Though this column is aptly named the “The Chair’s Corner,” I typically try to find a theme to guide my writing. For this Winter 2018 edition, several strike me as appropriate. For instance, I could see something along the lines of “The Big Chill,” or “Frozen.”

The entire state has recently endured a major cold spell, and the folks out east faced the “Bomb Cyclone.” (Incidentally, I’m not sure which is more ominous...that term, or the explanation, which is “…a rapidly deepening extratropical cyclonic low-pressure area.”) While my beloved Appalachians often see single digit winter temperatures, I don’t recall such an extended stretch of such bitter cold, and out here many folks are wearily dealing with damage from frozen pipes and lost school and work days. I can only imagine what the eastern part of the state was like given the rarity of significant snowfall and the lack of snow removal equipment.

All this winter talk is leading somewhere, namely, spring. And, I can imagine no better place to enjoy early spring than the Lewis Ginter Botanical Garden on March 9, 2018 in Henrico, Virginia at the Conference of Local and Specialty Bar Association’s Bar Leaders Institute. I was at Lewis Ginter a few years ago for this event and was surprised at how far ahead the area was in terms of spring compared to the Great Southwest. I expect many of you, like me, would enjoy seeing something bud, and grow, and Lewis Ginter is a marvelous place to do that.

At this point, a tip of the hat is in order to all those who’ve been busy developing this year’s agenda for the Bar Leader’s Institute. In addition to Paulette Davidson’s always stalwart support, which should never be underestimated or under-appreciated, Chuck Lollar has really done a fantastic job.

I did a bit of research on the story behind the Botanical Garden, and that story couldn’t fit better with the mission of the Bar, the CLSBA, or the Bar Leaders Institute. You see, the Garden’s namesake, a transplanted New Yorker who became one of the richest men in the South, left an indelible mark of service and generosity. In addition to being an unabashed proponent and advocate for Richmond during his life, upon his death he bequeathed substantial gifts to virtually every public institution and charity in the Richmond area, and family members who followed him continued that tradition.

Also upcoming is the last of the 2017-2018 CLSBA’s Solo and Small-Firm Practitioner Forums, which is set for May 10, 2018 at Hampden-Sydney College in Hampden-Sydney, Virginia. One of the great things about serving as chair is the opportunity to travel the state and attend these events.

When I got up this morning, the temperature was 2.5 degrees, but today’s high is expected to top out at a balmy 30 degrees. I can’t wait for Lewis Ginter and Hampden-Sydney. Hope to see you soon!

Alan McGraw is a partner with Altizer, Walk and White PLLC in Tazewell.

Newsletter Information

The Connection is published online two times a year by the Virginia State Bar’s Conference of Local and Specialty Bar Associations, in January and July. We invite you to submit information about projects and/or events going on at your local/specialty bar association to be included in the “Highlights from Around the Commonwealth” section. You are also invited to submit articles for the magazine. Articles should be no longer than 700 words. Submissions should be sent to CLSBA Coordinator Paulette Davidson via email at davidson@vsb.org. If you have any questions, please contact Paulette at 804-775-0521.

Mission Statement

Conference of Local and Specialty Bar Associations (CLSBA)

Local and specialty bar associations in Virginia comprise the Conference of Local and Specialty Bar Associations. The conference was established to maintain a mutually beneficial relationship between the VSB and the local and specialty bar associations in the Commonwealth. It sponsors a Bar Leaders Institute each year to help new local and statewide bar officers plan their bar year and assists them with ethical issues, various programs and internal management policies and procedures; sponsors Solo & Small-Firm Practitioner Forums open to all VSB members; sponsors awards of merit, as well as Local Bar Leader of the Year, Specialty Bar Leader of the Year and Bar Association of the Year Awards; maintains an information database; and makes executive committee and staff members available for technical assistance or presentations to local and specialty bars.
Let us hear from you! This year marks the 32nd Annual Awards of Merit Competition.

Virginia is comprised of approximately 132 local and specialty bar associations. Each association encompasses lawyers uniquely situated and inclined to serve the interests of their own communities. While these often discrete activities play a major role locally, collectively they contribute to the fabric of our entire legal community across the Commonwealth. The numerous local and specialty bar associations serve as laboratories of creativity, ingenuity, kindness, and leadership.

Together, we are best served when we communicate, and it is through this interaction and sharing ideas that we can raise our individual efforts beyond our imagination. Plus, lawyers tend to flatter through imitation, whether it be pleadings, discovery, CLE material, or bar projects. With this in mind, the Conference of Local and Specialty Bar Associations (CLSBA) calls for your submissions for Awards of Merit.

The CLSBA was established to maintain a mutually beneficial relationship between the Virginia State Bar and the local and specialty bar associations in the Commonwealth. The CLSBA bestows Awards of Merit for excellence in bar projects which are designed to: (1) recognize outstanding projects and programs of local and specialty bar associations; (2) share successful programming ideas and resources with all bar associations; (3) encourage greater service to the bench, bar, and public; and (4) inform the public about some of the excellent work of local and specialty bars and the legal profession in general.

Awards are offered among six divisions and are based upon the size of the bar. Local and specialty bars are encouraged to submit successful or unique new programs undertaken since May 1, 2016 or sustained projects that meet the judging criteria. All entry material will be added to the Virginia State Bar’s Resource Library for use by all local and specialty bar associations. This resource library is a treasure trove of ideas to emulate and improve upon. All entries must be postmarked or emailed no later than Friday, April 27, 2018. You are encouraged to visit the CLSBA website to browse the submissions of prior recipients of the awards, and to review the specific criteria: http://www.vsb.org/site/conferences/clba/clba-awards

The process is simple, and whether you win or not, your application and entry material will serve as a reference for future bar associations, thereby contributing far beyond your particular project. Go ahead, shine a light on your bar association’s achievements! We all stand to benefit, and you may just win an award.

