the context of a matter before a tribunal, the negotiation is not unauthorized practice. The committee approved this opinion on June 12, 2007, and it has been published for comment.

There were no opinions carried over or any requests pending at the end of the fiscal year.

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



## ACCESS TO LEGAL SERVICES

*The Dale H. Harris, chair*

Because of the effective participation of the members of the Access to Legal Services Committee and the encouragement, support, and sharing of expertise of the Virginia State Bar staff and leadership, several positive developments took place during the past year that were consistent with our stated mission. Thoughtfulness, energy, and a result-oriented approach pervaded the committee's efforts.

VSB President Karen A. Gould not only served as a resource, but also worked with members of the Supreme Court, attended numerous meetings, and moderated award ceremonies. She was an asset throughout this committee's efforts. The committee provided a forum for the exchange of information from many components about current efforts to provide access to legal services, to explore improved ways to expand that access, and to address vigorously the many variables, modifications, and incentives that support and promote critically important access to our justice system.

### Major substantive initiatives

The committee is grateful for the VSB Council's approval of major initiatives. These include:

- Revisions to VSB Regulation 15VAC5-10-10, which covers the function and operations of Legal Aid Societies
- Adoption of "Basic Procedures for Appeal to Virginia State Bar Council from Final Determinations of the VSB Secretary-Treasurer Concerning § 54.1-3916 and/or 15VAC5-10-10"
- Proposed amendments to the Emeritus Rule of Court to broaden the types of "Approved Legal Assistance Organizations" eligible under Part 6, §IV, Paragraph 3(e) (Classes of Membership) of the *Rules of the Supreme Court of Virginia*. These amendments are pending before the Court. They would expand supervised opportunities for certain volunteer attorneys in retirement who elect limited-practice status by serving only low-income individuals or nonprofit groups that represent the low-income individuals' interests.

The University of Richmond T.C. Williams School of Law was the site for the 2007 VSB Pro Bono and Access to Justice Conference. Held May 17-18, the proceedings focused on pro bono through a best practices forum that showcased Cheryl M. Zalenski, assistant legal counsel with the American Bar Association Center for Pro Bono. The forum also featured panelists from Virginia law firms, Central Virginia Legal Aid, the Fairfax Pro Bono Program, the University of Virginia School of Law, Freddie Mac, and the VSB Young Lawyers Conference.

A continuing legal education program, "Effectively Expanding Access to the Court: Resources and Remedies," was well-received. Topics included preparing and understanding the client's case, the Chief Justice's Commission on Mental Health Law Reform, access to the courts, court alternatives, and the ethics of electronic communications in pro bono representation.

### Awards and speakers

The program featured presentation of two Lewis F. Powell Jr. Pro Bono Awards and one Oliver W. Hill Law Student Pro Bono Award. John M. Oakey Jr. of Richmond was honored as an individual for extraordinary contributions he made after retiring from full-time practice as a partner at McGuireWoods. Cooperating counsel and volunteer faculty affiliated with the Mortimer Caplin Public Service Center at the University of Virginia School of Law were collectively honored for extraordinary supervisory and mentoring efforts — efforts that enabled contributions of thousands of hours of pro bono service from U.Va. law students. Maryann Nolan, a 2007 juris doctor candidate at the College of William and Mary, received the Hill Award. Mr. Hill, in his one hundredth year, attended and presented the award. The Honorable Walter S. Felton Jr., chief judge of the Court of Appeals of Virginia, was the guest speaker.

Andrew K. Block, nationally recognized legal director of the Charlottesville-based JustChildren Project at the Legal Aid Justice Center, received the Virginia Legal Aid Award in June at a luncheon held in his honor. First Lady of Virginia Anne B. Holton was the guest speaker.

Groundwork was laid for phase two of a pilot project to acknowledge, at the judicial circuit level, pro bono or court-appointed counsel who make extraordinary contributions to the Virginia justice system. Four circuits have been designated.

The committee anticipates that a new venue, Washington and Lee University School of Law, will be the site for the 2008 Pro Bono Conference.

### New developments

The Access Committee has continued to consider approaches to enhance funding of civil legal services. Two new subcommittees added an emphasis on Minority and Disability Access to Legal Services and on Pro Bono Best Practices. The latter produced a Pro Bono Best Practices Forum on May 17 as noted above.

### Gratitude

The committee wishes to thank all members of the Virginia State Bar and Virginia's judiciary for their interest, time, and support consistent with our mission, including "fostering support for free and reduced fee legal services with the goal of improving access to the legal system for all Virginians and for nonprofit charitable and civic groups that serve the public good."

### Addendum

New committee leadership for fiscal 2008 are chair Renae Reed Patrick, a former legal aid attorney and now a visiting professor of clinical law at W&L, chair; and co-vice chairs Margaret A. Nelson, a public defender in Lynchburg, and Raymond A. Hartz, executive director of the Legal Aid Society of Eastern Virginia.



