

DOCKET CALL NEWSLETTER

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Young
Lawyers
Conference



Virginia State Bar

One Side Now: Law and Equity United, But Not Exactly Merged


Christopher E. Gatewood

One of the first lessons of any Virginia procedure class in law school has been the distinctions between the law side and the equity side of court. If you want only money damages, file a motion for judgment on

the law side, to be decided by a judge. If you want an injunction or declaratory relief, use a bill of complaint filed on the equity side, to be decided by the same judge, whom we now call a chancellor.

Not for long. As of January 1, the

law and equity sides of court will unite—to some extent. A single form of civil action will be adopted in the Commonwealth, to be filed as a Complaint, with a unified set of procedural rules. No more Section 2 of the rules for the equity side and Section 3 of the rules for the law side. In spite of this change in form, the distinctions will be preserved, depending on what remedies the plaintiff seeks. If a plaintiff seeks an injunction, his right to a jury will remain limited as it is now. The elements and requirements for equitable causes of action and legal causes of action will not change.

The essential purpose of unification is to take away a large and time-honored pitfall for litigants who, after making an initial decision about which side of court to use, later find themselves precluded from certain claims and remedies as a result of that decision. Under the new system, litigants will always be on the right side of court. 


Emergency Legal Services: Responding To Hurricanes Katrina and Rita

Lesley A. Pate

In the wake of natural disasters or other national crises, young lawyers across the Commonwealth answer the call for help by volunteering with Virginia Emergency Legal Services (“VELS”) to provide free legal assistance to those affected by the disaster. The recent hurricanes that devastated the Gulf Coast are no exception.

VELS is a collaborative effort between the Virginia State Bar Young Lawyers Conference and the Virginia Bar Association Young Lawyers Division. In the past several months, VELS has conducted several CLEs to train new volunteers, one of which included over one hundred participants, to assist in the recovery efforts associated with Hurricanes Katrina and Rita. Up to 10,000 individuals affected by Hurricanes Katrina and Rita have registered through the Federal Emergency Management Agency

with Virginia addresses. These individuals are being mailed notification of VELS's services. When an individual calls VELS to request assistance, a volunteer will be assigned to provide the necessary assistance. VELS anticipates that the individuals affected by Hurricanes Katrina and Rita will need legal assistance with insurance, housing, consumer issues, lost documents, and probate.

If you are interested in volunteering with Virginia Emergency Legal Services, please contact Jeff Geiger at (804) 783-7284 or jgeiger@sandsanderson.com. 

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Chris Gatewood is a litigation associate at Hirschler Fleischer P.C. in Richmond. You can reach him at cgatewood@hf-law.com.

Legal Ethics Corner

Jeffrey Hamilton Geiger

Once again, I am defending my client against a federal complaint filed by Casper, the *pro se* serial filer. The problem this time is that his briefs read like a law review article (for good or bad) and his pleadings are articulate and, darn it, well reasoned. The bottom line: Casper has gotten the assistance of a friendly ghost-writer. So what's the problem you say? Well, for one thing, the court continues to afford Casper the benefit of the doubt because "after all, he is not represented by counsel."

Well, I can see why the specter of ghost-writing is dispiriting! Even as discussion continues over proposed rule changes concerning the "unbundling"



of legal services, an attorney's undisclosed preparation of pleadings on behalf of *pro se* parties is troubling. As one court noted, the practice of ghost-writing (1) exploits the deference afforded *pro se* parties, (2) nullifies the certification requirements required when signing and filing pleadings, and (3) circumvents the requirements for appearing and withdrawing as counsel. *Laremont-Lopez v. Southeastern Tidewater Opportunity Ctr.*, 968 F. Supp. 1075, 1077-78 (E.D. Va. 1997).

The ethical issues concern fairness to opposing counsel, candor to the courts and misrepresentation. See Virginia Rules of Professional Conduct 3.4(d), 8.4(c). For example, where a court's rules require that drafters of pleadings disclose their identity, the preparation of a ghost pleading may well violate that stricture. Legal Ethics Opinion 1592. However, preparing a pleading should not be confused with providing a form, so long as no assistance is given in completing the form. Legal Ethics Opinion 1761.