Shine a Light on Your Bar Association’s Achievements
By John A. Merrick

Call for Nominations

33rd Annual Awards of Merit Competition
The Virginia State Bar’s Conference of Local and Specialty Bar Associations announces the 33rd Annual Awards of Merit competition. This competition is designed to:
- Recognize outstanding projects and programs of local and specialty bar associations.
- Share successful programming ideas and resources with all bar associations.
- Encourage greater service to the bench, bar, and public.
- Inform the public about some of the excellent work of local and specialty bars and the legal profession in general.

23rd Annual Local Bar Leader of the Year Award
The Virginia State Bar Conference of Local and Specialty Bar Associations’ recognition of a Local Bar Leader of the Year identifies past and presently active leaders of local bar associations who have continued to offer important service to the bench, bar, and public. The award is a continuing monument to the dedication of local bar leaders. It also emphasizes the importance of close cooperation between the Virginia State Bar and local bar leaders.

2nd Annual Specialty Bar Leader Of the Year Award
The Virginia State Bar Conference of Local and Specialty Bar Associations’ recognition of a Specialty Bar Leader of the Year identifies past and presently active leaders of specialty bar associations who have continued to offer important service to the bench, bar, and public. The award is a continuing monument to the dedication of specialty bar leaders. It also emphasizes the importance of close cooperation between the Virginia State Bar and specialty bar leaders.

5th Annual Bar Association of the Year Award
The Virginia State Bar’s Conference of Local and Specialty Bar Associations seeks to recognize and honor the Bar Association of the Year. This award will be presented to a bar association that demonstrates the impact it has made upon the legal community and community at large, regardless of the size of that bar association.

The VSB Conference of Local and Specialty Bar Associations will present these Awards during the VSB Annual Meeting on Friday, June 15, 2018, in Virginia Beach.

All entries must be postmarked no later than Friday, April 27, 2018.

See CLSBA website (http://www.vsb.org/site/conferences/clba/clba-awards) for criteria and nomination procedures. To sign up for the CLSBA Annual Meeting and Breakfast, please email your name, bar/court affiliation, and number attending to Paulette Davidson at davidson@vsb.org.
Multiple studies show that more than 80 percent of the civil legal needs of the poor in Virginia and nationwide go unmet. Most impoverished Virginians navigate the complex court and legal structure pro se—without the assistance of either a private attorney or a legal aid lawyer. Not surprisingly, studies indicate that pro se litigants fare more poorly than represented litigants. This differential in access and assistance has been termed the “Justice Gap.”

In the past few years the courts and legal community have acted together to introduce numerous improvements designed to close the Justice Gap. There have been new technologies in the form of Virginia Free Legal Answers and Justice Server, exposure events such as the Chief Justice’s Pro Bono Summit, and the successful launch of innovative programs like the Triage Project. Additional work is being done in Virginia’s court system to improve the experiences of self-represented litigants, and to examine rules and develop model policies aimed at increasing access to legal services.

Clearly, strides are being made to address the Justice Gap in Virginia, and much of this progress grows out of or is significantly buoyed by the brain trust of three formal “access bodies”: the Virginia State Bar Access to Legal Services Committee, the Supreme Court of Virginia Access to Justice Commission, and The Virginia Bar Association Pro Bono Council. Membership in these organizations is composed of equal justice champions representing various Virginia districts. The following is an overview of each along with a description of the role it plays in addressing access to justice issues.

The VSB Access to Legal Services Committee

A special committee of the Virginia State Bar, the Access to Legal Services Committee was formed during the 1992-93 bar year by merging the VSB’s pro bono and legal aid committees. The Access Committee’s mission is three-fold:

1. To foster 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;

2. To promote pro bono publico services by Virginia lawyers and encourage the integrated development of like contributions by law school faculty and students, lay mediators, court reporters, interpreters, tax accountants, paralegals, and members of related professions; and

3. To examine ways in which access to legal services can be enhanced and opportunities for pro bono service can be expanded in a fashion that supports and complements the rich regional network of existing service providers.

The Access Committee carries out its mission by working with the Virginia judiciary, voluntary bar associations, the Public Defender Commission, and the licensed legal aid societies to help local coalitions identify and address areas of emerging need, redundancies, or gaps in service or information. The committee’s activities are consistent with the VSB’s mission statement to “advance the availability and quality of legal services provided to the people of Virginia.” The functions of the committee also serve the goal of the VSB’s 2016–18 Strategic Plan to “advance access to legal services.”

The VSB Access to Justice Commission

The Virginia Access to Justice Commission

By Crista Gantz

An Introduction to the Statewide Access to Legal Services Bodies

The VSB president appoints committee members and also has the power to determine the size and composition of the committee and to designate the chair. The Access Committee is currently chaired by Lonnie “Chip” Nunley III, and has the support of five active subcommittees:

1. CLE/Pro Bono Training chaired by Tara Casey;
2. Rules chaired by Alexandra “Ali” Fannon;
3. Social Media chaired by Jennifer Dean;
4. Alternative Delivery Systems chaired by Valerie L’Herrou; and
5. Awards chaired by Rachel Jones.

Recent Access Committee accomplishments of note include the approval of the emeritus rule change, making it easier for those members who are willing to limit their practice to pro bono to perform volunteer legal services for poor Virginians. The Access Committee has also increased visibility on its social media platforms and has seen steadily increasing participation on the Virginia Free Legal Answers website. In November, users posted a record number of questions to volunteer attorneys, and Virginia and Utah celebrated the shared accomplishment of having the highest percentage (94 percent) of questions answered by pro bono lawyers as compared to other states participating in the program. On October 1, 2017, Governor McAuliffe designated October as “Celebrate Pro Bono Month” in response to a proclamation submitted by the Access Committee in partnership with the Virginia Access to Justice Commission.