## BENCH-BAR RELATIONS

*Gregory A. Giordano, chair*

The purpose of the Special Committee on Bench-Bar Relations 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 practicing lawyers of the commonwealth. The committee comprises eighteen members, including five members from the judiciary, and meets quarterly in Richmond.

The committee continued or initiated the following during the 2006-2007 year:

**Judicial independence and merit selection and retention of judges:** The committee believes that issues regarding judicial independence and the selection and reappointment of judges continue to merit the attention and advocacy of members of the bench and bar. The committee in fiscal 2007 focused on three initiatives related to these issues: (1) Members of the committee will prepare one or more opinion pieces for publication in major newspapers in the commonwealth for the purpose of increasing public awareness of this issue. (2) The committee has offered to provide speakers for regional judicial conferences and for conferences of statewide bar associations in the upcoming year to encourage continued appreciation for and dialogue on these issues. (3) The committee will explore potential continuing legal education programs to address these issues.

**Bench-bar communications:** The committee provided speakers for regional judicial conferences and meetings of the Virginia State Bar's Bar Leaders Institute to discuss formal and informal methods of facilitating communication between the bench and bar at the local level. The committee is also proposing to have speakers available to discuss with local bar leaders the VSB process for responding to unjust criticism of judges and the judicial system. The committee anticipates that these programs and communications with the regional judicial conferences and the bar leaders institute will continue in the upcoming year.

**Continuing legal education:** The Bench-Bar Relations Committee joined the Litigation and Criminal Law sections to sponsor a CLE seminar titled "Answering the Call: Striving for Professionalism and Happiness in Our Lives as Lawyers." The program was the showcase CLE presentation at the VSB Annual Meeting in June 2007 and was well-attended and received. The program featured a presentation by a speaker and a panel discussion. The panel included Joseph A. Condo and retired judge Ann Hunter Simpson.



## INFORMATION TECHNOLOGY

*John L. Deal, chair*

The Special Committee on Information Technology is a successor to the Computer Committee. In 2001 that committee, under the leadership of Dana D. McDaniel, undertook the task of upgrading the Virginia State Bar's outdated Digital Equipment Corporation VAX minicomputer system. The original contract for the work was terminated in 2004 and completion of the project was brought in-house under the direction of the bar's information technology director, William H. Dickinson. The new system, IBIS (Integrated Bar Information System), was completed when the professional regulation module went online on April 3, 2007. Other installed modules include mandatory continuing legal education, lawyer referral, member Web portal; legal research, and an annual meeting system. The VAX system was formally retired and switched off on June 29, 2007.

## IBIS

The committee has the task of assisting the bar staff as necessary with ongoing technology needs. Some of the projects considered during the year were a document-management program, implementation of MCLE online certification, online membership renewal and directory lookup, staff remote access to IBIS, new staffing positions for technology matters, disaster recovery planning, and replacement of the telephone system. The committee assisted in prioritizing those needs for approval by the Standing Committee on Budget and Finance. Looking forward, the committee will be evaluating these needs and implementing future projects as approved by the VSB Executive Committee.

The committee would like to thank its liaison Bill Dickinson for his work on the IBIS and other technology projects. These projects could not have been completed without his leadership. In addition, Thomas A. Edmonds, Mary Yancey Spencer, Elizabeth L. Keller, George W. Chabalewski, and Susan C. Busch each provided assistance and insight to the committee. I would also like to thank members of the committee: Vice Chair John B. Farmer, John K. Sheldon, John M. Tran, and Professor Ellen Walk.



## JUDICIAL NOMINATIONS

*Joseph A. Condo, chair*

The Special Committee on Judicial Nominations had an eventful and productive year in fiscal 2007.

The year began with the committee's formulation of revised evaluation procedures. The main features of the new procedures were (i) the ranking of candidates who were deemed qualified for the position as either "qualified" or "highly qualified," with the designation determined by a majority of participating committee members; and (ii) the issuance of an executive summary that described each candidate's professional background and qualifications and the committee's reasons for its ranking. (No report is made regarding candidates not receiving a majority of "qualified" votes.)

The new procedures were approved by the Virginia State Bar Executive Committee in November 2006, and subsequently by the VSB Council at its next regular meeting in March 2007.

In response to requests from United States Senators John W. Warner and James H. Webb Jr., the committee met on February 23, 2007, and interviewed and evaluated twelve candidates for two vacancies on the U.S. District Court in Richmond and Alexandria. It again convened on April 11, 2007, to interview and evaluate ten candidates for two Virginia-designated vacancies on the United States Court of Appeals for the Fourth Circuit. The newly approved procedures were employed by the committee for these evaluations.

While the initial use of the revised procedures — especially the executive summaries — added considerably to the committee's workload, and each set of interviews required a session extending a full day (and, in one instance, into the early evening), the members of the committee are satisfied that this extraordinary effort established an excellent working precedent for future committees' use of the procedures.

