

The newsletter of the Young Lawyers Conference of the Virginia State Bar

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## Off the Beaten Path

### Putting the Bite in Virginia's Animal Welfare Laws

Gillian Deegan

Sitting in the emergency room of a local hospital on a recent Saturday night watching the hours slowly tick away, I had the opportunity to evaluate in depth my career path and my present position as an Assistant Commonwealth's Attorney in Botetourt County. I was sitting in a room with eight local animal care professionals after having been bitten by a rabid dog during a multi-jurisdictional "seizure" effort. We were waiting for human rabies vaccine to be delivered from other hospitals across the state. After a six-hour wait, the vaccine began to arrive, and we all prepared for our first five shots. As the last needle made its way into my thigh, I couldn't help but wonder, "Is this really why I went to law school?" I smiled to myself as the answer came back: an unequivocal yes.

As an ACA, I prosecute a wide range of criminal offenses, including animal cruelty. When I began my career as a prosecutor four years ago, the local paper interviewed me and asked me what type of cases particularly disturbed me. When I answered "animal cruelty," I had no idea that my career was about to take an unusual turn. Within days, the Botetourt Animal Control officers had found their way to my office, and we were soon on our way to helping the animals of Botetourt find justice.

Prosecuting animal cruelty cases presents many challenges. For a prosecutor, these cases begin in the field and often require a site visit to determine what needs to happen first. If conditions warrant it, the animal or animals may need to be removed from the alleged offender. Virginia law sets forth a very lengthy protocol governing the removal of animals from their owners, and it must be followed closely. Once an animal is removed, there must be a hearing within ten days to determine the final "disposition" of the animal. During this ten-day

period, the jurisdiction that seized the animal must provide for it, which, depending on the size of the seizure, can create numerous problems. A single dog or cat isn't much of an issue, but having to find temporary homes for 35 horses or 42 rabbits on short notice can cause something close to mass hysteria among the humans involved.

In order to lawfully seize an animal, you must be able to prove that there is an immediate threat to its life, safety, or health. Given that standard, virtually every animal seized is going to need veterinary care, as well as ongoing treatment and support. In a recent seizure of 14 coonhounds, we had to find a veterinarian willing to open her office at four o'clock on a Sunday afternoon—on a holiday weekend. Veterinary care can be very expensive, so we have formed a close alliance with a local veterinarian who is willing to take these cruelty cases at a reduced rate. We have also sought grants from large national animal welfare groups, and we have solicited donations locally to put toward the costs associated with the successful prosecution of animal abusers.

As I have pursued these cases, I have attended conferences to learn more about the emerging field of veterinary forensics. When the offense results in the death of an animal, I always accompany the body to the veterinary school at Virginia Tech so that I can view the necropsy (the animal version of an autopsy) and speak directly with the pathologist while the exam is going on. Many cases of animal cruelty are now classed as felonies and therefore require more thorough investigations to substantiate the charges. Because of this, I prefer to have a board-certified pathologist perform the necropsy and testify as to the ultimate cause of death. In a recent case, we knew a dachshund puppy had been killed by a young man who claimed that the dog had

# Southern Virginia Minority Pre-Law Conference Sets New Record for Number of Undergraduate Attendees

Lindsey A. Waters

The Minority Pre-Law Conference is designed to encourage minority undergraduate students to consider the legal profession as a career. For years, the Young Lawyers Conference has conducted Minority Pre-Law Conferences in Northern and Southern Virginia, and in an effort to reach out to more undergraduate students, it recently decided to add a conference in the Tidewater area. The YLC held its staple Southern Virginia Minority Pre-Law Conference on Saturday, September 20, 2008, at Washington and Lee University School of Law in Lexington.