Understandably, many *pro se* parties wish to represent themselves because of cost, preference or otherwise, but may still want to obtain the assistance of an attorney with respect to certain issues. Proposed changes to the rules would accommodate that desire and permit a lawyer to provide discrete tasks to an unrepresented party, such as preparing a brief, but require that disclosure of that assistance be made. As the court found in *Laremont-Lopez*, "the practice of ghost-writing legal documents to be filed with the Court by litigants designated as proceeding *pro se* is inconsistent with the procedural, ethical and substantive rules of this Court." 968 F. Supp. at 1080. 🏛️

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Message from the President

Jimmy F. Robinson Jr.



We All Can Make a Difference

In the wake of the devastation caused by hurricane Katrina, we have seen the decency of a loving and giving people who have made the grief of strangers their own. When catastrophic circumstances beyond our control occur in life, it's easy to feel hopeless and like giving up. Yet, as young lawyers—leaders in our families, communities, Virginia and across the world—we must broadcast the message that the promise of the future is limitless. Realizing this promise, however, cannot be accomplished if we allow the bustle of our prosperity and past successes to silence us into complacency. As Young Lawyers, Virginians and Americans, our future progress depends on our efforts today.

Today, the Young Lawyers' presence in our profession and in communities across Virginia is strong. Through our hard work, we are able to provide programs that bring hope, peace, civility, democracy and humanity to life. Perhaps most important, as Young Lawyers, we are doing our part to assist in efforts of promoting fundamental values. Through our labors, first responders across Virginia are receiving simple wills, advanced medical directives and powers of attorney at no cost to them; women and men who find themselves in violent domestic situations have access to resources, information, and attorneys who will assist them in starting a new life; our senior citizens have

information that will assist them in planning for their future; voters across Virginia have brochures providing an overview of their rights and responsibilities, ensuring that the coveted right to vote is always protected; victims of natural disasters, not only in Virginia but across America, benefit from lawyers trained by the Young Lawyers Conference to mobilize and provide much needed legal and emotional support. These are only a sampling of the services of the YLC.

As the 2005–2006 Young Lawyers Conference President, I am honored to have the opportunity to lead an organization committed not only to serving the bar but helping our communities look forward to the promise of the future. I am so proud to see the tireless efforts and personal sacrifice of the young lawyers across Virginia who through their volunteer hours and personal contributions today, are ensuring that the promise of the future is in fact limitless.

I encourage those involved to continue the good work and if you can, to do more. I invite those of you who have not yet volunteered with us to share the wonderful rewards that service brings. Our programs are outlined in this issue of the *Docket Call* and on the YLC's Web page at www.vayounglawyers.com. 🏛️

Docket Call

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Conference of the Virginia State Bar.

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Don't Forget to Crave Oyer

Michael R. Spitzer II

One of the lesser-used but very effective motions in civil practice is the Motion Craving Oyer. This motion dates back to the common law where a deed or instrument that was sued upon was literally read aloud in Court. Today, a Motion Craving Oyer is used to force plaintiffs to attach documents to pleadings that were not initially filed. By forcing the plaintiff to add documents to the pleading, the Court can use these documents in ruling on a demurrer.

A classic illustration where a Motion Craving Oyer should be used is when a plaintiff asserts a breach of contract claim but does not attach the contract to the Motion for Judgment. The written contract might contain provisions that are a complete defense as a matter of law to a breach of contract claim. However, on demurrer, a Court may only look at the Plaintiff's pleading and any exhibits to determine if the plaintiff has stated a cause of action.

A successful Motion Craving Oyer forces the plaintiff to produce the written contract and add it to the pleading. With the contract added to the pleading, the Court can properly consider it in ruling on a demurrer. Where the contract contains a

complete defense to a breach of contract claim, the defendant can have the breach of contract claim dismissed on demurrer for failure to state a claim.