On April 18, 2007, committee Chair Joseph A. Condo, VSB President Karen A. Gould, and Deputy Executive Director Mary Yancey Spencer met with each of the senators and their staffs to discuss and receive feedback on the procedures. The senators and staffs were uniformly complimentary. They indicated in particular that the executive summaries were useful to them in conducting their own interviews and evaluations of candidates.

As a result of the first two sets of evaluations using the new procedures, the VSB Executive Committee decided that it would be advisable (i) to assign an additional committee member to assist with the background investigation conducted for each candidate, and (ii) to have an executive committee member act as liaison to the nominations committee and be present for, but not participate in, the candidate interviews and committee deliberations.

The nominations committee was also of the unanimous view that the potential for observers to be present for its deliberations and the formulations of its recommendations would have an impact on the willingness and ability of the committee members to speak candidly and would impede the committee's effectiveness. Accordingly, the committee unanimously recommended that the Virginia State Bar seek an amendment to the Virginia Freedom of Information Act to render confidential, and not subject to disclosure, the committee's deliberations (but not the candidate interviews).

It has been a distinct privilege to preside over this committee during such a momentous year, and all of the members of the committee are to be commended for the diligence, dedication, and thoughtfulness that each has brought to this important endeavor.

In fiscal 2008, Carter Glass IV of Richmond will serve as chair.



## ON LAWYER MALPRACTICE INSURANCE

*Darrel Tillar Mason, chair*

This fifteen-person committee had a successful year serving Virginia State Bar members through new and ongoing programs.

The initiatives included the updating and republication of the valuable resource *Lawyers and Other People's Money: A Resource for Maintaining Trust Accounts*. This resource is now available for free download at [www.vsb.org/docs/Lawyers\\_OPM\\_electronic.pdf](http://www.vsb.org/docs/Lawyers_OPM_electronic.pdf).

To complement this re-issue, the committee completed development of a new interactive continuing education program, "The Devil Wore Green: Trust Accounting and You." This ethics program is now available without charge to local bar organizations.

In addition, the committee has been working with the bar's endorsed carrier, Attorneys Liability Protection Society (ALPS), to develop a lawyer-friendly trust accounting software program that would meet the standards of the Virginia Rules of Professional Conduct.

The committee continued its participation in the presentation of well-received risk management seminars offered across the state by ALPS. The committee also continued its oversight of the programs offered by the bar's risk managers. Services include a confidential risk management hotline, voluntary solo and small-firm audits, law-office management seminars, and publication of articles in the VSB's *Virginia Lawyer* magazine.

In the area of client protection, the committee continued to evaluate whether the bar is doing all it should to protect the public from harm arising from lawyer malpractice.



## PERSONAL INSURANCE FOR MEMBERS

*R. Paul Childress, Jr., chair*

The purpose of the Virginia State Bar insurance program is to provide bar members with good-quality coverage at affordable prices. The insurance program consists of medical, term life, and disability insurance. The role of the committee and its endorsed broker-administrator, the Virginia State Bar Members' Insurance Center, is to serve the interests of VSB members.

### Background

The Virginia State Bar has endorsed personal insurance plans for more than fifty years. In 1954, the bar began offering members a group life insurance plan. Although there have been variations in the details of the coverage, life, health, and disability insurance plans have been endorsed continuously since the inception of the program. During the early 1970s as many as fifteen types of insurance were endorsed in the name of the VSB. By 1980, those were trimmed back to the original three (life, health, and disability) which were consistent with the mission of the program. In 1995, the bar's authority to provide group insurance for its members was codified by the General Assembly.

The purpose of the insurance program is not to compete with the commercial market, but rather to leverage the group's buying power to provide members with insurance they could not get elsewhere. Over the years, the primary beneficiaries have been solo practitioners and small firms.

Past evaluations of the program by the Personal Insurance Committee, the VSB Executive Committee, the VSB Council, and outside consultants have found that the plans are an important service to members of the bar. They concluded that the plans can improve the quality of legal services and even limit misconduct by allowing attorneys to provide their families and employees with adequate insurance, particularly health insurance. They point to instances of defalcation committed to pay for uninsured family medical expenses.

The Personal Insurance for Members Committee oversees the program. With the help of the broker-administrator, the committee recommends change. Any new plans are approved by the executive committee or council. The work of the committee and the administrator relieves attorneys of the time and expense of finding insurance products on their own.

### **Health Insurance**

The most popular component of the VSB insurance program is health insurance with Anthem. As of spring 2007, the enrollment of nearly 6,000 VSB members, staff members, and family members is at an all-time high. The program provides numerous important features to VSB members.

Thanks to the endorsement by the VSB, people receive “Value Added Benefits” from Anthem, or extra benefits at no extra cost. These benefits, paid for by Anthem at 100 percent, include physicals, routine gynecological exams, Pap tests, mammograms, colorectal cancer screenings, prostate exams and prostate-specific antigen tests, all of which promote health and save money. Other benefits include emergency room benefits paid for at 100 percent up to \$750, if due to an accidental injury, and reduced hospital inpatient payments.