The Virginia Access to Justice Commission

On September 13, 2013, Cynthia Kinser, then the Chief Justice of the Supreme Court of Virginia, signed an order establishing the Supreme Court of Virginia Access to Justice Commission. The mission asserted in the order instructs the commission to “promote equal access to justice in Virginia, with particular emphasis on the civil legal needs of Virginia residents.” The order highlights the harmony between the formation of the Access to Justice Commission and the mission of the Virginia Judiciary, Vision 3 of the current Strategic Plan for Virginia’s Judicial System, as well as access-to-justice-minded resolutions adopted by the Conference of Chief Justices and the Conference of State Court Administrators. Chief Justice Donald Lemons has expressed continuing support for the Access to Justice Commission, most recently by highlighting the commission’s recent accomplishments in his May 2017, State of the Judiciary address and noting that “We must not lose sight of the fact that increasing access to justice and pro bono services can dramatically change people’s lives for the better.”

The Access to Justice Commission is co-chaired by Justice S. Bernard Goodwyn and John Whitfield, executive director and general counsel of Blue Ridge Legal Services. It operates through five standing committees:

1. The Committee on Court Access for Self-Represented Litigants, chaired by Hon. Deborah V. Bryan;
2. The Pro Bono Committee, chaired by Tara Casey;
3. The Outreach and Education Committee, chaired by James V. Meath;
4. The Judicial Education Committee, chaired by Hon. Tonya Henderson-Stith; and
5. The Awards Committee, chaired by Rachel Jones.

The Virginia Access to Justice Commission

The Virginia Access to Justice Commission is co-chaired by Justice S. Bernard Goodwyn and John Whitfield, executive director and general counsel of Blue Ridge Legal Services. It operates through five standing committees:

1. The Committee on Court Access for Self-Represented Litigants, chaired by Hon. Deborah V. Bryan;
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3. The Outreach and Education Committee, chaired by James V. Meath;
4. The Judicial Education Committee, chaired by Hon. Tonya Henderson-Stith; and
5. The Awards Committee, chaired by Rachel Jones.
The Pro Bono Coordinating Consortium, chaired by Karl Doss. Commission membership is specified by the Supreme Court order and includes a justice of the Supreme Court of Virginia; a judge of the Court of Appeals of Virginia; judges from Virginia’s circuit courts, general district courts, and juvenile and domestic relations courts; a trial court clerk; representatives of legal aid organizations and the Legal Services Corporation of Virginia; a law school dean, professor, or instructor; lawyers in private and corporate practice; and one member each from the Virginia State Bar Access to Legal Services Committee and The Virginia Bar Association Pro Bono Council. The Chief Justice may appoint three additional at-large members. The current Access to Justice Commission membership roster, meeting schedule, and the Supreme Court order creating the commission can be found on the Virginia’s Judicial System webpage at http://www.vacourts.gov/programs/vajc/home.html.

Noteworthy accomplishments of the Access to Justice Commission to date include the development of the Virginia Judicial System Court Self-Help website for self-represented litigants; the development and production of posters, bookmarks, and cards describing available resources for self-represented litigants and explaining the difference between the legal information court clerks can provide versus the legal advice they cannot; the publication in the District Court Benchbook of Practice Points that provide guidance to judges adjudicating civil matters involving self-represented litigants; and the amendment of the Canons of Judicial Conduct to explicitly allow judges to promote and encourage pro bono service.

Ongoing initiatives of the commission include work to propose improvements to Supreme Court rules to increase access to justice, creation of guided interviews using automation tools and techniques to help self-represented litigants identify and complete court forms, coordination with the Virginia Law Foundation on videos celebrating the value of pro bono services to attorneys and clients alike, and continued work exploring the feasibility of self-help centers in Virginia courts.

The VBA Pro Bono Council

Created in 2015, the VBA Pro Bono Council is another active statewide access body committed to serving equal justice goals as outlined in its multi-pronged mission statement:

“Pro Bono Council exists to promote pro bono participation and awareness within the Virginia legal community; to assist the member legal aid societies of Legal Services of Virginia and other poverty law programs; to support the pro bono initiatives of the Young Lawyers’ Division; to help implement the initiatives of the Access to Justice Commission; to coordinate with the Virginia State Bar Special Committee on Access to Legal Services; and to execute special pro bono initiatives of the President of The Virginia Bar Association.”

Council Chair Rob Stoney, echoing the sentiments of the past-president and council founder Pete Johnson, recognizes the “amazing amount of pro bono work being done throughout the Commonwealth,” including more than 100,000 hours of community service and pro bono work provided by VBA members. Despite this impressive service record, Stoney says the cause lacked a “mechanism for coordination and magnification of effort across programs and across communities.” The council was formed, at least in part, to address this gap, but Stoney sees the main job of the VBA Pro Bono Council as being “a helpmate to [private attorneys], legal aid, the court, and other like-minded organizations to realize the goal of advancing pro bono on a sustained basis.” The council serves its mission by engaging the membership through eight committees, each charged with executing a specific scope of tasks and priorities:

1. Firms in Service/Clearinghouse Expansion, co-chaired by Brian Marron and Scott Oostdyk;
2. YLD Pro Bono Outreach and Mentoring, co-chaired by Laura Liff and Mike Goldman;
3. 2018 Chief Justice’s Pro Bono Summit, chaired by Rob Stoney;
4. Pro Bono Visibility in the VBA, chaired by David Neumeyer;
5. Liaison to the Virginia Supreme Court Access to Justice Commission, co-chaired by Scott Oostdyk and Nicole Harrell;
6. Technology Opportunities in Pro Bono Service to the Under-served, co-chaired by Ali Fannon and Karl Doss;
7. Legislative Affairs Impacting Pro Bono and Legal Services to the Under-served, co-chaired by Mark Braley and Rob Stoney; and
8. Nominating, chaired by Heather Lockerman.

According to Stoney, “The council is working with the young lawyers division, and legal aid with several projects and will coordinate with the Access to Justice Commission and Access Committee to implement its initiatives.” Many of those initiatives will be highlighted at the 2018 Supreme Court Justices’ Pro Bono Summit, the bi-annual public service celebration and awareness event, which is planned and sponsored by the council and will be held at the Supreme Court on April 4, 2018.