Nearly 70 undergraduate students, from various undergraduate schools located primarily in Southwest Virginia, attended the Southern Virginia conference. The program exposed attendees to all phases of the legal profession, from the law school admissions process through the selection of career opportunities. The conference included a panel of law school deans and directors of admissions who provided an inside perspective on the law school admissions process. Additionally, a panel of law school students provided their perspectives on the law school experience.

esteemed members of the Bar, including Judge Diane M. Strickland of the McCammon Group, Tim Allen of the Franklin County Commonwealth's Attorney's office, Professor Kelley Bartges of the University of Richmond School of Law, Lauren E. Davis of Gentry Locke Rakes & Moore, Lalita D. Brim of the Roanoke City Commonwealth's Attorney's office, and Malik Shareef, a sole practitioner in Roanoke, shared their experiences and gave advice to students interested in pursuing a career in the law.

Karen Gould, executive director of the VSB, and Manuel Capsalis, president of the VSB, spoke about their dedication to diversity in the legal profession. Sherry Loring, coordinator of financial aid at Liberty University School of Law, presented an informative workshop on financial aid. W&L professor Sean Seymore held the attention of the students with a torts class that discussed an assault case. Howard Bourne of Kaplan provided an overview of preparation for the LSAT. Kaplan also held a drawing and gave away a free LSAT preparation course to one lucky attendee. At the end of the day, the students were given an opportunity to tour W&L's law school campus.

The Northern Virginia Conference will be held February 20–21, 2009, and the Tidewater Conference will be held April 4, 2009. Sponsors for the Southern Virginia Conference included Washington and Lee School of Law, Gentry Locke Rakes & Moore, LLP, and Woods Rogers, PC. Macel H. Janoschka and Lindsey A. Waters of Gentry Locke served as the conference co-chairs, and members of the committee included Lalita Brim, Lauren Davis, Erin Hapgood, Patice Holland, and Rachael Sanford.



▲ Committee members Macel Janoschka, Rachael Sanford, Erin Hapgood, Lalita Brim, Patice Holland, Lindsey Waters, and Lauren Davis with VSB President Manuel Capsalis and keynote speaker Jennifer McClellan (center and center right, respectively).  
◀ Bianca Mack, Patice Holland, and Rachael Sanford at the SoVa Pre-Law Conference.

We were excited to have Jennifer McClellan, the president of the YLC and a member of the House of Delegates, as the keynote speaker for the conference. She gave a motivational speech about her journey through her legal and political career. Other

**Lindsey Waters** is an associate in the business law and banking & finance sections at Gentry Locke Rakes & Moore, LLP, in Roanoke. You can reach her at [lindsey\\_waters@gentrylocke.com](mailto:lindsey_waters@gentrylocke.com).

# message from the president

## Jennifer McClellan



In 2006, Governor Kaine established the Commission on Sexual Violence to identify and promote appropriate and uniform criminal justice responses to sexual violence, comprehensive services to victims, and effective prevention initiatives. I was proud to serve on that commission, along with 37 state agency representatives, legislators, victim's advocates, judges, law enforcement personnel, health professionals, and survivors of sexual violence.

Our first meeting was a sobering experience. We learned that someone in the United States is sexually assaulted every two and a half minutes, and 1,190,354 Virginians have been sexually assaulted at least once in their lifetime. In Virginia, one in four females and one in eight males have been sexually assaulted. Young children are at the highest risk of sexual assault, with 46 percent of female victims and 44 percent of male victims reporting having been assaulted before the age of 14. Most were assaulted by someone they knew, and most have a high likelihood of being sexually assaulted as an adult. The physical and mental health effects remain with the victims for years. Sexual violence costs the Commonwealth approximately \$232 million annually. The cost to the victims is incalculable.

Often the victim suffers in silence. Fewer than half of all sexual assaults nationally, and fewer than 12 percent in Virginia, are reported. Sometimes, when victims do come forward, they are re-victimized by the very criminal justice and health care systems designed to protect and treat them.