A Motion Craving Oyer can be used to force the plaintiff to attach any document that forms the basis of a claim to a pleading. Another example is where contracts, advertisements, brochures, or other literature can be added to the pleadings on a fraud claim. Of course, a defendant cannot demand that the plaintiff attach all documents retrieved from discovery to a pleading. But a defendant can, and should, demand that all operative documents providing the basis for a claim be added to the pleading.

Motions Craving Oyer are not used often, but when used effectively to support a demurrer, they can save your client a tremendous amount of time and money. 🏛️

Mike Spitzer is a litigation associate at Hirschler Fleischer, PC, in Richmond. He can be reached at mspitzer@hf-law.com.

Discontented Shareholders Beware—That Dissolution Action Can Backfire

A new provision in the Virginia corporate code, effective since July 1, can cause a shareholder's suit for dissolution of a non-public Virginia corporation to backfire. The new provision can force the shareholder to sell its interest to the corporation or to other shareholders at whatever price an appraiser determines. This new provision can create a trap for the unwary shareholder, but corporations can opt out of this forced sale provision in their articles of incorporation.

If a shareholder in a non-public Virginia corporation brings suit to dissolve it under Va. Code Sec. 13.1-747, whether because of (i) deadlock, (ii) waste/misapplication of corporate assets or (iii) director conduct that is illegal, oppressive or fraudulent, the corporation now has a right, essentially irrevocable under 13.1-749.1, to buy the petitioning shareholder's shares. If the corporation does not, the other shareholders can exercise this option to purchase. This can come as a surprise to a petitioning

shareholder, who may or may not have viewed cashing in her shares as the goal of her dissolution suit.

The statute allows the corporation or shareholders to elect to purchase the shares of the petitioning shareholder, and this election gives the corporation or other shareholder(s) the right to purchase them at "fair market value". The statute provides a timeframe for exercising the option to buy out the petitioning shareholder, and also contemplates judicial appointment of an appraiser to determine the fair market value of the shares.

The only apparent escape from the statutory forced sale mechanism is a judge's finding that it would be inequitable. Because this judicial escape route is far from certain in any given case, opting out of the forced sale mechanism by provision in the articles of incorporation appears to be the only predictable way to avoid it. 🏛️

2005–2006 Circuit Representatives

In 1983, the Young Lawyers Conference established a statewide network of circuit representatives appointed from each of the state's 31 judicial circuits. This network is designed to meet three objectives: (1) to provide a liaison between practicing young lawyers on the local level and the Young Lawyers Conference board of governors, (2) to promote statewide communication and participation among young lawyers in the projects and activities of the conference, and (3) to increase the quantity and quality of public service legal programming throughout the state.

The primary responsibility of each circuit representative is to organize and carry out an annual project for young lawyers in his or her judicial circuit. These projects have ranged from CLE programs to community service projects to Young Lawyers Conference membership projects. Often, two or three circuits combine their efforts to attract a broader audience for the programs. In recent years, circuit representatives have also served as local liaisons for the VSB/VBA Emergency Legal Services Response Plan, helping coordinate the delivery of emergency legal services when the plan is activated in their locality.

If you are interested in becoming a circuit representative or assisting with any of the projects of the YLC, please contact any Young Lawyers Conference board member or your circuit representative.

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1	1, 3, 5, 7, 8	6	9, 15
2	2, 4	7	16, 20, 26
3	6, 11, 12, 13, 14	8	23, 25
4	17, 18	9	10, 21, 22, 24
5	19, 31	10	27, 28, 29, 30



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2005–2006
Guide to Involvement

SERVICE TO THE BAR

ADMISSION AND ORIENTATION CEREMONY

This committee is responsible for organizing and staging a special ceremony sponsored twice a year by the Conference at which time all newly licensed attorneys are given the opportunity to appear before the Supreme Court of Virginia to be admitted to practice in the courts of Virginia. Because the Court sits in Richmond, this committee typically is comprised principally of young lawyers practicing in the metropolitan Richmond area.