For more information about the VBA Pro Bono Council, its mission, committees, initiatives, and related resources please visit http://www.vba.org/?page=pro_bono_council.

Endnotes:
2Leonard C. Heath, Jr., president-elect, is currently seeking committee members for the upcoming term commencing July 1, 2018. Interested candidates can apply to be considered for appointment by downloading the form at http://www.vsb.org/docs/cme_form.pdf and returning it to the Virginia State Bar office by February 23, 2018, addressed as instructed on the form.
3The VSB Access to Legal Services Committee has three inactive subcommittees: Legal Aid Funding, Online Pro Bono Website, and Legal Education Access Committee.
4According to the VBA Pro Bono Council Bylaws, initial members of the VBA Pro Bono Council were appointed by the VBA president. Non-inaugural membership is determined by election by the council at an annual meeting held in conjunction with the VBA Annual Meeting. Membership includes ex officio members. Interested attorneys should contact VBA Pro Bono Council Chair Rob-Stoney to learn more about becoming involved with the council.

Crista Gantt is the director of Access to Legal Services at the Virginia State Bar.

SAVE THE DATE
2018 Virginia State Bar
Legal Aid Luncheon
Friday, June 15, 2018
Sheraton Oceanfront Hotel • 3501 Atlantic Avenue • Virginia Beach
The Legal Aid Award and Oliver White Hill Law Student Pro Bono Award will be presented during this event.
Ben Franklin wisely quipped: “Nothing in life is certain but death and taxes.” Unfortunately, because none of us have a specific deadline on the death issue, most of us (read: our clients) put off the planning for it—as well as the health crises that often precede it. In fact, it is estimated that 75% of Americans have never taken the time to discuss their wishes or provided any written guidance to loved ones or healthcare providers in the event they are unable to speak for themselves.

Recognizing the above, National Healthcare Decisions Day (NHDD), April 16, exists to encourage and empower all Americans to take the simple steps to be ready for the unexpected, to provide the gift of guidance to their loved ones, and, ultimately, to be sure that patients get the care they want and need if they are ever unable to speak for themselves. Lawyers can play a significant role in the effort to highlight the importance of making and documenting advance health care decisions and to provide tools for making these decisions.

The reality is that advance directives (naming a healthcare agent and/or creating a “living will” regarding end of life wishes) are important regardless of age or current health. Simple proof: Nancy Cruzan and Terri Schiavo were each in their twenties when their medical events struck. Beyond these high profile cases are those that come before ethics committees around the country every day because people do not have advance directives in place, even though there was plenty of time and myriad good reasons to engage in advance care planning. Among others, these cases include:

- Patients who experience complications from elective surgical procedures;
- Unmarried pregnant women who experience post-partum complications;
- Residents of nursing homes who have acute health episodes; and
- Patients with a range of chronic and progressive conditions who have never been asked about their advance care wishes.

In many cases, the lack of advance care planning leads to a tragedy: families dealing not only with the grief of loved ones (of various ages) who are suddenly unable to communicate—and often near death—due to an accident or unexpected medical problem, but also the heartbreak of trying to figure out who should make healthcare decisions and what those decisions should be. In many cases, this uncertainty could have been prevented with the simple act of executing an advance directive.

Ultimately, NHDD strives to provide much-needed information to the public, reduce the number of tragedies that occur when a patient’s wishes are unknown, and improve the ability of healthcare facilities and providers to offer informed and thoughtful guidance about advance healthcare planning to their patients. Lawyers can help!

Ten Things Lawyers Can Do For National Healthcare Decisions Day:

1. Lead by example—execute your own advance directive and see that your loved ones have done so as well
2. Volunteer to speak at an NHDD event in the community (at a healthcare facility, library, religious institution, etc.)
3. Present a CLE on advance directives (either public or in-house)
4. Present an advance directives “brown bag lunch” session for your staff
5. Write an Op-Ed on the importance of advance healthcare planning or present a PSA on the radio about NHDD
6. Write a piece for your local Bar Association’s magazine or on-line newsletter
7. Offer free office hours on April 16 to provide the public with advance directives forms
8. Create or update your state-specific website on advance directives
9. Visit https://www.nhdd.org/resources/ for more ideas and resources
10. Spread the word to colleagues, clients, and other organizations in which you participate

Significantly, there is no “agenda” to for NHDD other than education and improving the ability to honor patients’ wishes. To that end, the event exists to encourage all people to discuss and document their wishes, whatever they are.

NHDD’s theme is that “it always seems too early until it’s too late,” so join the movement today. The website www.nhdd.org has a variety of free information, including free advance directives forms for every state, and tools to assist with thoughtful reflection on healthcare choices. For Virginia information, please visit the Virginia State Bar’s website: http://www.vsb.org/site/public/healthcare-decisions-day/ Please use the materials and share them with others. The process is easier than many people think it is.

Nathan A. Kottkamp, Founder and Chair of NHDD, is Senior Counsel with the law firm McGuireWoods. He can be reached at nkottkamp@mcguirewoods.com.
Help is Available
By Renu Brennan

What is the value of a lawyer saved? Or better yet of a lawyer who doesn’t need to be saved because the profession is proactive in emphasizing lawyer well-being as an end in and of itself? That is not a riddle. It is a question that thankfully is finally being asked and addressed by the leaders in our profession, and it is a question that all of us need to consider if the movement to improve the profession is to succeed.

The legal profession can be immensely rewarding and extremely stressful, often both at the same time. Much is expected of lawyers, whether in private practice or public service. What tools do we have to help ourselves and our peers deal with stress? This article explores one of our best assets in this struggle -- Lawyers Helping Lawyers (LHL). Lawyers Helping Lawyers does just what its name implies: provides lawyers with peers who are willing and able to help them when they sense their professional and personal lives are at risk due to stress, addiction, or mental health concerns.

In my eight years as an assistant bar counsel, it was not often, actually ever, that a lawyer thanked me for disciplining them. It is a true testament, then, to LHL that one who entered into a contract with LHL as part of discipline sought me out to thank me because LHL saved not only his career, but his life. It is my hope that with this article, we create an environment that fosters wellness and reduces the numbers of lawyers who face impairment due to stress.