The Commission developed a series of recommendations, including four legislative proposals that have since passed the General Assembly. While that's a good start, it isn't going to end the problem of sexual violence. Nor will it eradicate or remedy related and still larger issues, like domestic violence. Domestic violence, which the Virginia Sexual & Domestic Violence Action Alliance defines as "a pattern of

abusive behaviors used by one individual intended to exert power and control over another individual in the context of an intimate or family relationship," touches an astounding number of Virginians annually. Particularly startling is the growing trend of teen dating violence, which too often is the beginning of a vicious and lifelong cycle for its victims and perpetrators.

*Someone in the United States is sexually assaulted every two and a half minutes, and 1,190,354 Virginians have been sexually assaulted at least once in their lifetime.*

The Virginia State Bar Young Lawyers Conference has a long history of fighting domestic violence in the Commonwealth. Through our Domestic Violence Safety Project, the YLC has distributed a Domestic Violence Safety Brochure and a pamphlet on related legal issues to victims of domestic violence statewide. We have also trained hundreds of attorneys to provide pro bono representation to victims, with a particular emphasis on obtaining protective orders.

But we can and must do more.

This year, the ABA Young Lawyers Division (YLD) has adopted as its public service project "Voices against Violence." It is a call to action for young lawyers across the country to join forces to end domestic violence. The program's goal is to educate young lawyers about the epidemic of domestic violence—particularly among the teen population—and to engage them in efforts to respond to and prevent domestic violence in their communities. The ABA's project includes a soon-to-be launched video, toolkit, and Web site focusing on the prevalence of teen dating violence, how it affects younger victims, and the importance of attorney involvement. The video also explains how young lawyers can get involved, regardless of their practice area or expertise.

For more information on the ABA/YLD's program, visit <http://www.abanet.org/yld/dv/>.

For information on how to volunteer with the VSB/YLC Domestic Violence Safety Project, contact Tim Mayfield, the program's chair, at [tmayfield@nadamslaw.com](mailto:tmayfield@nadamslaw.com), or YLC board member Kenneth Alger, at (540) 459-6129 or [kenalger@shentel.net](mailto:kenalger@shentel.net).

For more information on how to get involved in your community, visit the Virginia Sexual and Domestic Violence Action Alliance Web page at <http://www.vsdvalliance.org/>.

In the time it took you to read this article, someone in this country—probably a child—was sexually assaulted. Let's do everything we can to change that heartbreaking reality, one victim at a time.

**Jennifer McClellan** is Assistant General Counsel, Mid-Atlantic South for Verizon Communications in Richmond, Virginia. She is also a member of the Virginia House of Delegates, representing the 71st District.



# legal ethics corner

Jeffrey Hamilton Geiger

## You Make the Call



Who said “absolute power corrupts absolutely”? Ever since I was elected to city council, my law practice has thrived. Frankly, you can’t beat my front row seat. Not only am I aware of the substance of the laws that are passed, but I can also explain to my clients why particular ordinances were enacted.

Understandably, John R. Eckless, a client who lives just outside the city limits, wants to contest his speeding ticket, which was issued under a new local traffic law passed to complement state driving restrictions. Even though I was for the ordinance before I was against it, I see a great constitutional argument. Can you say “driving without representation”?



With luck, you have not run that red light just yet. In Legal Ethics Opinion 1841, the Standing Committee on Legal Ethics reviewed a similar situation, noting that the conflicts analysis concerned: (1) the client’s interest, (2) the council’s interest, and (3) the lawyer’s personal interest.

Clearly, concerns about misuse of power arise when a lawyer exploits her public office for the benefit of a private client. To that end, Rule 1.11(b) prohibits a lawyer from representing a private client with respect to an issue in which the lawyer has participated “personally and substantially”—unless the client and the public agency have consented after consultation. While

a lawyer–council member is not prohibited from representing a private client, a conflict of interest exists where “there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.” Va. R. of Prof. Conduct 1.7(a).