Another significant feature is the ability to offer a “sole proprietor” group coverage. Ordinarily, to be eligible for group health insurance, the group must have a minimum of two people; however, Anthem has made an exception for the VSB and several other professional associations. Group benefits are typically stronger than individual benefits. Often they will be superior in terms of annual maximum benefits, lifetime benefits, and prescription drug coverage. It is important to note that individual underwriting is stricter than group underwriting. Thus, for a bar member with a medical history, ongoing medical risk, or medical risk in the family, the rates are higher than average in the VSB group plan, yet not nearly as high as if one had to get individual coverage.

VSB members who reach age sixty-five are often confused by or unfamiliar with Medicare, Medicare supplements, and the new Part D program. The VSB administrator-broker is willing to take the time to guide people through the process and make sure they are comfortable making this transition.

In the VSB/Anthem program a spouse of a bar member can maintain coverage as the bar member selects Medicare and a supplement. Spouses are not tossed out of the program and do not have to look for health insurance during their most challenging age bracket (sixty to sixty-four) for health insurance.

In addition, the surviving spouse of a VSB member can maintain health insurance in the event of the bar member’s death. This exception that Anthem has made for the VSB can be very beneficial to those going through a most difficult time.

Children ordinarily must come off the plan at age twenty-three, but disabled children older than twenty-three can stay on the policy of their parents, including solo practitioners.

Today the VSB/Anthem program is not sold to attorneys or firms in northern Virginia. CareFirst Blue Cross products are typically used. Yet many solos and small firms in northern Virginia are “grandfathered” and continue to have the Anthem coverage with Value Added Benefits.

If the VSB/Anthem program were to cease to exist, nearly six thousand people would lose their Value Added Benefits. The following would be severely impacted and forced to find completely new coverage:

- Groups and solos who are grandfathered in northern Virginia
- More than nine hundred solos — VSB members throughout Virginia
- Disabled children of solo practitioners
- Widows and widowers of VSB members
- Spouses of VSB members who have reached age sixty-five

Higher-risk people would pay dramatically more and have reduced coverage with an individual policy. It is beneficial to the Virginia legal community, particularly to the solos and small firms, to be able to turn the VSB administrator-broker, who is committed to serving VSB members’ best interests. For example, the administrator broker:

- Sent out information to retirees about a new Medicare supplement product that requires lower premiums
- Explains Medicare Part D — prescriptions for seniors — and describes what to consider
- Talks to bar members about the advantages and disadvantages of an insurance product such as long-term care insurance, which the broker does not negotiate
- Assists by explaining alternate health insurance products, such as modified deductibles, copayments, and drug cover-

age. Often agents only make time for larger clients and smaller ones do not get the attention they need.

- Assists the insured with difficult claim problems and battling insurance bureaucracy

### **Life and Disability Insurance**

The VSB life and disability insurance plans were designed by attorneys for attorneys. Unlike most disability plans, the VSB disability plan has had the same rates and the same provisions for more than fifteen years. Likewise, the group term life plan has never had a rate increase, yet several times rate decreases have been passed on to insureds. The nearly one thousand VSB members in both plans have had the homework done for them by the Personal Insurance for Members Committee and the VSB administrator-broker. Important features of the plans include:

- Both the life and disability insurance plans are maintained on an unusual basis. Each plan has an experience-rated refund accumulation account that receives deposits from the insurance company when the plan's claims experience is favorable. Thus, rather than the insurance company keeping all the profits, some are eventually returned to insureds in the form of a premium holiday. A premium holiday, or six-month period of continued coverage, is taken when sufficient funds are available to pay for a semi-annual billing cycle. The insured pays nothing during this time. Recent premium holidays — life in 2005 and 2006 and disability in 2007 — have resulted in over \$400,000 in premiums that did not have to be paid by VSB members.
- Both plans are offered on an accept-or-decline basis. VSB members, their employees and spouses are encouraged to apply to the life plan while they are relatively young and healthy. Only attorneys may apply for the disability plan.
- Nothing comparable exists in the disability marketplace. Individual policies cost approximately twice as much initially.
- If these VSB plans no longer existed, some insureds who were once deemed healthy are no longer insurable and could not purchase life and disability insurance elsewhere.
- Also, to maintain eligibility, an attorney must merely maintain membership in the VSB. By contrast, an attorney who receives coverage from his large- or medium-size law firm policy could find himself uninsurable if he left the firm.



## **PUBLICATIONS AND PUBLIC INFORMATION**

*William R. Allcott Jr., chair*

In fiscal 2007, the Special Committee on Publications and Public Information considered a bar request to serve as a focus group for the new Virginia State Bar Web site and report back with necessary additions or corrections in the future.