The Problem and the Need to Act

The statistics and the stories are compelling, and show that stress, depression, and substance abuse affect lawyers of all ages and that we must act to address problems not only after they affect a lawyer’s practice, but before. The evidence of our struggles is anecdotal – we all know another lawyer who has struggled with these issues – and borne out by data:

ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Study published in the January/February 2016 Journal of Addictive Medicine:

- 21% to 36% of lawyers qualify as problem drinkers.
- 28% struggle with depression.
- 18% suffer from anxiety.
- 23% deal with stress.

The Hazelden Study surveyed 12,825 licensed, practicing lawyers across nineteen states assessing alcohol and drug use and symptoms of depression, anxiety, and stress. The Substance Abuse and Mental Health Services Administration reports that while only 6.4% of the general population abuse alcohol and only 6.6% experience major depression, lawyers have far higher numbers in both categories. The Hazelden Study concluded that attorneys experience problematic drinking at a higher rate than other professional populations and two to three times the general population. Data also indicates that the incidence of alcohol abuse is higher among lawyers aged 30 or less.

Law Student Well-Being Survey published in 2016:

- 25% of students at risk for alcoholism.
- 17% of students experience depression.
- 14% of students suffer from severe anxiety.
- 23% suffer from mild or moderate anxiety.
- 6% had suicidal thoughts in the past year.

The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, The Report of the National Task Force on Lawyer Well-Being

The good news is that our profession is heeding the call to action. Last year, several groups in the American Bar Association, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, the National Conference of Chief Justices, and the National Conference of Bar Examiners formed a task force -- the National Task Force on Lawyer Well-Being -- to address the mental health and substance abuse problems that plague the profession.

The Task Force issued a report, which directs the stakeholders (the judiciary, regulators, bar associations, firms, legal malpractice carriers, and legal assistance programs) to take responsibility and galvanize profession-wide action.

Our mandate is to work together to focus on lawyer well-being, so that lawyers are fulfilled and do a better job for their clients, the public, and those they serve, while we continue to attract the best and brightest to our profession.

Critically, the Task Force Report emphasizes a positive state of wellness, not merely the absence of illness, and a continuous process where lawyers actively work to improve their quality of life -- emotionally, intellectually, physically, and socially.

The Report’s recommendations emphasize a demonstrated commitment to well-being and a concerted effort by all stakeholders to encourage help-seeking behaviors, provide quality educational programs, and partner with lawyer well-being experts such as LHL.

- ABA CoLAP and state-based lawyer assistance programs are indispensable partners in efforts to educate and empower the legal profession to identify, treat, and prevent conditions at the root of the current well-being crisis, and to create lawyer-specific programs and access to treatment.1

- Lawyers who reported past treatment for alcohol use who used programs tailored to legal professionals reported significantly lower scores on current alcohol use.2

What is LHL? How does LHL help? How can LHL help?

LHL is a 501(c)(3) nondisciplinary, nonprofit organization that provides free confidential assistance to lawyers, judges, law students, bar applicants, and legal professionals who are experiencing professional impairment due to addiction, depression, or cognitive impairment issues.

LHL has the foundational elements outlined at 44.4 of the Report:

- A program director with an understanding of the legal profession and experience addressing mental health conditions, substance use disorders, and wellness issues for professionals.
A well-defined program mission and operating policies and procedures.

- LHL’s program is designed to promote recovery, protect the client, prevent disciplinary issues, support families and professional associates, and strengthen the profession.

- A key part of the mission, other than aiding and assisting the lawyers, judges, law students, and legal professionals, is educating about the impact of chemical dependency and other mental health disorders and the resources provided by LHL.

- Regular educational activities to increase awareness and understanding of mental health and substance use disorders. Regular and varied CLEs sponsored by LHL across the state.

- Volunteers trained in crisis intervention and assistance.

- Services to assist impaired members of the legal profession to begin and continue recovery.

- Participation in the creation and delivery of interventions.

- Consultation, aftercare services, voluntary and diversion monitoring services, referrals to other professionals, and treatment facilities.

- A helpline for individuals with concern about themselves or others.

Many of LHL’s dedicated, compassionate, and hard-working cadre of volunteers have benefitted from LHL’s services, and their role in the monitoring, support and ongoing recovery is critical to its success.

LHL devotes considerable time and attention to educating the legal community regarding substance abuse and mental health disorders, cognitive impairment, and transition and succession planning. LHL provides training and seminars to firms, local bar groups, judges, legal assistance groups, and other related organizations. Through these broad based educational efforts, LHL seeks to support lawyers and the legal community as well as the public. LHL is also a resource for wellness days and programs.

LHL is an invaluable resource to all stakeholders, not just lawyers in need.

LHL helps 200 lawyers annually of approximately 31,000 active, practicing lawyers in Virginia. It can help many more.

If I don’t have a substance abuse, anxiety, or mental health issues why should I care about LHL?

Lawyers are a self-governing, relatively autonomous profession, and with that privilege comes the responsibility of assuring that our behavior conforms to the Rules of Professional Conduct and serves the public interest. As the Preamble to the Virginia Rules of Professional Conduct instructs, “Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.”

The Rules of Professional Conduct, including Rule 1.1, Competence; Rule 1.3, Diligence; and Rule 1.4, Communication, are the most common causes of bar complaints and often the first manifestation of substance abuse and mental health issues. Addiction, along with mental and physical disorders, can create cognitive deficits that are manifest and particularly severe in terms of executive functions: problem solving, abstract thinking, planning, organizing, and memory. That dysfunction leads to lack of competence and diligence, and a concomitant breakdown in client communications. While Rule 1.16(a) (2) requires a lawyer to withdraw from representation if the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent his/her client, an impaired lawyer does not always withdraw.

While the Rules of Professional Conduct may not create a duty to proactively address potential impairment, a lawyer who is concerned about another lawyer’s impairment could encourage contact with LHL or contact LHL on the lawyer’s behalf, confidentially.