While the lawyer may be able to provide competent and diligent representation, she may be materially limited in providing representation to the criminal client if she (wearing her council member hat) previously went on the record as supporting (or at least not opposing) the very city ordinance that she now seeks to overturn on constitutional grounds. Beyond the appearance of impropriety, the lawyer would face questions of credibility, likely weakening her effectiveness as an advocate for her client and realizing the concerns of the drafters of Rule 1.7(b). Accordingly, and under such circumstances, the lawyer should reconsider her representation of her client.

**Jeff Geiger** is a principal in the Richmond office of Sands Anderson Marks & Miller, P.C. You can reach him at [jgeiger@sandsanderson.com](mailto:jgeiger@sandsanderson.com).

### Virginia’s Animal Welfare Laws, continued from front cover

attacked him. The pathologist was able to determine that the puppy had been beaten and ultimately strangled, with manual strangulation being the cause of death. The defendant, aware of the strength of our case and the pathologist’s credentials, pled guilty to felony animal cruelty.

Although pursuing animal cruelty cases can be very time consuming and expensive, it is also uniquely challenging. Because there is very little case law available in Virginia on animal matters, I find myself arguing novel issues on a regular basis. Fortunately, I have also found a large network of resources. Many of the national animal welfare groups, such as the American Society for the Prevention of Cruelty to Animals, the Humane Society of the United States, and the Animal Legal Defense Fund, have attorneys on staff to assist with research, and they can—and often do—brief issues within forty-eight hours, saving me a tremendous amount of time and effort. Many attorneys in the private sector have also made themselves available to assist with research, on a pro bono basis. I have even elicited the assistance of law students from Washington & Lee and the

University of Virginia who are interested in pursuing legal careers in the field of animal law.

One important lesson that I have learned from animal cruelty cases is that they are often just the tip of the iceberg when it comes to criminal activity. Research has shown that there is a very strong link between cruelty to animals and violence against humans. As a result, cases of animal cruelty often prompt social services to investigate the treatment of humans in the household. Nor are related crimes always violent; once, while investigating a case involving the mistreatment of more than 50 dogs, we uncovered a multimillion-dollar embezzlement scheme. The perpetrator worked as a financial advisor and was stealing client funds to buy dogs from breeders all over the country. She was convicted of felony animal cruelty and several counts of embezzlement and is now serving an eight-year sentence in federal prison for her financial crimes.

Partly as a result of the recent high profile animal cruelty cases involving Michael Vick in Surry County and Junior Horton in Carroll County, Virginia has new, tougher laws

governing the treatment of animals. All forms of animal fighting are now illegal and punishable as felonies. Puppy mills are now regulated, and there are strict penalties for failing to provide basic, minimum standards of care. Generally speaking, Virginia has strong animal welfare laws, which—if enforced—provide significant protection for animals in the Commonwealth. As Gandhi noted, famously, “The greatness of a nation and its moral progress can be judged by how its animals are treated.” Through its recent expansion of the protections afforded our four-footed friends, Virginia has shown an impressive commitment to keeping pace with societal views and concerns.

**Jill Deegan** is an Assistant Commonwealth’s Attorney in Botetourt County. You can reach her at [G512D@aol.com](mailto:G512D@aol.com).

# 2008–09 YLC Quick Guide to Involvement

## Board of Governors

Full list and contact information available online at <http://www.vsb.org/site/conferences/ylc/view/board-of-governors/>

Jennifer L. McClellan, President

Lesley A. Pate, President-Elect

Carson H. Sullivan, Secretary

Robert J. Denning, 1st District Representative

Stephen P. Pfeiffer, 2nd District Representative

Erin S. Whaley, 3rd District Representative

Gina L. Marine, 4th District Representative

Audra Hale-Maddox, 5th District Representative

Rasheeda N. Creighton, 6th District Representative

Kenneth L. Alger, 7th District Representative

J. Barrett Lucy, 8th District Representative

Brian R. Charville, 9th District Representative

Gerald E. Mabe II, 10th District Representative

Maureen E. Danker, At-Large Representative

Christy E. Kiely, At-Large Representative

Trevor A. Moe, At-Large Representative

Richelle D. Moore, At-Large Representative

Sarah Louppe Petcher, At-Large Representative

Daniel L. Gray, Immediate Past President

## Circuit Representatives

Full list and contact information available online at <http://www.vsb.org/site/conferences/ylc/view/circuit-representatives/>