Contact: Christy E. Kiely, Co-Chair
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Joseph S. Hall, Co-Chair
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ANNUAL MEETING ATHLETICS

This committee is responsible for organizing the “Run in the Sun” 5 kilometer foot race and the “Beach Volley Follies” volleyball tournament, all sponsored by the Conference during the Bar’s Annual Meeting in June.

Contact: Maureen Danker, Chair
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ANNUAL MEETING PROGRAMS

This committee plans the CLE program that takes place during the VSB Annual Meeting held in Virginia Beach each June. The program typically occurs on Friday morning and is a CLE of particular interest to Young Lawyers. It is also responsible for lining up a band for the dance sponsored by the conference during the meeting, and for handling details of any other scheduled social events.

FIRST DAY IN PRACTICE SEMINAR

In conjunction with the General Practice Section, this committee plans and implements the First Day in Practice Seminar for new lawyers, which is traditionally held the day after the Fall Admission and Orientation Ceremony.

Contact: Vanessa Jones, Chair
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PROFESSIONAL DEVELOPMENT CONFERENCE

The 2006 YLC Professional Development Conference will be held on March 17 and 18 at U.Va.’s Darden School in Charlottesville. The career development program this year is “DIY—Your Career-Building Toolkit.” The committee is looking for volunteers to assist with the event and encourages all Virginia young lawyers to attend for the education, networking, and CLE credits provided at the PDC.

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WE THE JURY—A VIEW FROM THE BOX

Building on the success of last year’s first We The Jury—A View From the Box program, this year we plan to roll the program out to various venues across Virginia. Through this program, the YLC exposes young lawyers to the attitudes, opinions and impressions held by actual jurors who served on jury cases in Virginia. The program explores the the overall trust in the court system and case-related variables, views of expert testimony in cases, and the jurors’ general perceptions of the trial process. Demographic variables like race, age, religion and social economic status will be explored.

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BENCH/BAR CELEBRATION DINNER

This event, to be held this year on March 17 in conjunction with the annual Professional Development Conference, provides an informal, relaxed event at which young lawyers, and especially young women and minority lawyers, are given the rare opportunity to “mix and mingle” with prominent members of the legal community. The Dinner is also an opportunity to meet with and recognize the recently appointed female and minority members of the Virginia judiciary.

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BOARD MATCH

Provides an opportunity for local non-profit organizations to solicit new board members and participation by young lawyers in their area.

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NEWSLETTER/DOCKET CALL

The editor and editorial board of the Docket Call publish four issues of the Conference’s newsletter each year. This award-winning newsletter contains information about the Conference’s activities and other information of particular interest to young lawyers, is circulated to every member of the Conference.

Contact: Christopher E. Gatewood, Chair
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SERVICE TO PUBLIC

COMMUNITY LAW WEEK

Promotes the ABA’s Law Day theme each year through programs during the first week in May devoted to enhancing awareness and appreciation of the role of law in American life. The committee works in part through through local bar associations, on a statewide basis. Included among the activities are presentations in the media, and public programs, through schools and other forums.

Contact: **Usha Koduru, Chair**
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DOMESTIC VIOLENCE SAFETY PROJECT

The DVSP distributes a Safety Brochure and a Legal Pamphlet to domestic violence victims statewide and trains attorneys to provide pro bono representation to domestic violence victims.

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EMERGENCY LEGAL SERVICES

Together with the VBA-YLD, this committee has developed and implemented a statewide Emergency Legal Services Response Plan, which includes training volunteers and working with other bar organizations to establish communication plans and provide emergency legal services in the event of natural disasters and other declared emergencies.

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IMMIGRANT OUTREACH

This committee designs projects, including the Immigrant Outreach-Education Regarding Deportation Ramifications of Criminal Convictions program to (1) educate members of the bar regarding immigration law issues and (2) reach out to Vrginia’s immigrant population.