Legal Ethics Opinions (LEOs) 1886 and 1887

LEO 1886, approved by the Supreme Court of Virginia on December 15, 2016, instructs that Rule of Professional Conduct 5.1, Responsibilities of Partners and Supervisory Lawyers, requires partners or lawyers with managerial authority to act when they reasonably believe a lawyer under his/her supervisory authority may be suffering from an impairment that poses a risk to clients or the general public. LEO 1886 instructs the managing partner or supervisory attorney to confront the impaired lawyer and encourage an evaluation and/or treatment. The LEO also suggests LHL as a resource to seek assistance, initiate an intervention and obtain an initial evaluation of the lawyer’s condition and a referral to an appropriate mental health provider. LHL can provide guidance on how to handle the possible impairment and resources.

Like LEO 1886, LEO 1887, approved by the Supreme Court of Virginia August 2017, discusses LHL as a resource for lawyers who know of a lawyer who is struggling, but are not sure about how and whether to act. While LEO 1887 states that there is no duty to act if there is no supervisory relationship, and no misconduct has occurred, the LEO discusses the distinction between the duty to report to the VSB, and the option to seek guidance from LHL. Where an attorney observes that a solo practitioner’s cognitive abilities are declining, and is concerned, the attorney can encourage the impaired lawyer to contact LHL, or contact LHL for guidance on how best to address the situation.

Both LEOs also instruct that Rule 8.3(a) requires a lawyer to inform the appropriate professional authority if the lawyer has reliable information that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness, or fitness to practice law.

Conclusion

When we help each other, we improve our profession. If you suspect a lawyer is in need of LHL’s service, call LHL’s 24-hour toll-free number 1-877-545-4682 or confidential voicemail: 804-644-3212. There should be no stigma in struggle, nor in the seeking of help. We as a profession are made better by our willingness to help ourselves and help others when we encounter addiction, mental health, or cognitive disorders.

Renu Brennan is the Deputy Executive Director of the Virginia State Bar. She previously served as Assistant Bar Counsel.

Endnotes:

1 Task Force Report, p. 16.
3 Task Force Report Recommendations to Work with LHL

As the well-being report emphasizes, all stakeholders benefit from partnership with lawyer assistance programs, like LHL. The following are recommendations for all stakeholders and then specific stakeholders (numbered as in the report) that emphasize LHL’s value to the stakeholders:

4. Facilitate, destigmatize, and encourage help-seeking behaviors.
5. Build relationships with lawyer well-being experts.
6. Foster high-quality educational programs and materials about lawyer well-being.
7. Guide and support the transition of older lawyers.
8. Use monitoring to support recovery from substance abuse disorders.
Recommendations for Judges
14. Communicate that well-being is a priority.
15. Develop policies for impaired judges.
16. Reduce stigma of mental health and substance use disorders.
20. Monitor for impaired lawyers and partner with lawyer assistance programs.

Recommendations for Legal Employers
24. Establish organizational infrastructure to promote well-being.
24.2 Assess lawyers' well-being.
25. Establish policies and procedures to support lawyer well-being.
25.1 Monitor for signs of work addiction and poor self-care.
26. Provide training and education on well-being including during new lawyer orientation.

Recommendations for Law Schools
27. Create best practices for detecting and assisting students experiencing psychological distress.
27.1 Provide training to faculty members relating to student mental health and substance use disorders.
27.3 Provide mental health and substance abuse disorder resources.
32. Facilitate a confidential recovery network.

Recommendations for Bar Associations
36. Encourage education on well-being topics in association with lawyer assistance programs.
36.1 Sponsor high-quality CLE programming on well-being related topics.
36.3 Train staff to be aware of lawyer assistance program resources and refer members.

Recommendations for Lawyers Professional Liability Carriers
40. Actively support lawyer assistance programs.

Highlights from
Around the Commonwealth

The Virginia Academy of Elder Law Attorneys announces the 11th Annual VAELA UnProgram Friday, February 23, 2018 - Saturday, February 24, 2018 at the Boar's Head Resort, Charlottesville, VA. To register, please visit http://bit.ly/VAELA2018UnProgram

Friday, February 23, features a Members’ Only Forum including Brief by NAELA, Nursing Home Panel on the Ins & Outs of Nursing Home & Assisted Living Contracts, Judges Panel and Members' Only UnProgram Discussions.

Saturday, February 24, is open to VAELA and Non-VAELA Members and will include 5 break out session for newer and experienced practitioners with topics including:

Drafting IRA Trusts
Tax Issues with Special Needs Trusts
Medicaid and VA Annuities
Auxiliary Grant - Does it really exist?
Fiduciary Access to Digital Assets

Medicaid Crisis Planning - What are the useful strategies?
Irrevocable Trusts - How to use Nonjudicial settlement agreements
Asset Protection for Blended Families
Oddsities in Estate Administration
Estate Planning for the Healthy Spouse
Promissory notes- Do's and Don'ts
Guardianship and Conservatorship Orders
Update on Augmented Estate
ABLE Accounts
Do's and Don'ts of Medicaid Asset Protection Planning
Tax Basics for Elder Law
CCRC / ALF Contracts
AMD vs. POLST
Succession/Disability Planning in Solo and Small Firms

The local bar associations of the 28th, 29th and 30th Judicial Circuits are planning their Solo & Small-Firm Practitioner Forum/ Regional Bench-Bar Conference for May 4, 2018, at the Southwest Virginia Higher Education Center. If you would like to be added to the distribution list for information on this program, please contact Matthew Felty at mfelty@snodgrasslawfirm.com.
April 23, 2018
Greater Richmond Convention Center