FIRST CIRCUIT: Vacant

SECOND CIRCUIT: R. Justin Fulton,  
Mark C. Hardman

THIRD CIRCUIT: Davina A. De Braux

FOURTH CIRCUIT: Sally-Ann Kass

FIFTH CIRCUIT: Megan Bradshaw

SIXTH CIRCUIT: William S. Newsome

SEVENTH CIRCUIT: Matthew D. Meadows

EIGHTH CIRCUIT: Vacant

NINTH CIRCUIT: Michael Hyman

TENTH CIRCUIT: Vacant

ELEVENTH CIRCUIT: Lara K. Jacobs

TWELFTH CIRCUIT: Joel W. Morgan

THIRTEENTH CIRCUIT: Kristin P. Walinski

FOURTEENTH CIRCUIT: Danielle D. Giroux,  
Rhodes B. Ritenour

FIFTEENTH CIRCUIT: Vacant

SIXTEENTH CIRCUIT: Dale B. Durrer

SEVENTEENTH CIRCUIT: Julie Flamant Hamilton

EIGHTEENTH CIRCUIT: Esther Slater McDonald

NINETEENTH CIRCUIT: Kimberly Waletich,  
Nathan J. Olson

TWENTIETH CIRCUIT: Timothy P. Bosson

TWENTY-FIRST CIRCUIT: H. Clay Gravely IV

TWENTY-SECOND CIRCUIT: Rachael A. Sanford

TWENTY-THIRD CIRCUIT: Vacant

TWENTY-FOURTH CIRCUIT: Vacant

TWENTY-FIFTH CIRCUIT: Craig A. Penny

TWENTY-SIXTH CIRCUIT: Timothy M. Mayfield

TWENTY-SEVENTH CIRCUIT: Nathaniel H. Lyons

TWENTY-EIGHTH CIRCUIT: Cameron S. Bell

TWENTY-NINTH CIRCUIT: Mandy Varney French

THIRTIETH CIRCUIT: M. Suzanne Kerney-Quillen

THIRTY-FIRST CIRCUIT: Cameronne Mary Taillon,  
Jessica M. Gurzo

## Program Chairs

Full list and contact information available online at <http://www.vsb.org/site/conferences/ylc/view/programs/>

**ADMISSION AND ORIENTATION CEREMONY**

Chair: Bryan G. Scott

Sponsors Coordinator: Martin C. Boyle

Volunteer Coordinator: Edward Everett Bagnell, Jr.

**ANNUAL MEETING**

Chair: Jennifer A. Haberlin

Athletics: Andrew Tank

**BENCH/BAR CELEBRATION DINNER**

Chair: Mollie Barton

**BOARD MATCH**

Chair: Brent Timberlake

**DOCKET CALL NEWSLETTER**

Editor: Meghan Cloud

**FIRST DAY IN PRACTICE SEMINAR**

Co-Chairs: Ryan Glasgow, Ronald A. Page, Jr.

**PROFESSIONAL DEVELOPMENT CONFERENCE**

Co-Chairs: Robert E. Byrne, Jr., Daniel Eric Ortiz

**COMMUNITY LAW WEEK**

Chair: Demian McGarry

**DOMESTIC VIOLENCE SAFETY PROJECT**

Chair: Timothy M. Mayfield

**EMERGENCY LEGAL SERVICES**

Chair: Glen Howard Sturtevant, Jr.