Contact: **Sarah Louppe Petcher, Chair**
(703) 277-9799
sarahlouppe@yahoo.com

JUVENILE JUSTICE/ YOUTH RIGHTS HANDBOOK

This year, the YLC will assist the Just Children’s Program of the Legal Aid Justice Center in Charlottesville, Virginia with the completion of its handbook on Youth Rights. The handbook, spearheaded by Andy Block, will try to identify and explain the rights of juvenile in three important arenas: 1) Schools; 2) Police Custody, and 3) Courts.

Contact: **Lesley A. Pate, Chair**
(202) 344-8033
lapate@venable.com

MINORITY PRE-LAW PROJECT

This committee presents a one-day seminar that exposes college students, especially minority students, to many aspects of a legal career. From LSAT prep courses, mock law school classes, and a mock trial, to panel discussions with the bench, bar, and law students, this course provides valuable information to Virginia students considering a career in the law.

Contact: **Samantha Ahuja, Co-Chair**
(202) 857-4528

Tomika N. Stevens, Co-Chair
tnstevens@juno.com

NO BILLS NIGHT

Annual No Bills Nights enable members of the public, throughout Vrginia, to raise legal issues and to seek information regarding their legal rights, without cost. This year the YLC plans to put on programs in Abingdon, Charlottesville, Danville/Martinsville, Lynchburg, Fredericksburg, Northern Virginia, Staunton/Lexington, Richmond, Roanoke, Tidewater and Winchester/Harrisonburg. Several programs are broadcast on local television stations.

Contact: **Darren W. Bentley, Statewide Chair**
(434) 793-8200
bentleyd@clementwheatley.com

Regional Chairs:

(1) Abingdon

Cameron Bell
(276) 623-4407
cbell@pennstuart.com

(2) Charlottesville

M. Bryan Slaughter
(804) 977-3390
mslaughter@mhlrt.com

(3) Danville

Darren W. Bentley
(434) 793-8200
bentleyd@clementwheatley.com

(4) Fredericksburg
[Vacant]

(5) Lexington/Staunton
[Vacant]

(6) Lynchburg
[Vacant]

(7) Martinsville
[Vacant]

(8) Northern VA
Richard D. Holzheimer
(703) 641-4205
rholzheimer@reedsmith.com

(9) Richmond
Mary E. (Betsy) Davis
(804) 788-0624
mdavis@spottsfain.com

(10) Roanoke
Victor S. “Dinny” Skaff III
(540) 983-9464
victor–skaff@gentrylocke.com

(11) Tidewater
Julia E. Keller
(757) 640-9396
Jkeller@glasserlaw.com

(12) Winchester
[Vacant]

OLIVER HILL/SAMUEL TUCKER PRE-LAW INSTITUTE

The Virginia State Bar Young Lawyers Conference in conjunction with the Millennium Diversity Initiative and the University of Richmond T.C. Williams School of Law has designed a program, the Oliver Hill/Samuel Tucker Law Institute, to facilitate diversity in the legal profession. The program permits at-risk, minority students to attend a week long comprehensive seminar that exposes and encourages them to become members of the legal profession.

Contact: **Jacqueline S. McClenney, Chair**
(804) 916 -7135
jacqueline.mcclenney@leclairryan.com

PEER MEDIATION

Young lawyers inform Middle and High School students of the importance of managing conflict. The committee assists school staffs with providing a forum with set standards and guidelines for conflict resolution. Student mediators receive certificates of appreciation from the YLC at the end of the school year for their dedication and commitment to improving the social climate in their schools.

Contact: **Sona Rewari, Chair**
(703) 714-7512
srewari@hunton.com

PLANNING FOR THE FUTURE HANDBOOK:

The YLC will partner with a group with which we have had success in years past, the Senior Lawyers Conference. We will cooperate to inform the citizens of Virginia on how and where to seek answers and assistance, through a handbook for those interested in Probate and estate Administration, specifically, Wills, Advance Directives and Powers of Attorney.