Virginia State Bar
TECHSHOW

Agenda

8:00–8:30 Registration/Continental breakfast
8:30 Welcome—VSB TECHSHOW Chair Sharon Nelson, VSB President Doris Henderson Causey, and Justice of the Supreme Court of Virginia Cleo E. Powell
8:45–9:45 First Sessions
• Digital Age Revolution in Virginia: The New Marketing Ethics Rules* — Jim McCauley — VSB Ethics Counsel, Richmond, VA/Chris Fortier — President, VSB Young Lawyers Conference, Oakton, VA/Britt Lorish — Affinity Consulting Group, Roanoke, VA
• Technology-Related Policies for Law Firms — WITH TEMPLATES! Debbie Foster — Affinity Consulting Group, Tampa, FL/Reid Trautz — American Immigration Lawyers Assn, Washington, DC
9:55–10:55 Second Sessions
• Ethical Disaster Recovery: The Lessons of 2017* (including Incident Response Plans and Active Shooter Policies) Sharon Nelson — President, Sensei Enterprises, Fairfax, VA/Jim Calloway — Director of Mgmt Asst Program at Oklahoma Bar Assn, Oklahoma City, OK
• E-Discovery Primer for Lawyers: Brett Burney — Burney Consultants, Chagrin Falls, OH/Tom Mighell — Contoural, Inc., Dallas, TX

11:05–12:05 Third Sessions
• Cryptocurrencies: What Lawyers Need to Know — Can You Accept Bitcoins for Legal Services? John Simek — Vice President, Sensei Enterprises, Fairfax, VA/Lincoln Mead — IT Director, Utah State Bar, Salt Lake City, UT

11:05–12:05 Third Sessions (continued)
• Employee Security Awareness Training for Law Firms* — Sharon Nelson/Ivan Hemmans — Senior Manager of Technical Development, O’Melveny Myers LLP, Los Angeles, CA
12:05–12:45 Lunch
12:45–1:45 Fourth Sessions
• Ethical Missteps in E-Discovery That Will Punch You and Your Client in the Face* — Brett Burney/Tom Mighell
• Alexa, Siri, and Other Personal Digital Assistants: How Lawyers Use Them — and the Ethics of Using Them — Nerino Petro — President/Attorney, The Erickson Group, Rockford, IL/Catherine Sanders Reach — Director of Law Practice Management and Technology, Chicago Bar Association, Chicago, IL
1:55–2:55 Fifth Sessions
• The Lawyers Guide to the Dark Web — John Simek/Lincoln Mead
• The Current Sweet Spot in Legal Technology for Lawyers — Nerino Petro/Britt Lorish
3:05–4:05 Sixth Sessions
• Why Lawyers Are Flocking to Office 365: A Guided Tour — Jim Calloway/Catherine Sanders Reach
• Getting and Keeping Your Law Firm Safely on the Cloud* — Reid Trautz/Ivan Hemmans
4:15–5:15 Plenary — ALL NEW: 60 Tech Tips in 60 Minutes
Sharon Nelson/Debbie Foster/Jim Calloway/Tom Mighell

Total possible CLE credits = 7 hours, which includes up to 5 hours of Ethics (pending), depending on which sessions you attend. *includes Ethics credit (pending)

Register online now!
Space is limited and first come/first served. Online registration is available at http://bit.ly/VSBTECHSHOW2018. The $125 registration fee will include Wi-Fi, continental breakfast, lunch, and coffee breaks, as well as CLE credit.
In December of 2008, a young man we’ll call Chris won a personal injury case in Alexandria General District Court and was awarded $11,053. The opposing attorney in the case promptly sent a check for the full amount from the insurance company to Chris’s attorney, John Arthur Sutherland Jr. The check, dated Christmas Eve 2008, was made payable to Chris and Sutherland. Though the case had ended in December 2008, Sutherland told Chris that he’d have to wait until the appeal period ran out before he could receive his money. Chris didn’t know how long that would be, so he waited. That was the last time he ever heard from Sutherland.

Years went by with no communication.

Chris was in college, so his mother and grandmother took up the quest to get in touch with Sutherland. Despite repeated attempts, they couldn’t reach him. It wasn’t until years later that they found out why.

In January 2016, Chris got a job in the Fairfax County Clerk’s office where he processes files. Later that year, Chris went back on the hunt for Sutherland. He contacted the Virginia State Bar to get Sutherland’s phone number, which he called. He reached a different lawyer at that location who followed up on the $11,053 check and who learned that it had been cashed.

Chris, whose name was on the check, had never signed it.

The second lawyer took up Chris’s cause and on October 18, 2016, helped Chris file a petition with the VSB Clients’ Protection Fund (CPF).

In the meantime, Sutherland had also gone missing from a different case. In that one, Sutherland represented a woman in a personal injury case where the insurance carrier had agreed to pay $25,000 in 2007 to settle the claim. Unfortunately, Sutherland took no further action on the case, and the client was unable to find him, despite calls, certified letters, and visits to his office.

The statute of limitations eventually expired and the client was unable to collect the $25,000. She then filed a bar complaint against Sutherland and in July 2009 – a year after Chris won his personal injury case - Sutherland’s license was suspended. On December 9, 2011, after a VSB investigator also tried and failed to find Sutherland, his license was revoked.

In September 2017, the Clients’ Protection Fund Board awarded Chris $7,333.33, two-thirds of the $11,053 check that he had won in his personal injury case, which is approximately what he would have received once he paid a lawyer.

Clients’ Protection Fund member Mary Grace O’Malley served as the investigator on Chris’s petition for reimbursement. “What I learned from this is that in a self-regulated profession, we take our jobs very seriously,” she said.

She pointed out that a lawyer who shared office space with Sutherland helped Chris file his petition to the CPF board, while the lawyer who opposed Sutherland in Chris’s personal injury case did the research that revealed Sutherland had cashed the check intended for Chris. “The fact that Sutherland put a fraudulent check through really drove (the opposing) lawyer crazy,” O’Malley said.

It is the lawyers’ desire to make things right and their willingness to aid in the investigation that most impresses O’Malley. “That’s what I got out of the Sutherland case, and I got that out of several other cases as well.”