**IMMIGRANT OUTREACH**

Co-Chairs: Frederico B. Serrano, Ni Ni Tin

**JUVENILE RIGHTS HANDBOOK**

Chair: Vacant

**MENTAL HEALTH REFORM**

Chair: Nathan Veldhuis

**MINORITY PRE-LAW CONFERENCE**

Northern Virginia Co-Chairs: Samantha Ahuja,  
Lindsey A. Waters

Southern Virginia Chair: Macel H. Janoschka

Tidewater Chair: Jeffrey Michael Bourne

**NO BILLS NIGHT**

Statewide Chair: William Wirt Brock

Abingdon Chair: Cameron Bell

Danville Chair: Darren W. Bentley

Richmond Chair: Mary E. (Betsy) Davis

The YLC is currently seeking volunteers to chair the No Bills Night program in the following regions: Charlottesville, Fredericksburg, Lexington/Staunton, Lynchburg, Martinsville, Northern Virginia, Roanoke, Tidewater, and Winchester. Interested parties should contact William Wirt Brock at (540) 983-9332.

**OLIVER HILL/SAMUEL TUCKER LAW INSTITUTE**

Chair: Yvette A. Ayala

**STUDENTS' DAY AT THE CAPITOL**

Chair: Lindsey H. McGinnis

**WE THE JURY (A VIEW FROM THE BOX)**

Chair: Vacant

**WILLS FOR HEROES**

Chair: Andrew G. Geyer

## Commissions

**CHILDREN AND THE LAW**

Chair: Barry Waldman

**PRO BONO**

Chair: Samantha Ahuja

**UNLOCK YOUR POTENTIAL**

Co-Liaisons: Jennifer McClellan, Dan Gray

**WOMEN & MINORITIES IN THE PROFESSION**

Chair: Vacant

## Internal Operating Committees

**ABA INVOLVEMENT**

Jennifer McClellan, Lesley Pate

**BUDGET AND FINANCE**

Lesley Pate

**CIRCUIT REPRESENTATIVES**

Trevor Moe, Richelle Moore

**COMMUNICATIONS/WEB PAGE**

Brian Charville

**GRANTS AND AWARDS**

Carson Sullivan

**LONG-RANGE PLANNING**

Sarah Louppe Petcher

**MEMBERSHIP INVOLVEMENT**

Brian Charville, Trevor Moe

**NEW PROGRAMS REVIEW**

Jennifer McClellan, Lesley Pate, Sarah Louppe Petcher

**NOMINATING COMMITTEE**

Dan Gray

## YLC Appointments

**VIRGINIA CLE:** Brian Charville

**VIRGINIA LEGAL SERVICES CORP.:** Christy Ellen Kiely

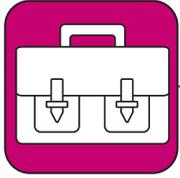
**TASK FORCE ON DIVERSITY:** Jennifer McClellan

**FASTCASE:** Sarah Louppe Petcher

## Volunteer Opportunities

Committee descriptions and mail-in volunteer form available online at

<http://www.vsb.org/site/conferences/ylc/view/volunteer-opportunities/>



# corporate corner

David C. Nahm

## Issues of Interest for Virginia Transactional Attorneys

### Delaware Puts a Fine Point on Directors' Obligation to Attain the Very Best Sales Price for Shareholders

Virginia lawyers with corporate clients organized under the laws of Delaware take heed: a recent decision in that state may undermine assumptions about how far corporate boards must go to protect their members from personal liability, as well as the likelihood of getting out of shareholder actions early and inexpensively.

In *Ryan v. Lyondell*, 2008 WL 2923427 (Del. Ch. 2008), the Delaware Chancery Court considered whether to grant summary judgment in favor of the defendant members of a corporation's board of directors on claims that they had not conducted the sale of the company properly. Though the court acknowledged that the sale price was "fair," it found that the board members' passive role in the quick sale of the economically healthy company required a trial to assess the factual issues—in particular, whether they had been active enough in determining whether the offer constituted the best price available.