Committee member Robert L. Flax pointed to the need to review outdated section brochures the bar distributes to the public. The committee noted examples of past brochures and at least one that will be updated as soon as possible.

At the request of the Young Lawyers Conference, the committee reviewed the text of a *Juvenile Rights Handbook*, prepared by the YLC in conjunction with the Juvenile Justice Center. The committee did not endorse the project in its present form. Members made suggestions related to style and substance and sent it back to the YLC for revision.

The committee developed the bar's 2007 Law in Society Award contest hypothetical. The topic addressed whether illegal aliens should be admitted to public universities.

Officers for fiscal 2008 are William R. Allcott Jr., chair, and Bruce M. Marshall, vice chair.



## **RESOLUTION OF FEE DISPUTES**

*Frank W. Rogers, III, chair*

Fiscal 2007 was one of considerable accomplishment for the Special Committee for the Resolution of Fee Disputes, and of significant improvements to the Fee Dispute Resolution Program (FDRP) which it oversees. Efforts included:

- Revision of FDRP rules and guidelines to incorporate mediation as an alternative means for fee dispute resolution
- Continuing Legal Education-accredited training sessions in Richmond, Norfolk, Roanoke, and Fairfax
- Revitalization and strengthening of circuit committee structure and membership
- Training and retraining of volunteer attorney and nonattorney arbitrators
- Initial training of certified mediators
- Establishment of two new circuit committees

## :: REPORTS OF SPECIAL COMMITTEES ::

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- Presentations about the FDRP to the Virginia State Bar Council and as a program element of the Fredericksburg and Roanoke Bar Leaders Institutes and Solo and Small-Firm Practitioner Forums

The committee is actively working on expanding the FDRP to circuits not presently served. At present, fifteen judicial circuits have active circuit committees. Contacts have been made with bar leaders in unserved circuits, and new circuit committees will most certainly be added in the upcoming year.

The committee continues to explore ways to raise awareness of the FDRP, and to promote utilization of the program by members of the public and by lawyers. Historically, attorneys have been unwilling to participate. If the FDRP is going to be ultimately successful, its use will need to be encouraged by the bar's leadership and by judges.

The members of the committee worked extremely hard this past year, and for their efforts I would like to recognize and thank Vice Chair Geetha Ravindra, E. Allen Newcomb, Timothy T. Szabo, Anthony F. Troy, Mark D. Seidelson, Robert S. Ballou, George Mason, Tom Gallagher, Stephen E. Scarce, and Deborah M. Costello. The committee also taxed the skills and time of VSB staff, who responded in every way. Special recognition and thanks go to Barbara O. Allen, Paulette J. Davidson, and Dolly C. Shaffner.

The committee will continue its responsibilities of oversight for the FDRP, and at the same time look for ways to expand the program, strengthen it, and encourage its use among lawyers and clients.

In the next year, the committee will be under the very capable leadership of Geetha Ravindra as chair, and Deborah M. Costello as vice chair.



### **SEMINARS**

*Howard W. Martin, Jr., chair*

The principal function of the Virginia State Bar Special Committee on Seminars is to plan upcoming Midyear Legal Seminars. Members of the committee for this year included 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. Michael F. Blair also served on the committee ex officio.

The 2006 Midyear Seminar was held at the Ritz-Carlton Penha Longa Hotel and Golf Resort outside Lisbon in the Sintra region of Portugal. Approximately ninety-four participants attended. The continuing legal education program included the following presentations: "Attorney Discipline Cases: We Report, You Decide," sponsored by the VSB Professional Regulation Department; "Hot Business Law Topics for the General Practitioner," sponsored by the Business Law Section; "Employment Law in the Twenty-First Century: A Primer for Practitioners"; and "What Every Lawyer Needs to Know About Family Law," sponsored by the Family Law Section. The seminar qualified for nine hours of Mandatory CLE credit, including two hours of ethics.

The committee also finalized plans for the 2007 seminar, to be held November 7-14, 2007, at the Grand Hotel Baglioni in Florence, Italy. Approximately 155 participants are registered. The CLE program will feature the following topics: "Not Your Father's Kiddie Court: Representing and Raising Children in a New Era," sponsored by the Criminal Law Section; "Are You Practicing Family Law and Don't Even Know It?," sponsored by the Family Law Section; and "Reality Bytes: Practicing Law Ethically in the Digital Age — How to Avoid Glitches, Errors, and Crashes," sponsored by the Ethics Department. The program has been approved for nine hours of MCLE credit, including three hours of ethics.



### **TECHNOLOGY AND THE PRACTICE OF LAW**

*Clyde R. Christofferson, chair*

The Special Committee on Technology and the Practice of Law (Technology Committee) is continuing to monitor privacy and public access of electronic court filings. A 2004 report that the Technology Committee wrote on this subject was considered by another committee appointed by Chief Justice Leroy R. Hassell Sr. and chaired by Circuit Court Judge Leslie Alden to draft rules for public access to court records in general — a broader issue than the case filings addressed by the Technology Committee. The Chief Justice's committee issued its final report in November 2006. Two members of the Technology Committee served on the Chief Justice's committee.