Chris’s award was one of 13 made by the board at its September 15, 2017, meeting. The total compensation awarded came to $38,168.33 and involved nine lawyers, two of whom had died and seven whose licenses were suspended or revoked by the VSB Disciplinary Board.

Without the CPF, Chris and the other 12 victims would have simply lost their money. And the entire Bar would have been that much poorer for their loss.

The CPF remains a last resort for clients like Chris who have suffered financial losses because of the actions of lawyers who have been disbarred, or in some cases have died. By preventing offending lawyers like Sutherland from doing any further harm, the disbarment or suspension often takes care of the Bar’s obligation as a self-regulating agency, but the CPF is what completes Virginia lawyers’ efforts to help people harmed by lawyer misconduct.

The money in the CPF comes from an annual assessment that for 10 years has been $25 but will be reduced to $10 next year. This past fiscal year, the Bar paid out approximately $343,000 in claims. Payments average about $300,000 a year.

Virginia lawyers have much to be proud of, and one of the most worthy things they have done has been providing the money for the Clients’ Protection Fund. By rectifying the dishonest actions of a few bad lawyers, the CPF elevates the reputation of the Virginia legal community and speaks to the ongoing efforts of Virginia lawyers to remain at the forefront of ethical practice.
GET CONNECTED

CLSBA Executive Committee Meetings
- Thursday, March 8, 2018 @ 4:30 p.m.
  Embassy Suites Hotel, 2925 Emerywood Pkwy., Richmond
- Thursday, May 16, 2018 @ 11:00 a.m.
  VSB Offices, 1111 E. Main Street, Suite 700, Richmond

Other CLSBA Events
http://www.vsb.org/site/conferences/clba-calendar
- Friday, March 9, 2018
  Bar Leaders Institute
  Lewis Ginter Botanical Garden
- Thursday, May 10, 2018
  Solo & Small-Firm Practitioner Forum
  Hampden-Sydney University, Hampden-Sydney
- Friday, June 15, 2018 @ 7:30 a.m.
  CLBA Annual Meeting and Breakfast
  Sheraton Oceanfront Hotel, Virginia Beach

Other VSB Events of Interest
http://www.vsb.org/site/events
- Monday, April 23, 2018
  VSB TECHSHOW, Greater Richmond Convention Center, Richmond
- Thursday, May 3, 2018
  Indigent Criminal Defense Training
  Richmond (sold out), Wytheville (seats available) and Weyers Cave (sold out)
- Thursday-Sunday, June 14-17, 2018
  Virginia State Bar Annual Meeting
  Virginia Beach

RESOURCE CORNER

Are you looking for a CLE speaker for your bar association’s next meeting? The following organizations offer free CLE programming to all local bars:

- Virginia State Bar
  ◦ Ethics Department—contact Kristy Hall at 804-775-0557 or hall@vsb.org
  ◦ Access to Legal Services—contact Cris Gantz at 804-775-0522 or doss@vsb.org
- Virginia CLE—contact Marcus Gaither at 800-979-8253 or vacle@vacle.org
- Virginia Lawyers Helping Lawyers—contact Jim Leffler at 804-644-5510 or info@valhl.org
- ALPS—contact Amy Esp at aesp@alpsnet.com or 406-728-3113—see ad on next page

For other ideas, please contact Paulette Davidson at davidson@vsb.org or 804-775-0521.

The ABA’s Bar Leader newsletter is free and offers some great information for bar leaders. Check out the January-February 2018 issue at http://bit.ly/2B7pNwD. There’s a great article titled A resolution worth keeping: Growing your membership with young lawyers and law students.

KEEP US IN THE LOOP!

When your bar association holds its elections, please be sure to send that information to Paulette Davidson at davidson@vsb.org. Paulette keeps a database of all Virginia bar associations and provides this information to individuals/organizations such as:

- Courts wanting to get the word out about rule/procedure changes
- Attorneys looking to join a local or specialty bar association
- Members of the public seeking to hire an attorney in a specific locality
- Bar associations looking to connect with other bars for events, etc.
- Members of the General Assembly seeking input from local attorneys
- Groups such as ALPS when they want to offer free CLE and/or funding for such to the members of a local/specialty bar
- Newly licensed attorneys at the VSB Admissions and Orientation Ceremonies in the Spring and Fall

2017-2018

CLSBA EXECUTIVE COMMITTEE

Chair: B. Alan McGraw
Tazewell County Bar Association

Chair-elect: Charles M. Lollar
Norfolk & Portsmouth Bar Association

Imm Past Chair: Barbara S. Anderson
Alexandria Bar Association

Secretary: Sandra T. Chinn-Gilstrap
Danville Bar Association

Treasurer: Lewis A. Martin III
Charlottesville-Albemarle Bar Association

At-Large: Daniel P. Frankl
Roanoke Bar Association

At-Large: John A. Merrick
The Bar Association of the City of Richmond

At-Large: Christine H. Mougin-Boal
The Loudoun County Bar Association

At-Large: Luis A. Perez-Pietri
Fairfax Bar Association

At-Large: Susan N.G. Rager
Northern Neck Bar Association

At-Large: W. Marcus Scriven
South Hampton Roads Bar Association

At-Large: Dillina W. Stickley
Harrisonburg-Rockingham Bar Association

At-Large: Amy P. VanFossen
Middle Peninsula Bar Association

At-Large: Reiss F. Wilks
Virginia Creditors Bar Association
We know that strengthening the legal community starts with you.

That’s why ALPS is bringing risk management education directly to Virginia’s local bars. Take advantage of FREE CLE Speakers for your members.

ALPS and the Virginia State Bar’s Lawyers’ Malpractice Insurance Committee are committed to delivering risk management education and resources aimed at enhancing the practice of law in the Commonwealth. That’s why we offer high-quality speakers on malpractice prevention issues and invite you to request a speaker for an upcoming gathering at no cost to your bar.

Call or email ALPS Risk Management Coordinator, Amy Esp, at (406) 728-3113 or aesp@alpsnet.com. For more information, visit vaportal.alpsnet.com/local.

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