Contact: **Amy VanFossen, Chair**
(804) 694-0560
avanfossen@thomaslhunter.com

PLANNING YOUR CAREER IN THE LAW PILOT PROGRAM

This year we plan to begin a new YLC program by partnering with one of Virginia’s law schools to roll out a Town-Hall-meeting type program, designed to expose second year law students to various careers that are available to them after graduating from law school.

STUDENTS DAY AT THE CAPITOL

This committee organizes efforts to teach children about the judiciary, including coordinating a visit to the capitol in Richmond.

Contact: **Christy E. Kiely, Chair**
(804) 788-7365
ckiely@hunton.com

VOTER EDUCATION

The Young Lawyers Conference has teamed with the Virginia State Board of Elections to ensure the distribution of Virginia Voter Rights and Responsibility brochures. These brochures are provided to the public to clearly outline their voter rights, as well as their responsibilities in protecting those rights.

Contact: **Jacqueline S. McClenney, Chair**
(804) 344-6328
jmcclenney-neal@morrismorris.com

WILLS FOR HEROES

In response to the events of September 11, 2001, this program allows the legal community to show its appreciation for the efforts and sacrifices made by firefighters, police, sheriffs and emergency medical technicians (“First Responders”). This committee provides simple wills, advanced medical directives, and powers of attorneys to first responders on a pro bono basis.

Contact: **Erin S. Whaley, Chair**
(804) 697-1389
Fax: (202) 508-9700

COMMISSIONS

CHILDREN AND THE LAW

This committee was formed to assess current programs designed to meet the legal needs of children. It is also charged with developing new projects to address the unmet legal needs of children.

Contact: **Amy VanFossen, Chair**
(804) 694-0560
avanfossen@thomaslhunter.com

PRO BONO

This commission was formed to assess current pro bono programs and to develop programs designed to improve the quantity and quality of pro bono activities of young lawyers.

Contact: **Carson Sullivan, Chair**
(202) 508-9500
carsonsullivan@paulhastings.com

WOMEN & MINORITIES IN THE PROFESSION

This commission was formed to assess current programs and to develop new programs to address the particular issues facing women and minority young lawyers.

Contact: **Jacqueline S. McClenney, Chair**
(804) 344-6328
jmcclenney-neal@morrismorris.com

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www.vsb.org/vlrs.html



Mandatory Continuing Legal Education
MCLE REPORTING DEADLINE:
December 15, 2005

MCLE REPORTING DEADLINE: December 15 , 2005—Failure to certify the required 12 CLE hours including 2 hours in ethics/professionalism by December 15, 2005 will result in a \$50 late filing fee. (Part 6, Section IV, paragraph 19, Rules of the Virginia Supreme Court)

Check your MCLE Record on-line at www.vsb.org/mcle/mcle_record.html

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Address Change?

If you have moved or changed your address, please see the VSB Membership Department's page on the Web for an **address update form** at www.vsb.org/membership/.

SAVE THE DATE

PROFESSIONAL DEVELOPMENT CONFERENCE

MARCH 17 AND 18, 2006

THE DARDEN SCHOOL AT THE UNIVERSITY OF VIRGINIA.

**Topic: "DIY—Your
Career-Building Toolkit."**

Come to the PDC for networking with Virginia's young lawyers, low-cost CLE, and expert speakers on topics relevant to young lawyers.

The PDC Committee is also looking for volunteers to assist with the event. To register or to help with the PDC, contact co-chairs Audra Hale-Maddox, at ahale-maddox@wcsr.com, or Bill Porter, at wporter@blankeith.com

MINORITY PRE-LAW CONFERENCE

FEBRUARY 25TH, 2006

GEORGE MASON UNIVERSITY SCHOOL OF LAW, ARLINGTON

This event targets college students or recent graduates considering a career in the law, with informative presentations, question and answer sessions, and advice and guidance on the application process. For information on how you can participate with this event, please send an email to prelaw@wcsr.com.

DOCKET CALL

Virginia State Bar Young Lawyers Conference
707 East Main Street, Suite 1500
Richmond, VA 23219-2800

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