## :: REPORTS OF SPECIAL COMMITTEES ::

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The Technology Committee had two subcommittees working on projects. One project was directed toward electronic discovery, an aspect of practice made more pressing by recent federal rules in this area. The subcommittee is planning a program to address practical problems presented by the technology of electronic discovery, such as the presence of metadata in discoverable electronic records. A second subcommittee explored suitable professional development for new or developing practices in technology law.

The committee discussed developing a program for a bar meeting that would address technology-driven innovations in trial practice. Innovations include the presentation of witnesses from remote locations and the use of multimedia recording devices for preparation of an appellate record. The committee also considered ethical implications of the use of technology, particularly in light of the dramatic effects of the Internet on how society communicates and conducts business. The Internet as a lawyer advertising medium is one area of examination. Another is use of technology in factual investigations, communications with parties and witnesses, and presentation of evidence.

Officers for fiscal 2008 will be Sharon D. Nelson, chair, and Blackwell N. Shelley Jr., vice chair.



## **CLIENTS' PROTECTION FUND BOARD**

*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 the dishonest conduct of Virginia lawyers. The fund is operated by a fourteen-member board appointed by the Virginia State Bar Council. The board has lay and lawyer members. Board members investigate all petitions from clients for payments from the fund, and the board discusses and acts on each petition.

As of July 1, 2006, nine claims were pending from the previous fiscal year. A total of thirty-eight new claims were received during the year, and three closed claims originally filed in fiscal 2006 were opened for reconsideration. The total amount paid during fiscal 2007 was \$99,876.89, representing twenty-five claims. The board denied twenty-one claims. As of June 30, 2007, there were four pending claims, which included two previously denied claims opened for reconsideration.

The fund began the fiscal year on July 1, 2006, with a cash balance of \$3,337,291.54. Interest income, net of bank service charges for the fiscal 2007 year totaled \$144,377. The fund received restitutions in the amount of \$15,243 from the attorney general's collections, debt setoff, and individual restitutions. As of June 30, 2007, the cash balance in the fund was \$3,406,588. 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 fiscal 2007 with one new board member. Linda I. Dodge of Warrenton was appointed by the council to represent the seventh disciplinary district.

The Clients' Protection Fund Board members are to be commended for the many hours they spend investigating and deliberating claims submitted to the board.



## **INDIGENT DEFENSE TASK FORCE**

*Alex N Levay Jr., chair*

July 1, 2007, marked the first time in Virginia history that an attorney who represents the indigent could ask the court in a criminal case to consider the time he or she actually spends on the case when determining court-appointed counsel's compensation.

This newly created fee-cap waiver system is the product of decades of work and lobbying to reform how our society treats the poor who are involved in the criminal justice system. This reform was an implicit recognition that it is wrong to have a system where counsel is not remunerated for his or her time when they represent the poor. It also demonstrates that caps on compensation that cover only a couple of hours on a case do not afford equal justice under the law. We should all be proud that Virginia has made a principled decision regarding this seminal matter, and that the commonwealth's action will have far-reaching implications for our less fortunate.

There is still a great deal of work to be done, however. The money budgeted to provide for the waivers is thought to be approximately one quarter of what is needed. It is hoped that when a shortfall becomes evident in terms of real numbers and elected officials can more accurately project what funding is necessary, additional increases will be forthcoming.

The Virginia Indigent Defense Commission (IDC) has made great strides after a somewhat rocky start three years ago. Public defender offices have seen technology upgrades, increases in salary, better and more frequent training, additional staff, and a recognition that it is the quality and not the quantity of representation that is the most important goal of any public defender office.

The IDC has also created standards of practice that will be applicable to all attorneys who represent the indigent — appointed counsel as well as public defenders. These standards are rigorous and commensurate with an expectation of quality representation. In addition, a caseload study has begun and an enforcement mechanism for the standards of practice is under development. The goal for the caseload study is to ensure that public defenders are capable of meeting their ethical obligation of zealous representation — something that is impossible if they are overwhelmed by the number of cases they are working on. The scope of the enforcement mechanism is limited to ensuring that names of only qualified counsel appear on the court-appointed lists; is not intended to provide fodder for ethics complaints or legal malpractice actions.

The Indigent Defense Task Force and Criminal Law Section of the Virginia State Bar have been actively involved in the many improvements that have taken place. The VSB has been a strong advocate for change. Its representatives have worked with the Court under the leadership of Chief Justice Leroy R. Hassell Sr. to direct attention to the need for reform. The VSB and the Court have cosponsored training initiatives such as the Advanced Criminal Law Seminar on May 4, 2007, in Richmond and Abingdon. These annual programs are provided at no charge and include nationally renowned speakers.