Lyondell Chemical Company was a financially stable company which, at the time of the events at issue, was not being marketed for sale. It received an unsolicited offer from Basell AF, a Luxembourg company, of \$13 billion, or \$48.00 per share. At the time, the value of Lyondell's stock was approximately \$30.00 per share. The board hired Deutsch Bank Securities,

Inc., as a financial adviser in the matter and instructed it not to solicit any competing offers. Deutsch Bank concluded that Basell's offer was fair and advised the board that it was unlikely to do better. The board approved the offer in fewer than seven days, and the stockholders voted overwhelmingly to approve the merger.

The merger spawned a number of lawsuits, including a class action brought by Walter E. Ryan, a former stockholder of Lyondell. Eleven former board members were named as individual defendants in the class action and faced personal liability. They were alleged to have breached their duty of loyalty and their duty to seek out the highest reasonable price pursuant to the Supreme Court of Delaware's holding in *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986). The important facts relating to the board members' liability were the "hasty" process, the deal's approval by a large majority of the stockholders, Deutsche Bank's determination that the offer was fair and unlikely to be topped, and the lack of a market check to see whether the \$48.00-per-share price was in fact the best attainable.

The board members moved for summary judgment, but their motion was denied. The court held that questions of fact would have to be resolved to determine whether they had violated their duties under *Revlon*. In *Revlon*, the Supreme Court of Delaware held that when the board of directors of a corporation undertakes to sell the company, the board must focus solely on obtaining the highest value reasonably

available to the stockholders. The chancery court found that though the price offered for Lyondell was plainly "fair," and though it was overwhelmingly approved by the stockholders, the question of whether the board had violated its *Revlon* duties was one that must be left for trial. In the court's view, the board's failure to solicit competing bids for the company—even though a higher offer was unlikely—presented a genuine issue of material fact. It bolstered its conclusion by noting that Lyondell was not in financial distress or actively seeking a sale of its assets or a strategic partnership at the time of Basell's offer, and that the board had essentially acted as a "passive conduit" to the stockholders for the bid.

Though the Delaware Chancery Court in *Lyondell* pointed out that "[t]he denial in part of the Lyondell Defendants' motion is driven more by the constraints of a summary judgment process than it is by our corporate law," the case points up issues worth considering if you are advising a corporation incorporated in Delaware during its sale. Even where an obviously fair offer is accepted by an overwhelming number of shareholders, and where your client's board clearly is not acting in a self-serving or conflicted way, a shareholder suit alleging breaches of duty may survive summary judgment. It is important not only to ascertain, through careful deliberations and the assistance of financial and legal advisors, that the price being offered is fair and reasonable, but to go the extra step and determine whether it is the best price attainable. As we transactional lawyers know, that's a tall order—especially when time is of the essence, and when searching for other bids could lead to the exasperated withdrawal of the current offer.

**David Nahm** is an associate with Wharton Aldhizer & Weaver, PLC, in Harrisonburg. You can reach him at [dnahm@wawlaw.com](mailto:dnahm@wawlaw.com).

Due to space constraints, *Criminal Corner* is taking a bye. It will reappear in our winter issue.

The YLC hosted two successful conferences in September. Additional photos may be viewed online, at <http://tinyurl.com/YLC-LDC08>.





# see you in court

Robert E. Byrne, Jr.

## News and Practice Tips for Virginia Litigators

### The (Indispensable) Basics of Court Orders

One of the prizes of winning a motion is the responsibility of drafting an order memorializing the court's ruling. The rules regarding orders are fairly straightforward and, to some extent, require little more than mechanical application. But those rules are rigid, and not properly understanding or following them can drastically alter a case.

The starting place for understanding orders is the oft-quoted and firmly established principle that a "trial court speaks only through its written orders." *Austin v. Consol. Coal Co.*, 256 Va. 78, 81, 501 S.E.2d 161, 162 (1998). That a trial court's ruling must be memorialized in a written order means that an oral ruling has no effect unless it is written and endorsed by the court. For that reason, think of your pleadings and motions as applications for orders—while written and oral arguments are necessary to obtain court rulings, orders are the ultimate goal of your battle.