Despite this momentous progress, criminal defense in Virginia is still very much “trial by ambush.” While our civil colleagues can issue interrogatories, requests for documents, and conduct depositions, Rule 3A:11 has no provision for obtaining the statements of witnesses, police reports, and other information vital to the proper preparation and evaluation of a case. Indigent defendants suffer the most under these deficient rules of discovery because their counsel do not have the time or resources to conduct their own investigations. This has been lessened somewhat by the state allotting a limited number of investigators in public defender offices, but court-appointed counsel are forced to lobby the court for even minimal investigative services.

This substandard process in which public defenders and court-appointed counsel must continually request and haphazardly receive expert witness assistance chronically puts indigent defendants at a disadvantage. An indigent defendant’s attorney must file a motion, explain to the court and the commonwealth why an expert or investigator is necessary, and then typically be given strict limitations on the expert or investigator’s services. Accordingly, reforms such as ex parte applications for expert witnesses and investigative services, as well as changes to the rules of discovery, will be a primary focus for the Indigent Defense Task Force in the immediate future.

There are too many people who helped to bring about the progress that was long overdue, to recognize them individually in this report. The beauty of working on this issue is that the work is done for the good of the people and because it is the right thing to do. When your cause is just, progress is the only thanks you need.

### **Appointed counsel legislation**

Pertinent final legislation from the 2007 Virginia General Assembly Session includes the following provisions:

1. \$8.2 million in the final budget, specifically allocated to pay for fee waivers
2. A first-round waiver up to an additional cap on all charges that is approved by the trial judge
  - An additional \$120 for misdemeanors and juvenile delinquency cases (current fee cap \$120) for a total of \$240
  - An additional \$155 for lower and mid-level felonies (current fee cap \$445) for a total of \$600
  - An additional \$850 for high level felonies (current fee cap \$1235) for a total of \$2,085
3. An unlimited waiver beyond the additional fee caps that can be granted by the chief judge in the circuit or district court, subject to guidelines issued by the Supreme Court of Virginia
4. A requirement that all court-appointed attorneys submit a detailed accounting of the time expended for that representation
5. Supreme Court tracking of hours worked, waivers requested and amounts paid.

During the past three years, the General Assembly has appropriated nearly \$17 million to increase court-appointed fees (\$2.4 million in 2005, \$6.3 million in 2006 and \$8.2 million in 2007). Over that period, it has approved increases of \$7.8 million for public defenders. These increases have greatly helped Virginia’s underfunded indigent defense system, but much work remains to be done.

### **Improvements in public and capital defender offices**

At the close of the 2007 General Assembly Session, funding for state public and capital defender offices increased by \$3.7 million. This increase tops a steady progression of new funding for defender offices over the past several years. We hope the cumulative effect will be one of retiring the low pay scales that have led to high turnover in recent years. This year’s additional funding should allow the agency to fill twenty-six additional positions and provide a 13 percent raise for all employees in November 2007. Starting salaries for public defenders will increase from \$42,600 to \$48,183. The 13 percent reflects a 9 percent raise in base salary for public defenders and administrative and support personnel combined with a 4 percent across the board increase for all state employees from other funding sources.

The pending salary increases for lawyers and support staff will help narrow the pay gap with prosecutors’ offices; but it won’t entirely eliminate it. Nevertheless, the additional positions, including increases for capital defender offices will help spread out the workload and improve the quality of service.

The significant pay increase (24 percent in base salary) for capital defenders will help reduce recruitment and retention problems in these very demanding jobs. Additional positions in the administrative office will help staff the enforcement mechanism for standards of practice that went into effect April 1, 2007.

There are twenty-five public defender offices in Virginia and four regional capital defender offices. They handle more than half of the indigent defense cases in the state. All other indigent defendants are represented by court-appointed attorneys — lawyers in private practice who take court-appointed criminal cases.



## MANDATORY CONTINUING LEGAL EDUCATION BOARD

*Eric M. Page, 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 MCLE Board consists of twelve members appointed by the Supreme Court. Members for fiscal 2007 included Vice-Chair Ronald Lee Livingston of Charlottesville, Jan Lois Brodie of Fairfax, Timothy C. Carwile of Waynesboro, Michael Lees Davis of Alexandria, Jacqueline May Ford of Richmond, Michael Lawrence Goodman of Glen Allen, Diane Pomeroy Griffin of Portsmouth, Sharon D. Nelson of Fairfax, Nancy Grace Parr of Chesapeake, Calvin Stanley Spencer Jr. of Kenbridge, and Bruce Calvin Stockburger of Roanoke.

The VSB's MCLE department administers the MCLE requirements for the board. The board meets seven times per year at the VSB's Richmond office and an average of ten times per year by consent agenda to consider course-approval applications. Over the last reporting cycle, the MCLE staff and board have considered the following: 7,150 course applications, 17,900 accredited sponsor courses, 21 waiver requests, 26 extension requests, 18,000 telephone and electronic mail inquiries, and more than 104,000 certificates of attendance.

The board undertook an extensive review of its regulations and opinions to clarify criteria for credit qualification for courses dealing with legal ethics or professionalism. The board also began the process of amending its regulations and opinions regarding accredited sponsors.

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 conscientious work and dedication in helping lawyers discharge their obligation to provide competent representation of clients.



## MULTI-JURISDICTIONAL PRACTICE TASK FORCE

*Marni E. Byrum, chair*

### Status summary

After a hiatus since December 2005, the Multi-Jurisdictional Task Force reconvened on April 24, 2007. The purpose of the meeting was to address issues raised by the Supreme Court of Virginia during its review of the Foreign Legal Consultant Rule and the amendments to Rules 5.5 and 8.5 of the Rules of Professional Conduct, which had been brought before the Court for approval. The Court and Virginia State Bar representatives met on February 13, 2007, to discuss these rules. As a result of comments and concerns exchanged during this meeting, the bar withdrew its petitions for approval and referred the rules back to the task force for revision. The MJP Task Force met on April 24, 2007, and revised the rules and petition in accordance with the Court's recommendations. The rules as revised will be prepared for review by the task force again and then published for comment. They will be presented again to the VSB Council in March 2008.

### Summary of action taken

#### Issues raised by Court:

- **Foreign Legal Consultant (FLC) Rule:** (1) The scope of practice of a FLC should be limited to the law of his or her home country and any other country where he or she is authorized to practice and international law. The language of the proposed rule did not state this explicitly. (2) The FLC Rule should also clarify the FLC's qualification as in-house for a Virginia corporation under Rule 1A:5, the Corporate Counsel Rule. Revisions required to accomplish

this would be substantive changes that will be published for notice and comment and presented again to the council for approval.

- **Petition in support of proposed rule and rule amendments:** The General Agreement on Trade and Services is no longer the driving force behind the MJP rules. The bar's petition needs to restate the need for adoption of the MJP rules in light of more current developments in international practice, such as individual foreign countries negotiating directly with individual U.S. states that already have FLC rules in effect.
- **Rules of Professional Conduct 5.5 and 8.5:** Amendments to these rules were withdrawn along with FLC Rule because of related content.

**Action Taken by the MJP Task Force:**

- **Proposed Rule 1A:7 Foreign Legal Consultant Rule**

**A. Further revision of Paragraph (d) Scope of Practice:**

The task force approved a rewrite of this paragraph to limit scope of practice of FLCs to *only matters involving the law of the jurisdiction(s) in which the person is admitted to practice or international law*. The task force also tasked staff to research and draft a definition of "international law" to include in this paragraph.

**B. FLC as in-house counsel for a Virginia employer**

Under Rule 1A:5, the Corporate Counsel Rule, a non-US foreign lawyer may apply under Part 2 for a corporate counsel registration, so presumably a foreign lawyer licensed as a FLC could do so also. The task force agreed that there is no reason why the FLC should be prohibited from serving as in-house counsel when the proposed FLC Rule allows them to open a free standing office or work in a Virginia law firm. For consistency and clarity an amendment to paragraph (e) of the FLC Rule is proposed to include employment as in-house counsel under Part II of Rule 1A:5 among the rights and obligations that a FLC will be entitled.

- **Rule 5.5**

Revised paragraph (d) to prohibit FLCs from engaging in "temporary practice" by adding a new subparagraph (5): A foreign legal consultant practicing under Rule 1A:7 of this Court and a corporate counsel registrant practicing under Part II of Rule 1A:5 of this Court are not authorized to practice under this rule.

- **Redrafting of petitions for adoptions of the MJP Rules**

Petitions will be redrafted removing discussion of GATS and focusing on more recent developments, including the informal mutual recognition and bilateral negotiations between countries such as Australia and, states such as New York and Georgia, and the resolutions adopted by the Council of Chief Justices.



## **PUBLIC PROTECTION TASK FORCE**

*Christopher J. Habenicht, chair*

The Public Protection Task Force was put in place by Karen A. Gould, president of the Virginia State Bar for fiscal 2007. The task force had a broad charge — to evaluate the bar's tools for protecting the public from lawyer defalcation and to explore ideas for enhancements to our current regulatory and statutory schemes.

The task force met on a number of occasions during fiscal 2007. The sense of the members was that the bar should have zero tolerance for lawyer defalcation.

The task force decided to make two recommendations in fiscal 2008 to the VSB Council: (1) that the council support an amendment to Virginia Code § 6.1-2.21 to provide an increase the Consumer Real Estate Settlement Protection Act bond from \$100,000 to \$200,000, and (2) that the council support passage of a statute that would require an insurer or its representative to notify a third-party claimant or judgment creditor when a check in settlement of the claim is being sent to the claimant's or judgment creditor's attorney or representative.