The written order principle also has several practical implications. Most importantly, your

proposed language will need to faithfully track the court's ruling, a task best accomplished by reviewing the hearing transcript. If you and opposing counsel do not agree on the language of the order, you may have to ask the court to rule on that matter and—if all goes your way—endorse your proposed order. And the inflexible rule regarding writing is not limited to the order; it oftentimes applies to objections as well. If you're on the losing side, you must clearly write your objections on the order itself.

Drafting orders becomes more complicated when the order in question is the final order. A final order may follow months or years of intense litigation, and it serves as the ultimate resolution of the pleadings, discovery, pretrial motions, trial, and post-trial motions. Be sure to include all of the relief you're entitled to, or all of your work will be for naught.

Entering the final order triggers two rules of vital importance, particularly if you plan to appeal the case. First, entering the final order activates the very first rule of the Supreme Court of Virginia: Rule 1:1, the pertinent portion of which states, "[a]ll final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and

subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer." The court's endorsement starts the ticking of the clock. Except for in very limited circumstances, the court will lose jurisdiction and become unable to modify, amend, or change the order after the 21-day period has expired. This has the consequence, whether or not intended, of making the final order "the law of the case." *Hill v. Hill*, 227 Va. 569, 578, 318 S.E.2d 292, 297 (1984).

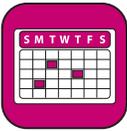
Second, endorsement of the final order also starts the clock for purposes of perfecting an appeal. Whether you are appealing a case to the Supreme Court of Virginia under Rule 5:9(a) or to the Court of Appeals of Virginia under Rule 5A:6, it is vital to understand that entry of the final order initiates a new process that requires specific actions at specific times. Recent opinions have shown that perfecting an appeal requires perfection, and the how, what, and when of perfection starts with entry of the final order.

Understand the importance of court orders, and understand that court orders will determine the direction, pace, and, ultimately, the remedy of your entire case. Knowing the effect that endorsing an order has on your case will help you develop and execute your strategy for the best possible result.

**Bob Byrne** is a litigation associate at Martin & Raynor, P.C., in Charlottesville. You can reach him at [bbyrne@mrlaw.com](mailto:bbyrne@mrlaw.com).

- 1) On September 12, lawyers from across the Commonwealth attended the YLC Professional Development Conference in Richmond. The Hon. B. Waugh Crigler (pictured) and the Hon. Johanna L. Fitzpatrick provided negotiation and mediation tips.
- 2) Attendees at the Professional Development Conference, "Learning from the Masters," listen to members of the profession's A-list.
- 3) Judge Jonathan C. Thacher (pictured) and Judge Margaret P. Spencer presented their best "Courtroom Tips" at the conference.
- 4) The following day, the YLC board and a host of volunteers gathered in the House Chamber at the State Capitol for the YLC Leadership Conference.
- 5) YLC Board member Christy Kiely provided valuable information on executing a successful program.
- 6) The Hon. Donald M. Haddock, Jr., a current YLC member and former YLC Board member, offered tips and life lessons from his new role as judge in Alexandria General District Court.





## Upcoming Events

- 12/4** | VSB Professionalism Course,  
Richmond
- 1/9** | YLC Board Dinner, Montpelier
- 1/10** | YLC Board Meeting, Montpelier
- 3/9** | YLC Board Dinner, Richmond
- 3/10** | YLC Board Meeting, Richmond
- 2/20-21** | NoVa Minority Pre-Law Conference
- 4/4** | Pre-Law Conference,  
William & Mary School of Law

For a complete, up-to-date list of events, please visit: <http://www.vsb.org/site/events/>

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## Docket Call

A quarterly publication of the Young Lawyers  
Conference of the Virginia State Bar.

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